

**Agreement relating to  
Data protection in conjunction with  
the use of the Fujitsu K 5 Cloud**

between

Fujitsu Technology Solutions GmbH, Mies-van-der-Rohe-Street 8, 80807 Munich, Germany  
hereinafter referred to as "Contractor"

and

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the registered customer in the Fujitsu K 5 Cloud  
hereinafter referred to as "Customer"

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Insofar as the Contractor, either

- (i) As part of a proper electronic onboarding
- (ii) as part of a signed contract with Customer or
- (iii) on behalf of other Fujitsu companies, holding a contract with Customer, is serving the Customer,

collects, processes or uses personal data on behalf of the Customer for the provision of services (order data processing pursuant to the German Federal Data Protection Act (hereinafter referred to as "BDSG"), Section 11), the parties agree to the following:

## **1 Scope of this agreement, responsibility for data processing**

This agreement details the obligations of the Parties related to the protection of data resulting from the scope of the processing of personal data (and the corresponding data categories and data types) on behalf and as defined in detail in the Fujitsu K 5 Cloud contractual documents. It shall apply to all activity within the scope of and related to the Fujitsu K 5 Cloud, and in whose context the Contractor's employees or sub-contractors may come into contact with Customer's personal data.

Contractor shall process personal data on behalf of Customer. The Customer is solely responsible for complying with the statutory data privacy and protection regulations, including, but not limited to, the lawfulness of the transmission to the Contractor and the lawfulness of processing; Customer shall be the responsible body (»verantwortliche Stelle«) as defined in section 3 paragraph 7 BDSG. If the legal domicile of the Customer is not in Germany, the mandatory data protection conditions of the Customer's country might also apply. If so the Customer shall observe this local legislation notwithstanding the validity and application of German data privacy law and of this agreement. Fujitsu has no influence on the conformity of the Customer with the data protection regulations in the Customer's respective home country.

## **2 Contractor Responsibility and Customer Instructions**

The scope of the processing and use of personal data by the Contractor is exclusively according to the assertive written instructions of the Customer, the valid regulations of the BDSG, and as defined in the Fujitsu K 5 Cloud German environment and associated service description.

Any instruction by Customer to Contractor related to processing (hereinafter, a »Processing Instruction«) shall, initially, be defined in the Fujitsu K 5 Cloud contractual agreements, and Customer shall be entitled to issuing changes and amendments to Processing Instructions and to issue new Processing Instructions. Parties shall treat any Processing Instruction exceeding the original contractual agreements as a change request. The Customer's instructions require the written form.

Contractor shall collect, process, and use data related to data subjects only within the scope of work and the Processing Instructions issued by Customer. Within the normal operation of the Fujitsu K 5 Cloud Service Contractor will get only access to personal related data of Customer Administrators in case of administration activities. In the normal operation of Fujitsu K 5 Cloud Services, Contractor will get no access to Customers content data.

If the Contractor is of the opinion that a Processing Instruction contravenes the BDSG or any other data protection regulations, it must immediately notify the Customer.

The Contractor is entitled to suspend the implementation of the relevant Processing Instruction until it is confirmed or changed or revoked by the responsible person on the Customer side.

Contractor shall, within Contractor's scope of responsibility, structure Contractor's internal organisation so it complies with the specific requirements of the protection of personal data in the Fujitsu K 5 Cloud. Contractor shall implement and maintain technical and organisational measures to adequately protect Customer's data in accordance with and satisfying the requirements of the BDSG (annex to section 9 BDSG). These measures shall be implemented as defined in the documentation of the Fujitsu K 5 Cloud, comprising

- a) physical access control
- b) logical access control
- c) data access control
- d) data transfer control
- e) data entry control
- f) control of Processing Instructions
- g) availability control
- h) separation control

Contractor shall be entitled to modifying the security measures agreed upon, provided, however, that no modification shall be permissible if it derogates from the level of protection contractually agreed upon.

The international standard ISO/IEC 27001:2013 specifies the requirements for manufacture, introduction, operation, monitoring, maintenance and improvement of a documented information security management system taking the IT risks within the entire organization into consideration. This means: maximum security relating to availability, confidentiality, integrity and authenticity of data and systems.

The data center of the Contractor has been certified by an official and accredited Certification Instance for Information Security pursuant to ISO/IEC 27001:2013.

Further details of these technical and organizational measures or the ISO/IEC 27001:2013 certification can be provided upon Customer's request. Except where Customer is able to obtain such information directly, Contractor shall provide all information available and necessary for compiling the overview defined by § 4g paragraph 2 sentence 1 BDSG.

Contractor shall ensure that any personnel entrusted with processing Customer's data have undertaken to comply with the principle of data secrecy in accordance with § 5 BDSG and have been duly instructed on the protective regulations of the BDSG. The undertaking to secrecy shall continue after the termination of the use of the Fujitsu K 5 Cloud.

Contractor shall, without undue delay and in conformity with the legal requirements, inform Customer of any material breach of the regulations for the protection of Customer's personal data, committed by Contractor or Contractor's personnel. Contractor shall implement the measures necessary to secure the data and to mitigate potential adverse effects on the data subjects and shall agree upon the same with Customer without undue delay. Contractor shall reasonably support Customer in fulfilling Customer's disclosure obligations under section 42a BDSG.

Contractor represents and warrants that Contractor complies with Contractor's obligations under sections 4f and 4g BDSG (section 11 paragraph 2 no. 5 in connection with section 11 paragraph 4 BDSG). The foregoing shall include in particular, but not be limited to, Contractor's obligations to appoint a data protection official where required by law.

Contractor shall not use data transmitted by the Customer for any purpose other than to fulfil Contractor's obligations under the Fujitsu K 5 Cloud Services contractual agreement.

The processing and use of data takes place exclusively in the territory of the Federal Republic of Germany, in a Member State of the European Union or in another contractual state of the Treaty on the European Economic Area or in an affiliated Fujitsu company and in individual cases other sub-contractors outside the EU or the EEA. For details about sub-contractors agreements, see Section 9 below and the Fujitsu K 5 Cloud documentation. In the case, that the parties have a need for processing outside of the EU/EEA or give sub-contractors outside the EU/EEA access to Customer's data the parties agree, that this will be done based on EU Guideline 95/46 EG or in the future EU Privacy-Law GDPR and by using of EU Standard Contract Clauses (C2P).

Where Customer so instructs Contractor, Contractor shall correct, delete or block data in the scope of this Fujitsu K 5 Cloud. Unless stipulated differently in the Fujitsu K 5 Cloud contractual agreement, Contractor shall, at Customer's

individual request, destroy data carrier media and other related material securely and beyond recovery of the data it contains. Where Customer so instructs Contractor, Contractor shall archive and/or provide to Customer, such carrier media and other related material.

After the termination or expiration of the Fujitsu K 5 Cloud use by Customer the data must be returned in a fully legible and usable manner, in a commonly accepted electronic format and include a presentation of the structure so that the data can be migrated by the Customer without any problems. Alternatively, the data should after prior approval by the Customer be destroyed in accordance with good data protection practice and that data could not be rebuild into a readable format. The same shall apply to any test and waste material. The deletion report is to be presented to the Customer on request. Data deletion shall remain undone as long as the data is not handed over to the Customer or the Customer has issued the instruction to delete the data.

Where Customer's data becomes subject to search and seizure, an attachment order, confiscation during bankruptcy or insolvency proceedings, or similar events or measures by third parties while in Contractor's control, Contractor shall notify Customer of such action without undue delay. Contractor shall, without undue delay, notify to all pertinent parties in such action, that any data affected thereby is in Customer's sole property and area of responsibility and that Customer is the responsible body in the sense of the BDSG.

### **3 Customer Responsibilities**

Customer shall, without undue delay and in a comprehensive fashion, inform Contractor of any defect Customer may detect in the Fujitsu K 5 Cloud and of any irregularity in the implementation of statutory regulations on data privacy.

Customer shall be obliged to maintain the public register of processing in accordance with section 4g paragraph 2 sentence 2 BDSG.

### **4 Enquiries by Data Subjects**

Where, in accordance with applicable data privacy laws, Customer is obliged to answer a data subject's enquiry related to the collection, processing or use of such data subject's data, Contractor shall reasonably support Customer in providing the required information. The foregoing shall be apply only where Customer has so instructed Contractor in writing or in text form, and where Customer reimburses Contractor for the cost and expenses incurred in providing such support. Contractor shall not directly respond to any enquiries of data subjects and shall refer such data subjects to Customer.

Where a data subject requests Contractor directly to correct, delete or block data, Contractor shall refer such data subject to Customer. The Contractor is not liable when such a forwarded subject request is not processed in time, or responded in a correct manner by the Customer.

### **5 Data secrecy and confidentiality**

In the contractual processing of data, the Contractor shall undertake to protect the personal data of the Customer according to Section 5 BDSG and the legally prescribed and contractually promised secrecy.

The Contractor may only deploy employees who are obliged to data secrecy when processing and using personal data. The Contractor must, in particular, act prudently to ensure that all persons deployed by the former in processing or fulfilling this contract are familiar with and observe legal data protection regulations and that Customer information is not forwarded to any third party or used in any other way as appropriate.

The Contractor is thus obliged to treat all data which it either directly or indirectly considers as part of the cooperation with the Customer in a confidential manner and to use such only in conjunction with the Fujitsu K 5 Cloud. The Contractor must also ensure that such information is not forwarded to any unauthorized third party, nor made accessible to any unauthorized third party in any manner and that all the suitable precautions have been taken to stop any third party from accessing such information.

This secrecy obligation applies for the Contractor's employees and commissioned staff irrespective of the type and legal definition of the cooperation.

Secrecy obligations according to this agreement apply for 5 years after the completion of this cooperation.

Secrecy obligations according to this agreement do not apply if and insofar as the information involved is proven to be

- general knowledge or
- generally known through no fault of the person/party obliged to secrecy or
- was acquired legally by a third party or to be acquired or
- is available to the recipient party.

The Contractor is authorized to use without any constraints its own findings as well as any of its own information that has not been obtained from the Customer without limiting the above obligations.

The Contractor is aware that

- any breach of company and business secrets can be punished in a court of law to the extent of imprisonment, and
- that the person violating such operational and business secrets is obliged to provide compensation for the resulting damage.

## **6 Contractor's data protection officer**

A data protection officer is appointed in writing pursuant to Section 4f BDSG.

This officer can carry out his/her activity pursuant to Sections 4f, 4g BDSG and provide the necessary expertise and reliability. His/Her contact data is published in the Internet (see data protection in the [Imprint of the German Fujitsu homepage](#)).

This person must ensure the Contractor's adherence to the BDSG as well as to other data protection regulations regarding the order. If the data protection officer determines any irregularities in this context, he/she must immediately notify the Customer.

In cases of doubt, the Customer can directly contact the Contractor's data protection officer. A change of data protection officer must be reported immediately to the Customer; the corresponding notification is generally published on the Contractor's Internet-Homepage.

Contact details of the Contractor's data protection officer are communicated to the Customer separately.

## **7 Customer's data protection officer**

The Customer appoints a data protection officer in writing pursuant to the Section 4f BDSG or another local country-specific legal provision, if the Customer does not come under the Federal Data Protection Act; alternatively the Customer has named a responsible contact person for data protection who provides the necessary expertise and reliability. He/She must guarantee the implementation of the appropriate Federal Data Protection Acts and other provisions for data protection with regard to the order relationship with the Customer. If the data protection officer determines any irregularities in this context, he/she must immediately notify the Contractor.

In cases of doubt, the Contractor can directly contact the Customer's data protection officer. The Contractor must be notified immediately if the data protection officer should change.

Contact details of the Customer's data protection officer are communicated to the Contractor separately.

## 8 Order control

The Customer has the right in advance of data processing within the mandate and then in ongoing operation to implement or have implemented the order control prescribed in no. 6 of the enclosure to Section 9 BDSG in consultation with the Contractor. If the client commissions a third party with the order control, the Customer ensures that this third party can provide sufficiently concrete audit assignment in which the Contractor can audit the legality of the order control. The Contractor is authorized to decline any order control without such audit assignment of the Customer e.g. for data protection and security reasons. The employee responsible for the implementation of order control is defined by the Customer at registration in the Fujitsu K 5 Cloud.

The Customer has, as part of the order control, in particular, rights to information, rights to inspection and access rights, through control samples which must generally be registered 10 working days in advance to prove compliance with this agreement by the Contractor within the Contractor's business operation during normal business hours and in the locations where data of the Customer is to be saved and processed. The Customer will design such inspections in a way, that the Contractors business processes are not more than necessary undermined.

On Customers request, the Contractor shall be obliged to provide the Customer with the available, necessary information and documentary proof regarding order control when it comes to adherence to obligations that exist for processing personal data.

The Contractor is obliged to maintain detailed documentation about data processing and data usage which can thus be used by the Customer as proof that such data has been processed or used correctly. This documentation is subject to standard book-keeping principles as well as correct archiving and storage. The Contractor can also submit current certificates, reports or report excerpts from independent instances (e.g. economic auditors, auditors, data protection officers, IT security department, data protection auditors, quality auditors) or a suitable certification via an IT security or data protection audit (e.g. according to ISO/ICE 27001:2013).

## 9 Subcontract relationships

With regard to the processing or use of the Customer's personal data by the Contractor, affiliated companies of the Fujitsu Group are involved as sub-contractors and in individual cases also other external third parties, if the following prerequisites exist: For the avoidance of doubt: The relationship between Contractor and following sub-contractors and sub- sub-contractors shall be governed by the same obligations and requirements as the relationship between Customer and Contractor. It is in the responsibility of the Contractor to ensure an equivalent level of contractual data security. The participation of sub-contractors is expressly permitted. Customer hereby permits Contractor to use Contractor's affiliated legal entities as sub-contractors for the scope of work defined in the Fujitsu K 5 Cloud documentation, in whole or in part, and to subcontract to said affiliated legal entities the parts of the scope of work as set out in the Fujitsu K 5 Cloud documentation.

Contractual agreements with the sub-contractor(s) are to be designed in such a way by the Contractor that they are aligned with data protection regulations as defined in the contract relationship between the Customer and Contractor, in particular in this agreement.

Where legally mandatory the Customer is to be granted control and inspection rights at the sub-contractors and possible sub-sub-contractors according to this agreement and Section 11 BDSG and Section 6 of Appendix Section 9 BDSG; the Contractor shall ensure this demand contractually with the respective sub-contractor and possible sub-sub-contractors. This also includes the Customer's right to receive information from the Contractor on written request in relation to the key contents in privacy regulations of the contract and the implementation of the data protection related obligations in the subcontract, if necessary by inspecting the data protection relevant contractual documents.

The approval requirements for subcontracting shall not apply in cases where Contractor subcontracts ancillary deliverables to third parties; such ancillary deliverables shall include, but not be limited to, the provision of external contractors, mail, shipping and receiving services, and maintenance services.

Contractor shall conclude, with such third parties, any agreement necessary to ensure the adequate protection of data.

## 10 Supplementary agreements

There are no supplementary agreements for this agreement. Changes and supplements to this agreement must be made in writing in order to become valid (e.g. letter with legal signature ).

Should any provision in this agreement be or become invalid this shall not affect the remaining contents in any way. The contracting parties shall replace the invalid provision with a valid provision that reflects as closely as possible the economic purpose of the invalid provision.

Unless otherwise regulated above, legal regulations apply. The sole court of jurisdiction, unless otherwise defined by law, shall be Munich. All disputes arising in conjunction with this agreement shall be subject to German law.

## 11 Termination and contract period

The duration of this agreement is based on the underlying contractual regulations that have been agreed between Customer and Contractor. If the use of is terminated by the Contractor, then this agreement terminates automatically without requiring a simultaneous termination. The Customer may terminate this agreement at any time without adhering to any period of notice if the Customer proves that Contractor seriously contravenes any data protection regulations or if the Contractor is unable or unwilling to implement a Customer instruction or if the Contractor has refused Customer access contrary to this agreement.

Contractor: Fujitsu Technology Solutions GmbH

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Signature

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Name

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