

Terms and Conditions

Cloud Software

This document sets out the general terms and conditions ("Terms") that apply to Cloud Software Services offerings ordered from Fujitsu by a Buyer under G-Cloud 13.

1. Application of Terms

- 1.1. These Terms together with each document for the Cloud Software Services offering expressly incorporated by reference by these Terms or any Call-Off Contract that incorporates them (collectively, the "**Documentation**") are the complete agreement between Fujitsu and the Buyer for the Applications the applicable Service Definition(s) identifies.
- 1.2. Documentation includes any user documentation that Fujitsu makes generally available in hard copy or electronic form to its customers in connection with the licensing of the Applications.
- 1.3. Definitions are set out in the attached Glossary. Capitalised expressions that are not otherwise defined have the meanings prescribed by the G-Cloud 13 Framework Agreement or the relevant Call-Off Contract authorised under it, unless the context requires otherwise.

2. Provision, Licensing and Use of the Applications

- 2.1. Fujitsu shall use commercially reasonable efforts to make the Applications available to the Buyer in accordance with the Agreement, exercising all reasonable professional skill, care and diligence in supplying the Applications and Cloud Software Services. Fujitsu warrants to the Buyer that Fujitsu's Cloud Software Services will comply in all material respects with the relevant Service Definition(s). The Buyer accepts that it is responsible for verifying that the Applications and the Cloud Software Services these are made available through are suitable for the Buyer's own needs.
- 2.2. In entering into a Call-Off Contract, Fujitsu grants to the Buyer a non-exclusive, non-transferable licence during the Term to access, operate and use for the purposes of the Buyer's internal business operations each Application identified in the Call-Off Contract in its object code form, subject to and in accordance with all the limitations and restrictions that the Agreement and the applicable Service Definition(s) prescribe.
- 2.3. In order to use the Applications, the Buyer is responsible for preparing its computer terminals, communication lines, hardware, software and other necessary resources as designated by Fujitsu ("**Buyer Environment**"), and for connecting to the Fujitsu Environment for access to the Applications, as designed by Fujitsu. The Applications shall be provided to the Buyer solely by means of the Buyer connecting to the Fujitsu Environment from the Buyer Environment via a network, which is not supplied as part of Cloud Software Services. Prior to using Cloud Software Services and the available Applications, Buyers shall review and require that End Users review any user guides provided by Fujitsu and comply with these, as part of the Documentation.
- 2.4. The parties will consult and co-operate with one another in respect of the delivery of each agreed order for Cloud Software Services, each using reasonable endeavours to perform allocated tasks and within agreed timelines.

3. Permitted Access

- 3.1. Buyers must access and use the Applications:
 - 3.1.1. Only to the extent of authorisations granted by Fujitsu and for the Buyer's own business purposes - and must not access, use or reproduce any part of Cloud Software Services or the Applications for any other purpose (except for security or back-up purposes in respect of the Buyer Data).

- 3.1.2. In accordance with any operating instructions, policies and procedures that apply in respect of Cloud Software Services and the Applications, as set out or referred to in any of the Documentation or that Fujitsu notifies to the Buyer from time to time, including policies relating to security, access and passwords; and in accordance with all applicable laws (including regulations).
- 3.2. A Buyer is not authorised to sell, resell, lease or sublicense to any third party direct access to all or any portion of the functionalities of any of the Applications nor permitted to provide hosting or timesharing services via Cloud Software Services to others.

4. Buyer Responsibilities

- 4.1. In applying for Cloud Software Services, each Buyer will provide to Fujitsu contact details for the Buyer Contact, who will act as the Buyer's authorised representative and point of contact for Fujitsu for the Agreement. The Buyer may change the Contact Person at any time by providing prior notice to Fujitsu.
- 4.2. In using Cloud Software Services and each Application, each Buyer agrees that it is responsible for:
 - 4.2.1. Ensuring that the infrastructure that the Buyer uses to access the Applications is compatible with the interfaces provided for the specific Application.
 - 4.2.2. Its data including for backing up and saving any Buyer Data and any other data registered, stored or processed by the Buyer and any of its End Users in connection with the Applications except (and then only to extent) set out in an agreed Call-Off Contract and the Service Definition(s) it incorporates.
 - 4.2.3. All use and management of the Buyer's user credentials for Cloud Software Services and the Applications including any passwords required for their access or use. Any Charges or other liabilities incurred as a consequence of the Buyer's, End Users' or any other third party's use of the Buyer's user credentials are payable by the Buyer.
 - 4.2.4. Obtaining all necessary permissions to use, provide, store and process Buyer Data and other data provided or transmitted by the Buyer or its End Users in connection with the Applications. In entering into a Call-Off Contract, each Buyer grants to Fujitsu and its affiliates permission to use such data for the purposes of providing Cloud Software Services and its Applications to the Buyer and any End Users.
 - 4.2.5. Taking adequate precautions within the Buyer Environment and the Buyer's own infrastructure to prevent the spread of viruses or malicious software.
 - 4.2.6. Complying (and ensure that End Users must also comply) with licence or restrictions or directions of use in respect of any Third Party Software provided by Fujitsu in delivering Cloud Software Services and any of the Applications.
 - 4.2.7. Complying with all statutory and other legal requirements applicable to the Buyer's and its End Users' conduct and operations.
- 4.3. Where Applications are accessible on a subscription per End User basis, the Buyer is responsible for managing subscriptions in compliance with this method of allocation. In doing so, a Buyer must ensure that each subscription is only used by one End User, and that an allocated subscription is only used by the End User it has been made available for, unless and until reassigned permanently to another End User, because the original End User has left or no longer requires access to the Application.
- 4.4. The Documentation may prescribe other responsibilities that a Buyer must also meet for Fujitsu to provide Cloud Software Services and the Applications as described. Fujitsu is only obliged to deliver Cloud Software Services and the Applications as described if the Buyer takes the steps identified in the Documentation as Buyer responsibilities or dependencies. If a Buyer does not do so, then this may prevent, delay or hinder the Applications' performance (which will not be Fujitsu's responsibility) or increase the applicable amount payable by the Buyer for Cloud Software Services.

5. Maintaining, Supporting and Suspending Cloud Software Services

- 5.1. The operational hours for Cloud Software Services and in respect of any availability of the Applications will be as described in the applicable Call-Off Contract and the applicable Service Definition(s), subject to maintenance. Availability, if applicable, 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.

- 5.2. Fujitsu will respond to any general inquiries from the Buyer Contact about the Applications ordered and how to operate these via methods agreed in setting up a Buyer for Cloud Software Services. Fujitsu is not obliged to provide any other support, unless and to the extent set out in the Documentation.
- 5.3. Fujitsu may temporarily interrupt or suspend the provision of or access to Cloud Software Services and any of the Applications in order to: undertake planned maintenance; maintain their integrity; and in the event of an emergency or as necessary to manage or prevent any Security Risk, including in order to prevent wrongful acts or attacks to the Fujitsu Environment. If the Buyer is affected, then Fujitsu shall use reasonable efforts to notify the Buyer promptly thereafter.
- 5.4. Fujitsu may suspend the provision of Cloud Software Services and any of the Applications immediately where it determines any of the following circumstances apply, until the circumstance is resolved to Fujitsu's satisfaction (acting reasonably):
 - 5.4.1. A Buyer's or any End User's use of the Applications (including any access using the Buyer's credentials) poses any Security Risk, may be fraudulent or subject Fujitsu or any member of its group of companies to liability.
 - 5.4.2. The Buyer or any person using its credentials is in breach of the Agreement, including as a consequence of non-compliance with Fujitsu's Acceptable Use Policy or for non-payment of amounts due and payable.
 - 5.4.3. The Buyer has ceased to operate in the ordinary course or become the subject of any bankruptcy, liquidation, dissolution or similar proceedings.
- 5.5. If the circumstance cannot be satisfactorily resolved and promptly, then Fujitsu may terminate the Agreement in respect of those services immediately on written notice. Amounts payable under the Agreement continue to accrue until the Agreement is terminated, including during the period of any suspension of access to any of the Applications.

6. Term and Minimum Commitments

- 6.1. Each Agreement shall be effective from the relevant Call-Off Contract's Start Date and continue for the period stated in the Call Off Contract unless and until terminated by either the Buyer or Fujitsu in accordance with the Agreement.
- 6.2. Certain Applications may be subject to minimum commitments, where and as set out in the Agreement or any part of its Documentation or otherwise agreed in writing from time to time. If minimum commitments apply, then these comprise the minimum volumes and/or duration for which the Buyer agrees to use (or permit Fujitsu to use to calculate the amounts payable for using and accessing) the relevant Applications (each, a **"Minimum Commitment"**). If a Buyer terminates use of an affected Application before a Minimum Commitment has been met, then the amounts payable in the event of early termination will include the value of the then remaining Minimum Commitment.

7. Payment and Pricing

- 7.1. The Buyer shall pay the Charges for Cloud Software Services and the Applications within 30 days of the date of invoice (**"Due Date"**), together with any Value Added Tax and any other applicable sales taxes at the prevailing rates.
- 7.2. Fujitsu may invoice the amounts payable under the Agreement on a monthly basis from the Effective Date. Charges are invoiced monthly in arrears, except where otherwise stated in a Call-Off Contract. For Buyers this means that each invoice for Charges that are payable in arrears will cover the Charges incurred during the month immediately preceding the month of invoice.
- 7.3. Where the Charges are calculated based on daily or hourly rates:
 - 7.3.1. Rates apply for a professional, working day of eight hours of chargeable time. Additional hours are available as required by the Buyer, except that overtime will apply in calculating the Charges for time worked by an individual in excess of eight hours during any working day and for hours required by the Buyer for non-working days. These Charges will be calculated by applying multipliers to the applicable rates of 1.25 for Saturdays and for hours in excess of eight hours on any working day, 1.5 for Sundays and 2 for public holidays, or as otherwise agreed in entering into the Call-Off Contract.

- 7.3.2. These Charges exclude (and each Buyer will also on request reimburse to Fujitsu) expenses in categories authorised for reimbursement by a Call-Off Contract, where actually incurred by Fujitsu or its staff in providing Cloud Software Services and/or the Applications. Fujitsu will provide the Buyer with reasonable evidence of expenses incurred, where chargeable to the Buyer and reasonably required to verify a claim for payment.
- 7.4. Where Cloud Software Services and/or access to the Applications is priced on a consumption basis, unless otherwise stated in the Call-Off Contract, the rates used to calculate the Charges will apply in the event of any usage during a measurement period (not only for usage for the entirety of the measurement period).
- 7.5. Where a Service Definition or pricing document in the Digital Marketplace prescribes any limits on the permitted number of End User subscriptions available for the specified Charges, then Buyers may purchase additional subscriptions, where and as agreed by the parties. The Buyer is responsible for ensuring that the maximum number of End Users is not in excess of the number of subscriptions purchased at any time. If End Users in excess of the purchased number of subscriptions are identified, then Fujitsu will inform the Buyer Contact and the Buyer will be responsible to pay as part of the Charges for the additional subscriptions.
- 7.6. If the Buyer has not paid an invoice by its Due Date, then Fujitsu may charge and the Buyer will pay upon receipt of invoice interest calculated on a daily basis, from its due date until the payment in full, at the rate of 4% per annum over the base rate of Barclays Bank in force from time to time. Fujitsu may also at its option and without prejudice to this or any other right or remedy suspend performance of the Services until amounts then outstanding for them are paid.
- 7.7. The Buyer is responsible for and agrees to pay directly to the appropriate government authority any withholding tax prescribed by applicable law. The Buyer will consult and 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 this Agreement.

8. Termination Rights

Termination rights as prescribed by the Call-Off Contract and the applicable Service Definition(s) will apply. In addition, except as otherwise prescribed in an agreed Call-Off Contract, either the Buyer or Fujitsu may end a Call-Off Contract for Cloud Software Services and any Applications at any time for convenience on 30 days prior written notice to the other party or, at any time, by mutual written agreement.

9. Termination Consequences

- 9.1. Upon termination for any reason:
 - 9.1.1. The Buyer's rights under the Agreement to use or access the Applications supplied under it will also end.
 - 9.1.2. The Buyer will remain responsible for and must 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.
 - 9.1.3. In the event of early termination by the Buyer or for the Buyer's breach, these Charges may, at Fujitsu's discretion, include those costs reasonably incurred by Fujitsu in anticipation of performance of the affected Cloud Software Services offering as planned to the extent these cannot reasonably be eliminated, including any early termination costs Fujitsu incurs in connection with cancelling any Third Party Software licences and other secondary contracts entered into in anticipation of performance in respect of the Buyer.
 - 9.1.4. Rates that apply to calculate the Charges payable in a Buyer's final invoice are not discounted in the event of termination part way through a unit measurement period.
 - 9.1.5. In meeting its obligations to destroy or return to the Buyer any Buyer Confidential Information, Fujitsu shall be entitled to charge on a time and materials basis for returning or destroying any Buyer Data, as its retrieval is the Buyer's responsibility unless otherwise expressly stated in the relevant Call-Off Contract; and Fujitsu shall not be obliged at the end of a Call-Off Contract to return copies of any computer records or files containing Confidential Information that are not readily identifiable and/or retrievable and created as a consequence of automatic backup procedures; or 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.

10. Post-Termination

- 10.1. Fujitsu is not obliged to continue to permit access to the Applications or to host or store any Buyer Data after the Agreement ends, except as expressly set out in the Call-Off Contract and the applicable Service Definition(s).
- 10.2. Post-termination assistance and any requirements for hosting, storage or other services after the Agreement ends are instead subject to mutual agreement by the parties before the Agreement ends about the specific requirements and the applicable charges. If for example, an exit plan and any handover to a replacement supplier is proposed for a Buyer in an Order Form, then Fujitsu will supply this assistance as Additional Services as agreed in finalising the Documentation. Unless otherwise agreed, this assistance will be chargeable to Buyers on a consumption basis where the assistance required involves continued consumption of the Applications or any other Cloud Software Services components and on a time and materials basis, at permitted rates, where resources are also required.
- 10.3. Where post-termination assistance is agreed in the Documentation or otherwise in writing as a requirement for a particular Buyer, then for 30 days following termination (or such other period as the relevant Documentation prescribes), Fujitsu will not erase as a result of termination any of the Buyer Data or the Buyer's account credentials.

11. Buyer Data

- 11.1. Each Buyer is solely responsible for obtaining all necessary permissions to use, provide, store and process Buyer Data and other data provided or transmitted by the Buyer or its End Users in connection with the Applications. In entering into a Call-Off Contract, each Buyer grants to Fujitsu and its affiliates permission to use Buyer Data and such data to provide Cloud Software Services and the Applications to the Buyer and any End Users.
- 11.2. Each Buyer acknowledges and agrees that Fujitsu makes no representations whatsoever regarding the Buyer Data and is in no way responsible or liable for monitoring or otherwise ensuring the integrity, completeness or accuracy of any of the Buyer Data or any other data transmitted or processed by or for the Buyer. The Buyer will, on demand, indemnify and hold Fujitsu harmless against and resolve any losses, expenses, damages or costs incurred by Fujitsu and arising in relation to any third party claims or proceedings in respect of the Buyer Data and any other data provided or transmitted by the Buyer using any of the Applications.

12. Information Security

- 12.1. 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. In implementing and maintaining information security, Fujitsu implements reasonable and appropriate measures, designed to help secure content against accidental or unlawful loss, access or disclosure. Fujitsu does not warrant that issues concerning information security will not occur.
- 12.2. The Buyer acknowledges that the Buyer is responsible for taking its own steps to maintain appropriate security and protection of the Buyer Data, which may include the use of encryption technology to protect Buyer Data from unauthorised access, as well as routine archiving. Each Buyer acknowledges that it can apply updates to software and take other necessary measures at the Buyer's discretion to reduce software security vulnerabilities.
- 12.3. If the Buyer suspects any attacks on or wrongful conduct in respect of the Fujitsu Environment or the Applications, then the Buyer shall immediately notify Fujitsu, and shall cooperate with Fujitsu to the extent necessary to take measures against such actual or suspected attacks or conduct.
- 12.4. The parties agree that the measures described in this clause 12 are the agreed Protective Measures for the purposes of Joint Schedule 11 of the G-Cloud 13 Call-Off Contract.

13. Software Installation

- 13.1. To the extent that the Cloud Software Services involve the installation, implementation, integration, maintenance or upgrade of Third Party Software for the Buyer, the Buyer acknowledges that:
 - 13.1.1. Fujitsu is not the author, developer, provider or seller of the Third Party Software and instead has been retained solely to install, implement, integrate, maintain or upgrade the Third Party Software in the Buyer's current computing environment.

- 13.1.2. Fujitsu will not be liable for any defects, flaws, programming errors, inefficiencies or malfunctions in any the Third Party Software, or for any lack of functionality in or non-performance of the Third Party Software, unless otherwise expressly agreed in the applicable Service Definition.
- 13.1.3. Its exclusive remedies with respect to the Third Party Software will be against its vendor or provider. Therefore, the Buyer will not assert against Fujitsu any claim based on or related to the Buyer's use of any Third Party Software, which will be governed solely by the terms of the Buyer's licence agreement with the Third Party Software's provider.

14. IPR – ownership and licensing

- 14.1. The Buyer and Fujitsu each acknowledge and agree that:
 - 14.1.1. There shall be no change as a result of this Agreement in the ownership of the Intellectual Property Rights in the Applications or any material or items existing as at the Effective Date.
 - 14.1.2. The Intellectual Property Rights that exist in respect of the Applications (including related software and content) and any modifications to the same are owned and shall continue to be owned by and vest in Fujitsu and/or its licensors.
 - 14.1.3. All Buyer Data shall be and remain the property of the Buyer and neither Fujitsu nor any of its licensors or subcontractors shall obtain any Intellectual Property Rights or other rights in relation to such Buyer Data.
- 14.2. Where Cloud Software Services will involve the Buyer accessing or using Third Party Software (which may include open source software), the Buyer agrees that use of the software is subject to (and the Buyer must abide by) any then current Third Party Software terms and conditions of use, as notified to the Buyer in the applicable Services Definition or otherwise by Fujitsu in writing. The Documentation may also specify policies, rules or restrictions that apply to how the Applications may be used and how any web or other applications or instances that run on or use the Applications or Fujitsu's Cloud Software Services solution may be built, with which the Buyer and its End Users must comply.
- 14.3. Fujitsu may terminate the provision of Third Party Software due to, among other reasons, the expiration or termination of the applicable licence. Fujitsu shall endeavour to notify the Buyer prior to such expiration or termination and the Buyer must cease use of such software by the applicable expiration or termination date, and where technically possible, delete such software. If the Buyer fails to promptly cease using and delete such software, then Fujitsu may unilaterally delete or block access to any component or resource in which such software is stored.
- 14.4. Each Buyer must not do anything and must not permit any End User or any other person that it is responsible for to do anything to jeopardise Fujitsu's or its licensors' Intellectual Property Rights. Except to the extent that such restrictions are expressly prohibited by applicable law, the Buyer shall not (and shall not permit End Users to) create any derivative works based on any aspect of the Applications or otherwise adapt, publicly transmit, make transmittable, reproduce, copy or reverse engineer (including by reverse-compiling, reverse-assembling or engaging in any other act of analysing undisclosed internal structures in respect of) any part of the Applications, the Fujitsu Environment or its or their components.
- 14.5. In interpreting the Call-Off Contract's provisions, in no circumstances will Fujitsu be liable or responsible for any claims in respect of Intellectual Property Rights to the extent based on non-Fujitsu owned or licensed products and/or services, items not provided by Fujitsu as part of the Applications or for any violation of law or third party right caused by Buyer Data or the materials, designs or specifications of the Buyer's End Users.

15. Confidentiality

- 15.1. Confidentiality obligations as prescribed by the Call-Off Contract will apply to Confidential Information. In interpreting these provision, in choosing use any Application, each Buyer consents and agrees that Fujitsu may access and inspect (and, where required by law or with permission, disclose to third parties) Buyer Data, only for the purposes of and to the extent necessary to:
 - 15.1.1. Operate the Applications (by way example, in calculating usage) and perform the Agreement.
 - 15.1.2. Comply with applicable law including to respond to any allegation of non-compliance or infringement arising from any third party.
 - 15.1.3. 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 its group is subject from time to time.

15.1.4. Act in a manner that the Buyer has expressly authorised in writing.

16. Acceptable Use

- 16.1. Each Buyer must not engage in or allow any End User to engage in any conduct in connection with the use of any of the Applications 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, network or system. Each Buyer will (and will ensure that each End User will also) ensure compliance with Fujitsu's Acceptable Use Policy, as notified to a Buyer in connection with accessing or using the Applications. The Buyer shall, at its own expense, be directly responsible for, and on demand resolve any losses, expenses, damages or costs incurred by Fujitsu arising from any violation of the Acceptable Use Policy by the Buyer or its End Users.
- 16.2. If Fujitsu determines that the Buyer has not complied with this obligation, or learns of any access or use of Cloud Software Services or the Applications otherwise than in compliance with Fujitsu's Acceptable Use Policy or these Terms, then Fujitsu may take any measures that it deems appropriate to resolve the Buyer's non-compliance and resulting risks arising, without prior notice to the Buyer. These steps may include deleting or blocking all or any portion of the information that was transmitted or displayed by the Buyer or its End Users using the Applications, suspending access to the Applications or the Buyer's permitted access or terminating the Agreement immediately for breach incapable of remedy.

17. Liability

- 17.1. In interpreting the liability provisions prescribed by each Agreement, Fujitsu and the Buyer acknowledge and agree that, in respect of Cloud Software Services and Lot 3 Services:
- 17.1.1. If any service credits or other pricing adjustments ("**Service Credits**") apply, as prescribed by the relevant Service Definition, then application of the Service Credits to an invoice will: comprise the Buyer's sole remedy in respect of any failure by Fujitsu to meet the service levels triggering the Service Credit; and be received by the Buyer in full and final satisfaction for any claim arising as a result of the failure to achieve the relevant service level.
- 17.1.2. Fujitsu shall not be liable in any circumstances for any damages, costs, expenses or other liabilities arising from any reasons that are not directly attributable to Fujitsu, whether foreseeable by Fujitsu or not.
- 17.1.3. Fujitsu is not responsible as part of Cloud Software Services for backing up or restoring any Buyer Data or for the same in respect of any Applications, unless and to the extent expressly described in the applicable Service Definition.
- 17.1.4. The extent of Fujitsu's liability for the types of loss listed at clause 11 of the Core Terms of the G-Cloud 13 Framework Agreement will be only to the extent such losses directly arise as result of the breach giving rise to the specific claim.
- 17.1.5. Each party has a general duty to mitigate any loss or damage that it suffers.
- 17.2. Nothing in the Agreement affects or restricts the liability of the Buyer to pay the Charges or any other sums falling due for payment by the Buyer under the Agreement nor the liability of Fujitsu to apply to the Charges any Service Credits.

18. Performance Management

Fujitsu will be excused from delay in performing, defective performance and non-performance under the Agreement to the extent each results from an act or omission of the Buyer that unreasonably prevents or delays Fujitsu from performing. Should a delay or defect arise in respect of Fujitsu's performance as a result, then Fujitsu shall be entitled to amend the affected service, delivery schedule and/or Charges with no liability and to charge as part of the Charges, at Fujitsu's discretion, any additional costs incurred by Fujitsu and arising from the Buyer's failure, act or omission. Fujitsu will take steps to mitigate the impact of any failure.

19. General

- 19.1. **Warranties:** 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 its Cloud Software Services, the Applications, the Service Portal and its and their use (including any warranty that the Services or third party services will be uninterrupted or error-free or free from security vulnerabilities, or that the Buyer'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 any component of the Applications which is not caused by Fujitsu; or any failure by the Buyer or End Users to comply with instructions issued by Fujitsu in respect of the Applications and use of Cloud Software Services.
- 19.2. **Website Terms:** Access to and use of any Service Portal made available in connection with Fujitsu's Cloud Software Services may be subject to terms of use and any policies that these incorporate by reference. Buyers must also comply with these requirements, or the Buyer and its End Users will not be authorised to use (and must not use) the Service Portal.
- 19.3. **Data Analytics:** By using any of the Applications, each Buyer consents to Fujitsu collecting and using technical information about the devices the Applications are accessed and used on and from and related software, hardware and peripherals to improve Fujitsu's products and to provide any Cloud Software Services or other Services to the Buyer and any other Buyers.
- 19.4. **Software Support:** Unless separately ordered under G-Cloud 13 or expressly stated in a Call-Off Contract and applicable Service Definition(s), Fujitsu has no obligation to provide as part of Cloud Software Services any support related to the Buyer's use of the Applications, or any service or software independently provided or arranged for by the Buyer, or any software deployed by the Buyer in connection with or used jointly with the Applications or in respect of any inquiries regarding the internal structure of Fujitsu environment (computer equipment, networks and systems).
- 19.5. **Export Control:** Each Buyer is responsible for complying with all applicable technology control or export laws and regulations in respect of the Buyer Data and use of the Applications. Buyers must not export any technical data in connection with access to or use of any of the Applications (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.
- 19.6. **Advisory Services:** Fujitsu shall not be liable for the Buyer's take up, non-take up or other discretionary use of the Applications or other information provided by Fujitsu or of any of the recommendations or options generated from work under a Call-Off Contract.
- 19.7. **Fujitsu Group:** Fujitsu and its affiliates and their subcontractors may process and store business contact information of Buyer personnel wherever they do business in connection with performing the Agreement and enabling the provision of Cloud Software Services in accordance with these Terms.
- 19.8. **Access and Audit Rights:** Buyers shall not have any automatic right to enter or gain access to Fujitsu's premises in connection with the use of the Applications, except to the extent permitted for the purposes of audits that are mandatory under G-Cloud 13 and then only in compliance with: the express provisions of a Call-Off Contract executed under it; and Fujitsu's instructions regarding access, at all times taking steps to protect and maintain the security of the Applications and minimise disruption. Audit rights under any Call-Off Contract do not extend to permitting access to Fujitsu's servers or technology stacks.
- 19.9. **Data Protection and Compliance:** The Buyer and Fujitsu shall each comply with the requirements of Data Protection Legislation in connection with any Personal Data passed by the Buyer to Fujitsu in connection with Fujitsu's provision of the Applications. The parties acknowledge that the Buyer is the Controller (and authorised to appoint Fujitsu to provide the Applications) and Fujitsu is the 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 Buyer consents to Fujitsu's Processing and represents and warrants that the Buyer has the rightful authority to lawfully entrust such data to Fujitsu for Processing. Where Fujitsu provides assistance to the Buyer in accordance with Joint schedule 11 of the G-Cloud 13 Call-Off Contract, Fujitsu may charge the Buyer on a time and materials basis at Fujitsu's standard applicable rates for time spent in providing this assistance unless otherwise stated in the Call-Off Contract.

- 19.10. **Force Majeure:** 'Force Majeure Events' and the operative provisions as prescribed by G-Cloud 13 apply. In interpreting these provisions, the parties agree that causes beyond a parties reasonable control include, by way of example, attacks and illegal acts by any third parties or for delays or failures arising from natural disasters, war, riots, conflicts, acts of terrorism, power outages or defects or malfunctions in networks, equipment or software.
- 19.11. **Severability:** If at any time any provision of this Agreement is found by any court or other competent authority to be illegal, invalid or unenforceable in whole or in part, it shall not affect or impair the legality, validity or enforceability of any and all other provisions of the Agreement.
- 19.12. **Interpretation and Conflicts:** 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. These Terms have been developed for the purposes of G-Cloud 13 only.
- 19.13. **Governing Law:** These Terms and any dispute or claim arising out of or in connection with them or their subject matter or in respect of the formation of each Agreement under them (including any non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England. In entering into each Agreement, each party irrevocably agrees that the English courts shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Terms and their subject matter or formation (including non-contractual disputes or claims).

Attachment – Glossary

In these Terms, unless the context requires otherwise, the following expressions have the following meanings:

Acceptable Use Policy	Any notified policy applying to use by the Buyer of the Applications, as published at a Service Portal or otherwise notified to the Buyer in entering into a Call-Off Contract.
Agreement	Each Call-Off Agreement entered into for Cloud Software Services and access to the Applications, as modified by these Terms.
Applications	The software applications and any associated documentation and any updates to these things that Fujitsu makes available for subscription to a Buyer as a service under a Call-Off Contract and applicable Service Definition(s).
Buyer	In these Terms, means the UK public sector body or other Contracting Authority purchasing Cloud Software Services and access to Applications, as identified in its Call-Off Order Form.
Buyer Contact	The person the Buyer appoints as its point of contact for the Call-Off Contract and in respect of the Applications, as updated by notification to Fujitsu from time to time.
Buyer Data	Has the meaning prescribed by the Call-Off Contract. For the purposes of these Terms, 'Buyer Data' comprises all data, information and material, including application software and any data, text, audio, video, images or other content, that the Buyer or End Users provide, transmit or store using any Application.
End User	Any person or entity that the Buyer authorises to access or use any of the Applications.
Fujitsu	Fujitsu Services Limited. For the purposes of these Terms, any authorised member of the Fujitsu group of companies may fulfil the obligations that apply to Fujitsu.
Fujitsu Environment	The computer equipment, networks, systems, software and its and their components owned by or licensed to and used by Fujitsu in offering Cloud Software Services and permitting access to the Applications.
Cloud Software Services	The service of permitting a Buyer and its authorised End Users to access the Applications and any of them under or in connection with these Terms, as more particularly described in a Call-Off Contract and applicable Service Definition(s).
Security Risk	Access by an unauthorised party to the Applications or the Fujitsu Environment and any other circumstance where Fujitsu determines events or circumstances may have a negative effect on the provision of Cloud Software Services or the Applications and their information security standards, irrespective of whether such access or circumstance has any adverse consequences.
Service Definition	The description for each Fujitsu Cloud Software Services offering which, for the purposes of G-Cloud 13, is as published at the Digital Marketplace, as may be updated or replaced from time to time in accordance with the Framework Agreement.
Service Level Specification	A document made available by Fujitsu on the Service Website or by Fujitsu to the Buyer via other electronic means or in writing, designated as a 'Service Level Specification' and describing the service levels applicable to the provision of any of the Applications.
Service Portal	Any webpage(s) operated by or for Fujitsu or any member of its group of companies and accessed by a Buyer using its credentials in connection with accessing, using or monitoring the Applications it orders under these Terms.
Term	The term of this Agreement from the Call-Off Contract Start Date until expiry or termination, in accordance with these Terms or the Call-Off Contract that incorporates them.
Third Party Software	Any third party software programme or application, which may include the Applications.