



ICAS FS SOFTWARE  
LICENSE TERMS AND  
CONDITIONS

# ICAS FS LICENSE TERMS AND CONDITIONS

## PREAMBLE

WHEREAS the Licensee is planning to use the iCAS FS software (hereinafter referred to as "**Licensed Software**") of iTernity GmbH (hereinafter referred to as "**iTernity**") for its company in order to archive its data. WHEREAS iTernity therefore grants the Licensee the right to use the Licensed Software, including the written documentation pertaining thereto (hereinafter referred to as "**Documentation**"), on the basis of these Licence Terms and Conditions and the transfer agreement concluded between the Licensee and an iTernity distribution partner.

## 1. SCOPE OF APPLICATION

- 1.1. These Licence Terms and Conditions shall apply to the permanent surrender of the Licensed Software and of the licence key together with the grant of the rights pursuant to Clause 2, which are necessary for them to be used in accordance with the contract, and shall apply to the permanent surrender of the Documentation.
- 1.2. Following registration with iTernity the Licensee shall receive a licence key, which enables the Licensed Software to be used in accordance with these Terms and Conditions and the Licensee's order. It is only possible to use the Licensed Software in conjunction with the licence key.
- 1.3. The scope of use of the Licensed Software is limited to the agreed volume of data. For the calculation of the volume of data, the RAW volume of the connected hard disks managed by the Licensed Software shall be decisive. In the case of replication, all copies of the data are taken into account in the calculation. It shall be possible to access data, which has already been archived, long-term and without limitation even after the agreed volume of data has been exhausted.
- 1.4. iTernity shall surrender the Licensed Software including the Documentation to the Licensee in its object code in digital form.
- 1.5. In order to enable predictive maintenance and support of the Licensed Software, it is equipped with a function that regularly transmits usage data such as statistical information and error messages to the iTernity support team ("Call Home" function). This requires the Licensed Software to be connected to the Internet. If this is not set up, maintenance and support can only be performed reactively.
- 1.6. Installation and configuration services are not the subject matter of the Licence Terms and Conditions, but may be agreed separately.
- 1.7. These License Terms and Conditions do not create any other rights or obligations (e.g. warranty, liability) between iTernity and the Licensee with respect to the Licensed Software. This is subject to the transfer agreement concluded between the Licensee

and the iTernity distribution partner from whom the Licensee obtains the Licensed Software.

## 2. GRANT OF RIGHTS

- 2.1. The Licensee shall receive the permanent, non-exclusive and non-assignable right to use the Licensed Software. The scope of the use is, as described in Clause 1, limited to the agreed volume. The contractual use comprises the installation as well as the loading, displaying and running of the installed software.
- 2.2. The Licensee is entitled to make a back-up copy of the Licensed Software handed over to the Licensee. If the Licensee creates the backup copy on a data carrier, the Licensee must visibly affix a notice "back-up copy" as well as a copyright notice from iTernity to the data carrier.
- 2.3. Furthermore, the Licensee shall be entitled to reproduce, edit or decompile the Licensed Software only if this is necessary in order to bring about the interoperability of the software with other programs or in order to remove faults in the software if iTernity does not provide the information necessary for this upon request by the Licensee.
- 2.4. Apart from the cases stipulated in Clauses 2.1 to 2.3 the Licensee is not entitled to reproduce the Licensed Software. In particular the Licensee is not entitled to edit, translate, alter or modify the Licensed Software in any other way.
- 2.5. The Licensee is not entitled (a) to rent out the Licensed Software, surrender it as part of a time-sharing model or to use it for surrendering it as part of a subscription agreement; (b) to remove or alter iTernity's program labels or designation of the author(s); (c) to make the programs available to third parties such that said third parties can use the programs for conducting their business.
- 2.6. The provision in Clause 2.5 shall not apply if iTernity has expressly consented to the use.
- 2.7. The Licensee is entitled to transfer the licence key only to affiliated undertakings pursuant to Paragraph 15 German Stock Corporation Act (AktG) or following the prior written consent of iTernity.
- 2.8. In the event of a permitted transfer of the Licensed Software and/or of the licence key to third parties the Licensee shall completely relinquish its use of the Licensed Software, remove all installed copies of the program from its computers and delete all copies, which are on other data carriers. Upon request by iTernity the Licensee shall confirm in writing that it has carried out said measures in full.
- 2.9. If the Licensee breaches the above provisions all of the rights of use granted under this Agreement shall immediately become void and shall automatically revert to iTernity. In that case the Licensee must forthwith and completely cease using the Licensed

Software, delete all of the copies of the Licensed Software installed on its systems and delete any back-up copy that may have been made or hand it over to iTernity.

### 3. THIRD PARTY SOFTWARE

The Licensed Software contains software products from third-party manufacturers. These third-party products are subject to additional license terms, which are listed in the Appendix "iCAS FS Third Party Components" (for download please refer to the iCAS FS section in [iTernity Support Downloads](#)). Licensee acknowledges that these license terms apply and agrees to comply with the provisions contained herein.

### 4. WARRANTY

- 4.1. The warranty is governed by the transfer agreement between the Licensee and the iTernity distribution partner. If a transfer agreement exists directly between iTernity and the Licensee, iTernity warrants that the Licensed Software has the agreed quality. The warranty as to defects does not apply to defects due to the Licensed Software having been used in a hardware or software environment, which does not meet the requirements stipulated by iTernity and known to the Licensee.
- 4.2. The Licensee must check the Licensed Software for obvious defects immediately following receipt and if there are any such obvious defects must report them without undue delay otherwise a warranty for said defects shall be excluded. The same shall apply mutatis mutandis if such a defect does not become apparent until later.
- 4.3. In the event of a defect in quality (Sachmangel) iTernity shall first have the right to supplementary performance, i.e. at its option, to rectify the defect ("subsequent rectification") or to deliver a replacement. In the event of a replacement delivery the Licensee shall, as the case may be, acquire a new status of the software unless this gives rise to unreasonable interference. In the event of any defect in title (Rechtsmängel), iTernity shall, at its option, procure a possibility for the Licensee to use the Licensed Software in a manner that is legally free from defects, or shall alter said Licensed Software such that no rights of third parties are infringed any more.
- 4.4. iTernity shall also satisfy the obligation to provide subsequent rectification by providing an automatic installation routine with updates for download and by offering the Licensee telephone support to resolve any installation problems that may arise.
- 4.5. This shall be without prejudice to any rights of rescission of the Licensee. If the latter asserts any compensation or the reimbursement of expenses incurred in vain iTernity shall be liable solely in accordance with Clause 5.
- 4.6. Any claims which the Licensee has for defects shall be time-barred within one year. The limitation period shall commence at the point in time when iTernity provides the

Licensee with the licence key and thereby enables the Licensed Software to be used in accordance with the contract.

## 5. LIABILITY

- 5.1. iTernity shall not be liable for any ordinarily negligent breach of contractual obligations other than of material contractual obligations. Material contractual obligations are obligations, the performance of which characterizes the contract and which is necessary for its proper implementation.
- 5.2. In the absence of intentional conduct on the part of iTernity, iTernity shall be liable only for reasonably foreseeable damage that typically occurs.
- 5.3. Liability under the German Product Liability Act (Produkthaftungsgesetz) shall remain unaffected; this also applies to the liability for any injury to life, body or health caused intentionally or negligently. If iTernity has given a guarantee iTernity shall be liable in accordance with the statutory provisions.
- 5.4. The Licensee is advised to make back-up copies of the archived data at regular intervals. In the event of any loss of data iTernity's liability shall be limited to the typical replacement costs that would have arisen had back-up copies been made regularly in a manner that is commensurate with the risk. This limitation does not apply in cases of intent or gross negligence on the part of iTernity.
- 5.5. Any subsequent claims for damages shall be time-barred within the statutory periods.
- 5.6. Unless otherwise provided above, claims against iTernity for damages arising out of a breach of duty are excluded.

## 6. MISCELLANEOUS

- 6.1. Any amendments and additions to these Licence Terms and Conditions are required to be in writing. This shall also apply to any amendment or cancellation of this Clause. Dispatch by fax or by e-mail shall also be sufficient to meet the requirement of writing.
- 6.2. The sole governing law shall be German law; the application of the United Nations Convention on Contracts for the International Sale of Goods ("CISG") of 11th April 1980 is excluded.
- 6.3. The place of performance shall be Freiburg. The exclusive place of jurisdiction shall be Freiburg provided both parties are merchants (Kaufleute) or legal entities governed by public law. In addition, iTernity has the option of asserting its own claims against the Licensee before the state courts at the Licensee's domicile or to have them finally decided by one or more arbitrators appointed in accordance with the Rules of



Arbitration of the International Chamber of Commerce (ICC). The place of arbitration shall be Freiburg.

- 6.4. In the event that individual provisions are void, this shall invariably not affect the validity of the remaining provisions. In lieu of the void provision the contracting parties shall endeavour to find a provision which legally and economically meets the objective of the contract as closely as possible. The same shall apply mutatis mutandis to the filling of any lacunae in the contract.



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