

# End User License Agreement

End User License Agreement (EULA) for using the Fujitsu Chromatography On Demand solution – AlphaCOD

## 1. TERMS OF ENGAGEMENT

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1.1 This EULA (this "Agreement") is between Fujitsu Systems Europe ("Vendor") and the person or entity agreeing to these terms ("You" or "Customer"). This Agreement states the terms under which Vendor will provide the Service to You. By accessing or using the Service, You are agreeing to the terms of this Agreement (the date of such action, the "Effective Date"). If You are entering into this Agreement on behalf of an entity, then You represent and agree that You have the legal authority to bind that entity to this Agreement. If You do not accept the terms of this Agreement, then you cannot use the Service.

## 2. DEFINITIONS

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In this Agreement:

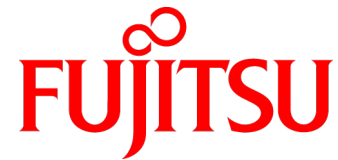
- 2.1 "Account" means the account that Customer has or creates with Vendor to access or use the Service.
- 2.2 "Affiliate" means any entity that directly or indirectly Controls, is Controlled by, or is under common Control with a party.
- 2.3 "Business Associate Agreement" means an amendment to this Agreement covering the handling of Protected Health Information.
- 2.4 "Confidential Information" means information that one party (or an Affiliate) discloses to the other party under this Agreement, and which is marked as confidential or would normally under the circumstances be considered confidential information. It does not include information that is independently developed by the recipient, is rightfully given to the recipient by a third party without confidentiality obligations or becomes public through no fault of the recipient. Subject to the preceding sentence, Customer Data is considered Customer's Confidential Information.
- 2.5 "Control" means control of greater than fifty percent of the voting rights or equity interests of a party.
- 2.6 "Customer Data" means all data uploaded to the Service by Customer or on Customer's behalf. Customer Data does not include Performance Data.

- 2.7 "Documentation" means the technical documentation provided by Vendor describing the features and functions of the Service.
- 2.8 "including" means including but not limited to.
- 2.9 "Indemnified Liabilities" means any (i) settlement amounts approved by the indemnifying party; and (ii) damages and costs finally awarded against the indemnified party and its Affiliates by a court of competent jurisdiction.
- 2.10 "Intellectual Property Rights" means current and future worldwide rights under patent, copyright, trade secret, trademark, and moral rights laws, and other similar rights.
- 2.11 "Legal Process" means a data disclosure request made under law, governmental regulation, court order, subpoena, warrant, governmental regulatory or agency request, or other valid legal authority, legal procedure, or similar process.
- 2.12 "Listing" means the page that describes the Service.
- 2.13 "Service" means the service offered by Vendor and procured or deployed by Customer, in each case where the Listing states that the provision of the service is governed by this Agreement.
- 2.14 "Term" means the applicable subscription term purchased for the Service or, if the Service is not sold on a subscription basis, the period of time until this Agreement is terminated in accordance with 10.
- 2.15 "Third-Party Legal Proceeding" means any formal legal proceeding filed by an unaffiliated third party before a court or government tribunal (including any appellate proceeding).

## 3. APPLICABILITY, PROVISION OF THE SERVICE

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- 3.1 Access and Use: During the Term and in accordance with this Agreement, Customer may access and use the Service solely for Customer's internal business purposes.
- 3.2 Registration and Account: To use the Service, Customer will create an Account. Customer must provide complete and accurate information when creating the Account and keep the information complete and accurate at all times. Customer is responsible for (a) maintaining the security of its Account (for example, any applicable login credentials or security keys), (b) all activities that



occur under Customer's Account, and (c) any other actions taken in connection with Customer's Account. Vendor and Vendor's Affiliates are not responsible for unauthorized access to Customer's Account. Customer will notify Vendor immediately if Customer believes there has been unauthorized access to or use of Customer's Account.

- 3.3 Support: Vendor will provide support for the Service as provided in Vendor's applicable support policy and in accordance with the level of support purchased by Customer (the "Support").
- 3.4 Service Level Agreement: If specified for the Service on the Listing, Vendor will provide the Service in accordance with the applicable service level agreement. Not all services include a service level agreement.

#### **4. CUSTOMER OBLIGATIONS**

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- 4.1 Restrictions: Customer will not, and will not allow any third party to: (a) use the Service in violation of laws or regulations, (b) use the Service to violate the rights of others, (c) use the Service in high-risk, hazardous environments requiring fail-safe performance, including in the operation of nuclear facilities, aircraft navigation or control systems, air traffic control, or weapons systems, or any other application in which the failure of the Service could lead to severe physical or environmental damages; (d) resell or sublicense the Service; (e) disable or circumvent any aspects of the Service, including security mechanisms used by the Service, or attempt to do the same; (f) use the Service to perform any malicious activity, including to violate the security or integrity of any network, computer or communications system, software application, or network or computing device; (g) generate, distribute, publish or facilitate unsolicited mass email, promotions, advertisements or other solicitations; (h) process or store any Customer Data that is subject to the International Traffic in Arms Regulations maintained by the Department of State; (i) publish or provide any benchmark or comparison test results that pertain to the Service; or (j) modify, adapt, or create a derivative work of the Service.
- 4.2 Applicable Law: Customer will comply with all laws, rules, and regulations applicable to Customer's use of and access to the Service. Vendor will comply with all laws, rules, and regulations applicable to Vendor's provision of the Service.
- 4.3 Enforcement: Vendor may but has no obligation to (a) investigate any violation of this (Customer Obligations) or misuse of the Service, and (b) remove or modify any Customer Data, or disable access to any resource, that violates the foregoing.
- 4.4 Responsibility for Customer Data: Customer is responsible for the Customer Data, including the accuracy and completeness of such Customer Data, and any loss, liabilities or damages resulting

from the Customer Data, regardless of the nature of the Customer Data. Customer is responsible for backing up or otherwise making duplicates of Customer Data. Customer is responsible for communicating with the Service through encrypted and authenticated connections, as may be required by Vendor, and for transmitting all Customer Data using appropriate security methods.

- 4.5 Protected Health Information: Customer will not store or process any Protected Health Information using the Service unless Customer has a Business Associate Agreement with Vendor.
- 4.6 Representations and Warranties: Customer represents and warrants that (a) it owns or has the necessary rights and licenses to provide the Customer Data to the Service; and (b) the provision of the Customer Data to, and use of the Customer Data by, the Service as contemplated in this Agreement will not infringe any third party's rights, including Intellectual Property Rights.

#### **5. DATA PROCESSING**

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- 5.1 Use and Performance Data: Vendor may collect and analyze data regarding Customer's use of the Service, excluding any personal data ("Performance Data"). Vendor may use this information for its own business purposes, including to maintain, operate, and improve the Service, monitor, and analyze activities in connection with the Service, as well as to create anonymized statistics for Vendor's own marketing purposes. Vendor may collect and retain anonymized subset of the data for the purpose of improving the service, for example for the re-enforcement learning of the Artificial Intelligent model used in the service.
- 5.2 Security: Vendor will implement reasonable technical and organizational safeguards designed to protect Customer Data against unauthorized loss, destruction, alteration, access, or disclosure.
- 5.3 Use of Customer Data: Vendor will not use Customer Data except as necessary to provide the Service.

#### **6. PAYMENT**

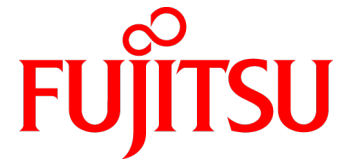
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- 6.1 The parties agree that Customer's sole payment obligations for the Service are contained in the financial proposal. Customer may not use or access the Service if Customer does not comply with all its payment obligations specified by the Vendor.

#### **7. CONFIDENTIAL INFORMATION**

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- 7.1 Obligations: The recipient will not disclose the Confidential Information, except to Affiliates, employees, agents, or professional advisors who



need to know it and who have agreed in writing (or in the case of professional advisors are otherwise bound) to keep it confidential. The recipient will ensure that those people and entities use the received Confidential Information only to exercise rights and fulfill obligations under this Agreement, while using reasonable care to keep it confidential.

7.2 Required Disclosure: Notwithstanding any provision to the contrary in this Agreement, the recipient may also disclose Confidential Information to the extent required by applicable Legal Process; provided that the recipient uses commercially reasonable efforts to: (i) promptly notify the other party of such disclosure before disclosing; and (ii) comply with the other party's reasonable requests regarding its efforts to oppose the disclosure. Notwithstanding the foregoing, subsections (i) and (ii) above will not apply if the recipient determines that complying with (i) and (ii) could: (a) result in a violation of Legal Process; (b) obstruct a governmental investigation; or (c) lead to death or serious physical harm to an individual. As between the parties, Customer is responsible for responding to all third-party requests concerning its use of the Service.

## 8. INTELLECTUAL PROPERTY

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8.1 Ownership: Except as expressly stated in this Agreement, this Agreement does not grant either party any rights, implied or otherwise, to the other's content or any of the other's Intellectual Property Rights. As between Customer and Vendor, Customer owns all Intellectual Property Rights in the Customer Data, and Vendor owns all Intellectual Property Rights in the Service.

8.2 Feedback: At its option, Customer may provide feedback and suggestions about the Service to Vendor ("Feedback"). If Customer provides Feedback, then Vendor and its Affiliates may use that Feedback without restriction and without obligation to Customer.

8.3 DMCA: Vendor provides information to help copyright holders manage their intellectual property online, but Vendor cannot determine whether something is being used legally without input from the copyright holders. Vendor will respond to notices of alleged copyright infringement and may terminate repeat infringers in appropriate circumstances as required to maintain safe harbor for online service providers under the U.S. Digital Millennium Copyright Act. If Customer believes a person or entity is violating Customer's copyrights, Customer can notify Vendor at Vendor's notice address described in 13.1.

## 9. WARRANTIES AND DISCLAIMERS

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9.1 Mutual: Each party represents and warrants that: (a) it has full power and authority to enter into the Agreement; and (b) it will comply with all laws and regulations applicable to its provision, or use, of the Service, as applicable.

9.2 Vendor Performance Warranty: Vendor warrants that the Service will perform substantially in accordance with the Documentation. If Vendor is providing Support, Vendor warrants that it will perform the Support in a diligent and workmanlike manner consistent with industry standards.

9.3 Remedies: If the Service or Support fails to conform to the warranties in 9.2, Vendor will promptly, at its option and expense, correct the Service and re-perform the Support as necessary to conform to the warranties. If Vendor does not correct the Service or re-perform the Support to conform to the warranties within a reasonable time, not to exceed 30 days, as Customer's sole remedy and Vendor's exclusive liability (except as provided in 9), Customer may terminate this Agreement without further liability and, if the Service was purchased on a subscription basis, Vendor will issue a refund to Customer of any fees prepaid by Customer, prorated for the unused portion of the subscription.

9.4 Disclaimer: Except as stated in 9, the Service and, if applicable, Support is provided on an "ASIS" basis. To the fullest extent permitted by law, Vendor disclaims, and this Agreement excludes any implied or statutory warranty, including any warranty of title, non-infringement, merchantability, or fitness for a particular purpose. Vendor does not warrant that the Service will operate uninterrupted or error free, or that all errors will be corrected.

## 10. TERMINATION

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10.1 Termination, Both Parties: If a party fails to cure a material breach of this Agreement within 30 days after receipt of written notice of the breach, the other party may terminate this Agreement. If either party has ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of such party's assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding, then the other party may immediately terminate this Agreement.

10.2 Termination or Suspension by Vendor: Vendor may also terminate Customer's Account, terminate this Agreement, or suspend Customer's Account or access to the Service, immediately if Customer violates 4.1. Vendor will provide advance notice before such suspension or termination unless Vendor believes an immediate suspension or termination is required in which case Vendor will provide notice promptly after such suspension or termination.

10.3 Effect of Termination: Upon expiration or termination of this Agreement, all rights under this Agreement will immediately terminate. Vendor will have no obligation to continue to store Customer Data after termination of this Agreement. Customer is solely responsible for exporting Customer Data from the Service before expiration or termination of this Agreement. The following Sections will survive expiration or termination of this Agreement: 7, 8, 9.4, 10.3, 11, 12, and 13.

## 11. INDEMNIFICATION

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11.1 By Customer: Customer will defend and indemnify Vendor and its Affiliates against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from: (a) any Customer Data; (b) the combination of the Customer Data with other applications, content, or processes; or (c) Customer's use of the Service in violation of 4.1.

11.2 By Vendor: Vendor will defend and indemnify Customer and its Affiliates against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising solely from an unaffiliated third-party allegation that use of Vendor's technology used to provide the Service infringes or misappropriates the third party's Intellectual Property Rights.

11.3 Exclusions: This 11 will not apply to the extent the underlying allegation arises from: (a) the indemnified party's breach of this Agreement; (b) modifications to the indemnifying party's technology or Brand Features by anyone other than the indemnifying party; (c) combination of the indemnifying party's technology with materials not provided by the indemnifying party; or (d) use of non-current or unsupported versions of the Service or Brand Features.

11.4 Infringement Remedies: In addition to Vendor's indemnity obligations, if the Service becomes, or in Vendor's opinion is likely to become, the subject of an infringement claim, Vendor may at its sole option and expense: (i) procure for Customer the right to make continued use of the Service; (ii) replace or modify the Service so that they become non-infringing; or (iii) terminate the Service.

11.5 Conditions: 11.1 and 11.2 are conditioned on the following: (a) The indemnified party must promptly notify the indemnifying party in writing of any allegation that preceded the Third-Party Legal Proceeding and cooperate reasonably with the indemnifying party to resolve the allegation and Third-Party Legal Proceeding. If breach of this 11.5 (a) prejudices the defense of the Third-Party Legal Proceeding, the indemnifying party's obligations under 11.1 or 11.2 (as applicable) will be reduced in proportion to the prejudice. (b) The indemnified party must tender sole control of the indemnified portion of the Third-Party Legal Proceeding to the indemnifying party, subject to

the following: (i) the indemnified party may appoint its own non-controlling counsel, at its own expense; and (ii) any settlement requiring the indemnified party to admit liability, pay money, or take (or refrain from taking) any action, will require the indemnified party's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

11.6 Sole Rights and Obligations: This 11 sets forth each party's only rights and obligations under this Agreement for any third party's Intellectual Property Rights.

## 12. LIMITATION OF LIABILITY

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12.1 Limitations: Except as stated in 12.2 and to the extent permitted by applicable law: (a) neither party will be liable to the other party for (i) indirect, consequential, special, incidental, or punitive damages or (ii) lost revenues, profits, savings, or goodwill; and (b) each party's total aggregate liability for damages arising out of or relating to the Agreement is limited to the fees Customer paid for the Service during the 12-month period before the event giving rise to liability.

12.2 Exceptions: Nothing in this Agreement limits either party's liability for the following: (i) fraud or fraudulent misrepresentation; (ii) death or personal injury caused by negligence; (iii) Customer's payment obligations; (iv) its obligations under 11; or (v) any liability that cannot legally be limited.

## 13. GENERAL

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13.1 Notices: All notices must be in writing and addressed to the other party's legal department and primary point of contact. The email address for notices being sent to Vendor is provided on the Listing. Notice will be treated as given on receipt as verified by written or automated receipt or by electronic log (as applicable).

13.2 Assignment: Neither party may assign any part of this Agreement without the written consent of the other, except to an Affiliate where: (a) the assignee has agreed in writing to be bound by the terms of this Agreement; (b) the assigning party remains liable for obligations under the Agreement if the assignee defaults on them; and (c) the assigning party has notified the other party of the assignment. Any other attempt to assign is void.

13.3 Change of Control: If a party experiences a change of Control (for example, through a stock purchase or sale, merger, or other form of corporate transaction): (a) that party will give written notice to the other party within thirty days after the change of Control; and (b) the other party may immediately terminate this Agreement any time between the change of Control and thirty days after it receives that written notice.

- 13.4 Force Majeure: Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control.
- 13.5 No Agency: This Agreement does not create any agency, partnership, or joint venture between the parties.
- 13.6 No Waiver; Severability: Neither party will be treated as having waived any rights by not exercising (or delaying the exercise of) any rights under this Agreement. If any term (or part of a term) of this Agreement is invalid, illegal, or unenforceable, the rest of the Agreement will remain in effect.
- 13.7 No Third-Party Beneficiaries: This Agreement does not confer any benefits on any third party unless it expressly states that it does.
- 13.8 Export Control: The Service, Support, and Documentation may be subject to export control laws and regulations. Customer may not access or use the Service, Support, Documentation, or any underlying information or technology except in full compliance with all applicable export control laws. None of the Service, Support, Documentation, or any underlying information or technology may be accessed or used (a) by any individual or entity in any country to which the United States has embargoed goods; or (b) by anyone on the U.S. Treasury Department's list of specially designated nationals or the U.S. Commerce Department's list of prohibited countries or debarred or denied persons or entities.
- 13.9 Governing Law: All claims arising out of or relating to this Agreement, or the Service will be governed by French Law. The parties' consent to personal jurisdiction in those courts. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.
- 13.10 Entire Agreement; Amendments: This Agreement sets out all terms agreed between the parties and supersedes all other agreements between the parties relating to its subject matter. In entering into this Agreement, neither party has relied on, and neither party will have any right or remedy based on, any statement, representation, or warranty (whether made negligently or innocently), except those expressly stated in this Agreement. Any amendment must be in writing, signed by both parties, and expressly state that it is amending this Agreement.
- 13.11 Conflicting Languages: If this Agreement is translated into any language other than English, and there is a discrepancy between the English text and the translated text, the English text will govern unless expressly stated otherwise in the translation.