



ICAS FS SOFTWARE  
SUPPORT TERMS AND  
CONDITIONS

# ICAS FS SUPPORT TERMS AND CONDITIONS

## PREAMBLE

WHEREAS the Customer uses the software iCAS FS (hereinafter referred to as "**Licensed Software**") of iTernity GmbH (hereinafter referred to as "**iTernity**"). WHEREAS in this context, the Customer has purchased a support package from a distribution partner of iTernity. WHEREAS the maintenance and support services to be provided by iTernity within this framework shall be governed by the provisions of these Support Terms and Conditions.

## 1 SCOPE OF APPLICATION

These Support Terms and Conditions apply to the maintenance of the Licensed Software by iTernity and the support provided to the Customer in handling the Licensed Software.

## 2 SCOPE OF PERFORMANCE

2.1. iTernity shall provide the following services to the Customer ("Support Service"):

- technical support and advice on rectifying problems, which occur when implementing and/or migrating and/or operating the Licensed Software and the underlying Linux operating system;
- installation of updates and patches of the Licensed Software including the contained third-party software via remote access free of charge;
- updates to future major versions of the Licensed Software free of charge;
- advice on and implementation of the installation of updates;
- advice on and implementation of configuration changes (e.g. creation of additional repositories and/or shares that were not configured during initial installation).

The provision of Support Services requires that the Licensed Software is used exclusively in accordance with its intended purpose and in a hardware and software environment that meets the requirements set by iTernity and known to the Customer.

- 2.2. iTernity may also use third parties to fulfil its obligations under this Clause 2.
- 2.3. iTernity shall act solely in an advisory and supporting function in connection with the rectification of problems. iTernity may, at its option, also render its services for dealing with a problem in the form of providing a workaround, update or upgrade.
- 2.4. Insofar as iTernity surrenders computer programs or other works, which can be independently protected by copyright, to the Customer on the basis of these Support Terms and Conditions, said programs or other works shall be subject to the Licence Terms and Conditions agreed between the parties.
- 2.5. Not included in the scope of performance are all installation and consulting services as well as other services that go beyond the range of services pursuant to Clause 2.1. These must be ordered and remunerated separately by the Customer. A corresponding catalogue of services will be made available to the Customer upon request.

### 3 AVAILABILITY OF THE SUPPORT SERVICE

- 3.1. The Customer can contact the Support Service on 365 days per annum, 24 hours per day.
- 3.2. iTernity shall only be obliged to act once iTernity has received an adequately specified description of the fault from the Customer.
- 3.3. iTernity shall fulfil the obligations under Clause 2 within a reasonable period.

### 4 CUSTOMER'S DUTY TO COOPERATE

- 4.1. The Customer shall be obliged to provide iTernity with all of the information, which the Support Service under Clause 2 requires and shall do so without undue delay.
- 4.2. The Customer shall allow iTernity the possibility of providing the Support Services under Clause 2 - to the extent applicable - by means of remote maintenance. For this, the Customer shall, at its own cost, provide iTernity or a third party commissioned by iTernity with remote access to the requisite systems.
- 4.3. 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.

- 4.4. The Customer shall, upon request, name a sufficiently qualified contact person, who shall be entitled to carry out the necessary measures at the Customer, to iTernity.
- 4.5. If the Customer fails to comply with its duty to cooperate it must bear the extra cost incurred as a result.

## 5 REMUNERATION

- 5.1. The remuneration owed shall ensue from the support package purchased by the Customer from the distribution partner.
- 5.2. Services that go beyond the Support Service under Clause 2, must be remunerated by the Customer separately. iTernity and/or the distribution partner shall in each case notify the Customer of the applicable remuneration rates in advance.

## 6 WARRANTY CLAIMS FOR UPDATES, UPGRADES AND NEW PROGRAM VERSIONS

- 6.1. If these Support Terms and Conditions enable the Customer to access updates, patches, upgrades or new program versions, the warranty claims regarding said developments shall be determined in accordance with this Clause 6.
- 6.2. iTernity warrants that the services under Clause 6.1 have the agreed quality. The warranty 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 Customer.
- 6.3. The Customer must check the services under Clause 6.1 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.
- 6.4. 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 Customer 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 Customer to use the services under Clause 6.1 in a manner that is legally free from defects, or shall alter said services such that no rights of third parties are infringed any more.

- 6.5. iTernity shall also satisfy the obligation to provide subsequent rectification by providing an automatic installation routine with updates for download and by offering the Customer telephone support to resolve any installation problems that may arise.
- 6.6. This shall be without prejudice to any rights of rescission of the Customer. If the latter asserts any compensation or the reimbursement of expenses incurred in vain iTernity shall be liable solely in accordance with Clause 7.
- 6.7. Any claims which the Customer has for defects shall be time-barred within one year. The limitation period shall commence at the point in time when iTernity provides the Customer with the service under Clause 6.1.

## 7 LIABILITY

- 7.1. 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.
- 7.2. In the absence of intentional conduct on the part of iTernity, iTernity shall be liable only for reasonably foreseeable damage that typically occurs.
- 7.3. 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.
- 7.4. The Customer 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.
- 7.5. Any subsequent claims for damages shall be time-barred within the statutory periods.
- 7.6. Unless otherwise provided above, claims against iTernity for damages arising out of a breach of duty are excluded.

## 8 TERM OF THE SUPPORT SERVICE

- 8.1. The term of the Support Service is determined by the support package purchased by the Customer from the distribution partner and is confirmed by iTernity through the support certificate.
- 8.2. If a support package with a fixed term has been agreed, the possibility of giving ordinary notice of termination is excluded.
- 8.3. If a support package with an automatic extension (subscription model) has been agreed, the possibility of termination shall depend on the notice period stipulated in the support certificate.
- 8.4. The right to termination without notice for good cause shall remain unaffected.
- 8.5. Any notice of termination is required to be in writing.

## 9 MISCELLANEOUS

- 9.1. Any amendments and additions to these Support 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.
- 9.2. 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.
- 9.3. 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 Customer before the state courts at the Customer'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.
- 9.4. 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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