

## General Terms of Service Agreement MID GmbH Nuremberg

### Preamble

Licensee has acquired the right to use certain Software products belonging to the Licensor.

For the purpose of supporting and servicing said Software, Licensor and Licensee enter into a software service agreement on the following terms and conditions.

### 1. Definitions

For the purposes of the software service agreement ("Service Agreement") between Licensor and Licensee as well as for the entire business relations between Licensor and Licensee, the following terms shall have the following meanings:

**Generating:** means the generating of data carriers with executable software for a specific operating system platform. The complete version number of the Software comprises of a maximum of three digits separated by dots. The first and second digits identify the Version and the third digit identifies the Release.

**License:** means a software license relating to one or more workstations for one or more operating system platforms within a firmly defined field of application by Licensee (corporate group, division, department and the like). The License Repository deposited with the respective License Server identifies the legitimate workstation, quantity, scope of performance and expiry date (for test versions and splitted single-server licenses) of the licensed Software. The License Repository further contains data relating to the platform license and the person in charge of the license.

**License Server:** means a program linked to a host which enables the administration of the licenses recorded in the product certificate.

**License Repository:** means the database of the License Server in accordance with the product certificate.

**Release:** means a technically-enhanced Version with or without substantial expansion of functionality which primarily serves the purposes of debugging. Such changes usually do not cause any changes in the software manual.

**Update:** shall mean the supply of a newer/up-to-date Release.

**Upgrade:** shall mean the supply of a newer/up-to-date Version.

**Version:** means the most up-to-date Software of a specific generation. New Versions comprise an expansion of the technical as well as of the functional level. Normally, changes in the functionality result in changes to the software manual.

### 2. Standard Services

Licensor's obligation to support and service the Software comprises the following services.

#### 2.1 User Support/Hotline

Licensor shall be available for telephone inquiries of Licensee to answer technical questions of Licensee and to assist Licensee in other matters relating to the application of the Software. Licensee further receives access to the Licensor's error information system via the hotline or user support, i.e. information about reported bugs or defects.

Licensor shall name one or more persons in charge and give one or more dedicated telephone numbers to reach said persons accordingly, who shall be available to Licensee for them to

report bugs and to answer their queries, and in particular regarding the provision of support and upgrade services.

Licensee may use such telephone support on working days Monday through Friday during regular business hours from 9 a.m. to 5 p.m. (GMT+1).

#### 2.2 Standard Upgrades

Licensor shall provide Licensee with all Upgrades and revised documentation which are generally made available to users of the Software if Licensee has acquired a license and maintains a valid Service Agreement for the Software concerned.

Upgrades will be announced by Licensor before they are released.

Upgrades are—in relation to the most recent Version—upward compatible (where appropriate by transformation); the transfer to a successor is possible without effect on the data basis if this can be technically/methodically realized.

Old Software Releases shall be supported and serviced by Licensor for a period of six months.

### 3. Diagnostics and Removal of Bugs

In the event of bugs in the Software, i.e. negative deviations from the respective product description, Licensor performs its obligations by:

- supply of an Update, or
- supply of an Upgrade, or
- supply of a Patch, or
- supply of a variant of the Software (i.e. a bug free Version/Release for a specific bug which only occurs subject to certain conditions, e.g. with certain operating systems).

The diagnostics and removal of bugs shall be effected with Licensor. In the event that the bug cannot be localized within reasonable time or only at Licensee's premises, Licensor is prepared to conduct bug diagnostics and, where necessary, bug removal onsite.

In the event that the bug is not caused by the Software supplied by Licensor, all costs of services relating to the determination of this fact shall be charged to Licensee.

In the event that a bug cannot be removed within a short period of time, Licensor shall provide Licensee with an interim solution to circumvent the problem. The circumvention of the bug, the Update, the Upgrade, the Patch or the Version of the Software shall be documented appropriately.

Licensor may be contacted for the reporting of bugs by telephone and by facsimile letter on working days Monday through Friday during regular business hours (from 9 a.m. to 5 p.m. GMT+1).

Furthermore, Licensor shall be available for the notification of bugs by facsimile letter or email 24 hours daily (Monday till Sunday). Licensor shall confirm receipt of written notifications of bugs at the latest on the next working day following the day of notification and shall commence to work on the bug between 9 a.m. and 5 p.m. (GMT+1).

The types of bugs are categorized as follows:

**Bug Category 1:** The user is unable to use the system or such use is possible but important user applications are not executable.

**Bug Category 2:** The user is able to use the system but not all functions can be utilized resulting in material limitations of the application.

**Bug Category 3:** All functions of the system can be used with slight limitations.

**Bug Category 4:** The user is able to use the system without limitations albeit occurring problems respectively the documentation is incorrect.

The allowed time period to rectify bugs depends on the bug category as follows:

**Bug Category 1:** If possible, response as to the estimated time until diagnostics/removal of the bug during the working day following the notification; immediate commencement of diagnostics and efforts to remove the bug; upon removal of the bug supply of a Software variant without undue delay.

**Bug Categories 2 and 3:** If possible, response as to the estimated time until diagnostics/removal or circumvention of the bug during five working days from the notification. Supply of a Software variant without undue delay after removal of the bug.

**Bug Category 4:** Removal of the bug with the next Update or Upgrade or at the very latest with the one after this.

#### 4. Requirements and Obligations

The removal of bugs, e.g. deviations from the respective product description and (subordinated) from the respective user manual, shall be performed by supply of a Software Variant, a Patch, an Update or Up-grade. The bug has must be able to be reproduced and to occur within the most recent Version accepted by Licensee. Licensor shall receive from Licensee in writing, without undue delay and free of charge, all documentation and information necessary for the removal of the bug provided that these are available to Licensee and not subject to specific confidentiality obligations. Where necessary, Licensee shall enable Licensor to access all equipment and data concerned and shall make available to Licensor all necessary data and machine time without cost. For the period until new Software without the bug can be supplied, Licensor shall make available to Licensee an interim solution to circumvent the bug if this is possible using reasonable efforts.

Licensee is herewith informed that—due to the complexity of Innovator—diagnostics and removal of serious bugs is normally not possible in less than five working days since said period is already required for the correction of a localized bug including porting and testing.

Transportation of data carriers to the Licensee shall be made at the cost and risk of Licensee.

#### 5. Extraordinary Termination of Servicing

In the event that a bug cannot be removed within an appropriate time period or circumvented in a manner reasonably acceptable to Licensee, Licensee shall be entitled to terminate the Service Agreement with immediate effect.

#### 6. Disclaimer

Licensor's obligation to support and service the Software does not include the diagnostics and removal of disruptions caused by inappropriate handling or mistakes in handling the Software or other circumstances beyond the responsibility of Licensor (including without limitation non-compliance with presumed conditions of use, hardware defects, incompatibility between hardware and other software used etc.). Licensee is not entitled to demand implementation of additional functions or performance criteria or that application services are performed.

Services rendered by Licensor for these purposes shall be charged by Licensor based on its current price list.

Licensor does not assume any servicing obligations relating to computer programs which have been installed with Licensee or third parties in disregard of Licensee's rights under the License Agreement or which have been manipulated.

#### 7. Limitations

Licensee shall not be entitled to claim

- inclusion of new performance criteria in the Software or the support of new operating systems;
- further development of specific Versions respectively in relation to supporting the respective programming language—whether with regard to the originating version or a new version of the programming language;
- supply of new Versions and Software variants within a specific timeframe—the principle decision to develop and supply the respective products is the sole decision of Licensor;
- support and servicing of an older Version in relation to which the release of a new Version has been made by Licensor more than six months prior.

It is the sole decision of Licensor to render any of the aforesaid services as a sign of goodwill or to offer such services for a fee.

#### 8. Service Fees

##### 8.1 Amount

The amount of the "Service Fee" payable by Licensee to Licensor shall be the amount stated in Licensor's current price list.

##### 8.2 Increase of Service Fee

Licensor shall be entitled to increase the Service Fee upon giving three months notice. In such event, Licensee shall be entitled to terminate the Service Agreement with one month notice to be effective as of the date of the increase.

However, such increase shall not be made with effect before the second anniversary of commencement of the license under the License Agreement. The Service Fee shall be paid annually in advance for a period of twelve months with commencement of the Service Agreement and each anniversary thereof (except for software leases: in such event the Service Fee shall be paid monthly in advance).

##### 8.3 Other Services

In addition to its services under the Service Agreement Licensor offers to analyze and remove problems, which are caused by inappropriate handling or mistakes in handling the Software or other circumstances beyond the responsibility of Licensor at the service fee rates stated in Licensor's current price list.

#### 9. Term of Agreement and Termination

##### 9.1 Conclusion

Principally, a Service Agreement can only be concluded upon conclusion of the underlying License Agreement and accordingly from the time of first delivery of the Software to Licensee. A later conclusion of a Service Agreement is only possible against retroactive payment of Service Fees up to the aforesaid time.

##### 9.2 Term of Agreement and Termination

The Service Agreement is in effect for a fixed period of one year.

It is deemed to be renewed automatically for another fixed period of one year at the conclusion of each fixed term unless it has been terminated with three months notice effective to the end of its current term.

### 9.3 Termination without Notice

In the event that Licensee infringes any copyright or any other property right of Licensor, including without limitation

- by duplicating Licensor's Software or using additional copies thereof without license or
- by negligently or willfully enabling a third party to duplicate Licensor's Software or to use additional copies thereof without license,

Licensor shall be entitled to terminate the Service Agreement without notice and without substitution.

Licensor's right to claim damages remains unaffected thereby.

### 10. Liability

Supply of new Updates and Upgrades and termination of this contract do not constitute an extension of lawful guarantee claims not do they constitute lawful guarantee claims to be prolonged, suspended or adjourned.

### 11. Liability

#### 11.1 Limitation of Liability

Licensor shall only be liable for damages caused in a willful or grossly negligent manner by itself or by its vicarious agents.

#### 11.2 Maximum Amount of Liability

The amount of Licensor's liability shall not exceed a total amount of € 1,250,000.00.

Licensor has taken out third party liability insurance for monetary, personnel and property damages in said amount. If and when Licensee considers said amount to be insufficient, Licensor is prepared to take out higher insurance as requested by Licensee at Licensee's cost.

#### 11.3 Consequential Damages

Licensor does not assume and hereby expressly excludes all liability for lost profit, unachieved savings, damage resulting from claims of third parties, other indirect and direct consequential damages as well as for damages incurred by the loss of data, unless and until proven that such damages are caused by Licensor's or its vicarious agents' gross negligence or willful breach of obligations.

### 12. Confidentiality

Licensor and Licensee shall treat confidential all information obtained from or received with regard to the confidential matters of the respective other party during the term and after expiry of the Service Agreement and shall use such information only for the purposes for which it has been obtained or received and shall prevent access of third parties to such information as if they were their own business secrets. Said obligation does not extend to such information which is known to the public or—verifiably—has been developed independently or lawfully obtained from a third party.

### 13. Notices

Licensee confirms its knowledge that the creation of daily data backups in long-term cycles, precautional measures against computer viruses and regular virus checks as well as diligent testing of the computer programs created using the Software is advisable and necessary.

Where applicable, consultation on appropriate measures may be given by Licensor at its discretion.

### 14. Miscellaneous

#### 14.1 Ancillary Agreements

Any cancelation, change, termination or amendment of the Service Agreement requires the written form to be valid and effective. Oral agreements are invalid including agreements on the waiver of the written form.

On behalf of Licensor, only management shall be authorized to give and receive any such declarations which are binding on Licensor.

#### 14.2 Restrictions of Set-Off, Assignment and Retention

The assignment and pledging of claims against Licensor shall be invalid without Licensor's express approval. Licensee shall not be entitled to set-off any of its claims against Licensor or claim any right of retention unless such claims or rights are absolute and legally binding on Licensor or beyond controversy.

#### 14.3 Severability

The invalidity or unenforceability of individual provisions of the Service Agreement shall not affect the validity and enforceability of the remaining provisions thereof.

In case of such invalidity or unenforceability, Licensor and Licensee shall be obliged to agree on a valid and enforceable provision the economic effect of which comes as close as possible to the invalid or unenforceable provision.

#### 14.4 Venue

In the event that Licensee is a party capable to enter into a valid agreement on the place of venue for disputes, it is hereby agreed that the exclusive place of jurisdiction for all disputes between Licensor and Licensee out of or in connection with the Service Agreement and the entire legal relationship between the parties shall be at the principal office of Licensor.

#### 14.5 Applicable Law

The governing law of the Service Agreement as well as all other legal relations between Licensor and Licensee shall be German law, with the exclusion of the United Nations Convention on the International Sale of Goods (CISG).

#### 14.6 Notes on Data Privacy Law

Data regarding business relations and customers shall be processed, insofar as this is permissible by the German Data Protection Act.

**Nuremberg, July 2011**