

## A. General Terms for Supplies and Services

### A.1 General

A.1.1 These Terms and Conditions shall apply to all sales, product deliveries, implementation and maintenance services for Hardware / Software Product Appliances by Fujitsu Technology Solutions AG (hereinafter "FUJITSU") to business customers (hereinafter "Customer"). These Terms and Conditions shall also apply to the provision of software for time-limited use. Contradicting or supplementary general terms and conditions of the Customer shall only be deemed as accepted by FUJITSU if and insofar as they are identical with the following terms and conditions or FUJITSU has consented to their application explicitly in writing.

A.1.2 The specific terms (Sections B through F of these General Terms and Conditions) will apply additionally for the following types of contracts:

- Sale of hardware (B) – p. 11 ff.;
- Provision of software for permanent use – Sale - (C) – p. 12 ff.;
- Hardware & software support and maintenance (D) – p. 14 ff.;
- Further service and works contracts (E) – p. 19 ff.
- Provision of software for time-limited use (F) – p. 23 ff.

A.1.3 For contracts on lease and rent of hardware, our respective Special Conditions are applicable.

A.1.4 If any contradictions between the specific terms (Sections B through F of these General Terms and Conditions) and the General Terms and Conditions (Sections A of these General Terms and Conditions) arise, the specific terms shall prevail.

### A.2 Subject and Use of Delivery

A.2.1 The scope of deliverables is defined by the Fujitsu offer as confirmed by the Fujitsu order confirmation and as further specified in the corresponding product or service data sheets and/or the agreed service descriptions and/or the agreed statements of work (as applicable).

A.2.2 Fujitsu is entitled to deliver a replacement or modified version of the equipment, software or service ordered by the Customer, provided their operation and capacity are not essentially different from the specifications of those originally ordered. Minor discrepancies between FUJITSU deliveries and FUJITSU offers and order confirmations, which are caused by compelling legal or technical norms, shall be deemed being a delivery according to specifications.

A.2.3 Unless agreed otherwise, Customer shall (i) use the products only as described in the specifications and user manuals of the product and/or in the service description/statement of work; (ii) immediately inform FUJITSU of any improper use; (iii) ensure properly managed and regular back up processes, availability of up-

to-date disaster recovery plans, restart procedures and conformity checks, (iv) organize a sufficient level of data security and data protection, in particular with regard to personal data, meeting at least the respective legal requirements and (v) implement any other operational IT processes or procedures necessary and to be reasonably expected by a professional business user.

A.2.4 Without limiting what stated above, Customer shall provide FUJITSU, upon request, with any information concerning location and ID of those products on which software applications have been installed if there is reasonable cause on the part of Fujitsu that the customer is not using the software in accordance with the contract. In this case, the Customer is also obliged to provide FUJITSU with further required information upon request so that FUJITSU can verify the customer's compliance with the contract. Furthermore, FUJITSU or an independent consultant appointed by FUJITSU has the right, after reasonable prior notice and within the usual business hours of the Customer and in compliance with the security requirements of the Customer as well as data protection laws and confidentiality obligations, to conduct an audit at the business premises of the Customer. The Customer undertakes to pay the remuneration for any additional use (including the relevant license and support fees and without prejudice to other rights and claims of FUJITSU also with respect to the past.

### A.3 Subcontracting, Assignment, Performance by Third Parties

FUJITSU shall be entitled to transfer or assign its rights and obligations under this contract in total or partially to third parties. Third parties may also be used for refinancing purposes at FUJITSU's reasonable discretion. The Customer hereby grants ex ante his consent to the assignment of claims or the transfer of the contract. In addition, the contractually owed services may be subcontracted to third parties (subcontractors).

### A.4 Prices, Payment Terms and Conditions

A.4.1 Unless agreed otherwise, all prices are in Swiss Francs (CHF), inclusive of the costs of delivery and carriage insurance to the extent provided under **clause B.3**, but exclusive of any applicable VAT, Sales Tax, Use Tax, GST and other taxes, levies, and/or customs charges. Any such taxes, customs charges and levies, if paid by FUJITSU, shall be reimbursed by Customer and will be shown separately in invoices.

A.4.2 Reimbursements for the contractual deliveries to be paid by Customer are as set out in the corresponding contract or if such contract is silent, are based on the FUJITSU price list applicable at the time of the conclusion of the contract.

A.4.3 Invoicing of equipment and software will take place on the date of delivery of the corresponding equipment/software. FUJITSU reserves the right to arrange for a credit check of the Customer and to request

prepayment where appropriate. If the equipment /software, due to reasons other than a delay on the part of Fujitsu, is delivered later than three months after the date on which Fujitsu accepted the delivery order for the equipment/software, Fujitsu reserves the right to adapt the prices and additional charges to list price increases applicable on the date of delivery. This shall apply especially with regard to the delivery of third party manufacturer products.

A.4.4 Any lump sum payments for services agreed upon are charged in advance and unless otherwise agreed as follows:

- where one-time payments are agreed: Upfront upon purchase or
- where revolving monthly, quarterly, or yearly lump sum payments are agreed: Upfront upon start of each billing period.

A.4.5 Yearly service prices shall be paid annually in advance.

A.4.6 The service charge for Fujitsu hardware and software support services, which are purchased from a Fujitsu sales partner, shall be paid in advance to Fujitsu or the sales partner who sold or brokered the Fujitsu service product as a one-time flat rate upon purchase and independent of any subsequent activation.

A.4.7 The flat-rate list prices of Fujitsu for hardware and software support services (one-time payment and recurring charges) shall be considered as a payment for all those services which are explicitly described as a mandatory/regular service component in the corresponding service data sheet and/or any applicable product specific technical appendix (not including optional services).

A.4.8 Fujitsu reserves the right to charge separately any deliveries and service performance exceeding the previously agreed scope of deliveries and services, if used or requested by Customer, based on the prices as set out in the then current price list for such additional products or services (or if there is no list price available for the particular product or service on a material and expenditure incurred basis). This holds true, in particular, for training and instruction efforts or other additional works and services which are or become necessary or are otherwise requested by Customer as a consequence of Customer's use of services, programs or hardware not approved by or agreed with FUJITSU or Customer's operation outside the instructions of the corresponding user manuals of the respective manufacturer or Customer or third party induced damages.

A.4.9 Insofar as no lump-sum prices are agreed, FUJITSU shall calculate its services on the basis of the accrued service hours (including travel times as well as waiting times) according to its list prices valid at the time of the performance or as otherwise agreed. If hourly or daily rates are used for the calculation, each hour of work or each day of work started shall be calculated proportionately. In case of billing based on hourly rates any started hour will be billed at half the hourly rate if the accrued service time is <30min and at the full hourly rate if the accrued time is > 30min. In case of billing based on daily rates any started day will be billed

at half the daily rate if the accrued service time is <4h and at the full daily rate if the accrued service time is > 4h. The services provided shall be invoiced against FUJITSU proof of performance records.

A.4.10 Unless explicitly included in a lump sum, the Customer shall reimburse additional costs e.g. costs which are incurred for any necessary or Customer-requested travel activities or any necessary overnight accommodation. Prior to starting the travel activities, the parties shall agree on details, such as dates or the means of travel (car, train, airplane). The following costs are to be reimbursed by Customer in any event:

- Travel times  
Travel times are considered as service hours and are charged at the agreed hourly rates
- Car  
According to Fujitsu's then current list price as applicable at the time of the travel
- Rail:  
Second class ticket
- Airplane:  
Economy Class ticket
- Overnight accommodation and meals per diem:  
Overnight stays are invoiced on the basis of actual expenditure (booking in accordance with Fujitsu Travel Policy). The calculation of the meals per diem is based on the respective valid Fujitsu rates.

A.4.11 All invoices shall become due for payment 14 days after delivery and invoice date. If Services are invoiced in arrears, payment shall become due 14 days after invoice date and receipt of the performance reports. The Customer shall be deemed in default of payment without further notice from FUJITSU, if and insofar payment is not made within 14 calendar days following due date and receipt of the respective invoice and, if required, the performance report. Performance reports shall be deemed approved if and insofar as the Customer fails to file its objections in writing within seven days of receipt of the report. This also applies if the Customer has received a performance report but did not sign it. Customer is obliged to substantiate his objections in due time. FUJITSU may issue invoices separately for each separate delivery item i.e. FUJITSU is entitled to issue invoices for different project steps (e.g. hardware, software, installation, training).

A.4.12 In case of delayed payments FUJITSU is entitled to additional payment of default interest of nine (9) percentage points above the base rate of the European Central Bank (published on the following link: <http://www.ecb.de>) without prejudice to any other remedies.

A.4.13 In the event that Fujitsu's general flat-rate list prices for hardware, software or services are increased in order to compensate for any increases in personnel expenses, supplier prices or other costs, Fujitsu may accordingly increase the prices for any hardware, software or services for which payment has not yet become due, if and insofar as the respective delivery elements are affected by the above cited cost increase.

A.4.14 As far as recurring payments are provided for services subject of this part of the contract, Fujitsu is allowed to adjust the remuneration once within a period of 12 months with 3 months prior written notice, however not earlier than 12 months after commencement of the Agreement. If the increase exceeds 10 %, the Customer is entitled within one month after receiving the notice on the increase, to terminate the contract with legal effect as of the effective date of the increased remuneration.

A.4.15 The Customer shall only be entitled to offset claims or exercise any right of retention in connection with counterclaims that have become *res judicata* or are not contested by Fujitsu.

## **A.5 Modifications and Change Request Process**

A.5.1 In case of the performance of development works, customizations, recurring deliveries or other continuing obligations by Fujitsu, modifications to the technical or functional specifications of customized products or software, including additions to the customized products or software, as well as any requests for a change or addition related to development work, service processes and/or the scope of service, may be requested by the Customer and/or recommended by Fujitsu at all times under the following change request process:

A.5.2 The requesting/recommending party shall inform the contact person of the other party in writing of any requests/recommendations for a change or addition in association with the technical or functional specifications of customized products or software, the service processes and/or the scope of service.

A.5.3 FUJITSU shall provide an implementation offer for requests for such changes or additions and will notify the Customer in writing of the expected consequences of any requested or recommended modifications or changes on the price, the delivery date(s), service processes and/or the service performance, including SLA's, unless this is unreasonable for FUJITSU. An implementation request will be deemed unreasonable in particular if the operation of FUJITSU should not be configured for the performance of the change as requested.

A.5.4 FUJITSU may interrupt the works and services affected by the change/addition requests until a decision is taken as to their implementation. The time limits for completion shall be extended by the number of workdays on which the interruption continues to exist. FUJITSU can demand an increase to the agreed lump sum remuneration for the duration of the interruption unless FUJITSU was able to otherwise employ the capacities which were planned for the provision of work and services or has maliciously omitted to do so.

A.5.5 FUJITSU is not obliged to fulfill the Customer's change and addition requests unless a change/addition contract is mutually agreed.

## **A.6 Delay in Delivery**

A.6.1 Delivery dates shall only be binding for FUJITSU if such dates have been expressly confirmed by FUJITSU in writing.

A.6.2 If FUJITSU is liable for delay in deliveries/performance, and the Customer can substantiate that he incurred damages as a result, the Customer shall be entitled to claim liquidated damages as follows:

In case of delays in connection with the delivery of hardware or software equipment or spare parts, the liquidated damages shall for each full week of delay be 0.5 % up to an aggregate maximum of 5 % of the purchase price for those products delivered late. In case of delays in connection with services the terms of the agreed SLA's shall exclusively apply.

A.6.3 FUJITSU shall not be liable for delays due to force majeure, in particular mobilization, war, situations of civil unrest, terror, general shortages in product and materials or similar circumstances such as strikes and lockouts.

A.6.4 All further claims arising out of or in connection with delayed deliveries or out of or in connection with a lapse of a reasonable extension granted by Customer shall be excluded, unless otherwise provided for by **clause A.12.1 (Limitation of Liability)** of these Terms and Conditions. The above conditions are not meant to change the burden of proof to the detriment of the Customer. The Customer's rights to cancel any purchase order following the lapse of a reasonable extension granted by Customer shall remain unaffected.

## **A.7 Retention of Title**

A.7.1 Title to products is retained by FUJITSU until the purchase price of the products is fully paid and all claims accruing to FUJITSU against the Customer in connection with the business relationship are settled (retention of title). Such retention of title shall also apply to the accepted balance, as far as any accounts receivable towards the Customer are allocated to current accounts by FUJITSU (current account reservation). The following terms and conditions shall apply for hard- and software (hereinafter called "Reserved Products").

A.7.2 If the Reserved Products are combined or inter-mixed with other products not belonging to FUJITSU, FUJITSU shall acquire a co-ownership interest in the new object in proportion to the value of the Reserved Products to the products not belonging to FUJITSU.

A.7.3 During the period in which FUJITSU still retains title in the Reserved Products any resale of the Reserved Products is only permitted to resellers in the ordinary course of their business and under the provision that the Customer receives concurrent payment of the purchase price from his customer or the title in the products is reserved in favor of the Customer until his customer has fully performed his obligations with regard to payment of the products.

A.7.4 With regard to a resale of the reserved products, the Customer hereby assigns to FUJITSU for security purposes as of now any and all claims arising out of the future resale of the products. Subject to revocation, the Customer shall however remain entitled to invoice and collect the assigned claims, arising out of the resale of these products. The right to invoice and collect the assigned claims may only be revoked for important reason including but not limited to delayed payment, suspension of payment, insolvency proceedings, protest

or dishonoring of a bill of exchange or other well founded evidence indicating the Customer's inability to pay his debts. Upon prior notice indicating to the Customer the disclosure of the assignment for security respectively the realization of the assigned accounts receivables, FUJITSU may - after a reasonable period of time - disclose the assignment for security to the Customer's customers, realize the assigned accounts receivables and/or require the Customer to disclose the assignment for security to his customers. Upon revocation of the entitlement to invoice and collect the assigned accounts receivables, the Customer shall without undue delay, provide FUJITSU with all information concerning the assigned accounts receivables respectively hand-over all documents required for their collection.

A.7.5 The reserved products may neither be pledged nor assigned by way of security. In case of seizures or other third party interventions the Customer shall immediately notify FUJITSU in writing.

A.7.6 If and whenever the value of the securities exceeds the accounts receivable of FUJITSU by more than 20%, FUJITSU will -upon request of the Customer - to that extent release securities, the choice of the securities being with FUJITSU. Upon payment in full of all accounts receivables secured by the assignment, the respective securities for FUJITSU shall expire.

A.7.7 In the event of a material breach of any contractual obligation of the Customer, including but not limited to delayed payment, FUJITSU shall be entitled to withdraw the reserved products. Neither the withdrawal as such nor any enforcement of the ownership rights resulting from the retention of title in general shall be deemed as cancellation of the purchase contract unless expressly stated otherwise by FUJITSU upon withdrawal.

A.7.8 If under applicable law the above retention of title is not effective, the Customer shall take any measures necessary to secure the property of FUJITSU or to procure equivalent security rights (e.g. letter of credit, bank guarantee) in the country of its place of business and in any country of destination and shall provide related evidence whenever requested by FUJITSU. Non-compliance with such obligation constitutes a fundamental breach of contract. FUJITSU shall not be obliged to deliver if equivalent security rights have not been provided by Customer before effectuation of delivery.

## **A.8 Conformity of Products/Services**

A.8.1 Products and Services are presumed to be conforming with contractual specifications, if the products or service results are fit for the purposes for which they were developed, produced or for which they are normally used/provided according to the product specification, service description and/or operation manuals and if they show the quality and performance that with a view to the specific product or service specification are common in the same type of product or services. Any deviations or defects that reduce the value of the product or the service results or their fitness for a specific purpose only insubstantially do not constitute a lack of conformity. Software shall only be considered as non-conforming, if there are deviations from the pro-

gram specifications defined in the product data sheet, the relevant error occurring in the last correction release supplied to the Customer. Unless agreed otherwise, the correct choice of product, the installation, the operability of a particular chosen combination or configuration and/or the specific use of the products by the Customer to achieve certain predetermined results is within the sole responsibility of the Customer. Instructions beyond installation- and operating manuals only form part of the deliverables, if and to the extent explicitly agreed. Public statements regarding the characteristics or the quality of the product are only deemed relevant for the agreed specifications, if such statements originate from Fujitsu or have been expressly approved in writing by Fujitsu, and only if and to the extent these statements relate to specific properties of the product, that actually were essential for the customer's specific purchase decision.

A.8.2 In case of warranty or maintenance services provided by Fujitsu, Fujitsu reserves the right to use either new or as good as new (refurbished) spare parts. Spare parts will be deemed conforming to specification if their functionality is at least on the same level as the defective parts, which were exchanged during the service assignment.

A.8.3 Unless expressly agreed, the products are not intended for a use requiring absolute reliability or uninterrupted high availability or where the failure or defect of the products could lead to death or serious bodily injury or to serious damage to tangible or intangible assets or the environment, e.g. in the operation of aircraft, human means of mass transport, nuclear or chemical plants. Unless conclusively described otherwise in the corresponding product specification when in doubt the IT security features and -IT security configuration options in the products shall comply with the state of technology generally established in the market at the time of the handover. Unless expressly agreed otherwise, the contractually agreed functionality extends exclusively to the application environment(s) expressly approved and released in accordance with the manufacturer's specification and only to the compatibilities approved by the manufacturer in accordance with the respective specification. A functionality of the products in other operating environments and/or a compatibility outside the manufacturer-approved compatibilities cannot be confirmed or committed with certainty. Any malfunctions resulting from such use of the product outside the approved environments/compatibilities therefore do not constitute a product defect vis-à-vis FUJITSU, unless a corresponding deviating compatibility or its development has been expressly agreed in writing with FUJITSU.

A.8.4 In case an operational service without implicit obligation to produce results (Dienstleistung) should not be performed according to specifications or not be performed at all and FUJITSU is responsible for such failure to perform/deficiency in performance, FUJITSU shall be obliged to re-perform such operational services within a reasonable term, provided that the Customer notifies FUJITSU of such failure to perform within two weeks after the performance of such service respectively in case of non-performance two weeks after the agreed performance date. The Customer's claims for

such re-performance of operational services shall be time barred 12 months after the scheduled performance date. If the service cannot be provided as per agreement within a reasonable additional period of time set by the Customer for reasons for which Fujitsu is responsible, the Customer shall be entitled to cancel the service concerned. This clause shall be deemed the exclusive remedy of the Customer with regards to deficiencies and omissions of services without implicit obligation to produce results. **Clause A.12. (Limitation of Liability)** shall apply accordingly

A.8.5 In case of lack of conformity of products or services with applicable specifications FUJITSU shall at first procure to repair or replace the respective products or re-perform the Services, the choice of the remedy being at the discretion of FUJITSU.

A.8.6 FUJITSU shall be entitled to withhold the rectification of a defect until payment of the part of the purchase price appropriate with regard to the defect. In case of replacement, the title in the defect good shall pass to FUJITSU, as soon as FUJITSU accepts the complaint. Additional costs and expenses deriving from installation and removal of product, impeded access or insufficient workspace or for return of the product to FUJITSU shall be borne by the Customer. Outside the territory of the European Union and the European Economic Area all transport costs for the replacement of products shall be borne by the Customer. If the Customer should receive faulty instructions for installation, it can only claim the delivery of faultless instructions, provided that the fault hinders a proper installation.

A.8.7 At FUJITSU's discretion software and firmware errors shall be remedied by providing a correction release of the software or by circumventing the error. The Customer shall supply FUJITSU with all necessary information and documentation to rectify the error. Pending implementation of a new correction release, FUJITSU shall provide an interim solution to circumvent the error unless this is impossible or disproportionate to FUJITSU. With regard to third-party products and components, the provision of such correction releases by Fujitsu is conditioned by a corresponding self-delivery to Fujitsu by the third-party manufacturer and a successful quality assurance check at Fujitsu. For application software supplied together with the products, please directly refer to the support websites of the respective software manufacturers, to receive the most current available patches and updates. If and to the extent FUJITSU should determine that FUJITSU or the respective third-party software manufacturer will require access either (i) to the faulty software at the customer's site or (ii) to the hardware at the customer's site on which this faulty software is running, to remedy the errors or malfunctions or provide workarounds, the customer shall be obliged to provide FUJITSU or the respective third-party software manufacturer with such access in an appropriate manner.

A.8.8 With respect to software, which has been extended via interfaces - released by FUJITSU for this purpose - the warranty shall cover the software up to, but not exceeding such interface.

A.8.9 All warranty obligations of FUJITSU shall exclude defects or damages directly attributable to normal

wear and tear, incorrect, negligent, or improper handling, improper storage, excessive load in particular loads not considered by the respective product or service specification, as well as defects or damages basing on operating errors not within the responsibility or the reasonable control of FUJITSU or any other specific external factors and non-reproducible software errors. All warranties shall also be excluded if the products are modified or repaired improperly by the Customer or a third party on the Customer's behalf unless Customer proves that such modifications or repairs were not the cause of the defect.

A.8.10 In case FUJITSU's examination of a product reported as being defect shows that no defect can be found or that the warranty for the defect found has been validly excluded under the terms of this Section A.8, FUJITSU shall be entitled to charge the Customer with the costs resulting from the accrued service hours (including travel times as well as waiting times) and material according to the FUJITSU price list applicable at the time the repair service is rendered.

A.8.11 Unless otherwise expressly agreed, service level information in FUJITSU's warranty documentation, service data sheets and/or in sales and marketing materials are average values (general situation) which FUJITSU regularly endeavors to adhere to as a target. However, the Customer will have no claim to compliance and adherence to such SLA in relation to any individual service incident /activity.

A.8.12 Used products are provided "as is" and without any warranty, except in cases of personal injury (injury to life, the body or health), gross negligence, willful misconduct and fraudulent behavior or product liability.

A.8.13 In the event of FUJITSU's persisting failure to remedy the lack of conformity within a reasonable time and in a reasonable manner the Customer shall have – after a written notification giving FUJITSU a reasonable grace period for a final attempt to remedy - the right to claim a price reduction equaling the reduced value of the faulty product/service or cancel the respective contract for the products or services in question.

A.8.14 The Customer's claims in connection with the conformity of products, works and services under contract or law shall be time barred (i) for hardware and software products: within 12 months from the date of delivery to the Customer (ii) for services without implicit obligation to produce results (Dienstleistung) 12 months from the date of performance and (iii) for works 12 months from the date of acceptance by the Customer.

A.8.15 Any and all further claims arising out of or in connection with non-conformity of products shall be excluded, unless otherwise provided for by **clause A.12 (Limitation of Liability)** of these Terms and Conditions.

## **A.9 Hardware Manufacturer Warranty**

A.9.1 FUJITSU or third party manufacturer guarantees as may be set out in product accompanying FUJITSU or third party warranty conditions coexist in parallel to the foregoing. Such warranty conditions will neither affect nor be affected by the provisions under the foregoing **clause A.8.(Conformity of Products/Services)**.

A.9.2 For Fujitsu hardware products the manufacturer's warranty terms applicable in addition to those provided in Sec. A.8 can be viewed and downloaded from the internet under the respective warranty link stated in the product accompanying documentation.

## A.10 Ownership in IP Rights

### A.10.1 IPR Ownership

- Copyrights, patents, and other intellectual property rights to objects made available to the Customer by FUJITSU or subcontractors of FUJITSU, in particular know-how, concepts, experiences, software programs, tools, documentation, process descriptions, service technologies, surveys and other work results (hereinafter "IP Rights") shall remain with FUJITSU or the respective right holder/owner.
- All IP Rights to objects provided by the Customer, in particular the Customer's own concepts, experiences, software programs, tools, documentation, and process descriptions, shall remain with the Customer or the respective right holder/owner.
- All IP Rights that can or will be exercised in respect of the products, regardless of the place and time of its generation, shall vest in Fujitsu or in Fujitsu's licensors. In the event of modification or improvement of the products, the IP Rights in respect of the modified or improved products shall vest in Fujitsu or in Fujitsu's licensors. Any IP Rights arising from the performance of this agreement will vest in Fujitsu, unless otherwise stipulated in the following provisions.

### A.10.2 Embodied work results

- Should any work/service result, generated within the framework of a project, lead to IP Rights, such rights shall vest in Fujitsu, except where corresponding work/service results were exclusively generated by employees of the Customer or third parties on behalf of the Customer (e.g. as part of any Customer contributions).
- Upon payment of remuneration in accordance with the contract and unless agreed otherwise, the work/service results embodied in the Fujitsu services or customized products may be used by the Customer only in the context of and solely for the purposes of this contract and must not be made accessible to any third parties outside the purpose of this contract. There will be no transfer of IP Rights to Customer under this contract, unless and only insofar as individually and expressly agreed with Customer in writing.
- Even in case of an expressly agreed transfer of IP Rights, FUJITSU shall remain entitled to free-of-charge shared use and any other use of its ideas, concepts, experiences, tools, program development components, technologies, surveys, and other work results that were used or developed during FUJITSU service provision to Customer.
- If both contractual parties have their part in generating the works/services results, the IP Right

shall be attributable to them, jointly in accordance with their respective share in the respective invention. With regard to their respective share in the invention the owners of such IP Rights shall grant a royalty free, non-exclusive and unlimited right of use to their contractual partner.

### A.10.3 Diagnostic material

- Fujitsu may – as necessary- provide Customer with diagnostic materials that may consist of and/or form part of diagnostic and test routines, programs, manuals, and documentation. Customer shall not require a separate license for its use of such diagnostic materials, on the understanding that Customer shall keep the facilities for Fujitsu as supportive tools for the provision of service by Fujitsu. Customer shall use the diagnostic materials solely in the way and for the purpose designated by Fujitsu. At reasonable times Customer shall allow Fujitsu to check the use of the diagnostic materials and shall allow Fujitsu to remove the diagnostic materials if Fujitsu deems such action necessary. Fujitsu shall have the right to take back the diagnostic materials at any time and in any way immediately after the end of a Fujitsu service for which they were used.

### A.10.4 FUJITSU Trademark/Copyright

- Customer shall abide by all instructions, requirements and directives received from FUJITSU with regard to the use of trademarks, copyrights, and any other property rights of FUJITSU or third parties.
- For software, the provisions under **Section C** shall apply additionally.

A.10.5 The unalienable rights of the parties or any third party to IP Rights shall not be affected by these terms.

## A.11 Liability for the Infringement of Protective Rights

A.11.1 If a third party enforces claims against the Customer for the infringement of IP Rights at the place of performance by using the goods/services provided by Fujitsu and if the use of the goods/services is impaired or forbidden in the country of the place of performance, Fujitsu shall be liable as follows until one year has expired after the start of the statutory limitations period:

Fujitsu shall at its discretion and expense either change or replace the goods/services in such a way that they shall not infringe the protective right, but nevertheless essentially conform to the agreed specifications, or release the Customer from paying license charges to the third party for the use of the goods/services or otherwise provide for a right of use for the Customer as required to meet the purpose of the agreement. If this is not possible for Fujitsu at reasonable terms and conditions, Fujitsu shall be obliged to withdraw the goods/services and refund the remuneration paid. Fujitsu may demand reasonable compensation from the Customer for the use of the goods/services.

A.11.2 The liability of Fujitsu according to clause A.11.1 shall be excluded, if the Customer does not meet the

following requirements: The Customer shall notify Fujitsu in writing without delay of any third-party claim for an infringement of protective rights, the claimed infringement shall not be acknowledged, and conducting any dispute including any out-of-court settlements shall only be in consultation with Fujitsu. The Customer shall be obliged to inform the third party concerned that the discontinuation of use of the goods/services does not imply any acknowledgement of any infringement of the protective right(s) if the Customer should decide to discontinue the use of the goods/services.

A.11.3 If the Customer himself is responsible for the infringement of protective rights, claims against Fujitsu according to this clause A.11 (Infringement of Protective Rights) shall be excluded. This also applies insofar as the infringement of protective rights is attributable to any particular specifications set by the Customer, has been caused by use which Fujitsu could not foresee or caused due to the Customer having altered the goods/services, or used together with goods/services not provided by Fujitsu.

A.11.4 Without prejudice to the provisions under **clause 12 (Liability of Fujitsu)**, any additional claims of the Customer due to an infringement of third-party protective rights shall be excluded. The right of the Customer to terminate the agreement with good cause shall not be affected.

## **A.12 Liability of Fujitsu**

A.12.1 FUJITSU shall be liable in accordance with the mandatory stipulations of applicable law in cases of

- negligently or intentionally caused personal injury (injury of life, body, or health),
- mandatory legal claims, in particular product liability (PrHG) or product safety law (PrSG),
- gross negligence, willful conduct, fraudulent misrepresentation,
- express written guarantees provided by Fujitsu with regard to specific properties of products or services, always limited however to damages that were directly caused by a lack of such specific properties, and
- whenever a limitation of liability is legally prohibited.

A.12.2 Notwithstanding anything to the foregoing, any liability of FUJITSU arising from a slightly negligent breach of contractual obligations shall be excluded.

A.12.3 Except for the cases provided under the preceding clauses A.12.1 and A.12.2, FUJITSU's liability arising from slight negligence for property damages shall be limited to a maximum sum of CHF 250,000 for each event of loss or damage.

A.12.4 FUJITSU shall not be liable for lost data unless it gave the Customer reason for a particular faith in this respect. FUJITSU shall not be liable for the recovery of lost data if the Customer fails to arrange for an adequate and efficient restoration of lost data. Any increase of damages resulting from the omission of a daily data backup shall be borne by the Customer. In the event of damage to data carrier material, any obli-

gation of FUJITSU for the payment of compensation shall not cover expenses for the recovery or replacement of lost data and information.

A.12.5 FUJITSU shall not be liable for any damages, including without limitation losses and/or expenses, of Customer resulting from third-party claims against the Customer for the infringement of IP Rights by using the goods/services of another manufacturer than FUJITSU provided by FUJITSU, particularly in the case of software products of another manufacturer than FUJITSU, unless FUJITSU knew or should have known that these IP Rights were infringed at the time of delivery of the goods/services to the Customer and that the infringement would cause the Customer to be exposed to the claims for the infringement of these IP Rights. In any case, unless other remedies or higher compensation are offered by the respective other manufacturer, any and all liability of FUJITSU for damages arising out of or in connection with the infringement of IP Rights by using such goods/services of the respective other manufacturer provided by FUJITSU is limited to the invoiced amount of these goods/services.

A.12.6 Any further liability of FUJITSU for damage claims shall be excluded, disregarding the cause of the claim (contractual agreement, negligence or faultless liability, equity, or other circumstances) and the type of damage (damage to or loss of other property or equipment; business interruption or lost revenue, profits, or sales; loss of information and data or for any special, incidental, punitive, indirect, or consequential damages and unavailing expenses). The above conditions are not meant to change the burden of proof to the detriment of the Customer.

A.12.7 The preceding exclusions and limitations of liability shall apply respectively in case of non-contractual liability and liability preceding a contract. As far as the liability of FUJITSU is limited or excluded according to these terms, the personal liability of employees and agents of FUJITSU shall also be limited resp. excluded. Such limitation and exclusion shall also apply to claims for reimbursement of expenses unless such claim cannot be excluded by law.

## **A.13 Force Majeure**

A.13.1 Neither contracting party shall be liable to the other for the non-performance or infringement of contractual obligations (with the exception of payment obligations) to the extent that such non-performance or infringement is due to force majeure. "Force majeure" means in particular wars, civil wars, disasters, acts of terror, epidemics, pandemics, quarantine, governmental action, labor disputes, fire, power outage, failure of telecommunication lines and external attacks on IT systems that cannot be prevented with technically and economically reasonable expense, using proven state-of-the-art technology. The affected party shall inform the other party of the Force Majeure event in writing without undue delay immediately after the occurrence of such event, stating the time of the occurrence and the anticipated impact on the party's ability to fulfill its contractual obligations.

A.13.2 During the time for which an event of Force Majeure persists, the party that is obliged to deliver or



perform shall be exempted from its obligation if and insofar as the delivery or the performance is impaired or affected by the Force Majeure event, provided the party has taken all reasonable measures to resume provision of the deliveries/performance and continually informs the other party of the circumstances on which the continuation of the obstacle to the deliveries/performance is based. If the resumption of the service is associated with additional costs to the party obliged to provide deliveries/performance, the parties shall come to an agreement as to the bearing of such costs before the deliveries/performance are resumed

#### **A.14 Export Control and Customs**

A.14.1 Activities in conjunction with this contract (e.g. delivery of hardware/distribution of software to Customer destination countries, technical services, providing access to customers IT infrastructure) may be subject to approval obligations, e.g. by reason of affected products, intended purpose or involved countries. It is the sole responsibility of the respective contractual partner to obtain such approvals who is obliged to do so according to the valid export control regulations of Switzerland, the Federal Republic of Germany, the European Union (EU), the United States of America (USA) or any other affected country. The parties agree to cooperate in providing information as necessary to obtain any required licenses and approvals on request.

A.14.2 In case the agreed service comprises support for Customer locations abroad, or in case the Customer allows access to software/technology in his IT infrastructure to FUJITSU subcontractors abroad, Customer confirms with its order resp. with its permission that the performance of the agreed services involving such locations abroad or such access, does not require export licenses and/or that if such licenses should be required, the customer has obtained any and all such export licenses.

A.14.3 Activities in conjunction with this contract may not be carried out if there are reasons for suspecting that they may be used in connection with chemical, biological, or nuclear weapons or for missile technology to be used for such weapons.

A.14.4 The contract parties shall comply with the corresponding sanction lists issued by Switzerland, the European Union, the German Federal Government, US export authorities or any other relevant country, e.g. European Sanctions List, Denied Persons List as well as any other valid advisory notices from the appropriate authorities as amended from time to time.

A.14.5 Shipments and services (the fulfilment of contract) shall be under the proviso that fulfilment is not being restricted by any national or international regulations, particularly export control regulations and embargoes or any other restrictions. Delays caused by export checks or licensing procedures shall override any lead times or deadlines stipulated. If any required licenses for certain items cannot be obtained, the contract shall be considered as not concluded regarding the items in question; because of this and of above mentioned transgression of deadlines, any claims for damages shall be excluded.

A.14.6 Whenever products are resold or otherwise disposed of, the Customer shall introduce reasonable checking measures for the prior assessment of its own customers relating to foreign trade and payments. Upon request the Customer will demonstrate such inspection measures to Fujitsu in detail. The Customer shall advise its own customers in writing about export regulations and agreements mentioned in this section. As far as products are destined for export the Customer is obliged to obtain all approvals and licenses if any, to comply with relevant export control regulations. If required to enable authorities or FUJITSU to conduct export control checks, Recipient, upon request by FUJITSU, shall promptly provide FUJITSU with all information pertaining to the particular end customer, the particular destination and the particular intended use of goods, works and services provided by FUJITSU, as well as any export control restrictions existing.

A.14.7 The parties acknowledge that correct customs clearance in connection with any cross border shipments is within responsibility of the respective contractual partner who has the obligation as per valid customs regulations of Switzerland, the Federal Republic of Germany, the European Union (EU) or any other affected country. If the parties under a specific order should agree that Fujitsu is to take care of customs clearance on behalf of the Customer or on behalf of a third party, Customer will provide any and all information and documents necessary for customs clearance (e.g. customs registration number/EORI-Number, power of attorney).

A.14.8 A breach of the provisions of this section shall be considered as a serious infringement of contractual obligations.

#### **A.15 Secrecy, Data Privacy, Suborders**

A.15.1 Each party shall use all the documents, information, and data it receives from the respective other party and which are marked as confidential solely for the performance of the contracted service. The receiving party shall treat the any such documents and information as confidential towards third parties who are not involved in the performance of the respective contract, except if any such documents and information are or become, without breach of this confidentiality undertaking, generally known, or in case of mandatory disclosure due to a binding order by a court or government authority or if the other party has approved the disclosure in advance. FUJITSU may use anonymized data pertaining to the Customer for evaluation, quality assurance and statistical purposes.

A.15.2 Each party shall comply with the applicable data protection laws. Information about the processing of personal data by FUJITSU as the controller in connection with the performance of contracts and the information to be provided according to Articles 13 and 14 GDPR is available at <http://www.fujitsu.com/de>, section "Informationspflichten" (Information Obligations). The Customer shall inform its personnel and other persons, who the Customer involves in the performance of the contract, accordingly.

A.15.3 If FUJITSU is processing personal data on behalf of the Customer as part of the performance of a contract, FUJITSU will be acting as a processor for the Customer.



tomer, who remains the controller in respect of such data processing. FUJITSU will only process the personal data on the documented instructions of the Customer or as otherwise required by applicable law. In the latter case, FUJITSU will inform the Customer of any such requirement before processing, unless the relevant law prohibits such information on important grounds of public interest. The Customer will be responsible for compliance with any legal requirements for a processing by FUJITSU on behalf of the Customer. Where necessary, FUJITSU and the customer will enter into a separate agreement in accordance with Article 28 (3) GDPR or in accordance with the applicable data protection laws. FUJITSU can provide respective standard contracts upon request. Details regarding the technical and organisational measures, which FUJITSU will apply as a minimum to maintain an appropriate level of protection for the processing of personal data, can be found at <http://www.fujitsu.com/de>, section "Informationspflichten" (Information Obligations)". The personnel of FUJITSU and its sub-contractors who are authorised to process personal data are bound by a confidentiality undertaking. Upon request and separate, reasonable compensation, FUJITSU will provide such assistance to the Customer in relation to requests from data subjects exercising their rights laid down in Chapter III of the GDPR or any other applicable data protection laws, and its obligations pursuant to Articles 32 to 36 GDPR, which FUJITSU is reasonably able to provide. FUJITSU will notify the customer without undue delay and in reasonable detail upon becoming aware of the occurrence of any personal data breach affecting the personal data processed on behalf of the Customer while in Fujitsu's possession or under its control. FUJITSU will, in relation to any such data security incident arising as a result of a breach of its obligations and of which it becomes aware, take reasonable steps to identify and correct the underlying cause of the data security incident so as to mitigate or exclude the risk of re-occurrence of similar data security incidents. FUJITSU will delete all processed personal data in its possession or under its control following the end of the provision of the relevant services unless agreed otherwise or to the extent storage is required by applicable law.

A.15.4 The customer generally agrees that FUJITSU may engage sub-contractors as sub-processors for the processing of personal data in accordance with Article 28 para. 4 GDPR or as required by applicable data protection laws. The customer further agrees that, subject to applicable data protection laws and suitable guarantees, such subcontractors may be located outside of the European Economic Area, for example in Eastern Europe or Asia Pacific (e.g. Japan or India). Information about sub-contractors engaged by FUJITSU is available at <http://www.fujitsu.com/de>, section "Informationspflichten" (Information Obligations); any intended changes concerning the addition or replacement of other sub-contractors will be published there as well.

A.15.5 The Customer will grant technical access to personal data in connection with remote services (clause D.5.3) to FUJITSU only if this is strictly required to perform the remote services. FUJITSU will not access personal data in connection with remote services unless this is strictly required to perform the remote service.

To the extent that access to personal data is strictly required to perform a remote service or if any problem or diagnostic data used by FUJITSU contains personal data, FUJITSU will access such data only for the purpose of providing the remote service and will not use it otherwise; in case of a separate agreement in accordance with Article 28 (3) GDPR FUJITSU will only act in accordance with the documented instructions of the Customer. Clauses A.15.3 and A.15.4 shall apply in addition.

A.15.6 The Customer remains responsible for any data stored on storage media returned to FUJITSU in connection with guaranty or warranty cases. Unless otherwise agreed in a particular case, FUJITSU will, on behalf of the Customer, either destroy the storage media or delete the data by applying a deletion process that complies with the recognized state of the art; clauses A.15.3 and A.15.4 shall apply in addition. Until deletion or destruction, FUJITSU will take all appropriate technical and organizational measures to protect the storage media against loss or unauthorized access.

A.15.7 FUJITSU shall commission, on a regular basis, a reasonable and appropriate audit, by an appropriately experienced and qualified auditor, of the technical and organisational measures that it has in place to protect its customers' data, including the personal data. Upon request, FUJITSU shall make available to the customer an appropriate summary of each report produced as a result of such an audit to the extent it relates to the processing of the customer's personal data. FUJITSU may redact or remove any information which is confidential to any other customer of FUJITSU or in which FUJITSU has another legitimate interest of confidentiality.

#### **A.16 Effective Date, Commencement Date for Services, Suspension and Termination**

A.16.1 The contract shall take effect upon the acceptance of the order by FUJITSU or as stated in the corresponding order confirmation or product/service schedules (hereafter Effective Date).

A.16.2 The commencement date of the service relating to the agreed equipment is the date of delivery or if installation service is ordered, the date of completion of installation or, in the case of previously installed equipment, the commencement date stated in the order confirmation or the corresponding service agreement (as applicable) The commencement date of the service relating to the software is the date of delivery of the software product or, if applicable, the date of acceptance or, in the case of previously delivered software, the commencement date stated in the order confirmation. In case of previously installed equipment or software additional precondition for the start of the services is, that the equipment/software is in "ready to service" condition, as to be verified and confirmed by Fujitsu in the hand over protocol to be signed prior to the start of service.

A.16.3 If and insofar as hardware appliances/software or solution products (Products) are provided, concluding a service contract for such Products starting with the date of purchase may either be a recommended or even a mandatory part of the bundled Products procurement. Details hereto are stated in the correspond-

ing product related data sheets and/or technical annexes for such Products which – unless stated otherwise – shall form an integral part of the overall contract between Fujitsu and the Customer. The service period for such recommended or mandatory services for Products shall always be deemed to start with the date of purchase of the corresponding Products – or – where delivery/installation by Fujitsu has been agreed at the time of the successful delivery/installation of the equipment (**Clauses B 5.5 and D.2**). In case the services (esp. recommended services) are procured at a later stage and/or for a later period, the service fees due for the period between the date of purchase of the Products and the scheduled service start date (period without service coverage) will have to be additionally paid, in spite of the fact that for this period no service coverage existed. The same shall apply for interim periods during which such services for the Products were cancelled or suspended, if and insofar such service is procured and taken up again at a later stage. In this case FUJITSU additionally reserves the right (i) to verify the serviceability of the specific Products, prior to accepting any such subsequent/renewed service responsibility and (ii) to charge additional fees for the resumption of services for the appliance/solution (reinstatement fees). All charges shall be made in accordance with the Fujitsu price list valid for the respective period in question.

A.16.4 If or insofar as the scope of deliverables extends to the performance of recurring deliveries or continuing obligations by Fujitsu (e.g. maintenance services) the contract shall continue for the minimum term as defined in the contract or service schedule. For the declared minimum term, the Customer's rights to a statutory termination are explicitly excluded, except as mandatory under applicable law. After end of the minimum period, the Contract may then be extended for an indefinite period of time and may then be terminated in writing by either party with three months' notice to the end of a calendar quarter. The latter shall also apply if and insofar as it was agreed from the beginning, that the Service will be provided for an indefinite period of time and no minimum term was agreed between the parties.

A.16.5 This shall not affect the right of both contracting parties to extraordinary termination of the contract for a compelling reason. A compelling reason for either party is in particular deemed to exist, if the terminating party, taking into account all the circumstances of the specific case and weighing the interests of both parties, cannot reasonably be expected to continue the contractual relationship until the agreed end or until the expiry of a notice period. If the compelling reason consists in the breach of a duty under the contract, the contract may be terminated only after the unsuccessful expiry of a remedying period of at least one month. Additionally FUJITSU has a right to extraordinary termination of the framework contract or any service schedule concluded thereunder for good cause in particular if the Customer (i) is in arrears for payment of the agreed remuneration or a substantial part thereof for two consecutive months or (ii) is in arrears for a period of more than two months for payment of remuneration amounting to a sum equivalent to the agreed remuneration for two months. A good cause for the extraordinary termination of this Contract shall also be deemed to exist

whenever the other parties' overall assets are being significantly compromised or significantly deteriorate or if insolvency proceedings are accepted with regard to the assets of the other party or the opening of insolvency proceedings is refused due to insufficiency of assets.

A.16.6 Termination of the agreement will not discharge the parties from their commitment to fulfill any obligations arisen prior to the termination, including the making of payments of which the due date has passed, or from their commitment to pay any amount due and payable as a result of the termination. Obligations which, by their nature, are intended to continue even after termination of the agreement will continue to exist after termination of the agreement.

A.16.7 Upon termination, the Customer will return to Fujitsu all of Fujitsu's property to which the Customer is no longer entitled under the contract. If the situation arises, the Customer will allow Fujitsu to access his premises in order to repossess and remove the property referred to above

#### **A.17 Assignment of Contractual Rights and Obligations, Ancillary Agreements, Place of Jurisdiction**

A.17.1 The Customer may only transfer or assign the contract or parts of it with the approval of FUJITSU, such approval however not being unreasonably withheld. If or insofar as the deliverables consist of the performance of recurring services dedicated to specific hardware or software equipment, any transfer or assignment of such service claims against Fujitsu may only take place in conjunction with the sale or other transfer of ownership of the corresponding hardware or software equipment entitled to the services in question.

A.17.2 Ancillary agreements, amendments and/or supplements shall require the written form, the requirement for a written form may itself only be waived by agreement between the parties in writing. The requirement of the written form can also be fulfilled by an electronic signature tool (e.g. with the DocuSign® solution), accepting that the verification of the electronic signature by a certification body or a third party is not necessary for its validity. Omitting such check of the electronic signature does not affect its validity. This regulation applies to the signing of the contract, acceptance declarations / protocols, notifications and also to changes or additions to this section. The provisions of this section on the written form do not apply to other unilateral declarations that require receipt, in particular terminations, warnings, and for cases in which the written form is required by law.

A.17.3 If and insofar as the scope of deliverables extends to the performance of recurring deliveries or continuing obligations by Fujitsu and the minimum service period has expired, Fujitsu is authorized at any time to unilaterally change these general terms and conditions with effect for future deliveries and service performance, as long as such changes are reasonable and universally applicable for all FUJITSU Customers under the new general terms and conditions. However, the Customer must be informed about such changes a reasonable time in advance electronically or in writing. If the Customer should not agree with the communi-

cated changes, he may object in writing to FUJITSU within 4 weeks from receipt of such information, otherwise the changes shall be deemed accepted by the Customer. In case of an objection from the Customer, the contract continues to apply in its original version until further agreement between Customer and FUJITSU on the changes and a change process will be started. If within 4 weeks from receipt of the objection by FUJITSU no agreement on the respective changes can be reached, both the Customer and FUJITSU are authorized to terminate the Contract wholly or partially within a termination period of two months from the receipt of the objection and with effect from the end of the 3rd month as of receipt of the objection. All claims that have arisen from this contract and prior to the termination remain unaffected by the termination of this contract.

A.17.4 If any specific provisions of this contract should turn out to be invalid, either in whole or in part, this shall

## **B. Hardware Deliveries**

**For the sale and delivery of hardware the general terms (A) as well as the following special terms for the sale and delivery of hardware (B) are applicable.**

### **B.1 Product Sale**

B.1.1 Customer shall purchase from Fujitsu and Fujitsu shall sell to Customer the hardware specified in the order confirmation in return for payment by Customer of the prices and charges stated therein and subject to the provisions made in these general terms and conditions.

B.1.2 The hardware is described in further detail in the relevant product data sheets and /or any agreed supplementary product specification(s). No other specification, description, publication or written or verbal undertaking forms part of the agreement or is deemed to be referred to in the agreement, unless parties have explicitly agreed otherwise in writing. If and insofar the hardware contains software, the conditions of sale regarding software set out below under Section C will also apply to such software and those conditions shall prevail in respect of the software in the event of irreconcilability with the conditions of sale for hardware.

### **B.2 Costs and payments**

Payments shall be made as set out in the order confirmation and in accordance with **clause A.4** of these general terms and conditions.

### **B.3 Transfer of Risk / Incoterm**

Unless otherwise agreed in writing, FUJITSU products shall be delivered according to Incoterms 2010 as follows: (i) within Switzerland DDP (named place of destination), (ii) cross-border deliveries within EU-member states CIP (named place of destination), (iii) cross-border deliveries to others but EU-member states CIP (named airport, harbor, or bonded warehouse). Fujitsu is authorized to make partial deliveries. The Customer must arrange for adequate insurance at his premises until payment in full.

not affect the validity of this contract, unless the continuation of this agreement would be an unreasonable hardship, even if the statutory regulations to be applied in compensation of the invalid contractual clauses were taken into account. In this case, the parties shall agree a new regulation of the issues concerned, which is both valid and comes as close as possible to the contents of the intended regulations originally agreed between the parties.

A.17.5 The contractual relationship between the parties shall be subject to Swiss law. The provisions laid down in the UN Convention on the International Sale of Goods dated April 11<sup>th</sup>, 1980 (CISG) and the provisions of conflict of laws shall be explicitly excluded.

A.17.6 The place of jurisdiction with regard to all disputes arising out of or in connection with this agreement is Zurich.

### **B.4 Arrangements/Contributions to be made by the Customer**

B.4.1 If and insofar as required, Fujitsu will provide the Customer with the information necessary to enable the Customer to make the necessary arrangements in his building for the delivery and/or installation of the hardware. The Customer will, at his expense and prior to the delivery and installation of the hardware, arrange for the installation of all necessary connection points and cabling, carry out refurbishment work, if necessary, and obtain any required permits for the installation of the hardware and its connection to the telecommunications system. If the Customer fails to meet these obligations, Fujitsu will be entitled to suspend the performance of its obligations under the agreement without further notice of default being required, until the Customer has contributed his share of cooperation duties to enable performance by Fujitsu.

### **B.5 Delivery and installation**

B.5.1 If installation services have been agreed as part of the Fujitsu obligations, Fujitsu shall install the hardware at the agreed location in return for payment by Customer of the prevailing installation charges of Fujitsu. Unless agreed otherwise, the installation will be carried out during Fujitsu's normal working hours, as applicable at the local Fujitsu country entity responsible for the national territory the delivery destination is in. Installation will be deemed successfully completed in accordance with the rules as set out in **clause A.16.2**.

B.5.2 Software sold with the hardware will be installed only, if and insofar as expressly agreed between the parties as part of the order. The relevant software documentation will be provided by FUJITSU on paper or on the same media as the software.

B.5.3 Insofar as FUJITSU is charged with the installation of hardware and/or software Customer is required to comprehensively inform Fujitsu about potential preconditions, assumptions or inhibiting factors as regards

the installation. To this end Fujitsu is also entitled to inspect the business premises and the IT environment in which the installation shall take place as reasonably required to find out about and evaluate potential pre-conditions, assumptions, or inhibiting factors for the installation. Unless agreed otherwise this activity will be charged in accordance with the then current Fujitsu price list based on time and material needed.

**B.5.4** If the installation of the Equipment is not carried out by Fujitsu, the Fujitsu obligations under the Contract shall be deemed fully complied with upon delivery of the hardware to the agreed Customer address. The Customer is obliged to take the delivery.

**B.5.5** Upon Fujitsu request the Customer will confirm receipt and/or installation of the hardware and/or software. If and to the extent the Customer does not confirm receipt the delivery and/or installation, the hardware and/or software will be deemed to have been delivered and installed in accordance with the agreement when the products have been put into operational use by Customer or on behalf of the Customer. The installation shall be deemed accepted if the Customer does not declare acceptance within four weeks after its completion and receipt of the notice of completion, except in case of a substantial fault.

## **C. Specific terms for Software for permanent use**

**For the provision of software for permanent use (license) the general terms (A) as well as the following special terms for software provision and licensing (C) are applicable. This applies both to software that is provided together with the hardware and to software that is provided without hardware.**

### **C.1 License Conditions**

**C.1.1** Software shall be supplied to Customer in object code only and on a suitable data carrier, via provision for download, or preinstalled on hardware-internal storage media, the choice of either being at the discretion of FUJITSU. Software documentation shall be provided by FUJITSU either in hardcopy form or in the same way as the software.

**C.1.2** Software licenses are provided by FUJITSU only insofar as explicitly stated in the product data sheet, the offer, or the corresponding FUJITSU order confirmation. Any other software licenses – even if a copy of such software should already be made available pre-installed on the corresponding hardware systems - will have to be procured separately by the Customer from the respective third party licensor.

**C.1.3** In case of licensing a sale of single user license FUJITSU grants the Customer a non-exclusive right to use the software on the hardware with which or for which - in accordance with the contract - the software has been supplied, provided that the hardware will not be modified. For software installed on a server and accessible to more than one workplace this software shall be licensed for nonexclusive use by the agreed number of users and subject to other restrictions indicated in the order confirmation or applicable product documentation or license terms. The above license of use shall extend only to those features authorized by FUJITSU or as authorized by the license terms accompanying the software. Any software must only be used within the limits indicated by the respective manufacturer of the software e.g. in the technical annexes and/or delivery-accompanying end user license agreements (EULA). Upon request, Fujitsu may also provide the Customer with these license terms and conditions before conclusion of the contract. The Customer is

obliged to accept and comply with the license terms of the respective software manufacturer. It is clarified that the end user license agreements of the software manufacturer apply directly between the Customer and the software manufacturer and that the rights and claims contractually granted to the Customer by FUJITSU are not restricted by this.

**C.1.4** FUJITSU is entitled to deliver the software, the software documentation and any and other documents in English.

**C.1.5** Unless otherwise agreed by the Parties in writing, the software will only be intended for use in the recipient country specified in the delivery address.

**C.1.6** If the Customer obtains updates or upgrades directly from the software manufacturer (such as by means of online download via the Internet), FUJITSU shall not be liable for any errors or defects in quality arising from this. The Customer shall be obliged to demonstrate that any error or defect found has not been caused by an update or upgrade acquired from the respective software manufacturer.

**C.1.7** Depending on the software product, Customers procuring server software licenses may be required to additionally acquire corresponding client access licenses for each of his client accessing a server. Where server software has been agreed as a network license, the number of clients concurrently accessing/using the server software must not exceed the maximum number of client access licenses agreed between the parties

**C.1.8** Depending on the software product, activation of the software by the Customer may be required in order to use the software. For activation purposes Customer will then have to enter personal and business information as required by and described in the installation routine. Following hardware changes may require a re-activation. If, according to the software documentation, activation of the software is to be carried out within a certain period of time, the Customer is obliged to comply with this period. Should no activation occur within such period, the software may be disabled for further use. In this case Customer will be able to unlock

the software by entering a valid activation code which can be procured either from FUJITSU or the third party licensor (as applicable) against proof of license entitlement.

C.1.9 Any rightful user of the software may produce one copy of the software (excluding embedded software and firmware etc.) for back-up and archiving purposes provided he reproduces all alphanumeric signs, trademarks, and copyright notices as it stands and keeps comprehensive records about the whereabouts of any and all of such copies, ensuring accessibility of such records for FUJITSU or the software manufacturer for review upon request. Otherwise the software must not be duplicated or reproduced neither by user or Customer nor by other third parties.

C.1.10 Neither Customer nor any third party is entitled or authorized in any way to modify, translate, or otherwise edit the software. This shall apply correspondingly with respect to such documentation that is not supplied in hard-copy form. Any reverse engineering, disassembling, or decompiling of the software is prohibited, unless this is exceptionally permitted under mandatory applicable law. However, in order to avoid such exceptionally permissible emergency reverse development, disassembly or decompilation measures, the Customer nevertheless undertakes in any case to first request the necessary information - entitling the Customer to reverse development, disassembly or decompilation - from FUJITSU or the respective third-party software manufacturer. Proprietary source codes are always to be regarded as trade secrets.

C.1.11 Depending on the respective software product and the selected license model, in particular in cases where Customer is granted only temporary right to use the software either for a defined period of time or indefinitely until revocation/termination, a resale or sub-licensing of software may be prohibited (conf. applicable product datasheet or technical annexes). Where permanent and irrevocable licenses have been granted, a resale of such software to other legal entities or third parties is permitted subject to the following conditions:

- Customer undertakes to suitably impose on the third party obligations substantially similar to the license scope and restrictions imposed on Customer under this **section C** or under applicable third party licensing or contractual terms as applicable.
- Customer ensures not to retain any copies including backup copies on his system.
- In no event shall Customer grant his customers any rights to the software beyond the scope of those, which he has been granted.

C.1.12 For firmware and middleware the above software license conditions shall apply accordingly, however such firmware and middleware may at all times only be used in conjunction with the corresponding hardware it was delivered with.

## C.2 Limitation of Liability for Shareware and Freeware

C.2.1 The software may contain freeware or shareware from a third party. Fujitsu paid no license fees for the use of this freeware or shareware. Against this background, the Customer will not be charged any license fees for the use of the freeware or shareware. The Customer recognizes and accepts that Fujitsu therefore grants no warranties with respect to such freeware or shareware components and does not assume any liability in connection with the ownership, the distribution and/or the use of the respective freeware or shareware. The Customers acknowledges and accepts such applicable Licenses for the use of shareware and freeware as provided by the copyright owner. Upon request, Fujitsu may also provide the Customer with these license terms and conditions before conclusion of the contract.

C.2.2 The Software may integrate open source software components that were developed according to the "open source model" and which are distributed exclusively on the basis of applicable open source software license terms and conditions ("Open Source Licenses"). Upon request, Fujitsu may also provide the Customer with these license terms and conditions before conclusion of the contract. The Customers acknowledges and accepts that such open source software components are governed exclusively by the applicable Open Source Licenses as provided by the copyright owner and shall abide by their terms in particular in respect of the provision of source code and the application and maintenance of mandatory copyright indications. Fujitsu receives neither license fees nor any other compensation for the delivered open source software components. As far as Fujitsu or a third party receives any compensation in connection with open source software components, it is received exclusively for additional delivery items and/or services. Because of the special nature of the development and distribution of open source software components, Fujitsu assumes no express or implied liability for such components and excludes any kind of warranty for such open source software components, particularly in connection with missing specifications, lack of functionality, programming errors or any other malfunctions. For the avoidance of doubt, Customer acknowledges and accepts that such software is based on open source software and that Fujitsu in particular disclaims any and all liability which may arise out of or in connection with that open source software background.

C.2.3 If open source software is incorporated in the particular software product and is necessary for its functioning (embedded software), the general warranty- and liability-terms (**clause A.8 and A.12**) shall apply. In any other case, FUJITSU shall not accept any liability for open source software.

C.2.4 The limitation of liability as stipulated in this Section C.2 shall not apply in case of explicit guarantees provided by FUJITSU or mandatory legal provisions, in particular mandatory product liability, personal injury (injury to life, the body or health), gross negligence, willful misconduct, and fraudulent behavior.

### C.3 Installation, Contributions to be made by the Customer

C.3.1 Software will be installed only, if and insofar as expressly agreed between the parties as part of the order. Unless otherwise agreed, the Customer shall be responsible for the installation of the software and to put the software into operation.

C.3.2 Insofar as FUJITSU is charged with the installation of software Customer is required to comprehensively inform Fujitsu about potential preconditions, assumptions or inhibiting factors as regards the installation. In this regard Fujitsu is also entitled to inspect the business premises and the IT environment in which the installation shall take place as reasonably required to find out about and evaluate potential preconditions, assumptions, or inhibiting factors for the installation. If and insofar as required, Fujitsu will provide the Customer with the information necessary to enable the Customer to make the necessary arrangements for the delivery and/or installation of the software. The Customer will, at his expense and prior to the delivery and installation of the software, arrange for the installation of all necessary connection points and cabling, carry

out refurbishment work, if necessary, and obtain any required permits for the installation of the software and its connection to the telecommunications system. If the Customer fails to meet these obligations, Fujitsu will be entitled to suspend the performance of its obligations under the agreement without further notice of default being required, until the Customer has contributed his share of cooperation duties to enable performance by Fujitsu. Unless agreed otherwise the installation service of FUJITSU will be charged in accordance with the then current Fujitsu price list based on time and material needed.

C.3.3 Upon FUJITSU's request, the Customer will confirm the installation of the software. If and to the extent the Customer does not confirm the installation, the software will be deemed to have been installed in accordance with the agreement when the software has been put into operational use by Customer or on behalf of the Customer. The installation shall also be deemed accepted if the Customer does not declare acceptance within four weeks after its completion and receipt of the notice of completion, except in case of a substantial fault.

## D. Hardware and Software Maintenance

For hardware and software maintenance services the general terms (A) as well as the following special terms for hardware and software maintenance (D) are applicable.

### D.1 Service and Service Delivery

D.1.1 The scope of Fujitsu hardware and software support services shall follow from the Fujitsu service data sheets, their technical appendices as well as any additional terms as applicable for the agreed service. The obligation to provide services shall be limited to the restoration of the functionality of the product at the time of the first delivery.

D.1.2 The following services shall not be part of any packaged support service offerings and Fujitsu reserves the right to separately and additionally charge any deliveries and services exceeding the previously agreed scope of delivery/services in accordance with the then current and applicable respective Fujitsu list prices:

- services requested by the Customer that are not included in the agreed scope of services,
- any installation, setup, moving, consulting, software engineering, and other support services requested by the Customer,
- diagnosis and elimination of faults or damage caused by improper handling or by any other circumstances for which Fujitsu is not answerable,
- the services that are provided at the request of the Customer outside the contractually agreed service times,

- first check and any repair work required when taking over the services of products already in use,
- first check and provision of software fixes/patches and -updates and/or any other updates, if necessary, when taking over the services of software products already in use.

D.1.3 Product errors and service incidents, occurring prior to activation or the closing of the agreement, do not fall within the scope of Fujitsu hardware and software support services even after activation or conclusion of the agreement. In such cases only the applicable product and country-specific manufacturer warranty terms shall apply (if any – see **clauses A.8 and A.9 Hardware Warranty**).

D.1.4 The services shall be provided by Fujitsu or - on behalf of Fujitsu - by an authorized service partner or Fujitsu Repair Center and within the service times as set out in the respective service data sheet or technical appendix. Fujitsu reserves the right to provide any remote support in English.

D.1.5 If and insofar as possible, the services shall be carried out using means of telecommunication (telephone, internet, remote service tools). If and where required, the necessary remote services infrastructure shall be made available at the premises of the Customer as set out in the product-specific service data sheet. Fujitsu reserves the right to decide if and in how far the services have to be performed on site.

D.1.6 The services shall not include the delivery and exchange of accessories (e.g. data media), wearing parts (e.g. rechargeable batteries, batteries, battery backup units (BBU), print heads, screen/picture tubes)

and other accessories. Unless explicitly agreed otherwise, the preventive maintenance measures usually to be carried out in regular intervals by the Customer as specified in the data sheet or operating instructions shall not be part of the services performed by Fujitsu.

D.1.7 The elimination of product errors and damages, which have been caused by improper handling, dirt, extreme environmental conditions (excess voltage, magnetic fields, etc.), act of God/Force Majeure (lightning, floods, war, etc.), use of force, Customer's own attempts at repairs or attempts at repairs by third parties, changes to the original product or other circumstances for which the Customer is liable, shall not be included in the scope of services. This shall also apply for product errors and damages, which have been caused by the fact that the object entitled to services was not used or installed according to the provisions of the corresponding product-specific documentation, in particular the safety regulations, instructions or operating instructions issued by Fujitsu, unless Fujitsu itself was contractually responsible for the performance of such (incompliant) installation or IT management services.

D.1.8 Fujitsu shall not provide support for any products or components of other manufacturers, unless such products or components were included in the delivery (scope) of the original product entitled to service and/or are explicitly included in the scope of services by the service description.

D.1.9 The spare parts and replacement devices used for repairs by Fujitsu during the service assignment are new or as good as new spare parts which are reconditioned or reassembled and functionally equivalent to new parts. Unless otherwise agreed, the faulty parts/devices removed from a product during a service case shall become the property of Fujitsu and are, inasmuch as they cannot be collected by Fujitsu during the service assignment, to be kept by the Customer for at least 60 days after the service assignment for testing purposes. If the Customer in conjunction with the service product acquired the right to retain the hard disk (option "HDD Retention"), the faulty hard disk -if replaced due to a proven malfunction/fault - shall remain with the Customer.

D.1.10 If and insofar as replacement or repair is normally carried out by Fujitsu involving the removal of the relevant hardware or part thereof from the Customer's premises (esp. mobile devices, swap pool concepts etc.) and the Customer should in such cases refuse to consent to such removal, Fujitsu will be entitled to pass on any additional costs for otherwise effecting the repair to the Customer. Furthermore Customer acknowledges that in case of such refusal Fujitsu may not be able to perform the contracted repair in accordance with the service contract. In such cases Fujitsu therefore will not be liable for any resulting delays nor for remaining in default with regard to the service provision.

## **D.2 Service Period, Dates**

D.2.1 Unless otherwise described in the respective service data sheets or otherwise agreed in a corre-

sponding service agreement, the term for Fujitsu hardware and software support services shall start at the time of the successful delivery/installation of the hardware (**clauses A.16 and B.5.5**). If no calendar-based deadline for the expiry of the service period has been agreed, the respective service agreement may be terminated by both parties with three months' notice to the end of a calendar month, at the earliest however to the end of the minimum contract period as may be determined or agreed in the respective service document.

D.2.2 If there is an option for renewal according to the service data sheet or the automatic renewal of the agreement is agreed, the agreement shall at the latest end with the end-of-service for the product entitled to services. Fujitsu shall inform the Customer of the product-specific end-of-service date in good time in advance.

D.2.3 The parties' right to terminate the service agreement for good cause shall not be affected hereby.

## **D.3 Supplementary Service Terms Governing Software Support Service-Agreements**

D.3.1 No software support within the framework of hardware service products:

Within the framework of hardware service products the services for the software products supplied with the hardware (if included in the delivery scope) is restricted to the exchange of physically defective or non-functional data media (diskettes, CDs, DVDs, tapes) during the first three months as of delivery/purchase date. Driver and firmware updates that are available from Fujitsu can also be downloaded via the internet addresses specified in the documentation or are provided for the equipment on a product-specific basis at the discretion of Fujitsu. As regards customers without a corresponding hardware support contract for the hardware, Fujitsu reserves the right to provide certain firmware updates enhancing the functionality of the hardware or incorporating new technologies only against additional remuneration.

D.3.2 Scope of software support within the framework of software service products:

The service obligation relating to software shall exclusively cover the software version specified in the respective service document, or a new version of such software taken over by the Customer, and - within such version - shall exclusively cover the latest patches and updates taken over by the Customer, unless otherwise described in the service data sheet or the respective technical appendix. Fujitsu shall provide its services for older versions and patches and updates exclusively on the basis of Fujitsu's or the software manufacturers' valid release policy relating to the respective software (as applicable).

D.3.3 The specific scope of the software support services owed shall be as set out in the service data sheet for the software product entitled to services, including the software-specific technical appendix current at the time of the closing of the Contract.



D.3.4 A service incident within the meaning of these terms and conditions shall exist if deviations from the program specification defined in the software product data sheet occur in the software product entitled to support services. To the extent that the Customer has extended the software beyond the interfaces determined in the release notice for this purpose, Fujitsu's obligation to provide services shall be limited to providing support services up to the interface. The obligation to provide services shall not extend to the remedying of non-reproducible software errors.

D.3.5 Customer acknowledges and agrees that unless expressly agreed otherwise software support under these software support terms shall in no event include the interrupt-free or error-free functioning of the software, individual application programming services, IT consulting, installation, performance enhancement, system optimization, the provision of drivers for peripheral units or the backup and recovery of Customer data or software.

D.3.6 With regard to software or software components not acquired through Fujitsu, but which are nevertheless part of the service agreement as specified in the service document, the Customer shall notify Fujitsu of the scope of his rights to use and, if necessary, about the scope of the processing rights of the Customer with regard to the software specified in the relevant agreement. Customer shall ensure at all times, that the license rights necessary for Fujitsu to provide its services have been acquired from the respective licensor. Fujitsu shall be exempt from its duty to perform the agreed support services for the software as long as and to the extent that Fujitsu is prevented from providing its services, due to the Customer lacking the necessary license rights.

D.3.7 In order to eliminate occurring incidents Fujitsu shall at all times be entitled to ask the Customer to use any available patches, update or program improvements and/or new versions of the software program on an error independent basis. This shall particularly apply if a software manufacturer no longer supplies patches or updates for a specific release version that has been agreed with the Customer or the manufacturer announces the "end of life" for the release or version used by the Customer. The Customer shall be obliged to take over any new software versions, provided that the scope of functions as agreed and used by the Customer is maintained and provided that it is not unreasonable for the Customer to take over the new software version. If the taking-over of such an upgrade or such a new version is not included in the original scope of service, the Customer shall be obliged to bear any further or increased license and service charges that may possibly be associated with the upgrade or the new version. If the Customer refuses to do so, Fujitsu shall be entitled to terminate the software support contract with good cause.

D.3.8 If the Customer is unable due to the software error to process tasks and if the processing of such tasks cannot be postponed until the new patches and updates are made available, Fujitsu shall provide an interim solution in order to perform a workaround of

the error, provided that this is possible with reasonable time and effort. If workarounds of the errors cannot be created with reasonable effort, or if such workarounds are not available, particularly in the case of software products from third parties, Fujitsu shall promptly endeavor to obtain a program fix from the manufacturer of the respective software, to the extent that this is reasonably possible.

D.3.9 The installation of the program fixes or patches and updates delivered shall be carried out by the Customer, unless stipulated otherwise in the agreement. If the patches, updates, upgrades, or new versions delivered as part of service delivery require modifications or extensions to the underlying hardware infrastructure for technical reasons, the Customer shall be obliged to procure the necessary hardware at his own expense. If the Customer refuses to do so, Fujitsu shall be entitled to terminate the service agreement with good cause if the maintenance of the service for the previous release version were to be associated with unreasonable expenditure or costs for Fujitsu. Any additional costs resulting from the perpetuation of an outdated release of the software shall be borne by the Customer.

D.3.10 If and insofar the Customer receives fixes, patches or updates for a firmware or software product, the provisions of the underlying license agreement for the software product shall be applicable also for such fix's patches or updates. As to the Customer's entitlement to receive such fixes/patches and/or updates as part of the software services and free of charge, clause D.6.2 below shall apply.

D.3.11 All program fixes, patches and updates delivered as part of the software support services shall, where appropriate, have been submitted to a current anti-virus program at a reasonable time prior to delivery to the Customer. Apart from this, Fujitsu's liability for viruses or any other detrimental software elements shall be excluded, unless Fujitsu has introduced them on the respective data media, patches and updates or program fixes intentionally or carelessly through active action on Fujitsu's part.

D.3.12 The Customer's entitlement with regard to the services shall lapse if and to the extent that the Customer does not use the software entitled to services and as specified in the system agreement or the offer within the agreed system environment, or if the Customer uses such software contrary to the relevant rights of use as stipulated in the system agreement. Apart from this, the Customer shall not be entitled to the provision of the services if and to the extent that the Customer has modified the software, or the software has been changed by any third parties not authorized by Fujitsu, unless the Customer is able to demonstrate by means of a test run of the unmodified software product that the modification is not directly attributable to the error which has occurred.

#### **D.4 Supplementary Terms Governing Solution Infrastructure Support Services**

D.4.1 The proactive services named within the framework of the solution infrastructure support services are

preventive support services for the early advance detection of any system faults to the system entitled to services. In this connection, Fujitsu shall merely owe the performance of the proactive service expressly described in the corresponding service data sheet or a corresponding statement of work, however the general responsibility for current and uninterrupted system operations shall remain with the Customer at all times. Beyond the obligation to eliminate occurring incidents in accordance with the provisions of the service data sheet or any additional service description, Fujitsu shall not assume any responsibility for any damage in conjunction with downtimes suffered by the system entitled to the services, despite the preventive support services.

D.4.2 Unless otherwise described in the respective service data sheet or the technical appendix, the service obligation shall not include any support in the form of product development, application programming, IT consulting, installation, performance enhancement, system optimization or the backup and recovery of Customer data or software.

#### **D.5 Duties to Cooperate, Cooperation in a Service Case**

D.5.1 The proper provision of the services by Fujitsu and/or its service partners or Repair Center is subject to the proper fulfillment of the duties to cooperate by the Customer as defined in the service data sheets, the technical appendices, these terms and conditions and any other applicable contractual documents. If and to the extent that the Customer fails to fulfill his duties to cooperate despite the reasonableness of the duty to cooperate concerned, Fujitsu shall be relieved from the provision of its services for as long as the Customer fails to fulfill his duty to cooperate. The Customer shall compensate Fujitsu for any additional costs or damage caused by the Customer's failure to comply with his duty to cooperate. Any additional services required in this context on the part of Fujitsu shall be charged according to the then current Fujitsu standard conditions and prices. Fujitsu shall be entitled to terminate the agreement for cause and without further notice in cases where the Customer has committed a significant or repeated breach of his duties to cooperate.

D.5.2 Cooperation duties of the Customer as part of the services under these terms and conditions are in particular:

- The Customer shall name a competent employee to Fujitsu, who can provide the Customer information required to implement this agreement and either take or quickly bring about contract related technical, commercial, and legal decisions of the Customer.
- The Customer shall report any occurring faults and errors without delay. During error elimination the Customer shall observe any advice and instructions received from Fujitsu employees. Furthermore, the Customer shall - to the extent that this is reasonable - take measures to facilitate the diagnosis of any error including the causes

for such errors and to reduce the need for any reruns for the purpose of determining the error in question.

- The Customer shall make the necessary documents, information or data required for service delivery available to Fujitsu and/or its service partners. This duty to cooperate shall particularly cover notification in good time and without delay of the ID/serial number of the contracted hardware and software products. Notification of the ID/serial number or another unique means of product identification shall be a mandatory prerequisite for the delivery of the agreed services.
- If and insofar as required for specific service delivery, the Customer shall ensure free access to the installation/operating location of the devices or software products entitled to services as well the space required to carry out repairs at the installation location. The Customer shall also ensure that the technical installations (in particular, telephone and power connections) required to carry out maintenance services are made available in good working order at Customer's own expense and to an appropriate extent. In case of on-site technical support, the Customer must ensure that the working environment for Fujitsu technical staff and Fujitsu subcontractors complies with all applicable occupational health and safety regulations (e.g. legally required oxygen concentration, acceptable sound levels, ergonomically correct workplaces, etc.).
- Prior to each service assignment, especially before parts or devices are replaced, the Customer shall be obliged to back up any programs and data and to remove any data media, changes, and add-ons. The correct data backup shall comprise all technical and/or organizational measures that enable the rapid and inexpensive recovery of the systems, data, software products and/or procedures after occurrence of any impairment to the operating state of the hardware.
- The Customer shall proactively inform Fujitsu of any relevant system changes, extensions or changes to interfaces or installation resp. device locations.
- After a successful on-site service assignment the Customer shall be obliged to countersign a service report for the service engineer. The Customer shall note any objections and complaints in conjunction with incorrect elimination and/or non-elimination of errors in writing on the service report or address written notification to Fujitsu immediately after ascertaining the error concerned. Any and all objections and complaints of Customer as regards a specific service activity from Fujitsu shall be time barred after a period of 1 (one) year as of the date of the respective Fujitsu service activity.

#### **D.5.3 Duties to Cooperate, Coordination within the Framework of Remote Services**

- If the services as set out in the respective service data sheet are provided wholly or partially via remote maintenance/remote access (remote services), the Customer shall - in addition to the required telecommunication and Internet connections (including the provision of functioning browser software) - be obliged to accept and implement the installation of a standard software utility program for remote access (remote access tool) to be provided by Fujitsu, as well as to ensure its functioning for the duration of the service agreement. Depending on the remote access tool used, a temporary download of respective software elements may be sufficient. The property rights to the respective remote access tool shall remain with the respective owner at all times.
- During the installation or downloading of the respective remote access tool the Customer shall be requested to accept the software license agreement of the respective software manufacturer and the corresponding data privacy regulations that are attached to the installation routine or download procedure. Fujitsu shall provide the Customer with the appropriate regulations any time upon request. The use of the respective remote access tool shall also be subject to the terms and conditions of this contract. If and to the extent that the Customer does not accept the appropriate regulations of the software licensor, neither the installation/download of the remote access tool nor the associated remote service delivery by Fujitsu will be technically possible. Any resulting service restrictions, in particular breaches of the agreed service levels due to the Customer's refusal to allow remote access, shall not be the responsibility of Fujitsu and any additional service costs resulting thereof shall be borne by the Customer.
- Fujitsu support engineers shall obtain remote access to the Customers' computer for the problem elimination with the aid of the respective remote access tool. The use of this remote access tool for problem elimination by support engineers shall include the analysis of the Customer's system configuration, the displaying and processing of the Customer's files, registration, the displaying of the Customer's screen as well as the displaying of comments on the Customer's screen and assuming control of the Customer's system. If and to the extent that the Customer has not actively granted permanent approval for remote access by Fujitsu as part of the configuration of the remote access tool, new active approval of remote access shall be required from the Customer for every remote access session. The Customer can end the session at any time by means of the input function provided in the operating guide of the respective remote access tool.
- Fujitsu shall collect, administer, process, and use the diagnosis data, as well as any technical or

use-related information associated with the service assignment. This particularly includes device information about the computer being accessed, the system software and software programs used as well as the connected peripheral devices. Fujitsu shall be entitled to collect, save, process, and use this information for the provision of software updates, product support, product information and other services (if available) as well as anonymously for the further development, simplification, or improvement of products and/or services. In connection with the remote access tool it is not intended to otherwise access personal data or collect such data. Any inadvertently collected or displayed personal data shall be handled in compliance with the statutory regulations regarding data privacy and Fujitsu's data privacy guideline. Transportation of data between the Customer system and Fujitsu shall be in encrypted form. Remote access sessions may be monitored or recorded by Fujitsu for quality assurance purposes.

- It shall be for the Customer to restrict the access to its data by implementation of an adequate authorization scheme admitting technicians of Fujitsu to see only such data and information required for the performance of their respective services
- Fujitsu engineers may be located and access Customer system from outside the European Economic Area (EEA) and the Customer agrees to the installation or download of the remote access tools so that Fujitsu may export, use, and save any personal data affected by the use of the remote service and other information, with which the Customer can be identified outside the EEA, for the provision of the Fujitsu remote services and any other connected Fujitsu products and services.
- Activation of third-party providers / Fujitsu service partners for remote tool use:

As a result of a supplementary agreement with the Customer or with the Customer's approval the remote service tool can also be activated for the delivery of remote services by designated third-party providers which are not subcontractors of Fujitsu or for Fujitsu's service partners. However, in the case of third-party providers Fujitsu will only provide the remote service infrastructure. Unless otherwise agreed explicitly and in writing, the Customer alone shall therefore bear the risk of illicit or incorrect use of the remote access right by such a third-party provider that is associated with activation. Liability of Fujitsu for service activities and/or another action or omission on the part of the activated third-party provider shall be excluded unless the action or omission of the corresponding third-party provider is based on an order from Fujitsu.

## D.6 Third Party Product Maintenance (TPM) / Cost of Service Related to Third Party Products

D.6.1 Fujitsu services for third party products are limited to those third party products which are expressly mentioned in the data sheet or the individually agreed statement of work. Where product specific deviations in service scope, special requirements and/or additional cooperation duties of Customer apply, such supplementary deviations and requirements shall be as set out in the respective technical appendix for the specific third party product or as individually agreed corresponding in the statement of work.

D.6.2 Software update and maintenance services only include the provision of patches, updates, and upgrades, which are offered and recommended on a cost-neutral basis by the respective manufacturer for the purposes of an elimination of software defects, (e.g. certain free microcode updates, firmware updates, error patches, bug fixes, etc.) Chargeable updates/upgrades, which would signify a service extension, and which have not explicitly (and in writing) been included in the specific scope of services will have to either be contributed by the Customer via the appropriate third party manufacturer contracts or will be procured by Fujitsu on behalf of the Customer at the Customer's cost based on the corresponding list prices for such licenses/services.

D.6.3 Should access to manufacturer specific information on third party products outside the scope of the FUJITSU services be required by Fujitsu to perform its Services, such information is to be provided and contributed by Customer at Customer's own costs.

D.6.4 In case of third party products being incorporated into the scope of the Fujitsu Services or services being taken over from a previous service provider it is a precondition that:

- a comprehensive and correct asset inventory on such third party hardware has been communicated to Fujitsu by Customer including information on remaining third party manufacturer warranty
- all incidents having occurred up to the start date for the Fujitsu services, have been comprehensively resolved by the third party manufacturer or the former service provider

- up to the start date for the Fujitsu services a valid maintenance service contract existed for the corresponding third party products and all the current patches, updates and upgrades were uploaded to the corresponding system.
- for systems still under third party manufacturer warranty, service incidents will be resolved based on the corresponding contractual relationship between the Customer and the respective third party manufacturer. Upon request and against a handling fee to be agreed, Fujitsu will handle such direct contractual relationship with the third party manufacturer as single point of contact on behalf and at the expense of the Customer. In these cases Customer will provide to Fujitsu any and all information required for such third party service handling. In no event will Fujitsu directly take over any of the Customer's third party warranty/maintenance service contracts neither via assignment nor otherwise.

D.6.5 Supplementary services which might be required to bring the products up to date and in line with the above prerequisites for enabling the start of the Fujitsu services, shall be separately aligned and agreed with the Customer and be performed and remunerated based on a separate ancillary project order.

D.6.6 In case of an increase of product, spares or maintenance costs related to third party products (hardware or software) due to changes in the third party manufacturer pricing policies, Fujitsu will be entitled to increase its charges to the Customer proportionally, provided that Fujitsu notifies Customer of such increase a reasonable time in advance.

D.6.7 In the event, that a third party manufacturer should declare the "End of Service Life" (EoSL) for a specific third party manufacturer product within the scope of Fujitsu's services or ceases to support certain IT/OS environments of the Customer which are subject to Fujitsu's services, the obligation of Fujitsu to provide the Services will correspondingly cease at the same date. Fujitsu shall inform Customer of such End of Service Life (EoSL) date a reasonable time in advance. However independent of such information, Fujitsu's obligation to provide the services shall cease at such EoSL date without any further formal termination notice being required.

## E. Further Service- and Works-Contracts

For further service- and works-contracts (projects) the general terms (A) as well as the following special terms (E) are applicable. Subject of such "further service- and works-contracts" are services like consulting, planning, installation, organization, and programming works.

### E.1 Scope of Services/Performance

E.1.1 The specific scope of works and/or services will be comprehensively and conclusively determined in

writing in the Fujitsu order confirmation, the service schedule, the corresponding service product data sheet and/or a mutually agreed statement of work (if any).

E.1.2 Unless agreed otherwise FUJITSU will render the agreed services during local regular business hours, as applicable at the local Fujitsu entity performing the corresponding works or services.

E.1.3 Customer shall remain responsible for the overall project and for the integration of the Fujitsu works and services and their results into the overall project.

## **E.2 Deployment of Fujitsu personnel for the provision of services**

E.2.1 Fujitsu will provide the services with reasonable care.

E.2.2 The parties shall each nominate a central contact person to coordinate the provision of services under the contract. The Customer shall direct requests concerning the works and services to be provided exclusively to the contact person nominated by FUJITSU and shall refrain from giving any direct instructions to FUJITSU employees.

E.2.3 Customer acknowledges and agrees that FUJITSU is free to deploy, direct and control its staff at its own reasonable discretion. This particularly applies to the selection of the specific employees, orders regarding working hours and overtime, the setting of holidays, attendance supervision and monitoring of work processes.

E.2.4 Depending on the individual scope of the agreement, FUJITSU may also decide to provide the agreed services at the Customer's premises, insofar as this is required for the provision of the services. However, even in such cases the employees of FUJITSU shall not be deemed to directly or indirectly enter a working relationship with the Customer. The Customer shall direct requests concerning the services that are to be provided exclusively to the contact nominated by FUJITSU and shall give no instructions to FUJITSU employees.

E.2.5 Customer shall compensate FUJITSU for all costs incurred by FUJITSU or a subcontractor of FUJITSU out of or in connection with an alleged or effective legal transfer of employees/employment contracts following a transfer of business under applicable law from the Customer or any preceding service provider of the Customer to FUJITSU or any FUJITSU subcontractor. Customer's obligation to compensate includes both (i) any and all claims of employees, accrued in or linked to periods prior to the transfer date, if and insofar as FUJITSU should be held liable for such claims under applicable law, as well as (ii) any and all costs incurred by FUJITSU and/or the relevant subcontractor as of the transfer date, in particular related to costs for the continuation and/or the effective termination and including any and all related lawyers and litigation fees. FUJITSU shall be obliged to reject the respective claims of employees regarding the transfer of their employment contracts and must not employ these employees in its operations and shall procure that its subcontractors shall act in the same way. As far as FUJITSU should fail to meet this obligation, Customer's obligation to compensation shall be limited to any and all claims of employees, accrued in or linked to periods prior to the transfer date. Customer is exempted from the obligation to compensate FUJITSU under this clause, if and insofar as the parties have separately agreed in writing on the transfer of employees/employment contracts and the corresponding allocation of related costs.

## **E.3 Change Request for Changes in Works and Services**

Any and all changes to the agreed works and services which have not already been included as optional or alternative services in the service schedule, the corresponding data sheet and/or any mutually agreed statement of work, shall be subject to approval within the framework of the change request process as set out in section A 5 (Change Request Process).

## **E.4 Notification on Changes in IT Environment**

E.4.1 The Customer has to notify Fujitsu in advance and in writing concerning all planned alterations or supplements of his hardware or software environment which are potentially apt to affect the contracted performance of works and services by Fujitsu.

E.4.2 Any and all disadvantages resulting from Customer's implementation of such alterations or supplements in his IT environment without consultation and alignment with Fujitsu, in particular impairments to the security and/or the efficiency of the business operation due to a mismatch of the new IT environment with the agreed work results shall be exclusively attributable to the Customer. Fujitsu shall be entitled to terminate the contract for cause and without further notice, if rendering of services or works by Fujitsu is significantly complicated or impaired by alterations or supplements of the hardware and the Customer, despite prior warning, does not restore contractual conditions within a reasonable time from notice.

## **E.5 Proof of Performance Report for Services**

E.5.1 If the services are provided on the basis of service hours spent and/or materials delivered, the service is deemed completed when Fujitsu has provided the agreed services and has delivered the materials as deemed appropriate by Fujitsu for performing the agreed services. Fujitsu will provide Customer with a proof of performance report stating the man hours spent and the materials delivered.

E.5.2 If and insofar as a formal acceptance has neither been agreed nor is required under applicable law, the satisfactory contractual conclusion of the service shall be confirmed by the Customer signing the service report (proof of performance) without undue delay following FUJITSU's performance of the agreed services or service elements.

E.5.3 Despite the absence of the Customer's signature the service report (proof of performance) shall be deemed approved, if the Customer does not make any substantiated objections in writing within one calendar week after receipt of the report.

## **E.6 Acceptance, Acceptance Protocol for Works**

E.6.1 If and insofar as a formal acceptance is either agreed or otherwise required under applicable law, the parties agree to handle such acceptance in accordance with the procedure as set out in sections E.6.2 to E.6.8.

E.6.2 After the due performance of works by Fujitsu, Fujitsu will perform a functionality test directly following completion of the work. If the test runs without

significant restrictions of functionality, Customer shall accept the agreed work results within the agreed period of time for acceptance or, where no such time has been agreed, without undue delay, however, in any case no later than one calendar week after FUJITSU has given notification of completion and handed over the work result(s) to the Customer by means of a handover/acceptance protocol. (Acceptance Period)

E.6.3 The same is applicable if the Customer himself is responsible for the final functionality/acceptance test, which Customer is obliged to perform and complete without undue delay (no later than seven days after completion and handover of the works by Fujitsu), provided that the work results meet the agreed acceptance criteria without material shortcomings or – in absence of any such specifically agreed acceptance criteria – meet the average results as may be reasonably expected between the parties based on the scope of work and the remuneration agreed in the corresponding statement of work without material restrictions.

E.6.4 FUJITSU may demand partial acceptance for those parts of the service that are individually separable and have been completed independently. In any case the services shall be deemed accepted if:

- the Customer confirms compliance with contractual agreements or the agreed acceptance criteria, or
- the Customer does not notify FUJITSU of any material or major deficiencies in writing during the Acceptance Period, or
- the Customer puts the work results to use at the end of the Acceptance Period without reservation.

E.6.5 Any and all deficiencies/errors found during acceptance shall be recorded in the acceptance protocol.

E.6.6 If the deficiencies/errors in question are material, FUJITSU shall - after the elimination of these deficiencies - re-provide the relevant work to Customer in order to continue the acceptance process.

E.6.7 If the defects are not material, the Customer shall - in spite of such minor defects - be obliged to accept the work results upon handover and FUJITSU's accompanying note of completion. If the Customer fails to accept such work results, although no material defect is found and recorded in the acceptance protocol, the work results provided by FUJITSU shall be deemed accepted by Customer latest four weeks after handover and FUJITSU's accompanying note of completion. Independently of such acceptance FUJITSU shall procure to eliminate these defects free of charge and within a reasonable period of time.

E.6.8 As regards the customers' remedies in connection with the non-conformity of the work results with the agreed specification or statement of work after customers' acceptance of the work results, **clause A.8 (Conformity of Products)** of these terms and conditions shall apply accordingly. FUJITSU however excludes all warranties and remedies for its work results in connection

with any changes made to the work by the Customer or a third party after acceptance.

## E.7 Customer's Obligations

E.7.1 In the context of the works and services to be provided by Fujitsu under the terms of this agreement, the Customer will:

- grant Fujitsu full and free access to all relevant information, hardware and software;
- nominate contact persons with expert knowledge of the matter and make any required resources available to Fujitsu and shall provide any information, assistance and facilities Fujitsu may reasonably require supporting its service performance.
- if and to the extent necessary, provide Fujitsu, with suitable workspace and facilities, and with safe storage space for the service equipment, spare parts and manuals;
- keep the most recent versions of the software as used by the Customer available for Fujitsu;
- agree to and/or take care of temporary disconnection of any equipment and/or software not delivered by Fujitsu and/or not maintained by Fujitsu, should this be necessary in the reasonable opinion of Fujitsu to make a diagnosis;
- if requested by Fujitsu, set out clearly how the hardware and software are used;
- at his own expense provide Fujitsu with the telecommunication facilities and other facilities which Fujitsu may reasonably require for diagnostic and test purposes.

## E.8 Remote Access

E.8.1 Where technically possible Fujitsu may choose at its reasonable discretion to provide "Further Works and Services" also via Remote Access. For the provision of services by Fujitsu within the framework of remote services the following rules shall apply.

- Both operative services as well as proactive and reactive system maintenance services may be provided by Fujitsu, wholly or partially, via remote access (Remote Services). The regulations in **clause D.5.3 (Remote Services)** shall apply accordingly also for such operative services and proactive maintenance services, with the special modifying provision that (i) the respective remote access tool is already pre-installed and preconfigured on the Fujitsu hardware equipment used for service delivery and that (ii) for the purpose of providing the agreed services, Customer grants to Fujitsu and the subcontractors as deployed by Fujitsu a permanent approval for remote access to the contracted systems and the systems used for service delivery.
- In this context the Customer commits to honor the terms of the software license agreement on which the remote access tool is based as well as any resulting use restrictions and the correspond-

ing data protection regulations of the respective software manufacturer. Upon Customer request, these terms and conditions shall be made available to the Customer separately in electronic form or in writing.

- As regards such operational and proactive maintenance services the approval and granting of remote access in favor of Fujitsu and its sub-contractors is an indispensable prerequisite for providing the contractually agreed service delivery. Unless agreed otherwise, Customer approval of such remote access shall end with the cessation or expiry of the underlying service contract and the corresponding delivery obligations of Fujitsu there under. Customer acknowledges and agrees that if and insofar as approval for remote access is revoked by Customer or remote access is interrupted due to circumstances for which Fujitsu is not responsible, Fujitsu shall not be liable for the non-performance or improper performance of any contractual obligations. If and to the extent that the Customer is responsible for the revocation or interruption of remote access, the obligation of the Customer to pay the agreed remuneration shall continue to exist.

#### **E.9 Prices, Recurring Payments.**

E.9.1 Unless otherwise agreed in a corresponding project contract, the Customer will remunerate Fujitsu for the works and services provided under this section E based on service hour and material rates as agreed or as set out in the applicable Fujitsu price lists.

E.9.2 In case a lump sum payment is agreed, FUJITSU shall invoice the Customer for the agreed lump sum remuneration as follows:

- a) in the case of orders with a value of up to CHF 10'000.-: after complete performance or customer's acceptance of the service,
- b) in the case of orders with a value of more than CHF 10'000.- and a service period of up to 3 months: 1/3 of the order value upon conclusion of the agreement and the rest after complete performance or customer's acceptance of the service,
- c) in the case of orders with a value of more than Euro 10'000.- and a service period of more than 3 months: 30% of the remuneration upon conclusion of the agreement, 30% of the remuneration at the end of the first third of the planned service period, 30% of the remuneration at the end of the second third of the planned service period and the rest after complete performance or customer's acceptance of the service.

E.9.3 The costs for parts, components, media, consumables, and other deliveries must be compensated separately by the Customer in accordance with the

then current Fujitsu handling fees and/or prices for such parts, components, media, consumables, and other deliveries. The same shall apply for compensation of travel times as well as accommodation expenses of Fujitsu which shall be reimbursed by Customer in accordance with **clause A.4.10** and the then current Fujitsu policies and guidelines on the compensation of travel expenses. This shall not apply, if and to the extent that such expenses have been included in the lump sum pricing for the services explicitly and in writing.

E.9.4 In addition **clause A.4. (Prices, Payment terms and conditions)** shall apply accordingly for the provision of further works and services under this Section E. Unless another billing period has been agreed in the specific project agreement, invoices for the works and services provided under this Section E are issued monthly in arrears.

#### **E.10 Minimum Term of Contract, Termination**

E.10.1 The contract based on these terms and conditions shall take effect as of the date stated in the Fujitsu offer or the agreed service schedule (hereafter Effective Date).

E.10.2 If and insofar any fixed minimum term has been agreed, the Customer's rights to a statutory termination are explicitly excluded during such minimum period, except for his mandatory rights of termination for good cause. Otherwise, the Customer may terminate any contract for further services or works with a notice period of one month. In this case and as far as a work performance has been agreed on, Fujitsu is entitled to the agreed consideration minus such costs which are not incurred by Fujitsu due to the termination of the contract.

E.10.3 In case any provision of hardware or software is part of the agreed works or services, the Customer will be obliged to pay the following cancellation charges to Fujitsu:

- The entire amount for the hardware and software already delivered, plus a sum equal to 75% of the amount Fujitsu would have received for the delivery of the remaining part of the hardware and/or software, had the cancellation not taken place;
- In the event that Fujitsu keeps hardware and/or software in stock for the Customer or has ordered hardware and/or software for the Customer from a third party which order cannot be cancelled, the sales value of the hardware and/or software concerned at the time of cancellation.

E.10.4 To be valid, any notice of termination for cause must be given in writing and within a reasonable period of time after obtaining knowledge of the cause for termination.



## **F. Special conditions for Software for time-limited use**

The General Terms and Conditions (A), insofar as applicable to rental agreements, as well as the following special terms (F) shall apply to the provision of software for time-limited use (rental). This applies both to software provided together with hardware and to software provided without hardware.

### **F.1 Subject matter of the contract, rights of use and obligations of the customer**

F.1.1 Software shall be made available to the customer only as object code and - depending on the agreement - either on a suitable data carrier, for downloading or pre-installed on hardware-internal storage media. Software documentation shall be provided by FUJITSU either in hardcopy form or in the same way as the software. FUJITSU shall be entitled to supply the software and software documentation and other documentation in English.

F.1.2 The software will only be provided by FUJITSU insofar as this is expressly stated in the product data sheet (or, in the case of third-party software, in the product specifications of the respective third-party manufacturer) or the offer or the corresponding order confirmation of FUJITSU. Further software licenses must be procured by the Customer itself from the relevant third-party licensor, even if a copy of this software is already provided by pre-installation on the relevant hardware systems.

F.1.3 The Customer's rights to use the software are defined in the respective end user license agreements (EULA) of the software manufacturer and are limited in time to the contract term agreed between Fujitsu and the Customer. Upon request, these license terms can also be provided to the Customer by Fujitsu prior to conclusion of the contract. The Customer is obliged to accept and comply with the license terms of the respective software manufacturer. It is clarified that the end user license agreements of the software manufacturer apply directly between the Customer and the software manufacturer and that the rights and claims contractually granted to the Customer by FUJITSU are not restricted by this.

F.1.4 With regard to the scope of use, conditions of use and system requirements, the specifications from the product data sheet and the technical appendices (or, in the case of third-party software, the product specifications of the respective third-party manufacturer) and other contractual documents must be complied with in addition to the license terms of the software manufacturer. Unless otherwise agreed in writing between the parties, the software is only intended for use in the recipient country resulting from the delivery address.

F.1.5 Depending on the software product, activation of the software by the Customer may be required in order to use the software. For activation purposes, the Customer must then enter the personal and business information requested and described in the installation routine. After hardware changes, reactivation of the software may be required. If, according to the software documentation, activation of the software is to be car-

ried out within a certain period of time, the Customer is obliged to comply with this period. If the activation is not carried out within this period, the software may be blocked for further use. In this case, the Customer may unlock the software by entering a valid activation code provided by FUJITSU or the software manufacturer against proof of license authorisation.

F.1.6 Any rightful user of the software may produce one copy of the software (excluding embedded software and firmware etc.) for back-up and archiving purposes provided that he reproduces all alphanumeric signs, trademarks, and copyright notices as it stands and keeps comprehensive records about the whereabouts of any and all of such copies, ensuring accessibility of such records for FUJITSU or the software manufacturer for review upon request. Otherwise the software must not be duplicated or reproduced neither by user or Customer nor by other third parties.

F.1.7 Neither Customer nor any third party is entitled or authorized to modify, translate or otherwise edit the software. This applies accordingly to the associated documentation that is not supplied in hardcopy form. Any reverse engineering, disassembling or decompiling of the software is prohibited, unless this is exceptionally permitted under mandatory applicable law. However, in order to avoid such exceptionally permissible emergency reverse development, disassembly or decompilation measures, the Customer nevertheless undertakes in any case to first request the necessary information - entitling the Customer to reverse development, disassembly or decompilation - from FUJITSU or the respective third-party software manufacturer. Proprietary source codes are always to be regarded as trade secrets.

F.1.8 Depending on the particular software product, redistribution and sublicensing of the software may be forbidden (see the relevant product data sheet or technical appendices or license terms of the software manufacturer).

### **F.2 Shareware Freeware and Open Source Software**

F.2.1 The software may contain freeware or shareware from third parties. FUJITSU has not paid any license fees for the inclusion of such freeware or shareware and accordingly no license fees will be charged to the Customer for the use of such freeware or shareware. The Customer acknowledges and accepts that FUJITSU therefore assumes no warranty obligation with respect to such freeware or shareware components and assumes no liability obligations of any kind in connection with the Licensee's possession, distribution and/or use of the respective freeware or shareware. The Customer acknowledges and accepts the license terms for the use of the freeware or shareware as provided by the copyright owner. Upon request, Fujitsu may also provide the Customer with these license terms and conditions prior to the conclusion of the contract.

F.2.2 The software may also contain open source software components which have been developed according to the "open source model" and which are distributed exclusively on the basis of the respective applicable open source software license terms valid at

the time of transfer of the corresponding open source software component. Upon request, Fujitsu may also provide the Customer with these license terms and conditions prior to the conclusion of the contract. The Customer acknowledges and accepts that such open source software components are governed exclusively by the applicable Open Source Licenses as provided by the copyright owner and shall abide by their terms in particular in respect of the provision of source code and the application and maintenance of mandatory copyright indications. FUJITSU shall receive neither license fees nor other remuneration for the provision of the open source software components. As far as FUJITSU or a third party receives any compensation in connection with open source software components, it is received exclusively for additional delivery items and/or services. Due to the special nature of the software development and distribution of open source components, Fujitsu assumes no express or implied liability for such components and excludes any kind of warranty for such open source software components, particularly in connection with missing specifications, lack of functionality, programming errors or any other malfunctions. For the avoidance of doubt, Customer acknowledges and accepts that such software is based on open source software and that Fujitsu in particular disclaims any and all liability which may arise out of or in connection with that open source software background.

F.2.3 If open source software is incorporated in the particular software product and is necessary for its functioning (embedded software), the general warranty- and liability-terms (**clause F.5 and A.12**) shall apply. In any other case, FUJITSU shall not accept any liability for open source software.

F.2.4 The limitation of warranty and liability as stipulated in this Section F.2 shall not apply in case of explicit guarantees provided by FUJITSU or, mandatory legal provisions, in particular mandatory product liability, personal injury (injury to life, the body or health), gross negligence, willful misconduct and fraudulent behavior.

### **F.3 Installation, Contributions to be made by the Customer**

F.3.1 Software will be installed only, if and insofar as expressly agreed between the parties as part of the order. Unless otherwise agreed, the Customer shall be responsible for the installation of the software and to put the software into operation.

F.3.2 Insofar as FUJITSU is charged with the installation of software Customer is required to comprehensively inform Fujitsu about potential preconditions, assumptions or inhibiting factors as regards the installation. In this regard Fujitsu is also entitled to inspect the business premises and the IT environment in which the installation shall take place as reasonably required to find out about and evaluate potential preconditions, assumptions or inhibiting factors for the installation. If and insofar as required, Fujitsu will provide the Customer with the information necessary to enable the Customer to make the necessary arrangements for the delivery and/or installation of the software. The Customer will, at his expense and prior to the delivery and installation of the software, arrange for the installation

of all necessary connection points and cabling, carry out refurbishment work, if necessary, and obtain any required permits for the installation of the software and its connection to the telecommunications system. If the Customer fails to meet these obligations, Fujitsu will be entitled to suspend the performance of its obligations under the agreement without further notice of default being required, until the Customer has contributed his share of cooperation duties to enable performance by Fujitsu. Unless agreed otherwise the installation service of FUJITSU will be charged in accordance with the then current Fujitsu price list based on time and material needed.

F.3.3 Upon FUJITSU's request, the Customer will confirm the installation of the software. If and to the extent the Customer does not confirm the installation, the software will be deemed to have been installed in accordance with the agreement when the software has been put into operational use by Customer or on behalf of the Customer. The installation shall also be deemed accepted if the Customer does not declare acceptance within four weeks after its completion and receipt of the notice of completion, except in case of a substantial fault.

### **F.4 Rent**

F.4.1 The rent includes the remuneration for the provision of the software for contractual use and its maintenance in a condition in accordance with the contract. Further services are to be remunerated separately.

F.4.2 The rents take into account the taxes and other levies applicable at the time of the conclusion of the contract. Insofar as the assessment under tax or duty law by the administration, the tax and duty law (e.g. with regard to VAT) or the relevant administrative practice changes in this respect after this point in time, a corresponding adjustment of the rents may be demanded by the Customer or FUJITSU.

F.4.3 Unless otherwise agreed, the rent for the entire rental period shall be paid in advance and at the latest at the beginning of the rental period.

F.4.4 If the parties have agreed on monthly payment, the rent shall - unless otherwise agreed - be paid monthly in advance, at the latest on the last working day before the beginning of the respective new month. If the rent starts in the course of a calendar month, the agreed rent shall be paid at the start of the rent for the remainder of the current calendar month in the amount of 1/30 of the agreed monthly rent per day. From the first day of the following month, the monthly rent shall be paid in full monthly in advance, at the latest on the last working day before the beginning of the respective new month.

F.4.5 Independent of the payment modalities, the Customer acknowledges the total debt over the complete rental period in the amount as recorded in the sense of a legal title ("Rechtsöffnungstitel").

F.4.6 In all other respects, the provisions under **clause A.4** shall apply.

## F.5 Conformity of the software

F.5.1 FUJITSU warrants in accordance with the provisions under **clause F.5.6** that the software has the contractually agreed quality and that this quality will be maintained during the term of the contract. The software shall only be deemed to be not in conformity with the contract if there are deviations from the program specifications or technical data stipulated in the product data sheet or offer or in the corresponding order confirmation of FUJITSU and the use of the software in conformity with the contract is not only insignificantly impaired thereby. Unless agreed otherwise, the correct choice of product, the installation, the operability of a particular chosen combination or configuration and/or the specific use of the products by the Customer to achieve certain predetermined results is within the sole responsibility of the Customer. Instructions beyond installation- and operating manuals only form part of the deliverables, if and to the extent explicitly agreed. Public statements regarding the characteristics or the quality of the software are only deemed relevant for the agreed specifications, if such statements originate from Fujitsu or have been expressly approved in writing by Fujitsu, and only if and to the extent these statements relate to specific properties of the software, that actually were essential for the customer's specific decision to use this specific Software.

F.5.2 For the avoidance of doubt, FUJITSU clarifies that all characteristics expressly mentioned in the contractual documents (e.g. in the performance characteristics mentioned in the product data sheets) merely represent a product description; they expressly do NOT constitute a quality guarantee within the meaning of the statutory regulations.

F.5.3 Unless expressly agreed, the software is not intended for any use that requires absolute reliability or uninterrupted high availability or where the failure or defect of the products could lead to death or serious bodily injury or to serious damage to tangible or intangible assets or the environment, e.g. in the operation of aircraft, human means of mass transport, nuclear or chemical plants. Unless conclusively described otherwise in the corresponding product specification when in doubt the IT security features and -IT security configuration options in the products shall comply with the state of technology generally established in the market at the time of the handover. Unless expressly agreed otherwise, the contractually agreed functionality extends exclusively to the application environment(s) expressly approved and released in accordance with the manufacturer's specification and only to the compatibilities approved by the manufacturer in accordance with the respective specification. A functionality of the products in other operating environments and/or a compatibility outside the manufacturer-approved compatibilities cannot be confirmed or committed with certainty; Any malfunctions resulting from such use of the product outside the approved environments/compatibilities therefore do not constitute a product defect vis-à-vis FUJITSU, unless a corresponding deviating compatibility or its development has been expressly agreed in writing with FUJITSU.

F.5.4 The Customer shall carefully examine the software immediately after handing it over and notify FUJITSU immediately in writing of any obvious defects with a precise description of the problem and the information useful for rectifying the defect (notice of defect). If the Customer has not immediately notified FUJITSU of obvious defects after the software has been provided, the software shall be deemed to have been approved as free of defects at the time of provision.

F.5.5 The Customer shall notify FUJITSU in writing of non-obvious and subsequently occurring defects immediately after their occurrence with a precise description of the problem and the information useful for the elimination of the defect. The Customer shall take the necessary measures within the bounds of what is reasonable to facilitate the determination of the faults and their causes and to shorten repeat runs for fault determination.

F.5.6 Defects shall be remedied at the discretion of FUJITSU either by rectification free of charge or by replacement delivery. For the purpose of checking and remedying defects, the Customer shall allow Fujitsu remote access to the software. The IT infrastructure required for remote access at the Customer's premises (e.g. Internet connection) is not part of this agreement, unless otherwise agreed. Unless otherwise agreed, defect testing and removal shall be carried out within the framework of the contractual provisions applicable to software maintenance in accordance with **Section D** and may also be carried out by subcontractors of FUJITSU. FUJITSU shall not be responsible for backing up the data on the Customer's systems and the data processed or created with the software unless this is expressly agreed otherwise. If and to the extent that the software maintenance is carried out by the software manufacturer, the provisions in **Section D** shall not apply, but the respective terms and conditions of the software manufacturer shall apply.

F.5.7 Subject to the mandatory legal provisions, the Customer may not enforce a rent reduction directly by deducting it from the agreed rent. Corresponding claims for enrichment or damages remain unaffected.

F.5.8 For software which has been extended by FUJITSU or the Customer by means of interfaces which FUJITSU has released for this purpose, the warranty extends only to the software including the interface, but not beyond it.

F.5.9 FUJITSU shall not be liable for defects or damage directly attributable to incorrect, negligent or improper use, or use not provided for in the relevant product specification, or defects or damage caused by operating errors or other external factors not within the responsibility or control of FUJITSU. Furthermore, any warranty is also excluded if the products are improperly modified or repaired by the Customer or by a third party on his behalf, unless the Customer can prove that the modifications or repairs in question did not cause the defect.

F.5.10 Further claims of the Customer other than those expressly mentioned, in particular claims for damages and reimbursement of expenses, are excluded, unless liability is mandatory according to **clause A.12 (Liability**

by FUJITSU). The Customer's right to terminate for convenience shall be excluded unless the remedy of the defect is deemed to have failed. This is the case if the removal of the defect is impossible if Fujitsu refuses or unreasonably delays the removal of the defect or if the removal of the defect is unreasonable for the Customer for other reasons.

#### **F.6 Contract term and termination**

F.6.1 Unless otherwise agreed, the term of the contract shall commence on the day the software is provided to the Customer or on the day the Customer receives the license key. If and insofar as a minimum term has been agreed, early ordinary termination during the minimum term is excluded. Mandatory legal provisions (e.g. the early return of the leased property within the meaning of Art. 264 of the Swiss Code of Obligations) shall remain reserved. Unless otherwise agreed, the contract shall end upon expiry of the agreed term without the need for a separate notice of termination.

F.6.2 Insofar as no contract term has been agreed, the respective contract shall run for an indefinite period and may be terminated in writing by either contracting party with a notice period of 3 (three) months to the end of a calendar month, either in its entirety or for individual software products.

F.6.3 The right of the Customer to terminate the contract in accordance with **clause F. 5.10** as well as the right of each contractual partner to extraordinary termination for good cause shall remain unaffected. In addition to the reasons listed under **clause A.16.5**, good cause on the part of FUJITSU exists in particular if the Customer violates the respective license terms of the

software manufacturer and the Customer has already been notified thereof with a reasonable grace period. Further claims of FUJITSU in this case shall remain unaffected. Art. 266k of the Swiss Code of Obligations shall be reserved.

#### **F.7 Return of the software**

F.7.1 Upon termination of the contract, the Customer shall cease all use of the software and, unless otherwise agreed, in consultation with FUJITSU (i) surrender all copies of the software to FUJITSU or (ii) delete the relevant software on all of the Customer's system units and (iii) clean up or destroy all data carriers existing at the Customer's premises for the respective software products as well as associated documentation and all copies made and confirm this via a software destruction declaration.

F.7.2 If the Customer fails to discontinue use of the software immediately after termination of the contract or to return or delete the software and to confirm this to FUJITSU via a software destruction declaration within one month after termination of the contract, the Customer shall be obliged, without prejudice to any further claims and rights to which FUJITSU is otherwise entitled, to pay the fees originally agreed for the provision for each month or part thereof of default with these obligations until use has been discontinued or the complete return of the software or the deletion of the software and submission of the software destruction declaration has taken place. The obligation to continue to pay the rent in the event of a delay in returning the software after the expiry of the rental period does not give rise to any claim on the part of the Customer to the continuation of the software maintenance.