

SOFTWARE LICENCE Clauses

1 Introduction: This Clauses only applies where an Agreement provides for the supply of Software.

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.

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.

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 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

6 Supply of Licence: For the purpose of the licence granted in Clause 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**").

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.

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

- (a) the licence in Clause 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 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.

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.

10 Periodic Prices: Where a periodic licence charge is indicated in an Agreement, the licence granted in Clause 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.

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.

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.

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.

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.

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 3 to 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.

16. SOFTWARE WARRANTY AND SUPPORT

16.1 Introduction: This Clause 16 only applies where an Agreement provides for the supply of Software and/or Software.

16.2 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.

16.3 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.

16.4 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.