

# ***McFate Support Services Inc. Terms of Service***

## **IOtech® Vibration Analysis Systems Support Services Contracts**

IOtech® products are designed and manufactured by National Instruments (“NI”). All software is used by the customer under a licensing agreement between the customer and NI. McFate Support Services Incorporated (“McFate-Inc”) is an independent business entity incorporated in the State of Tennessee and is not affiliated with, employed by or a subsidiary of NI.

IOtech® is a registered trademark of NI. The Mark is used under a license agreement between McFate-Inc and NI. McFate-Inc provides technical support, customer training and consulting services to end users of the IOtech® Vibration Analysis products. McFate-Inc also serves as an authorized reseller of IOtech Vibration Systems hardware and associated software products under an agreement between McFate-Inc and NI.

McFate-Inc agrees to provide [Customer Name] [Customer Address] with Technical Services identified below, for IOtech® Vibration Analysis System Hardware and Software products with the following terms and conditions

### **A. Technical Support Services**

1. McFate-Inc will provide supporting services to the customer in the form of on-demand answers to technical questions associated with the products and their field application. This support will encompass software installation, operating system compatibility, hardware integration, system deployment, software configuration, system troubleshooting and domain expertise.
2. Support Services are purchased on a per-system basis. Each covered system will be clearly identified with a bar-coded and serialized Contract Label issued by McFate-Inc. Contract Labels must be affixed to the IOtech® product matching the serial number for which the contract was issued. The Contract Label lists the phone number and email utilized to access support. Customer will be required to provide the IOtech® product serial number and the Contract Label serial number to obtain services.
3. Support Requests may also be initiated via the company web site [www.mcfate-inc.com](http://www.mcfate-inc.com). A Support Request Form is available on the site that may be completed by the customer including the aforementioned serial number information, problem description or question, and return contact information.
4. McFate-Inc is dedicated to providing customer assistance as near ‘real-time’ as possible. Typical response time is immediate if contacting by phone. If immediate response is not possible due to availability of our personnel (i.e. meetings, travel, training commitments, etc.) the customer’s

Service Request will be addressed as soon as personnel become available. Responses will be sequenced in the order requests are received.

4. McFate-Inc's normal hours of operation are Monday through Friday, 8:00 am to 5:00 pm Central Standard Time. National Holidays are observed. Contacting McFate-Inc outside normal working hours is acceptable if deemed critical by the customer. This accommodation will be considered exceptional and will not be construed as contracted 24 – 7 coverage. McFate-Inc is not required to respond to customer requests received outside of normal, published hours of operation.

## **B. Excluded Services**

1. McFate-Inc does not provide diagnostic services or evaluation of customer data. No judgement of machinery health, condition, safety or suitability for operation is expressed or implied.
2. McFate-Inc serves as a technical support resource to the customer for IOtech® Hardware and Software products in their current, released state. McFate-Inc is not authorized to modify, update, re-engineer, enhance or alter the products in any manner.
3. McFate-Inc does not serve as a Warrantee guarantor, facilitator or intermediary between the manufacturer and the customer. IOtech® Product Warrantee is the sole responsibility of NI, Warrantee issues must be referred to, and remedied by National Instruments.

## **C. Term**

This Agreement is only for the period as listed. McFate-Inc will send 2 months before the agreement ends a quotation for renewal.

## **D. Compensation**

1. Fees for contracted Support Services are subject to change at the beginning of each one year term. Notice of fee changes will be sent to Customer with subscription renewal notices.
2. Taxes. The Support Services Fee is exclusive of any federal, state or local sales or excise taxes. Customer will be responsible for payment of such taxes.

## **E. Confidentiality**

1. McFate-Inc shall consider all customer data confidential. McFate-Inc will not disclose or share confidential or privileged information regarding the customer with any third party.

2. Communication between McFate-Inc and the customer, in writing, email, or in conversation will be considered confidential.
3. McFate-Inc and the customer shall execute a Mutual Non-Disclosure Agreement protecting the interests of both parties. This agreement will be considered an integral section of this contract.

#### **F. Limitation of Liability**

1. McFate-Inc will not be liable for any claims arising under this Agreement, whether under warranty breach or otherwise, including those for any special, direct, indirect, incidental or consequential damages, including but not limited to lost profits, loss of revenue, loss of data, or loss of use, whether in contract, tort, breach of warranty, or otherwise. Customer's sole and exclusive remedy will be McFate-Inc' choice of either reperformance of the services or a pro rata refund of the Support Services Fee.
2. McFate-Inc will not provide support for altered, mishandled, abused or modified software; derivative works; a defect in software distribution media and/or software function which causes material performance failure, or any other defect, which is caused by Customer negligence or hardware malfunction; software problems which do not significantly impair or affect the operation of the software; or software problems due to any forces external to the software and beyond McFate-Inc's control. McFate-Inc may refuse to provide or may suspend support services on any software for which a valid license or sublicense is not in effect, or in which such licenses have been breached in a material manner.

#### **G. Force Majeure**

The performance of the Agreement may be suspended by either party in the event performance is prevented by a cause or causes beyond the reasonable control of such party. Such causes shall include, but not be limited to, acts of God, war, riot, fire, explosion, accident, flood, or sabotage, government laws, regulations, injunctions or restraining orders.

#### **H. Attorney Fees**

If either party commences a legal action or otherwise employs an attorney to enforce any provision of this Agreement, the prevailing party's reasonable attorney's fees and all costs incurred in enforcing this Agreement will be paid by the opposing party. That amount will be included in the principal amount of any judgment obtained.

## **I. Miscellaneous**

1. This Agreement constitutes the entire agreement between the parties and supersedes all previous understandings, whether oral or written, relating to the subject matter. Its validity, interpretation and performance will be governed and construed in accordance with the laws of the State of Tennessee.
2. This Agreement cannot be modified, amended or supplemented except by written consent of McFate-Inc.
3. If any provision of this Agreement becomes invalid or unenforceable due to a decision by a court of competent jurisdiction or any legislative action, the remaining portions of the Agreement will remain in full force and effect.
4. The failure of either party to enforce any provision of the Agreement will not be construed as a waiver of such provision or of the right of either party thereafter to enforce any provision of this Agreement.
5. The products covered by this agreement are manufactured and licensed by National Instruments, (All right, title and interest to all software and its associated documentation belongs to National Instruments.
6. Nothing in this Agreement will be construed to require any McFate-Inc personnel to visit customer premises in connection with furnishing any support services. On-site support, consultation and customer training are offered as supplemental services by McFate-Inc. If required, on-site activity will be contracted and compensated under a separate agreement between the customer and McFate-Inc.

# McFate Support Services Incorporated Certificate of Coverage



Effective Date: \_\_\_\_\_ Contract Number: \_\_\_\_\_

Customer: \_\_\_\_\_

Billing Address;

Street 1: \_\_\_\_\_

Street 2: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Contact Phone \_\_\_\_\_ cell work home

Alt. Phone \_\_\_\_\_ cell work home

Contracted Equipment(s)

	Unit Description	Unit s/n	Contract Code
1	IOtech ZonicBook 618e	XXXXXX	SC-XXXXX
2	IOtech 672u	XXXXXX	SC-XXXXX
3			
4			

This Certificate of Coverage shall be signed on behalf of McFate Support Services Inc. by David J. McFate, Owner and on behalf of [Company Name] by [Customer Name], [Customer Title].

McFate Support Services Inc.

By: \_\_\_\_\_  
David J. McFate  
Owner

Date: \_\_\_\_\_

[Company Name]

By: \_\_\_\_\_  
[Customer Name]  
[Customer Title]

Date: \_\_\_\_\_