

## Developer Terms for the PLCnext Store Governing the Distribution and Sale of Developer Apps

Phoenix Contact and its Affiliates operates the PLCnext Store, which is part of a self-scaling technical ecosystem for Phoenix Contact's industrial control systems equipped with the open automation platform "PLCnext Technology" (*PLCnext Controls*). Via the PLCnext Store, Phoenix Contact distributes Phoenix Contact Apps as well as third-party developer (*Developer*) apps (*Developer Apps*). Both the Phoenix Contact Apps and the Developer Apps are ready-made software applications (*Apps*) which can be used by Customers to e.g. functionally extend their PLCnext Controls. In case of Developer Apps, Phoenix Contact will sell and distribute the Apps to Customers as a commission agent, that is, in Phoenix Contact's own name but on account of the respective Developer. The PLCnext Store is a sales channel for Phoenix Contact, software providers, and programmers and allows Phoenix Contact as well as Developers the access to new digital business and profitability models. Currently, the PLCnext Store operates a US Hub (for distribution of Apps to customers in the United States of America and Mexico and Canada) and a European Hub (for distribution of Apps to customers in Europe and in the rest of the world). If you wish to distribute Developers Apps through the US Hub of the PLCnext Store, for such distribution the terms and conditions of this Agreement as modified by the Annex to these Developer Terms apply. The PLCnext Store is only available to business customers.

The following terms and conditions apply to the use of the PLCnext Store by Developers in order to distribute Developer Apps to Customers through the PLCnext Store.

### 1 DEFINITIONS

Capitalized terms used in the Agreement have the meaning ascribed to them below:

<b>"Affiliate"</b>	means any enterprise affiliated with Phoenix Contact, that is any enterprise which, in each case, either directly or indirectly (i) controls Phoenix Contact, (ii) is controlled by Phoenix Contact or (iii) is under the joint control of more than one enterprise, where "control" means the power for Phoenix Contact to exercise controlling influence over the management of the relevant enterprise, whether by direct or indirect ownership of more than 50 per cent of the voting capital, by contract or otherwise.
<b>"Agreement"</b>	means the Agreement between Phoenix Contact and the Developer incorporating these Developer Terms and all documents referenced herein.
<b>"API"</b>	means application programming interface.
<b>"App"</b>	means a software application, software components, software services including functionality add-ons, designed for use with PLCnext controls or the PLCnext automation system, including any corresponding documentation (as distributed by the licensor), distributed to the Customer through the PLCnext Store. This includes the enabling of additional functions via in-app transactions.
<b>"App Distribution Process"</b>	means the process for distribution of Apps and payment collection available under <a href="https://www.plcnextstore.com/guideline">https://www.plcnextstore.com/guideline</a> or otherwise provided by Phoenix Contact.
<b>"App License"</b>	means a license that Phoenix Contact grants to a customer under a separate agreement.
<b>"Business Day"</b>	means a Monday through Friday, except for public holidays observed throughout the State of Lower Saxony, Germany.

<b>“Commission”</b>	means the share of the gross amount of all Customer Receivables that Phoenix Contact is entitled to in consideration of the PLCnext Developer Services.
<b>“Compliance Standards”</b>	means the following requirements: Developer Apps and Distribution Content: (i) comply with the applicable laws; and (ii) can be used by Phoenix Contact and the Developer as permitted under the Agreement and by Customers as permitted under the applicable Customer Agreements without violating applicable laws or the intellectual property rights, trade secrets, or other rights of any third party, or restrictions towards third parties, such as confidentiality obligations.
<b>“Confidential Information”</b>	means any information shared by Phoenix Contact or any of its Affiliates with the Developer under or in connection with the PLCnext Store Agreement and which is – when disclosed – identified as “Confidential” or consists of information that, by its nature or context, is sufficient to put the Developer on notice of its confidential nature. Any information and materials obtained by the Developer in connection with the Agreement and the Developer’s receipt of PLCnext Developer Services thereunder, including but not limited to the PLCnext Store and its underlying technology, information regarding Phoenix Contact’s, its Affiliates’ and business partners’ business strategies and practices, methodologies, trade secrets, know-how, pricing, technology, software, APIs, product plans, services, client lists, and information regarding employees, clients, vendors, consultants and Affiliates, are deemed to be Phoenix Contact’s Confidential Information.
<b>“Customer”</b>	means a customer using one or more Developer Apps under one or more Customer Agreements.
<b>“Customer Agreement”</b>	means a contract on the use of a Developer App concluded between Phoenix Contact and a Customer.
<b>“Customer Data”</b>	means all electronic data or information stored, processed or transmitted in or through the PLCnext Store and/or any App by Customers.
<b>“Customer Receivables”</b>	means, collectively, all obligations of Customers to pay License Charges to Phoenix Contact.
<b>“Developer”</b>	means the person or entity other than Phoenix Contact developing an App, which is distributed by Phoenix Contact through the PLCnext Store and that has entered into the Agreement with us.
<b>“Developer App”</b>	means an App, including Updates, developed by the Developer and distributed through the PLCnext Store in the name of Phoenix Contact (which may also be a Phoenix Contact Affiliate) and on account of the Developer.
<b>“Developer Support”</b>	means the support to be provided by the Developer to the Customer with regard to the Developer App.
<b>“Distribution Content”</b>	means the documents, information, data and other content (such as the name of the Developer to be displayed in the PLCnext Store) provided by the Developer along with a Developer App for the distribution of the Developer App through the PLCnext Store, provided that the Developer App itself is not part of the Distribution Content.

<b>“Documentation”</b>	means the documentation made available to the Developer by Phoenix Contact as part of or in connection with the PLCnext Developer Services.
<b>“Force Majeure”</b>	means any event caused by circumstances beyond the respective Party’s reasonable control, including, but not limited, acts of God, earthquake, fire, flood, epidemics, pandemics, embargo, riot, sabotage, attacks on IT systems by third parties (e.g., hacker attacks), labor shortage or dispute, acts or omissions of civil or military authorities (in particular, but not limited to currency restrictions, suspension or withdrawal of import or export permits), war, acts of sabotage or terrorism, even if these circumstances occur with a supplier, vicarious agent ( <i>Erfüllungsgehilfe</i> ) or an Affiliate.
<b>“Free-of-Charge License”</b>	means a license that Phoenix Contact grants to a Customer under a corresponding Customer Agreement to use a Developer App free of charge.
<b>“License Charges”</b>	means all charges, if any, agreed between Customers and Phoenix Contact under Customer Agreements for Customers’ use of Developer Apps.
<b>“Modified Materials”</b>	means derivative works or materials created by or for you that are derived from, based upon or incorporate any portion of the Phoenix Contact Licensed Material licensed to the Developer under the Agreement.
<b>“Other Developer”</b>	means any person or entity distributing Apps through the PLCnext Store without being party to the Agreement.
<b>“Parties”</b>	means Phoenix Contact and the Developer, collectively.
<b>“Party”</b>	means Phoenix Contact or the Developer, as applicable.
<b>“Phoenix Contact”</b>	means Phoenix Contact GmbH & Co. KG, with an address of Flachs- marktstr. 8, 32825 Blomberg, Germany, in case of distribution through the European Hub and Phoenix Contact USA, Inc., with an address of 586 Fulling Mill Road, Middletown, PA 17057, USA in case of distribution through the US Hub.
<b>“Phoenix Contact App”</b>	means an App developed by Phoenix Contact or a Phoenix Contact Affiliate and distributed through the PLCnext Store by and in the name of Phoenix Contact.
<b>“Phoenix Contact Licensed Material”</b>	means all SDKs, Documentation, documents, sample code, scripts, libraries, technology, distributables, and other material or information made available to the Developer by Phoenix Contact as part of or in connection with the PLCnext Developer Services.
<b>“PLCnext Developer Services”</b>	means the services specified in the Agreement provided by or on behalf of Phoenix Contact to a Developer, including without limitation any Phoenix Contact Licensed Material and the access to the PLCnext Store for the purpose described hereinafter.
<b>“Phoenix Contact SLT”</b>	means the “Software License Terms” of Phoenix Contact applicable whenever a Customer purchases an App.
<b>“PLCnext Store”</b>	means the PLCnext online store for Apps operated by Phoenix Contact.
<b>“PLCnext Store Agreement”</b>	means the agreement between Phoenix Contact and a Customer on the Customer’s access to the PLCnext Store.

<b>“Recipient”</b>	means a Party receiving access to Confidential Information of the other Party.
<b>“Registration”</b>	means Developer’s online application for access to the PLCnext Developer Services under the terms of the Agreement and Phoenix Contact’s acceptance of such application.
<b>“Requirements”</b>	means the technical and quality requirements for Developer Apps available under <a href="https://www.plcnextstore.com/guideline">https://www.plcnextstore.com/guideline</a> and / or the Documentation otherwise provided by Phoenix Contact.
<b>“SDK”</b>	stands for software development kit and means a set of program libraries and programming tools for software development, including corresponding Documentation, provided by Phoenix Contact enabling the Developer to create Modified Materials, and, based on that, Developer Apps to be distributed through the PLCnext Store.
<b>“Security Standards”</b>	means the following requirements: Developer Apps and any Distribution Content will <u>not</u> : (i) constitute a threat to the security or functionality of the PLCnext Store or the PLCnext Developer Services; (ii) adversely impact Phoenix Contact, Phoenix Contact Affiliates, Customers, or any third party, in particular, without limitation, not present any risk of personal injury; (iii) contain viruses, Trojan horses, or other programs that may damage software; and (iv) contains unsigned software or software from an undefined source.
<b>“Service Levels”</b>	means time frames for resolving support requests by Customers as set forth in Sections 7.9 to 7.11.
<b>“Suspension”</b>	means the suspension of: (i) a Developer’s access to the PLCnext Store, if applicable; (ii) the provision of PLCnext Developer Services, including services in relation to Customers; and/or (iii) the granting of rights under the Agreement, in whole or in part.
<b>“Taxes”</b>	means any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales and use, or withholding taxes, assessable by any local, state, federal or foreign jurisdiction.
<b>“Update”</b>	means an updated or amended version of a Developer App.
<b>“Update of Terms”</b>	means an update of or modification to the terms of the Agreement, including any documents referenced therein in accordance with Section 18. Changes to Requirements, the App Distribution Process pursuant to Section 6.3 and updates of templates pursuant to Section 18, last sentence, will not constitute an Update of Terms.
<b>“Updated Terms”</b>	means the updated or modified terms of the Agreement due to an Update of Terms.
<b>“Us”, “we”, “our”</b>	means Phoenix Contact in its capacity as a Party to the Agreement.
<b>“You”, “you”, “your”</b>	means the Developer in its capacity as a Party to the Agreement.

## **2 SUBJECT MATTER AND SCOPE**

- 2.1 The Agreement is concluded between you and us by a successful Registration in accordance with the designated Registration procedure. These Developer Terms, together with all documents referenced therein, each as amended from time to time, are incorporated into the Agreement.
- 2.2 If you wish to distribute Developer Apps through the US Hub of the PLCnext Store, for such distribution the terms and conditions of this Agreement as modified by the Annex to these Developer Terms apply.
- 2.3 The PLCnext Developer Services are aimed only at natural and/or legal persons, entities or partnerships which use the PLCnext Developer Services in exercise of their commercial or self-employed professional activities (entrepreneurs).
- 2.4 Notwithstanding Section 2.3, in the course of the Registration process for the PLCnext Developer Services, we will ask the respective natural person to state whether it is acting: (a) in its own name and for the own account of its own business (e.g. as proprietor); or (b) as duly authorized representative in the name and on behalf of a certain legal entity. In case of (a), the Agreement is concluded between us and the respective person and you represent that you are at least eighteen years of age. In case of (b): (i) the Agreement is concluded between us and the legal entity that is represented by the respective natural person; and (ii) upon Registration, the registering natural person warrants that they are authorized to conclude the Agreement on behalf of the legal entity they represent according to the information provided in the course of the Registration process.
- 2.5 We may, in our sole discretion, accept or reject any application for Registration. For certain transactions, the acceptance of Registration depends, *inter alia*, on the receipt of applicable tax identification documentation as well as its verification of validity by us or by the payment service provider or proof of commercial business activity as may be required by us as well as the specifications set by the payment service provider during the registration process.
- 2.6 The Agreement governs your use of the PLCnext Developer Services in consideration of your obligation to pay Phoenix Contact the applicable Commission provided that we charge our Customers License Charges for Developer Apps.
- 2.7 PLCnext Developer Services exclude: (i) any hardware and/or software necessary to use the PLCnext Developer Services; (ii) the transmission of Phoenix Contact Licensed Material and any other data to and from the WAN exit of the data center on which the respective PLCnext Developer Services are provided; and (iii) any external websites (including embedded widgets or other means of access) linked to or in the PLCnext Store. You shall be solely responsible for securing and maintaining suitable hardware and software and an internet connection at your own expense.
- 2.8 The PLCnext Developer Services may contain third-party software, including open source software, which may be subject to additional or differing terms and conditions. We will make the applicable terms and conditions available to you in an appropriate manner.

## **3 GENERAL RIGHTS AND OBLIGATIONS WITH RESPECT TO PLCNEXT DEVELOPER SERVICES**

- 3.1 During the term of the Agreement and subject to Sections 3.2 to 3.4, we provide any PLCnext Developer Services as a service in substantial conformance with the features and functionalities as conclusively described in the Agreement. We will provide you with Phoenix Contact Licensed Material and make the PLCnext Store available in a manner suitable for distributing Developer Apps to Customers by Phoenix Contact.

- 3.2 Except for the express obligations and/or warranties set forth in the Agreement, we assume no obligations to you, and any statements about the PLCnext Developer Services and their respective functionality in any communication with you are for information purposes only and do not constitute obligations of us.
- 3.3 The use of the PLCnext Developer Services may be subject to certain system requirements, including without limitation with regard to necessary hardware or operating system. The PLCnext Developer Services will be rendered in a manner that will support those specified system requirements. Notwithstanding Section 2.7, we assume no warranty and shall not be liable for any consequences to the extent they are caused by your failure to use the PLCnext Developer Services in accordance with any such defined system requirements.
- 3.4 Unless otherwise agreed, we provide the PLCnext Developer Services as standard services and enable you to use the agreed PLCnext Developer Services made generally available by us. We update and further develop the technology, features, and functionalities of the PLCnext Developer Services and are under no obligation to provide prior versions thereof. Upon the provision of a modified or new version of the PLCnext Store, Phoenix Contact Licensed Material, or any other content, you are no longer entitled to use previous versions. Should material changes to the PLCnext Developer Services be implemented which have an impact on your use or should the PLCnext Developer Services be restricted or disabled, we will notify you at least ten (10) Business Days before the changes become effective by sending you a notice (to the extent reasonable) or by informing you through the PLCnext Store in a way that the notice will be displayed to you when you log in. Such notice period does not apply if, based on our reasonable judgment, we believe that changes are necessary in order to avoid any: (i) threat to the security or functionality of the PLCnext Developer Services in particular without limitation the PLCnext Store or; (ii) adverse impact on us, our Affiliates, Customers and/or any third party, including without limitation any risk of personal injury; and/or (iii) subject us, our Affiliates, Customers and/or any third party to liability. To the extent you are, due to such changes, materially deprived of the benefits of the Agreement, you are entitled to terminate the Agreement in writing with effect upon effectiveness of the change at the earliest.
- 3.5 We provide you access to the PLCnext Developer Services to be provided over the internet at the WAN exit of the data center used by us.
- 3.6 You shall render to us any cooperation that is reasonable and appropriate for the proper performance of the PLCnext Developer Services. You acknowledge that our proper performance of the PLCnext Developer Services may depend on your timely and proper performance of your cooperation obligations. In particular, you shall (i) make available to us, in a reasonable format and in a timely manner, the data and information that is necessary for rendering the agreed PLCnext Developer Services, (ii) use reasonable measures to ensure that any personnel involved on your behalf in receiving and using the PLCnext Developer Services is adequately qualified, and (iii) provide timely instructions, approvals or sign-offs if and as applicable. If you fail to cooperate in accordance with the Agreement, we shall not be responsible for any consequences caused by such failure. You shall reimburse us for any additional efforts caused by such failure on our applicable time and material rates.
- 3.7 Notwithstanding any deviating and/or additional obligations expressly set forth in the Agreement, it is your responsibility to ensure, and we will neither assume any additional obligation nor responsibility, that your use of the PLCnext Developer Services complies with applicable law.
- 3.8 We may engage any of our Affiliates and any other third parties for and in connection with the provision of PLCnext Developer Services, it being understood that this shall not amend or release us from our contractual obligations to you under the Agreement.

## **4 PHOENIX CONTACT LICENSED MATERIAL**

- 4.1 As part of or in connection with the PLCnext Developer Services, we may make available to you certain Phoenix Contact Licensed Material. Such Phoenix Contact Licensed Material may include, in particular: (i) an SDK and (ii) Documentation, including a description of APIs.
- 4.2 We grant you a right to use the Phoenix Contact Licensed Material as set forth in Section 10.2.
- 4.3 You agree not to create any modifications of the Phoenix Contact Licensed Material or include any code in the Modified Materials which would: (i) damage, disable, prevent the use of or access to the PLCnext Developer Services; or (ii) prevent, interrupt, adversely affect or interfere with the installation or operation of existing features or functions of the PLCnext Developer Services.
- 4.4 You agree not to reverse engineer or decompile any of the Phoenix Contact Licensed Material that is not in source code format, except as and only to the extent expressly permitted to do so by applicable law for the purposes of inter-operability, error correction, and security testing. If you have such statutory rights, you will notify us in writing of any intended reverse engineering or reverse compilation. Although we are not obligated to do so, in the event we provide any error corrections or updates to the Phoenix Contact Licensed Material, you agree to incorporate such error corrections or updates into the Modified Materials.
- 4.5 Since the Phoenix Contact Licensed Material is part of the PLCnext Developer Services, unless the context indicates otherwise any and all provisions in these Developer Terms referring to “PLCnext Developer Services” are applicable to your use of the Phoenix Contact Licensed Material, including without limitation Sections 8 and 10.
- 4.6 The following provisions apply with respect to software that according to generally recognized principles is to be considered “Open Source Software”:
- 4.7 When submitting any Developer App or Update to us (as applicable), you shall provide us with: (a) a complete and accurate list of all Open Source Software combined, linked or embedded with, in or to the Developer App; (b) a description of the nature of such Open Source Software, (e.g., standalone software, library, plug-in, interpreter); and (c) a copy of the license terms of such Open Source Software.
- 4.8 When developing and distributing through the PLCnext Store any Developer App with, in or to which Open Source Software is combined, linked or embedded, you shall comply with all terms of the relevant Open Source Software license, which includes without limitation, if and as applicable under that license, that you: (i) provide us with the information and documents described in Section 4.7 (a) and (c); (ii) deliver, or make available, to us the source code of such Open Source Software; and (iii) provide to us all relevant copyright notices and warranty disclaimer notices.
- 4.9 Without our prior written consent you shall not combine, link or embed with, in or to the Developer App any Open Source Software which is subject to license terms that would oblige you, us, our Affiliates, or any third party: (i) to distribute, or make available, Phoenix Contact Licensed Material under the license terms of such Open Source Software or substantially similar terms; and/or (ii) to grant third parties access to the source code of any Phoenix Contact Licensed Material (“copy-left license”).

## **5 NO WARRANTY OR GUARANTEE**

- 5.1 The PLCnext Developer Services are provided “as is”. We are not obliged to provide certain functionalities or fulfill any other requirements. We do not warrant that the PLCnext Developer Services will be available at all times without any interruption.

- 5.2 None of our obligations under the Agreement shall be deemed to constitute a guaranteed quality (*zugesicherte Eigenschaft*) or other guarantee (*Garantie*). In addition, we disclaim any strict liability (*verschuldensunabhängige Haftung*) for defects and non-conformance already existing when the Agreement was concluded.

## **6 DISTRIBUTION OF DEVELOPER APPS THROUGH THE PLCNEXT STORE**

- 6.1 As part of the PLCnext Developer Services, by deploying Developer Apps in the PLCnext Store and making the PLCnext Store available to users you may submit Developer Apps for distribution by the PLCnext Store through the PLCnext Store in accordance with the App Distribution Process. Developer Apps offered via the PLCnext Store will be distributed alongside Apps by Other Developers and Phoenix Contact Apps. We may feature certain Apps in our discretion.
- 6.2 All Developer Apps developed by the Developer for the distribution through the PLCnext Store must always comply with the Requirements, Security Standards, the Compliance Standards and the App Distribution Process.
- 6.3 We may change and/or issue additional Requirements, and we may change the App Distribution Process, at any time by notifying you at least thirty (30) days before the changed Requirements become effective. Such notice period does not apply if, based on our reasonable judgment, we believe that changes to the Requirements are necessary in order to avoid any: (i) threat to the security or functionality of the PLCnext Store; (ii) adverse impact on us, our Affiliates, Customers, and/or any third party, including without limitation any risk of personal injury; and/or (iii) subject us, our Affiliates, Customers and/or any third party to liability.
- 6.4 Before and during the distribution of any Developer App through the PLCnext Store we may ask you (in our sole discretion) to submit to us the source code or object code file of the respective Developer App or Update (as applicable) along with any other information that might be necessary for an evaluation and for the distribution of the Developer App. For the purpose of evaluating the Developer App, you grant us a non-exclusive and royalty-free license to the Developer App and its Updates as well as to the respective source code or object code and any other information requested. Phoenix Contact will use the source code or object code files solely for evaluating the Developer App and may pass the information to providers which perform such checks on behalf of Phoenix Contact. The Parties agree that the aforementioned license is transferrable to such providers. For clarity, the Parties acknowledge that Phoenix Contact will not provide such source code or object code files to Customers or Other Developers.
- 6.5 For the distribution of the Developer App, you must provide us with the executable files and the Distribution Content. This applies also for Updates. The format and manner of the submission and the required Distribution Content are described in the Requirements. We may change the format and manner of the provision at any time by notifying you reasonably in advance before the change becomes effective by sending you a notice (to the extent reasonable). For the purpose of distributing the Developer App, you grant us a non-exclusive, non-transferrable, and royalty-free license to the Developer App, its Updates, and the Distribution Content that is sub-licensable to the Customers under the terms of the Phoenix Contact SLT.
- 6.6 You are aware and acknowledge that we are under no obligation to deploy and distribute in or through the PLCnext Store any Developer App or any of its Updates that you submit to us. We may reject the deployment and/or distribution of any Developer App, Update and/or Distribution Content in or through the PLCnext Store for any reason at our sole discretion, including if the Developer App, Update and/or Distribution Content according to our reasonable judgment are not compliant with the Requirements, the Security Standards and the Compliance Standards. Within thirty (30) days after the submission of a Developer App or an Update thereof in accordance with the Requirements and the provision of any additional items or information requested by us pursuant to Section 8.3, we will inform you about the deployment or rejection of a Developer App and/or Update in the PLCnext Store by us.



- 6.7 You acknowledge that in respect of the marketing and distribution of any Developer Apps we act as your commission agent. Therefore, you acknowledge that we will distribute the Developer Apps in our name and for your account and that we will conclude the Customer Agreements with the Customers.
- 6.8 We distribute to Customers any Developer App that we deploy in the PLCnext Store either free of charge under a Free-of-Charge License or against payment of License Charges under an App License at prices designated by you. Upon explicit agreement between you and us, you can also offer additional services or billing models as set out under <https://www.plcnextstore.com/guideline>; for clarity, the remuneration for such services or billing models paid by Customers shall also be regarded as License Charges under this Agreement. You shall set any prices charged to Customers for the provision of Developer Apps or related services at your sole discretion (in Euro, net of Taxes). You may change your prices at any time, upon reasonable advance notice to us. After receipt of your notification of a change of your prices, we will adjust the prices in the PLCnext Store without undue delay.
- 6.9 Upon your discretion Developer Apps that are distributed under a Free-of-Charge License will be offered to Customers worldwide and/or via the European Hub and/or via the US Hub to Customers in the United States of America and Mexico and Canada . Developer Apps that are deployed against payment of a License Charge will only be sold to Customers with a proof of their entrepreneurial activity in accordance with the specifications set by us (e.g. VAT number) upon your discretion via the European Hub and/or via the US Hub to Customers in the North-American target regions of the US Hub.
- 6.10 We are entitled to terminate the distribution of any Developer App and/or Distribution Content on the PLCnext Store at any time if: (i) according to our reasonable judgment, it is not compliant with the Requirements, the Security Standards, and/or the Compliance Standards; or (ii) such termination is required by law, a court decision, or a request from a governmental body. If in our reasonable judgment a Developer App and/or Distribution Content infringes third-party rights or applicable law, we may remove it from the PLCnext Store at any time. We will inform you without delay about any termination of your distribution or deletion of a Developer App and/or Distribution Content. Upon your request, we will terminate the distribution of Developer Apps without delay.
- 6.11 We may, but are not obligated to, advertise the Developer Apps offered by you through the PLCnext Store and/or the PLCnext Store itself both within and without the PLCnext Store, in print, digital or other media via publications of our choosing. For this purpose, you grant us a worldwide, non-exclusive, non-transferable, sub-licensable, and royalty-free license to: (i) use the Distribution Content; (ii) convert to digital electronic form, excerpt, reformat, adapt or otherwise create derivative works of the Distribution Content; and (iii) use all trademarks or trade names included in the Distribution Content; in connection with the advertising and marketing the Developer Apps or the PLCnext Store.

## **7 OPERATION OF APPS BY CUSTOMERS**

- 7.1 Upon your request we will enable you in accordance with Section 6 to distribute an Update through the PLCnext Store to Customers using the respective Developer App.
- 7.2 It is your responsibility to provide any technical measures (e.g., backend services) that are required for the correct and/or advertised function of the Developer App. Any scheduled downtime must be communicated to the Customer (e.g. via the Developer App) and to us in advance if such downtime negatively impacts the use of the Developer App. To provide an excellent experience for all Customers, such downtime shall be scheduled at a time when the negative impact for the concerned Customers is low. Information on the availability should be given in the Distribution Content. Unless otherwise agreed between you and Phoenix Contact, you must not require additional payment for the provision of such technical measures from the Customer.

- 7.3 Notwithstanding Section 15, we are entitled to remove any Developer App from the PLCnext Store, if in our reasonable judgment there is a risk that the Developer App: (i) constitutes a threat to the security or functionality to the PLCnext Store or any other of our systems; (ii) adversely impacts the Customer, us, or our Affiliates, or any third party, including, without limitation, any risk of personal injury; or (iii) subject the Customer, us, or our Affiliates, or any third party to liability. Furthermore, we are entitled to remove any Developer App from the PLCnext Store: (i) if this is required by law, a court decision, or a request from a governmental body; (ii) for all Customers at any time if the Agreement has been terminated; and/or (iii) for the relevant Customer only if its access to the PLCnext Store has been suspended or the PLCnext Store Agreement between us and the Customer has been terminated by us. We will inform you about any removal or suspension as soon as possible.
- 7.4 You shall inform us promptly but no later than thirty (30) days in advance, about any discontinuation of the distribution or maintenance of a Developer App by you which would result in an equivalent discontinuation of the distribution or maintenance by us as commission agent. You are not entitled to request a temporary or permanent removal of a Developer App from the PLCnext Store prior to expiry of the aforementioned period, except for good cause (*aus wichtigem Grund*), e.g. if you are prevented from a continued distribution by applicable law or an administrative or court order.
- 7.5 Upon your request pursuant to Section 7.4 and at your responsibility, we will remove any Developer App from the PLCnext Store without undue delay. You acknowledge that a removal or suspension pursuant to Section 7.4 does not lead to any responsibility of us for the respective App vis-à-vis the Customer or any Other Developer. You will indemnify, defend and hold us and our Affiliates, as well as the directors, officers employees and agents of us and our Affiliates harmless from and against any claims, losses, damages, claims, judgments, fines, penalties, settlements and costs (including, but not limited to, reasonable attorneys' fees) arising from claims of any Customer, Other Developer and/or any other third party as set forth in Section 11.1, resulting from your requested removal of any Developer App.
- 7.6 You will indemnify, defend and hold us harmless from and against any warranty claims of any Customer, as set forth in Section 11.1, and you will render to us all necessary technical support to enable us to fulfill the Customer's warranty claim, in particular by providing an Update (Section 7.7). The warranty period for Developer Apps subject to License Charges and/or Free of Charge Licenses is set out in the Phoenix Contact SLT which are also incorporated into the Customer Agreements. Our rights according to Section 7 and Section 11.1 against you acting as your commission agent shall in no case be shorter than the warranty period under any Customer Agreement concluded for the respective Developer App or the period during which the Developer App was available in the PLCnext Store, whichever period is longer. For the avoidance of doubt: your obligation to indemnify us in accordance with Section 11.1 and to render to us all necessary technical support in case of a Customer's warranty claim applies regardless of whether the Developer App is subject to a License Charge or is provided to the Customer free of charge.
- 7.7 In case of malfunctions of a Developer App, you are required to provide an Update to Phoenix Contact without undue delay to fix the malfunction. We are entitled to pause the distribution of the Developer App through the PLCnext Store until such Update has been provided.
- 7.8 Where Customers contact us for support queries, we will: (i) process queries concerning the PLCnext Store or download of Developer Apps ourselves; and (ii) forward queries concerning a Developer App and its functioning to you and you will have sole responsibility for providing the support as part of your Developer Support. Upon receipt, you will immediately forward support queries from Customers concerning the PLCnext Store or the download of Developer Apps to us.
- 7.9 You are required to provide an email address for support requests. As far as the support requests pertain to defined request classes, the applicable Service Levels (actual reaction time and actual implementation time) available under <https://www.plcnextstore.com/guideline> are applicable.

- 7.10 You are required to inform us without undue delay, if a support request cannot be implemented within the Service Levels or if the Customer asks for a refund or a price reduction.
- 7.11 If a malfunction of the Developer App is not fixed by an Update without undue delay, or if a support request has not been implemented within the Service Levels or if the Customer asks for a refund or a price reduction, we are entitled to refund the License Charges from your account to the respective Customers, upon our reasonable discretion in part or in full.

## **8 SECURITY AND COMPLIANCE**

- 8.1 You shall: (i) ensure that all Developer Apps submitted to us and all Distribution Content are compliant with the Security Standards; (ii) ensure that your use of the PLCnext Developer Services will not constitute a threat to the security or functionality of any PLCnext Developer Services and/or adversely impact us, our Affiliates, Customers, or any third party; (iii) before accessing the PLCnext Developer Services and during use, take all necessary precautions against security attacks on your system and to prevent viruses, trojan horses or other programs that may damage software; (iv) not interfere with or disrupt the integrity or performance of the PLCnext Developer Services or other equipment or networks connected to the PLCnext Developer Services; and (v) not use the PLCnext Developer Services in a way that could damage, disable, overburden, impair, or compromise our systems or security or interfere with other users.
- 8.2 You shall: (i) ensure that all Developer Apps submitted to us and all Distribution Content are compliant with the Compliance Standards; (ii) before and at all times during the use of PLCnext Developer Services review and comply with any applicable law, product liability, product safety, tax, and export control law, in particular, at your own expense, obtain and maintain all necessary permits and registrations; (iii) not use the PLCnext Developer Services for any purpose except as expressly permitted by the Agreement; (iv) except to the extent permitted pursuant to applicable law or expressly permitted otherwise, not translate, disassemble, decompile, reverse engineer, or otherwise modify or attempt to discover the source code of any software contained in PLCnext Developer Services in particular without limitation the PLCnext Store and the Phoenix Contact Licensed Material; and (v) ensure that your use of the PLCnext Developer Services will not subject us, our Affiliates, Customers and/or any third party to liability.
- 8.3 We reserve the right to conduct any type of assessment of compliance of Developer Apps submitted to us and of Distribution Content with the Requirements, the Security Standards, the Compliance Standards, our quality criteria, or otherwise with the Agreement. In order to conduct such assessment, upon our request, you shall immediately provide us access to the Modified Materials, executable files, security and deployment processes, and/or other features of Developer Apps along with the applicable documentation and any additional information reasonably requested by us.
- 8.4 You shall inform us promptly: (i) if you become aware of any circumstances indicating that any Developer App submitted to us or items of Distribution Content are not compliant with the Requirements, the Security Standards and/or the Compliance Standards, provided that the information will also contain the measures you intend to take in order to restore the security and/or compliance, respectively; (ii) about any measures of authorities or court decisions which may possibly hinder distribution and/or use of any Developer App and/or Distribution Content; and (iii) about any change to your name, contact details and/or the relevant representative.
- 8.5 You shall: (i) state all information and data truthfully and completely and keep these up to date at all time (e.g., contact information); and (ii) provide us with the name of a representative who is responsible towards you for developing the relevant Developer App.
- 8.6 You are solely responsible for the development, functioning, suitability, content, management, use, and quality of Developer Apps and Distribution Content and the means by which you acquired such content. For example, you are solely responsible for: (i) the creation and maintenance

of independent backup copies of all Developer Apps and Distribution Content; and (ii) any document retention or archiving obligations resulting from applicable laws or company policies.

- 8.7 You will be given access credentials (e.g., logins and passwords) for your authorized users to use in connection with the PLCnext Developer Services. You shall change the passwords on a regular basis in accordance with appropriate password policies. You, and each authorized user, are entirely responsible for maintaining the confidentiality and security of your access credentials, and you are solely responsible for any and all activities that occur under your account(s) to the extent such activities have been authorized by you and/or an authorized user, or have not been authorized by you and/or an authorized user but could have been prevented by you when exercising due care. Passwords may not be used by more than one authorized user and you are prohibited from transferring or sharing passwords with any person that is not an authorized user. You shall ensure that authorized users exit or log-off from their account at the end of each session of use.
- 8.8 Notwithstanding any additional responsibility under applicable law, you are solely responsible to ensure that any of your employees, personnel, Affiliates, and third parties which you engage when making use of PLCnext Developer Services, as well as their employees and personnel, comply with the provisions of the Agreement and other applicable law.

## **9 COMMISSION, BILLING, AND PAYMENT**

- 9.1 We will notify you of Customer Agreements concluded with regard to your Developer Apps except that with regard to Developer Apps under a Free-of-Charge License, we will only show a summary of the downloads. We are not obliged to provide you with the names and data of any Customer of a Developer App; any performance liability (*Erfüllungshaftung*) pursuant to Section 384 para. 3 of the German Commercial Code (*Handelsgesetzbuch*) is excluded in this case.
- 9.2 In consideration of our provision of the PLCnext Developer Services you shall pay to us in connection with the distribution of Developer Apps for which we charge License Charges the Commission on the net amount of all Customer Receivables.
- 9.3 We will invoice Customers all Customer Receivables through the designated process in the PLCnext Store and collect the Customer Receivables for your account. We will deduct a Commission of twenty per cent (20 %) from the collected Customer Receivables and remit to you the remaining amount of eighty per cent (80 %) of the collected Customer Receivables by wire transfer to the bank account or other payment method indicated by you, based on the options presented by Phoenix Contact. Remittance will be made periodically at the latest to the end of the following month upon the date on which we have collected the respective Customer Receivables. We may appoint a payment service provider with the collection of the Customer Receivables and the remittance, after deduction of the applicable Commission, of the remaining amount of the Customer Receivables. Your and our ability to distribute Developer Apps through the PLCnext Store is contingent upon a valid agreement between you and this payment service provider.
- 9.4 Unless otherwise stated, the Commission does not include any Taxes. We will invoice you, and you shall reimburse us for, any such taxes charged to us by any governmental authority in connection with providing the PLCnext Developer Services to you.
- 9.5 Where applicable laws require you to withhold and pay any withholding taxes or similar levies, you may do so, provided that your obligation to pay the net amounts of any Commission we are entitled to, shall remain unaffected. Therefore, as between the Parties, you shall pay to us the net amount of the Commission remaining after the respective deduction plus the amount that was deducted, in order to ensure that we receive the full net amount as contractually agreed.
- 9.6 Once every twelve (12) months, for the first time upon the second (2nd) anniversary of the effective date of the Agreement, we may in our discretion adjust the agreed rates for the Commission rates, with effect for the following commencing month, up to a maximum amount of twenty per cent (20 %) of the rate for the Commission applicable prior to the adjustment.

- 9.7 You may not withhold or offset any payments, unless and until your corresponding claims are undisputed by us or established by a competent court of final jurisdiction. If you withhold or offset any payments in violation of the aforesaid, then, without prejudice to our other rights or remedies, upon ten (10) Business Days' prior notice we may suspend the PLCnext Developer Services on a temporary basis until you have fully settled the withheld amount.

## **10 INTELLECTUAL PROPERTY**

- 10.1 All rights, title, interest and know-how in and to the Phoenix Contact Licensed Material, the PLCnext Store, Distribution Content, and any other information and content and any part and improvement of the aforementioned, other than those expressly granted in the Agreement, shall remain wholly vested in the relevant Party or its third-party business Developers and/or licensors.
- 10.2 Subject to the terms and conditions of the Agreement, we grant to you a non-exclusive, non-transferable right, limited to the duration of the Agreement, to: (i) use the Phoenix Contact Licensed Material to create, develop and test Modified Materials and to compile such Modified Materials into Developer Apps for distribution through the PLCnext Store; and (ii) make one (1) copy of the SDK for archival and backup purposes. The aforesaid rights are not sub-licensable except that you may use the Licensed Material for the foregoing purposes through individual independent contractors who are bound by confidentiality no less restrictive than those applicable to you under the Agreement, provided that all such rights are exercised solely on behalf and for the benefit of you and further that you remain solely liable for all acts and omissions of such independent contractors. You may only use software code made available to you as part of Phoenix Contact Licensed Material where and to the extent expressly permitted in the Agreement. Except as set forth in the Agreement, no license to distribute the Phoenix Contact Licensed Materials or Modified Materials in any form is granted under the Agreement.
- 10.3 Further, subject to the terms and conditions of the Agreement, we grant to you a non-exclusive, non-transferable right, limited to the duration of the Agreement, to access and use the PLCnext Store as necessary to provide Developer Apps into the PLCnext Store with the Agreement.
- 10.4 You shall not remove any copyright or other proprietary notices of us, our Affiliates or third parties found in or on the PLCnext Developer Services and you shall include such notices in all reproductions of the Phoenix Contact Licensed Material.
- 10.5 You grant us, our Affiliates, subcontractors, and business Developers, a worldwide, perpetual, irrevocable, transferable, sub-licensable, and royalty-free license to use any suggestion, recommendation, feature request, or other feedback related to the PLCnext Store and/or the PLCnext Developer Services provided by or on behalf of you, and to incorporate into or otherwise use any such feedback in connection with the PLCnext Developer Services, the PLCnext Store and/or any other products or services.
- 10.6 If you are deprived of your use of the agreed PLCnext Developer Services as permitted under the Agreement due to an infringement of such use upon an Intellectual Property Right, then we will obtain for you the right to continue accessing and using the PLCnext Developer Services, or will at our sole discretion replace or modify the PLCnext Developer Services so they become non-infringing; or, if such remedies are not reasonably available, we are entitled to terminate the Agreement in whole or in part. We, in our sole discretion, may provide the remedies specified in this Section prior to your deprivation of your use of the applicable PLCnext Developer Services.

## **11 INDEMNIFICATION**

- 11.1 You will indemnify us and hold us harmless from and against any losses and/or damages, and defend us and our Affiliates, as well as the directors, officers employees and agents of us and our

Affiliates (both in and out of court) at your own cost against any losses, damages, claims, judgments, fines, penalties, settlements and costs (including, but not limited to, reasonable attorneys' fees) arising out of or in connection with the following circumstances: (i) an allegation by a third party, including an authority, that a Developer App or any Distribution Content is not compliant with the Security Standards and/or Compliance Standards; (ii) a voluntary or officially ordered recall or withdrawal of the Developer App; (iii) claims by a third party made out of or in connection with the use of Developer Apps; (iv) any failure to comply with your obligations under Section 8; (v) any warranty claim made by a Customer against us related to the Developer App distributed by us in our name to the Customer for the account of the Developer; and/or (vi) a breach of the Agreement or applicable law, including without limitation, export control law, by you.

- 11.2 We will: (i) give you written notice of such claim without undue delay, (ii) give you sole control of the defense and settlement of the claim, and (iii) at your cost provide to you all reasonable assistance to defend such claim. You shall not settle or acknowledge any claim without our prior written consent. Notwithstanding the foregoing, you have no obligation of defense or indemnification or otherwise with respect to any claim or demand that results directly from any modification of the concerned Developer App and/or Distribution Content made by us or on our behalf.

## 12 LIABILITY

- 12.1 We are fully liable for damages: (i) to the extent that liability cannot be limited or excluded according to applicable law, in particular applicable product liability law; (ii) caused by intent or gross negligence of us, our legal representatives, employees, vicarious agents (*Erfüllungsgehilfen*), or subcontractors; (iii) in cases of damage to life, body or health caused by willful intent or negligence of us, our legal representatives, employees, vicarious agents or subcontractors; and (iv) in cases of our failure to comply with an agreed guarantee.
- 12.2 In no event will we be liable for damages or frustrated expenses (*Aufwendungsersatz*) caused by ordinary negligence (*einfache Fahrlässigkeit*), except in cases of a violation of material contractual obligations in a manner jeopardizing the purpose of the Agreement or of contractual obligations the fulfillment of which is indispensable for the proper and due performance of the Agreement and which you will and may usually rely on (*Kardinalpflichten*), provided that, in each such case, our liability shall be limited to the damage or frustrated expenses which is reasonably foreseeable in connection with contracts of the type of the Agreement at the time of its conclusion.
- 12.3 The Parties agree that the reasonably foreseeable damages or frustrated expenses within the meaning of Section 12.2 shall, in no event, exceed in aggregate EUR ten thousand (10,000.00).
- 12.4 Unless otherwise agreed by the Parties, any liability of us for damages or frustrated expenses caused by ordinary negligence exceeding the reasonably foreseeable damages as per Section 12.3 is excluded.
- 12.5 We shall not be liable for indirect or consequential damages, including without limitation loss of profit, loss of revenue, business interruptions and loss of goodwill.
- 12.6 We will not be liable for any damage due to loss of data to the extent such damage would have been avoided if you had performed backup copies as foreseen under Section 8.6.
- 12.7 Except for claims under Section 12.1, any rights, claims and remedies for damages against us arising out of or related to the Agreement, whether in contract, tort or otherwise, shall expire no later than two (2) years.
- 12.8 Any limitations and exclusions of liability provided in the Agreement also apply to the benefit of any of our Affiliates, directors, employees, agents, business Developers, sub-suppliers, subcontractors, and any other persons used by us in performing any of our obligations as well as their Affiliates, directors, employees, agents, business Developers, sub-suppliers, subcontractors and any other persons used by them.

## **13 DATA PROTECTION**

Each Party undertakes and agrees to comply with all data protection laws, regulations, requirements or the like, that apply to the performance of each Party's obligations under the Agreement, including but not limited to ensuring that it complies with applicable notification requirements under such laws and (if necessary) entering into an agreement for commissioned data processing.

## **14 CONFIDENTIALITY**

- 14.1 You undertake to treat confidential the Confidential Information of us and our Affiliates and may disclose it only to those employees and/or other personnel who have a need to know and who are bound to confidentiality by their employment contract or otherwise not less stringent than the provisions herein. You may use such Confidential Information only for the purpose authorized by the Agreement.
- 14.2 The confidentiality obligations of this Section 14 shall not apply if you can prove that: (i) the information is generally known or later became known through no fault of yours; (ii) you already knew the same information before the obligation to maintain secrecy or the same information was verifiably developed by you independently; (iii) the information was supplied to you by a third party without the obligation to maintain secrecy; (iv) the information was released in writing for publication by us or our Affiliates; or (v) to the extent the information must be made public on the basis of a binding official or judicial directive.
- 14.3 The Confidential Information and any copies made of it shall be returned (or upon our request destroyed) without further request after the termination of the Agreement. The obligation to return/destroy such Confidential Information does not apply to the extent that Confidential Information and/or copies thereof have to be stored by you in safe custody according to mandatory law, provided, however, that during the retention period provided by such mandatory law this Confidential Information and/or the copies thereof are subject to the obligation to secrecy according to the provisions of the Agreement.

## **15 SUSPENSION**

- 15.1 We are entitled to immediate Suspension, if, according to our reasonable judgment: (i) the use of the PLCnext Developer Services by you may not comply with Sections 8, 13 or 17; (ii) you are in material breach of any other provision of the Agreement; or (iii) any Developer App submitted to us or items of Distribution Content are not compliant with the Security Standards and/or the Compliance Standards. In addition, we are entitled to a Suspension if any payment under the Agreement owed by you is overdue by more than thirty (30) days or the Suspension is required by law, a court decision, or a request from a governmental body. We shall inform you at our earliest convenience about any Suspension.
- 15.2 If and to the extent we make use of our Suspension right, you remain liable for: (i) all fees you have incurred until the date of Suspension; and (ii) all agreed fees for use of any PLCnext Developer Services not suspended. We will restore access to the suspended PLCnext Developer Services, as applicable, if and to the extent a reason for our Suspension pursuant to Section 15.1 no longer exists. Our Suspension right is in addition to and restoration is without prejudice to our termination right pursuant to Section 16 and all other rights and remedies we may have.

## **16 TERM AND TERMINATION**

- 16.1 The Agreement takes effect upon Registration and remains in place and runs for an unlimited period. The Agreement can be terminated for convenience by either Party upon one (1) months' notice before the end of the respective month unless otherwise agreed on by the Parties.

- 16.2 Either Party may terminate the Agreement for cause. Events that entitle us to terminate the Agreement for cause include, in particular and without limitation: (i) acts or omissions by you that entitle us to a Suspension for a continuous period of at least thirty (30) days; (ii) your breach of any obligation or provision of the Agreement which remains uncured for a period of thirty (30) days after receipt of notice thereof; (iii) a material breach of the obligations under the Agreement by you; (iv) our obligation to comply with applicable law or requests by a governmental body, rendering the continued provision of services by us impossible or unreasonable; (v) a change in control of you and/or your direct or indirect parent company which, as suggested by objective reasons, adversely affects our position, rights or interests; and (vi) the termination or expiration of our relationship with a supplier for the provision of the agreed PLCnext Developer Services or material software and/or services, rendering their continued provision by us impossible or unreasonable, unless culpably caused by us.
- 16.3 All termination rights must be exercised by written notice to the other Party.
- 16.4 Except as provided otherwise, upon the termination of the Agreement, regardless of the reasons: (i) we will permanently suspend your access to the PLCnext Store and discontinue provision of the PLCnext Developer Services; (ii) you are obliged to cease all further use of PLCnext Developer Services, including Phoenix Contact Licensed Material; and (iii) you are obliged to destroy or delete all Phoenix Contact Licensed Material without delay and to provide us with written confirmation to this effect. Upon termination, we are not obliged to provide you with the data on any Customers.
- 16.5 Any terms or conditions of the Agreement, which by their express terms extend beyond the termination or expiration of the Agreement or which by their nature should so extend, shall survive and continue in full force and effect after any termination or expiration of the Agreement. In particular, the obligations set out in Sections 11, 12, 13, and 14 shall survive. Section 7 shall survive until any warranty period in connection with the distribution of the Developer App to any Customer has passed.

## **17 EXPORT COMPLIANCE**

- 17.1 You shall before and at all times in connection with the use of the PLCnext Developer Services and other services review and guarantee by appropriate measures that: (i) you comply with any applicable national, supranational and international export and (re-)export control law, including any provisions on technical assistance and technology transfers, in particular of the Federal Republic of Germany, of the European Union and of the United States of America; (ii) you will not violate against an embargo/a sanctions program imposed by the European Union, the United Nations or the United States of America; (iii) in particular, but not limited to, you will not use the PLCnext Developer Services or other services in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to prohibition or authorization, unless required authorization is provided; and (iv) during the term of the Agreement, you are: not subject to national, supranational or international sanctions, in particular of the European Union and the United States of America, neither directly or indirectly owned (50% or more in the aggregate) nor controlled in any way, whether directly or indirectly, by a legal or natural person subject to aforementioned sanctions, nor are you acting on behalf or on account of such person.
- 17.2 If you transfer items (hardware and/or software and/or technology as well as corresponding documentation, regardless of the mode of provision) by using the PLCnext Developer Services and other services administered by us, you will comply with all applicable national and international (re-)export control regulations including but not limited to the regulations of the Federal Republic of Germany, of the European Union and of the United States of America. You will notify us in writing prior to any transfer of goods which are subject to restrictions and export control classifications arising from aforementioned regulations by indicating the appropriate export control list number, e.g. an ECCN (Export Control Classification Number).



- 17.3 Upon request by us, you shall promptly provide us with all necessary information to perform investigations relating to (re-)export control regulations.
- 17.4 Section 17.1–17.3 does not apply to you (i) in case you qualify as a resident party domiciled in the Federal Republic of Germany within the meaning of Section 2 para. 15 of the German Foreign Trade and Payments Act (*Außenwirtschaftsgesetz*) in so far as this would result in a violation of Section 7 of the German Foreign Trade and Payments Ordinance, (ii) in so far as this would result in a violation of Article 5 of Council Regulation (EC) No 2271/96, or (iii) in case any other anti-boycott statute applies to you in so far as this would result in a violation with any provision of such other anti-boycott statute.
- 17.5 We shall not be obligated to fulfill the Agreement if such fulfillment is prevented by any impediments arising out of national or international foreign trade requirements, including any embargoes or other sanctions.

## **18 AMENDMENTS TO THE AGREEMENT**

We reserve the right to conduct an Update of Terms at any time in our own reasonable discretion. In particular, changes in applicable law or updates to and further developments of PLCnext Developer Services may require an Update of Terms. We will inform you about any Update of Terms by giving you at least thirty (30) days' prior notice and by providing you Updated Terms, e.g., by email. The Updated Terms shall become binding upon the Parties upon expiry of the above notification period or on any later date set forth in the notification, unless you object to the Updated Terms in text form prior to the expiry of the notification period. In case you object, we may terminate the Agreement in text form with effect upon the expiry of the notification period at the earliest if the continuance of the Agreement without the Updated Terms is impossible or unreasonable for us. We will point out these consequences to you as part of the notification. Any other termination rights of the Parties shall remain unaffected. This Section 18 shall not apply to changes of the PLCnext Developer Services and/or pricing.

## **19 FINAL PROVISIONS**

- 19.1 The Agreement may not be assigned or otherwise transferred, nor may any rights or obligations be assigned or delegated, by the Developer without our prior written consent.
- 19.2 Any amendments as well as supplements to the Agreement must be in writing in order to be effective. A waiver of form shall be effective only if agreed upon in writing.
- 19.3 If any provision of the Agreement (or any portion thereof) shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder hereof shall not in any way be affected or impaired thereby.
- 19.4 Neither Party's failure to enforce strict performance of any provision of the Agreement will constitute a waiver of a right to subsequently enforce such a provision. No written waiver shall constitute, or be construed as, a waiver of any other obligation or condition of the Agreement.
- 19.5 The Parties are independent contractors, and nothing in the Agreement or the performance of the PLCnext Developer Services shall be considered to create a partnership, joint venture or similar relationship between the Parties.
- 19.6 Unless explicitly set forth otherwise in the Agreement, in case of conflict or inconsistency between any documents which, collectively, form the Agreement, the documents shall prevail in the following descending order of precedence: (i) any terms applicable to third-party software pursuant to Section 2.8, (ii) these Developer Terms; (iii) the documents referenced in these Developer Terms other than the Documentation and (iv) binding provisions of the Documentation.

- 19.7 Whenever notice by email is sufficient as expressly set forth in the Agreement or these Developer Terms, notices to us shall be sent to [PLCnext\\_Technology@phoenixcontact.com](mailto:PLCnext_Technology@phoenixcontact.com) and notices to you shall be sent to your then-current email address as provided by you in the registration process or as recently updated by you. If the Agreement or these Developer Terms require a notice or a document to be „in writing“ or „in written form“, notice by email is sufficient unless (1) expressly stated otherwise or (2) the relevant notice concerns the termination of this Agreement, in this case notice by e-mail is only sufficient if a PDF file of a signed document is attached. For the avoidance of doubt, other electronic communication shall not qualify as a written notice or document.
- 19.8 The Agreement shall constitute the entire understanding of the Parties regarding the subject matter hereof. Any general terms and conditions of the Parties shall not apply, even if printed on or referenced by a form used in connection with the Agreement.
- 19.9 Neither Party shall be liable for any failure or delay in its performance under the Agreement due to Force Majeure, provided that the delayed Party: (i) gives the other Party prompt notice of such cause; and (ii) uses commercially reasonable efforts to promptly correct such failure or delay in its performance.
- 19.10 Any disputes arising out of or in connection with the Agreement or its validity shall be finally settled in accordance with the rules of arbitration of the German Institution of Arbitration (DIS) without recourse to the ordinary courts of law. The place of arbitration shall be Cologne, Germany. The arbitration court shall consist of three arbitrators. The language of the arbitration proceedings shall be English.
- 19.11 The Agreement shall be governed and construed in accordance with the substantive law applicable in Germany without reference to any other law. The United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 and Section 305 – 310 of the German Civil Code (*Bürgerliches Gesetzbuch*) shall not be applicable to the Agreement.

## US Hub Annex

If you wish to distribute Developers Apps through the US Hub of the PLCnext Store, for such distribution the terms and conditions of this Agreement are modified as follows:

1. The following definitions apply instead of the corresponding definitions in the Developer Terms:

- “Business Day”** means a Monday through Friday, except for U.S. public holidays.
- “Force Majeure”** means any event caused by circumstances beyond the respective Party’s reasonable control, including, but not limited, acts of God, earthquake, fire, flood, epidemics, pandemics, embargo, riot, sabotage, attacks on IT systems by third parties (e.g., hacker attacks), labor shortage or dispute, acts or omissions of civil or military authorities (in particular, but not limited to currency restrictions, suspension or withdrawal of import or export permits), war, acts of sabotage or terrorism, even if these circumstances occur with a supplier, agent or an Affiliate.

2. Section 5 para. 2 of the Developer Terms is replaced (as a whole) by the following text:

“OTHER THAN WITH RESPECT TO ANY EXPRESS WARRANTIES MADE IN THIS AGREEMENT, PHOENIX CONTACT EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND RELATING TO THE PLCNEXT DEVELOPER SERVICES WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.”

3. In Section 6 para. 8 of the Developer Terms the reference to “Euro” currency is replaced by a reference to U.S. Dollars.

4. Section 9 para. 1 of the Developer Terms is replaced (as a whole) by the following text:

“We will notify you of Customer Agreements concluded with regard to your Developer Apps except that with regard to Developer Apps under a Free-of-Charge License, we will only show a summary of the downloads. We are not obliged to provide you with the names and data of any Customer of a Developer App.”

5. Section 12 (Liability) of the Developer Terms is replaced (as a whole) by the following text:

“12 Liability

12.1 IN NO EVENT SHALL PHOENIX CONTACT’S LIABILITY HEREUNDER, IN ANY 12 MONTH PERIOD (“CONTRACT YEAR”), EXCEED AN AMOUNT EQUAL TO THE FEES PAID OR PAYABLE BY PHOENIX CONTACT TO DEVELOPER BY DURING THE IMMEDIATELY PRECEDING CONTRACT YEAR. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, UNDER NO CIRCUMSTANCE WHATSOEVER SHALL PHOENIX CONTACT BE LIABLE FOR ANY LOSS OF REVENUE, PROFITS OR DATA, OR FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER OR NOT FORESEEABLE AND REGARDLESS OF WHETHER EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY.

12.2 Any rights, claims and remedies for damages against us arising out of or related to the Agreement, whether in contract, tort or otherwise, shall expire no later than two (2) years.

12.3 Any limitations and exclusions of liability provided in the Agreement also apply to the benefit of any of our Affiliates, directors, employees, agents, business Developers, sub-suppliers, subcontractors, and any other persons used by us in performing any of our obligations as well as their Affiliates, directors, employees, agents, business Developers, sub-suppliers, subcontractors and any other persons used by them.”

6. Section 17.4 does not apply.

7. Section 19, paras. 10 and 11 are replaced (as a whole) by the following text:

“19.10 The Parties will use reasonable efforts to resolve amicably any disputes that may relate to or arise under this Agreement. Any disputes that cannot be resolved will be settled exclusively by arbitration, conducted in English, in accordance with the Commercial Arbitration Rules of the American Arbitration Association in Dauphin County, Pennsylvania (the “Arbitration”); however, either Party may seek injunctive relief from any court of competent jurisdiction. The following specific provisions will also apply to the Arbitration: (i) the proceedings will be held before a panel of three (3) arbitrators; (ii) the arbitrators will apply the law chosen above; (iii) the prevailing Party will be entitled to recover, in addition to any other amounts awarded, its reasonable attorney’s fees, costs, and expenses; (iv) the costs of the Arbitration (other than the Parties’ costs and expenses) will be allocated among the Parties in the discretion of the arbitrators; and (v) the decision of the arbitrators will be in a writing stating the facts and law upon which the decision rests and will be given no later than ten (10) days following the conclusion of the necessary hearings. The Arbitration award will be final, non-appealable and bind the Parties, and any court having jurisdiction can enter judgment upon the award.

19.11 This Agreement, and all matters arising out of or related to this Agreement, except actions arising under the patent and copyright provisions of the U.S. Code, shall be governed by the laws of the Commonwealth of Pennsylvania. The Parties agree that this Agreement is not subject to and shall not be interpreted by the United Nations Convention on Contracts for the International Sale of Goods.”

**Status: March 2022**