

1. PURPOSE

1.1 These general terms and conditions (“**General Terms**”) set out the terms and conditions under which **Fujitsu (Thailand) Limited** of 23rd Floor, Exchange Tower, 388 Sukhumvit Rd., Klongtoey, Bangkok 10110 and/or its affiliated companies (“**Fujitsu**”) may provide to a Customer (“**Customer**”) equipment (“**Equipment**”), software (“**Software**”) any services or professional services (“**Professional Services**”).

In these General Terms, Fujitsu and the Customer 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 Customer 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 Customer and those stated or referenced terms and conditions shall be of no legal 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.

2.3 These General Terms are governed by the law of Thailand.

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 Customer and deliver the Equipment to the Customer 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 Customer upon delivery to the Customer 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 Customer; and Customer shall not dispose of, encumber, mortgage, pledge or assign by way of security the Equipment until it has paid Fujitsu in full for such Equipment. Legal risk of the Equipment will pass to the Customer upon delivery to the Customer 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 Customer 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 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.

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.

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 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.

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. The Customer will, at its own risk and expense, deliver the Equipment to a Fujitsu, 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 reasonable endeavours to attend the Customer'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 Customer. 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 Customer. 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 Customer. 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 Customer upon

delivery to the Customer. Ownership of all Intellectual Property Rights in Software shall remain with Fujitsu or its licensors.

5.4 Terms of Licence: Fujitsu grants to the Customer a non-transferable, non-exclusive licence 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 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 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 Customer with a copy of the Software, in which case the Customer agrees to accept responsibility for the installation of such Software; or

(b) authorise the Customer 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 Customer; 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 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.

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 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 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 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.

5.9 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, 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 Customer shall be liable to pay Fujitsu the associated licence charge, unless terminated by the Customer 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 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 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 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.

5.12 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.

5.13 Disposal of Media: Customer 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 Customer to audit or have audited the use of Software by the Customer.

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 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 5.3 to 5.14 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.

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.

6.2 Warranty: Fujitsu warrants that, during a period of 30 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 Customer'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 Customer notifies Fujitsu of such non-conformity prior to the expiry of the Software warranty period. 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.

6.3 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 Customer 90 days' notice.

6.4 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.

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

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 Customer 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 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 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 Customer is granted a licence to use the modified, enhanced, adapted or developed Software under the terms and conditions of the applicable Agreement.

8. CHARGES AND PAYMENTS

8.1 Invoice and Payment: Except where otherwise stated in an Agreement or in this Clause 8, Fujitsu will invoice the Customer on delivery for the charge for each deliverable. The Customer will pay to Fujitsu the charge for the deliverable (as adjusted in accordance with this Clause 8, if applicable) and any services charges and other expenses as invoiced. All charges shall be payable within 30 days of the date of such invoice or as otherwise agreed under this Agreement.

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

- (a) suspend performance of its obligations under the relevant Agreement, including delaying delivery of any deliverables; and
- (b) charge interest on a daily basis on the overdue amount from the date on which such amount becomes payable, at seven point five percent (7.5%) per annum until payment in full of the outstanding amount is made by the Customer. 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 indemnified by the Customer for any damage or additional cost incurred as a result of such suspension and remobilisation.

8.3 Taxes: all prices are exclusive of any taxes, fees and duties or other amounts, however designated, and including without limitation goods and services, value added and withholding taxes and/or use taxes which are levied or based upon such charges, or upon

this Agreement or upon any payment therefor (herein '**Taxes**'). All such Taxes related to any products and services provided or licensed pursuant to this Agreement shall be to the account of and paid by Customer (except for taxes based on Fujitsu's income).

8.4 Equipment Maintenance: If an Agreement provides for the supply of Equipment maintenance, the first payment of the Equipment maintenance charge 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 charges 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 charges (if any) shown in an Agreement are due upon commencement of the licence to which the charges relate. If periodic charges are shown in an Agreement, 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 90 days' notice.

8.6 Exchange Rate Variations: The charge in respect of any Equipment, Software or Professional Services is subject to adjustment for any exchange rate variation. Fujitsu reserves right to revise any charges as a consequence of an exchange rate variation that increases the costs to Fujitsu in supplying the Equipment, Software or Professional Services.

8.7 Increases in Charges: Fujitsu may increase charges for Software licences or services (other than those for which the Customer has paid in advance as agreed) by giving the Customer 90

days' notice. All increases will take effect from the start of an Invoice Period.

8.8 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.

8.9 Consumables: Unless specifically included in the charge, the Customer 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 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.

9.3 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 provision outside of Fujitsu's basic service hours.

9.4 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 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.

9.5 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 an Agreement, 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.

9.6 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.

9.7 Laws: Each Party shall comply with all mandatory national and international laws and regulations applicable to their respective obligations and rights under any 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.

9.8 Subcontractors: Fujitsu shall have the right to subcontract, without the prior written consent of Customer, 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.

10.3 Notwithstanding other provisions in this Agreement, Fujitsu's aggregate liability to the Customer 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 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; and

(b) any:

(i) 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

(ii) 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.

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

10.6 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 Customer 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 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.

11.3 Subject to Clause 10 and 11.5, Fujitsu will, at its expense, defend any action brought against the Customer, which claims that the use of any deliverable infringes the Intellectual Property Rights of a third party and will pay all costs and damages to 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.

11.4 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 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.

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 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.

11.6 Except as provided in this Clause 11, 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:

- (a) Fujitsu's compliance with Customer'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 Customer 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.

12.5 The Customer warrants that prior to disclosing any personal information, according to relevant laws, ("**Personal Information**") to Fujitsu, the Customer 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 data subjects, 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 Customer further warrants (and the Customer itself consents) that such

consents permit the collection, process, 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 Thailand 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, Customer remains the data controller and Fujitsu will be Customer'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 the Agreement or at law, 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 under the insolvency law, is or commences to be wound up (other than for the purposes of internal reconstruction or amalgamation), carries on or commences to carry on business under official receiver 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 breach of that Agreement (including without limitation any payment default) 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 Customer 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 Customer 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. 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 entities and the Customer 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, discussion and communications between or involving the Parties.

14.4 Waiver: No provision of this Agreement shall be deemed to be waived and no breach excused unless such waiver or consent shall be made in writing and signed by the Party which is claimed to have waived or consented. No waiver of any provision or breach of this Agreement shall be held to be a waiver of any other provisions.

14.5 Force Majeure: If a Party ("**Affected Party**") is unable to perform its obligations because of force majeure event, it shall promptly notify the other Party of its inability to perform and the nature and extent of

the force majeure event, and the Affected Party's obligation to perform those obligations affected by the force majeure event will be suspended for the duration of the force majeure event. If the force majeure event continues for more than thirty (30) days, the Affected Party may at its election, by notice to the other Party, modify or cancel the Agreement without being liable in damages or otherwise.

14.6 Dispute Resolution: In the event of any dispute, controversy or claim arising out of or relating to any provisions of this Agreement or the interpretation, enforceability, performance, breach, termination, or validity of the Agreement or any part thereof, the Parties shall attempt in good faith to amicably resolve the dispute. Any dispute which cannot be resolved within sixty (60) days as from the date such dispute has arisen shall be resolved finally and exclusively by any civil court of competent jurisdiction in Thailand. Notwithstanding the foregoing, Fujitsu may commence court proceedings in relation to non-payment by the Customer of any undisputed sum due to Fujitsu under this Agreement.

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

14.8 Headings: Headings are inserted for convenience only and do not affect the construction or interpretation of these General Terms.

14.9 Severability: If any provisions of the Agreement are found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Agreement, and the validity and enforceability of the other provisions of the Agreement shall not be affected.

14.10 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.

14.11 Offshoring Data: For the purposes of Fujitsu performing its obligations under an Agreement, Fujitsu may transfer, provide access to, store or process Customer data outside of Thailand.

14.12 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 entities and their representatives, government and public authorities, state enterprises, public, governmental and municipal officials.

By entering into an Agreement, Customer 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/>.



*Update ver Aug 2024 – FTH Legal