

VITIM-Nutzungsbedingungen V1.0

These Terms of Use enter into force when you download, install or use VITIM software. Please first familiarise yourself with the provisions of this end-user licence agreement and accept them before downloading, installing or using VITIM software.

VITIM Switzerland GmbH is a Lachen-based company with its headquarters at St. Gallerstrasse 85, 8853 Lachen, Switzerland.

1. **IMPORTANT: READ THIS END-USER LICENCE AGREEMENT CAREFULLY. BY DOWNLOADING, INSTALLING OR USING VITIM SOFTWARE, YOU CONFIRM THAT YOU AGREE TO THE PROVISIONS OF THIS AGREEMENT. THIS LICENCE FOR THE SOFTWARE IS VALID ONLY ON THE CONDITION THAT YOU AGREE TO ALL PROVISIONS OF THIS LICENCE AGREEMENT. YOU CONFIRM YOUR AGREEMENT TO SAID PROVISIONS BY INSTALLING OR DOWNLOADING THE SOFTWARE OR BY USING DEVICES RUNNING THIS SOFTWARE. YOU COMMIT YOURSELF AND THE BUSINESS UNIT YOU REPRESENT (COLLECTIVELY REFERRED TO AS "CUSTOMER") TO THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL PROVISIONS OF THIS AGREEMENT, VITIM IS NOT PREPARED TO LICENSE THE SOFTWARE TO YOU AND YOU SHALL NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE.**
 2. Dependent on compliance with the general terms and conditions set out in this Agreement, VITIM grants the Customer a non-exclusive and non-transferable licence for use of the software and the documentation within the scope of the Customer's internal business purposes for the duration of the contract, insofar as the Customer has paid all licence fees due to VITIM or VITIM's distributors on time. "Documentation" refers to written information (that may be contained in user or technical manuals, training documents, technical data or other documents) that relates to the software in particular and that VITIM has provided in any form (including CD-ROM and online) with the software. The Customer's licence for use of the software is limited (i) to use on the devices specified in the order and for which the Customer has paid any licence fees due on time, and (ii) to the duration of the contract. The Customer may use the software only within the scope of this individual licence. Unless expressly stated otherwise in the documentation, the Customer may use and run the software only when the software is integrated in the devices acquired or leased by the Customer — so-called authorised devices. This also applies (provided that the relevant documentation permits installation on other devices) to communication with authorised devices, insofar as this takes place exclusively within the scope of the Customer's internal business purposes. The software is not permitted to be used in another way within the scope of this Agreement. The software may not be connected to any other portals (URLs) without prior authorisation from VITIM or its distributors. Any unauthorised use of the software represents a breach of the provisions of this licence and the Agreement, whereby VITIM or its distributors may suspend use of the software.
Please note: For trial or beta versions for which VITIM or its distributors charge no licence fee, the above requirement concerning payment of a licence fee does not apply.
 3. Use of the products. The products are not authorised for use in important safety applications or other applications where defects may result in injuries, death or catastrophic property damage. If the Customer uses the products in such applications, it acknowledges that it is not possible to completely eliminate any malfunctions in the software even when exercising the greatest caution, and so the Customer must ensure that no property damage or personal injury can arise even if malfunctions occur. Any use that is potentially dangerous is undertaken at the Customer's own risk. The Customer indemnifies VITIM and VITIM's distributors and shall compensate them for and protect them against any liability claims and costs that may arise as a result of or in connection with such use. If the Customer processes personal application data, the Customer is responsible for compliance with the relevant provisions under data protection law. The Customer further guarantees that no unlawful or inappropriate activities will be undertaken using VITIM products. The Customer undertakes to protect data sent using the software; VITIM and VITIM's distributors are not responsible for doing so.
- ## 2. Limitation of liability
- 2.1. Express guarantee
 - (i) VITIM guarantees that, for a period of two years following delivery of the product, (i) the product hardware will be free from defects in material and workmanship and (ii) the licensed software will largely correspond to the published technical data. Instructions regarding the raising and processing of claims against this guarantee will be provided by the authorised VITIM dealer from whom you acquired the product. Any defect must be reported to VITIM or VITIM's distributors within ten calendar days of the defect being discovered; otherwise, the rights to claim for defects are forfeited. The Customer acknowledges that it is responsible for setting up and maintaining the telecommunications connection required for contractual use of the software.
 - (ii) With the exception of the provision set out above, the software is supplied as is. This limited guarantee applies only to Customers that are the original licence holder. The sole and exclusive legal remedy of the Customer and the sole liability of VITIM and its suppliers, licensors and distributors within the context of this limited guarantee involves, at

VITIM's discretion, the repair (the circumvention or suppression of a defect also counts as the permissible rectification of a defect) or replacement of the product or the provision of a refund for the product if VITIM or the party that provided the product to the Customer is notified of such accordingly (or if the product is returned in response to a request). Any further warranty claims on the part of the Customer are expressly excluded. Under no circumstances does VITIM guarantee that the software is free from defects or that the Customer will be able to run the software without any problems or disruptions. Furthermore, given the continual development of new techniques for penetrating and attacking networks, VITIM does not guarantee that the software or any devices, systems or networks on which the software is run are free from the risk of penetration or attack.

Limitations: This guarantee does not apply if the software, product or any other devices that have been authorised for use of the software (a) have been modified, insofar as this has not been carried out by VITIM or authorised representatives, (b) have not been installed, operated, repaired or maintained in accordance with the instructions provided by VITIM, (c) have been subjected to an abnormal physical or electrical load, misuse, negligence or accidents or (d) have been licensed for beta, trial, test or demonstration purposes. This guarantee also does not apply to (e) any temporary software modules and (f) any software for which VITIM receives no licence fees.

3. EXCLUSION OF LIABILITY

3.1. WITH THE EXCEPTION OF THOSE SPECIFIED IN THIS GUARANTEE, VITIM, ITS SUPPLIERS, LICENSORS AND DISTRIBUTORS HEREBY EXPLICITLY EXCLUDE ALL EXPRESS AND IMPLIED CONDITIONS, ASSURANCES AND WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SUITABILITY FOR A SPECIFIC PURPOSE, THE EXERCISING OF THIRD-PARTY RIGHTS, SATISFACTORY QUALITY, NON-INTERVENTION, ACCURACY OF INFORMATION, OR WARRANTIES THAT ARISE ON ACCOUNT OF BUSINESS OPERATIONS, THE LAW, USAGE OR COMMERCIAL PRACTICE, TO THE EXTENT PERMITTED BY THE APPLICABLE LAW. INsofar AS AN IMPLIED WARRANTY CANNOT BE EXCLUDED, THE PERIOD OF VALIDITY OF SAID WARRANTY IS LIMITED TO THE PERIOD OF VALIDITY OF THE EXPRESS GUARANTEE. BECAUSE SOME STATES AND JURISDICTIONS DO NOT PERMIT ANY RESTRICTIONS ON THE PERIOD OF VALIDITY OF IMPLIED WARRANTIES, THE LIMITATION STIPULATED ABOVE MAY NOT APPLY. THIS WARRANTY

GRANTS THE CUSTOMER CERTAIN RIGHTS. DEPENDING ON THE JURISDICTION, FURTHER RIGHTS MAY BE AVAILABLE TO THE CUSTOMER. This waiver and exclusion apply even if the basic purpose of the express guarantee described above is not fulfilled.

4. General limitations

1. This Agreement concerns a licence and not a transfer of rights to the software and documentation. VITIM and/or its licensors therefore retain ownership of all copies of the software and documentation, as well as the intellectual property rights to the product and software. The Customer acknowledges that the products, software and documentation include industrial property rights (such as international and US trade secrets, copyrights, patents and patent applications) belonging to VITIM, its suppliers or licensors, including but not limited to the relevant internal design and structure of individual programs and the corresponding interface information. As such, the Customer has no rights in this respect unless expressly stated otherwise in this Agreement. The Customer explicitly agrees: (i) not to transfer, assign or sublicense its licence rights to other persons or legal entities and not to use the software on unauthorised devices or on second-hand authorised devices. Furthermore, the Customer acknowledges that any attempted transfer, assignment, sublicensing or use is null and void. (ii) not to circumvent or avoid any technical protective measures of any kind for the software. (iii) not to use the software independently of the product. (iv) not to publish, copy, sell, export, import, distribute or lend the software. (v) not to correct any defects or make any other changes or adjustments to the software or the product, nor to create derivative works based on the software or to permit third parties to do so. (vi) not to reverse-engineer, decompile, encrypt or disassemble the software or otherwise convert it into a format that can be read by humans, unless this is expressly permitted by the applicable law notwithstanding this restriction. (vii) not to use or permit the use of the software in order to render services for third parties, be this as part of a service enterprise, on a time-sharing basis or in any other way (renting, leasing, etc.), without VITIM's express written consent. (viii) not to disclose or provide to third parties, or make available to third parties in any other way, in any form, any of the trade secrets contained in the products, software and documentation unless written consent is obtained from VITIM in advance. The Customer must implement suitable security measures to protect such trade secrets. To the extent required by law and on written request from the Customer, VITIM shall provide to the Customer the interface information required to enable interoperability between the software and another, independently created program, insofar as the Customer has paid any fee requested by VITIM. The Customer must treat this information in the strictest confidence and use it in accordance with all applicable general terms and conditions that VITIM stipulates for the provision of such information.
2. Unless expressly stated otherwise, all taxes and duties relating to this Agreement, the products and the software are excluded and are the responsibility of the Customer.

2. Software, upgrades and additional copies

2.1. Within the context of this Agreement, "software" refers to (and the general terms and conditions of this Agreement apply to) computer programs, including firmware, that the Customer is provided by VITIM or an authorised dealer, as well as all updates, bug fixes and modified versions (collectively referred to as "updates") and back-up copies of the software that have been licensed or provided to the Customer by VITIM or an authorised dealer. The Customer undertakes to use the latest version of the software. NOTWITHSTANDING ALL OTHER PROVISIONS OF THIS AGREEMENT: (1) THE CUSTOMER HAS NEITHER A LICENCE NOR THE RIGHT TO USE ANY ADDITIONAL COPIES OR UPDATES UNLESS, AT THE TIME OF ACQUIRING SUCH COPY OR UPDATE, THE CUSTOMER (i) ALREADY HAS A VALID LICENCE FOR THE ORIGINAL SOFTWARE AND (ii) HAS PAID THE APPLICABLE FEE CHARGED FOR THE UPDATE OR ADDITIONAL COPIES; (2) USE OF UPDATES IS LIMITED TO AUTHORISED DEVICES WHOSE END USER AND BUYER OR LESSEE ARE THE CUSTOMER, OR FOR WHICH THE CUSTOMER OTHERWISE POSSESSES A VALID LICENCE FOR THE USE OF THE UPDATED SOFTWARE AND (3) THE CREATION AND USE OF ADDITIONAL COPIES IS LIMITED TO THE REQUIRED BACK-UP PURPOSES.

3. Property rights

3.1. The Customer agrees to maintain all copyrights and property rights to all copies made of the software in any way in the same manner as for the original software. Unless expressly authorised within the context of this Agreement, the Customer may not make any copies or duplicates of any software without prior written consent from VITIM. VITIM is entitled to refuse to give consent without having to specify the reasons for doing so.

4. Period of validity and termination

4.1. This Agreement and the licence granted herein remain valid until terminated as specified in the corresponding order or contract. Upon termination of the contract, the Customer must destroy all copies of the software and documentation in its possession or control. All confidentiality obligations of the Customer as well as all liability and guarantee limitations, and waivers, continue to apply after termination of the Agreement. In addition, No. 9 of these Terms of Use continues to apply after termination of the Agreement. All other clauses that are necessary for implementation of this Agreement on account of their provisions continue to apply after termination of this Agreement.

5. Export

5.1. The products, software and documentation, including technical data, may be subject to US export control legislation, including the US Export Administration Regulations, and the corresponding provisions and export/import provisions of other countries. The Customer agrees to adhere fully to all of these provisions. Furthermore, the Customer acknowledges that to this end it is responsible for acquiring licences

for the export, re-export or import of products, software and documentation in advance.

6. LIABILITY

Generally applicable provisions concerning the end-user licence, the declaration of limited warranty and the warranty exclusion.

6.1. IRRESPECTIVE OF WHETHER THE FUNDAMENTAL OR OTHER PURPOSE OF ONE OF THE CLAIMS STIPULATED HEREIN IS NOT MET, VITIM OR ITS SUPPLIERS AND LICENSORS SHALL UNDER NO CIRCUMSTANCES ACCEPT LIABILITY FOR ANY LOSS OF REVENUE OR PROFIT, OR FOR ANY LOST OR DAMAGED DATA, BUSINESS INTERRUPTIONS OR LOSS OF CAPITAL, NOR FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL CLAIMS FOR DAMAGES OR CLAIMS FOR DAMAGES OWING TO PENALTIES, REGARDLESS OF THE CAUSE. THIS APPLIES IRRESPECTIVE OF THE THEORETICAL LIABILITY AND EVEN IF SUCH CLAIMS ARISE AS A RESULT OF USE OF THE SOFTWARE OR IMPOSSIBILITY OF USE OF THE SOFTWARE OR IN ANY OTHER WAY, AND EVEN IF VITIM OR ITS SUPPLIERS OR LICENSORS WERE MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. Under no circumstances may the liability of VITIM, its suppliers or licensors towards the Customer, be it on account of the contract, misuse (including negligence), breach of warranty or for any other reason, exceed the price that the Customer paid for the software on which the claim is based. If the software is part of another product, the price of this other product applies. BECAUSE SOME STATES AND JURISDICTIONS DO NOT PERMIT THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGE, THIS LIMITATION OR THIS EXCLUSION MAY NOT APPLY UNDER CERTAIN CIRCUMSTANCES.

6.2. The Customer agrees that the limitation of liability specified herein and the exclusions apply irrespective of whether the Customer has accepted the software or any other products or services provided by VITIM. The Customer acknowledges and agrees that VITIM has set the prices for end customers and authorised dealers and that VITIM enters into this Agreement within the scope of the warranty exclusions and limitations of liability stipulated herein and that this represents a distribution of risks between the parties (including the risk of the fundamental purpose of a legal remedy not being fulfilled and consequential damages arising) and that this forms an indispensable basis of agreement between the parties. The validity, format and execution of this Agreement are governed by and subject to Swiss law, without reference to or application of the specification of statutory regulations or principles. The exclusive place of jurisdiction for any legal disputes arising from this Agreement shall be the relevant courts in Lachen, Switzerland. The UN Convention on Contracts for the International Sale of Good does not apply. If part of this Agreement proves invalid or unenforceable, the remaining provisions of this Agreement remain fully valid and in full force. Unless expressly stated otherwise herein, this Agreement represents the entire agreement between the parties with respect to the provisions listed herein and the documentation, and renders inoperative any contradictory or additional provisions of any orders or

other documents whose provisions are entirely excluded. This Agreement has been written in German and the parties agree that the German version is valid.

7. Compensation in the event of violations

1. VITIM or its distributors shall, at their own expense, challenge any action against the Customer or accept said action where it is based on a claim that the software or product, insofar as used exclusively within the scope of the licence granted under this Agreement, directly violates a patent or copyright registered in Switzerland. However, this requires that: (i) the Customer informs VITIM of such claims immediately in writing; (ii) the Customer does not enter into any settlements or compromises whatsoever with respect to such claims without VITIM's prior written consent; (iii) VITIM has exclusive control with respect to any actions and settlement negotiations, and (iv) the Customer, on request, provides VITIM with the information and assistance necessary to admit or defend such claims. VITIM agrees to reimburse the Customer for any damages and costs incurred in the course of such a claim. The above represents the only liability accepted by VITIM and the only compensation provided to the Customer in connection with any violation of industrial property rights by the product or any other items provided. (b) If the product or the software actually or in VITIM's view serves as the basis

for a claim owing to a violation of third-party rights, VITIM may, at its discretion: (i) grant the Customer the right to use the product free of charge and with no liability; (ii) replace or modify the product so that third-party rights are no longer violated, or (iii) re-acquire the relevant licences or products. (c) The Customer shall, at its own expense, challenge any action against VITIM or allow such action where it is based on a claim that any changes to the product or combining the product with other products violates third-party rights. However, this requires that: (i) VITIM informs the Customer of such claims immediately in writing; (ii) VITIM enters into no settlements or compromises whatsoever with respect to such claims without the Customer's prior written consent; (iii) the Customer has exclusive control with respect to any actions and settlement negotiations, and (iv) VITIM, at the Customer's request, provides the Customer with the information and assistance necessary to admit or defend such claims. The Customer agrees to reimburse VITIM for any damages and costs incurred in the course of such a claim. (d) Notwithstanding subsection (a) above, VITIM accepts herein no liability or obligation to defend the Customer or to assume any costs, damages or legal fees for any claims that are based on changes to the product not undertaken by VITIM or the combination of the product with other products.