

**FUJITSU NEW ZEALAND LIMITED  
GENERAL TERMS AND  
CONDITIONS OF SALE  
EFFECTIVE DATE: APRIL 2026**

**1. PURPOSE**

1.1 These general terms and conditions of sale ("General Terms") set out the terms and conditions under which Fujitsu New Zealand Limited of Level 3, 40 Bowen Street, Wellington, 6011, New Zealand (company number 37446) and/or its affiliated companies ("Fujitsu") may sell to a purchaser ("Purchaser") equipment ("Equipment"), software ("Software") or professional services ("Professional Services") for use only in the country of the Purchaser unless otherwise agreed by Fujitsu ("Territory"). In these General Terms, Fujitsu and the Purchaser will each individually be referred to as a "Party" and jointly as "Parties".

**2. APPLICABILITY**

2.1 These General Terms form part of and are applicable to any proposal submitted by Fujitsu ("Offer") and/or each contract agreed between the Parties and/or any purchase order issued by the Purchaser as a response to a firm and valid Offer based on these General Terms ("Agreement"). The terms and conditions of any written contract executed between the Parties for a particular supply shall prevail over any conflicting or inconsistent terms in these General Terms. These General Terms shall prevail over any terms and conditions (including any intended to exclude or limit the General Terms) stated or referenced in any purchase order, work order or other similar document issued by the Purchaser and those stated or referenced terms and conditions shall be of no force or effect whatsoever.

2.2 These General Terms may only be supplemented or amended by written agreement between the Parties. All terms and conditions not so modified shall apply as set forth herein.

**3. EQUIPMENT SALE**

3.1 Introduction: This Clause 3 only applies where an Agreement provides for the sale of Equipment.

3.2 Delivery: Fujitsu will sell the Equipment to the Purchaser and deliver the Equipment to the Purchaser delivery address. Fujitsu will use reasonable endeavours to deliver the Equipment by the date(s) specified in the Agreement.

3.3 Title and Risk: Title to the Equipment will pass to the Purchaser upon delivery to the Purchaser delivery address. Notwithstanding the foregoing, Fujitsu shall have the right to exercise a lien on the Equipment supplied until payment of the price in full by the Purchaser; and Purchaser shall not dispose of, encumber, mortgage, pledge, assign by way of security or otherwise charge the Equipment until it has paid Fujitsu in full for such Equipment. Risk of loss of and damage to the Equipment will pass to the Purchaser upon delivery to the Purchaser delivery address.

3.4 Installation: If indicated in an Agreement, Fujitsu will install the Equipment for the installation charges shown in the Agreement. Installation will be carried out during Fujitsu's normal business hours.

**4. EQUIPMENT WARRANTY AND  
MAINTENANCE**

4.1 Introduction: This Clause 4 only applies where an Agreement provides for the supply of Equipment and/or Equipment maintenance.

4.2 Warranty: Subject to Clause 4.3, commencing upon the date of delivery to the Purchaser delivery address and for a period of 12 months or such other period as is specified in the Agreement, Fujitsu warrants that each item of Equipment will perform in substantial conformity with its published specifications. If any item of Equipment does not so perform, Fujitsu will at its option in compliance with applicable reseller arrangements, either repair or replace such Equipment without charge to the Purchaser provided that the Purchaser notifies Fujitsu of such non-performance prior to the expiry of the Equipment warranty period.

4.3 OEM Equipment Warranty: For OEM Equipment supplied by Fujitsu, the warranties, rights and guarantees given are those provided by the OEM supplier.

Notwithstanding anything to the contrary contained herein, any warranty relative to OEM Equipment is limited to the extent to which Fujitsu can enforce remedies from the OEM supplier in the Territory.

4.4 Maintenance: If an Agreement provides for the supply of Equipment maintenance and the Equipment is not performing in substantial conformity with its published specifications, Fujitsu will at its option either repair or replace the Equipment provided that the Purchaser notifies Fujitsu of such non-performance prior to the expiry of the Equipment maintenance period. Equipment maintenance will also include preventative maintenance where preventative maintenance forms a part of Fujitsu's maintenance procedures for the Equipment.

4.5 On-Site/Return for Repair: Fujitsu will provide Equipment maintenance or Equipment warranty services on a Return for Repair or On-Site basis as designated in an Agreement. If no designation is made in an Agreement, Fujitsu will provide the Equipment maintenance or Equipment warranty services on a Return for Repair basis.

(a) Where Equipment maintenance or Equipment warranty services are designated as "Return for Repair", such services will be performed at a Fujitsu service centre. The Purchaser will, at its own risk and expense, deliver the Equipment to a Fujitsu service centre, properly and securely packed and with a description of the need for service. Fujitsu will notify the Purchaser upon completion of the service and the Purchaser will arrange for the collection of the Equipment at the Purchaser's risk and expense.

(b) Where Equipment maintenance or Equipment warranty services are designated as On-Site, Fujitsu will use reasonable endeavours to attend the Purchaser's site (or to commence to resolve the problem remotely) within the response time specified in an Agreement (if any), or otherwise within a reasonable time, following notification of the relevant problem to Fujitsu.

4.6 Replacement Parts: Replacement parts provided by Fujitsu during the

provision of Equipment maintenance or Equipment warranty services will be either new or equivalent to new in performance. All replacement parts will become the property of the Purchaser. All replaced parts will become the property of Fujitsu.

**4.7 Term of Maintenance:**

(a) Equipment maintenance, if specified in an Agreement, will commence on the date specified in an Agreement. If no date for commencement is so specified, Equipment maintenance will commence on the day immediately following the expiration of the Equipment warranty period.

(b) Equipment maintenance will continue from the commencement date for the period purchased by the Purchaser. At the end of that period, Equipment maintenance will cease or may be renewed by written agreement between the Parties.

**5. SOFTWARE LICENCE**

**5.1 Introduction:** This Clause 5 only applies where an Agreement provides for the supply of Software.

**5.2 Delivery:** Fujitsu will deliver the Software to the Purchaser. Fujitsu will use reasonable endeavours to deliver the Software on the date(s) specified in an Agreement.

**5.3 Title and Risk:** Title to the physical media on which Software is delivered, and risk of loss of and damage to such media, will pass to the Purchaser upon delivery to the Purchaser. Ownership of all Intellectual Property Rights in Software shall remain with Fujitsu or its licensors.

**5.4 Terms of Licence:** Fujitsu grants to the Purchaser a non-transferable, non-exclusive licence in the Territory to:

- (a) install and/or operate the Software or any portion thereof only in object code form solely for its own internal purposes on one unit of equipment (or multiple units where so specified in an Agreement);
- (b) install and/or operate the Software in the manner and for the purposes specified in an Agreement; and
- (c) make copies of the Software solely for the Purchaser's own backup

purposes. The Purchaser will reproduce and include on all copies of the Software any copyright or trade mark notices or legends which appear on the initial copy of the Software supplied by Fujitsu or through Fujitsu.

5.5 Any other use of the Software is prohibited. Licence charges are calculated on the basis that the Software will only be executed or operated as permitted by this Clause 5.

**5.6 Supply of Licence:** For the purpose of the licence granted in Clause 5.4, Fujitsu will either:

- (a) supply the Purchaser with a copy of the Software, in which case the Purchaser agrees to accept responsibility for the installation of such Software; or
- (b) authorise the Purchaser to make a copy from the copy of the Software initially supplied by Fujitsu ("Secondary Licence").

**5.7 Commencement of Licence:** The licence of the Software will commence:

- (a) in the case of a licence other than a Secondary Licence:
  - (i) where an Agreement does not provide for Fujitsu to install the Software, on delivery of the Software to the Purchaser; and
  - (ii) where an Agreement provides for Fujitsu to install the Software and/or any associated Equipment, on completion of such installation; and
- (b) in the case of a Secondary Licence, on the earlier of:
  - (i) delivery to the Purchaser of a copy of the Software for the purpose of such Secondary Licence; or
  - (ii) copying of the Software by the Purchaser for the purpose of such Secondary Licence.

**5.8 Authorised Equipment:** Where an Agreement specifies that the Software may only be used on particular Equipment ("Authorised Equipment"):

- (a) the licence in Clause 5.4 will be restricted to installation into, operation on and/or transmission to for execution on one nominated unit of the Authorised Equipment (or multiple units where so specified in an Agreement);
- (b) the Purchaser is authorised to temporarily transfer the licence in

respect of the Software to a nominated alternate unit of the Authorised Equipment while the nominated unit or an associated unit required for use of the Software is temporarily inoperable until operable status is restored and processing on the nominated alternate unit is completed;

(c) where the Purchaser upgrades or modifies the Authorised Equipment then, subject to payment to Fujitsu of any applicable additional licence and/or support charges appropriate to the upgrade or modification, the Purchaser may transfer the licence granted under Clause 5.4 to the upgraded or modified unit which will then become the Authorised Equipment; and

(d) where the Authorised Equipment has been supplied by the Purchaser or by a third party and the Purchaser proposes to modify it in any manner (whether by replacement, upgrade, downgrade or otherwise) the Purchaser's licence to use the Software will not apply to the modified Authorised Equipment unless the Purchaser has obtained Fujitsu's prior consent.

**5.9 Restrictions on Use:** The Purchaser will not, and will ensure that no other person (including without limitation its employees, contractors or agents) will:

- (a) make any modifications to any Software;
- (b) merge any Software with any other software or data;
- (c) modify or reproduce any documentation associated with any Software or any part thereof;
- (d) reverse assemble, reverse compile, disassemble or otherwise reverse engineer any Software in whole or in part;
- (e) make any Software available to any third party for any purpose; or
- (f) allow any Software to be used simultaneously by more than the maximum number of simultaneous users specified in an Agreement for such Software.

**5.10 Periodic Prices:** Where a periodic licence charge is indicated in an Agreement, the licence granted in Clause 5.4 is granted only for the prepaid period. Such licence will

continue to be renewed automatically for each subsequent prepaid period, and Purchaser shall be liable to pay Fujitsu the associated licence charge, unless terminated by the Purchaser by giving Fujitsu 90 days' notice prior to the expiry of a prepaid period.

5.11 Termination: Fujitsu may not terminate any licence except for breach by the Purchaser of these terms and conditions. If Fujitsu terminates a licence for breach, Fujitsu may exercise any other right or remedy available to it. Promptly following the termination of any Agreement or the licence to which the Software relates, the Purchaser will as Fujitsu directs return or destroy the original and all copies of any Software received from Fujitsu or made pursuant to any Agreement or the licence to which the Software relates, as the case may be, and certify to Fujitsu in writing that such action has been taken. This requirement will apply to all copies on any media including translations whether partial or complete and whether or not merged into other software material as authorised herein. With prior written authorisation from Fujitsu, the Purchaser may retain a copy of the Software for archive purposes only.

5.12 Assignment to Licensors: If for any reason Fujitsu loses the right to license any Software to the Purchaser, Fujitsu reserves the right to assign its rights and novate its obligations hereunder to its licensors and the Purchaser hereby consents to such assignment and/or novation.

5.13 Disposal of Media: Purchaser will ensure prior to disposing of any media being tapes, disks and any other data processing media that any Software contained on it has been erased or otherwise destroyed.

5.14 Audit: Fujitsu and its licensors will be entitled on reasonable notice to the Purchaser to audit or have audited the use of Software by the Purchaser.

5.15 Third Party Licences: Certain Software supplied by Fujitsu may be licensed to Fujitsu by a third party which has given Fujitsu the right to market it to the Purchaser. Such Software may be

subject either to licensing terms and conditions specified by that third party which accompany the Software or to the terms and conditions of an end user licence agreement supplied with the Software in shrink-wrapped or other form, and which totally replace Clauses 5.3 to 5.14 for such Software. The Purchaser agrees to be bound by any such terms and conditions and to indemnify and keep indemnified Fujitsu against any loss or damage Fujitsu may incur or suffer as a result of the Purchaser's failure to observe or perform those terms and conditions.

## 6. SOFTWARE WARRANTY AND SUPPORT

6.1 Introduction: This Clause 6 only applies where an Agreement provides for the supply of Software and/or Software support and that software is not governed by a separate end user licence agreement.

6.2 Warranty: Fujitsu warrants that, during a period of 90 days from commencement of the licence or such other period as is specified in an Agreement, the Software will operate in substantial conformity with its published specifications. Where the Software does not so operate, Fujitsu will (as the Purchaser's sole remedy and Fujitsu's sole liability) use reasonable endeavours to investigate the error or malfunction responsible for such non-conformity and to correct or circumvent it, provided that the Purchaser notifies Fujitsu of such non-conformity prior to the expiry of the Software warranty period. The Purchaser acknowledges that, due to the nature of software, the operation of the Software may not be uninterrupted or error free, and that not all errors are able to be rectified by error correction or avoidance action.

6.3 Scope of Software Support: In return for the payment of the periodic charge for Software support indicated in an Agreement, Fujitsu will (by means of Fujitsu's "Hotline" telephone service notified to the Purchaser):

(a) use reasonable endeavours to investigate any errors in the Software and correct or circumvent any Software error or malfunction;

(b) provide, at no additional cost, such corrective updates and code for the Software as are generally made available by Fujitsu to its customers, in accordance with Fujitsu's standard procedures in force from time to time; and

(c) provide advice and guidance relating to the installation of the Software and the identification and reporting of errors therein.

6.4 Commencement and Termination:

(a) Software support will commence on the date of commencement of the licence of the Software or such other date as is specified in an Agreement.

(b) Fujitsu may withdraw Software support for the Software at any time 12 months or more after its commencement provided that it has given the Purchaser 90 days' notice.

(c) Except for Software which is the subject of a combined periodic licence and support charge, the Purchaser may terminate Software Support at any time 12 months or more after its commencement provided that it has given Fujitsu 90 days' notice to take effect at the end of any Prepaid Period.

6.5 Documentation: Where Fujitsu provides the Purchaser with a copy of any documentation made available by Fujitsu's licensors for the purpose of updating the Software manual, the Purchaser will update the Software manual by including that documentation.

## 7. PROFESSIONAL SERVICES

7.1 Introduction: This Clause 7 only applies where an Agreement provides for the supply of Professional Services.

7.2 Scope: "Professional Services" means implementation, training, software modification, consultancy, project management or other services specified in an Agreement.

7.3 Purchaser Responsibilities: The Purchaser will carry out the tasks (if any) specified in an Agreement as the responsibility of the Purchaser.

7.4 Fujitsu Responsibilities: Fujitsu will provide the services described in an Agreement, using reasonable

endeavours to achieve any dates specified in such Agreement.

7.5 Completion: Fujitsu will be deemed to have completed the Professional Services:

- (a) when Fujitsu has complied with the acceptance/completion criteria (if any) specified in an Agreement;
- (b) if no acceptance/completion criteria have been specified, when Fujitsu notifies the Purchaser of completion; or
- (c) where the Services are provided on a time and materials basis, when time and materials have been furnished.

7.6 Changes: The Purchaser may at any time request and Fujitsu may at any time recommend changes to the Professional Services. Neither Party will be obliged to agree to any requested or recommended change, but neither Party will unreasonably withhold its agreement to any such change. Fujitsu will advise the Purchaser of the likely impact of any requested or recommended change on the price and timing for the Professional Services. Any agreement to a requested or recommended change will only become valid as an amendment to an Agreement once it has been expressed in writing and signed by authorised representatives of both Parties.

7.7 Software: Where the Professional Services consist of the modification, enhancement, adaptation or development of Software, the Purchaser is granted a licence to use the modified, enhanced, adapted or developed Software under the terms and conditions of the applicable Agreement.

## 8. FEES AND PAYMENTS

8.1 Invoice and Payment: Except where otherwise stated in an Agreement or in this Clause 8, Fujitsu will invoice the Purchaser on delivery for the Fee for each deliverable. The Purchaser will pay to Fujitsu the Fee for the deliverable (as adjusted in accordance with this Clause 8, if applicable) and any installation Fee as invoiced. All Fees will be invoiced to the Purchaser when they become due and shall be payable within 14 days of the date of such invoice.

8.2 Default: If the Purchaser fails to pay any amount to Fujitsu by the due date then, upon prior notice to the Purchaser and without fault, liability or prejudice to the exercise of any other rights or remedies which may be available to it, Fujitsu may:

- (a) suspend performance of its obligations under the relevant Agreement, including delaying delivery of any deliverables; and/or
- (b) charge interest on a daily basis on the overdue amount from the date on which such amount becomes payable, at the greater of:

- (i) one percent (1%) per month; or
- (ii) the maximum rate permitted by law, until payment in full of the outstanding amount is made by the Purchaser. In the event of suspension by Fujitsu, any delivery due dates shall be automatically extended for a period of at least the actual duration of the suspension and Fujitsu shall be reimbursed by the Purchaser for any damage or additional cost incurred as a result of such suspension and remobilisation.

8.3 Taxes:

(a) All taxes, duties, fees or other government imposts, levies or charges, incurred by Fujitsu as a result of the execution or performance of an Agreement (but not including GST or taxes assessed on the profits of Fujitsu) ("Taxes") applicable to the supply of a deliverable will be paid by the Purchaser. The Fee for any deliverable includes New Zealand customs duty and sales tax where applicable. The Fee for any deliverable does not include GST. Where GST is applicable, GST will be charged and the Purchaser must pay GST in addition to the Fee for a deliverable. Taxes are calculated at the rates current at the date of the relevant Agreement. If at any time after that date any existing Taxes are varied or abolished, or any new Taxes are incurred, the total Fees will be adjusted accordingly.

(b) Any amount of GST which the Purchaser is invoiced in accordance with paragraph (a) above (the "GST Amount") must be paid by it in full and without deduction regardless of any entitlement it may have to a credit or

offset however arising. However, if it is found that:

- (i) the GST Amount paid or payable by the Purchaser in respect of a deliverable is different from the amount of GST payable at law by Fujitsu on the supply of that deliverable; and
- (i) an adjustment of that GST Amount is made between Fujitsu and the relevant taxing authority,

then Fujitsu and the Purchaser must make the same adjustment to the GST Amount which the Purchaser has paid or is otherwise required to pay in accordance with paragraph (a) above.

8.4 Equipment Maintenance: If an Agreement provides for the supply of Equipment maintenance, the first payment of the Equipment maintenance Fee shown in an Agreement will become due upon commencement of the Equipment maintenance in accordance with Clause 4.7(a) and will be for the first full calendar monthly, quarterly, yearly or other period specified in an Agreement ("Invoice Period") plus any part Invoice Period prior to the commencement of such full Invoice Period. Subsequent Equipment maintenance Fees will be due and payable on the first day of each subsequent Invoice Period.

8.5 Software: If an Agreement provides for the supply of Software, one-time/initial Fees (if any) shown in an Agreement are due upon commencement of the licence to which the Fees relate. If periodic Fees are shown in an Agreement, the first payment is due upon commencement of the licence to which the Fees relate and will be for the first full Invoice Period plus any part Invoice Period prior to the commencement of such full Invoice Period. Subsequent periodic Fees will be due and payable on the first day of each subsequent Invoice Period. Fujitsu may increase such periodic Fees at any time by giving 90 days' notice.

8.6 Exchange Rate Variations: The Fee in respect of any Equipment, Software or Professional Services is subject to adjustment for any exchange rate variation which increases the costs to Fujitsu in supplying the Equipment, Software or Professional Services. Such

adjustment is in accordance with the formula below provided that the variation between the CER and the AER exceeds \$US0.02:

Amount of Adjustment = ((CER – AER)/AER) x Base Price.

Where: AER (Adjustment Exchange Rate) means the closing Wholesale Market Spot Rate for \$US published by the Reserve Bank of New Zealand on the delivery date; Base Price means the charge for the Equipment, Software or Professional Services which is the subject of the adjustment under this Clause 8.6; and CER (Contract Exchange Rate) means the selling rate for \$US upon which the prices are based and which rate is stated in an Agreement, or, if such rate is not stated in an Agreement, the closing Wholesale Market Spot Rate for \$US published by the Reserve Bank of New Zealand on the date of the Agreement.

8.7 Increases in Fees: Fujitsu may increase charges for Software licences or services (other than those for which the Purchaser has paid in advance during any Prepaid Period) by giving the Purchaser 90 days' notice. All increases will take effect from the start of an Invoice Period.

8.8 Remote Purchaser Sites: Fujitsu may make an additional charge for the time and travelling expenses of its services personnel in respect of services which are to be provided at a Purchaser site in excess of 50 kilometres from Fujitsu's nearest service centre.

8.9 Consumables: Unless specifically included in the charge, the Purchaser will pay separately for all magnetic media, stationery, consumables and any other Equipment or Software supplied by Fujitsu.

**9. DELIVERABLES - GENERAL**

9.1 Alternative deliverables: Fujitsu may:

- (a) substitute any equipment, software or services for the deliverables; or
- (b) modify any deliverables;

provided that the substituted or modified item is substantially equivalent or superior in performance and functionality to the deliverables which

the substituted or modified item replaces.

9.2 Access and Facilities: In connection with the provision of any deliverable, the Purchaser will, at its expense:

- (a) follow the service guidelines and procedures issued by Fujitsu from time to time;
- (b) provide Fujitsu with safe access to all Purchaser premises at which Fujitsu is required to perform any work and provide full and free access to all relevant Personal Information, information, equipment and software;
- (c) make accessible to Fujitsu Purchaser personnel who are familiar with the Purchaser's operations, equipment, software and applications;
- (d) if Services are provided on-site, provide suitable working space and facilities and provide suitable safe storage for service equipment, diagnostic materials, spare parts and manuals;
- (e) accept and implement all Fujitsu maintenance levels and corrective code for Software, as advised by Fujitsu;
- (f) make available for use by Fujitsu the latest issues of software used by the Purchaser;
- (g) assist in the diagnosis and identification of faults and consent to and arrange for the temporary disconnection and isolation of any equipment or software which is not supplied or maintained by Fujitsu;
- (h) at Fujitsu's request, keep a record of use of Equipment and Software in the manner prescribed by Fujitsu and make it available when required by Fujitsu;
- (i) at its own expense provide telecommunications and other facilities required by Fujitsu for diagnostic and testing purposes and bear the costs of the use of these facilities by Fujitsu;
- (j) ensure that adequate back up plans, restart procedures, checks for accuracy and procedures for security of data are in place;
- (k) supervise, manage and control the proper use of Equipment and Software (including any routine Purchaser maintenance and any Purchaser enhancements or modifications authorised by Fujitsu) in the manner which Fujitsu may reasonably specify from time to time;

(l) if necessary for the delivery and/or installation of any Equipment:

- (i) carry out any structural work and provide any appliances required to enable Fujitsu to deliver the Equipment; and
- (ii) prepare the site and environment, including, but not limited to, the carrying out of all electrical and communications wiring, structural work and the obtaining of any consents necessary for the installation of the Equipment and its connection to telecommunications lines;
- (m) consider and respond in a timely manner to all items submitted to it by Fujitsu;
- (n) manage all other suppliers of equipment, software and services that impact upon the delivery of the deliverables so as to not interfere with Fujitsu's performance of its obligations under an Agreement; and
- (o) comply with any conditions attached by a third party telecommunications carrier to the use of any data transmission equipment or the provision of data transmission Services.

9.3 Fujitsu shall not be liable for any failure to comply with its obligations under an Agreement to the extent such failure is caused by any failure by Purchaser to comply with its obligations under the Agreement. Purchaser shall be responsible for all additional costs incurred by Fujitsu, and Fujitsu shall have the right to charge Purchaser accordingly as result of Purchaser's failure to comply with such obligations.

9.4 Service Hours: Fujitsu will perform services during the basic service hours as published by Fujitsu and made known to the Purchaser in writing from time to time. Basic service hours vary dependent upon the deliverable. Services may be provided outside of Fujitsu's basic service hours if agreed in writing between the Parties and the Purchaser will pay an additional charge at the prevailing Fujitsu rates for such provision outside of Fujitsu's basic service hours.

9.5 Exclusions: Unless otherwise agreed in writing, Fujitsu may make an additional charge at the applicable Fujitsu rates and terms then in effect for

work resulting from any of the following:

- (a) improper installation of Equipment or Software which was not installed by or on behalf of Fujitsu;
- (b) modifications, alterations or attachments to or work carried out on Equipment or Software not effected or authorised by Fujitsu;
- (c) use of Equipment or Software in combination with equipment, software, accessories or services not supplied or authorised by Fujitsu;
- (d) failure to observe the instructions or specifications of Fujitsu or the relevant manufacturer or licensor regarding use, operating or environmental conditions for the Equipment or Software;
- (e) misuse, abuse, accidental damage or negligent use or operation of Equipment or Software;
- (f) the Purchaser's failure to meet its obligations under any Agreement;
- (g) delays caused to Fujitsu by the Purchaser or any additional work requested or caused by the Purchaser; or
- (h) non-installation through no fault of Fujitsu of applicable software or engineering changes provided by or on behalf of Fujitsu.

9.6 Diagnostic Materials: Fujitsu may provide to the Purchaser diagnostic materials which include (but are not limited to) diagnostic and test routines, software, manuals, documentation and data. These diagnostic materials will be held at the Purchaser's site on behalf of Fujitsu as an aid to the provision of Services by Fujitsu. The Purchaser will care for and use the diagnostic materials solely in the manner and for the purposes specified by Fujitsu. Whether or not such diagnostic materials are specified in an Agreement, Fujitsu grants no ownership or licence of them to the Purchaser and they remain the exclusive property of Fujitsu and Fujitsu will have no obligation to provide any services in relation to diagnostic materials under any circumstances. The Purchaser will keep confidential the diagnostic materials and the results obtained by their use and will not disclose them to any third party. The Purchaser will permit Fujitsu at all reasonable times to audit the use of

diagnostic materials and to remove them from the Purchaser's premises whenever Fujitsu requires.

9.7 Resale and Exports: Purchaser acknowledges that Equipment, Software, documentation and other materials provided by Fujitsu ("Covered Products") may be subject to export control laws and regulations of the United States and other countries. Upon delivery of Covered Products to Purchaser, Purchaser is responsible for compliance with all applicable export control laws and regulations. Purchaser must not export, re-export or transfer directly or indirectly any Covered Products in contravention of such export control laws and regulations. If Purchaser wishes to resell or export any Equipment, Software or materials, Purchaser will first obtain all consents and licences as may be required from time to time under local laws and regulations and under the laws and regulations of any other country, including but not limited to the Export Administration Regulations of the United States of America, that may affect or regulate such export. The Purchaser must also obtain Fujitsu's prior consent before exporting Software.

9.8 Laws: Each Party shall comply with all mandatory national and international laws and regulations applicable to their respective obligations and rights under any Agreement. Purchaser shall remain solely responsible for the compliance with law applicable to its own business and operation and for ensuring that the deliverables fulfil all legal and regulatory requirements applicable to Purchaser.

9.9 Subcontractors: Fujitsu shall have the right to subcontract, without the prior written consent of Purchaser, any element of the services.

**10. LIMITATION OF LIABILITY**

10.1 Except as expressly provided in an Agreement, and to the full extent not prohibited by law, all express or implied warranties, representations, terms and conditions regarding deliverables and their use (including without limitation their merchantability or fitness for any

particular purpose), or regarding any Agreement, are expressly excluded.

10.2 The terms and conditions of any Agreement that exclude or limit Fujitsu's liability will apply to the full extent not prohibited by law. Provisions of the Fair Trading Act 1986 (as amended) and other statutes from time to time in force in New Zealand may imply warranties or conditions or impose obligations upon Fujitsu which cannot be excluded or modified. Any Agreement must be read and interpreted subject to any such statutory provisions. If any such statutory provisions apply, then to the extent not prohibited by law, Fujitsu's liability for breach of those statutory provisions will be limited at its option to:

- (a) if the breach relates to Equipment or Software:
  - (i) the replacement of the Equipment or Software for the supply of equivalent goods;
  - (ii) the repair of the Equipment or Software;
  - (iii) the payment of the cost of replacing the Equipment or Software or of acquiring equivalent goods; or
  - (iv) the payment of the cost of having the Equipment or Software repaired; and
- (b) if the breach relates to services:
  - (i) the supplying of the services again; or
  - (ii) the payment of the cost of having the services supplied again.

10.3 Fujitsu's aggregate liability to the Purchaser for all claims arising under or in connection with each Agreement and its subject matter, and whatever the cause, will to the full extent not prohibited by law not exceed the value of all deliverables supplied under that Agreement in the preceding 12 month period.

10.4 Notwithstanding anything to the contrary contained in any Agreement and to the full extent not prohibited at law, Fujitsu will not be liable for, and the Purchaser will assume full responsibility for:

- (a) any use or interpretation by the Purchaser or by any other person (including any employee of the Purchaser) of any information:

(i) received from Fujitsu under any Agreement.

10.5 To the extent permitted at law, neither party will be liable to the other for economic loss or loss of profits, revenue, production, opportunity, anticipated savings, access to markets, goodwill, reputation, business, or loss arising from business disruption or loss or corruption of data, or penalties imposed by third parties; or indirect, consequential, remote, special or similar loss, whether or not such loss, or the possibility of such loss, was foreseeable, could have been contemplated by, or was notified to Fujitsu.

10.6 Fujitsu's liability for any losses suffered or incurred by the Purchaser arising out of any breach, act, omission, fault or negligence of Fujitsu relating to an Agreement will be reduced to the extent that the Purchaser caused or contributed to such losses through the Purchaser's breach of an Agreement, act, omission, fault or negligence.

10.7 The limitations on liability stated in this Clause 10 apply to any claim, whether in contract, tort (including negligence), under statute, under any indemnity, under any action in product liability or under any other basis in law or equity, which arises under or in connection with any Agreement and will survive termination, discharge or rescission of any deliverable under any Agreement.

## 11. INTELLECTUAL PROPERTY RIGHTS

11.1 The Purchaser acknowledges that it will not obtain ownership of any copyright, trade mark, design, patent, semiconductor, circuit layout rights or other intellectual property rights arising under statute or otherwise ("Intellectual Property Rights") as a result of the provision of deliverables unless otherwise expressly provided for in an Agreement.

11.2 The Purchaser will not at any time take any action inconsistent with the Intellectual Property Rights of Fujitsu or the relevant licensor of any deliverable. The Purchaser will not at any time before or after its installation change,

remove or obscure any labels, legends, plates, insignia, lettering or other markings which are on any item of Equipment or Software.

11.3 Subject to Clause 11.5, Fujitsu will, at its expense, defend any action brought against the Purchaser in New Zealand which claims that the use of any deliverable infringes in New Zealand the Intellectual Property Rights of a third party and will pay all costs, damages and legal fees finally awarded against the Purchaser in any such action and which are attributable to such claim provided that the Purchaser:

- (a) promptly notifies Fujitsu of the action or of any allegation of infringement;
- (b) gives Fujitsu the sole control of the defence of the action and all negotiations for its settlement or compromise;
- (c) has not admitted and does not admit liability for the alleged infringement;
- (d) provides Fujitsu with such assistance in the defence and negotiations for settlement or compromise of the claim as Fujitsu may reasonably require; and
- (e) does not incur any cost or expense concerning the action on behalf of or in the name of Fujitsu without Fujitsu's prior consent.

11.4 If any action referred to above is brought or threatened, Fujitsu may at its option:

- (a) procure for the Purchaser, at Fujitsu's expense, the right to continue using the allegedly infringing deliverable; or
- (b) modify or replace the allegedly infringing deliverable so as to avoid the infringement.

If, in the case of Equipment or Software, neither of the foregoing alternatives is reasonably available, the Purchaser agrees that upon 30 days' notice from Fujitsu it will return the alleged infringing Equipment or Software, and Fujitsu will credit the Purchaser for the depreciated value of the relevant Equipment or Software calculated on a five year, straight line basis.

11.5 Where a deliverable is not supplied under the "Fujitsu" brand name, Clauses 11.3 and 11.4 will not apply but where the owner or the licensor to Fujitsu of

the deliverable has warranted to Fujitsu that such deliverable does not infringe any Intellectual Property Rights in New Zealand and/or has agreed to indemnify Fujitsu against any such infringement, Fujitsu will use reasonable efforts to pass on the benefit of that warranty and/or indemnity to the Purchaser provided that the Purchaser notifies Fujitsu as soon as it becomes aware of any alleged infringement and complies with any conditions applicable to such warranty and/or indemnity.

11.6 Except as provided in this Clause 11, Fujitsu will have no liability to the Purchaser for any action brought against the Purchaser, or any allegation of infringement of any Intellectual Property Rights of any third party arising from the Purchaser's use of any deliverable. In particular, but without limitation, Fujitsu will have no liability to the Purchaser for an alleged infringement which is based on:

- (a) Fujitsu's compliance with Purchaser's design, instructions or specifications;
- (b) the use of any deliverable other than as licensed by Fujitsu, or in combination with equipment, software or services not supplied or approved by Fujitsu; or
- (c) modification of any deliverable or part thereof by the Purchaser or any third party without Fujitsu's prior written consent.

## 12. CONFIDENTIAL INFORMATION AND PERSONAL INFORMATION

12.1 All information identified as confidential (whether verbally or in writing) or which by its nature ought reasonably to be regarded as confidential which is disclosed by a Party under any Agreement is supplied in confidence and will be treated by the receiving Party as confidential information at all times.

12.2 Neither Party will without the prior consent of the other Party use any confidential information of the other Party other than for the purposes of any applicable Agreement, or divulge it to any person other than those responsible employees, contractors or agents of the Party or a related body corporate

anywhere in the world to whom it is necessary to supply the confidential information for such purposes.

12.3 Each Party will ensure that any person to whom it discloses confidential information observes the requirements of this Clause 12.

12.4 Neither Party will be obliged to keep confidential any information which:

- (a) is or becomes public knowledge other than by breach of this Clause 12;
- (b) is already lawfully in its possession before receiving it from the other Party;
- (c) it independently receives from a third party with full rights to disclose; or
- (d) it is required by law to disclose (including to Parliament).

12.5 The Purchaser warrants that prior to providing any personal information, as that term is defined in the Privacy Act 2020, ("Personal Information") to Fujitsu, the Purchaser will clearly indicate to Fujitsu that it is providing Personal Information and will do all things necessary, including but not limited to obtaining all appropriate consents from individuals, to ensure that Fujitsu may lawfully use that Personal Information in connection with the provision of services and for any other purposes contemplated by an Agreement. The Purchaser further warrants (and the Purchaser itself consents) that such consents permit the disclosure and transfer of Personal Information by Fujitsu to Fujitsu's related bodies corporate, contractors or agents or those of its related bodies corporate, whether located in New Zealand or overseas, and the storage and processing of such Personal Information by those entities, in connection with the provision of services and for any other purposes contemplated by an Agreement. Where applicable, Purchaser remains the data controller and Fujitsu will be Purchaser's data processor for purposes of relevant local data privacy and data processing laws.

12.6 Each Party will implement and maintain commercially reasonable administrative, technical and physical safeguards to protect confidential information and Personal Information

that it receives from the other Party against unauthorised access, disclosure or use.

**13. TERMINATION**

13.1 A Party may, without prejudice to any of its other rights or remedies under an Agreement or at law or in equity, terminate an Agreement:

- (a) immediately, by giving notice, if the other Party becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration, is or commences to be wound up (other than for the purposes of reconstruction or amalgamation), carries on or commences to carry on business under a receiver or manager for the benefit of its creditors or any of them or compounds with or enters in to any scheme of arrangement with creditors; or
- (b) if the other Party is in material breach of that Agreement (including without limitation any breach of a payment obligation) and fails to remedy the breach within 30 days of being given a notice requiring it to do so.

13.2 On and from the effective date of termination of an Agreement pursuant to Clause 13.1:

- (a) the Purchaser will:
  - (i) cease to use any Software the subject of that Agreement;
  - (ii) deliver up to Fujitsu any Fujitsu property (including Equipment for which the Purchaser has not made payment in full to Fujitsu) the subject of that Agreement; and
  - (iii) pay any charges already due or which become due to Fujitsu under that Agreement;
- (b) each Party will perform and continue to perform all its continuing obligations in accordance with Clause 13.4; and
- (c) Fujitsu will no longer have any obligation to deliver Equipment or Software, or to provide further Services.

13.3 Termination of an Agreement will be without prejudice to any rights or liabilities which have accrued to either Party prior to such termination.

13.4 The provisions of Clauses 8.2, 9.7, 10, 11.1, 11.2, 11.6, 12, 13 and 14 and any provision which expressly or by

implication applies upon or following termination will survive termination of an Agreement for any reason. Clauses 11.3 to 11.5 will survive termination of an Agreement unless such termination is effected by Fujitsu for the Purchaser's breach. Any Software licence which remains effective after the termination of any Agreement shall remain subject to the terms of such Agreement.

**14. GENERAL**

14.1 Assignment: Neither Party may assign or novate any Agreement in whole or in part without the prior consent of the other Party (which may not be unreasonably withheld or delayed), provided however that Fujitsu may assign or novate any Agreement in whole or in part to any of its related bodies corporate and the Purchaser hereby consents to such an assignment or novation.

14.2 Notices: A notice, authorisation or consent under any Agreement must be in writing and given to a Party by hand delivery, prepaid post, electronic mail or other electronic means to the address of the relevant officer stated in an Agreement or as otherwise notified by the receiving Party from time to time.

14.3 Entire Agreement: Subject to Clause 2, each Agreement constitutes the entire agreement and understanding between the Parties concerning deliverables supplied pursuant to it and supersedes all prior or contemporaneous agreements, proposals, discussions and communications between or involving the Parties and related to the deliverables whether oral or written.

14.4 Waiver:

- (a) No failure or delay of either Party in exercising its rights under any Agreement shall be deemed to be a waiver of such rights unless expressly made in writing by the Party waiving its rights.
- (b) Any failure or delay by a Party to fully enforce any of the provisions of an Agreement, or any forbearance, delay or indulgence granted by one Party to the other, will not be interpreted as a waiver of that Party's rights under the Agreement, and will not prevent or prejudice that Party's subsequent

exercise of that right or the exercise of any other right.

14.5 Force Majeure: Neither Party will be liable for any delay or for failure to perform its obligations under any Agreement (except obligations relating to payment), resulting from any cause beyond its reasonable control, including, but not limited to: acts of God; inclement weather; fire, explosion or flood; strikes; work stoppages, slowdowns or other industrial disputes; riots or civil disturbances; acts of government; inability to obtain any necessary licence or consent; and delays caused by suppliers or material shortages. Fujitsu and the Purchaser will, if practicable, give to each other immediate notice of the occurrence of any such event and will as soon as the event ceases to affect the performance of obligations under the relevant Agreement resume compliance with their obligations.

14.6 Dispute Resolution: The Parties must refer all disputes arising in connection with an Agreement in the first instance to the Parties' assigned representatives. They must try to resolve the dispute through good faith discussions. If they cannot resolve it within 14 days of it being referred to them, the dispute is to be escalated for negotiation between senior managers of the Parties. If the senior managers cannot resolve the dispute within 30 further days (or such other time frame as is agreed between the Parties) of it being referred to them, then either Party may commence legal proceedings against the other in relation to the dispute.

14.7 Currency: Unless otherwise specified in an Agreement, all monetary amounts are expressed and all payments shall be effected in New Zealand currency.

14.8 Applicable Law: All Agreements will be exclusively governed by and construed in accordance with the laws of New Zealand and the Parties submit to the jurisdiction of the New Zealand courts.

14.9 Headings: Headings are inserted for convenience only and do not affect

the construction or interpretation of these General Terms.

14.10 Severability: Any part, term or provision of an Agreement which is determined to be void, illegal or unenforceable will be severed from the relevant Agreement and the remaining parts, terms and provisions will remain in full force and effect.

14.11 Good Faith: Except as otherwise specified in an Agreement, each Party must act reasonably and in good faith with respect to matters that relate to that Agreement.

14.12 Offshoring Data: For the purposes of Fujitsu performing its obligations under an Agreement, Fujitsu may transfer, provide access to, store or process Purchaser data outside of New Zealand.

14.13 Anti-Corruption: Each Party shall comply with the requirements of anti-corruption laws and shall not take any action that may violate these requirements. The Parties shall not: pay, offer to pay or allow the payment of any monetary assets or valuables, directly or indirectly, to any person for influencing the actions or decisions of those persons in order to obtain any improper advantage or to implement other illegal purposes; or carry out actions that are qualified by the applicable law as giving/receiving of bribes or commercial bribery of any individual persons or entities including, but not limited to, commercial organisations and their representatives, government and public authorities, state and municipal officials. By entering into an Agreement, Purchaser commits to comply with a standard of conduct consistent with the requirements of Fujitsu's Code of Conduct, which is publicly available at <https://www.fujitsu.com/global/about/philosophy/codeofconduct/>.

## 15. GLOSSARY

In this contract, unless the context indicates a contrary intention, terms are defined by reference to the DX SOW and the Glossary.

\*\*\*\*\*END\*\*\*\*\*