



Fujitsu Cloud Services Master Agreement

This Fujitsu Cloud Services Master Agreement consisting of the subsequent terms and conditions (hereinafter “**Terms and Conditions**”) and, depending on the specific cloud service, the applicable relevant service specification schedule specifying the respective cloud service (hereinafter “**Service Specification Schedule**”; collectively hereinafter the “**Agreement**”) applies to cloud services provided by Fujitsu Enabling Software Technology GmbH, Schwanthalerstraße 75a, 80336 Munich (hereinafter “**Fujitsu**”) to the respective customer (hereinafter the “**Customer**”; Fujitsu and the Customer collectively hereinafter the “**Parties**” or each a “**Party**”).

By completing the online registration form through clicking the confirmation box or agreeing in writing to this Agreement, the Customer agrees to be bound by the provisions of this Agreement. In cases where Fujitsu grants the Customer a free-of-charge trial version of the Cloud Services, the Customer agrees to be bound by the provisions of this Agreement by logging into the Cloud Services.

1. Subject Matter and Scope of Services

- 1.1 Fujitsu will provide cloud services as set out in the applicable Service Specification Schedule (hereinafter “**Cloud Services**”) and any respective documentation, operating instructions or user manuals of the Cloud Services in electronic format (hereinafter “**Documentation**”) during the term of this Agreement.
- 1.2 Fujitsu shall provide the Cloud Services to the Customer with due care and skill and in accordance with the provisions of this Agreement.
- 1.3 A legal claim to use the Cloud Services does not exist. Fujitsu reserves the right, in its sole discretion, to deny providing Cloud Services to any person.
- 1.4 Subject to Fujitsu’s sole discretion, the Cloud Services are made available through server systems which are operated by Fujitsu and/or a third party on behalf of Fujitsu.

2. Usage Requirements and Obligations to Cooperate for the Customer

- 2.1 The Cloud Services may be used only by natural persons with legal capacity as well as legal entities and partnerships. Registration by a legal entity or a partnership must be effected through an authorized natural person, whose name must be provided. The Customer will provide accurate registration data and updates hereto as necessary without delay. In case of a respective Customer default, Fujitsu shall be entitled (i) to cease the Cloud Services for the respective Customer until he has updated the relevant data; or (ii) to exclude the Customer from the Cloud Services.
- 2.2 The Customer will support Fujitsu in providing the Cloud Services in an appropriate scope.
- 2.3 The Customer is solely responsible for complying with the system requirements for the Cloud Services at any time during the course of the Agreement subject to the Documentation and the applicable relevant Service Specification Schedule.
- 2.4 Customer acknowledges and agrees that the transmission of data, information and material of content he provides to the Cloud Services in order to be processed therein (hereinafter "**Customer Content**") occurs at the Customer's own risk.
- 2.5 The Customer shall carefully protect access to his user account by keeping the respective password of the Cloud Services secret. The Customer represents and warrants that he will not make his password available to any unauthorized third party and will not keep or store it in a place where it can be copied or used by unauthorized third parties. If the Customer suspects that an unauthorized third party may know his password, he shall change it immediately and notify Fujitsu accordingly.
- 2.6 The Customer shall be responsible for all activities performed within the Cloud Services by means of his password, even if the relevant activity was not authorized or intended by him. The Customer shall be solely liable for any and all damage caused by the use of his password by himself or by any third party, unless he is not responsible for the damaging act.
- 2.7 In the framework of using the Cloud Services or any part thereof the Customer acknowledges and agrees to
- (a) solely use any part of the Cloud Services for his own business purposes;
 - (b) use the Cloud Services in accordance with the Documentation and any other operating instructions or procedures or notifications provided to him by Fujitsu from time to time, including procedures and policies relating to security, access and passwords; and

- (c) not infringe any law or third-party rights. In particular, but not limited to, the Customer will not
 - (i) infringe the intellectual property rights of any other person or entity (e.g. copyrights, ancillary copyrights, patents, trademarks, company symbols, work titles or designs);
 - (ii) infringe data protection law or rights of privacy or publicity;
 - (iii) interfere with or disrupt the integrity or performance of the Cloud Services (or any part thereof) or third-party data contained therein; or
 - (iv) provide malicious code, including but not limited to, viruses, trojan horses, worms, time bombs, cancelbots, or any other computer programming routines that may damage, interfere with, surreptitiously intercept, or expropriate any system, program, data, or personal information.

3. Intellectual Property and Grant of Rights

- 3.1 Intellectual property in the Cloud Services or any part thereof and any modifications or improvements to the same shall be held by Fujitsu or its third-party licensors. For the avoidance of doubt: This does not apply to Customer Content which is – where applicable – intellectual property of the Customer.
- 3.2 Fujitsu hereby grants to Customer for the term of this Agreement a non-exclusive, non-transferable, non-sublicensable, limited right to use the Cloud Services and the respective Documentation for his own business purposes.
- 3.3 Except as otherwise expressly permitted under this Agreement, Customer will not
 - (a) create modifications to or derivative works of the Cloud Services or any part thereof;
 - (b) copy, frame or mirror any part or content of the Cloud Services (or any part thereof), other than copying or framing on his own intranets or otherwise for his own internal business purposes;
 - (c) duplicate, adapt or make public broadcasts, including, but not limited to, converting the software or content into a transmittable form;
 - (d) decompile, disassemble, or reverse engineer the Cloud Services or any such related software or content, except as authorized by section 69e German Copyright Act;

- (e) remove, obscure or alter any copyright notices or any name, trademark, tagline, hyperlink or other designation included on any display screen within the Cloud Services (or any part thereof); or
- (f) commercially exploit the Cloud Services in a way that competes with Fujitsu's business.

4. Payment Terms

- 4.1 The Customer shall pay the fees to Fujitsu in accordance with the details set out in the relevant Service Specification Schedule. All payments shall be made in EUR plus VAT.
- 4.2 Fujitsu will invoice the Customer for the charges as set out in the relevant Service Specification Schedule and Customer must pay all invoices within thirty (30) days of the date of the invoice. Fujitsu reserves the right after this time period, to apply the interest of ten (10) percent or the applicable statutory default interest, whichever is lower. Customer shall compensate Fujitsu for all appropriate costs incurred vis-à-vis the collection of unpaid invoices, including appropriate legal fees.
- 4.3 Fujitsu has the right to suspend the Cloud Services effective immediately if the Customer is in default with payment for two (2) months and after having sent a warning letter after the aforesaid time period, informing the customer about the default and announcing the planned suspension and setting another reasonable grace period for payment. The Customer's payment obligations remain unaffected thereof. Fujitsu will remove the suspension of the Cloud Services and the Support Services immediately after the receipt of the pending payments.

5. Term and Termination

- 5.1 The term of this Agreement for the respective Cloud Services is set out in the relevant Service Specification Schedule.
- 5.2 Each Party's right to terminate this Agreement with important cause with immediate effect shall remain unaffected thereof. Important cause shall in particular, but not limited to, exist if
 - (a) the other Party is insolvent or if an application was made to institute insolvency proceedings over the other Party's assets;
 - (b) the other Party is liquidated or dissolved;
 - (c) the other Party violates an essential contractual provision of this Agreement and this violation is not remedied within thirty (30) days after a warning (in written form or by e-mail) about such violation; or

(d) the other party severely or repeatedly violates material contractual duties under this Agreement.

5.3 Upon termination of this Agreement, without prejudice to any other rights or remedies which the Parties may have under this Agreement, all rights granted and obligations required hereunder shall immediately cease.

5.4 Subsequent to the effective termination Fujitsu will provide the Customer with his Customer Content as set out in the applicable relevant Service Specification Schedule.

6. Warranty

6.1 Fujitsu warrants that the Cloud Services are free from material defects. Material defects are deviations from the Documentation, to the extent such deviations significantly impair the value of the Cloud Services or their fitness for ordinary use as described therein.

6.2 Warranty claims require that the Customer has duly complied with its duty to examine and give notice of material defects. In the event of obvious defectiveness or incompleteness of the Cloud Services, Customer shall notify Fujitsu by e-mail of the complaints within two (2) weeks after delivery giving an exact description of the defect and specifying how the material defect manifests itself, what effect it has, under what circumstances it occurs, and how it is to be classified from the Customer's point of view. The Customer's claims due to defectiveness or incompleteness are excluded, if he does not fulfil this obligation.

6.3 Provided that Fujitsu, having received notification of the material defect, has determined that a material defect actually exists, it will remedy such material defect within in a reasonable time period. If such an attempt to remedy is not successful within this reasonable time period, and if such an attempt also fails within a further reasonable time limit to be set by the Customer, then the Customer may, without prejudice to possible claims for damages, reduce (lower) the license fee or withdraw from this Agreement. If any notified material defect cannot be ascribed to Fujitsu, then the Customer shall compensate Fujitsu for time spent, as well as for the accrued costs, in each case at the applicable rate.

6.4 Fujitsu will not be liable to the extent that any material defect is caused by (i) third-party components or services (including in combination with the Cloud Services) not provided by Fujitsu; (ii) modifications to the Cloud Services not authorized by Fujitsu; (iii) unauthorized use (including unauthorized access) of the Cloud Services or use of the Cloud Services other than in accordance

with the respective Documentation; (iv) viruses introduced by the Customer; or (v) continued use of the Cloud Services by the Customer after Fujitsu notifies him, to discontinue use of the Cloud Services (or any component thereof) and/or the Documentation due to a claim, allegation or proceeding of third-party infringement.

7. Limitation of Liability

7.1 Fujitsu's liability for chargeable services shall be limited as follows:

- (a) Fujitsu shall be fully liable for any damage in the case of wilful intent or gross negligence.
- (b) Fujitsu shall be liable for simple negligence only in the case of any damage to life, body or health or in the case of breach of a material contractual duty the fulfilment of which is essential to proper performance of this Agreement or the violation of which compromises attainment of the Agreement's purpose and on compliance with which the Customer relies as a matter of course (so-called cardinal duty). In the case of negligent breach of cardinal duties, Fujitsu's liability shall be limited to foreseeable damage typical of the contract.
- (c) Fujitsu's liability for such foreseeable damage typical of the contract shall be limited to the amount of the Customer's payments made for twelve (12) months.
- (d) Such limitation of liability shall not apply to the extent that Fujitsu maliciously concealed any defect or assumed a guarantee of quality, or if the Customer has any claims under product liability law.

7.2 Fujitsu's liability for free of charge services shall be limited to cases of wilful intent or gross negligence.

7.3 Fujitsu's legal representatives, employees and vicarious agents shall not be liable to any greater extent than Fujitsu itself under this section 7.

8. Indemnity

8.1 Fujitsu warrants that in providing the Cloud Services it will not infringe the intellectual property rights of any third party.

8.2 In case of any assertion of such claim by third parties Fujitsu will indemnify the Customer from unappealable material costs of such claim and the reasonable legal costs and expenses if

- (a) the Customer immediately informs Fujitsu in writing of the claim being made against him;

- (b) Fujitsu has sole control over the defence and the associated negotiations; and
- (c) the Customer provides to Fujitsu the necessary support, information and power of attorney to conduct the aforementioned actions.

Customer understands that this is the sole remedy for the breach of the warranty as set forth in section 8.1.

- 8.3 If (i) the Cloud Services or parts thereof are in any legal proceeding claimed or held to constitute an infringement of any third-party intellectual property right; or (ii) in any such action, claim, assertion, demand or proceeding a third party obtains an injunction or other relief whereby the ability to use or operate the Cloud Services is or might be impaired, then Fujitsu shall at its expense either (i) procure for the Customer the right to continue to use or operate the Cloud Services or part thereof affected; or (ii) while meeting the specifications in all respects, replace or modify the Cloud Services or part thereof affected so that there is no longer any infringement existent and no third-party relief applicable. In the event that such procurement or workaround is economically untenable for Fujitsu, because the respective costs of the procurement or workaround are disproportional with respect to the provision of the Cloud Services, then Fujitsu may terminate this Agreement with immediate effect.
- 8.4 The Customer is solely responsible for the legality of Customer Content. Fujitsu does not review any Customer Content prior to its integration within the Cloud Services. The Customer will indemnify Fujitsu, Fujitsu's affiliates, directors, employees, consultants and/or agents from any legal action brought forward by a third party to the extent that such action relates to Customer Content, including, but not limited to, infringement or misappropriation of any third-party's intellectual property rights or violation of applicable law.

9. Confidentiality

- 9.1 Pursuant to this Agreement and the provision of the Cloud Services, the Parties may disclose or otherwise make available to each other confidential and proprietary information, including, but not limited to, (i) information of a confidential nature; (ii) proprietary aspects of the Cloud Services; (iii) information which was marked or designated as confidential when disclosed or made available to the other Party; and (iv) the content of this Agreement excluding content which has been published on Fujitsu's website (collectively "**Confidential Information**").

- 9.2 Except as otherwise expressly provided in this Agreement, neither Party receiving Confidential Information of the other Party may disclose it to any third party without the prior explicit consent (in written form or textform) of the original disclosing Party, except to the receiving Party's own employees, directors, consultants, or affiliates to whom disclosure is necessary to fulfil the purposes set forth in this Agreement and who agree to keep the Confidential Information of the original disclosing Party confidential with an equal level of confidentiality as provided in this section 9.
- 9.3 This Agreement imposes no obligation on the receiving Party with respect to Confidential Information of the disclosing Party that the receiving Party can establish (i) was in the possession of or was known by the receiving Party prior to its receipt from the disclosing Party without an obligation to maintain its confidentiality; (ii) is or becomes generally known to the public without violation of this Agreement; (iii) is obtained by the receiving Party from a third party without an obligation to keep such information confidential; (iv) is independently developed or created by the receiving Party; or (v) has to be disclosed pursuant to a legal proceeding or otherwise required by law.
- 9.4 This section 9 shall continue to apply subsequent to the termination of this Agreement for five (5) years.
- 9.5 Each Party must, without undue delay, destroy, erase or return to the other Party all Confidential Information (including any duplicates) if requested to do so by the other Party upon termination of this Agreement.

10. Data Protection

- 10.1 Where applicable, the Parties shall comply with applicable data protection regulations and shall oblige their personnel to observe statutory data secrecy requirements or similar appropriate confidentiality.
- 10.2 If and to the extent that Fujitsu processes personal data on behalf of the Customer as a data processor in the sense of Art. 4 no. 8 of the European General Data Protection Regulation (2017/679 – GDPR), the Parties shall immediately agree on a data processing agreement subject to Art. 28 GDPR.

11. Variation

With respect to the technological progress and the optimisation of its Cloud Services Fujitsu reserves the right to alter the provisions of this Agreement, provided that such alterations are

reasonable and acceptable to the Customer. The Customer shall be notified in advance of any such alterations or amendments either in writing or by e-mail. Unless the Customer objects in writing to such alterations or amendments within four (4) weeks from receipt of the relevant notification, the changes shall be deemed accepted by the Customer. Fujitsu will explicitly inform the Customer about this condition at the time of the relevant notification. In cases of alterations or amendments the Customer is also entitled to terminate this Agreement with immediate effect.

12. **Links**

12.1 Except for websites on which Fujitsu provides the Cloud Services (hereinafter “**Cloud Services Websites**”) Fujitsu is not liable for the content or privacy practices of any websites to which the Cloud Services Websites provide links. Any reference to such links cannot be interpreted as an endorsement, authorization or recommendation by Fujitsu with regard to the owners or operators of the linked websites or the content of the linked websites.

12.2 The Customer may link to the Cloud Services Websites on his websites, provided that

- (a) his website does not slander or damage Fujitsu or its affiliates in any way or contains inappropriate content;
- (b) his website complies with applicable law and does not infringe any third-party rights; and
- (c) Customer does not create a frame around content of Fujitsu or creates any impression by any other method that the content does not belong to Fujitsu.

13. **Jurisdiction, Applicable Law and Severability Clause**

13.1 This Agreement, its construction, and any and all disputes resulting from and in connection with this Agreement shall be subject exclusively to German law, excluding any provisions of choice of law or conflict of laws that would prescribe the applicability of any laws of a jurisdiction other than Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG, Vienna Convention) shall be excluded.

13.2 All modifications to this Agreement need to take place in written form or textform.

13.3 The exclusive venue and jurisdiction regarding all disputes arising out of or associated with this Agreement shall be the Regional Court Munich I in Germany.

- 13.4 Should any provision in this Agreement be found invalid, unenforceable or unlawful, this shall not affect the full validity of the remaining provisions herein. In such a case the Parties shall cooperate in preparing provisions that will produce a legally valid result which economically comes as close as possible to the invalid provision. The same applies to any gaps in this Agreement.
- 13.5 All Service Specification Schedules of this Agreement are incorporated herein by reference. In case of a contradiction between these Terms and Conditions and a Service Specification Schedule, the provisions of the respective Service Specification Schedule shall prevail.