

FLUKE CORPORATION SOFTWARE LICENSE AGREEMENT

By downloading and using Fluke “OpenAccess” software, you (“the User”) agree to the following conditions:

1. Background

1.1 -- Fluke manufactures and sells certain infrared imaging products (“Thermal Imaging Cameras”). Fluke also has developed and owns several versions of certain software known as OpenAccess, wherein OpenAccess is a software library, which permits computer application software to download images and radiometric temperature data from a Fluke Thermal Imaging Camera.

1.2 -- Fluke is interested in assisting manufacturers of computer application software to develop and distribute software drivers that support the use of present and future versions of Fluke Thermal Imaging Cameras with such computer application software.

1.3 -- The User has developed or plans to develop computer application software that will be capable of downloading images and radiometric temperature data from infrared imaging products.

1.4 -- Both parties believe it to be in their mutual interest for the User to merge its application software with Fluke’s OpenAccess software, and for the User to develop and distribute software that supports the use of Fluke Thermal Imaging Cameras. Fluke is willing to grant the User a license to merge Fluke OpenAccess software with the user software and to distribute the merged software.

2. Definitions

2.1 -- “Thermal Imaging Camera” means Fluke infrared imaging products.

2.2 -- “Fluke Software” means software in any and all versions in object-code form, including IRAccess.dll and NetIRImageFile.dll.

2.3 -- “User Software” means software products from the User with similar applications.

2.4 -- “Merged Software” means software created by merging Fluke Software and User Software.

3. Software Merger and Distribution

3.1 -- Fluke agrees to allow the User to merge the Fluke Software into the User Software to create Merged Software, and to create, manufacture and sell Merged Software that supports Fluke Thermal Imaging Cameras.

3.2 -- The User shall make the Merged Software available to purchasers or other end-user customers through the Users normal sales, marketing, and distribution channels around the world to meet market needs.

4. Grant of License

4.1 -- Fluke hereby grants the User a worldwide, nontransferable, nonexclusive, and royalty-free license to merge the Fluke Software into the User Software, and to distribute the Merged Software through the User’s own worldwide sales, marketing, and distribution channels, as well as through the Users OEM affiliates. The license granted by Fluke includes the right to grant sublicenses to Merged Software end users using the Users standard license agreement.

5. Delivery

5.1 -- Fluke will provide Fluke Software to the User to be merged with the User Software.

6. Title and Ownership

6.1 -- Title and all ownership and proprietary rights to Fluke Software are and shall remain in Fluke.

6.2 -- Title and all ownership and proprietary rights of User Software are and shall remain with the User

7. Confidential Information

7.1 -- In consideration of the opportunity to receive proprietary information from each other which is necessary develop, distribute and support the Merged Software contemplated by this Agreement, Fluke and the User agree to retain in confidence all proprietary information acquired from the other, and not to disclose such information to anyone except employees authorized to receive it, and not to use the other's confidential information for any purpose other than that for which it is disclosed.

7.2 -- Proprietary information considered confidential includes all unpublished information owned or controlled by either party that relates to the technical, manufacturing, marketing, sales and financial operations of each company and its subsidiaries, and that is not generally disclosed by the parties to the public. In particular, Fluke Software contains Fluke know-how and trade secret information that is not to be disclosed to others. The User agrees not to "reverse-engineer" Fluke Software to determine Fluke know-how that is not specifically disclosed or licensed to the User.

7.3 -- The User acknowledges that Fluke may suffer irreparable harm from any unauthorized disclosure of Fluke confidential information and that remedies at law may be inadequate to protect Fluke's interests, and accordingly Fluke shall have the right and option, in addition to any other remedy available, to apply for and receive from any court of competent jurisdiction equitable relief by way of restraining order, injunction or otherwise, to prevent a breach or continuing breach of the terms of this Agreement.

7.4 -- The obligations imposed by this confidentiality agreement shall not apply to any information that:

(a) is already known to the recipient as evidenced by documentation bearing a date prior to the date of disclosure; or

(b) is publicly available or becomes so without breach of this agreement by recipient; or

(c) is rightfully received from a third party without accompanying disclosure or use restrictions; or

(d) is independently developed by recipient; or

(e) is approved for release in writing by Fluke;

and shall terminate ten (10) years from the date of disclosure or the termination date of this Agreement and license, whichever is later in time.

8. Indemnification

8.1 -- At its own expense, Fluke will indemnify and defend the User against any action brought against the User to the extent that such action is based on a claim that the Fluke Software supplied by Fluke to the User constitutes an infringement of United States patents, copyrights, trade secrets, and trademarks, provided the User promptly notifies Fluke in writing and furnishes a copy of each communication related thereto, and gives Fluke sole control of the defense of such claims and all negotiations for its settlement or compromise.

8.2 -- If the Fluke Software is, in Fluke's opinion, likely to cause a claim of infringement or such a claim is made, Fluke shall have the option of replacing or modifying the Fluke Software to make it non-infringing, provided such modification or replacement does not materially affect performance of the Fluke Software.

8.3 -- The User agrees to hold Fluke harmless from and against any and all claims arising from the use or reliance upon any modifications to any Fluke user documentation made by the User or the customers of the User.

8.4 -- The User shall indemnify and defend Fluke against any action resulting from any claim of patent infringement that is based solely on the use of the Fluke Software in combination with any software other than Fluke Software, from a modification (except by Fluke) after shipment, or for any trademark infringement involving any marking or branding not applied by Fluke.

9. Warranty and Limitation of Liability

9.1 -- Fluke represents and warrants that it owns and has the right to license the Fluke Software. Fluke further represents that to the best of its knowledge, the Fluke Software does not infringe upon the valid patents, trademarks, trade names, or copyrights of any person, firm, or corporation.

9.2 -- Fluke warrants that the Fluke Software will, when delivered, be in good working order on non-defective media and will, for a period of 90 days after the date of delivery, perform as intended substantially in accordance with the published specifications. Fluke does not warrant that the Fluke Software will be error free or operate without interruption.

9.3 -- FLUKE DISCLAIMS ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, DATA, OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION ON THE CONTRACT OR IN TORT OR BASED ON A WARRANTY, EVEN IF THE OTHER PARTY OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY'S LIABILITY FOR DAMAGES SHALL IN NO EVENT EXCEED THE FEES PAID UNDER THIS AGREEMENT.

10. Notification of Modifications

10.1 -- From time to time, Fluke may make modifications to or develop enhancements for Fluke Software. In such event, Fluke agrees to give the User notice as soon as practicable if it intends to modify or change the Fluke Software in any material way, and Fluke shall provide the User with information, revised software or a prototype of such major modification.

11. Technical Assistance and Support

11.1 -- Fluke agrees to provide the User with technical assistance for the initial implementation, in the creation and support of the Merged Software, drivers, and download procedures as such relate to the Fluke Software and Thermal Imaging Cameras. This technical assistance shall be limited to e-mail messages, telephone calls and updates, which do not exceed an aggregate of twelve (12) hours. Fluke does not agree to provide technical assistance directly or on a regular basis to the User's customers, but may do so, in Fluke's sole discretion, upon the request of the User.

11.2 -- The User agrees to provide full support to its customers for the User Software.

12. Term and Termination

12.1 -- This Agreement and license shall become effective upon the Effective Date for an initial period of five (5) years from the Effective Date, and may be renewed for additional periods of five (5) years upon written consent of both parties. If not renewed, termination will be automatic upon expiration of the five-year period then in effect. The User agrees to give Fluke at least six (6) months notice, in writing, of a desire not to renew the Agreement and License for such annual automatic five (5) year terms.

12.2 -- This Agreement and license granted herein will terminate immediately upon any attempt by the User to assign, delegate, or otherwise transfer this license without written consent of Fluke. Either party shall have the right to immediately terminate this Agreement if any assignment is made of the other party's business for the benefit of creditors, or if a receiver, trustee in bankruptcy, or similar officer is appointed to take care of all or part of the other party's property, or if the other party is adjudicated a bankrupt.

12.3 -- Upon termination of this Agreement and license, the User shall return to Fluke or destroy the original and all copies of the Fluke Software except the User may retain an archive copy.

12.4 -- Except as otherwise herein provided, neither party may terminate this agreement except by mutual consent of the parties.

13. Governing Law

13.1 -- This agreement shall be governed by the laws of the State of Washington. The User consents to dispute resolution at Seattle, Washington.

14. Dispute Resolution

14.1 -- Except for the right of either party to apply to a court of competent jurisdiction for a preliminary injunction to prevent irreparable harm concerning disclosure of Confidential Information, the parties agree to

work together in good faith to resolve any disputes arising under this Agreement, and to explore resolution of the dispute through methods of alternative dispute resolution. If the parties are unable to resolve any such questions or disputes by discussion, such questions or disputes shall be finally settled by a single arbitrator in arbitration conducted in accordance with the then pertaining Commercial Arbitration Rules of the American Arbitration Association. Judgment upon any award in any such arbitration may be entered in any court of competent jurisdiction. If both parties agree that neither arbitration nor any other method of alternative dispute resolution is suitable to resolve the dispute, they may proceed with litigation. Unless the parties agree otherwise in writing, resolution of the dispute, by whatever process, will occur in Seattle, Washington.

15. Merger

15.1 -- This Agreement and license constitutes the complete and exclusive statement of the agreement between the parties, and all previous representations are merged in this license. This Agreement and license may be modified only by a writing signed by both parties.

16. Severability

16.1 -- If any provision of this license shall be held invalid or unenforceable, it shall be deemed to be severed from the license, and the remaining provisions of the license shall remain in effect.

17. Waiver

17.1 -- Waiver of any breach of this license by either party shall be ineffective unless in a writing signed by the party waiving compliance, and shall not be considered a waiver of any other breach.

18. Assignment

18.1 -- Neither party may delegate its obligations nor assign its rights under this Agreement without the express written consent of the other party.

19. Amendment

19.1 -- This Agreement may not be amended or modified in any manner, including by terms contained on purchase orders or other documents, except by written agreement of the parties.

20. Notices

20.1 -- Any notices required to be given under this license shall be in writing and shall be given by letter or facsimile. Such notices shall be deemed given when sent. Notices will be sent to:

Fluke Corporation
3550 Annapolis Lane North, Suite 70
Plymouth, MN 55447
Attn: Jordan Schlichting
Telephone: (425) 446-6967
Email: jordan.schlichting@fluke.com

21. Force Majeure

21.1 -- Any delay or nonperformance of any provision of this license caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this license, and the time for performance of such provision shall be deemed to be extended for a period equal to the duration of the conditions.