

APPLICATION FORM

FUJITSU Cloud Service S5 Usage Agreement

Parties:

1. Fujitsu America, Inc. of 1250 E. Arques Avenue, Sunnyvale, CA 94085 (“Fujitsu”); and
2. Customer: [Field for Customer to complete] (“Customer”)
Headquarters Office Address: [Field for Customer to complete]

The parties agree that this Application Form, the FUJITSU Cloud Service S5 Agreement and its schedules from the agreement between the parties once the parties have completed and executed the Application Form as indicated in the Execution section below. The Customer agrees to be bound by the terms and conditions of the FUJITSU Cloud Service S5 Usage Agreement attached to this Application as well as all the Schedules referenced therein; namely Schedules 1-3.

Application Details

Item	Service Name	Quantity
1	IaaS Service	1

Usage Fees	The Usage Fees (“Usage Fees”), if applicable, will be published on the Service Portal, which can be found at https://globalcloud.us.fujitsu.com/portala/ctrl/UsePrice , and are subject to change by Fujitsu in the manner set forth herein. Time entries will be rounded up to the nearest interval of time in terms of hours, minutes or seconds. The Customer shall pay Fujitsu the Usage Fees and all applicable taxes on a monthly basis.
Global Service Desk (GSD)	Global Service Desk services to be provided by Fujitsu to the Customer are as set forth on the attached Schedule 1.
Usage Resources	The Customer may order any of the services and configurations set forth on the Service Portal for the Charges set forth thereon.

Responsible Person for Service Usage

Customer’s Name		
Name of Responsible Person (person with authority)		Position
Contact details	Address	
	Telephone	Fax
	Email	
Planned usage of this Service (Optional)		

Portal Usage

Customer Contract Number	
Portal Usage ID	
Desired start date of Service Usage	

Billing Address (if different from the Person Responsible for Service Usage)

Billing address		
Department		Name
Contact details	Email	
	Telephone	Fax
NOTE: Internal Fujitsu America Inc. organizations applying for service must enter their PCC code in the Department field. Signing this agreement authorizes FAI Accounting to cross charge the originating department.		

The Application and the attached FUJITSU Cloud Service S5 Usage Agreement and its Schedules 1-3 are agreed to by each party's duly authorized representative. The original hard copy of a party's signature or any digital signature shall be equally authentic.

Date: _____

Signed for and on behalf of Fujitsu America, Inc.:

.....
Signature of authorized person

.....
Signature Date

.....
Name of authorized person (print)

Signed for and on behalf of the Customer:

.....
Signature of authorized person

.....
Signature Date

.....
Name of authorized person (print)

FUJITSU Cloud Service S5 Usage Agreement

Background

- A. The Customer requires the use of certain cloud services on an 'as required' basis.
- B. Fujitsu has offered to make its FUJITSU Cloud Service S5 Platform Infrastructure as a Service (hereafter "the Service"), one of the cloud services provided by Fujitsu, available to the Customer subject to the terms and conditions of this FUJITSU Cloud Service S5 Usage Agreement and its Schedules (hereafter "Agreement").
- C. In using the Service, the Customer agrees to abide by the terms of this Agreement.

Operative Provisions

Clause 1: Definitions

The definitions of the terms used in this Agreement shall be as follows:

Additional Services means any related offerings or additional services, including consulting, system/cloud administration support or training, provided by Fujitsu.

Agreement means this FUJITSU Cloud Service S5 Usage Agreement together with its Schedules and the Application Form, as they may be amended from time to time in accordance with the terms of this Agreement.

API means an application program interface that enables operating instructions, such as deploying or decommissioning Virtual Machines, to be issued without having to pass through the Service Portal.

Application Form means the application form that is signed by the Customer and attached to (and forms part of) this Agreement, a copy of which appears on the Service Portal.

Backup means copying of data for use in restoring that data if it is ever needed (for example, after a data loss event.) Basic/manual IaaS Cloud backup is available through the Service Portal for Customer to invoke.

Billing Month means the period starting from the first day of the calendar month and ending on the last day of the calendar month.

Charge(s) means the charges that apply to the Service, including, but not limited to Usage Fees and license fees and applicable taxes.

Cloud refers to the physical servers, storage, and network equipment that is located in a Fujitsu Data Center. Fujitsu Customers can use the IaaS environment to support their virtual application needs. Customers can manage their virtual servers through the web-based Service Portal. Fujitsu manages and controls the underlying physical IaaS Cloud environment.

Compute Platform means an architectural framework comprised by hardware, software, and virtualization technology managed from within Fujitsu Data Centers.

Confidential Information means:

- (1) Information specific to the other party's business activities, technology or sales that has been disclosed in writing (including electronic formats) that indicates that the information is confidential,
- (2) Information specific to the other party's business activities, technology or sales that has been indicated as being confidential while being disclosed verbally or by demonstration and that has been presented in writing (including electronic formats) within 10 days of disclosure,
- (3) Customer-Specific information, and
- (4) The content of this Agreement (excluding content that has been published on the Service Portal), but Confidential Information does not include:
 - (1) Information that was already public knowledge at the time of disclosure, or which becomes public knowledge after the disclosure through no fault of the party receiving the Confidential Information (hereafter "the Recipient"),
 - (2) Information that the Recipient has rightfully obtained from a third party without obligations of confidentiality,
 - (3) Information that the Recipient already held at the time of disclosure, and
 - (4) Information that the Recipient has developed independently without reliance on Confidential Information that has been disclosed.

Confidential Materials means materials received from the other party that contain Confidential Information including Confidential Information received via a network, such as email, that have been fixed in a tangible form.

Customer Content means the data, information and material that the Customer provides, stores, accesses or transmits using the Service.

Customer Contract Number means the customer contract number allocated by Fujitsu to the Customer.

Customer Data means the information specific to the Customer that the Customer has personally registered or entered on Virtual Systems or that Fujitsu has collected in connection with the Service.

Execution Date means the date that the Application Form is signed by the last party.

Force Majeure means a circumstance beyond the reasonable control of the party claiming the event of force majeure which results in that party being unable to observe or perform on time an obligation under this Agreement. Such circumstances include, but are not limited to, acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster, acts of war, acts of public enemies, terrorism, riots, strikes, civil commotion, malicious damage, malware probes, service attacks, internet disruptions, and sabotage.

Global Service Desk (GSD) means the Global Service Desk that provides the monitoring of all FUJITSU Cloud Service S5 infrastructure and is the Customer's primary contact point for platform support, available 24x7 and is accessible by email or phone.

Incident means an event outside of standard operation that causes an interruption to, or a reduction in the quality or performance of hardware, software, or processes covered by a Fujitsu IaaS Cloud service.

Infrastructure as a Service (IaaS) is the Fujitsu hosted infrastructure that provides processing, storage, networks, security, monitoring, backups (optional additional service), and other fundamental computing resources to Customers. Infrastructure as a Service enables Customers to deploy and use their own software, applications and tools.

Insolvency Event means if either party: (a) being a company, has a petition presented for its liquidation or has a petition presented for the appointment of an administrator or has a receiver or administrative receiver appointed over it or any of its assets or makes any voluntary arrangement with its creditors; or (b) being an individual (or if a firm or partnership, any of its partners or members), has a petition presented for his bankruptcy, or has a receiver appointed over his affairs, or makes any voluntary arrangement with his creditors or (in the case of a firm or partnership) proposes or has presented against it a petition for its dissolution; or (c) in either case undergoes any analogous event in any jurisdiction where it is domiciled.

Intellectual Property means all copyright, patents, trademarks and service marks (registrable or not), designs (registrable or not), database rights, eligible circuit layout rights, trade secrets, applications for any of the foregoing, know-how and other intellectual property rights in any country.

Inquiry Contact Point means an email address established by Fujitsu as a point of contact for inquiries from the Customer.

Internet Communications Service means a connection between the Customer's Trusted Public S5 infrastructure and the public internet.

Intranet Connection Service means a private connection between the Customer's Trusted Public S5 infrastructure and the Customer's private network (on-net connection).

MAC means a media access control address (MAC Address) which is a unique identifier assigned to network interfaces for communications on the physical network.

Minimum Term means in connection with the usage of the resource a period of one hour even should actual usage be less than one hour, and in terms of the minimum length of this Agreement means 30 days.

Operating System Software means the software set out in Appendix 1 of Schedule 1 – Service Specification.

Operation Stoppage Time means the time, (excluding certain events set forth in Schedule 1) rounded down to the nearest minute, during which the Service has stopped operating and all responses to attempts to connect to the Virtual Systems managed by Fujitsu from the outside have been unsuccessful.

Portal Usage ID means the user name and password issued by Fujitsu to the Customer for use of the Service Portal.

Public Service Website means the website that Fujitsu America publishes on the Internet that provides details of the Service to the general public.

SDK means a software development kit, which is a collection of software, sample programs and documents relating to the API specification, in order to enable the Customer to use the APIs easily.

Service means the IaaS services provided by Fujitsu to the Customer as described in Schedule 1 – Service Specification.

Service Commencement Date means the date when the IaaS is available for use by Customer.

Service Credit means a sum that Fujitsu will credit to the Customer in relation to Operation Stoppage Time within the limits and according to the procedures described in the Service Specification, Schedule 1.

Service Portal means the web portal Customers use to provision and manage virtual servers in their Trusted Public S5

environment, which is located at <http://globalcloud.us.fujitsu.com>

Storage means housing Customer Data and applications on the underlying storage technology of the FUJITSU Cloud Service S5.

Term means the period during which the Customer is using the FUJITSU Cloud Service S5 .

Virtual Machine refers to the computers that Fujitsu uses to provide the Service. Virtualization technology splits a physical computer into multiple logical computers, each of which is operated under an independent operating system.

Virtual System means a collection of Virtual Machines and virtual infrastructure (including, but not limited to, virtual memory disks and virtual communications facilities), with a single virtual firewall and independent networks for each virtual subnet on the inside of the firewall.

Virtual System Set means the collection of all of the virtual systems used by the Customer in accordance with the Agreement.

VLAN means the virtual local area network.

For terms that appear in the Schedules to this Agreement, the definitions shall be the same as the definitions in this clause 1, unless expressly stated otherwise in the Schedule.

Clause 2: Term

This Agreement will commence on the Execution Date and unless terminated earlier in accordance with this Agreement, continue for the Minimum Term. Thereafter, this Agreement will automatically renew for subsequent Minimum Terms until such time as either party gives written notice of termination to the other party (such notice to be at least equal to the Minimum Term for the Service being terminated).

Clause 3: Termination

1. On expiry or termination of this Agreement for any reason, the Customer must immediately remove or delete any Customer Content or other Customer Data stored in the Virtual System Set, at the Customer's own responsibility and cost. If the Customer fails to remove or delete any of the Customer Content, Customer Data or information from the Virtual System Set within 30 days of the expiration or termination of this Agreement, Fujitsu shall be entitled to take such action as it deems necessary to remove the Customer Content and Customer Data and shall have no liability to the Customer or any other person if it does so.
2. Either party may terminate this Agreement by notice in writing if the other party (i) is in material breach of any term of this Agreement and such breach is not remedied within 7 days of it being notified of the breach, or (ii) undergoes an Insolvency Event.
3. Notwithstanding the preceding Fujitsu may immediately terminate this Agreement, upon written notice to the Customer, if:
 - (1) a debt to Fujitsu is unpaid by the Customer;
 - (2) requested by a law enforcement or regulatory authority or if necessary in Fujitsu's reasonable judgment to avoid the Service infringing any law or regulation or Intellectual Property;
 - (3) The Customer is in breach of its obligations under clause 8.
4. On termination of this Agreement for any reason, all Services provided will immediately terminate and the Customer's right to use any hardware, software and content permitted by this Agreement immediately ceases. Fujitsu will invoice the Customer for all Charges incurred up to and including the date of termination. As of the termination date Customer to immediately discontinue use of its User ID, API, and Service Portal and any other element of the Service.

Clause 4: Provision of this Service

1. Fujitsu shall provide a Service to the Customer for the Term in accordance with the terms of this Agreement. No rights to intellectual property rights are being transferred.
2. The Customer acknowledges and agrees that Customer Content and Customer Data is provided or transmitted at the Customer's own risk and Fujitsu makes no guarantees whatsoever regarding the Customer Content or Customer Data. Customer is solely responsible for encrypting any of its Customer Content or Customer Data.
3. Fujitsu shall provide the Customer with an API.
4. The Customer acknowledges and agrees that all operating instructions issued via the API shall be regarded as having been issued by the Customer as if the instruction was made via the Service Portal using the Portal Usage ID.

Clause 5: Virtual Machines

1. The Customer may deploy (generating), start (virtually turning on the power to) and return (decommission) Virtual Machines by using its Portal Usage ID to perform prescribed operations via the Service Portal.
2. The conditions for use of the Service Portal are provided in **Schedule 2 – Service Portal Conditions of Use**. The Customer agrees to comply with the Service Portal Conditions of Use when using the Service Portal.

Clause 6: Intellectual Property

1. Intellectual Property in the Service (including related software and content) shall be held by Fujitsu, its affiliates or its third party licensors.
2. Unless expressly stipulated otherwise, the Customer shall not duplicate, adapt or make public broadcasts (including converting the software or content into a transmittable form), modify, decompile, disassemble, or reverse engineer such software or content.
3. As part of the Service, software as set forth on the appendices to the Schedules to Agreement is provided. The Customer may be provided with access to or use of third party software and will abide by all of its conditions. The Customer acknowledges that Fujitsu and its affiliates have certain obligations to third party licensors of software that may be accessed or used by the Customer in the course of accessing the Service Portal or receiving the Services.
4. In using the third party software, the Customer agrees to abide by any third party software conditions of use as set out in **Schedule 3 – Microsoft Software End User License Agreements**.
5. The responsibility borne by Fujitsu in respect of such software shall be limited in accordance with the terms of the applicable Microsoft Software End User License Agreement.
6. The Customer agrees that Fujitsu may provide those third party licensors with information regarding the Customer's use of their software, including information on the number of licenses required for the Customer's use or access of the software, the country in which the Customer's is located and the Customer's name and address.
7. The Customer releases Fujitsu and its affiliates from any and all liability any of them may have to the Customer in relation to any use or other dealing with that information by Fujitsu's third party licensors.
8. If the software is listed as open source software in **Schedule 1 – Service Specification**, the Customer shall only use such software upon having agreed to the conditions indicated by the licensor as the license conditions for that software.
9. If the Customer personally prepares software for use on a Virtual Machine, the Customer shall acquire permission to use the software on the Virtual Machine from the person with the rights to the software and Fujitsu may request Customer to provide written confirmation of this permission.
10. Fujitsu at its own expense will defend any action brought against the Customer to the extent that such action is based on a claim that the use of the Service infringes the Intellectual Property rights of a third party. The Customer must cooperate with Fujitsu in relation to any actions conducted by Fujitsu relating to defending against the claim of infringement. Fujitsu's obligations under this clause will be to the full extent of Fujitsu's liability in relation to any claim or allegation of infringement of Intellectual Property rights or other third party rights arising out of the use of the Services.
11. The Customer hereby agrees to defend, hold harmless and indemnify Fujitsu and its affiliates against any claim or proceeding that is made, threatened or commenced, and against any liability, loss, damage or expense (including legal costs on a full indemnity basis) howsoever arising any of them suffers, as a direct or indirect result of a claim that the Customer's installation, use, storage or accessing material or third party software infringes the Intellectual Property or other rights of a third party .

Clause 7: Backups

The Customer acknowledges and agrees that it is solely responsible for backups of the Customer Content and Customer Data that the Customer has registered and stored on the Virtual System Set. Fujitsu has no obligation to monitor the Customer Content. The Customer agrees that it has the obligation to take all measures it deems necessary to protect the Customer Content and Customer Data from loss or damage. Fujitsu and its affiliates are not liable for any loss, destruction, or damage to Customer Content or Customer Data.

Clause 8: Prohibitions

In using the Service, the Customer agrees not to perform any of the following acts:

- (1) Infringing, or risking the infringement of, the Intellectual Property rights of Fujitsu its affiliates or third parties.

- (2) Infringing, or risking the infringement of, the property, privacy or confidentiality rights of Fujitsu, its affiliates or third parties.
- (3) Discriminating against, defaming or slandering Fujitsu, its affiliates or third parties, or facilitating discrimination against third parties, or undermining the reputation or good name of Fujitsu, its affiliates or third parties.
- (4) Actions connected to, or with a high risk of connection to, illegal activities.
- (5) Repeatedly making numerous connections to a computer held by a third party, thereby making it difficult to use that computer.
- (6) Obstructing, or risking the obstruction of, the use or security of the management of facilities or the Services infrastructure owned or operated by Fujitsu, its affiliates or third parties (including actions that destroy the functions of Virtual Machines, such as erasing the operating systems stored on Virtual Machines).
- (7) Transmitting or publishing malicious computer programs or creating a situation where such programs can be downloaded by third parties.
- (8) Compelling a third party to perform actions applicable to any of the preceding items, or failing to take appropriate measures to prevent such actions or omissions despite being aware of such actions or omissions by a third party.
- (9) Violate or otherwise breach any of the import or export laws or regulations of the U.S., including the Export Administration Regulations and International Traffic in Arms Regulations, or the import or export laws of other countries including Japan and the European Union
- (10) Use the Service for the development or production of nuclear, chemical or biological weapons, weapons of mass destruction or missiles, or otherwise use the Service in any manner that could lead to the death or serious bodily injury of any person or to physical or environmental damage.”
- (11) Any illegal activities not otherwise described above.

Clause 9: Security

1. The Customer acknowledges that software, such as the operating systems running on the Virtual Machines (and including the software that is provided as part of this Service) may contain known or unknown security vulnerabilities.
2. The Customer acknowledges and agrees that it must apply the most recent updates to the software, and take other necessary measures and precautions at the Customer’s discretion, to reduce software security vulnerabilities.
3. FUJITSU SHALL NOT BE LIABLE TO CUSTOMER OR ANYONE ELSE FOR ANY UNAUTHORIZED ACCESS TO THE CUSTOMER CONTENT OR CUSTOMER-SPECIFIC INFORMATION UNLESS THAT ACCESS IS A RESULT OF FUJITSU’S FAILURE TO COMPLY WITH ITS CONTRACTUAL SECURITY OBLIGATIONS. FUJITSU HEREBY DISCLAIMS ALL LIABILITY FOR ANY LOSS OR DAMAGE, INCLUDING, WITHOUT LIMITATION, ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR LOSS ARISING OUT OF OR IN CONNECTION WITH UNKNOWN SECURITY VULNERABILITIES WITH SOFTWARE INCLUDING BY WAY OF EXAMPLE OPERATING SYSTEMS RUNNING ON THE VIRTUAL MACHINES.

Clause 10: Customer Data

1. Fujitsu will not access or view Customer Data without the Customer’s consent unless:
 - (1) disclosure is required by law or for the purpose of criminal investigation;
 - (2) Fujitsu deems that the information is required to protect life, limb or property; or
 - (3) Fujitsu has reason to suspect that malware or other malicious code is being transmitted through the Fujitsu infrastructure, or
 - (4) Fujitsu America needs to access management information so that it can operate the Service (e.g., calculating Usage Fees or maintaining the facilities).

Clause 11: Confidential Information

1. Subject to clause 11.3, each party shall maintain the confidentiality of Confidential Information disclosed by the other party, and neither party shall disclose such information to any person other than those employees or directors of their own organizations who need to know the information in order to use the Service (or, in the case of Fujitsu and its affiliates, in order to operate and develop the Service).
2. Subject to clause 11.3, each party shall store and manage Confidential Materials with due care and skill, and neither party shall transfer or provide Confidential Materials to third parties nor allow persons other than employees or directors of their own organization or their affiliates to view or otherwise access such Confidential Materials and Fujitsu shall not access the Virtual

Systems deployed by the Customer without the Customer's consent except to do usage reports for billing purposes.

3. Each party may disclose or provide the other party's Confidential Information or Confidential Material to relevant third parties in the following circumstances:
 - (1) When compelled to by law;
 - (2) To store contact details (email and phone number) at Fujitsu's additional secure site in Japan as needed for an emergency related to the Service;
 - (3) Where information is provided to a person with a legal obligation of confidentiality; and
 - (4) When either party commissions work relating to the Service to a third party and that third party has an obligation of confidentiality equivalent to the obligation of confidentiality in this clause 11.
4. Each party shall only use Confidential Information disclosed by the other party for purposes related to the Service, and shall not use such information for any other purpose.
5. Each party may duplicate Confidential Materials to the extent necessary in order to use the Service.
6. Each party must, without delay, destroy, erase or return to the other party all Confidential Materials (including any duplicates) if requested to do so by the other party, or upon termination of the Agreement.
7. Each party must ensure that any employees or directors in their own organization who come to know the other party's Confidential Information to comply with the content of this clause 11.
8. Personal information (as defined by the relevant local law) held by the Customer and clearly disclosed as such, as well as the materials received from the Customer for the purpose of disclosing such personal information shall be handled in the same manner as the Confidential Information and Confidential Materials in this clause 11.
9. The conditions in this clause 11 shall continue to remain in effect even after the termination of this Agreement.

Clause 12: Liability and Exclusions

1. In the event that the Customer is entitled to damages as a result of an inability to use the Service pursuant to the terms and conditions hereof for reasons attributable to Fujitsu. Customer shall be entitled to a Service Credit set out in the relevant Service Specification – Schedule 1. Such Service Credit shall be the Customer's sole remedy for any Service failure. In the case of liability arising from death or injury to persons as a result of any act or omission of Fujitsu which is negligent or of any fraud on the part of Fujitsu or others for whom Fujitsu is at law responsible, there shall be no limit to such liability.
2. FUJITSU SHALL NOT BE LIABLE TO CUSTOMER OR ANYONE ELSE AND HEREBY DISCLAIMS ALL LIABILITY FOR ANY LOSSES OR DAMAGE, INCLUDING, WITHOUT LIMITATION, ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR LOSS ARISING OUT OF OR IN CONNECTION WITH REASONS THAT CANNOT BE DIRECTLY ATTRIBUTED TO FUJITSU OR ITS AFFILIATES.
3. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT FUJITSU SHALL HAVE NO LIABILITY RELATED TO THE SERVICE.
4. All indemnities granted under this Agreement are excluded from the liability limitation in clause 12.3.
5. IN NO EVENT ARE FUJITSU, ITS AFFILIATES, AGENTS OR SUBCONTRACTORS, AND EACH OF THEIR PARTNERS, PRINCIPALS, MEMBERS, EMPLOYEES AND OTHER PERSONNEL LIABLE FOR ANY LOST PROFITS, OPPORTUNITY COSTS OR LOST DATA, LOSS OF MANAGEMENT TIME OR FAILURE TO REALIZE ANTICIPATED SAVINGS OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, COSTS, EXPENSES OR LOSSES OF ANY NATURE.
6. Fujitsu's legal responsibility in relation to inability to use the Service shall be limited to the extent prescribed in this clause 12 and the Service Credit.
7. Without limiting the foregoing, Fujitsu shall not be held legally responsible for damages to the Customer caused by any of the following reasons:
 - (1) Maintenance as described in the Service Schedule, Schedule 4;
 - (2) Force Majeure events;
 - (3) Orders or requests from government or judicial institutions to halt business activities;
 - (4) Reasons related to the Customer's facilities;

- (5) Defects or incompatibilities with the third party software running on virtual machines (whether prepared by Fujitsu or the Customer);
 - (6) The Customer's access line for connecting to the Service;
 - (7) Settings that the Customer has implemented for Virtual Systems;
 - (8) Illegal or insecure operations by the Customer;
 - (9) Loss or damage (including, without limitation, any direct, indirect, incidental, special, punitive or consequential loss) arising from Customer Content, Customer Data or other information, and
 - (10) Attacks or unauthorized or invalid actions by third parties or the introduction of malware or malicious code introduced into any of the systems or equipment or software provided by Fujitsu America.
8. To the extent permitted by law, the liability of Fujitsu for loss or damage sustained by the Customer will be reduced proportionately to the extent that such loss or damage has been directly caused by the Customer's failure to comply with its obligations under this Agreement or the negligence of the Customer has contributed to such loss or damage, regardless of whether a claim is made by the other party in contract, tort (including negligence) or any other basis.
 9. TO THE EXTENT PERMITTED BY LAW, FUJITSU DISCLAIMS ALL IMPLIED WARRANTIES WITHOUT LIMITATION, INCLUDING WARRANTIES OF FITNESS FOR PURPOSE. Where legislation implies into this Agreement any condition or warranty, and that legislation voids or prohibits the exclusion of that condition or warranty, the liability of Fujitsu for any breach of that condition or warranty is limited at Fujitsu's option to the re-supply or the cost of re-supplying the Services.
 10. The Customer shall indemnify and hold harmless Fujitsu and its affiliates against all and any liabilities, losses, costs and expenses (including legal fees) howsoever arising which Fujitsu or its affiliates may incur or suffer as a result of a claim by a third party arising from the Customer's use of the Service(s) in breach of this Agreement including its Schedules.

Clause 13: Charges and Payment

1. The unit prices for the Usage Fees for the Service shall be as listed on the Service Portal. Fujitsu may change the Usage Fees at any time by posting the new Usage Fees on the Service Portal. The new Usage Fees shall take effect on the first day of the calendar month but in no event less than 30 days after the price change has been posted.
2. Fujitsu shall calculate Usage Fees from the first day of each Billing Month (unless the Agreement started midway through the Billing Month in question, in which case the calculation will start from the day that the Agreement started) until the last day of the Billing Month (unless the Agreement ended midway through the Billing Month in question, in which case the calculation will end on the day that the Agreement ended), by measuring one or more of the following elements:
 - (1) the usage time for Virtual Machines;
 - (2) the usage time and allocated capacity for virtual memory disks,
 - (3) the volume of Internet communications,
 - (4) Gigabyte connectivity of 1 or more gigabytes, and
 - (5) the number of licenses for using software, and.
 - (6) the presence of the Intranet Connection service.
3. All Usage Fees are exclusive of sales, use and other applicable taxes which are the responsibility of the Customer to pay. If Fujitsu pays any taxes on the Customer's behalf, the Customer will promptly reimburse Fujitsu and shall hold Fujitsu and its affiliates harmless and defend it from any penalties, fines legal costs or expenses that result from Customer's failure to timely pay or reimburse for such taxes.
4. With respect to the calculations for the Usage Fees for the Service and all applicable taxes and fees, any fractional amounts less than one cent shall be rounded down.
5. Fujitsu will invoice the Customer as stated in the Service Specification (Schedule 1) and the Customer shall pay Fujitsu the Usage Fees for the Service and an amount equivalent to all taxes owed.
6. Payment of all invoices is due within thirty (30) days net of invoice. If the payment date falls on a non-business day for financial institutions, the payment date shall be moved forward to the preceding business day.
7. The Customer shall be responsible for paying any transfer fees payable to a financial institution at the time when the payments are made.

8. If the Customer neglects to discharge financial liabilities arising from the Agreement (including any debts due and payable), the Customer shall pay Fujitsu interest on any amount due from the due date of payment until the date of actual payment at the highest rate allowed by law. Interest is to be calculated on a daily basis.

Clause 14: Prohibition of Transfer of Rights and Obligations

The Customer shall not assign, novate or otherwise in any way transfer its rights or obligations under the Agreement to a third party without Fujitsu's prior written consent (not to be unreasonably withheld). Fujitsu is entitled to assign, novate or otherwise transfer its rights or obligations under this Agreement upon written notice to the Customer. The Customer shall not lend or in any other way transfer its rights or obligations under the Agreement to a third party.

Clause 15: Agreement Jurisdiction

This Agreement shall be governed by the laws of California, without reference to its provisions concerning conflicts of laws, and the parties submit to its exclusive jurisdiction by the courts of Santa Clara County, California.

Clause 16: Indemnity

1. The Customer shall indemnify Fujitsu and its affiliates against any claim or proceeding that is made, threatened or commenced, and against any liability, loss, damage or expense (including legal costs on a full indemnity basis) any of them incurs or suffers, as a direct or indirect result of any of the following:
 - (1) a breach of this Agreement by the Customer;
 - (2) a wilful, unlawful or negligent act or omission by the Customer;
 - (3) any claim by a third party that the Customer's installation, storage or accessing of the material on the Service infringes the Intellectual Property or other rights of that third party.
 - (4) the Customer's use of software other than as permitted by this Agreement;
 - (5) damage to or loss of any of Fujitsu's property caused or contributed to by the Customer;
 - (6) a deficiency in the Customer's systems or facilities;
 - (7) corruption or loss of Fujitsu's or a third party's data caused or contributed to by the Customer;
 - (8) damages caused to a third party caused by or in connection with the Customer's use of the Service; or
 - (9) any claim by a third party against the Customer that was caused or contributed by the Customer's use of the Service.

Clause 17: Dispute Resolution

2. A party must not start court proceedings (except proceedings seeking interlocutory relief) unless it has complied with this clause 17.
3. A party claiming that a dispute, difference or question arising out of this Agreement ("Dispute") has arisen must notify the other party giving details of the Dispute ("Notification").
4. Within 7 days (or any longer period agreed between the parties) after a Notification is given, each party's Relationship Manager or Legal representatives must personally or through a nominee use reasonable efforts to resolve the Dispute through negotiation.
5. If the Relationship Managers or Legal representatives cannot resolve the Dispute within 14 days after the Notification is given (or any longer period agreed between the parties), the Relationship Managers or Legal representatives must immediately refer the Dispute to a senior vice president of each party or their nominated representatives.

Clause 18: Subcontract

1. Fujitsu may subcontract for the performance of this Agreement or any part of this Agreement and may engage subcontractors, whether or not operating under a corporate structure, to assist in the provision of Services pursuant to this Agreement at any time without the Customer's consent.

Clause 19: Variation

1. The Customer acknowledges and agrees that Fujitsu may change the terms of this Agreement and its Schedules at any time during the Term, in which case the new (changed) Agreement shall apply to the Customer.

2. Fujitsu will provide the Customer with advance notice of any proposed change to the terms, but the Customer's consent is not a prerequisite.
3. If the Customer does not agree with the terms of the new (changed) Agreement, the Customer may terminate the Agreement without penalty by providing written notice to Fujitsu. Customer's failure to so terminate shall be deemed its acceptance of the new (changed) Agreement terms.

Clause 20: Express rights

1. Any express statement of a right of Fujitsu under this Agreement is without prejudice to any other right of Fujitsu expressly stated in this Agreement or existing at law.

Clause 21: Waiver

1. No right under this Agreement will be deemed to be waived except by notice in writing signed by each party. Any waiver by Fujitsu will not prejudice its rights in respect of any subsequent breach of the Agreement by the Customer.
2. Any failure by Fujitsu to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by Fujitsu to the Customer will not be construed as a waiver of Fujitsu's rights under this Agreement.

Clause 22: Severability

1. If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, the Agreement will remain otherwise in full force apart from such provisions which will be deemed deleted.

Clause 23: Entire Agreement

1. The Agreement sets forth the entire understanding between the Customer and Fujitsu regarding the subject matter of this Agreement.
2. The content of this Agreement shall take precedence over any other agreements, materials, statements, understandings or offers that were exchanged between the parties.
3. Neither party shall be responsible for or have obligations for any matters in relation to the Service other than those specified in this Agreement.

Clause 24: Notices

1. Any notice or communication required to be given to a party under this Agreement may be made by traditional written means, such as a letter, as well as by electronic mail or other electronic means via the Service Portal.

Clause 25: Interpretation

1. In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
 - (1) the clause headings are for ease of reference only and will not be relevant to interpretation;
 - (2) a reference to a clause number is a reference to its subclauses;
 - (3) words in the singular number include the plural and vice versa;
 - (4) words importing a gender include any other gender;
 - (5) a reference to a person includes bodies corporate and unincorporated associations and partnerships;
 - (6) a reference to a subclause is a reference to a subclause of the clause in which that reference is made;
 - (7) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings; and
 - (8) all monetary references herein are references to U.S. dollars.