

Fujifilm Business Innovation Reseller Transformd Terms of Business

July 2021

Terms of Business

Thank you for your interest in our *Transformd software as a service offering* and related services. This document sets out the terms on which we offer to provide our Products and Services to Fujifilm Business Innovation clients.

(In this document, 'we' or 'us' means Transformd Pty Ltd (ABN 52 602 839 707) and you' or 'Client' means the company, Government agency or other legal entity named on the Fujifilm Business Innovation Order Form.)

1 This creates a binding contract

1.1 Contract

We offer to supply the Products and Services to you on these general terms, plus any other terms in an Order Form. You may accept this offer by: signing the Fujifilm Business Innovation Order Form; issuing a purchase order for the Products &/or Services; clicking on 'I accept' (or similar term) in an online form; or starting to use the Products.

If you do any of these things, a legally binding contract will be created, comprising these general terms plus the Order Form terms (Contract).

1.2 Order Forms Prevail

If there is any inconsistency between these general terms and specific terms agreed in writing in an Order Form or purchase order, the specific terms prevail.

1.3 Entire Contract

This Contract contains everything we have agreed relating to the matters it deals with. You acknowledge that you have not relied on any warranty or representation which is not specifically stated in the Order Form. If you give us your terms and conditions (e.g. as referred to in a purchase order or other document), those terms and conditions are of no legal effect relating to our Products and Services and do not form part of this Contract.

2 Definitions

Additional Services means Services which we may provide via Fujifilm Business Innovation in addition to the Support Services, such as diagnosing and correcting reported problems which are outside the scope of Support Services (e.g. problems caused by operator error, hardware failure or failure to maintain current back-ups of data and software), assistance with installing, implementing or configuring the Product, developing software customisations, providing training or consulting.

Approved Use means the use for which the Client may use the Product as set out in an Order Form, such as an approved number of users, forms, or instances of the Products, or Client sites or territories, or lines of business, or other restrictions on use.

Confidential Information means any information provided by a party or any of its employees, agents, related parties or representatives to the other party or any of its employees, agents, related parties or representatives, or otherwise obtained by that party (whether oral, written or viewed by inspection) which is marked as "proprietary" or "confidential" or similar language or which the recipient knows or reasonably should know is proprietary or confidential.

Confidential Information includes:

- a. the terms of this Contract and any Order Form;
- b. Intellectual Property, software, specifications, ideas, concepts, plans, formulas, drawings, procedures, financial information, reports, technical information and forecasts;
- c. the Transformed Materials, and;
- d. details of each party's internal systems, business processes, future product plans, marketing, customers, prospects, finances, personnel and operations.

Client Data means the proprietary data and content of the client provided to Transformed for the purpose of providing or testing the Services.

Documentation means documents about the Products or Services as provided by us from time to time, and may include installation guidelines, specification documents and user guides and other resources provided on a web portal.

End User means each person who has access to, uses or operates the Products purchased or licensed by Client, including Client's employees, invitees, agents and subcontractors (but not including our employees, agents and subcontractors).

Infringement Claim means any claim made against Client alleging that any part of the Transformed Materials or Client's authorised use of the Transformed Materials infringes any third party's Intellectual Property Rights.

Intellectual Property or **Intellectual Property Rights** includes copyright, trade mark, design, patents (whether registered or not), trade, business or company names, domain names, or other proprietary rights, Confidential Information or any rights to registration of such rights existing in any country, whether created before, on or after the date of the Order Form.

Transformed Materials means materials created by us and provided to you in the course of performing this Contract including the Documentation, Software designs and drawings, and reports provided as part of the Support Services.

Modern Slavery Laws means the Modern Slavery Act 2018 (Cth) and any state laws that relate to modern slavery.

License means your right to use the Transformed Materials.

Order Form means an order form for Products &/or Services signed by you and Fujifilm Business Innovation.

Products means the Transformed Products set out in an Order Form. **Services** means, collectively, Support Services and any Additional Services. **Software** means:

- a. the object code versions of the software Products;
- b. the object code versions of any other software we provide to you under this Contract;
- and
- c. any updates and additions to the software described in (a) and (b) that we make, including any software delivered through Support Services or Additional Services.

Start Date means the date set out on an Order Form.

Subscription License means a License that continues for so long as you pay the Charges for Support Services.

Support Services means the services provided by Fujifilm Business Innovation

Term means the Initial Term described in an Order Form plus any renewal term as set out in clause 9.1, until terminated under clause 9.

Warranty Period means for so long as you pay the Subscription Charges and or Support Services.

3 Ordering Products and services

3.1 Order Forms

You may order Products and Services by both of us signing a written Order Form. We will prepare an Order Form, which will include details of the Products ordered (and licensing terms); the scope of any Services; and the Charges.

3.2 Delivery, License expiry for non-payment

Promptly after the Start Date (or other date agreed on an Order Form), we will deliver the Product to you. You acknowledge that we may prevent use of the Software if our Charges are not paid within agreed time limits.

4 Grant of License

4.1 License

Subject to all the other terms of this Contract, we grant to you a non-exclusive, non-transferable license to use the Transformd Materials during the Term. You acknowledge that:

- a. the Products are licensed, not sold, to you;
- b. we reserve all rights not expressly granted by this Contract including ownership of all Intellectual Property Rights in the Transformd Materials, and;
- c. no development to your specifications or based on your feedback or suggestions gives you ownership of any rights in any invention or derivative work.

4.2 Duration

The License begins when the Product is made available to you and continues as a Subscription License. The License continues for so long as you pay the Charges for Support Services.

4.3 Limitations

Means:

- a. You may only use the Products within the Approved Use/s and other limitations as set out in the relevant Order Form.
- b. Unless permitted in an Order Form, the Transformed Materials must only be used by you and for your benefit; and you must not use the Product in a production environment for the purposes of resale or to process the data or business of any third party or to operate a bureau service.
- c. You may not assign or transfer the Product or your License or sublicense the Software to any third party without our prior written consent.
- d. Your License to use the Transformed Materials is subject to clause 6 (*Confidentiality*).
- e. You must not copy the Transformed Materials.
- f. You must not:
 - i. make derivative works of the Products, or modify, alter or change the Products;
 - ii. allow any person, other than your employees, agents or representatives, to access and use the Products or Documentation; and, before permitting any third party agent or representative to access and use the Products, you will require such third party agent or representative to agree in writing to only use the Products during the Term on your behalf in accordance with this Contract, and to maintain all Confidential Information of Transformed in strict confidence. You shall remain responsible for such third party's use of the Products;
 - iii. disassemble, decompile, reverse-engineer, or otherwise attempt to view or access the source code to the Products;
 - iv. copy, reproduce or transmit to the public any of the Transformed Materials;
 - v. attempt to unlock or bypass any initialisation system, encryption methods or copy protection devices in the Products;
 - vi. alter, remove or obscure any patent, trademark or copyright notice in the Products;
or
 - vii. use components of a Product independent of the Products they comprise.
- g. Any unauthorised use of the Products, or unauthorised modifications, alterations or changes to the Products, will terminate the warranties provided in this Contract and entitle us to terminate the License and Support Services for such Products.

4.4 Use

You have sole responsibility for your use of the Product, including using the Product in accordance with the Documentation or other instructions provided by us and ensuring your relevant staff are trained in using the Product.

4.5 Export Controls

You will comply with all export laws and restrictions and regulations of Australia.

4.6 Third Party Software

The Product may include third party software which may be subject to additional or different terms or conditions. To the extent that any third party software terms conflict with any of these terms, the third party software terms will prevail with respect to your use and distribution of the applicable third party software.

We may incorporate free or open source material in the Product. We are responsible for ensuring that the License terms of any such free or open source material do not conflict with the License for the Product, or otherwise prevent you from using the Product in accordance with this Contract.

5 Support Services

5.1 Providing Support Services

Fujifilm Business Innovation to provide support services

6 Confidentiality

6.1 Obligations

Where one party (in this clause, Recipient) receives Confidential Information from the other party (Discloser), Recipient must:

- a. hold the Discloser's Confidential Information in strict confidence, and apply at least the standard of care used by the Recipient in protecting its own Confidential Information, but not less than a reasonable standard of care;
- b. not disclose such Confidential Information to any third party, except as permitted under this Contract;
- c. not use any Confidential Information of the Disclosure except as reasonably required to exercise its rights or perform its obligations under this Contract;
- d. immediately notify Disclosure of any potential, suspected or actual unauthorised use, copying or disclosure of its Confidential Information; and
- e. cause its employees, subcontractors, agents and, if permitted, related companies, who require access to such Confidential Information to abide by such obligations.

6.2 Permitted use

Notwithstanding clause 6.1, Recipient may use or disclose the Confidential Information to the

extent necessary to comply with any law or the requirements of a regulatory body (including a stock exchange), or to obtain professional legal or accounting advice, or for use in legal proceedings regarding this Contract.

6.3 Exceptions

Clause 6.1 does not apply to Confidential Information which Recipient can prove by written evidence:

- a. is in or becomes part of the public domain other than through breach of an obligation of confidence;
- b. was known to Recipient at the time of disclosure, unless such knowledge arose through breach of an obligation of confidence;
- c. was independently developed by Recipient; or
- d. is acquired from a third party who was entitled to disclose it.

6.4 Return or destroy

Upon termination of this Contract, and at the written request of the Disclosure, the Recipient shall promptly return or destroy all Confidential Information in its possession and certify its destruction in writing, provided however, that the Recipient may retain one copy of the returned or destroyed items for archival purposes in accordance with its records-retention policies and subject to this clause. The obligations in this clause 6 continue to apply after this Contract expires or is terminated.

6.5 Right to Injunction

The parties agree that the Disclosure may be irreparably damaged if the obligations under this clause 6 are not enforced and such party may not have an adequate remedy in the event of a breach by Recipient; and therefore the Disclosure is entitled to seek, in addition to other available remedies, an injunction or any other appropriate equitable order or decree restraining any actual, threatened or further breaches of the Recipient's obligations under this clause 6.

6.6 Publicity

We may prepare a press release, case study or other material regarding your use of the Products, with publication subject to your prior written consent, which will not be unreasonably withheld or delayed. Subject to your prior written consent, we may also include your name in any client list. Otherwise, neither party will use the name of the other party in publicity releases or similar activity without the consent of the other party.

6.7 Personal Information

If as a result of this Contract, we are able to access any information about identifiable individuals ("Personal Information" or "Sensitive Information") held by or on behalf of you then we:

(a) must comply with the Privacy Act and all other applicable privacy laws and such other data protection laws as may be in force from time to time which regulate the collection, storage, use and disclosure of information, as if we were regulated by these laws;

(b) must comply with any of your directions that are consistent with the laws, codes and

policies referred to in clauses 6.7(a) and 6.7(b) above;

(c) must use the information only for the purposes of performing our obligations under this Contract;

(d) must restrict access to any information to our Representatives who need to access information to fulfil our obligations under this Contract;

(e) must promptly notify you in writing of any request made by such an individual for access to the information;

(f) must promptly notify you in writing in the event that we become aware of any privacy related complaint and must cooperate with you in the resolution of any complaint under, or relating to, any of the laws, codes or policies referred to in 6.7(b) above;

(g) must immediately notify you in writing in the event that we become aware of any unauthorised access, unauthorised disclosure, interference (including hacking), misuse or loss of the information; and

(h) must obtain prior written consent from you. If we intend to send or disclose information relating to this Contract outside of Australia; and must provide you with attestations with respect to privacy on a regular basis or as required by you.

6.8 Data Security

We acknowledge that:

(a) your ability to maintain information security is of utmost importance and the security of Client Data is fundamental to your business;

(b) you, as a provider of financial services, is entrusted with personal and sensitive information about its customers, including health and financial information which must be held securely;

(c) you have obligations to report data breaches and/or security incidents to Australian Government regulators on a timely basis; and

(d) we must have processes and controls in place to promptly identify and report data breaches and/or security incidents to you so as to assist you to meet your legal and regulatory obligations and community expectations.

(e) establish, maintain, enforce and continuously improve safety and Information security procedures, controls and processes against the unauthorised use, access, destruction, loss or alteration of Client Data and your other Confidential Information;

(f) establish, maintain, enforce and continuously improve safety and Information security procedures, controls and processes against the unauthorised use, access, destruction, loss or alteration of Client Data and your other Confidential Information;

(g) not make any undocumented, unreported or unauthorised configuration changes to any information assets or to the information security procedures, controls and processes that secure Client Data, if those changes would decrease the protections afforded to Client Data;

(h) notify and keep you notified at all times of our current information security procedures, controls and processes and any amendments to such procedures, controls and processes which adversely affect, or are likely to adversely affect, your ability to manage the Services or the security of the Services or maintain information security.

6.8A If we become aware of any security incident we must immediately (and in any event

within 24 hours):

- (a) notify you of the security incident;
- (b) identify the cause of the security incident ;
- (c) use best endeavours to rectify any actual security incident and its consequences;
- (d) use best endeavours to ensure that any potential security incident does not become an actual security incident;
- (e) investigate any alleged or suspected security incident; and either:
- (f) implement rectification measures if an actual security incident occurred or a security incident is likely to occur; or
- (g) confirm to you that no actual security incident occurred or is likely to occur;
- (h) provide you with a report detailing the cause of, and procedure for correcting, the security incident;
- (i) provide you with reasonable evidence that the security incident will not occur again; and
- (j) certify that we have taken all commercially reasonable steps to prevent any recurrence of such a security incident.

7 Warranties

7.1 General

We represent and warrant that we have the necessary authority to grant the License and perform all our obligations under this Contract.

7.2 Product Limited Warranty

7.2.1 We represent and warrant that during the Warranty Period the Products shall perform all material functions set out in the applicable Documentation and shall otherwise operate in substantial accordance with such Documentation.

7.2.2 If, during the Warranty Period the Products fail to comply with this warranty, you must notify us in writing of any alleged defects with the Products. We will have 30 days from receipt of such notice or an additional period of time as reasonably agreed to by the parties to correct such defects in accordance with Support Services in Schedule 1.

7.2.3 If we are unable to correct such defects in a reasonable time, you may elect to terminate the License to such Product during the Warranty Period; and if so, we will give you, as your exclusive remedy, a refund of all Charges previously paid for such Products.

7.3 Virus

7.3.1 We represent and warrant that to the best of our knowledge after utilizing commercially available virus-checking software, the Products as delivered to you will be free from computer software viruses, worms, trap doors, back doors or other functions (collectively, Virus) that detrimentally interferes with or otherwise adversely affects your use of the Products.

7.3.2 If you detect a Virus, you will promptly notify us and use your best commercial efforts to mitigate against any damages or effects caused by the Virus; while we will use our best

commercial efforts to promptly eliminate such virus.

7.4 Services

7.4.1 We warrant that the Services will be provided:

- a. promptly, carefully, exercising all due care, skill and judgement, in an efficient and professional manner and in accordance with generally accepted professional and business practices; and
- b. using appropriately trained and skilled personnel.

7.4.2 If the Services fail to comply with this warranty, you will promptly notify us in writing including reasonable details of any alleged defects. Upon such notice, we will, as your exclusive remedy, promptly re-perform any such Services in accordance with this Contract. We are not responsible for any delay or defect in performing any Services due to any cause outside our reasonable control.

8.6 Disclaimer

We do not warrant that the Products will operate error-free or that we will correct all Product errors. Except for the express warranties in this Contract (including an Order Form), the Products are provided "as is" and we disclaim all other warranties, express or implied, with respect to the Products and Services, including but not limited to, any warranty of merchantability, fitness for a particular purpose, accuracy, reliability, course of dealing, course of performance or usage in trade.

We will not be liable for any claims or damages caused by the unauthorized use of the Products or acts of abuse or misuse by Client or End Users. In addition, we will not be liable for any loss or damage in connection with or arising out of the interruption or loss of use of the Products or the loss or corruption of your data or files processed or stored by the Products, unless such loss or damage is caused by our (Transformd's) act, omission or negligence.

9 Liability

9.1 Infringement Claims

9.1.1 Subject to the rest of this clause 9, we will arrange for the defence or settlement of any Infringement Claim and we shall pay or arrange for the payment of your reasonable legal fees and any damages and costs awarded against you in respect of such Infringement Claim (but we shall not be liable for any indirect or consequential loss or damage arising in connection with such Infringement Claim). You must:

- a. promptly notify us in writing of any Infringement Claim;
- b. cooperate with us to defend any such claim; and
- c. not settle or make any admission of liability without our prior written consent. You can choose to participate in the defense of any claim with your own lawyers, at your own cost.

9.1.2 If an Infringement Claim has been made or threatened or we consider the Transformed Materials may infringe any third party's rights, we have the option to:

- a. modify the Transformed Materials (at our cost) so it becomes non-infringing;
 - b. obtain a licence for you (at our cost) to continue using the Transformed Materials;
- or

c. if we determine that neither of these options is feasible, we may terminate the licence of the infringing Transformd Material and refund the licence Charges you have paid for the infringing Transformd Material.

9.1.3 We will have no liability or obligation for, and shall be indemnified by you against, all loss expense

a. use of the Product or other materials outside of the scope of the Licence or in breach of this Contract;

9.1.4 This clause 9.1 constitutes our sole liability and your sole remedy (whether under this Contract or otherwise) in connection with any actual, suspected or alleged infringement of any third party Intellectual Property Rights.

9.2 Exclusion of Indirect Loss

Each party excludes all liability for any loss of product, loss of data, loss of revenue, loss of profit, loss of or damage to reputation, loss of anticipated savings or benefits, or any indirect, special or punitive loss, damage, cost or expense or other claims for consequential compensation, incurred by or awarded against the other party arising directly or indirectly under or in connection with this Contract or the performance or non-performance of this Contract and whether arising under any indemnity, statute, in tort (for negligence or otherwise), or on any other basis in law or equity, except for: interest due by any party for late payments; personal injury or tangible property damage, losses relating to fraud or wilful misconduct, breach of confidence, breach of privacy or infringement of Intellectual Property Rights.

9.3 Limits

9.3.1 Our liability to you for all claims relating to Products or Services is limited, at our option, to:

- a. in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and
- b. in the case of goods, the cost of replacing the goods, supplying equivalent goods or having the goods repaired, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired.

9.3.2 You agree that except for claims under clause 9.1, clause 9.2 and clause 9.6, our total liability arising out of, connected with, or resulting from the performance or non-performance of this Contract, whether based on contract, warranty, tort (including negligence), statute or otherwise, is capped at the amounts you have paid us under this Contract during the 12 months before the events giving rise to your claim.

9.4 Contribution

Each party's liability shall be reduced proportionately to the extent that the other party's acts or omissions cause or contribute to, directly or indirectly, the loss or damage for which the first party is liable.

9.5 Excused Performance

Each party will not be liable for, or be considered to be in breach of or default under this Contract (except an obligation to pay money) on account of, any delay or failure to perform as required by this Contract as a result of any cause or condition beyond that party's reasonable control.

9.6 Indemnity - third parties

We agree to indemnify and hold you (and your directors, officers, employees and agents), harmless from and against any and all losses, damage, liabilities, penalties, court cost, professional fees (including legal fees) and expense incurred by you resulting or arising in whole or in part from any act or omission by any third party integration service provider (e.g. OneSpan, Green ID).

10 Term and termination

10.1 Term

This Contract begins on the date it is formed under clause 1.1 and continues for the Initial Term and then continues for as long as you pay the Charges for Support and Subscription Services (or unless otherwise terminated under clause 10.2).

10.2 Breach or Insolvency

Either party may terminate this Contract if the other party:

- a. breaches this Contract and does not remedy the breach within two weeks of written notice;
- b. breaches any term of this Contract which cannot be remedied (including a breach of confidentiality or Intellectual Property Rights); or
- c. becomes subject to an event of insolvency (including having an administrator, receiver or liquidator appointed).

10.3 Obligations on termination

When this Contract is terminated or expires:

- a. hold the Discloser's Confidential Information in strict confidence, and apply at least the standard of care used by the Recipient in protecting its own Confidential Information, but not less than a reasonable standard of care;
- b. not disclose such Confidential Information to any third party, except as permitted under this Contract;
- c. The License will terminate, you will immediately stop using the applicable Products. If requested, you will certify in writing to us that you have complied with these obligations.

10.3.2 Each party must immediately return (or certify that it has destroyed) all of the other party's Confidential Information, except for any information which the recipient needs to retain in order to perform any ongoing obligation under this Contract (and any archive or back-up copies, subject to ongoing confidentiality restrictions).

10.3.3 Any clause which by its terms is intended to survive the expiration or termination of this Contract will do so.

10.3.4 Each party retains its rights under this Contract and at law in respect of any breach of this Contract by the other party.

11 General

11.1 Independent Contractors

The parties are independent contractors, not employees, agents, partners, franchisees, or representatives of each other. Each party is not authorized to, and will not attempt to, create or assume any obligation or liability, express or implied, in the name or otherwise on behalf of the other party.

11.2 Construction

In interpreting this Contract, no presumption shall be made against the party that drafted the term. The singular includes the plural and vice versa. Words like *including, for example, such as* or similar expressions are to be interpreted as meaning *including, without limitation*. Headings are for convenience only and do not affect the interpretation of this contract. Any notices required under this Contract must be in the English language.

11.3 Severability

If a clause or part of a clause of this document can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this document is not affected.

11.4 Variation & Waiver

No variation of this document will be of any force or effect unless it is in writing and signed by the parties to this document. The fact that a party fails to do, or delays in doing, something the party is entitled to do under this document, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

11.5 Governing law

This Contract and performance under it shall be governed by the laws of New South Wales without regard to its choice of law principles. Each party unconditionally accepts the jurisdiction of the courts of New South Wales and any related appellate court provided that each Party shall have the right to enforce a judgment of those courts in a jurisdiction in which the other Party is incorporated or in which any assets of the other Party may be situated.

11.6 Modern Slavery

(i) We will ensure that we and each of our subcontractors take reasonable steps to review our supply chains and business for modern slavery or human trafficking, and assist You with your compliance with Modern Slavery Laws.

(ii) We will notify You as soon as we become aware of any material actual or suspected breach of a Modern Slavery Law or modern slavery or human trafficking in a supply chain which has a connection with this Contract.

(iii) You have a right to terminate this Contract with prior notice to us in the event we have caused or contributed to adverse human rights impacts and failed to address these impacts.

