



IPCOS SOFTWARE SERVICE SUBSCRIPTION TERMS FOR CLOUD BASED APPLICATIONS

BY ENTERING INTO A SOFTWARE SERVICE SUBSCRIPTION AGREEMENT WITH **IPCOS BV** A COMPANY ORGANIZED UNDER THE LAWS OF THE NETHERLANDS, AND HAVING ITS ADDRESS AT BOSSCHEWEG 135B, 5282 WV BOXTEL, THE NETHERLANDS, INCLUDING ALL OF ITS AFFILIATED COMPANIES (HEREINAFTER REFERRED TO AS **IPCOS**) REGARDING THE USE (AS DEFINED BELOW) OF **IPCOS' SOFTWARE SERVICES**, **SUBSCRIBER** ACCEPTS ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT.

IPCOS grants **SUBSCRIBER** per subscription agreement entered into with **IPCOS** a nonexclusive and non-transferable right to access and use (as defined below) the **SOFTWARE** via the **SOFTWARE SERVICE** (as defined below) from solely the cloud based computer service provided by **IPCOS**. The use is only granted for the duration covered by the pre-paid subscription.

SUBSCRIBER is not allowed to make any copies of the **IPCOS** software for archival, back-up or any other purpose. **SUBSCRIBER** is responsible for making archival or backup copies of the project and data files. **IPCOS** is not liable for any loss of user data.

EXCEPT AS EXPRESSLY AUTHORIZED ABOVE, **SUBSCRIBER** SHALL NOT: COPY, IN WHOLE OR IN PART THE **SOFTWARE**; MODIFY THE **SOFTWARE**; REVERSE COMPILE, REVERSE ASSEMBLE, OR OTHERWISE REVERSE ENGINEER ALL OR ANY PORTION OF THE **SOFTWARE**; OR RENT, LEASE, DISTRIBUTE, SELL, OR CREATE DERIVATIVE WORKS OF THE **SOFTWARE**.

1. DEFINITIONS:

1.1 "SOFTWARE" shall mean any single instance or combination of **IPCOS'** proprietary computer programs, including, but not limited to

[INCA AptiTune Go](#)

In addition, "**SOFTWARE**" includes any and all accompanying documentation, manuals, upgrades, releases, enhancements and instructions delivered by **IPCOS** to **SUBSCRIBER** via the cloud based platform. "**SOFTWARE**" shall further include software and documentation (if any) of suppliers of **IPCOS** delivered to **SUBSCRIBER** by **IPCOS** as part of **IPCOS'** proprietary software products.

1.2 "USE" means to benefit from using the functionality of the **SOFTWARE**.

1.3 "SOFTWARE SERVICE" shall mean the **USE** of the **SOFTWARE** via the cloud based facilities offered by **IPCOS** during the subscription period.

2. TERMS OF USE:

2.1 By registering for the use of the software on the **IPCOS** website **SUBSCRIBER** enters automatically into a commercial agreement with **IPCOS** and accepts all terms and conditions of this agreement.



2.2 By using the software, **SUBSCRIBER** and software user also enter automatically into a commercial agreement with **IPCOS** and accept all terms and conditions of this agreement.

2.3 SUBSCRIBER may not modify, redevelop or translate the **SOFTWARE**, nor may **SUBSCRIBER** extract individual parts. Furthermore, **SUBSCRIBER** may not remove alphanumeric identifiers, trademarks or details of copyright from the data medium and, insofar as **SUBSCRIBER** is entitled to make copies of the **SOFTWARE**, shall copy these details without alteration.

2.4 SUBSCRIBER acknowledges that the continued integrity of the **SOFTWARE** and **SOFTWARE SERVICE** is dependent upon the proper use of the **SOFTWARE** and **SOFTWARE SERVICE** by **SUBSCRIBER**. Proper use means that **SUBSCRIBER** will use the **SOFTWARE** and **SOFTWARE SERVICE** in accordance with the documentation supplied by **IPCOS**.

2.5 SUBSCRIBER shall not:

- Upload or distribute any files that contain viruses, corrupted files, or any other similar software or programs that may damage the operation of the **SOFTWARE SERVICE**,
- Probe, scan, test the vulnerability of, or circumvent any security mechanisms used by, the sites, servers, or networks connected to the **SOFTWARE SERVICE**,
- Take any action that imposes an unreasonably or disproportionately large load on the sites, servers, or networks connected to the **SOFTWARE SERVICE**,
- Copy or reproduce the **SOFTWARE SERVICE**,
- Access or use any other clients' data through the **SOFTWARE SERVICE**,
- Maliciously reduce or impair the accessibility of the **SOFTWARE SERVICE**,
- Use the service to post, promote, or transmit any unlawful, harassing, libelous, abusive, threatening, harmful, hateful, or otherwise objectionable material, or
- Transmit or post any material that encourages conduct that could constitute a criminal offense or give rise to civil liability.

2.6 SUBSCRIBER agrees that aspects of the **SOFTWARE** and **SOFTWARE SERVICE**, including specific design and structure of individual programs, constitute trade secrets and/or copyrighted material of **IPCOS**. **SUBSCRIBER** agrees to keep all matters relating to the **SOFTWARE** and **SOFTWARE SERVICE** confidential and not to disclose, provide, or otherwise make available the **SOFTWARE** and **SOFTWARE SERVICE** to any third party without the prior written consent of **IPCOS**.

2.7 IPCOS provides the **SOFTWARE SERVICE** via the Amazon Appstream hosting service. **IPCOS** has the right to move the service to other hosting platforms. If technically feasible **IPCOS** will transfer the user data to the new hosting platform. If this is not possible, **SUBSCRIBERS** will be warned and will take responsibility for the transfer.

3. FINANCIAL PROVISIONS

3.1 The **SOFTWARE SERVICE** is offered on a time-based charging with a granularity of 15 minutes on a pre-pay basis.

3.2 The unit price (per hour) is indicated on the **IPCOS** website (www.ipcos.com). Payment amounts under this agreement do not include Taxes.

3.3 IPCOS has the right to alter the unit price at its discretion. New prices will be applicable on the subsequent orders of pre-paid periods.



3.4 The minimum amount of pre-paid hours per order is 8 hours.

3.5 Unused ordered hours will expire 6 months after the purchase.

3.6 IPCOS grants access to the **SOFTWARE SERVICE** only when payments have been received from the subscriber.

3.7 IPCOS will not process any refunds.

4. OWNERSHIP AND PROPRIETARY RIGHTS:

Title to, ownership of, and all rights in patents, copyrights and trade secrets in all **SOFTWARE** and **SOFTWARE SERVICE** does not transfer to **SUBSCRIBER** and shall remain in **IPCOS** and/or **IPCOS'** suppliers. In addition, **IPCOS** may furnish **SUBSCRIBER** with confidential and proprietary information ("Proprietary Information") in connection with the provision of the **SOFTWARE** and **SOFTWARE SERVICE** and related support. **SUBSCRIBER** shall protect such Proprietary Information to the same degree it protects its own proprietary information, but in any case with no less than a reasonable degree of care.

5. LIMITED WARRANTY

IPCOS warrants that the **SOFTWARE** and **SOFTWARE SERVICE** substantially conforms to its specifications as published in corresponding manuals. Except for the foregoing, the **SOFTWARE** and **SOFTWARE SERVICE** is provided "AS IS". This limited warranty extends only to **SUBSCRIBER**. **SUBSCRIBER's** exclusive remedy and the entire liability of **IPCOS** and its suppliers under this limited warranty will be, at **IPCOS'** option, repair, replacement, or refund of the amount limited to the last purchase order value paid to **IPCOS** by **SUBSCRIBER** for the **SOFTWARE SERVICE**. In no event does **IPCOS** warrant that the **SOFTWARE** and **SOFTWARE SERVICE** is error free or that **SUBSCRIBER** will be able to operate the **SOFTWARE** and **SOFTWARE SERVICE** without problems or interruptions.

This warranty does not apply if the **SOFTWARE** and **SOFTWARE SERVICE** (a) has been altered, except by **IPCOS**, (b) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident, or (c) is used in hazardous activities.

DISCLAIMER:

EXCEPT AS SPECIFIED IN THIS WARRANTY, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW.

IPCOS WILL NOT BE LIABLE TO **SUBSCRIBER** FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, REVENUES, CUSTOMERS, OPPORTUNITIES, GOODWILL, USE, OR DATA), EVEN IF **SUBSCRIBER** HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, **IPCOS** WILL NOT BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) **SUBSCRIBER'S** INABILITY TO USE THE **SOFTWARE SERVICE**, INCLUDING AS A RESULT OF ANY (I) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR **SUBSCRIBER'S** USE OF OR ACCESS TO THE **SOFTWARE SERVICE**, (II) **IPCOS** DISCONTINUATION OF ANY OR ALL OF THE



SOFTWARE SERVICE OFFERINGS, OR, (III) WITHOUT LIMITING ANY OBLIGATIONS UNDER THE **SOFTWARE SERVICE** AGREEMENTS, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE **SOFTWARE SERVICE** FOR ANY REASON; (B) THE COST OF PROCUREMENT OF SUBSTITUTE **SOFTWARE SERVICE**; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY **SUBSCRIBER** IN CONNECTION WITH THIS AGREEMENT OR **SUBSCRIBER'S** USE OF OR ACCESS TO THE **SOFTWARE SERVICE**; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF **SOFTWARE SERVICE** CONTENT OR OTHER DATA.

In no event shall **IPCOS's** or its suppliers' liability to **SUBSCRIBER**, whether in contract, tort (including negligence), or otherwise, exceed the last paid subscription fees paid by **SUBSCRIBER**. The foregoing limitations shall apply even if the above-stated warranty fails of its essential purpose.

6. PRIVACY AND DATA SECURITY

IPCOS takes all reasonable measures provided by the hosting platform to protect the user data and the privacy of the **SUBSCRIBER**.

IPCOS agrees not to (a) modify the **SUBSCRIBER** data, (b) disclose **SUBSCRIBER** data except as compelled by law in accordance or as expressly permitted in writing by **SUBSCRIBER**, or (c) access **SUBSCRIBER** data except to provide the Services or prevent or address service or technical problems, or in connection with a support request by **SUBSCRIBER**.

7. TERMINATION OF SOFTWARE SERVICE SUBSCRIPTION:

7.1 IPCOS may terminate the agreement to the **SOFTWARE SERVICE**, effective immediately, if **SUBSCRIBER** commits a material breach of the provisions of the terms of the agreement between **SUBSCRIBER** and **IPCOS**, including, but not limited to any breach which adversely affects **IPCOS'** or its suppliers' intellectual property rights. Upon termination of a subscription, **SUBSCRIBER's** right to use the **SOFTWARE** and **SOFTWARE SERVICE** shall end immediately.

7.2 IPCOS will not pay any refunds to the **SUBSCRIBER** upon termination of the **SUBSCRIPTION**.

7.3 IPCOS will remove the user data and the subscriber accounts:

- Immediately, when **IPCOS** terminates the agreement if **SUBSCRIBER** commits a material breach of the provisions of the terms of the agreement
- 1 year after the expiration of the last pre-payment period in all other cases.

8. INFRINGEMENT INDEMNIFICATION:

IPCOS will indemnify **SUBSCRIBER** from any damages arising out of or in connection with the infringement of the unmodified **SOFTWARE** and **SOFTWARE SERVICE** of any third party's intellectual property rights based on Dutch law, upto the amount of the last purchase order value paid to **IPCOS** by **SUBSCRIBER** under the agreement, *provided that*: (i) **SUBSCRIBER** notifies **IPCOS** in writing within seven (7) calendar days of learning of such alleged infringement, (ii) **SUBSCRIBER** gives **IPCOS** the right to control the defence of such claims, and (iii) **SUBSCRIBER** fully cooperates with **IPCOS** in any defence or settlement of such claims. In the event that it is determined by a court of competent jurisdiction that the **SOFTWARE** has infringed a third party's intellectual property rights based on Dutch law, **SUBSCRIBER's** sole and exclusive right to remedy shall be that **IPCOS** will, at its sole discretion: (i) replace the infringing **SOFTWARE** product with a non-



infringing, functionally-compatible product; or (ii) modify the **SOFTWARE** so that it becomes non-infringing, or (iii) obtain a subscription for **SUBSCRIBER** to use the allegedly infringing product. The foregoing indemnity shall not apply to infringements that arise from the use of the **SOFTWARE** and **SOFTWARE SERVICE** in combination with other non-**IPCOS** products, and defines the entire obligation of **IPCOS** with respect to the infringement of any intellectual property rights. If **SUBSCRIBER** stops using the **SOFTWARE** and **SOFTWARE SERVICE** to reduce the damage or for other important reasons, he shall be obliged to make it clear to the third party that the suspended use does not mean acknowledgment of an infringement of property rights.

9. EXPORT:

SUBSCRIBER acknowledges that the **SOFTWARE** and **SOFTWARE SERVICE** is subject to export and import control of the Netherlands and applicable EU-laws. **SUBSCRIBER** agrees that **SOFTWARE** and **SOFTWARE SERVICE** will be used or exported only in compliance with such laws. **SUBSCRIBER** represents and warrants that the **SOFTWARE** and **SOFTWARE SERVICE** shall not be used for any nuclear, chemical/biological warfare, missile end-use or training related thereto. **SUBSCRIBER** represents and warrants that the **SOFTWARE** and **SOFTWARE SERVICE** shall not be used in any region/country of the world where the use of it is restricted or prohibited by The Netherlands, EU or US export regulations.

10. GENERAL:

10.1 Either party's failure to perform its obligations hereunder shall not be deemed a breach of these subscription terms if such failure is due to fire, strike, war, civil unrest, terrorist action, government regulations, acts of Nature, or other causes beyond the reasonable control of the party claiming force majeure. This provision shall not apply to **SUBSCRIBER**'s obligation to pay any sums due under the subscription agreement(s) with **IPCOS**.

10.2 SUBSCRIBER shall not assign, sub subscription or otherwise transfer the **SOFTWARE** or Proprietary Information or otherwise assign its rights or obligations under these subscription terms without the prior written consent of **IPCOS**.

10.3 All modifications to these subscription terms must be in writing and signed by both parties. Failure or delay of either party to exercise any right or remedy hereunder shall not constitute a waiver of rights or remedies under these subscription terms.

10.4 If any provision of these subscription terms is held unenforceable or inoperative by any court of competent jurisdiction, either in whole or in part, the remaining provisions shall be given full force and effect to the extent not inconsistent with the original terms of these subscription terms.

10.5 These subscription terms shall be governed by and construed in accordance with the laws of The Netherlands, regardless of where any action may be brought. The **SUBSCRIBER** hereby agrees to submit to the exclusive jurisdiction of the courts of The Netherlands.
