

These General Terms and Conditions govern the supply of Equipment, Software and Services by Fujitsu Hong Kong Limited to the Customer and shall apply to all subsequent orders signed by Customer or its Affiliates and accepted by Fujitsu Hong Kong Limited unless otherwise indicated in the Quotation/Order Form

PART I INTERPRETATION AND DEFINITIONS

1. Interpretation and Definitions

- 1.1 In these General Terms and Conditions, the following words and phrases shall have the following meanings:

"Affiliate" means in respect of the Customer, a company which is its related company as defined in s49BA of the Companies Ordinance, Cap. 32 of the Laws of Hong Kong, or any person or company being an associate of the Customer and "associate" shall have the following meaning:

- (1) a person is an associate of any person whom he employs or by whom he is employed and any director or other officer of a company is to be treated as employed by that company; and
- (2) a company is an associate of another company
 - a. if the same person has control of both, or a person has control of one and persons who are his associates, or he and persons who are his associates, have control of the other, or
 - b. if a group of two or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate; and

a person is to be taken as having control of a company if the directors of the company or of another company which has control of it (or any of them) are accustomed to act in accordance with his directions or instructions, or he is entitled to exercise, or control the exercise of, one third or more of the voting power at any general meeting of the company or of another company which has control of it;

"Agreement" means the terms and conditions herein together with the Order appended hereto and all documents referred to in this Agreement and the Order;

"Confidential Information" means any trade secrets and/or confidential or proprietary commercial, financial, marketing, technical or other information, whether disclosed orally or in writing before or after the date of this Agreement, together with any reproductions of such information in any form or medium, and which is either designated as confidential or which is otherwise clearly confidential in nature;

"Customer" means the company, firm or individual identified on the Order;

"Diagnostic Materials" means the materials used by FUJITSU for the purpose of carrying out diagnostic or routine testing of Equipment, including but not limited to software, manuals, documentation and data;

"Equipment" means the hardware equipment referred to on the Order and any replacement equipment and/or parts provided to Customer under this Agreement;

"Equipment Description" means documentation relating to the Equipment published by FUJITSU from time to time, including without limitation user manuals, operating manuals, and technical

manuals required to operate and support the Equipment, or in the absence of such documents, the most recent technical specification of the Equipment provided by FUJITSU or the manufacturer as the case may be;

"Equipment Warranty Period" means one year from the date of installation of the Equipment determined pursuant to Section 3.2 or such other period as may be agreed in writing between the parties as stated on the Order;

"FUJITSU" means Fujitsu Hong Kong Limited;

"Hire Charges" means in respect of each unit of Equipment hired by Customer pursuant to Part III, the applicable hire charges payable by Customer which are more particularly stated on the Order. Such charges are exclusive of charges for servicing the Equipment as required by Section 6.2;

"Hire Period" means in respect of each unit of Equipment hired by Customer pursuant to Part III, the period of hire which is more particularly stated on the Order commencing from the date of installation of such Equipment as determined pursuant to Section 8;

"Hong Kong" means the Hong Kong Special Administrative Region of the People's Republic of China;

"Integral Software" means the software embedded in or forming an integral part of the Equipment as specified in the Order;

"Intellectual Property Rights" means all copyrights, design rights, patents, trade marks, service marks, know-how and other intellectual property rights (whether registered or unregistered) and any applications for any of them and any rights of any such nature anywhere in the world;

"Licence" means the licence to use the Software and the Software Documentation which is granted to the Customer under Part IV of this Agreement;

"Licence Fee" means those charges payable for the Licence which are more particularly set out in the Order;

"Maintenance Schedule" refers to the schedule appended to the Order setting out in respect of each unit of Equipment, the level of Maintenance Services required and applicable Service Charges;

"Maintenance Services" means the services to be provided by FUJITSU to Customer in relation to the Equipment and Software pursuant to Section 16 which may be amended and or further supplemented by the Maintenance Schedule;

"Order" means FUJITSU's standard order form titled "Quotation/Order Form" for the procurement of Equipment, the hire of the Equipment, Licence, Maintenance Services and or Specialist Services by Customer from FUJITSU which is signed by both the Customer and FUJITSU and appended to this Agreement;

"Service Charges" means charges payable by Customer to FUJITSU for Maintenance Services and Specialist Services rendered by FUJITSU under Part V of this Agreement;

"Shipment Date" means the date when the Software is shipped to the Customer by FUJITSU or its authorized supplier;

"Software" means any software program stated on the Order, any Subsequent Releases and any change or amendment to or upgrade of the Software provided to the Customer as part of the Maintenance Services;

"Software Documentation" means the current versions of the user guides, installation instructions, and technical manuals relating to the Software and Software Specifications (if any);

"Software Specifications" means the written information published by Fujitsu from time to time defining the functional characteristics and features of the Software;

"Specialist Services" means, without limitation, consultancy and training services which are more particularly described in the Specialist Services Schedule;

"Specialist Services Schedule" refers to the schedule appended to the Order setting out the scope and level of Specialist Services which FUJITSU will provide to the Customer;

"Specified Configuration" means the equipment and programs with which Software is designed to operate as described in the Software Specifications or the Software Documentation, as the case may be; and

"Subsequent Releases" means any maintenance release of the Software that is distributed to Customer at no charge to replace an earlier release of the Software. Such releases do not include upgrades, releases or versions of the Software containing additional or enhanced features or functionality for which FUJITSU charges its existing customers an additional fee.

- 1.2 The headings in this Agreement are inserted for convenience only, and shall not constitute a part of or are referred to in interpreting this Agreement.
- 1.3 In the event of conflict,
 - a. the order of precedence for this Agreement and documents attached to or referred to in this Agreement is as follows: (1) Order and the schedules attached thereto; (2) the terms and conditions herein; and (3) other documents referred to in this Agreement;
 - b. terms in Part II, III, IV or V, as the case may be, shall prevail over terms in Part VI;
 - c. terms relating to Maintenance Services in Part II during the Equipment Warranty Period shall prevail over terms in Part V in relation to Equipment supplied under Part II;
 - d. terms relating to Maintenance Services in Part III shall prevail over terms in Part V in relation to Equipment supplied under Part III.

PART II TERMS AND CONDITIONS APPLICABLE TO THE SALE OF EQUIPMENT

2. SALE AND PURCHASE

- 2.1. FUJITSU hereby agrees to sell and the Customer hereby agrees to purchase the Equipment shown on the Order in the quantities and at the prices and charges indicated on such Order and subject to the terms and conditions of this Agreement.

3. DELIVERY AND INSTALLATION

3.1 Delivery and risk

Delivery shall be made to the Customer's delivery address as shown on the Order. The costs of any structural or other alterations or special hoisting gear or other equipment required to effect such delivery shall be borne by the Customer. Risk of loss or damage to the Equipment shall pass to the Customer upon delivery.

3.2 Installation and Acceptance

- a. Unless otherwise indicated on the Order, FUJITSU shall install the Equipment at the Customer's premises at FUJITSU's then current installation rates. Such installation shall be effected during FUJITSU's normal business hours as advised by FUJITSU from time to time, unless otherwise agreed by the parties in writing. If Customer fails to prepare the site pursuant to Section 3.4; or FUJITSU is prevented from carrying out delivery or installation at the prearranged day and time through no fault of FUJITSU; or Customer requires delivery to be made outside normal business hours, an additional charge shall be payable to FUJITSU.
- b. The Equipment shall be deemed to have been installed and accepted by Customer when it shall have passed the applicable FUJITSU installation tests. The passing of such installation tests shall be determined at FUJITSU's sole discretion. If any additional testing is required by the Customer, additional expenses arising thereof shall be borne by the Customer. If FUJITSU is not required to install Equipment, the Equipment shall be deemed to have been accepted by Customer and installed right after the Equipment in question is delivered to the Customer.

3.3 Delivery/installation

FUJITSU shall endeavor to ensure that the Equipment shall be delivered/installed on or about any dates agreed by FUJITSU and the Customer as mutually convenient for delivery and/or installation of the Equipment, but shall not in any circumstances have any liability for any delay in such said delivery or installation.

3.4 Site preparation

FUJITSU shall supply the information necessary to enable the Customer to prepare its premises for installation of the Equipment. The Customer shall, at its expense, prior to Equipment installation, install all electrical and communications wiring, carry out any necessary structural work and obtain any consents necessary for the installation of the Equipment and its connection to telecommunications lines.

4. EQUIPMENT WARRANTY

4.1 FUJITSU's Warranty

For the duration of the Equipment Warranty Period, FUJITSU

- a. warrants that, the Equipment will conform to the Equipment Description and that any defect in material or workmanship discovered in any unit of Equipment or any non-conformance to the Equipment Description will be rectified by repair, replacement or adjustment at FUJITSU's option and expense unless otherwise indicated on the Order; and
- b. will, subject to the provisions set out in Sections 4.2 and 4.3 provide Maintenance Services to Customer at no additional charge.

4.2 Conditions to Maintenance Services during Equipment Warranty Period

Maintenance Services provided to Customer during the Equipment Warranty Period shall be subject to the following conditions:

- a. The Customer shall provide adequate storage space for spare parts and test equipment and adequate working space (including heat, light, ventilation, electric current and outlets) for the use of FUJITSU's personnel. These facilities will be within a reasonable distance from the Equipment and shall be provided at no charge to FUJITSU;
- b. At all times during the Equipment Warranty Period the Customer shall, at its expense, maintain the installation site in all respects and provide necessary utility services (including without limitation electricity and air conditioning) for use of the Equipment in accordance with the Equipment Description and or other applicable specifications as advised by FUJITSU from time to time;
- c. FUJITSU shall have full and free access to the Equipment at mutually agreeable times in order to provide Maintenance Services;
- d. The Customer shall permit FUJITSU to install engineering changes as determined applicable by FUJITSU;
- e. The Customer shall not permit any person other than an authorized FUJITSU representative to perform maintenance or otherwise repair an item of Equipment. The Customer shall not alter or change the Equipment without FUJITSU's prior written consent; and
- f. The Customer shall promptly notify FUJITSU of any change in the location of the Equipment during the Equipment Warranty Period. In the event that the Equipment is installed at or relocated to an installation site outside an existing FUJITSU service area, FUJITSU reserves the right to charge the Customer for increased travel, lodging and other related expenses incurred by FUJITSU attributable to such Equipment location. FUJITSU shall be under no obligation to perform Maintenance Services for any portion of the Warranty Period during which the Equipment is located outside Hong Kong.

4.3 Excluded Services

Maintenance Services provided by FUJITSU during the Equipment Warranty Period does not include:

- a. Electrical work external to the Equipment; or

- b. Repair of damage resulting from causes external to the equipment, neglect, misuse, failure to conform to FUJITSU's applicable site specifications, or from use of the Equipment for other than the data processing purposes for which the Equipment was designed; or
 - c. Furnishing supplies or accessories, or painting, detailing or refurbishing the Equipment; or
 - d. Services in connection with (i) the relocation of the Equipment or (ii) the addition or removal of items of Equipment, attachments, features or other devices not furnished by FUJITSU or (iii) the maintenance of alterations, items, attachments, features or other devices not furnished by FUJITSU.
- 4.4 Except as provided by Section 4.1 FUJITSU' shall have no other liability whatsoever as regards the quality, or fitness for purpose of the Equipment or for any loss or damage whether in contract, tort or otherwise, and all other representations, conditions, warranties and terms whether express or implied by law are expressly excluded from this Agreement to the fullest extent permitted by law.
- 4.5 If any unit of Equipment is marked "Return for Repair" on the Order, Maintenance Services shall be performed at FUJITSU's workshop premises. Customer shall at its own risk and expense return the Equipment properly packed with proof of purchase and with a description of the alleged defect. When the repair is effected FUJITSU will inform the Customer and the Customer will be responsible for collecting the repaired Equipment as soon as possible thereafter. Items and parts replaced in the course of repair shall become the property of FUJITSU.
- 4.6 Upon the expiry of the Equipment Warranty Period, FUJITSU shall continue to provide Maintenance Services pursuant to Part V of the Agreement unless otherwise stated on the Order.

5. TITLE TO EQUIPMENT

- 5.1 Until such time as title in the Equipment has passed to Customer, FUJITSU:
- a. shall be entitled to repossess at any time any Equipment in which title remains vested in FUJITSU;
 - b. for purposes of Section 5.1.a, FUJITSU or any of its agents or authorised representatives shall be entitled at any time and without notice to enter upon any premises in which the Equipment or any part thereof is installed, stored or kept, or is reasonably believed so to be; and
 - c. shall be entitled to seek a court injunction to prevent Customer from selling, transferring or otherwise disposing of the Equipment and Customer shall not oppose such application.
- 5.2 Until such time as title in the Equipment has passed to Customer, Customer shall, subject to FUJITSU's rights hereunder:
- a. hold the Equipment as FUJITSU's fiduciary agent and be entitled to use the same in the ordinary course of the Customer's business but shall not be entitled to sell or otherwise dispose of the same or part with possession thereof;
 - b. cause to be added to its audited accounts for each year a note that Equipment supplied by FUJITSU is subject to retention of title and shall be the property of FUJITSU until full payment of all sums in respect thereof has been made to FUJITSU; and
 - c. insure such Equipment to its replacement value naming FUJITSU as the loss payee until all payments to FUJITSU have been made as specified in this Section and Customer shall forthwith, upon request, provide FUJITSU with a certificate of such insurance.

PART III TERMS AND CONDITIONS APPLICABLE TO THE HIRE OF EQUIPMENT

6. HIRE

- 6.1 FUJITSU hereby undertakes to supply and the Customer hereby agrees to take on hire the Equipment shown on the Order for the Hire Period subject to the terms and conditions of this Agreement
- 6.2 Service of Equipment
- It is a condition of hire that the Customer shall, with effect from the date of installation (as determined under Section 8 below) of the Equipment, subscribe to FUJITSU's Maintenance Services in order to maintain the Equipment in good working order to the satisfaction of FUJITSU.
- 6.3 Ownership
- Ownership of the Equipment and the responsibility for normal wear and tear of the Equipment shall at all time remain with FUJITSU.
- 6.4 Duties of Customer
- a. The Customer will care for the Equipment, house it in suitable premises and under suitable conditions and follow such instructions on these matters and such instructions on operating the Equipment; be fully responsible for and indemnify FUJITSU in respect of any destruction, loss or damage howsoever caused to the Equipment (except for loss and damage caused by FUJITSU'S action, omission or negligence); and inform FUJITSU immediately of any loss, destruction or damage caused to, or malfunctioning of, the Equipment;
 - b. The Customer will use Diagnostic Materials supplied by FUJITSU to carry out diagnostic and routine tests on the Equipment solely in the manner advised by FUJITSU and upon termination of the Hire Period return forthwith to FUJITSU all such Diagnostic Materials so supplied;
 - c. For purposes of Section 6.2, provisions under Part V shall apply and Customer shall
 - (i) allow FUJITSU's duly authorised representative upon reasonable notice and at any time access to inspect, service, uninstall or remove the Equipment;
 - (ii) at its own expense, give FUJITSU full access to the Equipment and provide such telecommunication facilities as are reasonably required by FUJITSU for purposes of testing faults in and or testing the Equipment;
 - (iii) make available to FUJITSU engineers appropriate staff who are familiar with the Customer's program and applications; and
 - (iv) provide suitable working space and facilities and suitable safe storage for maintaining the Equipment and spare parts;
 - d. Where FUJITSU's software is used in conjunction with the Equipment, the Customer will at its own expense make available to FUJITSU the latest issues of such software program that are currently in use by the Customer. Further, the Customer will ensure FUJITSU will be able to use its standard software program for carrying out its services under this Agreement on any facilities that are not supplied by FUJITSU;
 - e. The Customer will accept full responsibility for the performance of the Equipment or any system of which the Equipment is a part and for the cost of any remedial action necessitated if the performance is adversely affected by:
 - (i) the use of media or supplies or consumables which either are not as specified by FUJITSU for use with the Equipment or have been treated with any substance other than is required by FUJITSU; or
 - (ii) any alterations or connections or attachments fitted or repairs or adjustments done except by FUJITSU or with FUJITSU's written consent;
 - f. The Customer shall throughout the Hire Period (without prejudice to any liability of Customer to FUJITSU) at its own expense insure the Equipment against all loss or damage, including all risks of third party liability arising out of and in connection with the ownership presence or use of the Equipment in an amount not less than the price of the Equipment. Customer shall notify FUJITSU forthwith of any loss and damage to the Equipment and hold any insurance money in trust for FUJITSU. Customer irrevocably authorises FUJITSU to collect insurance monies from the insurers. If a claim is made against the insurers, FUJITSU may at its own discretion conduct negotiations and effect a settlement with the insurers and Customer agrees to be

bound by such settlement. FUJITSU shall apply the insurance monies in its own discretion in making good the damage, or in replacing the Equipment; or in compensating Customer for all loss it suffers, any deficiency being made up by Customer on demand;

- g. The Customer will be responsible for any damage caused to any land or building by affixing of the Equipment thereto or the removal of the Equipment therefrom (whether such affixing or removal be effected by FUJITSU or not) and shall indemnify FUJITSU against any claim or alleged claim made in respect of such damage;
- h. The Customer shall use the Equipment only for the purpose for which it is intended and only in accordance with the Equipment Description;
- i. The Customer shall not sell, assign, sub-hire, pledge, charge or part with possession of or otherwise deal with the Equipment or any interest therein nor create nor allow to be created any lien on the Equipment and in the event of any breach of this provision FUJITSU shall be entitled (but not obliged) to pay to any third party such sum as is necessary to procure the release of the Equipment from any charge or encumbrance or lien and shall be entitled to recover such sum from the Customer forthwith. The Customer shall, forthwith after delivery of the Equipment, advise the landlord of the premises where the Equipment is to be kept, of FUJITSU's title to the Equipment, and shall on demand furnish FUJITSU with a copy of such advice; and
- j. The Customer shall not interfere with any marks or plates indicating ownership of any item of Equipment.

6.5 Termination of Hire Period

Upon expiration of the Hire Period or earlier termination thereof as provided by this Agreement, the Customer

- a. shall release the Equipment to FUJITSU unencumbered and in good repair condition (fair, wear and tear excepted); and
- b. shall remain liable for (i) any arrears of Hire Charges accrued up to the date of termination; (ii) the cost of all repairs required to the Equipment to put them in a condition consistent with the performance with the Customer's obligations under this Agreement; (iii) damages, if any, for breach of this Agreement; and (iv) such further sum as may be required in settlement of such arrears or other sums due.

7. HIRE CHARGES AND PAYMENTS

- 7.1 During the Hire Period, Customer shall pay FUJITSU Hire Charges in advance in such instalments as stated on the Order and in accordance with this Agreement. FUJITSU reserves the right to modify the Hire Charges so that such charges accord with FUJITSU's ruling prices on the date of delivery of the Equipment.
- 7.2 FUJITSU may from time to time modify Hire Charges by giving the Customer not less than thirty (30) days' written notice. New Hire Charges shall take effect either at the end of one year following the date of installation of the Equipment as determined under Section 8 below, or at any time thereafter, whichever the later, provided that such charges will not exceed a charge in accordance with the appropriate FUJITSU standard scales of charges in force from time to time.

8. DELIVERY AND INSTALLATION

8.1 Delivery, Installation, Acceptance and Site Preparation

Section 3 shall apply in relation to (1) the delivery, installation and acceptance of the Equipment and (2) the Customer's obligation to prepare the site for the installation of the Equipment.

PART IV TERMS AND CONDITIONS APPLICABLE TO SOFTWARE

9. SOFTWARE LICENCE

- 9.1 In consideration of the Licence Fee, FUJITSU grants to the Customer a non-exclusive, non-transferable Licence to use the Software and Software Documentation in Hong Kong for such term as specified in the Order and subject to the terms and

conditions of this Agreement. This Licence shall commence on the Shipment Date.

9.2 The Licence is subject to the following restrictions:

- a. the Licence granted to the Customer is limited to the use of the Software in object form only;
- b. the Customer may only use the Software and the Software Documentation for the internal business purposes of the Customer. This means that it may not use the Software to store or process the data of any third party including its Affiliates;
- c. the Customer may make a single copy of the Software and the Software Documentation for back-up purposes only provided the making of such copy is reasonably necessary for the lawful use of the Software in accordance with this Licence;
- d. the Customer must not reverse engineer, disassemble or decompile any part of the Software or attempt to do so (other than to the extent that must be permitted by applicable law);
- e. the Customer must comply promptly with any reasonable instructions given by FUJITSU from time to time in connection with the use and operation of the Software; and
- f. the Customer will only use the Software Documentation to support its use of the Software. The Customer may not make additional copies of the Software Documentation without the prior written consent of FUJITSU.

9.3 Unless specified otherwise on the applicable Order:

- a. Customer may, for the purpose of migrating to a Subsequent Release, continue to use a previous release of the Software for a period not to exceed ninety (90) days after commencing the use of a Subsequent Release; and
- b. for the avoidance of doubt, FUJITSU shall not be obliged to provide Maintenance Services in respect of previous releases of the software if the Customer does not commence the use of a Subsequent Release.

- 9.4. If FUJITSU has reason to suspect that the use of the Software by the Customer is in breach of this Agreement, the Customer shall permit FUJITSU or its employees or agents to conduct an audit on the use of the Software. If the audit reveals that there is an excess of at least five percent (5%) between the Customer's actual use of the Software and the permitted scope of use under the Licence, FUJITSU shall (1) at its option, terminate the Licence or require the Customer to pay additional licence fee; and (2) require Customer to reimburse FUJITSU the cost of the audit.

10. DELIVERY

- 10.1 FUJITSU will, within the specified period as stated in the Order, deliver the Software to the Customer either in the form of a
 - a. CD Rom containing a copy of the Software and the Software Documentation; or
 - b. an authorisation code allowing the Customer to download a copy of the Software and the Software Documentation from FUJITSU's web site.
- 10.2 Delivery will be deemed to have taken place when:
 - a. in the case of Section 10.1.a the CD Rom is received by the Customer; and
 - b. in the case of Section 10.1.b either
 - (i) the Software or the Software Documentation is downloaded by the Customer; or
 - (ii) a period of 14 days has expired from the date on which the authorisation code was delivered to the Customer and, through no fault of FUJITSU, the Customer has not downloaded the Software

whichever first occurs.

- 10.3 Subsequent Releases will be delivered in a similar way and within comparable time scales.

11. LICENCE FEE

- 11.1 The Customer shall pay the Licence Fee and such obligation arises with effect from the Shipment Date.
- 11.2 FUJITSU will invoice the Customer monthly in advance for the Licence Fee payable under the Order. Unless otherwise specified on the invoice, Licence Fees are due thirty (30) days after the invoice date.
- 11.3 FUJITSU may increase any periodic element of Licence Fee from time to time by not less than thirty (30) days prior to written notice to the Customer.

12. WARRANTY

- 12.1 FUJITSU warrants that (i) from the Shipment Date and for a period of three months after that date the Software will in use and operation conform in all material respects with the Software Documentation when used on the Specified Configuration; and (ii) it has the right to license or sublicense all Intellectual Property Rights in the Software and the Software Documentation.
- 12.2 The Customer will notify FUJITSU as soon as reasonably practicable if it becomes aware of any breach of any of the warranties contained in section 12.1. Before the Customer is entitled to exercise any other right or remedy in relation to any such breach, FUJITSU will be given a reasonable opportunity to correct any such breach at its sole discretion by (i) repairing the Software, or any relevant part of the Software; or (ii) replacing the Software and Software Documentation, or any relevant part thereof, with an alternative with substantially equivalent specification PROVIDED this is done within a reasonable time and without additional charge to the Customer.
- 12.3 FUJITSU will not be liable under or in connection with this Agreement (whether for breach of the above terms or otherwise) in relation to any defect or other problem with or in relation to the Software attributable to:
 - a. the use or operation of the Software otherwise than in accordance with normal and authorised operating instructions and procedures set out in the Software Documentation and on the Specified Configuration;
 - b. alterations, modifications, repairs or any other work done on or in relation to the Software by anyone other than the FUJITSU or its approved sub-contractor;
 - c. abnormal or incorrect operating conditions (including interruption of or abnormality in the electricity supply);
 - d. any other act or omission (whether accidental or deliberate) or other cause outside the control of the FUJITSU;
 - e. any breach by the Customer of its obligations under this Agreement; or
 - f. any third party equipment or software being connected to or operated with the Software, unless such connection or operation has been or is carried out or expressly authorised and approved by the FUJITSU in writing.
- 12.4 Other than as expressly provided otherwise by this Licence, it is not a term of this Licence (whether a condition, warranty or other term):
 - a. that the Software or the Software Documentation is or will be of any particular quality (satisfactory or otherwise), fit for any particular purpose (whether made known to the FUJITSU or not) or that they will conform to any particular description as may be specified in the Sale of Goods Ordinance; or
 - b. that the use or operation of the Software will be uninterrupted or error-free.
- 12.5 The Customer acknowledges that it is the Customer's sole responsibility to ensure that the Software is appropriate for its requirements.
- 12.6 The foregoing warranties are in lieu of all other warranties, express or implied, including but not limited to, implied warranties of quality and fitness for a particular purpose and those arising by statute or otherwise in law or from a course of dealing or usage of trade.

13. CUSTOMER RESPONSIBILITIES

- 13.1 Customer shall be exclusively responsible for (a) selection of the Software to achieve Customer's intended results, (b) installation of the Software, (c) the results obtained from the Software, and (d) the supervision, management and control of the use of the Software.

- 13.2 The Customer will be solely responsible for the maintenance and security of its other software and data. FUJITSU will have no liability for any loss or corruption of any such software or data, however caused where such loss or corruption could have been avoided or corrected if the Customer had taken and retained, in a secure place, appropriate backup copies.

14. TERMINATION OF LICENCE

- 14.1 Upon expiry of the Licence term or earlier termination of this Agreement (for whatever reason):
 - a. the Customer and its Affiliates will immediately stop all use of the Software and the Software Documentation save as specifically provided for by Section 14.1.b;
 - b. the Customer and its Affiliates will immediately delete all copies of the Software and the Software Documentation held or controlled by the Customer and/or its Affiliates on computer or computer-readable media; and
 - c. an officer of the Customer will confirm by statutory declaration to FUJITSU that it and its Affiliates has complied with the provisions of this Section and the Customer hereby irrevocably authorises FUJITSU or its authorised representatives to enter any of its premises or those of its Affiliates and take such action as FUJITSU reasonably considers necessary in order to ensure that the Customer and its Affiliates have complied with the provisions of this Section.

14A. SOFTWARE LICENCE

- 14.A.1 Introduction: This Clause 14.A only applies where an Agreement provides for the supply of Software.
- 14.A.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.
- 14.A.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.
- 14.A.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.
- 14.A.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 14.A.
- 14.A.6 Supply of Licence: For the purpose of the licence granted in Clause 14.A.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").
- 14.A.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.

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

- a. the licence in Clause 14.A.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 14.A.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.

14.A.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.

14.A.10 **Periodic Prices:** Where a periodic licence charge is indicated in an Agreement, the licence granted in Clause 14.A.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.

14.A.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.

14.A.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.

14.A.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.A.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.

14.A.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 14.A.3 to 14.A.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.

14.B. SOFTWARE WARRANTY AND SUPPORT

14.B.1 **Introduction:** This Clause 14.B only applies where an Agreement provides for the supply of Software and/or Software support.

14.B.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.

14.B.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.

14.B.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.

PART V TERMS AND CONDITIONS APPLICABLE TO SERVICES

15. SERVICES

15.1 FUJITSU shall provide Maintenance Services and Specialist Services to Customer for such term and in such manner as specified in the Order and upon terms and conditions of this Agreement.

15.2 The Customer shall be deemed to have been granted a licence to use any program or material supplied to him by FUJITSU in performance of its services under this Part V subject to receipt by FUJITSU in full of the applicable Service Charges stipulated in the Order. The said licence shall not entitle the Customer to grant any sub-licence nor to provide any aforesaid program or material for use or copying by any third party.

16. MAINTENANCE SERVICES

16.1 In relation to the Equipment, FUJITSU shall provide

- a. preventive maintenance service at the frequency specified in the Maintenance Schedule based on the needs of the particular units of Equipment as determined by FUJITSU. Such preventive maintenance service shall include routine operational testing; lubrication; necessary adjustment; and replacement of unserviceable parts; and
- b. corrective maintenance service which shall include the repair and or adjustment to Equipment or replacement of such parts of the Equipment as may reasonably be required to restore the Equipment to operation in accordance with the Equipment Description upon receiving notification from Customer. FUJITSU shall

within four (4) working hours upon receiving a call from the Customer endeavour to respond to the request for such service.

16.2 In relation to the Software, Maintenance Services shall be limited to standard support service which will be provided during normal business hours and updating service, more particularly described as follows:

- a. The standard support service will comprise (i) telephone help desk to provide technical support to users of the Software; (ii) remote diagnosis using customer supplied telediagnostic facilities defined by FUJITSU for correction of faults; and (iii) on-site checking. For matters that affect the Customer's day to day business operation, FUJITSU shall within four (4) working hours upon receiving a telephone call for assistance, respond to the call and thereafter take necessary actions that in the opinion of FUJITSU deem fit for the purpose of resolving the problem. For matters that do not affect the Customer's day to day business operation, FUJITSU shall respond to such calls within eight (8) working hours upon receipt of the call.
- b. In relation to updating service, FUJITSU will from time to time make Subsequent Releases available to the Customer and Customer shall within ninety (90) days from the issuance of a Subsequent Release install and integrate such Subsequent Release in the Software.

16.3 Except where expressly agreed in writing with FUJITSU, Maintenance Services shall not include repairs, replacements, adjustments, error corrections, or increased service time requirements occasioned by:

- a. improper installation (save where installation has been carried out by FUJITSU);
- b. failure to observe the Equipment Description, Specified Configuration and/or Software Specifications;
- c. misuse, abuse, negligence, accident;
- d. modifications, alterations or attachments carried out other than by FUJITSU;
- e. use of equipment, software or accessories supplied other than by FUJITSU and which are not in the reasonable opinion of FUJITSU suitable for use with the Software or Equipment; or
- f. work carried out on the Equipment and or Software by any person other than FUJITSU.

16.4 Replacement parts for Equipment shall be provided by FUJITSU without charge (unless otherwise agreed between FUJITSU and the Customer) when (1) Equipment is under warranty and/or (2) Equipment maintenance has been fully paid for. The replacement parts shall be either new or reconditioned or reassembled parts, which are equivalent to new parts in performance. All parts so replaced shall unless otherwise agreed between FUJITSU and the Customer become the property of FUJITSU.

16.5 Where the Maintenance Services comprise the replacement or repair of any part of the Equipment and where this is normally effected by removal of the Equipment or any part thereof from the Customer's premises and should the Customer refuse to allow such removal then FUJITSU will be entitled to recover additional costs incurred thereby and FUJITSU shall incur no liability for any resultant delay or failure in providing such services.

16.6 In respect of any unit of Equipment requiring "Return for Repair" as recorded on the Order, Maintenance Services shall be performed at FUJITSU's premises, in which case the Customer shall, at its own risk and expense, deliver the Equipment to FUJITSU's workshop premises, properly packed and with a description of the need for service. When the repair is effected FUJITSU will inform the Customer and the Customer will be responsible for collecting the repaired Equipment as soon as possible thereafter.

17. SPECIALIST SERVICES

17.1 In relation to Specialist Services,:

- a. FUJITSU will assign personnel with appropriate skill and experience to perform the Services.
- b. The Customer will, at its own cost, make available to FUJITSU appropriate personnel and resources and prompt access to such information and facilities as FUJITSU may reasonably require.

c. FUJITSU shall be entitled to make reasonable additional charges in the event of any extension of or modification to or delay in the provision of any such Specialist Services other than as a result of any contractual default or negligence on the part of FUJITSU.

d. unless otherwise agreed in writing Services shall be performed by FUJITSU during its normal business hours. Specialist Services provided outside normal business hours shall be subject to charges at the prevailing FUJITSU special or overtime rates.

e. Reasonable expenses incurred by FUJITSU personnel such as but not limited to travel, accommodation and meals shall be charged in addition to prices and charges stated on the Order.

f. FUJITSU shall be deemed to have completed any relevant Services when it has complied with the completion criteria stipulated in the applicable Specialist Services Schedule or in cases where Specialist Services are provided on a personnel time and/or materials basis when such said personnel time and/or materials have been furnished.

17.2 The Customer shall be deemed to have been granted a licence to use any program or material supplied to him by FUJITSU in performance of the relevant services under this Part V subject to receipt by FUJITSU in full of the applicable Service Charges stipulated in the Order. The said licence shall not entitle the Customer to grant any sub-licence nor to provide any aforesaid program or material for use or copying by any third party.

18. PERFORMANCE

18.1 FUJITSU shall employ reasonable care and skill in the performance of Maintenance Services and Specialist Services and take all reasonable and practical steps to avoid or ameliorate any default on its part in carrying out the same but it will not be liable for any claim whatsoever or howsoever arising whether in contract, tort or otherwise for any delay or act or omission on its part in relation to the provision of such services save and to the extent such exclusion of liability shall be prohibited by law.

19. COMMENCEMENT

19.1 For the purposes of this Section, the commencement date of Maintenance Services shall be determined as follows:

- a. in relation to the Software supplied under Part IV, from the date of delivery determined under Section 10;
- b. in relation to Equipment supplied under Part II, upon the installation of the Equipment pursuant to Clause 3.2; and
- c. in relation to Equipment supplied under Part III, with effect from the commencement of the Hire Period.

In relation to Specialist Services, the commencement date shall be the date stated on the Specialist Services Schedule.

19.2 Services shall continue from the commencement date for each unit of Equipment or Software until (in the case of Services agreed to be provided for an indeterminate period) either party terminates the Services by giving the other party not less than ninety (90) days' prior written notice of termination. In the case of Services agreed to be provided for a specified minimum period of time, termination as aforementioned shall (other than for reason of breach by either party) only be effected after the minimum period has elapsed and then by not less than thirty (30) days' written notice.

20. SERVICE CHARGES

20.1 Customer shall pay FUJITSU Service Charges in accordance with the terms specified in the Maintenance Services Schedule or the Specialist Services Schedule, as the case may be.

20.2 From time to time, FUJITSU may increase Service Charges provided that FUJITSU gives the Customers at least thirty (30) days' prior notice of each such increase.

20.3 Charges for parts, components and materials, and for magnetic media, stationery, and other supplies, where not expressly included in the Services charge, are separately payable by the Customer.

20.4 Except when expressly included in the Service Charges, the Customer will be responsible for any travel time and expense (including accommodation) at FUJITSU's current standard rates.

21. ACCESS TO FACILITIES

To facilitate provision of Maintenance Services and Specialist Services, the Customer shall:

- 21.1 provide FUJITSU with full and free access to all relevant information, equipment and software;
- 21.2 make available to FUJITSU's personnel appropriate staff who are familiar with the Customer's operations, software and/or applications;
- 21.3 provide suitable working space and facilities and suitable safe storage for service equipment, spare parts and manuals;
- 21.4 keep at its premises for use by FUJITSU the latest issues of Software that are used by the Customer;
- 21.5 consent to and/or arrange for the temporary disconnection and/or isolation of any non-FUJITSU supplied and/or maintained equipment if in FUJITSU's reasonable opinion such action will better assist FUJITSU in the diagnosis and identification of faults;
- 21.6 at FUJITSU's request, keep a record of use of the Equipment and Software in the manner prescribed by FUJITSU and make available such records as and when FUJITSU may reasonably require; and
- 21.7 at its own expense provide such telecommunications and other facilities as are reasonably required by FUJITSU for diagnostic and testing purposes and bear the costs of the use of these facilities by FUJITSU.

PART VI GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF EQUIPMENT, SOFTWARE AND SERVICES

22. PAYMENT TERMS

- 22.1 Payments shall be made in accordance with the payment terms set forth on the applicable Order and as indicated herein. FUJITSU reserves the right to revoke any credit extended to the Customer at any time.
- 22.2 Any customs duties or import surcharges, taxes, rates or governmental levies (other than those assessed on profits or gains of FUJITSU) which are payable in connection with the supply of Equipment, Software, Maintenance Services or Specialist Services will be payable by the Customer. Such charges are in addition to the Equipment purchase price, Hire Charges, Licence Fee and Service Charges .
- 22.3 If the Customer fails to make full payment within thirty (30) days after due date FUJITSU may refuse to perform any further obligations and suspend warranty and any services and support obligations under this Agreement and may charge the Customer interest on the overdue amounts at one point five percent (1.5%) per month.
- 22.4 Should the Customer delay delivery, installation or completion of any service or item then any sums payable by reference to the date of delivery, installation or completion shall be deemed to be due and payable thirty (30) days after the date which FUJITSU notifies to Customer as the date at which it is ready to effect such delivery, installation or completion. The Customer shall pay all FUJITSU's reasonable costs and charges resulting from such delay.

23. MISCELLANEOUS

- 23.1 Retention of title

Notwithstanding delivery, installation, acceptance and passing of risk, title to the Equipment or any other goods supplied pursuant to this Agreement shall not pass to Customer but shall be retained by FUJITSU until full payment for the Equipment or such goods has been received by FUJITSU from Customer.
- 23.2 Substitutions and modifications

FUJITSU may substitute or modify any Equipment, Software or Services agreed to be supplied to the Customer provided that any substituted or modified item shall be substantially equivalent in performance and capabilities to the Equipment, Software or Services originally ordered.
- 23.2 Data transmission

The Customer accepts and acknowledges that the ability of any unit of Equipment to meet its data transmission speed

specifications (if any) is subject to limitations imposed on the use of telecommunications lines by the agency furnishing such lines and to the availability of telecommunication equipment and lines.

23.4 Diagnostic materials

From time to time FUJITSU may provide Diagnostic Materials to the Customer. Diagnostic Materials are not the subject of any licence granted to the Customer for its own use but shall be held at the Customer's site on behalf of FUJITSU as an aid to the carrying out of services by FUJITSU. The Customer shall use Diagnostic Materials solely in the manner and for the purposes specified by FUJITSU and will follow FUJITSU's advice concerning their use. The Customer shall keep Diagnostic Materials, including the results obtained by their use, confidential and will not disclose the same to any third party. The Customer shall permit FUJITSU at all reasonable times to audit the use of Diagnostic Materials and to remove such materials whenever FUJITSU so requires. FUJITSU shall be entitled to remove any Diagnostic Materials from Customer's premises forthwith upon termination of any FUJITSU services in connection with which the relevant Diagnostic Materials are used.

23.5 Integral Software

Where Equipment supplied to Customer contains Integral Software,

- a. FUJITSU grants to the Customer a non-exclusive and non-transferable licence to use such Integral Software in the form in which it is embedded in or integrated into the Equipment at the time of delivery to the Customer as an integral part of the Equipment;
- b. The purchase price of the Equipment or the Hire Charges, as the case may be, include the right for the Customer to use the Integral Software in the manner provided by this Section;
- c. The Customer agrees that Integral Software must only be used in conjunction with the Equipment, in accordance with the Equipment Description and only for the Customer's internal business purposes;
- d. The Customer acknowledges that the Intellectual Property Rights in the Integral Software are owned by FUJITSU or its licensors and agrees that it will not sublicense, reproduce, reverse engineer, disassemble or decompile any part of the Integral Software or attempt to do so (other than to the extent that must be permitted by applicable law); and
- e. Subject to Section 29, the Customer is entitled to transfer the benefit of the licence granted under this Section to any purchaser of the Equipment provided that the purchaser agrees to be bound by the terms of this Section.

24. CARE AND USE

- 24.1 The Customer shall use the Equipment and Software in the manner contemplated respectively by the Equipment Description and Software Documentation relating thereto. The Customer shall supervise, manage and control the proper use of the Equipment and Software (including routine Customer maintenance, if any) in the manner that FUJITSU may reasonably specify from time to time. The Customer shall also ensure that adequate backup plans, restart procedures, checks for accuracy and security of data together with other necessary procedures and controls are provided by the Customer to meet his requirements.
- 24.2 If any unauthorised modification is made either to any Equipment (including but not limited to obtaining access without the express authority of FUJITSU to any installed latent capacity) or to any Integral Software or Software then the Customer shall be deemed to be in breach of this Agreement and FUJITSU shall be entitled to terminate forthwith any licence applicable to any Integral Software or Software so modified, and in the meantime the Customer's continued use of any such Integral Software or Software shall be regarded as unauthorised. Any authorised modification by or on behalf of the Customer resulting in an enhanced level of capacity of any equipment shall be subject to the payment by the Customer in respect of all Software in his possession of the rates of charges charged by FUJITSU at that time for the use of Integral Software or Software on such equipment at the said enhanced level of capacity or a rateably increased fee compared to the use authorised under this Agreement, whichever is greater.

25. LIMITATION OF LIABILITY

- 25.1 FUJITSU shall not in any circumstances be liable to the Customer or its Affiliates for any incidental, indirect, special or consequential damages, loss of use, loss of data, loss of

business opportunity and loss of profits or anticipated savings, loss of goodwill or injury to reputation or losses suffered by third parties, regardless of the form of action, whether in contract, strict liability or tort (including negligence), and regardless of whether FUJITSU knew or had reason to know of the possibility of the loss, injury or damage in question. Such exclusions will apply to the fullest extent permissible at law but FUJITSU does not exclude liability for death or personal injury caused by the negligence of FUJITSU, or its officers, employees, subcontractors or agents, or for fraud.

25.2 In respect of any Order, FUJITSU's aggregate liability to the Customer in respect of all losses, damages, costs, claims or expenses suffered by the Customer or its Affiliates arising out of or in connection with

- a. any and all breaches by FUJITSU of the terms of this Agreement (including but not limited to, claims arising in respect of a breach of warranty); or
- b. any and all torts, breaches of statutory duty or wilful misconduct committed by FUJITSU (or any officer, employee, sub-contractor or agent of FUJITSU) in connection with the performance or purported performance of FUJITSU's obligations under this Agreement (including claims for payment under any indemnity contained in this Agreement or under Section 26, whether relating to a single event or series of connected events); and

shall be limited to and in no circumstances whatsoever exceeding the aggregate of the total consideration paid by Customer to FUJITSU under that Order or HK\$500,000, whichever is the greater.

26. INTELLECTUAL PROPERTY RIGHTS

26.1 FUJITSU's intellectual property rights

All Intellectual Property Rights in the Equipment, Equipment Description, Software Documentation, Software, Diagnostic Materials and materials supplied to Customer by FUJITSU in the course of its performance of Maintenance Services and Specialist Services, including translations, compilations, and partial copies within modifications and updated or derivative works thereto ("Materials") belong to FUJITSU or its supplier(s).

26.2 FUJITSU will, at its sole expense, defend any action brought against the Customer based on a claim of infringement of any third party Intellectual Property Rights by the Materials or any part thereof and will pay all costs and damages finally awarded against the Customer in any such action which are attributable to such claim provided that:

- a. the Customer immediately upon becoming aware of the claim notifies FUJITSU in writing of any such claim or allegation of infringement;
- b. FUJITSU shall have sole control and conduct of the defence and settlement of any such claim; and
- c. the Customer will at its own expense provide FUJITSU with such assistance in such defence, settlement or compromise as FUJITSU may reasonably require; and
- d. the Customer shall not incur any cost or expense for FUJITSU's account without FUJITSU's prior written consent.

26.3 If any allegation or infringement of copyright or other intellectual property right with respect to the Materials or any part thereof is made, or, in FUJITSU's opinion, is likely to be made, FUJITSU may at its sole option and expense procure for the Customer the right to continue using the same in the manner contemplated by this Agreement, or modify or replace the infringing Materials (the "Infringing Materials") in whole or in part so as to avoid the infringement. In the event that neither of the foregoing options is available on a basis that FUJITSU considers to be commercially reasonable, then upon the return of the Infringing Materials by the Customer to FUJITSU or in the case of an infringing Equipment, upon the Customer's request for the return of the infringing Equipment, FUJITSU may

- a. terminate the Licence and refund to the Customer the Licence Fee for the Infringing Materials (less depreciation for use, assuming straight line depreciation over the term of the Licence specified in the applicable Order under which the Infringing Materials were purchased, or five (5) years, whichever is less);
- b. in relation to an infringing Equipment supplied under Part II, remove the Equipment from the Customer's premises and refund the purchase price of the Equipment (less depreciation for use which is calculated as two percent

(2%) of the net purchase price of the Equipment per month from the date of installation); or

- c. in relation to an infringing Equipment supplied under Part III, remove the Equipment from the Customer's premises, as the case may be.

26.4 The indemnity contained in Section 26.2 shall not extend to any claim which arises as a result of:

- a. any modifications to the Materials made by any person other than FUJITSU, or its employees or agents or any modifications made by any other person where such modifications have not been authorised by FUJITSU;
- b. use of the Materials for a purpose not specified in this Agreement or otherwise contemplated by this Agreement;
- c. the Customer having itself done or permitted or suffered to be done anything which may have been or become an infringement of such third party rights;
- d. the Customer having used the Materials (i) other than in accordance with this Agreement, Equipment Description, Specified Configuration or FUJITSU's instructions, as the case may be, or (ii) in combination with equipment, software and services not supplied by FUJITSU, and under such circumstances, the Customer will, at its sole expense, indemnify FUJITSU and keep FUJITSU fully and effectively indemnified against all losses, costs and expenses (including, without limitation, legal and professional adviser's fees) incurred by FUJITSU as a consequence of such claim of infringement.

26.5 Subject to Section 25.2, this Section 26 states FUJITSU's entire liability to the Customer in respect of the infringement of the Intellectual Property Rights of any third party.

26.6 Instructions

The Customer shall follow all reasonable instructions that FUJITSU gives from time to time with regard to the use of Intellectual Property Rights belonging to FUJITSU and/or its licensors. In particular but without being limited to the foregoing the Customer shall provide FUJITSU promptly upon request with information relating to the location and identification of all processors upon which specified Software are installed in order to assist FUJITSU in the computation of third party royalties.

27. CONFIDENTIAL INFORMATION

27.1 Each party shall keep and procure to be kept secret and confidential all Confidential Information belonging to the other party disclosed or obtained as a result of the relationship of the parties under this Agreement and shall not use nor disclose the same save for the purposes of this Agreement or with the prior written consent of the other party. Where disclosure is made to any employee, sub-contractor or agent, it shall be done subject to obligations equivalent to those set out in this Section. Each party shall use its best endeavours to procure that any such employee, sub-contractor or agent complies with such obligations. Each party shall be responsible to the other in respect of any disclosure or use of such confidential information by a person to whom disclosure is made.

The foregoing obligations shall not apply, however, to any part of the Confidential Information which (i) was already known to the recipient party (otherwise than following a breach of this Agreement) prior to receipt thereof; (ii) was already in the public domain or becomes so through no fault of the recipient party; (iii) was acquired by the recipient party from a third party having the right to convey the confidential information to the recipient party without any obligation of confidentiality not to disclose the same; (iv) is independently developed by the recipient party; and (v) is approved for release by prior written authorisation by the disclosing party.

The parties agree to indemnify each other against loss or damage arising directly from any breach or non-performance of this Section.

28. TERMINATION

28.1 If the Customer is in breach of any term of this Agreement and does not remedy that breach within fourteen days after receiving written notice from FUJITSU, then FUJITSU may immediately terminate this Agreement or, at FUJITSU's option, and without prejudice to such termination right, suspend the performance of

FUJITSU's obligations hereunder until the breach is remedied. The Customer will have no claim against FUJITSU on account of FUJITSU's withholding performance of its obligations in these circumstances.

28.2 If either party commits an act of insolvency or goes or is placed into liquidation (either provisionally or finally), (other than solely for amalgamation or reconstruction purposes) or if a provisional liquidator or a receiver is appointed over any part of that party's business or property, then the other party may regard any such circumstances as grounds for immediately terminating this Agreement without notice.

28.3 Termination will not discharge either party from performing any obligation or from payment of any sums already due or becoming due by reason of the termination.

28.4 Upon termination for whatever reason, the Customer will immediately deliver up all FUJITSU property which it has no contractual right to retain and FUJITSU may enter any premises to recover and remove such property.

28.5 Sections 5, 6.4, 6.5, 14, 23.4, 23.5, 25, 26, 27, 28, 29 and 30 survive termination of this Agreement.

29. RESTRICTION ON RESALE AND EXPORTS

29.1 In the event that the Customer desires to resell or sublicense any Equipment or Software, prior written consent from FUJITSU must be obtained.

30. GENERAL

30.1 Assignment

Neither party may assign this Agreement to any third party without prior written consent from the other party.

30.2 Notices

All notices hereunder shall be in writing addressed to the parties at their respective addresses set forth on the Order or such other address as may be notified from time to time in writing by either party to the other.

30.3 Publicity and Co-operation

Customer acknowledges and agrees that FUJITSU may, subject to Sections 26 and 27, from time to time issue press releases or other public documents containing, or may make public statements containing, information in relation to the Customer's use of the Equipment and/or Software. Customer agrees that once such a release, document or public statement has been issued, FUJITSU may (a) refer the Customer as being a customer of FUJITSU publicly or in FUJITSU's marketing materials; and (b) publish case studies on the Customer's use of the Equipment and or Software. Customer further agrees that upon receiving a request from FUJITSU, Customer shall cooperate with FUJITSU and shall promptly provide such information and comment as FUJITSU may require for the

issuing of such press release, document, statement, marketing material or case study.

30.4 Effective Terms

Unless agreed otherwise in writing this Agreement shall represent the only terms and conditions between the parties and shall supersede all representations, promises and proposals, whether they are oral or written. Any terms and conditions set forth in any Customer order form or other correspondence shall be without effect.

Each of the parties acknowledges and agrees that in entering into this Agreement, and the documents referred to in it, it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement as a warranty. The only remedy available to it for breach of the warranties will be for breach of contract under the terms of this Agreement. Notwithstanding the foregoing, nothing in this Section 30 seeks to avoid liability for fraudulent misrepresentation.

30.5 Waiver

No terms or conditions hereof shall be deemed waived and no breach or default excused unless such waiver or excuse shall be in writing and signed by the party issuing the same.

30.6 Force majeure

Neither party will be liable for any delay or for failure to perform its obligations hereunder resulting from any cause beyond its reasonable control, including, but not limited to, failure to supply in good time necessary data, information or specifications (if the other party has agreed to supply any such data, information or specifications); changes in any such data, information or specifications supplied; acts of God; inclement weather; fire; explosions; floods; strikes; work stoppages, slowdowns or other industrial disputes; accidents; riots or civil disturbances; acts of government; outbreak of epidemics; inability to obtain any necessary licence or consent; and delays by suppliers or material shortages.

30.7 Governing law

This Agreement is governed by and shall be construed and interpreted in accordance with the laws of Hong Kong and each Party hereby submits to the non-exclusive jurisdiction of the Courts of Hong Kong.

30.8 If any terms or conditions contained herein prove to be legally invalid this shall not affect the validity of the remaining provisions hereof which shall continue in full force and effect between the two parties.