

FUJIFILM Business Innovation Australia

Software Terms



Software Terms

These software terms (**Software Terms**), in conjunction with the terms and conditions contained within the Agreement which cross reference them govern the provision of Licensed Software, Base Software, Diagnostic Software, FBAU Tools and related Support Services.

1 Base Software

1.1 Licence and Title

- 1.1.1 Subject to clause 1.1.3, FBAU grants to Customer a non-exclusive and non-transferable licence to use the Base Software in object code within Australia only on, and in the course of operating, the FBAU Equipment with which (or within which) it was delivered and for as long as Customer is legally in possession of the FBAU Equipment.
- 1.1.2 Title in Base Software does not at any time pass to Customer and any licence granted to Customer expires at the end of the Agreement.
- 1.1.3 Any Third Party software incorporated in the Base Software is licensed for use as set out in the licence terms supplied with the Equipment (including click-wrap and shrink wrap licence terms). A breach of any such licence terms is a breach of the Agreement.
- 1.1.4 Base Software may contain computer code that disables the proper operation or functioning of Equipment if there is a default under the Agreement or Customer's licence to the Base Software is terminated or expires.

1.2 Support Services

- 1.2.1 FBAU will use reasonable efforts to resolve coding errors in Base Software and provide workarounds or patches provided Customer reports the problems accurately and with the detail required by FBAU. Customer accepts that FBAU may not successfully correct all errors.
- 1.2.2 Support Services includes access to Maintenance Releases. Maintenance Releases must be implemented by Customer within 30 days after being made available by FBAU.
- 1.2.3 FBAU may on notice and without cause elect not to renew Support Services following the end of the Minimum Term or vary or terminate the supply of Support Services during the Minimum Term or any renewal term if the licensor ceases to supply the applicable Support Services to FBAU.

2 Diagnostic Software and FBAU Tools

2.1 Licence and Title

- 2.1.1 Diagnostic Software may be installed on, embedded in or reside on FBAU Equipment.
- 2.1.2 FBAU Tools may be installed on, embedded in or reside on FBAU Equipment or Third Party Equipment.
- 2.1.3 Title to the Diagnostic Software and FBAU Tools shall at all times remain solely with FBAU or its licensors. Unless separately licensed by FBAU to do so, Customer does not acquire a licence or right to access or use the Diagnostic Software or FBAU Tools in any manner.

2.2 Access and Use by FBAU

- 2.2.1 In order to efficiently perform the Services, Customer will allow FBAU access to the Site to install, modify, remove, maintain, operate and replace any FBAU Tools used by FBAU to perform the Services and will do anything else reasonably necessary to allow the FBAU Tools to operate in accordance with the Specifications.
- 2.2.2 FBAU Tools may be modified, removed or replaced by FBAU at its discretion, providing that any such removal will not affect FBAU's obligations to perform the Services.

3 Licensed Software: Application Software, Application Software Support and/or SaaS

3.1 Delivery, Acceptance, Licence and Title

- 3.1.1 FBAU will use reasonable endeavours to Deliver Application Software and SaaS (unless otherwise specified in a SOW) by the Commencement Date but, to the extent permitted by law, FBAU will not be liable to Customer or others for Claims in relation to any delay in doing so.
- 3.1.2 Licensed Software is deemed accepted, and the Initial Licensed Software Period commences, upon Delivery. The initial period for Licensed Software continues for the same length of time as the Minimum Term, or such other period specified in the Schedule ("**Initial Licensed Software Period**"). The Initial Licensed Software Period automatically renews for successive terms of 12 months (and such renewed Licensed Software shall be charged at FBAU's then standard rate) unless a party is notified otherwise in writing by the other party no less than 30 days prior to a renewal date.
- 3.1.3 Customer's use of the Software and Specifications is subject to the EULA and any Licence Restrictions. Customer agrees: (i) to comply with the terms of the EULA and acknowledges that it has been provided with the opportunity to review the EULA; (ii) the EULA is deemed to create a binding agreement between the Licensor named in the EULA and Customer; and (iii) that a breach of the EULA by Customer is a breach of the Agreement. For the removal of doubt, the existence of the EULA is without prejudice to Customer's obligations to pay FBAU the Licence Fee and any other Charges required under the Agreement.
- 3.1.4 Title in Licensed Software does not at any time pass to Customer and any licence granted to Customer expires at the earlier of the (i) end of the Licensed Software Period; and (ii) end of the Agreement.

3.2 Support

- 3.2.1 Application Software Support commences on the start date of the Initial Licensed Software Period and continues for the same period as the Initial Licensed Software Period, or such other period specified in the Schedule (except for perpetually licensed software which shall continue for 12 months or such other period specified in the Schedule) (in each case an "**Initial Application Software Support Period**"). The Initial Application Software Support Period automatically renews for successive terms of 12 months (and such renewed Application Software Support shall be charged at FBAU's then standard rate) unless a party is notified otherwise in writing by the other party no less than 30 days prior to a renewal date.
 - 3.2.2 Customer must ensure that (if required by FBAU) FBAU has sufficient access to the Licensed Software, any systems in which the Licensed Software is used, and any relevant records or documentation to provide the Application Software Support.
 - 3.2.3 FBAU will provide Patches or Minor Releases within a reasonable period of being made available to FBAU by the Licensor. FBAU cannot guarantee and do not warrant that a Patch or Minor Release will be available where a Defect has been identified or that (where made available) a Patch or Minor Release will in fact rectify, limit or eliminate a Defect in the Licensed Software or cause the Licensed Software to operate without error.
 - 3.2.4 Unless specified in the Schedule, FBAU has no obligation to provide on-Site support to Customer in relation to the Licensed Software.
- ### 3.3 Variation or Termination
- 3.3.1 Subject to Non Excludable Rights, Customer may not vary or terminate the Agreement or withhold payment of the Charges in the event of any: (i) defect in Licensed Software; (ii) delay in relation to the supply of Licensed Software; or (iii) termination of or amendment to the Software Terms.

- 3.3.2 FBAU may, on notice and without cause, vary or terminate the supply of Licensed Software to Customer if the Licensor ceases to supply the Licensed Software to FBAU. In the event that FBAU terminates (in whole or part) the supply of Licensed Software in accordance with this clause, it may at its discretion vary the Charges accordingly. The Agreement shall otherwise continue in full force and effect and parties shall continue to perform their other obligations under the terms of the Agreement.
- 3.3.3 In the event that Application Software Support is terminated and Customer subsequently opts to reinstate Application Software Support, an additional Charge may apply.

4 Miscellaneous

- 4.1 Customer shall designate a customer contact to conduct all communication with FBAU with respect to the Support Services.
- 4.2 Unless permitted by law notwithstanding this prohibition, Customer must not (and must ensure Third Parties do not): (i) distribute, copy, modify, create derivative works of, decompile or reverse engineer the Base Software, Diagnostic Software or FBAU Tools; (ii) activate any software Delivered with Equipment in an inactivated state; or (iii) remove or modify trademark references or copyright notices.
- 4.3 Customer must provide FBAU with all necessary access to perform its obligations (including, but not limited to, Support Services and Application Software Support) and verify that the terms of the Agreement are being complied with.

5 Definitions

Terms defined in the Agreement have the same meaning in these Software Terms. Unless the context requires otherwise, the following definitions apply to these Software Terms:

- 5.1 **Application Software** means, if specified in the Schedule, the software application to be provided to Customer, excluding Base Software, Diagnostic Software and FBAU Tools.
- 5.2 **Application Software Support** means the provision of: (a) Maintenance; and (b) unless otherwise indicated in the Schedule, Technical Assistance. Application Software Support excludes Support Services.
- 5.3 **Base Software** means any software that is proprietary to FBAU or its Related Bodies Corporate or licensors and is installed upon, or embedded in, FBAU Equipment in an activated state when FBAU Equipment is delivered and any Maintenance Releases provided thereafter, excluding Diagnostic Software, FBAU Tools and Application Software.
- 5.4 **Defect** means a material failure by the Licensed Software to perform in accordance with the Specifications, other than due to: misuse or use inconsistent with the Specifications; a Force Majeure Event; or acts or omissions of Customer or Third Parties.
- 5.5 **Delivery** means: in respect of Application Software, to give Customer an authorisation key to enable Customer to download Application Software from an online system nominated by FBAU or to despatch Application Software to Customer by carrier or post on physical media; and in respect of SaaS, Customer registers for SaaS or receives the login details for SaaS (whichever occurs first).
- 5.6 **Diagnostic Software** means software embedded in FBAU Equipment and used or intended to be used by FBAU to maintain or diagnose defects or substandard performance.

- 5.7 **EULA** means the relevant end user licence agreement applicable to Licensed Software and available at www.fujifilm.com/fbau/en/software-terms, as amended from time to time without notice, or from such other location advised by FBAU.
- 5.8 **FBAU Tools** means tools that are proprietary to FBAU or its licensors and designed to be used solely by FBAU to perform the Services and may include remote meter collection and monitoring Equipment tools such as EP-BB.
- 5.9 **Initial Licensed Software Period** has the meaning given to it in clause 3.1.2.
- 5.10 **Licence Restrictions** means restrictions on access to Software identified in the Documentation, EULA or in a SOW, including any restrictions as to the maximum number of authorised devices or users which are permitted to access the Software at any one time.
- 5.11 **Licence Fee** means the licence fee for the Licensed Software specified in the Schedule. The Schedule may indicate that the Licence Fee has been incorporated in the Charges.
- 5.12 **Licensed Software** means any in-scope Application Software, Application Software Support and/or SaaS (as required by the context).
- 5.13 **Licensed Software Period** means the Initial Licensed Software Period and any renewal under clause 3.1.2.
- 5.14 **Licensor** means the licensor or authorised distributor of the Licensed Software from which FBAU obtains its licence and/or rights to distribute the Licensed Software to Customer.
- 5.15 **Maintenance** means the making available of Patches and Minor Releases to Customer within a reasonable time after they become available to FBAU.
- 5.16 **Maintenance Release** means any release of Base Software that is provided or made available to Customer by FBAU that primarily incorporates code error fixes and is generally made available by FBAU without charge to customers in the course of performing Support Services in relation to FBAU Equipment.
- 5.17 **Minor Release** means a new version of the Licensed Software which provides fixes or minor enhancements, generally indicated by a change in the numbering to the right hand side of the first decimal point in the version numbering of the Licensed Software and which is provided without charge by Licensor for distribution to Customer under the Agreement.
- 5.18 **Patch** means software, which attempts to rectify, limit or eliminate a Defect in the Licensed Software and which is provided without charge by Licensor for distribution to Customer under the Agreement.
- 5.19 **Related Body Corporate** has the meaning given in the Corporations Act 2001 (Cth).
- 5.20 **SaaS** means, if specified in the Schedule, the software application or other computing infrastructure to be Delivered to Customer as a service from a remote location through the internet, excluding FBAU Tools.
- 5.21 **Specifications** in relation to Licensed Software, means the CED (or where none is available) any end user documentation, manual or specification published by the manufacturer or Licensor; and in relation to FBAU Tools, means the CED (or where none is available) the technical specifications published by the manufacturer of the FBAU Tools, as amended from time to time by FBAU.
- 5.22 **Technical Assistance** means technical assistance via telephone, mail, fax or e-mail to resolve Application Software problems.