

# FUJITSU MASTER AGREEMENT

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**THIS MASTER AGREEMENT** is Effective as of the date specified in Item 1 of the Details Section

**BETWEEN**

**FUJITSU NEW ZEALAND LIMITED**, a company duly incorporated and having its registered office at 141 The Terrace, Wellington, New Zealand ("Fujitsu")

**AND**

The entity identified in Item 3 of the Details Section ("the Customer")

**DETAILS SECTION**

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<b>Item 1</b>	
Effective Date of this Master Agreement:	Insert Effective Date
<b>Item 2</b>	
Jurisdiction:	New Zealand
<b>Item 3</b>	
Customer's Name:	Insert Customer's full legal name
Customer's New Zealand Company Number :	Insert Customer's New Zealand Company Number
Customer's Registered Address:	Insert Customer's registered address

**EXPLANATORY NOTES**

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- A. An Agreement for Fujitsu to supply Deliverables to the Customer will only come into existence when Fujitsu and the Customer have signed (i) this Master Agreement, and (ii) one or more Schedule specifying such Deliverables.
- B. Once an Agreement has been entered into in this manner, the Customer can arrange for Fujitsu to supply further Deliverables simply by signing additional Schedule which specify those Deliverables. It will not be necessary for the Customer to sign a further Master Agreement.
- C. Some Clauses of this Master Agreement apply to all Agreements, while others apply only to the supply of certain types of Deliverables. For example, Clause 2 (Equipment Sale) only applies where Fujitsu and the Customer have signed a Schedule which provides for the sale of Equipment.

**1. DEFINITIONS**

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- 1.1. Definitions:
  - "Agreement" means any group of one or more Schedule (including any variations thereof) sharing the same contract number and entered into under this Master Agreement. Each such group of Schedule will be regarded as a separate Agreement.
  - "Authorised Equipment" means the authorised Equipment, if any, specified as such in a Schedule and relevant to the Software specified therein.
  - "Charge" means the price or charge for a Deliverable as shown in a Schedule.
  - "Customer Delivery Address" means the address in New Zealand to which Deliverables are to be delivered as specified in a Schedule or notified in writing by the Customer to Fujitsu.
  - "Deliverables" means Equipment, Software (including any modifications, enhancements, adaptations or developments of or to Software) or Services.
  - "Equipment" means the computer hardware, components or parts of components and operating manuals specified in a Schedule.
  - "Equipment Maintenance" means the Services described in Clause 3.3.
  - "Equipment Maintenance Period" means the period (if any) during which Fujitsu agrees to provide Equipment Maintenance, as specified in Clause 3.6.

"Equipment Warranty Period" means the warranty period (if any) for Equipment set out in the applicable Schedule.

"Equipment Warranty Services" means the Equipment warranty services described in Clause 3.2.

"FNZ" when used in a Schedule means Fujitsu.

"GST" any goods and services tax, value added tax or tax of similar effect.

"Installation Date" means:

(i) if installation is not to be carried out by Fujitsu, the date of delivery to the Customer Delivery Address;

(ii) if installation is to be carried out by Fujitsu, the date when Fujitsu indicates to the Customer that the Fujitsu installation tests have been passed; or

(iii) if installation is to be carried out by Fujitsu but installation is delayed by the Customer for more than fourteen (14) days after the requested delivery date shown in a Schedule, then fourteen (14) days after such date.

"Intellectual Property Rights" means copyright, trade mark, design, patent, semiconductor, circuit layout rights or other intellectual property rights arising under statute or otherwise.

"Invoice Period" means the relevant calendar monthly, quarterly, yearly or other period specified as such in a Schedule.

"Master Agreement" means this document (inclusive of Clauses 1 – 16).

"Minimum Period" means the minimum period for the provision of Equipment Maintenance which shall be one (1) year or such other minimum period specified in the Schedule.

"On-Site" is as described in Clause 3.4

"Personal Information" means personal information as defined in the Privacy Act 1993.

"Prepaid Period" in respect of a licence or service charge means the period in respect of which the Customer is required to pay in advance.

"Professional Services" means the services described in Clause 6.2.

"Response Time" means the period within which Fujitsu is to respond to a request for On-Site provisioning of Equipment Maintenance or Equipment Warranty Services.

"Return for Repair" is as described in Clause 3.4.

"Schedule" means an Equipment Sale and Maintenance Schedule, Software Licence and Support Schedule (also known as a Program Licence and Support Schedule), Professional Services Schedule or any Statement of Work executed by Fujitsu and the Customer which references the Master Agreement No. shown on the face of this Master Agreement.

"Secondary Licence" means a licence marked on a Schedule as 'S'.

"Services" means any services, including Professional Services, to be provided under an Agreement.

"Software" means software specified in a Schedule, in object code form together with its associated documentation.

"Software Support" means software support as described in Clause 5.2.

"Taxes" means 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 does not mean GST or taxes assessed on the profits of Fujitsu.

"Territory" means New Zealand, unless otherwise specified in a Schedule or any applicable third party licence or end-user licence.

"\$" means New Zealand dollars unless otherwise stated.

Words importing the singular will be deemed to include the plural and vice versa. Words importing any gender will be deemed to include all other genders.

## **2. EQUIPMENT SALE**

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- 2.1. Introduction: This Clause 2 only applies where an Agreement provides for the sale of Equipment.
- 2.2. Delivery: Fujitsu will sell the Equipment to the Customer and deliver the Equipment to the Customer Delivery Address. Fujitsu will use all reasonable endeavours to deliver the Equipment by the date(s) specified in a Schedule.
- 2.3. Title and Risk: Title to the Equipment will pass to the Customer upon payment of the Charge in full. Risk of loss of and damage to the Equipment will pass to the Customer upon delivery to the Customer Delivery Address.
- 2.4. Installation: If indicated in a Schedule, Fujitsu will install the Equipment for the installation charges shown in a Schedule. Installation will be carried out during Fujitsu's normal business hours.

## **3. EQUIPMENT WARRANTY AND MAINTENANCE**

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- 3.1. Introduction: This Clause 3 only applies where an Agreement provides for the supply of Equipment Warranty Services and/or Equipment Maintenance.
- 3.2. Warranty: Commencing upon the Installation Date and for the Equipment Warranty Period, 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 either repair or replace such Equipment without charge to the Customer provided that the Customer notifies Fujitsu of such non-performance prior to the expiry of the Equipment Warranty Period.
- 3.3. Maintenance: If a Schedule 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 Customer 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.
- 3.4. 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 a Schedule.
  - 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 Customer will, at its own risk and expense, deliver the Equipment to Fujitsu's nearest service centre, properly and securely packed and with a description of the need for service. Fujitsu will notify the Customer upon completion of the service and the Customer will arrange for the collection of the Equipment at the Customer's risk and expense.
  - b) Where Equipment Maintenance or Equipment Warranty Services are designated as On-Site, Fujitsu will use all reasonable endeavours to attend the Customer's site (or to commence to resolve the problem remotely) within the Response Time specified in a Schedule (if any), or otherwise within a reasonable time, following notification of the relevant problem to Fujitsu.
- 3.5. 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 Customer. All replaced parts will become the property of Fujitsu.
- 3.6. Term of Maintenance:
  - a) Equipment Maintenance, if specified in a Schedule, will commence on the date specified in a Schedule. If no date for commencement is so specified, Equipment Maintenance will commence:
    - i) where a Schedule specifies an Equipment Warranty Period, on the day immediately following the expiration of such period; or
    - ii) where a Schedule does not specify an Equipment Warranty Period, on the Installation Date.
  - b) Equipment Maintenance will continue from the commencement date for the Minimum Period. At the end of the Minimum Period, Equipment Maintenance will continue until terminated in accordance with c) below.
  - c) Either party may terminate Equipment Maintenance for any item of Equipment by giving ninety (90) days' notice and such termination shall take effect on or after the later of:
    - i) the end of any Prepaid Period; or
    - ii) the end of the Minimum Period.

#### 4. SOFTWARE LICENCE

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- 4.1. Introduction: This Clause 4 only applies where an Agreement provides for the supply of Software.
- 4.2. Delivery: Fujitsu will deliver the Software to the Customer Delivery Address. Fujitsu will use all reasonable endeavours to deliver the Software on the date(s) specified in a Schedule.
- 4.3. Title and Risk: Title to the physical media on which Software is delivered will pass to the Customer upon payment of the Charge in full. Risk of loss of and damage to such media will pass to the Customer upon delivery to the Customer Delivery Address. Ownership of all Intellectual Property Rights in Software shall remain with Fujitsu or its licensors.
- 4.4. Terms of Licence: Fujitsu grants to the Customer 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 a Schedule);
  - 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 Customer's own backup purposes. The Customer 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.

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 4.
- 4.5. Supply of Licence: For the purpose of the licence granted in Clause 4.4, Fujitsu will either:
  - a) supply the Customer with a copy of the Software, in which case the Customer agrees to accept responsibility for the installation of such Software; or

- b) where Fujitsu grants the Customer a Secondary Licence of the Software, authorise the Customer to make a copy from the copy of the Software initially supplied by Fujitsu.
- 4.6. Commencement of Licence: The licence of the Software will commence:
- a) in the case of a Licence other than a Secondary Licence:
- i) where a Schedule does not provide for Fujitsu to install the Software, on delivery of the Software to the Customer; and
- ii) where a Schedule provides for Fujitsu to install the Software and/or any Authorised Equipment, on completion of such installation; and
- b) in the case of a Secondary Licence, on the earlier of:
- i) delivery to the Customer of a copy of the Software for the purpose of such Secondary Licence; or
- ii) copying of the Software by the Customer for the purpose of such Secondary Licence.
- 4.7. Warranty: Fujitsu warrants that upon commencement of the licence, the Software will operate in substantial conformity with its published specifications. Where the Software does not so operate, Fujitsu will (as the Customer's sole remedy and Fujitsu's sole liability) use all reasonable endeavours to investigate the error or malfunction responsible for such non-conformity and to correct or circumvent it provided that the Customer notifies Fujitsu of such non-conformity within thirty (30) days of the commencement of such licence. The Customer 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.
- 4.8. Authorised Equipment: Where a Schedule specifies Authorised Equipment:
- a) the licence in Clause 4.4 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 a Schedule);
- b) the Customer 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 Customer 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 Customer may transfer the licence granted under Clause 4.4 to the upgraded or modified unit which will then become the Authorised Equipment; and
- d) where the Authorised Equipment has been supplied by the Customer or by a third party and the Customer proposes to modify it in any manner (whether by replacement, upgrade, downgrade or otherwise) the Customer's licence to use the Software will not apply to the modified Authorised Equipment unless the Customer has obtained Fujitsu's prior consent.
- 4.9. Restrictions on Use: The Customer 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 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 a Schedule for such Software.
- 4.10. Periodic Charges: Where a periodic licence charge is indicated in a Schedule, the licence granted in Clause 4.3 is granted only for the Prepaid Period. Such licence will continue to be renewed automatically for each subsequent Prepaid Period unless terminated by the Customer by giving Fujitsu ninety (90) days' notice prior to the expiry of a Prepaid Period.
- 4.11. Termination: Fujitsu may not terminate any licence except for breach by the Customer 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 this Master Agreement, any Agreement or the licence to which the Software relates, the Customer will as Fujitsu directs return or destroy the original and all copies of any Software received from Fujitsu or made pursuant to this Master Agreement, 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 Customer may retain a copy of the Software for archive purposes only.
- 4.12. Assignment to Licensors: If for any reason Fujitsu loses the right to license any Software to the Customer, Fujitsu reserves the right to assign its rights and novate its obligations hereunder to its licensors and the Customer hereby consents to such assignment and/or novation.

- 4.13. Disposal of Media: Customer will ensure prior to disposing of any media being tapes, disks, paper, cassettes and any other data processing media that any Software contained on it has been erased or otherwise destroyed.
- 4.14. Audit: Fujitsu and its licensors will be entitled on reasonable notice to the Customer to audit or have audited the use of Software by the Customer.
- 4.15. 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 Customer. 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 4.3 to 4.14 for such Software. The Customer 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 Customer's failure to observe or perform those terms and conditions.

## 5. SOFTWARE SUPPORT

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- 5.1. Introduction: This Clause 5 only applies where an Agreement provides for the supply of Software Support.
- 5.2. Scope: For Software licences other than Secondary Licences, in return for the payment of the periodic charge for Software Support indicated in a Schedule, Fujitsu will (by means of Fujitsu's "Hotline" telephone service notified to the Customer):
  - 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.
- 5.3. Commencement and Termination:
  - a) Software Support will commence on the date of commencement of the licence of the Software.
  - b) Fujitsu may withdraw Software Support for the Software at any time twelve (12) months or more after its commencement provided that it has given the Customer six (6) months' notice.
  - c) Except for Software which is the subject of a combined periodic licence and support charge the Customer may terminate Software Support at any time twelve (12) months or more after its commencement provided that it has given Fujitsu ninety (90) days' notice to take effect at the end of any Prepaid Period.
- 5.4. Documentation: Where Fujitsu provides the Customer with a copy of any documentation made available by Fujitsu's licensors for the purpose of updating the Software manual, the Customer will update the Software manual by including that documentation.

## 6. PROFESSIONAL SERVICES

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- 6.1. Introduction: This Clause 6 only applies where an Agreement provides for the supply of Professional Services.
- 6.2. Scope: "Professional Services" means implementation, training, software modification, consultancy, project management or other Services specified in a Schedule.
- 6.3. Customer Responsibilities: The Customer will carry out the tasks (if any) specified in a Schedule as the responsibility of the Customer.
- 6.4. Fujitsu Responsibilities: Fujitsu will provide the Services described in a Schedule, using reasonable endeavours to achieve any time-scales specified in such Schedule.
- 6.5. 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 a Schedule;
  - b) if no acceptance/completion criteria have been specified, when Fujitsu notifies the Customer of completion; or
  - c) where the Services are provided on a time and materials basis, when time and materials have been furnished.
- 6.6. Changes: The Customer 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 Customer of the likely impact of any requested or recommended change on the Price and time-scale 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 and incorporated into an Agreement.

- 6.7. Software: Where the Professional Services consist of the modification, enhancement, adaptation or development of Software, the Customer is granted a licence to use the modified, enhanced, adapted or developed Software under the terms and conditions of this Master Agreement and any applicable Agreement.

## 7. CHARGES AND PAYMENTS

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- 7.1. Invoice and Payment: Except where otherwise stated in a Schedule or in this Clause 7, Fujitsu will invoice the Customer on delivery for the Charge of each Deliverable. The Customer will pay to Fujitsu the Charge for the Deliverable (as adjusted in accordance with this Clause 7, if applicable) and any installation charges as invoiced. All Charges will be invoiced to the Customer when they become due and shall be payable within fourteen (14) days of the date of such invoice.
- 7.2. Interest: Fujitsu may charge interest on a daily basis on any overdue amount from the date on which such amount becomes payable, at the lesser of:
- one percent (1%) per month; or
  - the maximum rate permitted by law.
- 7.3. Taxes:
- All Taxes applicable to the supply of a Deliverable will be paid by the Customer. The Charge for any Deliverable includes customs duty and sales tax where applicable. The Charge for any Deliverable does not include GST. Where GST is applicable, GST will be charged and the Customer must pay GST in addition to the Charge for a Deliverable. Taxes are calculated at the rates current at the date of the relevant Schedule. If at any time after that date any existing Taxes are varied or abolished, or any new Taxes are incurred, the total Charges will be adjusted accordingly.
  - Any amount of GST which the Customer 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:
    - the GST Amount paid or payable by the Customer in respect of a Deliverable is different from the amount of GST payable at law by Fujitsu on the supply of that Deliverable; and
    - an adjustment of that GST Amount is made between Fujitsu and the relevant taxing authority, then Fujitsu and the Customer must make the same adjustment to the GST Amount which the Customer has paid or is otherwise required to pay in accordance with paragraph a) above.
- 7.4. Equipment Maintenance: If an Agreement provides for the supply of Equipment Maintenance, the first payment of the Equipment Maintenance charge shown in a Schedule will become due upon commencement of the Equipment Maintenance in accordance with Clause 3.6.a) and will be for the first full Invoice Period plus any part Invoice Period prior to the commencement of such full Invoice Period. Subsequent Equipment Maintenance charges will be due and payable on the first day of each subsequent Invoice Period.
- 7.5. Software: If an Agreement provides for the supply of Software, One-Time/Initial Charges (if any) shown in a Schedule are due upon commencement of the licence to which the charges relate. If periodic charges are shown in a Schedule, the first payment is due upon commencement of the licence to which the charges 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 charges will be due and payable on the first day of each subsequent Invoice Period. Fujitsu may increase such periodic charges at any time by giving ninety (90) days' notice.
- 7.6. Exchange Rate Variations: The Charge in respect of any Equipment or Software is subject to adjustment for exchange rate variation in accordance with the formula below provided that the variation between the CER and the AER exceeds \$US0.02:
- $$\text{Amount of Adjustment} = ((\text{CER} - \text{AER})/\text{AER}) \times \text{Base Price.}$$
- Where: AER (Adjustment Exchange Rate) means the closing Wholesale Market Spot Rate for \$US published by the Westpac Bank on the Installation Date; Base Price means the Charge for the Equipment or Software which is the subject of the adjustment under this Clause 7.6; and CER (Contract Exchange Rate) means the selling rate for \$US upon which the prices are based and which rate is stated in a Schedule, or, if such rate is not stated in a Schedule, the closing Exchange Rate for \$US published by the Reserve Bank of New Zealand on the date of the Agreement.
- 7.7. Increases in Charges: Fujitsu may increase charges for Software licences or Services (other than those for which the Customer has paid in advance during any Prepaid Period) by giving the Customer ninety (90) days' notice. All increases will take effect from the start of an Invoice Period.
- 7.8. Remote Customer 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 Customer Site in excess of fifty (50) kilometres from Fujitsu's nearest service centre.
- 7.9. Consumables: Unless specifically included in the Charge, the Customer will pay separately for all magnetic media, stationery, consumables (including without limitation print-heads, print bands, toner cartridges and drums) and any other Equipment or Software supplied by Fujitsu.

## 8. DELIVERABLES - GENERAL

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- 8.1. 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.
- 8.2. Access and facilities: In connection with the provision of any Deliverable, the Customer 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 Customer 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 Customer personnel who are familiar with the Customer'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 Customer;
  - 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 Customer maintenance and any Customer 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.
- 8.3. Fujitsu shall not be liable for any failure to comply with its obligations under this Master Agreement or any applicable Agreement to the extent such failure is caused by any failure by Customer to comply with its obligations under this Master Agreement or any applicable Agreement. Customer shall be responsible for all additional costs incurred by Fujitsu, and Fujitsu shall have the right to charge Customer accordingly as result of Customer's failure to comply with such obligations.
- 8.4. Service Hours: Fujitsu will perform Services during the basic service hours as published by Fujitsu and made known to the Customer 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 Customer will pay an additional charge at the prevailing Fujitsu rates for such Services.
- 8.5. 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 Customer's failure to meet its obligations under this Master Agreement or any Agreement;

- g) delays caused to Fujitsu by the Customer or any additional work requested or caused by the Customer; or
  - h) non-installation through no fault of Fujitsu of applicable software or engineering changes provided by or on behalf of Fujitsu.
- 8.6. Diagnostic Materials: Fujitsu may provide to the Customer 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 Customer's site on behalf of Fujitsu as an aid to the provision of Services by Fujitsu. The Customer 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 a Schedule, Fujitsu grants no ownership or licence of them to the Customer 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 Customer will keep confidential the diagnostic materials and the results obtained by their use and will not disclose them to any third party. The Customer will permit Fujitsu at all reasonable times to audit the use of diagnostic materials and to remove them from the Customer's premises whenever Fujitsu requires.
- 8.7. Resale and Exports: Customer 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 Customer, Customer is responsible for compliance with all applicable export control laws and regulations. Customer must not export, re export or transfer directly or indirectly any Covered Products in contravention of such export control laws and regulations. If Customer wishes to resell or export any Equipment, Software or materials, Customer 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 Customer must also obtain Fujitsu's prior consent before exporting Software.
- 8.8. Laws: Each Party shall comply with all mandatory national and international laws and regulations applicable to their respective obligations and rights under this Master Agreement and any applicable Agreement. Customer 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 Customer.
- 8.9. Subcontractors: Fujitsu shall have the right to subcontract, without the prior written consent of Customer, any element of the Services.

## 9. LIMITATION OF LIABILITY

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- 9.1. Except as expressly provided in this Master Agreement or any Agreement, and to the full extent permitted 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 this Master Agreement or any Agreement are expressly excluded. In particular, and without limiting the foregoing, the Customer acknowledges and agrees that all supplies of goods and services from Fujitsu are or will be supplied to the Customer for the purposes of a business in terms of sections 2 and 43 of the Consumer Guarantees Act 1993 and that the provisions of that Act do not apply to any supplies made to the Customer.
- 9.2. The terms and conditions of this Master Agreement or any Agreement that exclude or limit Fujitsu's liability will apply to the full extent permitted by law. Provisions of the Consumer Guarantees Act 1993 (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. This Master Agreement and any Agreement must be read and interpreted subject to any such statutory provisions. If any such statutory provisions apply, then to the extent permitted 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.
- 9.3. Fujitsu's aggregate liability to the Customer for all claims in respect of injury to or death of person(s) and damage to or loss of any physical property arising under or in connection with this Master Agreement and all Agreements and their subject matter (whether for negligence or otherwise) will to the full extent permitted by law not exceed one million dollars (\$1,000,000) in the aggregate; and
- 9.4. Fujitsu's aggregate liability to the Customer for all claims other than those referred to in Clause 9.3 arising under or in connection with each Agreement and its subject matter (whether for negligence or otherwise) will to the full extent permitted by law not exceed the value of all Charges under that Agreement in the preceding twelve (12) month period.



- 9.5. Notwithstanding anything to the contrary contained in this Master Agreement or any Agreement, Fujitsu will not be liable for, and the Customer will assume full responsibility for:
- a) any use or interpretation by the Customer or by any other person (including any employee of the Customer) of any information:
    - i) received from Fujitsu under any Agreement; or
    - ii) produced by Deliverables supplied under any Agreement;
  - b) special, indirect and consequential damages; or
  - c) damages, however caused, comprising or resulting from loss of data, network, opportunity, business, revenue or profit.
- 9.6. The limitations on liability stated in this Clause 9 apply to any claim (whether contractual, tortious, statutory or otherwise) which arises under or in connection with this Master Agreement or any Agreement and will survive termination, discharge or rescission of any Deliverable under this Master Agreement or any Agreement.

## 10. INTELLECTUAL PROPERTY RIGHTS

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- 10.1. The Customer acknowledges that it will not obtain any Intellectual Property Rights to or as a result of Deliverables unless otherwise expressly provided in an Agreement.
- 10.2. The Customer will not at any time take any action inconsistent with the Intellectual Property Rights of Fujitsu or the relevant licensor of any Deliverable. The Customer 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.
- 10.3. Subject to Clause 10.5, Fujitsu will, at its expense, defend any action brought against the Customer 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 Customer in any such action and which are attributable to such claim provided that the Customer:
- 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.
- 10.4. If any action referred to above is brought or threatened, Fujitsu may at its option:
- a) procure for the Customer, 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 Customer agrees that upon thirty (30) days' notice from Fujitsu it will return the alleged infringing Equipment or Software, and Fujitsu will credit the Customer for the depreciated value of the relevant Equipment or Software calculated on a five (5) year, straight line basis.
- 10.5. Where a Deliverable is not supplied under the "Fujitsu" brand name, Clauses 10.3 and 10.4 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 Customer provided that the Customer notifies Fujitsu as soon as it becomes aware of any alleged infringement and complies with any conditions applicable to such warranty and/or indemnity.
- 10.6. Except as provided in this Clause 10, Fujitsu will have no liability to the Customer for any action brought against the Customer, or any allegation of infringement of any Intellectual Property Rights of any third party arising from the Customer's use of any Deliverable. In particular, but without limitation, Fujitsu will have no liability to the Customer for an alleged infringement which is based on 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.

## 11. CONFIDENTIAL INFORMATION AND PERSONAL INFORMATION

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- 11.1. 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.
- 11.2. 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.
- 11.3. Each party will ensure that any person to whom it discloses confidential information observes the requirements of this Clause 11.
- 11.4. Neither party will be obliged to keep confidential any information which:
- a) is or becomes public knowledge other than by breach of this Clause 11;
  - 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.
- 11.5. The Customer warrants that prior to providing any Personal Information to Fujitsu, the Customer 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.
- 11.6. The Customer further warrants (and the Customer itself consents) that all consents in this Clause 11 permit the disclosure of Confidential and Personal Information by Fujitsu to Fujitsu's contractors or agents or those of its related bodies corporate, whether located in New Zealand or overseas, in connection with the provision of Services and for any other purposes contemplated by an Agreement.
- 11.7. Each party will implement and maintain commercially reasonable administrative, technical and physical safeguards to protect Personal Information that it receives from the other party against unauthorised access, disclosure or use of such Personal Information, and to protect it against accidental or unlawful destruction or accidental loss or alteration of such Personal Information.

## 12. TERMINATION

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- 12.1. This Master Agreement shall be effective from the Effective Date until twelve (12) months from the Effective Date unless otherwise terminated in accordance with Clause 12. This Master Agreement will be automatically renewed for successive periods of twelve (12) months unless it is terminated by either party upon written notice to the other party, such termination to take effect at the end of the current renewal period, unless otherwise terminated in accordance with Clause 12. If any Agreement that is entered into under this Master Agreement specifies a termination date, that date shall prevail over the operation of this Clause 12.1.
- 12.2. A party may, without prejudice to any of its other rights or remedies under this Master Agreement or any Agreement or at law or in equity, either suspend or terminate its obligations under 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 thirty (30) days of being given a notice requiring it to do so.
- 12.3. On and from the effective date of suspension or termination of an Agreement pursuant to Clause 12.1:
- a) the Customer will:
    - i) cease to use any Software the subject of that Agreement;
    - ii) deliver up to Fujitsu any Fujitsu property (including Equipment to which the Customer has not obtained title) 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 12.5; and
  - c) Fujitsu will no longer have any obligation to deliver unpaid for or undelivered Equipment or Software, or to provide further Services.
- 12.4. Termination of this Master Agreement or any Agreement will be without prejudice to any rights which have accrued to either party prior to such termination.
- 12.5. The provisions of Clauses 7.2, 8.7, 9, 10.1, 10.2, 10.6, 11, 12 and 13 and any provision which expressly or by implication applies upon or following termination will survive termination of this Master Agreement or any Agreement for any reason. Clauses 10.3 to 10.5 will survive termination of this Master Agreement or any Agreement unless such termination is effected by Fujitsu for the Customer's breach. Any Software licence which remains effective after the termination of any Agreement or this Master Agreement shall remain subject to the terms of such Agreements.

## 13. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

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### 13.1. Security and Risk

- a) Ownership of all Equipment supplied to the Customer by Fujitsu shall not pass upon delivery but shall remain with Fujitsu until Fujitsu has received total payment in cleared funds of all monies owing by the Customer to Fujitsu (whether relating to the supply of Deliverables, Intellectual Property, or any other goods or services whether under this Master Agreement, any Agreement or any other agreement). The Customer grants Fujitsu a security interest in:
  - i) all Equipment supplied to the Customer for payment of those monies;
  - ii) all proceeds of all Equipment; and
  - iii) all computer hardware, components or parts of components and operating manuals previously supplied to the Customer by Fujitsu, where monies payable in relation to such goods have not been paid in full, together with all proceeds of such goods.
- b) All payments received by Fujitsu shall be applied first in reduction of interest or costs and expenses due to Fujitsu (if any) and then in reduction of amounts due to Fujitsu. Fujitsu may apportion payments received against such outstanding accounts or items as it determines (at its sole discretion) and specifies to the Customer. Until Fujitsu specifies its application of any monies, all monies received shall be held unallocated and no amount due shall be reduced or deemed reduced until payment of all monies due are received in full by Fujitsu.
- c) Until all monies due to Fujitsu are paid in full by the Customer, the Customer:
  - i) shall not sell, charge or part with possession of the Equipment otherwise than for its full value in the ordinary course of business;
  - ii) shall not alter, obliterate or deface the Equipment and shall not alter, obliterate, deface, cover up or remove any identity mark indicating that the Equipment is Fujitsu's property;
  - iii) must store the Equipment in such a manner that it is clearly identifiable as Fujitsu's property or as charged to Fujitsu and must keep separate records in respect of the Equipment; and
  - iv) will hold the proceeds of resale and any other proceeds of the Equipment on trust for Fujitsu, in a separate and identifiable account.
- d) At Fujitsu's request, the Customer will promptly deliver, execute or do (or cause to be executed, delivered or done) any documents, contracts, agreements or deeds that Fujitsu may require from time to time to give effect to this Master Agreement, including without limitation doing all such things as Fujitsu may require in order to ensure that the security interest created under this Master Agreement constitutes a perfected security interest over the Equipment, and all proceeds of the Equipment. This includes providing any information Fujitsu request to enable Fujitsu to complete a financing statement or a financing change statement for the Personal Property Securities Register.
- e) The Customer waives any right to receive a verification statement under the PPSA.
- f) Nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this Master Agreement, any Agreement or any other agreement. The Customer's rights as debtor in sections 116, 120(2), 121, 125-127 and 129 of the PPSA shall not apply to this Master Agreement, any Agreement or any other agreement.
- g) Sections 108, 109 and 120 of the PPSA shall not apply to the extent that they are inconsistent with this Clause 13.
- h) Where the Customer has only partly paid for Equipment, and Fujitsu recovers the Equipment from the Customer, Fujitsu will refund amounts paid from the proceeds of sale of the Equipment (if any) after deducting all or any other moneys owing to Fujitsu (whether or not then due) and all costs incurred by Fujitsu in accordance with Sub-Clause i).
- i) For the purposes of Sub-Clauses c), e), g) and h) and Clause 12.3.a)ii), "Equipment" shall include all computer hardware, components or parts of components and operating manuals previously supplied to the Customer by Fujitsu, where monies payable in relation to such goods has not been paid in full, together with all proceeds of such goods.
- j) The Customer agrees to pay, at Fujitsu's request, all costs incurred by Fujitsu (including costs on a solicitor-client basis and debt collection costs) incurred in registration of a financing statement or a financing change statement, protection or presentation of Fujitsu's security interest or its registration, recovery or attempted recovery of outstanding monies and the enforcement of the provisions of this Master Agreement or the security interest contained in this Master Agreement.

### 13.2. Payment and Default: If the Customer is overdue in payments, or if the Customer fails to deliver up to Fujitsu any Fujitsu property and/or Equipment pursuant to 12.3.a), Fujitsu may:

- a) Enter upon the Customer's premises or any other place where Fujitsu believes the Equipment or Fujitsu property is or may be stored, take possession of and sell the Equipment, even if Fujitsu do not have priority over other persons having a security interest in the Equipment, or Fujitsu property and sections 108, 109

and 120 of the PPSA do not apply to the extent that they are inconsistent with this Clause 13.2. For the purposes of this Clause 13.2, "Equipment" shall include all proceeds of Equipment.

- b) At Fujitsu's request, the Customer agrees to pay all costs incurred by Fujitsu (including costs on a solicitor-client basis and debt collection costs) incurred in registration of a financing statement or a financing change statement, protection, presentation or registration of its security interest, or recovery or attempted recovery of outstanding moneys and the enforcement of this Master Agreement, any Agreement or any other agreement or the security interest contained in this Master Agreement.

#### 14. [OPTIONAL] – PARTNERING

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- 14.1. Each party recognises that the successful delivery of the Services requires the partnership, cooperation and goodwill of both parties.
- 14.2. In order to help achieve these partnership and cooperation objectives, the parties further agree to hold a partnering workshop, based on the "Fujitsu Partnering Methodology" and aimed at fostering good co-operative working relationships. The agenda for the partnering workshop will be discussed and mutually agreed between the parties and the partnering workshop will be held within three (3) months of signing this Master Agreement. Each party shall bear its own cost of attendance at the workshop and the cost of independent facilitation shall be shared equally between them. For the avoidance of doubt, outputs and representations from the workshop are designed to assist the parties in forming a healthy working relationship and engagement model but shall not be legally binding on either party.

#### 15. GENERAL

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- 15.1. Assignment: Neither party may assign and/or novate this Master Agreement or 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 and/or novate this Master Agreement and any Agreement in whole or in part to any of its related corporations (as defined in the Companies Act 1993 and the Customer hereby consents to such an assignment and/or novation).
- 15.2. Notices: A notice, authorisation or consent under this Master Agreement or any Agreement will be in writing and given to a party by delivery, prepaid post or facsimile at its address stated in this Master Agreement or any other address notified to the other party as the address for service and will be deemed to have been duly given:
- a) if delivered, on the date of delivery;
  - b) if sent by prepaid post, four (4) days after posting; and
  - c) if sent by facsimile, on the day of confirmation of transmission.
- 15.3. Entire Agreement: 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.
- 15.4. Waiver:
- a) No right under this Master Agreement or any Agreement will be waived except by notice signed by the waiving party.
  - b) Subject to Sub-Clause a) above, any failure by a party to enforce any of the provisions of this Master Agreement or any 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 this Master Agreement or any Agreement, and will not prejudice that party's rights concerning any subsequent breach of the Agreement by the other party.
- 15.5. Force Majeure: Neither party will be liable for any delay or for failure to perform its obligations under this Master Agreement or 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 Customer 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.
- 15.6. Dispute Resolution: The parties must refer all disputes arising in connection with this Master Agreement or a Schedule in the first instance to the party's assigned account representatives. They must try to resolve the dispute through good faith commercial discussions. If they cannot resolve it within fourteen (14) days of it being referred to them, the parties agree to escalate the dispute to their respective managing directors or the nominees of those managing directors ("Senior Managers"). If the Senior Managers cannot resolve the dispute within thirty (30) days of it being referred to them, the parties agree to attempt to resolve the dispute by mediation conducted in Wellington

following notice from either party. The mediator shall be appointed by agreement between the parties. Failing agreement within five (5) days of the mediation notice the mediator will be appointed by the chairperson (or their nominee in Wellington) of the Resolution Institute. The mediation shall be conducted in accordance with guidelines agreed between the parties. Failing agreement on the guidelines, a party may request the mediator to set the guidelines that will govern the mediation. If the dispute has not been resolved within thirty (30) days of it being referred to mediation, after giving at least fourteen (14) days' written notice to the other, each party may commence legal proceedings in relation to the dispute. The provisions of this Clause 15.6 do not apply to proceedings for urgent interlocutory relief and do not require either party to enter into arbitration. To the extent permitted by law, neither mediation under this Clause nor any legal action, regardless of its form, related to, or arising out of an Agreement may be brought more than two (2) years after the cause of action first arose.

- 15.7. Jurisdiction: This Master Agreement and all Agreements will be exclusively governed by and interpreted under the laws of the Country as specified in Item 2 of the Details Section and the parties submit to the jurisdiction of the courts in that Country.
- 15.8. Headings: The headings in this Master Agreement (including words in bold at the commencement of Clauses or Sub-Clauses) are inserted for convenience only and will not affect the construction or interpretation of those provisions.
- 15.9. Severability: Any part, term or provision of this Master Agreement or any Agreement which is determined to be void, illegal or unenforceable will be severed from the relevant Agreement(s) and the remaining parts, terms and provisions will remain in full force and effect.
- 15.10. Counterpart: This Master Agreement and all Agreements may only be altered or varied in writing signed by both parties. This Master Agreement may be executed in any number of counterparts. All counterparts will be taken to constitute one instrument.
- 15.11. Consents: Unless otherwise specified in this Master Agreement, all consents, approvals, notices and requests, acceptances or similar actions to be given by either party shall not be unreasonably withheld, delayed or conditioned and each party shall make only reasonable requests under this Master Agreement. Where Fujitsu reasonably considers the Customer has unreasonably withheld, delayed or conditioned any consent, approval, notice, request, acceptance or similar Fujitsu shall be entitled to recover reasonable costs incurred (having used endeavours to mitigate any such costs) as a result of such action or in-action of the Customer.
- 15.12. Anti-Bribery and Corruption: Each party shall at all times comply with the applicable laws relating to anti-bribery including but not limited to the OECD Convention policies against corruption, the Foreign Corrupt Practices Act of the USA, the UK Bribery Act 2010 and the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the "Applicable Anti-Bribery Laws"). The parties shall not engage in any activity, practice or conduct which would constitute an offence under the Applicable Anti-Bribery Laws and shall have and maintain in place throughout the term of this Master Agreement its own policies and procedures to ensure compliance with the Applicable Anti-Bribery Laws and shall enforce them where appropriate.

## 16. EMPLOYEES

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- 16.1. Fujitsu and the Customer agree that for the time during which any Services are provided and for a period of six (6) months thereafter, each of them will refrain from soliciting or enticing away for employment any employee of the other who is involved in the provision or receipt of such Services. To avoid doubt, the parties agree that a party will not be in breach of this Clause 16 where the employee or contractor responds to a general advertisement published by a party.
- 16.2. With respect to its own personnel, each party is independently responsible for all obligations incumbent upon it as an employer.

## EXECUTED AS AN AGREEMENT

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Signed for and on behalf of Fujitsu New Zealand  
Limited by an Authorised Representative

Signed for and on behalf of the Customer by an  
Authorised Representative

.....  
Print Name & Title

.....  
Print Name & Title

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Signature

.....  
Signature

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Witness Print Name & Title

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Witness Print Name & Title

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Witness Signature

By executing this Master Agreement, the Authorised Representative warrants that he or she is authorised to sign on behalf of Fujitsu New Zealand Limited.

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Witness Signature

By executing this Master Agreement, the Authorised Representative warrants that he or she is authorised to sign on behalf of the Customer.