

## Service Maintenance Terms & Conditions for End User Customers

Upon end user Customer's signature to and acceptance of FCPA's Service Contract Quotation (the "Quote"), Fujitsu Computer Products of America, Inc. ("FCPA") agrees to provide, and Customer agrees to purchase, repair, maintenance and other services as indicated in the Quote for FCPA and other manufacturers' equipment ("Product"), for the term and at the price set forth on the Quote, and in accordance with these Service Maintenance Terms and Conditions ("Terms and Conditions") and the applicable Description of Service Program. The Quote, Terms and Conditions and applicable Description of Service Programs constitute the Service Maintenance Agreement ("Agreement") between FCPA and the customer ("Customer") identified in the Quote, and Customer agrees to be bound thereby. Customer acknowledges that FCPA may modify the applicable Description of Service Program from time to time at its discretion without notice or consent of Customer. For purposes of clarity, these Terms and Conditions for the Service Maintenance Agreement apply to end user Customers only, not to resellers from FCPA's distribution channel who resell service contracts to end user Customers.

### 1. SERVICE

Customer shall be entitled to purchase one or more of the service programs described in the applicable Description of Service Program ("Services") for one or more Product. Service hours shall be during the hours described in the Description of Service Program, Monday through Friday (each a "Business Day"). For purposes of this Agreement, "Business Day" excludes New Years' Day, Memorial Day, Independence Day Labor Day, Thanksgiving Day, Christmas Day, legal holidays and such other days when the FCPA service business is closed (collectively "FCPA Holidays"). Service may be provided under this Agreement by FCPA or its authorized service provider ("Service Provider"). FCPA RESERVES THE RIGHT TO CHANGE ANY OF ITS SERVICE PROGRAMS OR SERVICE METHODS AT ANY TIME AND WITHOUT PRIOR NOTICE TO CUSTOMER. FCPA ALSO RESERVES THE RIGHT TO USE, REPLACE AND REPAIR PRODUCTS WITH LIKE AND REFURBISHED PARTS AND PRODUCTS IN THE COURSE OF PROVIDING SERVICES, AT ITS SOLE DISCRETION.

### 2. EXCLUDED SERVICE

Services provided under this Agreement do not include the furnishing of supplies or accessories for the Products, or any other additional service unless specified in the applicable Quote. In addition to the exclusions and limitations on Service set forth in Section 7 of this Agreement, Services provided under this Agreement excludes repair or maintenance of Products which exhibit damage or malfunction resulting directly or indirectly from any cause other than ordinary use or from operation of the Product with non-FCPA approved equipment or supplies, or of Products which have been modified without FCPA's prior written authorization. If a Product appears to require an excluded service, part, supply or accessory, FCPA will submit a description of the services, part, supply or accessory which is necessary to restore the Product to normal operating condition and the estimated charges based on FCPA's time and material rates then in effect. If Customer does not authorize FCPA to perform such repairs at Customer's expense, FCPA may terminate immediately its obligation to provide Service under this Agreement with respect to the Product, without liability for termination of this Agreement and may invoice Customer for its customary inspection fee in lieu of service.

### 3. SOFTWARE MODIFICATIONS AND UPGRADES

3.1 FCPA will provide maintenance upgrades, software patches and telephone assistance of a technical nature on licensed software approved and provided by FCPA ("FCPA Software") only. FCPA, or its licensors, may issue maintenance upgrades or patches or provide for on-site services necessary to

correct errors that significantly affect software performance in accordance with the FCPA Software's operating specifications. Unless documentation states otherwise, support will be provided for the current and previous version release of the FCPA Software.

3.2 FCPA, and its licensors, reserve the right to develop new features and functionality improvements, which may be offered to Customers as version releases under a separate price schedule.

3.3 All FCPA Software is subject to the terms and conditions of the applicable software license that was in effect at the time the software was licensed from FCPA, or its licensors. License Terms are applicable as long as the FCPA Software is being used, even if maintenance services are no longer available.

#### 4. TERM

Services will begin on the start date specified in the Quote ("Effective Date") and end on the end date specified in the Quote ("Term"). Thereafter, Service may be renewed for successive periods (each a "Renewal Period"), as defined in the Quote, at then effective policies, support plans and current price schedule, upon the mutual written consent of Customer and FCPA, or until earlier terminated as provided in this Agreement.

#### 5. PAYMENT AND PRICE CHANGES

5.1 Customer shall pay maintenance service charges on an annual or multi-year basis prior to the commencement of Service. The service fees for Renewal Periods are subject to change upon forty-five (45) days' prior written notice, except that FCPA may adjust the charges for the then-current Service period if Products are added or Product specifications, attachments, or features change during such period.

5.2 Customer acknowledges and agrees that FCPA shall not be charged, and FCPA shall not be responsible for paying, any fees that Customer or any third party engaged by Customer, may attempt to charge FCPA for credentialing or registration fees ("Access Fees") to access Customer's premises in order to provide Service on Products. Customer expressly acknowledges that it did not inform FCPA of any Access Fees before purchasing Service, and that the pricing Customer received did not contemplate or include such fees. If FCPA is unable to enter the Customer's premises to provide Service at the time scheduled by Customer, due to Customer or any third party attempting to charge FCPA Access Fees in violation of this Agreement, FCPA shall be released from all liability for not providing Service at the scheduled time, and FCPA may charge Customer for any time spent at Customer's site.

5.3 Payment of fees for Service is due net 30 days from date of invoice, except for service fees due upon renewals, which are due and payable prior to the renewal date. FCPA may assess interest on all amounts, which are due and unpaid at the maximum rate allowable by law, if Customer fails to pay charges by the due date. Customer shall pay any and all sales and use taxes, which may become due in connection with this Agreement. Customer shall pay any and all cost associated with the collection of fees for Service, including, but not limited to: attorney's fees, invoicing, restocking, invoicing and collection costs.

#### 6. PRODUCT CONDITION

Customer represents and warrants that as of the Effective Date of this Agreement the Product and all Product safety features are in good condition; are operating in accordance with the Product

specifications; have been maintained in accordance with Product manufacturer's Product performance specification; and have not been modified without FCPA's prior written authorization.

## 7. SERVICE EXCLUSIONS AND LIMITATIONS

Service provided under this Agreement does not include services or parts replacement related to the following:

- Damage or malfunction of the Product due to fraud, tampering, or misuse or the use of components, assemblies or modules not supplied by FCPA or by its authorized resellers or authorized for use with the product.
- Accessories or missing parts, supplies, consumables and expendable items, or those items identified as being the user's responsibility in the Product's Operator's Guide and Cleaning and Maintenance Guide
- Replacement of Product or increased service time required due to casualty, accident, damage, acts of God, transportation, alteration, missing parts, neglect, misuse or abuse, operator error, failure of proper management or supervision;
- Damage caused by failure to remove the shipping restraint;
- Damage or malfunction due to unsuitable physical operating environment;
- Damage caused by use of supplies, cleaners or accessories not approved by FCPA;
- Improper handling or maintenance;
- Service or modifications not performed by FCPA or its authorized service provider;
- Product installation, set-up, configuration or other non-repair services;
- Problems due to failure of Customer to conform to FCPA's site specifications;
- Replacement of motors or electrical components due to changes in power line specifications;
- Time spent in locating equipment not at the specified location or waiting for Product availability;
- Service or parts associated with any unauthorized modifications, alterations, attachments or service, or problems related to the installation of non-manufacturer supplied software or system components;
- Service associated with the use of supplies or consumables that do not conform to Product specifications;
- Rebuilding or reconditioning of Product;
- The installation, discontinuance or removal of the Product;
- Relocation, systems engineering, programming, reinstallation of user operating systems or applications software, reconstruction of data, operational procedures, operating system services, system administration services, network system administration services, or consultation services;
- Cables and installation of cables;
- User maintenance training;
- Product maintenance after expiration or termination of the Agreement, due to Customer's delay or rescheduling during Term; or
- Circumstances beyond FCPA's control.

## 8. CUSTOMER RESPONSIBILITIES

Failure to meet these responsibilities may result in additional charges or denial of service, at FCPA's sole discretion. Customer will, as appropriate for the Products:

- Provide initial problem solving assistance to site users;
- Differentiate software and hardware malfunctions;
- Request Service only when a malfunction is evident on Product covered under this Agreement, except as otherwise provided in the applicable Description of Services;
- Perform appropriate problem analysis and corrective actions by following troubleshooting and remedial actions as prescribed by FCPA's technical assistance center, including Customer maintenance;

- Maintain site environmental ranges including space, electrical power, air conditioning and humidity within Product specifications;
- Provide continuous and appropriate resource availability during problem resolution;
- Maintain software documentation and install, as directed, any maintenance upgrades and patches supplied by software manufacturers;
- Supply consumable items (such as lamps, feed rollers, or other components that are replaced due to normal wear and/or as referenced in the Manufacturer's Manual(s));
- Provide service personnel with immediate access to the Products when service is requested;
- Perform preventative maintenance and error recovery procedures, as defined in the individual Products' user manual;
- Provide service personnel with immediate access to the Products when service is requested; and
- Keep the site environment ranges within the specifications set forth by the manufacturer of the relevant Product.

#### 9. PROPERTY OF FCPA

Maintenance material, tools, documentation, diagnostics, firmware and test equipment provided by FCPA shall remain the exclusive property of FCPA.

#### 10. WARRANTY AND DISCLAIMER

FCPA warrants that it shall perform the Service required under this Agreement in accordance with industry practices and standards generally applicable to such Services. This warranty pursuant to this Section 9 shall remain in effect for a period of ninety (90) days following FCPA's performance of any Services hereunder, or until the termination of the Agreement, whichever is sooner.

FCPA'S WARRANTY OBLIGATIONS UNDER THIS SECTION 10 ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, AND FCPA SPECIFICALLY DISCLAIMS ALL WARRANTIES, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

11. LIMITATION OF LIABILITY THE SERVICES OUTLINED IN THESE TERMS ARE FCPA'S ONLY OBLIGATION. FCPA AND ITS SERVICE PROVIDERS WILL NOT BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, THIRD PARTY CLAIMS, LOSS OF PROFITS OR DATA, OR LOSS OF USE OF PRODUCT OR EQUIPMENT OR OTHER BENEFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICE PERFORMED UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT, EVEN IF FCPA OR SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

This limitation of liability will not apply to claims for injury to persons caused by the sole negligence of FCPA or of persons under its direction or control.

Customer agrees that FCPA's liability from any cause, whether based upon contract, tort, breach of warranty, negligence or otherwise shall be limited to the lesser of \$5,000 or the total amount of FCPA's maintenance service fees paid to FCPA pursuant to this Agreement. In all cases any claim must be brought within twelve (12) months after the occurrence of the alleged act or omission, giving rise to the damage.

#### 12. TERMINATION

Either party may terminate the Agreement, with or without cause, at any time upon thirty (30) prior written days notice to the other party; provided however that a Customer who elects to terminate this Agreement and who received a discount from the normal charge for Services to be provided under this

Agreement shall be liable for an early cancellation fee in an amount equal to the discount received. If a Customer elects to cancel this Agreement within the first six months of the term of the Agreement, Customer shall receive a refund in an amount equal to the lesser of (i) 75% of the total amount paid by the Customer under the Agreement prior to the effective date of cancellation or (ii) the prorata amount for the remaining unexpired term of the Agreement, less charges at FCPA's customary time and materials rate for onsite visits made and for consumable provided to the Customer. A Customer who elects to cancel the Agreement after first six-month period is not eligible for refunds of any kind whatsoever. A Customer will be charged for any Service provided prior to cancellation of the Agreement at time and material rates. Either party may terminate this agreement upon written notice to the other party (i) for failure of the other party to comply with any material term or condition of this Agreement and such failure is not remedied within thirty (30) days of written notice of such failure by the other party, (ii) if the other party make an assignment for the benefit of creditors, becomes unable to make payments due, or becomes the subject of any bankruptcy, receivership, or similar proceeding. FCPA may terminate this Agreement if Customer is in default of this or any other Agreement with FCPA.

### 13. FORCE MAJEURE

FCPA shall be excused from performance under this Agreement if such failure or delay arises out of cause(s) beyond the reasonable control of FCPA, including without limitation acts of God or the public enemy, earthquake, fires, floods, epidemics and unusually severe weather, material shortages, strikes or similar labor disruptions.

### 14. COMMUNICATIONS WITH CUSTOMER

FCPA, and its agents and third-party resellers, shall have the right to contact Customer by telephone, email or other means, regarding the Services, renewal of the Services or other products and services that FCPA believes may be of interest to Customer. Customer hereby agrees and consents to receive communications in accordance with this Section.

### 15. Confidentiality

FCPA does not wish to receive any confidential information of Customer in the course of providing maintenance services, and Customer shall take all reasonable precautions to avoid disclosing any of its confidential information or that of its customers, employees or clients ("Confidential Information") to FCPA and its employees and Service Providers. However, in the event that FCPA's employees or Service Providers become exposed to Confidential Information, FCPA will ensure that such information is protected against unauthorized disclosure using the same degree of care, but no less than a reasonable degree of care, as FCPA uses to protect its own information of a like nature.

### 16. Waiver of Default

Any failure of either party at any time, from time to time, to require or enforce the strict keeping and performance by either party of any of the terms and conditions of this Agreement shall not constitute a waiver by either party of a breach of any such terms of conditions in the future and shall not affect or impair such terms or conditions in any way, or the right of either party at any time to avail itself of such remedy as it may have for any such breach of any term or condition. No waiver of any right or remedy hereunder shall be effective unless expressly stated in writing by the waiving party.

### 17. GENERAL

17.1 This Agreement (consisting of the Quote, these Terms and Conditions, and the Description of Service Program contains the entire agreement between the parties with respect to the subject matter

hereof and supersedes all prior and contemporaneous oral or written proposals, negotiations, understandings, agreements, and other communications between the parties.

17.2 This Agreement may not be amended and no provision of this Agreement shall be considered modified by either party unless the amendment or modification is made in writing and signed by both parties.

17.3 The terms and conditions of this Agreement shall control and take precedence over any contrary terms contained in any invoice, purchase order, or other document exchanged by the parties in connection with this Agreement.

17.4 This Agreement shall be governed by the laws of the State of California, without regard to conflicts of law provisions.

17.5 FCPA may assign this Agreement and its rights under this Agreement to any its parent or an affiliate. Customer may not assign this Agreement without FCPA's prior written consent.

17.6 Any notice or communications between the parties shall be in writing and delivered personally or by first class mail, postage prepaid, by facsimile transmission verifiable as received with a contemporaneous date-stamp, or by email to the parties' respective addresses as set forth in the Quote.

17.7 In the event of a dispute which arises in connection with this Agreement (other than disputes related to unpaid fees, charges and other sums due from Customer under this Agreement), the parties' exclusive remedy will be binding arbitration in Santa Clara County, California by the American Arbitration Association ("AAA") in accordance with its then-current Commercial Arbitration Rules before a single arbitrator. In the event the parties are unable to agree upon an arbitrator, the AAA will select the arbitrator according to its Commercial Arbitration Rules. Judgment upon any award rendered in such arbitration may be entered in any court having jurisdiction thereof.

17.8 In the event that litigation is instituted between the parties in connection with any controversy or dispute arising from, under or related to this Agreement, the judgment therein shall include a reasonable sum to be paid to the prevailing party for and on account of attorneys' fees and costs incurred in such litigation, including those incurred on appeal.

17.9 If any provision herein is held invalid or illegal by any court of competent jurisdiction, the same shall be deemed severable, shall in no way affect any other provision, and shall be deemed replaced by a provision which comes closest in language and intent without being invalid or illegal.

17.10 This Agreement and any renewals or modifications hereof may be executed in one or more original signed counterparts or signed counterparts transmitted by email or facsimile, each of which shall be treated as though it were an original document and which together shall constitute one and the same instrument.