

FUJITSU CLOUD SERVICE K5: TERMS OF USE

Effective as of July 20, 2016

Under these provisions, Customers may access and use the Cloud Services. Capitalized terms are defined at Article 2 and the Glossary.

Article 1. Application of Terms

- 1.1 This document sets out the general terms and conditions (the "Terms") upon which each Customer may access and use the Cloud Services and the basis on which Fujitsu will supply the Cloud Services.
- 1.2 These Terms together with each Service Description, Service Level Description and each policy, pricing, condition and procedure document expressly incorporated by reference by these Terms or any Service Application associated with them (collectively, the "Documentation") are the complete agreement ("Agreement") between Fujitsu and the Customer for the Cloud Services.

Article 2. Definitions.

In these Terms:

"Cloud Services" means the cloud products and/or services made available under or in connection with these Terms, as more particularly described in each Service Description and any Service Application authorized under or in connection with these Terms.

"Contract ID" means a unique identifier which identifies the Customer, which is issued by Fujitsu in registering the Customer for an account for the Cloud Services.

"Customer" means the entity requesting and using the Cloud Services.

"Customer Contact" means the person that the Customer appoints as its point of contact for the Agreement and in respect of the Cloud Services, as identified in the Customer's application for the Cloud Services and updated by notification to Fujitsu from time to time.

"Customer Content" means the data, information and material, including the Application Software and any data, text, audio, video, images or other content, that the Customer or the End User provides, transmits or stores using any of the Cloud Services.

"Effective date" means the date identified by Fujitsu in an approved Service Application as the 'Effective Date'.

"End User" means any person or entity that the Customer permits to access or use any of the Cloud Services or any Customer Content.

"Fujitsu" means Fujitsu Limited or, if different, the member of Fujitsu's group of companies that enters into a written agreement with the Customer for the Cloud Services, which incorporates by reference these Terms.

"K5 Resource" is a collective term for computing, storage and network services and any other resources deployed by the Customer for use in connection with the Cloud Services.

"Service Application" means an order for any of the Cloud Services authorized under or in connection with these Terms, which will be made substantially in the form designated by Fujitsu or as otherwise mutually agreed by Fujitsu and the Customer in writing.

"Service Description" means each document made available by Fujitsu on the Service Website or otherwise notified by Fujitsu in connection with these Terms, whether in print or online, describing the features and functionalities of the any of the Cloud Services and identified by Fujitsu as a 'Service Description' for the purposes of these Terms.

"Service Portal" means the webpage(s) operated by or for Fujitsu and accessed by a Customer using its credentials in accessing and using the Cloud Services it orders under these Terms.

"Service Level Description" means a document made available by Fujitsu on the Service Website or by Fujitsu to the Customer via other electronic means or in writing, designated as a 'Service Level Description' and describing the service levels applicable to any of the Cloud Services.

"Service Start Date" means the date identified by Fujitsu during the registration process as the first date from which the Cloud Services the Customer has registered to use will be available to the Customer to access using its credentials.

"Service Website" means the website(s) made publicly available by Fujitsu for the Cloud Services.

"Regional-Specific Terms" means any provisions notified by Fujitsu to the Customer as applicable to the Cloud Services for the territory in which the Customer is purchasing and/or Fujitsu is supplying the Cloud Services, which are at variance with these Terms. Regional-Specific Terms, if any, prevail over these Terms to the extent and for the duration of any inconsistency.

"User Name" means a character string selected by the Customer during the registration process for the Cloud Services on the Service Portal.

Other expressions may be used in connection with these Terms or the Cloud Services which have defined or particular meaning for Fujitsu. Capitalized terms used but not otherwise defined will be interpreted by reference to definitions used in Fujitsu's Cloud Services Glossary, as published at the Service Website or otherwise made available to the Customer by Fujitsu from time to time.

Article 3. Ordering Cloud Services

- 3.1 If the Customer requires any of the Cloud Services, then the Customer will apply to register by completing and submitting an application in the form and following a process designated by Fujitsu. If the Customer's application is accepted, then Fujitsu will notify the Customer by email or otherwise in writing of acceptance, confirming the Customer's Service Application by approving the application and affirming the Customer's applicable Documentation and Contract ID. Fujitsu is not obliged to accept any request to supply any of the Cloud Services.
- 3.2 Access to and use of the Service Website and each Service Portal may be subject to their own terms of use and any policies that these incorporate by reference. The Customer must also comply with

these requirements, otherwise the Customer and its End Users will not be authorized to use (and must not use) the Service Website or any Service Portal.

Article 4. Term and Service Period

- 4.1 The Agreement shall be effective from the Effective Date and continue unless and until terminated by either the Customer or Fujitsu in accordance with these Terms.
- 4.2 The Cloud Services ordered under these Terms are available for an initial period of 12 months from the Service Start Date and then for successive 12 month periods or such other periods as may be specified in an authorized Service Application (each, a "**Service Period**"), unless and until terminated by either the Customer or Fujitsu in accordance with these Terms.
- 4.3 This does not limit the Cloud Services (in whole or in part) may be subject to minimum commitments, comprising the minimum volumes and/or duration for which the Customer agrees to use (or permit Fujitsu to use to calculate the amounts payable for using and accessing) the relevant Cloud Services (each, a "**Minimum Commitment**"), where and as set out in the Documentation or otherwise agreed in writing from time to time.

Article 5. Termination

- 5.1 The Customer may terminate the Agreement without cause at any time by providing written notice and closing the Customer's account for the Cloud Services using Fujitsu's then prescribed account closing mechanism. The Agreement will end with effect from the date upon which the Customer's account is closed. Fujitsu may terminate the Agreement for any reason without liability by providing to the Customer 30 days prior written notice.
- 5.2 The Customer and Fujitsu may each end the Agreement: (i) immediately for cause if the other is in material breach of the Agreement, where that party has been notified of that breach yet not remedied it within 30 days or such period permitted by that notice; (ii) immediately if the other party has ceased or is likely to cease to operate in the ordinary course, or becomes or is likely to become the subject of any bankruptcy, liquidation, dissolution or similar proceedings in any jurisdiction; (iii) immediately if the other party transfers or attempts to transfer all or material part of its business to a third party; (iv) by mutual written agreement, or as otherwise specified in or permitted by any Service Application authorized under or Regional-Specific Terms applying to the Agreement. Failure to pay invoices for any of the Cloud Services comprises an example of a material breach.
- 5.3 Fujitsu may also terminate the Agreement immediately upon written notice if: (i) Fujitsu's relationship with a third party who provides software or other technology used to provide the Cloud Services ends for any reason or requires Fujitsu to change the way its provides the third party's software or other technology as part of the Cloud Services; (ii) in order to comply with the law or requests of local government entities; or (iii) if Fujitsu determines that the Customer's or its End Users use of the Cloud Services, or Fujitsu's provision of the Cloud Services to the Customer or its End Users has become impractical or unfeasible, for any legal or regulatory reason.
- 5.4 When the Agreement ends: the Customer's rights under the Agreement to use or access any of the Cloud Services supplied under it will also end; and the Customer will remain responsible for and

shall promptly pay to Fujitsu all amounts incurred up to the date of termination, including for tasks in-process that complete after the date of termination.

- 5.5 Fujitsu is not obliged to continue to provide the Cloud Services or to host and/or store any Customer Content after the Agreement ends. Post-termination assistance and any requirements for hosting, storage or other services after the Agreement ends are subject to mutual agreement between Fujitsu and the Customer before the Agreement ends and available to the extent that the Customer pays to Fujitsu any charges for post-termination use of the Cloud Services and all other amounts due.
- 5.6 If, prior to the expiry or achievement of any applicable Minimum Commitment, the relevant Cloud Service is terminated, then the Customer shall promptly pay to Fujitsu cancellation fees in consideration for early release from the Minimum Commitment. This obligation will not apply where the Agreement is terminated by the Customer for Fujitsu's breach in accordance with these Terms. Unless otherwise stated in the Documentation, cancellation fees are calculated as an amount equal to 'A' multiplied by 'B'. 'A' is the average service fees payable in a month for the applicable Cloud Service (as determined for the period from the Service Start Date to the month preceding the month of the termination). If the period from the Service Start Date to termination is less than one month, then 'A' is instead the sum of the average service fees incurred by the Customer in a day for the applicable Cloud Service (as determined for the period from the Service Start Date to the date of the termination) multiplied by 30. 'B' is the number of months then remaining in the Service Period for the relevant Cloud Service (rounded up to 1, if less than one month remains).

Article 6. Provision and Use of the Service

- 6.1 Fujitsu shall use commercially reasonable efforts to supply the Cloud Services to the Customer in all material respects as described in the relevant Service Description. Fujitsu warrants that it provides the Cloud Services using commercially reasonable skill and care. The Customer accepts that it is responsible for verifying that the Cloud Services are suitable for its own needs.
- 6.2 In order to use the Cloud Services, the Customer shall prepare computer terminal(s), communication line(s), hardware, software and other necessary resources as designated by Fujitsu ("**Customer Environment**"), and connect to any computer equipment through which the Cloud Services are made available by Fujitsu ("**Fujitsu Environment**"). The Cloud Services shall be provided to the Customer solely by means of the Customer connecting to the Fujitsu Environment from the Customer Environment via a network.
- 6.3 In order to start using the functions provided by the Cloud Services, unless otherwise designated by Fujitsu, the Customer must conduct certain tasks, as designated by Fujitsu via the Service Portal or APIs using its Contract ID. Prior to using the APIs, the Customer shall review any documentation provided by Fujitsu. Any tasks that are conducted via the APIs using the Customer's Contract ID or other Customer account credentials shall be deemed to have been conducted by the Customer.
- 6.4 The Documentation may prescribe other responsibilities that a Customer must also meet for Fujitsu to provide the Cloud Services as described. These might include, by way of example, prescribing technical requirements and standards which the Customer must meet in order to access the Cloud Services or experience availability consistent with their Service Level Description. Fujitsu is only

obliged to deliver the Cloud Services as described if the Customer takes the steps identified in the Documentation as Customer responsibilities or dependencies. If a Customer does not do so, then this may prevent, delay or hinder the Cloud Services' performance (which will not be Fujitsu's responsibility) or increase the applicable amount payable by the Customer for the Cloud Services.

- 6.5 The Customer must only access and use the Cloud Services: (i) only to the extent of authorizations granted by Fujitsu; (ii) for its own business purposes and must not access, use or reproduce any part of the Cloud Services for any other purpose (except for security or back-up purposes in respect of the Customer Content); (iii) in accordance with any operating instructions, policies and procedures that apply in respect of the Cloud Services, as set out or referred to in any of the Documentation or that Fujitsu notifies to the Customer from time to time, whether by publishing at the Service Website or notifying by email or via the Service Portal, including policies relating to security, access and passwords; (iv) and in accordance with all applicable laws. Unless otherwise specified in Service Application or by express agreement with Fujitsu in writing, the Customer is not authorized to sell, resell, lease or sublicense to any third party direct access to all or any portion of the functionalities of any of the Cloud Services nor permitted to provide hosting or timesharing services via the Cloud Services to others. The Customer shall not have any right to enter or gain access to Fujitsu's premises in connection with the use of the Cloud Services.

Article 7. Maintenance and Suspension

- 7.1 The operational hours of the Cloud Services shall be 24 hours a day, 365 days a year, subject to maintenance. Service Descriptions and any Service Level Description identify any availability measures that apply for the specific Cloud Services described. Availability is measured at infrastructure level and measurements will exclude network connectivity and/or access issues and other events that 'stop the clock', as prescribed in the Documentation.
- 7.2 Fujitsu may temporarily suspend the provision of any of the Cloud Services in order to undertake planned maintenance. Fujitsu will use reasonable efforts to notify planned maintenance reasonably in advance (by giving at least 14 days prior advance notice, where practical) whether by posting notifications at the Service Website or a Service Portal or by e-mailing or otherwise notifying the Customer Contact in advance.
- 7.3 Fujitsu may at any time temporarily interrupt or suspend the provision of any of the Cloud Services in order to maintain their integrity, in the event of an emergency, or to manage or prevent any Security Risk including wrongful acts or attacks to the Fujitsu Environment. If the Customer is affected by such interruption or suspension, Fujitsu shall use reasonable efforts to notify the Customer promptly thereafter.
- 7.4 Fujitsu may suspend the provision of the Cloud Services and any part of them immediately where it determines: (i) a Customer's or any End User's use of the Cloud Services (including any access of the Cloud Services using the Customer's credentials) poses any security risk to the Cloud Services or any third party, may be fraudulent or subject Fujitsu or any member of its group of companies to liability; (ii) the Customer or any person using its credentials is in breach of the Agreement, including as a consequence of non-compliance with Acceptable Use Policy or for non-payment of amounts due and payable; or (iii) the Customer has ceased to operate in the ordinary course or become the subject of any bankruptcy, liquidation, dissolution or similar proceedings, until the relevant circumstance is resolved to Fujitsu's satisfaction (acting reasonably). If the circumstance

cannot be satisfactorily resolved and promptly, then Fujitsu may terminate the suspended Cloud Services and the Agreement in respect of those services immediately on written notice. Amounts payable under these Term continue to accrue until the Agreement entered under these Terms for the Cloud Services is terminated, including during the period of any suspension of any of the Cloud Services.

Article 8. Support

- 8.1** Fujitsu shall respond to any general inquiries from the Customer Contact concerning the specifications and operating methods related to the Cloud Services and the performance of the Cloud Services through a help desk, as set out in the applicable Service Description.
- 8.2** Fujitsu is not obliged to provide any support except as set out in the Documentation. Without limiting the foregoing, Fujitsu has no obligation to provide any support related to any service or software independently provided or arranged for by the Customer, any software deployed in connection with any K5 Resource, any software used jointly with the Cloud Services or in respect of any inquiries regarding the internal structure of the Fujitsu Environment. The Customer is solely responsible for technical support of its applications (including any web or other application a Customer creates using the Cloud Services and any source code written by Customer for use in connection with use of the Cloud Services), the Customer's APIs and computing, storage and other Customer owned or operated resources via which the Customer or any End User may use the Cloud Services.

Article 9. Intellectual Property

- 9.1** The intellectual property rights in materials provided in connection with the Cloud Services, including contents and software, are owned by Fujitsu or a third party (each, the "Licensor"). Except as otherwise expressly permitted, or to the extent where such restriction is expressly prohibited by applicable law, the Customer shall not, among other acts, reproduce, adapt, publicly transmit (including the act of making transmittable), modify, reverse-engineer (including reverse-compiling, reverse-assembling, and any other act of analyzing undisclosed internal structures of) such materials.
- 9.2** Software developed by the Licensor may be provided to the Customer as part of the Cloud Services upon approval by Licensor, where applicable. The Customer agrees that use of Licensor software (which may include open source software) is subject to the terms and conditions of the applicable license agreement presented by Fujitsu, and the Customer must comply with such terms and conditions. The extent of the relevant Licensor's liability with regard to such software shall be as set out in the applicable license agreement. The Documentation may specify policies, rules or restrictions that apply to how the Cloud Services may be used and how any web or other applications or instances that run on or use the Cloud Services may be built, with which the Customer and its End Users must comply.
- 9.3** Fujitsu may terminate the provision of third party Licensor software due to, among other reasons, the expiration or termination of the applicable license or software support services. Fujitsu shall notify the Customer prior to such expiration or termination and the Customer shall cease use of such software by the applicable expiration or termination date, and where technically possible,

delete such software. If the Customer fails to promptly cease using and delete such software, then Fujitsu may unilaterally delete or block access to any K5 Resource in which such software is stored.

- 9.4 Where the Customer uses software independently provided or arranged for by the Customer in connection with any of the Cloud Services, the Customer is solely responsible for such software and shall obtain all necessary rights and licenses. Any right, title or interest in and to the Customer Content shall not be transferred to Fujitsu under this Agreement.

Article 10. Data and Backup

- 10.1 The Customer is solely responsible for its data including for backing up and saving any Customer Content and any other data registered or stored with the Cloud Services. The Customer acknowledges that Fujitsu will not be liable for any loss, destruction or damage to Customer Content or other data.
- 10.2 The Customer is solely responsible for properly configuring and using the Cloud Service and for retrieving any Customer Content registered or stored in connection with the Cloud Services, at its own expense. Where any such data remains in the Fujitsu Environment after the Agreement or a Service Period ends, then Fujitsu may unilaterally delete such data at any time. However, if Fujitsu and the Customer have expressly agreed in writing prior to termination or expiry a requirement for Fujitsu to provide for the Customer post-termination assistance and its applicable terms, then Fujitsu will not exercise this right while any agreed post-termination assistance continues.

Article 11. Conduct and Acceptable Use

- 11.1 The Customer must not engage in or allow any End User to engage in any conduct in connection with the use of any of the Cloud Services that is unlawful, fraudulent, defamatory, offensive, obscene or that may bring Fujitsu's or any other member of its group's reputation into disrepute or cause harm or damage in respect of any person, entity, network or system. The Customer will (and will ensure that each End User will also) ensure compliance with Acceptable Use Policy in accessing or using the Cloud Services. The Customer is responsible for End Users' use of Customer Content and the Cloud Services. The Customer will be deemed to have taken any action that the Customer permits, assists or facilitates any person or entity to take related to the Agreement, the Customer Content or use of the Cloud Services.
- 11.2 The Customer shall, at its own expense, be directly responsible for, and shall indemnify and hold Fujitsu harmless against and resolve any losses, expenses, damages or costs incurred by Fujitsu arising in relation to any violation of this Article, including by taking corrective measures against any third parties that violate this Article in connection with the Customer's use of the Cloud Services.
- 11.3 If Fujitsu determines that the Customer has not complied with this Article, or learns of any third-party claims arising as a consequence of access or use of the Cloud Services otherwise than in compliance with Acceptable Use Policy or these Terms, then Fujitsu may take any measures that it deems appropriate, without prior notice to Customer, including deleting or blocking all or any portion of the information that was transmitted or displayed by the Customer, or terminating the Agreement immediately upon notice for breach incapable of remedy.

Article 12. Customer Responsibilities

- 12.1 The Customer shall provide to Fujitsu contact details for the Customer Contact, who will act as the Customer's authorized representative and point of contact for Fujitsu for the Agreement and the Cloud Services. The Customer may change the Customer Contact at any time by providing prior notice to Fujitsu.
- 12.2 The Customer shall be responsible for all use and management of Contract ID, User Names and any passwords required to access or use any of the Cloud Services, and Fujitsu shall not be responsible or liable in any way for any loss or damage relating to any use of such Contract ID, User Names or passwords by a third party. Any fees incurred by the use of such Contract ID, User Names or passwords by a third party shall be borne by the Customer, who shall immediately notify Fujitsu of any loss, theft, or leak of Customer's Contract ID, any User Name password or any event that may cause or has caused actual or suspected unauthorized use of any of the Cloud Services.
- 12.3 The Customer is responsible and liable for, and shall indemnify and hold Fujitsu harmless against and resolve any losses, expenses, damages or costs incurred by Fujitsu in relation to the Customer Content and any other data provided or transmitted by the Customer using the K5 Resource or any of the Cloud Services. The Customer is responsible for obtaining all necessary permissions to use, provide, store and process Customer Content and other data provided or transmitted by the Customer or its End Users in connection with the Cloud Services and grants Fujitsu permission to use Customer Content and such data to provide the Cloud Services to the Customer and any End Users. The Customer acknowledges and agrees that Fujitsu makes no representations whatsoever regarding the Customer Content and is in no way responsible or liable for monitoring or otherwise ensuring the integrity, completeness or accuracy of any of the Customer Content or any other data transmitted or processed by or for the Customer.

Article 13. Information Security

- 13.1 Fujitsu shall implement Fujitsu's prescribed information security protection measures for the Fujitsu Environment. Fujitsu's responsibilities concerning information security extend solely to maintaining those information security protection measures. All facilities used to store and process Customer Content within the Fujitsu Environment will adhere to reasonable security standards no less protective than the security standards at facilities where Fujitsu process and stores its own information of a similar type. Fujitsu does not warrant that issues concerning information security will not occur. Some of the Customer Content including any software may be subject to governmental regulation or may require security measures beyond those specified by Fujitsu as part of the Documentation for the Cloud Services. The Customer will not input or provide such content unless the Customer first implements additional required security measures and on request evidences that it has done so.
- 13.2 The Customer acknowledges that security vulnerabilities may exist in hardware or software in the Fujitsu Environment. The Customer is responsible for taking its own steps to maintain appropriate security and protection of the Customer Content, which may include the use of encryption technology to protect Customer Secured Content from unauthorized access, as well as routine archiving. The Customer may, at its discretion, seek to apply in respect of software accessed or made available for use in connection with the Cloud Services any corrections that are provided by the software's Licensor or another third party, and take other measures necessarily required to

reduce potential software security vulnerabilities. If the Customer suspects any attacks on or wrongful conduct within the Fujitsu Environment, the Customer shall immediately notify Fujitsu, and shall cooperate with Fujitsu to the extent necessary to take measures against such actual or suspected attacks or conduct. Fujitsu will use reasonable efforts to remediate the identified security vulnerabilities to the extent such vulnerabilities arise in the Fujitsu Environment.

13.3 Customer Content will be hosted and accessed using Virtual Servers accessible at the regions identified in the applicable Service Description or as otherwise agreed by the Customer Contact and Fujitsu when mapping data flows or subsequently by the parties in writing.

13.4 Fujitsu may install an intrusion detection system ("**IDS**") in Fujitsu's equipment in order to help detect communications attempting to disrupt or disable any of the Cloud Services, hack into Fujitsu's equipment, or perform hacking using Fujitsu's equipment, including equipment installed for providing the Cloud Services (collectively, "**Offensive Communication**"). The contents of any communications with Fujitsu's equipment or using Fujitsu's equipment may be verified by Fujitsu through the IDS to determine whether such communications are Offensive Communications. Fujitsu may tabulate and analyze the records of Offensive Communication obtained with the IDS, create statistical data, and use and process the same only for purposes of improving the security of any of the Cloud Services, the Fujitsu Environment and Fujitsu's other products and services. Such statistical data may be publicly announced where anonymized (meaning to the extent that it does not identify the Customer or any security vulnerabilities in respect of its data) for the research, development, improvement, enlightenment or other purposes related to enabling information security. By accessing any of the Cloud Services, the Customer acknowledges and consents to each of the items that this Article describes.

Article 14. Customer Content

14.1 With respect to any Customer Content subject to an access control function ("**Customer Secured Content**"), Fujitsu shall not access, inspect, or use such Customer Secured Content without the Customer's consent, except as permitted by these Terms.

14.2 In accepting these Terms, the Customer consents and agrees that Fujitsu may access or inspect (and, for purposes of this Article, disclose to third parties) Customer Content, only for the purposes of and to the extent necessary to: (i) operate the Cloud Services (by way example, in calculating usage and maintaining the Cloud Services their integrity); (ii) perform the Agreement; (iii) comply with applicable law including to respond to any allegation of non-compliance or infringement arising from any third party in respect of the Customer Content; (iv) permit access for the purposes of an audit or regulatory or criminal investigation where access is expressly ordered by an authority of competent jurisdiction, mandatory under applicable law or regulations or required by a regulator or regulatory body to which Fujitsu or any member of the Fujitsu group is subject from time to time; (v) act in a manner that the Customer has expressly authorized in writing.

Article 15. Confidential Information

15.1 The Customer and Fujitsu shall treat as confidential and each maintain in confidence the other's Confidential Information, only use it solely for the purposes of and in connection with the access to and provision of the Cloud Services and shall not disclose or divulge such Confidential Information to any person other than its own officers, employees, contracts and representatives

(“**Representatives**”) who need to know such Confidential Information in order for the recipient party (“**the Recipient**”) to comply with its obligations under these Terms. The Recipient will inform Representatives of the confidential nature of the information, requiring that its Representatives keep this information confidential as required by these Terms. The Recipient may also disclose or permit access to the other’s Confidential Information shared under these Terms: (i) where and only to extent required by law, court order or other legal process or power provided, to the extent that it is legally permitted to do so, the Recipient attempts to notify the other party in advance of such disclosure and requests that the regulator, court or authority receiving the information take measures to maintain its confidentiality; or (ii) where necessary to give proper instructions to any of the Recipient’s professional advisers who are under a legal or ethical obligation of confidentiality. The Recipient shall use no less than degree of care to protect the other party’s Confidential Information and avoid its disclosure to any third party than the Recipient uses with respect to its own information of like importance. For the purposes of these Terms, Fujitsu’s Representatives include staff of any company which is a subsidiary of Fujitsu Limited.

15.2 The Recipient shall promptly, as determined in consultation with the other party, return or, to the fullest extent technically and economically feasible, destroy or erase the other party’s Confidential Information providing written confirmation of the same, upon request or the expiration or termination of the Agreement. In meeting this obligation, a Recipient will not be obliged to return or destroy: (i) copies of any computer records or files containing Confidential Information that are not readily identifiable and/or retrievable and created as a consequence of the Recipient’s automatic backup procedures; or (ii) documents and other data incorporating or based on Confidential Information where retention is required by law or any applicable governmental or regulatory authority. Any information that is not returned or destroyed remains subject to the obligations of confidentiality arising under or in connection with these Terms. This provision does not relieve the Customer from its responsibility for retrieving Customer Content at the end of the Agreement.

Article 16. Liability

16.1 Any liability of Fujitsu arising from any unavailability of Cloud Services due to reasons that are attributable to Fujitsu shall not exceed an amount calculated in accordance with any service credit mechanism set out in the Service Level Description that applies for any affected Cloud Services, which shall comprise the Customer’s sole and exclusive remedy for any unavailability of the Cloud Services. Any amount payable will be applied by Fujitsu as a credit to adjust invoices in the circumstances that the applicable Documentation prescribes.

16.2 In the event of any unavailability of the Cloud Services where no service credit mechanism applies, without limiting the other provisions of this Article: (i) Fujitsu shall not be liable for any inaccessibility or other unavailability of the Cloud Services to the Customer in the event and to the extent that any unavailability of the Cloud Services continues for fewer than twenty-four hours; and (ii) in no circumstances in any one Service Period shall any liability of Fujitsu in respect of the Customer’s inability to access the Cloud Services, if any, exceed a maximum value equal to the amount the Customer actually pays to Fujitsu for the Cloud Services related to such liability in the month followed by a month when such liability arises, regardless of the basis for the claim.

16.3 To the maximum extent permitted by law, neither party shall be liable to the other party for (and in the case of Fujitsu, nor shall its affiliates, licensors or contractors be liable to the Customer for):

(i) any indirect, special, consequential or exemplary damages or costs or for any damages for loss of profits, opportunity, goodwill, use or data, howsoever arising whether foreseeable by the party or not and even if a party has been advised of the possibility of such damages or costs; or (ii) any direct or indirect loss of revenue or business or for failure to realize anticipated savings or opportunities; or (iii) the cost of procurement of substitute goods or services. Fujitsu shall not be liable in any circumstances for any credits, damages, costs, expenses or other liabilities arising from any reasons that are not directly attributable to Fujitsu, whether foreseeable by Fujitsu or not. Nothing in this Article or elsewhere in these Terms affects or limits the Customer's responsibility to pay for the Cloud Services or any sums falling due for payment by the Customer under the Agreement.

16.4 In no event shall Fujitsu's maximum and entire liability for all claims arising in connection with these Terms and the Agreement concluded under them exceed the amount of any actual direct damages incurred by the Customer and then only up to a maximum, aggregate amount equal to the lesser of: (i) the amount the Customer actually pays to Fujitsu for the Cloud Services related to such liability in the 12 months before such liability arises; or (ii) one million euros, regardless of the basis for the claim. Without limiting any obligation under any applicable Service Level Description, neither Fujitsu nor its affiliates, licensors or contractors are responsible for any compensation, reimbursement or damages arising from the Customer's inability to use the Cloud Services or for any investment, expenditure or other commitment made by the Customer in connection with the Customer's use of or access to the Cloud Services.

Article 17. Payment and Pricing.

- 17.1** The Customer shall pay to Fujitsu within the period specified in the Documentation or if no period is specified, then within 30 days of the date of invoice ("**Due Date**") the amounts payable for the Cloud Services, at the rates or for the amounts published in the Service Website or otherwise agreed in writing, together with any applicable sales and/or consumption taxes, which are also payable by the Customer to Fujitsu at the prevailing rates. Fujitsu may invoice the amounts payable for the Cloud Services on a monthly basis from the Effective Date, even if the Customer has not then completed its own network configuration to the extent necessary to enable that access. Each monthly billing period shall be from the first day of the applicable calendar month to the last day of the applicable calendar month (on a UTC basis).
- 17.2** If the Customer has not paid an invoice in full by its Due Date, then Fujitsu may charge and the Customer shall pay to Fujitsu upon receipt of invoice a delinquency charge calculated on a daily basis at a rate of 14.6% per annum or such other rate as the Agreement's Regional-Specific Terms prescribe, from the Due Date until payment in full to Fujitsu.
- 17.3** The Customer shall make all payments to Fujitsu free of any tax withholding, and the Customer is responsible for and agrees to pay directly to the appropriate government authority any withholding tax prescribed by applicable law. The Customer will consult and fully cooperate with Fujitsu in seeking a waiver or reduction of such taxes, to the extent these arise in respect of any amounts paid or payable under these Terms and promptly complete and file all relevant documents, and promptly provide Fujitsu with a certificate of all tax paid where applicable. Where taxes are based upon the location or locations receiving the benefit of any of the Cloud Services, then the Customer has an ongoing obligation to notify Fujitsu of those locations if different than

the Customer's business address, as identified in the Service Application or other Documentation agreed by Fujitsu with the Customer from time to time.

Article 18. Export Controls.

The Customer is responsible for complying with all applicable technology control or export laws and regulations in respect of the Customer Content and use of the Cloud Services. The Customer shall not export any technical data acquired from Fujitsu in connection with access to or use of any of the Cloud Services (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations, including United States export laws and regulations and related ordinances, to any country for which the government or any government agency, at the time of export, requires an export licence or other governmental approval, without first obtaining such licence or approval.

Article 19. Personal Data.

The Customer and Fujitsu shall each comply with the requirements of any applicable laws relating to the processing of personal data and privacy in connection with any personal data passed by the Customer to Fujitsu in connection with Fujitsu's provision of the Cloud Services. The parties acknowledge that the Customer is the data controller (and authorized to appoint Fujitsu to provide the Cloud Services) and Fujitsu is the data processor, if and to the extent that any personal data is processed in connection with these Terms. By permitting any access to personal data, the Customer consents to Fujitsu's processing and represents and warrants that the Customer has the rightful authority to lawfully entrust such data to Fujitsu for processing. Unless any Regional-Specific Terms prescribe otherwise, 'personal data', 'processing', 'data controller' and 'data processor' shall be understood as having the meanings prescribed by the European Directive 95/46/EC, as amended, extended or re-enacted from time to time.

Article 20. General

20.1 Changing the Cloud Services: Fujitsu may change and discontinue at its discretion any of the Cloud Services and change or remove features or functionality of any of the Cloud Services from time to time. Fujitsu will notify the Customer if a change is material and will degrade the functionality or security of the Cloud Services or involves the discontinuation of any the Cloud Services supplied to the Customer under then current Service Descriptions, whether by publishing notification at the Service Portal or supplying it to the Customer otherwise in writing (which may be via email). In doing so, Fujitsu will provide at least 12 months prior notice for the discontinuance of all of the Cloud Services then supplied under a Services Description in their entirety and at least 14 days prior notice in the event of a materially adverse change to or discontinuance in part of any of the Cloud Services, except where earlier change or discontinuance is required to comply with the law or requests of government entities (in which case such change or discontinuance will take effect from the date that the law or the relevant entity requires).

20.2 Changing the Agreement: Since the Terms and the other parts of the Documentation may apply to many and various orders for the Cloud Services and any of them, Fujitsu may change these Terms and the Documentation from time to time. Changes to the Terms will apply with effect from 14 days from the earlier of the date of Fujitsu first publishing at the Service Website notification or sending a notification to the email address then associated with Customer's account for the Cloud Services, or a shorter period if the change is required immediately due to applicable law. Other

changes to the Documentation may apply immediately upon notification unless such changes discontinue the Cloud Services or will have the effect of materially adversely affecting or degrading the functionality or performance of the Cloud Services available to the Customer and their applicable charges, in which case Article 20.1 applies. By continuing to access or use any of the Cloud Services after notification of a change to the Documentation, the Customer agrees to be bound by the modified Documentation. Any other amendments in respect of the Customer's Agreement after the Effective Date must otherwise be agreed in writing in order to be effective.

20.3 Warranties: Each person that accepts these Terms on behalf of the Customer ("you"), whether online or in writing, warrants and represents that: you have the full legal authority to lawfully bind the Customer; you have read and understand the Agreement; and you agree, on behalf of the Customer, to the Agreement. In commencing to provide the Cloud Services, Fujitsu represents and warrants to the Customer that it has the full capacity and authority to enter into and perform the Agreement. Except as expressly provided in these Terms, Fujitsu, excludes to the full extent permitted by law all express or implied warranties, representations, terms and conditions regarding the Service, the Service Portal and their use (including any warranty that the Cloud Services or third party services will be uninterrupted or error-free or free from security vulnerabilities, or that the Customer's data will not be maliciously attacked or accessed). To the fullest extent permitted by law, all warranties and conditions which might have effect between the parties or be implied or incorporated into the Agreement for any reason are excluded, except for those set out in these Terms. Warranties will not apply if there has been misuse, modification or damage to K5 Resources which is not caused by Fujitsu or any failure by the Customer or End Users to comply with instructions issued by Fujitsu in respect of the Cloud Services.

20.4 Subcontracting: Fujitsu may use subcontractors to perform any part of the Cloud Services at its own risk. Fujitsu shall be liable for the selection and direction of the subcontractor and shall not be relieved of any of its obligations to the Customer as a consequence of using any subcontractor. The Customer may allow use of the Cloud Services where subcontracting its operations to a third party within the scope of such arrangement; provided, however, that the Customer shall not allow such third party to use the Customer's Contract ID or any Customer User Name. The Customer shall ensure such subcontractor's compliance with the Agreement, and shall remain liable under the Agreement for any act or omission of such contractor in connection with the use of the Cloud Services.

20.5 Relationship: Nothing in these Terms or the Agreement that incorporates them will be construed to create any relationship between the Customer and Fujitsu other than an independent contractor relationship. Neither party is authorized to bind the other to any liability or obligation or to represent that it has this authority. Each party is responsible for determining the assignment of its personnel and contractors and for their direction, control and compensation.

20.6 Assignment: The Customer will not assign, transfer, sublicense or delegate any or all of its rights or obligations under the Agreement to a third party, except with Fujitsu's prior written consent. Assignment or charging by Fujitsu of any of its rights to receive payment or by Fujitsu to any affiliate or by Fujitsu in conjunction with the sale of the portion of Fujitsu's business that includes the Cloud Services is not restricted.

20.7 Force Majeure: A party is not responsible for delays in or failures to fulfill its non-monetary obligations due to causes beyond its reasonable control including, by way of example, attacks and

illegal acts by any third parties or delays or failures arising from natural disasters, war, riots, conflicts, acts of terrorism, power outages or defects or malfunctions in networks, equipment or software.

20.8 Notices: All notices under the Agreement must be in writing and sent to the addresses prescribed by the Service Application or otherwise designated by a party's authorized representative in writing. The parties consent to exchange of emails between authorized representatives for each party as adequate to comprise written notice and agreement in writing, unless these Terms or any Documentation expressly prescribes otherwise (for example, these Terms explain that Fujitsu may notify certain events by posting information at the Service Website or using the Service Portal). Notifications on the Service Website or using the Service Portal will become effective upon posting. Notices provided by email will become effective upon sending unless otherwise stated in the email. It is the Customer's responsibility to keep its email address valid, as the Customer will be deemed to receive any email sent to the email address associated with its Contract ID.

20.9 Dispute Resolution: If an issue or difference arises concerning the Agreement or its subject matter and it cannot be readily resolved through discussion, then each party will, in the first instance, refer it for resolution by negotiation between the parties before initiating any legal action against the other party. If the matter is not promptly resolved through negotiation, then where Regional-Specific Terms prescribe any further steps for dispute resolution, the parties shall take those steps and comply with that process. Neither party may initiate any legal action until the process has been completed, except in order to seek and obtain urgent interlocutory relief or to protect or preserve Confidential Information or any right of action it may have in respect of intellectual property rights. Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations under or in connection with these Terms.

20.10 Survival: Termination or expiry of the Agreement and any of the Cloud Services will not affect any provisions which are reasonably required or intended to continue.

20.11 Third Party Beneficiary: Unless otherwise set forth in the Documentation, no right or cause of action for any third party is created by these Terms or the Agreement established under them. Only a party shall have any rights under or in connection with the Agreement to enforce any part of it.

20.12 Enforceability: If at any time any provision is found by any court or other competent authority to be illegal, invalid or unenforceable in whole or in part, this will not affect or impair the legality, validity or enforceability of any and all other provisions.

20.13 Entire Agreement: The Agreement embodies the entire legal and contractual relationship between the parties relating to the Cloud Services and, except in the case of any fraudulent misrepresentation, terminates, cancels and supersedes all prior representations, agreements, courses of dealing, discussions or understandings (written or oral) with respect to these Terms and the Agreement's subject matter. Each party acknowledges that it has not relied upon any statements of any person other than as expressly set out in these Terms. No power or right arising under the Agreement will be waived or any breach or default excused unless a waiver or excuse is given in writing and signed by an authorized representative for the party giving it.

20.14 Interpretation: Any words following the terms 'including', 'include', 'in particular', 'for example' or any similar expression will be construed as illustrative and not limit the sense of the words preceding those expressions. If there is any conflict between any provisions of the Documentation, then this order of precedence will apply, to the extent and for the duration of any consistency: (i) the Service Application; (ii) then the Service Descriptions, where and as incorporated in a Service Application authorized under the Agreement; (iii) then these Terms, as varied by any Regional-Specific Terms, and (iv) then any other documents expressly incorporated by reference, in the order these are referenced.

20.15 Governing Law and Jurisdiction: The Terms and the Agreement shall be governed by and construed in accordance with the governing laws and exclusive jurisdiction prescribed by the Regional-Specific Terms or otherwise agreed by Fujitsu and the Customer in writing.