



INTERNATIONAL TECHNOLOGY GMBH

Professional engine monitoring and diagnostics

On Premise Licences



Software Licence Agreement

This International Technology Software License Agreement (the "Agreement") is between you and International Technology, the company that owns the software you access or use here ("International Technology" or "we"). If you are agreeing to this Agreement not as an individual, but on behalf of your company, government, or other entity for which you are acting (e.g., as an employee or government official), then "you" means your entity and you bind your entity to this Agreement. International Technology may modify this Agreement from time to time, subject to the provisions of Section 21 (Modifications to this Agreement) below. The Software is not intended for, and may not be used by, persons under the age of 16. You must ensure that all Authorized Users are at least 16 years of age.

The "Effective Date" of this Agreement is the date that is the earlier of: (a) Your first access to or use of the Software (as defined below); or (b) the effective date of the first purchase order related to this Agreement.

By using or accessing the Software presented to you at the time of your order, you agree to be bound by this Agreement. If you do not agree to this Agreement, you may not use the Software.

1 Scope of Agreement

1.1 Software

This Agreement governs your initial purchase of the Software from International Technology, support and maintenance for the Software and any additional services, and any future purchases you make that reference this Agreement. This Agreement incorporates each purchase order, International Technology's policies, product-specific terms and conditions, and all other referenced policies and terms. The Software and its permitted use are further described in the Documentation. The term "Software" includes the Documentation unless otherwise specified.

1.2 Cloud Products

This Agreement does not apply to International Technology's hosted or cloud-based solutions (currently referred to as "Cloud" deployments), the use of which requires a separate agreement with International Technology.

2 Registration: Authorized Users

2.1 Registration

Upon your order and installation of EDCenter on Premise on your own cloud server or the cloud server provided by us, you will be granted access to the Software. The initial registration information has been entered by International Technology correctly, up-to-date, and complete. You are responsible for keeping your registration current so that we can send you notifications, invoices, and other information via email. You are responsible for all actions taken, including orders or app activations (for which fees may apply). You are solely responsible for any access and all related rights and obligations in your respective agreement.

2.2 Authorized Users.

Only Authorized Users may access and use the Software. Some Software allows you to designate different types of Authorized Users, in which case pricing and features may vary depending on the type of Authorized User. You are responsible for all Authorized Users' compliance with this Agreement, including what Authorized Users do with your information,



and for any fees incurred by Authorized Users (or by adding Authorized Users). Any use of the Software must be for Your or Your Affiliates' benefit only (except as expressly permitted in Section 2.3 below) and must be within the Scope of Use.

2.3 Secondary Users.

As further described in the Documentation, certain Software may be used as part of your support (or similar) resources in connection with your own products, such as using EDCenter or using EDCenter Diagnostics to share your own documentation with your users. Subject to the terms of this Agreement, you may grant limited rights to your own customers' end users ("Secondary Users") to use the Software solely to view and interact with such resources. You may not permit Secondary Users to use the Software for purposes unrelated to supporting your own Offerings or grant Secondary Users administrative, configuration or similar rights to the Software. You may not charge Secondary Users a specific fee for use of the Software, but you may charge an aggregate fee for your own Offerings. You are responsible for all Secondary Users as "Authorized Users" under Section 2.2 (Authorized Users) and are otherwise responsible solely for Your own Products, Support Offerings and Secondary Relationships. Notwithstanding anything to the contrary in this Agreement, International Technology does not assume any direct or indirect warranty, indemnity or other liability or obligation of any kind to Secondary Users.

3 Use of the Software.

3.1 Your License Rights.

Subject to the terms of this Agreement, International Technology grants you a non-exclusive, non-sublicensable, non-transferable license to install and use the Software during the applicable license term for your own business purposes in accordance with this Agreement, the applicable Scope of Use, the Documentation, and all laws.

3.2 Restrictions.

Except as expressly permitted in this Agreement, you may not: (a) reproduce, modify, adapt, or create derivative works of the Software; (b) rent, lease, distribute, sell, sublicense, transfer, or make available the Software to any third party; (c) use the Software for the benefit of any third party; (d) incorporate the Software into any product or service you make available to any third party; (e) interfere with any license key mechanism of the Software or otherwise circumvent any mechanism in the Software intended to restrict your use; (f) reverse engineer, disassemble, decompile, translate or otherwise attempt to obtain or derive the source code, underlying ideas, algorithms, file formats or non-public APIs of the Software, except as expressly permitted under applicable law (and then only upon prior notice to us); (g) remove or obscure any proprietary or other notices contained in the Software; (h) use the Software for competitive analysis or to create competitive products; (i) publicly disseminate information about the performance of the Software; or (j) encourage or assist any third party to do any of the foregoing.

3.3 Number of Instances.

Unless otherwise specified in your Order, for each Software License you purchase, you may install one (1) Production Instance of the Software on systems owned or operated by you or one of your Authorized Users. We may also provide free "developer" licenses for certain of our software offerings to allow you to deploy non-production instances, such as for staging or QA purposes. For details on how to request non-production licenses, please contact us directly.

3.4 Product-Specific Terms.

Some software may be subject to additional terms specific to that software, which are set forth in the product-specific terms. By accessing or using a product to which the product-specific terms apply, you agree to be bound by the product-specific terms.



3.5 Your Modifications.

Subject to the terms of this Agreement (including Section 2 (Combination of Products with Open-Source Software) of Third-Party Code in International Technology Products), for all elements of the Software provided by International Technology in source code form, and to the extent permitted in the Documentation, you may modify such source code solely for the purpose of developing bug fixes, customizations and additional functionality for the Software. Any modified source code or documentation constitutes "Your Modifications." You may use Your Modifications solely in support of Your permitted use of the Software (and only with Your own instances of the Software), but You may not distribute the code for Your Modifications to any third party. Notwithstanding anything to the contrary in this Agreement, International Technology has no support, warranty, indemnification or other obligation or liability with respect to Your Modifications or their combination, interaction or use with Our Software.

3.6 Attribution.

In any use of the Software, you may not remove, obscure, or alter in any way the following reference to International Technology on the user interface of the Software: "Powered by International Technology", which in all cases must include a hyperlink to <http://www.int-tec.com> and be provided in the same format as in the Software.

3.7 System Requirements.

You are solely responsible for ensuring that your systems meet the hardware, software and other applicable system requirements for the Software as specified in the Documentation. International Technology assumes no obligation or responsibility under this Agreement for any problems caused by the use of third-party hardware or software not provided by International Technology.

3.8 Indemnification by You.

You will defend, indemnify, and hold International Technology harmless from any loss, cost, liability, or damage (including attorneys' fees) arising out of or in connection with any claim brought against International Technology (a) by reason of or in connection with your breach of Section 2.3 (Secondary Users) or arising out of claims or disputes brought by Secondary Users in connection with their use of the Software; (b) by a third party in connection with your Modifications (including, without limitation, representations, or warranties you make with respect to your Modifications of the Software) or your breach of Section 3.5 (Your Modifications); (c) by a third party in connection with Your Customer Materials, as defined in Section 6.2(b); or (d) by a third party in connection with non-International Technology content or data used by You or Your Secondary Users in connection with the Software. This indemnification obligation is subject to your receipt of (i) prompt written notice of any such claim (but in any event in sufficient time for you to respond thereto without prejudice); (ii) the exclusive right to control and direct the investigation, defence, or settlement of any such claim; and (iii) all reasonably necessary cooperation from International Technology at your expense.

4 Apps and Third-Party Products.

4.1 Third-Party Products.

You (including Your Authorized Users) may choose to use or obtain other third-party products or services in connection with the Software, including third-party apps (see Section 4.2 (Marketplace Apps)) or implementation, customization, training, or other services. Your receipt or use of any third-party products or services is subject to a separate agreement between you and the third-party provider. If you enable or use Third-Party Products or Services (including Third-Party Apps, as defined in Section 4.2 (Marketplace Apps)) with the Software, you acknowledge that the Third-Party Providers may access or use your information to the extent necessary for their products and services to interact with the Software. This may



include submitting, transferring, modifying, or deleting your information or storing your information on systems of the third-party vendors or other third parties. The use of your data by third party providers is subject to the applicable agreement between you and the third-party provider. We are not responsible for the access to or use of your data by Third Party Providers or their products or services, or for the security or privacy practices of Third-Party Providers or their products or services. You are solely responsible for your decision to allow a third-party vendor or third-party product or service to use your information. It is your responsibility to carefully review the agreement between you and the third-party provider as provided by the applicable third-party provider.

INTERNATIONAL TECHNOLOGY DISCLAIMS ANY LIABILITY OR RESPONSIBILITY FOR ANY THIRD-PARTY PRODUCT OR SERVICE (WHETHER SUPPORT, AVAILABILITY, SECURITY OR OTHERWISE) OR FOR ANY ACTS OR OMISSIONS OF ANY THIRD-PARTY PROVIDER OR VENDOR.

4.2 Market-Apps.

As further described in International Technology's Terms of Use, a variety of apps are listed that may be used with the Software, including both International Technology apps and third-party apps. International Technology Apps for the Software are considered "Software" for purposes of this Agreement (unless International Technology indicates otherwise). Third Party Apps are not Software and remain subject to their own applicable vendor terms and conditions. International Technology may enable interoperability of the Software with Third Party Apps as set forth in Section 4.1 (Third Party Products). The terms "Apps", "International Technology Apps", "Third Party Apps".

5 Privacy Policy.

International Technology may collect certain data and information from You and Secondary Users in connection with Your and Secondary Users' use of the Software and otherwise in connection with this Agreement. All such data and information will be collected and used by International Technology in accordance with International Technology's Privacy Policy, which you acknowledge. You may opt-out of data collection by the Software through the settings in the Software.

6 International Technology Commitments

6.1 Support and Maintenance.

During the period for which you have paid the applicable support and maintenance fee, International Technology will provide support and maintenance for the Software in accordance with the International Technology Support Policy and the Enterprise Support and Services Policy (if applicable). Support and maintenance for the Software includes access to new releases if and when they become available, and all references to "Software" in this Agreement include new releases.

6.2 Additional Services.

Subject to this Agreement, you may purchase additional services from International Technology, which will be provided to you by International Technology pursuant to the applicable Order. Additional Services may be subject to additional policies and terms established by International Technology, including the Company's Support and Services Policy.

(a) International Technology Deliverables.

International Technology retains all right, title and interest in any materials, services, modifications, derivative works, or developments provided by International Technology in connection with Ancillary Services ("International Technology Deliverables"). You may use any International Technology Deliverables provided to you only in connection with the Software, subject to the same use rights and restrictions as apply to the Software. For clarification:



International Technology Deliverables are not considered Software, and any Software (including a New Version) is not considered an International Technology Deliverable.

(b) Customer Materials.

You agree to provide International Technology with reasonable access to your materials, systems, personnel, or other resources (including your instances of the Software) as necessary for International Technology to provide the Additional Services ("Customer Materials"). If you fail to timely provide International Technology with the Customer Materials, International Technology shall be excused from providing Additional Services until you do so. You retain your rights in the Customer Materials, subject to International Technology's ownership rights in the underlying software, International Technology's deliverables or other International Technology "technology". International Technology will use the Customer Materials solely for the purpose of providing the Additional Services. You represent and warrant that you own all necessary rights in the Customer Materials to make them available to International Technology for such purposes.

(c) Non-Covered Training.

Your purchase and our provision of training is subject to our training terms and policies, which are a separate agreement such as Jumpstart Program.

7 License term, return and payment.

7.1 License Term and Renewals.

The License Duration, Support Period and Service Period are specified in the Order (if applicable). The License Term and any applicable Service Periods will begin on the Order Date (unless a different start date is specified in the Order) and end on the expiration date specified in your Account. Unless earlier terminated in accordance with this Agreement, each right to use the Software will terminate at the end of the applicable License Term. Unless you have ordered an "automatic renewal," all renewals must be agreed to in writing by the parties. All renewals are subject to the continued availability of the applicable Software or Support and Maintenance and will be charged at the then-current rates.

7.2 Delivery.

You will receive the corresponding license keys with the delivery of the EDCenter Server on Premise and expect the fees to be paid within the agreed period. All deliveries under this Agreement will be either electronic or, in the case of Hardware, physical. For the avoidance of doubt, you are responsible for installing the Software and you acknowledge that International Technology has no further delivery obligations in respect of the Software after delivery.

7.3 Return Policy.

As part of our commitment to customer satisfaction, you may cancel your original order for the applicable Software under this Agreement without cause by providing notice of cancellation and returning the applicable Software to International Technology no later than thirty (30) days after the order date for such Software. If you cancel your original order pursuant to this Section 7.3, International Technology shall be entitled to deactivate the license key that enabled the operation of the Software and, upon your request (which may be made through your Account), International Technology shall refund to you the amount paid under such order. This cancellation and refund right applies only to your initial order and only if you exercise your cancellation right within the time period specified above and does not apply to additional services. You acknowledge that International Technology may change this practice in the future in accordance with Section 21 (Changes to this Agreement).



7.4 Increased Scope of Use.

During your license term, you may expand your scope of use (e.g., adding authorized users, licenses, copies, or instances) by placing a new order or, if provided by International Technology, directly through the applicable software. Any extension of your scope of use will incur additional fees as specified in the applicable purchase order.

7.5 Payment.

You will pay all charges in accordance with the applicable Purchase Order, on the due dates and in the currency specified in the Purchase Order. If a purchase order number is required for payment of an invoice, you must provide International Technology with such purchase order number by emailing the purchase order number to info@fuchstechnology.com. For additional services performed at a location outside of International Technology, you will reimburse International Technology, the pre-approved travel, lodging and meal expenses that International Technology may charge based on time and materials, unless otherwise specified in the purchase order. Except as expressly provided in Section 7.3 (Right of Return) and Section 16 (IP Compensation by International Technology), all amounts are non-refundable, non-cancellable and non-creditable. You agree that we may charge the agreed-upon payment method for renewals, additional users, expenses, and unpaid fees, if applicable.

7.6 Taxes.

Your fees under this Agreement exclude any taxes or duties imposed with respect to the Software in the jurisdiction in which payment is either made or received. To the extent any such taxes or duties are payable by International Technology, you shall pay the amount of such taxes or duties to International Technology in addition to the fees owed under this Agreement. Notwithstanding the foregoing, at the time such taxes or duties are imposed or assessed, you may have received an exemption from such taxes or duties. In such event, you shall have the right to provide International Technology with information regarding such exemption, and International Technology shall use reasonable efforts to provide you with billing records that will enable you to obtain a refund or credit for the amount so paid from the applicable taxing authority, if such refund or credit is available.

7.7 Withholding Taxes.

You will pay all fees net of all applicable withholding taxes. You and International Technology will cooperate to avoid withholding taxes when tax exemptions or a reduced contractual withholding rate are available. If International Technology qualifies for a tax exemption or reduced withholding tax rate, International Technology will provide you with reasonable proof. You will provide International Technology with reasonable proof that you have paid the amount withheld or deducted to the appropriate authority.

7.8 Reseller Orders.

This Section 7.8 applies if you purchase the Software, Support and Maintenance, or additional services through an authorized partner or reseller of International Technology ("Reseller").

(a) In lieu of paying International Technology, you will pay the appropriate amounts to Reseller as agreed between you and Reseller. International Technology may suspend or terminate your rights to use the Software if International Technology does not receive the appropriate payment from Reseller.

(b) Instead of placing an order with International Technology, your order details (e.g., Software, scope of use, and license term) will be specified in the order that Reseller places with International Technology on your behalf, and Reseller will be responsible for the accuracy of that order as communicated to International Technology.



(c) If you are entitled to a refund under this Agreement, then, unless otherwise specified by International Technology, International Technology will refund the applicable fees to Reseller, and Reseller will be solely responsible for refunding the applicable amounts to you.

(d) The amount paid or payable by Reseller to Us for Your use of the applicable Software under this Agreement shall be deemed to be the amount actually paid or payable by You to Us under this Agreement for purposes of calculating the Limit of Liability in Section 15.2 (Limit of Liability).

7.9 Future Functionality; Separate Purchases.

You acknowledge that the Software and Additional Services referenced in a Purchase Order are purchased separately from our other products or services. Payment obligations for products or services are not contingent on the purchase or use of our other products (and for clarification, purchases of software and additional services are separate and not contingent on each other, even if listed on the same purchase order). You agree that your purchases are not contingent on the delivery of future features or functionality (including future availability of software beyond the current license term or new versions) or on any oral or written public statements by International Technology regarding future features or functionality.

8 Gratuitous software.

We may offer certain software (including some International Technology Apps) to you free of charge, including free accounts, trial use and beta versions, as defined below (collectively, "Free Software"). Your use of Free Software is subject to additional terms and conditions specified by us and is permitted only during the license term specified by us (or, if not specified, until terminated in accordance with this Agreement). Except as otherwise provided in this Section, the terms and conditions of this Agreement for Software, including Section 3.2 (Restrictions), apply in full to Free Software. We may terminate your right to use No-Charge Software at any time and for any reason in our sole discretion without liability to you. You understand that all pre-release and beta versions of the Software and all pre-release and beta features within the generally available Software that we make available (collectively, "Beta Versions") are still under development, may not be functional or may be incomplete, and are likely to contain more errors and bugs than generally available Software. We make no promises that Beta Versions will ever be made generally available. In certain circumstances, we may charge a fee to allow you to use Beta Versions, but Beta Versions are still subject to this Section 8. All information regarding the features, characteristics, or performance of the Royalty-Free Software (including Beta Versions) constitutes confidential information of International Technology. To the extent permitted by applicable law, we disclaim all obligations or liabilities with respect to the Royalty-Free Software, including any support, maintenance, warranty and indemnification obligations. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, INTERNATIONAL TECHNOLOGY'S MAXIMUM AGGREGATE LIABILITY TO YOU WITH RESPECT TO THE ROYALTY-FREE SOFTWARE IS 100 EURO.

9 Use of International Technology Developer Assets.

Access to any International Technology APIs, SDKs or other International Technology developer assets is subject to the International Technology Developer Terms and not this Agreement.

10 License certifications and audits.

You agree to provide, upon our request, a signed certification that you are using all of the Software in accordance with the terms of this Agreement, including the Scope of Use. You agree to allow us or our authorized representative to audit your use of the Software (including use by your authorized users). We will notify you at least ten (10) days prior to the audit, and the audit will be conducted during normal business hours. We will pay any out-of-pocket expenses we incur as a result of the audit, unless the audit determines that you have exceeded the scope of use. You will provide, at your own expense, reasonable assistance,



cooperation, and access to relevant information as part of an audit. If you exceed the Scope of Use, we may bill you for past or current excessive use, and you will pay the bill promptly upon receipt. This remedy is without prejudice to any other remedy available to International Technology at law or in equity or under this Agreement. To the extent we are required to do so, we may disclose audit results to certain of our third-party licensors or assign the audit rights set forth in this Section 10 to such licensors.

11 Ownership and Feedback.

The Software is provided on a limited license or access basis, and no ownership interest is transferred to you, notwithstanding the use of terms such as "purchase" or "sale". International Technology and its licensors have and retain all right, title, and interest, including all intellectual property rights, in and to International Technology (including the Software). From time to time, you may have the opportunity to provide feedback to us. International Technology shall be free to use, copy, disclose, license, distribute and exploit any Feedback in connection with its products or services without any obligation, royalty or restriction based on intellectual property rights or otherwise. No Feedback shall be considered Your Confidential Information, and nothing in this Agreement shall limit International Technology's right to independently use, develop, evaluate, or market any products or services, whether or not they incorporate the Feedback.

12 Confidentiality.

Except as otherwise provided in this Agreement, each party agrees that all code, inventions, know-how and business, technical and financial information disclosed to such party ("Receiving Party") by the disclosing party ("Disclosing Party") shall constitute the Confidential Property of the Disclosing Party ("Confidential Information") if, at the time of disclosure, it is marked as confidential or should reasonably be known by the Receiving Party to be confidential or proprietary based on the nature of the information disclosed and the circumstances of disclosure. Any International Technology-Technology and any performance information relating to the Software shall be deemed to be International Technology's Confidential Information without any marking or further designation. Except as expressly authorized in this Agreement, the Receiving Party shall (1) keep Confidential Information confidential and not disclose it to any third party and (2) not use Confidential Information for any purpose other than the performance of its obligations and exercise of its rights under this Agreement. The Receiving Party may disclose Confidential Information to its employees, agents, contractors, and other representatives who have a legitimate need to know, provided that they are bound by confidentiality obligations that protect the Disclosing Party no less than this Section 12 and that the Receiving Party remains responsible for their compliance with the provisions of this Section 12. The receiving party's confidentiality obligations shall not apply to information that the receiving party can demonstrate: (i) was lawfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become publicly known through no fault of the Receiving Party; (iii) was lawfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) was independently developed by employees of the Receiving Party who did not have access to such information. Receiving Party may also disclose Confidential Information if required to do so by regulation, law, or court order (but only to the minimum extent necessary to comply with such regulation or order and with prior notice to Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy and, therefore, upon such disclosure by the Receiving Party, the Disclosing Party will be entitled to equitable relief in addition to any other remedies it may have at law.



13 Term and termination

13.1 Term.

This Agreement shall be effective as of the Effective Date and shall continue until the expiration of all License Terms unless terminated earlier as provided herein.

13.2 Termination for Cause.

Either party may terminate this Agreement (including any related Order) if the other party (a) fails to cure a material breach of this Agreement within thirty (30) days after written notice; (b) ceases to operate without a successor; or (c) seeks protection under any bankruptcy, receivership, trust, creditors' arrangement, composition or similar proceeding, or if any such proceeding is commenced against such party (and not dismissed within sixty (60) days thereafter).

13.3 Termination for Convenience.

You may discontinue use of the Software and terminate this Agreement (including any Orders) at any time for any reason by giving written notice to International Technology. However, unless you exercise your right to early termination under Section 7.3 (Right of Return), upon such termination (i) you will not be entitled to a refund of any prepaid fees and (ii) unless you have already paid all applicable fees for the then-current license term or related service period (as applicable), all outstanding fees will become immediately due and payable.

13.4 Effect of Termination.

Upon expiration or termination of this Agreement, your license to the Software will terminate (even if the license term is marked "perpetual" or if no expiration date is specified in your order) and you must cease use and delete (or return upon our request) all Software and Confidential Information or other International Technology materials in your possession, including on third party systems operated on your behalf. You will certify such deletion upon our request. If this Agreement is terminated by you pursuant to Section 13.2 (Termination for Cause), International Technology will refund to you all prepaid Software Fees for the remainder of the then-current License Term after the effective date of termination. If this Agreement is terminated by International Technology pursuant to Section 13.2 (Termination for Cause), you will pay all unpaid fees for the remainder of the then-current license term after the effective date of termination. In no event will termination relieve you of the obligation to pay all fees payable to International Technology for the period prior to the effective date of termination. Except where an exclusive remedy is specified in this Agreement, the exercise of any remedy by either party, including termination, shall be without prejudice to any other remedy to which it may be entitled under this Agreement, by law or otherwise.

13.5 Survival.

The following Sections will survive any termination or expiration of this Agreement: 3.2 (Restrictions), 3.8 (Indemnification by You), 4.1 (Third Party Products), 7.5 (Payment), 7.6 (Taxes), 8 (No-Charge Software) (disclaimers and use restrictions only), 10 (License Certifications and Audits), 11 (Ownership and Feedback), 12 (Confidentiality), 13 (Term and Termination), 14.3 (Warranty Disclaimer), 15 (Limitations of Liability), 16 (IP Indemnification by International Technology) (but solely with respect to claims arising from your use of the Software during the License Term), 18 (Dispute Resolution), 19 (Export Restrictions), and 22 (General Provisions).



14 Warranties and Disclaimer

14.1 General Warranties.

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. If you are an entity, you represent and warrant that this Agreement and each Order is entered into by an employee or agent of such entity with all necessary authority to bind such entity to the terms and conditions of this Agreement.

14.2 Virus Warranty.

International Technology further represents and warrants that it will take reasonable commercial efforts to ensure that the Software, in the form and when provided to you, will be free of any viruses, malware, or other harmful code. For any breach of the foregoing warranty, your sole and exclusive remedy, and International Technology's sole obligation, is to provide a replacement copy of the Software promptly upon notice.

14.3 Warranty Disclaimer.

EXCEPT AS EXPRESSLY SET FORTH IN SECTION 14.1 (GENERAL WARRANTIES) AND 14.2 (VIRUS WARRANTY), ALL SOFTWARE, SUPPORT AND MAINTENANCE AND ANY ADDITIONAL SERVICES ARE PROVIDED "AS IS," AND INTERNATIONAL TECHNOLOGY AND ITS SUPPLIERS EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, FUNCTIONALITY, OR MERCHANTABILITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY. INTERNATIONAL TECHNOLOGY WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF INTERNATIONAL TECHNOLOGY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER INTERNATIONAL TECHNOLOGY NOR ANY OF ITS THIRD PARTY SUPPLIERS MAKES ANY REPRESENTATION, WARRANTY OR GUARANTEE AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF ANY SOFTWARE OR ANY CONTENT THEREIN OR GENERATED THEREWITH, OR THAT: (A) THE USE OF ANY SOFTWARE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE; (B) THE SOFTWARE WILL OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM, OR DATA; (C) THE SOFTWARE (OR ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SOFTWARE) WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS; (D) ERRORS OR DEFECTS WILL BE CORRECTED; OR (E) EXCEPT AS EXPRESSLY SET FORTH IN SECTION 14.2 (VIRUS WARRANTY), THE SOFTWARE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. YOU MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, WILL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW.

15 Limitations of Liability

15.1 Consequential Damages Waiver.

EXCEPT FOR EXCLUDED CLAIMS (DEFINED BELOW), NEITHER PARTY (NOR ITS SUPPLIERS) WILL HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOSS OF USE, LOST OR INACCURATE DATA, LOST PROFITS, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, COSTS OF DELAY OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

15.2 Liability Cap.

EXCEPT FOR EXCLUDED CLAIMS, EACH PARTY'S AND ITS SUPPLIERS' AGGREGATE LIABILITY TO THE OTHER ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE AMOUNT



ACTUALLY PAID OR PAYABLE BY YOU TO US UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE CLAIM.

15.3 Excluded Claims.

“Excluded Claims” means (1) amounts owed by you under any Orders, (2) either party's express indemnification obligations in this Agreement, and (3) your breach of Section 3.2 (Restrictions) or of Section 2 (Combining the Products with Open-Source Software) of Third-Party Code in International Technology Products.

15.4 Nature of Claims and Failure of Essential Purpose.

The parties agree that the waivers and limitations specified in this Section 15 (Limitations of Liability) apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

16 IP Indemnification by International Technology.

We will defend you against any claim brought against you by a third party alleging that the Software, when used as authorized under this Agreement, infringes any third-party patent, copyright or trademark, or misappropriates any third-party trade secret enforceable in any jurisdiction that is a signatory to the Berne Convention (a “Claim”), and we will indemnify you and hold you harmless against any damages and costs finally awarded on the Claim by a court of competent jurisdiction or agreed to via settlement executed by International Technology (including reasonable attorneys' fees), provided that we have received from you: (a) prompt written notice of the Claim (but in any event notice in sufficient time for us to respond without prejudice); (b) reasonable assistance in the defence and investigation of the Claim, including providing us a copy of the Claim, all relevant evidence in your possession, custody, or control, and cooperation with evidentiary discovery, litigation, and trial, including making witnesses within your employ or control available for testimony; and (c) the exclusive right to control and direct the investigation, defence, and settlement (if applicable) of the Claim. If your use of the Software is (or in our opinion is likely to be) enjoined, whether by court order or by settlement, or if we determine such actions are reasonably necessary to avoid material liability, we may, at our option and in our discretion: (i) procure the right or license for your continued use of the Software in accordance with this Agreement; (ii) substitute substantially functionally similar Software; or (iii) terminate your right to continue using the Software and refund any license fees pre-paid by you for use of the Software for the terminated portion of the applicable License Term or, in the case of any “perpetual” licenses, the license fee paid by you as reduced to reflect a three (3) year straight-line depreciation from the license purchase date. International Technology's indemnification obligations above do not apply: (1) if the total aggregate fees received by International Technology with respect to your license to Software in the twelve (12) month period immediately preceding the Claim is less than Euro 50,000; (2) if the Software is modified by any party other than International Technology, but solely to the extent the alleged infringement is caused by such modification; (3) if the Software is used in combination with any non-International Technology product, software, service or equipment, but solely to the extent the alleged infringement is caused by such combination; (4) to unauthorized use of Software; (5) to any Claim arising as a result of (y) circumstances covered by your indemnification obligations in Section 3.8 (Indemnification by You) or (z) any third-party deliverables or components contained with the Software; (6) to any unsupported release of the Software; or (7) if you settle or make any admissions with respect to a Claim without International Technology's prior written consent. THIS SECTION 16 STATES OUR SOLE LIABILITY AND YOUR EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS IN CONNECTION WITH ANY SOFTWARE OR OTHER ITEMS PROVIDED BY INTERNATIONAL TECHNOLOGY UNDER THIS AGREEMENT.



17 Publicity Rights.

We may identify you as an International Technology customer in our promotional materials. We will promptly stop doing so upon your request sent to info@fuchstechnology.com.

18 Dispute Resolution

18.1 Informal Resolution.

In the event of any dispute or claim arising out of or in connection with this Agreement, the parties shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a resolution satisfactory to both parties. If the Parties fail to reach agreement within a sixty (60) day period, either Party may pursue remedies available under this Agreement pursuant to Section 18.2 (Governing Law; Venue). All negotiations pursuant to this Section 18.1 shall be confidential and shall be treated as compromise and settlement negotiations for purposes of all rules and rules of evidence under applicable law and jurisdiction.

18.2 Governing Law; Venue.

This Agreement shall be governed by and construed in accordance with the applicable laws of Switzerland, without giving effect to the principles of that country relating to conflicts of law. Each party irrevocably agrees that any action, suit or proceeding arising out of or relating to this Agreement must be brought exclusively in the state or federal court located in Frauenfeld, Thurgau, Switzerland, and is subject to service of process and other applicable procedural rules, and each party irrevocably submits to the sole and exclusive personal jurisdiction of the courts located in Frauenfeld, Thurgau, Switzerland, generally and unconditionally, with respect to any action, suit or proceeding brought against it by it or the other party. In any action or proceeding to enforce a party's rights under this Agreement, the prevailing party shall be entitled to reimbursement of its reasonable costs and attorneys' fees.

18.3 Injunctive Relief

Enforcement. Notwithstanding the provisions of Section 18.1 (Informal Resolution) and Section 18.2 (Governing Law; Jurisdiction), nothing in this Agreement will prevent International Technology from seeking injunctive relief with respect to a violation of intellectual property rights, confidentiality obligations or enforcement or recognition of any award or order in any appropriate jurisdiction.

18.4 Exclusion of UN Convention and UCITA.

The provisions of the United Nations Convention on Contracts for the Sale of Goods do not apply to this Agreement. The Uniform Computer Information Transactions Act (UCITA) does not apply to this Contract, regardless of when or where it was adopted.

19 Export Restrictions.

The Software is subject to export restrictions imposed by the government of Switzerland and may be subject to import restrictions imposed by certain foreign governments, and you agree to comply with all applicable export and import laws and regulations when downloading, accessing or using the Software. You will not (and may not permit any third party to) remove or export any portion of the Software or any direct product thereof from Switzerland and the United States, nor will you permit the export or re-export of any portion of the Software or any direct product thereof (a) into (or to a national or resident of) any embargoed country or any country that supports terrorists; (b) to any person on the U. S. Commerce Department's list of Denied Persons, Entities, or Unverified Lists or the U. S. Treasury Department's list of Specially Designated Nationals and Consolidated Sanctions list (collectively, "Prohibited Persons"); (c) to any country to which such export or re-export is restricted or prohibited or for which the government of Switzerland, the United States or any of their agencies requires an export



license or other regulatory approval at the time of export or re-export without first obtaining such license or approval; or (d) otherwise in violation of any export or import restrictions, laws or regulations of Switzerland, any U.S. or foreign authority or agency. You represent and warrant that you are not located in, under the control of, or a national or resident of any such prohibited country. You further represent and warrant that you are not a prohibited person and are not in possession of, under the control of, or acting on behalf of a prohibited person. You agree not to use or make available the Software for any prohibited end use, including to support the proliferation of nuclear, chemical, or biological weapons or missile technology, without the prior approval of the Government of the United States and Switzerland.

20 Third Party Code.

The Software contains code and libraries licensed to us by third parties, including open-source software. See Third Party Code in International Technology Products for additional terms regarding our use of Third-Party Code.

21 Changes to this Agreement.

21.1 Modifications Generally.

We may modify the terms and conditions of this Agreement (including International Technology Policies) from time to time, with notice given to you by email, through the Software or through our website. Together with notice, we will specify the effective date of the modifications.

No-Charge Software:

You must accept the modifications to continue using the No-Charge Software. If you object to the modifications, your exclusive remedy is to cease using the No-Charge Software.

Paid Licenses:

Typically, when we make modifications to the main body of this Agreement (excluding the International Technology Policies), the modifications will take effect at the next renewal of your License Term and will automatically apply as of the renewal date unless you elect not to renew pursuant to Section 7.1 (License Term and Renewals). In some cases – e.g., to address compliance with Laws, or as necessary for new features – we may specify that such modifications become effective during your then-current License Term. If the effective date of such modifications is during your then-current License Term and you object to the modifications, then (as your exclusive remedy) you may terminate your affected Orders upon notice to us, and we will refund to you any fees you have pre-paid for use of the affected Software for the terminated portion of the applicable License Term. To exercise this right, you must provide us with notice of your objection and termination within thirty (30) days of us providing notice of the modifications. For the avoidance of doubt, any Order is subject to the version of this Agreement in effect at the time of the Order.

International Technology Policies:

Our products and business are constantly evolving, and we may modify the International Technology Policies from time to time, including during your then-current License Term in order to respond to changes in our products, our business, or Laws. In this case, unless required by Laws, we agree not to make modifications to the International Technology Policies that, considered as a whole, would substantially diminish our obligations during your then-current License Term. Modifications to the International Technology Policies will take effect automatically as of the effective date specified for the updated policies.



22 General Provisions

22.1 Notices.

All notices under this Agreement must be in writing. We will provide notices to you by electronic mail. You agree that such electronic communication complies with all applicable legal communication requirements, including the requirement that such notices be in writing. Our notices to you will be deemed given on the first business day after they are sent. You will send notices to us by mail to International Technology GmbH, c/o International Technology GmbH, Juchstrasse 45, 8500 Frauenfeld, Switzerland, Attn: General Management. Your notices to us shall be deemed given upon receipt by us.

22.2 Force Majeure.

Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (other than non-payment of fees) if the delay or failure is due to events beyond the reasonable control of the respective party, such as strike, blockade, war, terrorist attack, riot, natural disaster, failure or impairment of power or telecommunications or data networks or services, or denial of a license by any governmental authority.

22.3 Assignment.

You may not assign or transfer this Agreement without our prior written consent. As an exception to the foregoing, you may assign this Agreement in its entirety (including any purchase orders) to your successor resulting from your merger, acquisition, or sale of all or substantially all of your assets or voting securities, provided that you promptly notify us in writing of the assignment and the assignee agrees in writing to assume all of your obligations under this Agreement. Any attempt by you to transfer or assign this Agreement, except as expressly authorized above, shall be null and void. We may assign our rights and obligations under this Agreement (in whole or in part) without your consent. We may also permit our affiliates, agents, and contractors to exercise our rights or perform our obligations under this Agreement, in which case we will remain responsible for their compliance with this Agreement. Subject to the foregoing, this Agreement shall apply to the permitted successors and assigns of the parties.

22.4 Government End Users.

All Swiss, U.S. federal, state or local government customers are subject to the Government Supplement in addition to this Agreement.

22.5 Entire Agreement.

This Agreement constitutes the entire agreement between you and International Technology with respect to the Software and supersedes all prior or contemporaneous oral or written communications, proposals and representations between you and International Technology with respect to the Software or any other subject matter covered by this Agreement. No provision of any purchase order or other business form used by you supersedes or supplements the terms of this Agreement, and any such documents relating to this Agreement are for administrative purposes only and have no legal effect.

22.6 Conflicts.

In event of any conflict between the main body of this Agreement and either the International Technology Policies or Product-Specific Terms, the International Technology Policies or Product-Specific Terms (as applicable) will control with respect to their subject matter.



22.7 Waivers; Modifications.

No failure or delay by the injured party to this Agreement in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder at law or equity. Except as set forth in Section 21 (Changes to this Agreement), any amendments or modifications to this Agreement must be executed in writing by the authorized representatives of International Technology and you.

22.8 Interpretation.

As used herein, "including" (and its variants) means "including without limitation" (and its variants). Headings are for convenience only. If any provision of this Agreement is held to be void, invalid, unenforceable, or illegal, the other provisions will continue in full force and effect.

22.9 Independent Contractors.

The parties are independent contractors. This Agreement will not be construed as constituting either party as a partner of the other or to create any other form of legal association that would give either party the express or implied right, power or authority to create any duty or obligation of the other party.

23 Definitions.

Certain capitalized terms are defined in this Section 23, and others are defined contextually in this Agreement.

"Additional Services"

means Technical Support Agent ("TSA") services, Support and Maintenance or other services related to the Software provided to you by International Technology, as identified in an Order.

"Affiliate"

means an entity which, directly or indirectly, owns or controls, is owned or is controlled by or is under common ownership or control with a party, where.

"control"

means the power to direct the management or affairs of an entity, and "ownership" means the beneficial ownership of greater than 50% of the voting equity securities or other equivalent voting interests of the entity.

"International Technology Policies"

means International Technology's Acceptable Use Policy, Privacy Policy, Online Community Platforms Terms of Use, Support Policy, Enterprise Support and Services Policy, terms for Third Party Code in International Technology Products, and (unless otherwise specified) any other policies or terms referenced in this Agreement.

"International Technology-Technology"

means the Software (including all No-Charge Software), International Technology Deliverables, their "look and feel", any and all related or underlying technology and any modifications or derivative works of the foregoing, including as they may incorporate Feedback.

"Authorized Users"

means the specific individuals whom you designate to use the applicable Software and for whom you have paid the required fees. Authorized Users may be your or your Affiliates' employees, representatives, consultants, contractors, agents or other third parties who are acting for your or your Affiliates' benefit or on your or your Affiliates' behalf. Authorized Users



also include any Secondary Users that you permit to use the Software, subject to Section 2.3 (Secondary Users).

“Documentation”

means our standard published documentation for the Software, currently located here.

“Feedback”

means comments, questions, ideas, suggestions, or other feedback relating to the Software, Support and Maintenance or Additional Services.

“Laws”

means all applicable local, state, federal and international laws, regulations, and conventions, including those related to data privacy and data transfer, international communications and the exportation of technical or personal data.

“License Term”

means your permitted license term for the Software, as set forth in an Order.

“New Releases”

means any bug fixes, patches, major or minor releases, or any other changes, enhancements, or modifications to the Software that International Technology makes available to you as part of Support and Maintenance.

“Order”

means International Technology's applicable ordering documentation or other purchase flow referencing this Agreement. Orders may include purchases of Software licenses, Support and Maintenance, Additional Services, increased or upgraded Scope of Use or renewals.

“Product-Specific Terms”

means additional terms that apply to certain Software and Additional Services, currently located here.

“Scope of Use”

means your authorized scope of use for the Software as specified in the applicable Order, which may include: (a) number and type of Authorized Users, (b) numbers of licenses, copies or instances, or (c) entity, division, business unit, website, field of use or other restrictions or billable units.

“Software”

means International Technology's commercially available downloadable software products (currently designated as “Server” or “Data Center” deployments), including mobile applications of such products. Your Order will specify the Software that you may use.

“Support and Maintenance”

means International Technology's support and maintenance services for the Software, as further described in the International Technology Support Policy and Enterprise Support and Services Policy (if applicable). Your level of Support and Maintenance will be specified in your Order.

“Training”

means International Technology-provided training and certification services.