Terms and Conditions

This document sets out the general terms and conditions ("Terms") that apply to Cloud Hosting Services ordered from Fujitsu by a Buyer under G-Cloud 11.

1. Application of Terms

1.1. These Terms together with each document for the Cloud Services 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 Cloud Services.

1.2. Definitions are set out in the attached Glossary. Capitalised expressions that are not otherwise defined have the meanings prescribed by the G-Cloud 11 Framework Agreement or the relevant Call-Off Contract authorised under it, unless the context requires otherwise.

2. Ordering / On-Boarding

2.1. Where a Buyer requires access to any of the Cloud Services, the Buyer will apply to register for the relevant offering by completing and submitting an application in the form and following a process designated by Fujitsu. Fujitsu is not obliged to accept any request for any of the Cloud Services. If the Buyer's application is accepted, then Fujitsu will notify the Buyer by email or otherwise in writing of acceptance.

2.2. Access to and use of the Service Portal 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.

3. Provision and Use of the Cloud Services

3.1. Fujitsu shall use commercially reasonable efforts to make the Cloud Services available to the Buyer in accordance with the Agreement, exercising all reasonable professional skill, care and diligence in supplying the Cloud Services. Fujitsu warrants to the Buyer that the Cloud Services comply in all material respects with the relevant Service Definition. The Buyer accepts that it is responsible for verifying that the Cloud Services are suitable for its own needs.

3.2. In order to use the Cloud Services, 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 any computer equipment through which the Cloud Services are made available by Fujitsu ("Fujitsu Environment"). The Cloud Services shall be provided to the Buyer solely by means of the Buyer connecting to the Fujitsu Environment via a network, which is not supplied as part of the Cloud Services.

3.3. In order to start using the functions provided by the Cloud Services, the Buyer may also be required to conduct certain tasks, as designated by Fujitsu via the Service Portal or Application Program Interfaces (the "APIs") using its credentials. Prior to using the APIs, Buyers shall review and require that End Users review any user guides provided by Fujitsu and comply with these, as part of the Documentation. Any tasks that are conducted via the Service Portal or APIs using the Buyer's account credentials shall be deemed to have been conducted by the Buyer.

3.4. The parties will consult and co-operate with one another in respect of the delivery of each agreed order for the Cloud Services and any of these, each using reasonable endeavours to perform allocated tasks and within agreed timelines.

4. Buyer Responsibilities

4.1. In using the Cloud Services, each Buyer agrees that it is responsible for:

4.1.1. Ensuring that the infrastructure that the Buyer uses to access the Cloud Services is compatible with the interfaces provided for the specific Services.
4.1.2. 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 Cloud Services except (and then only to extent) set out in an agreed Call-Off Contract and the applicable Service Definition(s) it incorporates.

4.1.3. All use and management of the Buyer's user credentials for the Cloud Services 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.

4.1.4. 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 Cloud Services. 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 the Cloud Services to the Buyer and any End Users.

4.1.5. Taking adequate precautions within the Buyer's own infrastructure to prevent the spread of viruses or malicious software.

4.1.6. 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 any of the Cloud Services.

4.1.7. Complying with all statutory and other legal requirements applicable to the Buyer's and its End Users' conduct and operations.

4.2. In applying to use the Cloud 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 and the Cloud Services. The Buyer may change the Contact Person at any time by providing prior notice to Fujitsu.

4.3. The Documentation may prescribe other responsibilities that a Buyer must also meet for Fujitsu to provide the Cloud Services as described. Fujitsu is only obliged to deliver the Cloud Services 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 Cloud Services' performance (which will not be Fujitsu's responsibility) or increase the applicable amount payable by the Buyer for the Cloud Services.

5. Permitted Access

5.1. Buyers must access and use the Cloud Services:

5.1.1. 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 the Cloud Services for any other purpose (except for security or back-up purposes in respect of the Buyer Data).

5.1.2. In accordance with any operating instructions, policies and procedures that apply in respect of the Cloud Services, as set out or referred to in any of the Documentation or that Fujitsu notifies to the Buyer from time to time, including policies relating to security, access and passwords; and in accordance with all applicable laws (including regulations).

5.2. 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 Cloud Services nor permitted to provide hosting or timesharing services via the Cloud Services to others.

6. Maintaining, Supporting and Suspending Cloud Services

6.1. The operational hours of the Cloud Services are as described in the applicable Call-Off Contract and Service Definition(s), subject to maintenance. Availability is measured at infrastructure level and measurements will exclude network connectivity and/or access issues and other events that 'stop the clock', as prescribed in the Documentation.
6.2. Fujitsu will respond to any general inquiries from the Buyer Contact about the Cloud Services ordered and how to operate these via methods agreed in setting up a Buyer for the Cloud Services. Fujitsu is not obliged to provide any other support, unless and to the extent set out in the Documentation.

6.3. Fujitsu may temporarily interrupt or suspend the provision of or access to any of the Cloud Services:

6.3.1. In order to undertake planned maintenance. Fujitsu will use reasonable efforts to notify planned maintenance in advance, whether by posting notifications at the Service Portal or by e-mailing or otherwise notifying the Buyer Contact in advance.

6.3.2. In order to 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.

6.4. Fujitsu may suspend the provision of any of the Cloud Services immediately where it determines any of the following circumstances apply, until the circumstance is resolved to Fujitsu's satisfaction (acting reasonably):

6.4.1. A Buyer's or any End User's use of the Cloud Services (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.

6.4.2. 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.

6.4.3. The Buyer has ceased to operate in the ordinary course or become the subject of any bankruptcy, liquidation, dissolution or similar proceedings.

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

7. Term and Minimum Commitments

7.1. 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.

7.2. Certain Cloud Services (in whole or in part) 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 Cloud Services (each, a “Minimum Commitment”). If a Buyer terminates use of the Cloud Services 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.

7.3. Where a Call-Off Contract sets out an end date for its Cloud Services, then Fujitsu is not obliged to make its resources available to supply the Cloud Services beyond that end date, except to the extent that the Buyer continues to pay for those resources on a time and materials basis.

8. Payment and Pricing

8.1. The Buyer shall pay the Charges for the Cloud Services 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.

8.2. Fujitsu may invoice the amounts payable for the Cloud Services on a monthly basis from the Start 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.

8.3. Where the Charges are calculated based on daily or hourly rates:

8.3.1. 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.

8.3.2. 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 the Cloud Services. 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.

8.4. Where the Cloud Services are 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).

8.5. 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.

8.6. 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.

9. Termination Rights

9.1. Termination rights as prescribed by the Call-Off Contract and applicable Service Definition(s) will apply. In addition:

9.1.1. The Buyer may terminate each Agreement for subscription-based Cloud Services without cause at any time by providing written notice and closing the Buyer's account for the Cloud Services using Fujitsu's then prescribed account closing mechanism. The Agreement will end with effect from the date upon which the Buyer's account is closed.

9.1.2. Except as otherwise prescribed in an agreed Call-Off Contract, either the Buyer or Fujitsu may end a Call-Off Contract for Cloud Services at any time for convenience on 30 days prior written notice to the other party or, at any time, by mutual written agreement.

10. Termination Consequences

10.1. Upon termination for any reason:

10.1.1. The Buyer's rights under the Agreement to use or access any of the Cloud Services supplied under it will also end.

10.1.2. 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.

10.1.3. 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 Specialist Cloud Services 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.
10.2. 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.

10.3. 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.

11. Post-Termination

11.1. Fujitsu is not obliged to continue to provide the Cloud Services or to host or store any Buyer Data after the Agreement ends, except as expressly set out in the Call-Off Contract and applicable Service Definition(s).

11.2. 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 consumption of any Cloud Services components and on a time and materials basis, at permitted rates, where resources are also required.

11.3. 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):

11.3.1. Fujitsu will not erase as a result of termination any of the Buyer Data or the Buyer’s account credentials.

11.3.2. The Buyer may retrieve from the Cloud Services any Buyer Data, if not already retrieved, where and to the extent that the Buyer has paid to Fujitsu any charges for post-termination use of the Cloud Services and all other amounts due.

12. Data and Backup

12.1. Each Buyer is solely responsible for:

12.1.1. 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 Cloud Services, except as expressly set out in the Call-Off Contract and applicable Service Definition(s).

12.1.2. All use and management of the Buyer’s credentials for the Cloud Services including User Names and any passwords ("Account Credentials") required to access or use any of the Cloud Services. Any fees, expenses and other charges or liabilities incurred as a consequence of the Buyer’s, its End Users’ or any other third party’s use of any of the Buyer’s Account Credentials are payable by the Buyer. The Buyer must immediately notify Fujitsu upon becoming aware of any loss, theft, or leak of any of the Buyer’s or End Users’ Account Credentials that may cause or has caused actual or suspected unauthorised use of any of the Cloud Services.

12.1.3. Properly configuring and using the Cloud Services and for retrieving any Buyer Data registered or stored in connection with the Cloud Services, at its own expense. Where any Buyer Data remains in the Fujitsu Environment after the Agreement ends, then Fujitsu may unilaterally delete such data at any time. However, if Fujitsu and the Buyer have expressly agreed prior to termination a requirement for Fujitsu to provide for the
Buyer any post-termination assistance, then Fujitsu will not exercise this right while any agreed post-termination assistance continues.

12.1.4. 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 Cloud Services. 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 the Cloud Services to the Buyer and any End Users.

12.2. 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 Cloud Services.

13. Information Security

13.1. Fujitsu shall implement Fujitsu’s prescribed information security protection measures for the Fujitsu Environment. Fujitsu’s responsibilities concerning information security extend solely to maintaining those information security protection measures. The facilities used to store and process Buyer Data within the Fujitsu Environment will adhere to reasonable security standards no less protective than the security standards at facilities where Fujitsu process and stores its own information of a similar type. 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.

13.2. 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 Secured Content 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.

13.3. If the Buyer suspects any attacks on or wrongful conduct in respect of the Fujitsu Environment, 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.

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

13.5. The parties agree that the measures described in this clause 13 are the agreed Protective Measures for the purposes of Schedule 4 of the G-Cloud 11 Call-Off Contract.

14. Software Installation
14.1. To the extent that the Cloud Services involve the installation, implementation, integration, maintenance or upgrade of Third Party Software for the Buyer, the Buyer acknowledges that:

14.1.1. 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.

14.1.2. 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(s).

14.1.3. 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.

15. IPR – ownership and licensing

15.1. The Buyer and Fujitsu each acknowledge and agree that:

15.1.1. There shall be no change as a result of this Agreement in the ownership of the Intellectual Property Rights in any material or items existing as at the Start Date.

15.1.2. The Intellectual Property Rights that exist in respect of the Cloud Services (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.

15.1.3. 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.

15.2. Where the Cloud Services will involve the Buyer accessing or using Third Party Software (which may include open source software), the Buyer agrees that us 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 Cloud Services may be used and how any web or other applications or instances that run on or use the Cloud Services may be built, with which the Buyer and its End Users must comply.

15.3. 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.

15.4. 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 Cloud Services 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 Cloud Services, the Fujitsu Environment or its or their components.

15.5. 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 Cloud Services 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.

16. Confidentiality
16.1. Confidentiality obligations as prescribed by the Call-Off Contract will apply to Confidential Information. In interpreting these provisions:

16.1.1. Fujitsu shall not access, inspect, or use Buyer Secured Content without the Buyer’s consent.

16.1.2. In choosing to order any of the Cloud Services, 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:

- Operate the Cloud Services (by way example, in calculating usage and maintaining the Cloud Services their integrity) and perform the Agreement.
- Comply with applicable law including to respond to any allegation of non-compliance or infringement arising from any third party.
- 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.
- Act in a manner that the Buyer has expressly authorised in writing.

17. Acceptable Use

17.1. 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 Cloud Services that is unlawful, fraudulent, defamatory, offensive, obscene or that may bring Fujitsu's or any other member of its group’s reputation into disrepute or cause harm or damage in respect of any person, 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 Cloud Services. 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.

17.2. If Fujitsu determines that the Buyer has not complied with this obligation, or learns of any access or use of the Cloud Services 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 Cloud Services, suspending the Cloud Services or the Buyer’s permitted access or terminating the Agreement immediately for breach incapable of remedy.

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 Cloud Services, 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. Liability

19.1. In interpreting the liability provisions prescribed by each Agreement, Fujitsu and the Buyer acknowledge and agree that, in respect of Fujitsu’s Cloud Services:

19.1.1. 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.
19.1.2. 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.

19.1.3. Fujitsu is not responsible as part of the Cloud Services for backing up or restoring any Buyer Data or for the same in respect of any other Cloud Services, unless and to the extent expressly described in the applicable Service Definition.

19.1.4. The extent of Fujitsu’s liability for the types of loss listed at clause 4.5 of the G-Cloud 11 Framework Agreement will be only to the extent such losses directly arise as result of the breach giving rise to the specific claim.

19.1.5. Each party has a general duty to mitigate any loss or damage that it suffers.

19.2. 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.

20. **General**

20.1. **Changes**: Fujitsu may change and discontinue at its discretion any of the Cloud Services including to change or remove features or functionality from time to time. Fujitsu will notify the Buyer in advance if a change is material and will degrade the functionality of the Cloud Services or involves the discontinuation in their entirety of any the Cloud Services supplied to the Buyer under these Terms. In doing so, without prejudice to paragraph 7 (Termination Rights), Fujitsu will endeavour to provide at least 6 months prior notice for the discontinuance of the Cloud Services then supplied in their entirety and at least 14 days prior notice in the event of a material change to or discontinuance in part of any of the Cloud Services, whether by publishing notification at the Service Portal or otherwise notifying the Buyer in writing (which may be via email). Any other amendments or changes in respect of a Call-Off Contract must be agreed in writing in order to be effective.

20.2. **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 the Cloud Services, the Service Portal 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 Cloud Services or its underlying environment 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 Cloud Services.

20.3. **Data Analytics**: By using any of the Cloud Services, each Buyer consents to Fujitsu collecting and using technical information about the devices the Cloud Services are accessed and used on and from and related software, hardware and peripherals to improve Fujitsu's products and to provide any Cloud Services to the Buyer and any other Buyers.

20.4. **Software Support**: Unless separately ordered as Cloud Services or Additional Services under G-Cloud 11, Fujitsu has no obligation to provide as part of the Cloud Services any support related to any service or software independently provided or arranged for by the Buyer, any software deployed by the Buyer in connection with or used jointly with the Cloud Services or in respect of any inquiries regarding the internal structure of the Fujitsu Environment. Unless a Buyer has also purchased Additional Service or other support from Fujitsu, then the Buyer is solely responsible for technical support of its applications (including any web or other application a Buyer creates using the Cloud Services and any source code written by Buyer for use in connection with use of the Cloud Services), the Buyer's APIs and computing, storage and other Buyer owned or operated resources via which the Buyer or any End User may use the Cloud Services.
20.5. **Advisory Services**: Fujitsu shall not be liable for the Buyer's take up, non-take up or other discretionary use of the information provided by Fujitsu or of any of the recommendations or options generated from work under a Call-Off Contract.

20.6. **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 the Cloud Services in accordance with these Terms.

20.7. **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 Cloud Services, except to the extent permitted for the purposes of audits that are mandatory under G-Cloud 11 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 Cloud Services and minimise disruption. Audit rights under any Call-Off Contract do not extend to permitting access to Fujitsu's servers or technology stacks.

20.8. **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 Cloud Services. Buyers must not export any technical data in connection with access to or use of any of the Cloud Services (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations, including United States export laws and regulations and related ordinances, to any country for which the government or any government agency, at the time of export, requires an export licence or other governmental approval, without first obtaining such licence or approval.

20.9. **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 Cloud Services. The parties acknowledge that the Buyer is the Controller (and authorised to appoint Fujitsu to provide the Cloud Services) 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 clauses 12.2, and schedule 4 of the G-Cloud 11 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.

20.10. **Force Majeure**: 'Force Majeure Events' and the operative provisions as prescribed by G-Cloud 11 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.

20.11. **Subcontracting**: Fujitsu may use nominated subcontractors to perform any part of the Cloud Services at its own risk. Buyers may allow use of the Cloud Services purchased by contractors where outsourcing or otherwise engaging contractors to perform or support the performance of the Buyer's operations. However, in doing so, a Buyer must not allow the third party to use the Buyer's User Name or other allocated Account Credentials. Instead, unless otherwise directed by Fujitsu, unique identifiers for the third party contractors must be created, as directed by Fujitsu. The relevant Buyer will remain responsible for usage by its contractors and shall ensure their compliance with the Agreement, remaining liable for any act or omission of such contractor in connection with accessing or using of the Cloud Services.

20.12. **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 this Agreement.

20.13. **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 11 only.
20.14. **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
The policy applying to use by the Buyer of the Cloud Services, as published at the Service Portal or otherwise notified to the Buyer in entering into a Call-Off Contract.

Agreement
Each Call-Off Agreement entered into for the Cloud Services, as modified by these Terms.

Buyer
In these Terms, means the UK public sector body or other Contracting Authority purchasing the Cloud Services, 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 Cloud Services, as identified in the Buyer’s application for the Cloud Services and 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 of the Cloud Services.

Buyer Secured Content
Buyer Data that is subject to an access control function, as applied by the Buyer. ‘Buyer Data’ includes Buyer Secured Content.

Cloud Services
The cloud products and/or services made available under or in connection with these Terms, as more particularly described in the applicable Service Definition(s) and any Call-Off Contract authorised under or in connection with these Terms.

End User
Any person or entity that the Buyer permits to access or use any of the Cloud Services or any Buyer Data.

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.

Security Risk
Access by an unauthorised party to the Cloud Services or the Fujitsu Environment and any other circumstance where Fujitsu determines events or circumstances may have a negative effect on the Cloud Services and their information security standards, irrespective of whether such access or circumstance has any adverse consequences.

Service Definition
The description for the Services which, for the purposes of G-Cloud 11, 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 any of the Cloud Services. For the purposes of G-Cloud 11, information about service levels is also supplied within the applicable Service Definition.

Service Portal
The webpage(s) operated by or for Fujitsu or any member of its group of companies and accessed by a Buyer using its credentials in accessing and using the Cloud Services it orders under these Terms.

Third Party Software
Any third party software programme or application.

User Name
A character string selected by the Buyer during the registration process for the Cloud Services on the Service Portal.