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Crown Hosting Framework Agreement

Schedule 2.3

Crown Hosting Standard Terms

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SECTION A - PRELIMINARIES

1. Definitions and Interpretation

- 1.1 In this Call-Off Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) of the Framework Agreement or the relevant Schedule in which that capitalised expression appears.
- 1.2 In this Call-Off Agreement, unless the context otherwise requires:
- (a) the singular includes the plural and vice versa;
 - (b) a reference to a gender includes the other gender and the neuter;
 - (c) a reference to a person includes an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Contracting Authority;
 - (d) a reference to a Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - (e) the words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
 - (f) references to "writing" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - (g) the headings are for ease of reference only and shall not affect the interpretation or construction of this Call-Off Agreement;
 - (h) references to this Call-Off Agreement are references to this Call-Off Agreement as amended from time to time;
 - (i) references to Clauses and Schedules are references to the clauses and schedules of this Call-Off Agreement, and references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear; and
 - (j) a reference to a document (including this Call-Off Agreement) is to that document as varied, amended, novated, ratified or replaced from time to time.
- 1.3 Where a standard, policy or document is referred to in this Call-Off Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Customer and the Parties shall update this Call-Off Agreement with a reference to the replacement hyperlink in accordance with Schedule 4.2 (Change Control Procedure).

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- 1.4 If there is any conflict between the Call-Off Order Form, the Clauses and the Schedules and/or any Annexes to the Schedules and/or any other documents referred to in this Call-Off Agreement, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the Call-Off Order Form;
 - (b) the Clauses;
 - (c) Schedule 1 (Definitions) to the Framework Agreement;
 - (d) any other Schedules to this Call-Off Agreement and their Annexes and appendices;
 - (e) Clauses and/or Schedules to the Framework Agreement incorporated into this Call-Off Agreement, except for the provisions of Schedule 4.1 (Supplier Solution) to the Framework Agreement;
 - (f) any Contract Controlled Documents;
 - (g) the provisions of Schedule 4.1 (Supplier Solution) to the Framework Agreement incorporated into this Call-Off Agreement; and
 - (h) any other document referred to in Schedule 4.1 (Supplier Solution) to the Framework Agreement incorporated into this Call-Off Agreement.
- 1.5 The Parties agree that the Customer, on its own behalf and as agent for each of the Service Recipients, shall:
- (a) have conduct of all claims and Disputes;
 - (b) have the right to enforce the terms, conditions, undertakings, representations, warranties and other provisions of this Call-Off Agreement;
 - (c) recover loss suffered by any of the Service Recipients as if such loss were suffered or incurred by the Customer; and/or
 - (d) be liable for all acts and omissions of the Service Recipients in connection with this Call-Off Agreement as if they were the acts and omissions of the Customer.
- 1.6 Subject to the Framework Agreement and this Call-Off Agreement, rights granted to a Customer are also granted to any Service Recipients as applicable.
- 1.7 The Parties acknowledge and agree that this Call-Off Agreement:
- (a) is intended to set out the arrangements under which the Supplier shall provide data centre co-location services to the Customer and is:
 - (i) not intended to be construed as creating any landlord and tenant relationship, any form of lease or other similar property interest in relation to the Data Centres; and
 - (ii) intended to grant the necessary licence for the Customer to occupy and use the Data Centres for the purposes of receiving the Services; and

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- (b) may include rights and options that subsequently create or result in a property interest being granted following further action by the parties, but that such rights and options are not intended to affect the manner in which this Call-Off Agreement are interpreted in accordance with paragraph 1.7(a).

2. Conditions Precedent

- 2.1 Save for Clauses 1 (Definitions and Interpretation), 2 (Conditions Precedent), 23 (Confidentiality), 24 (Freedom of Information), 25 (Protection of Personal Data), 26 (Publicity and Branding), 29 (Warranties, Representations and Undertakings), 35 (Limitations on Liability), 42 (Term), 49 (Waiver and Cumulative Remedies), 50 (Relationship of the Parties), 53 (Severance), 55 (Entire Agreement), 56 (Third Party Rights), 57 (Notices), 58 (Disputes) and 59 (Governing Law and Jurisdiction), this Call-Off Agreement is conditional upon the Supplier's fulfilment of each of the Conditions Precedent in the Call-Off Order Form. The Customer may in its sole discretion at any time agree to waive compliance with any one or all of the Conditions Precedent by giving the Supplier written notice.
- 2.2 The Supplier shall satisfy, or procure the satisfaction of, the Conditions Precedent as soon as possible. In the event that one or all of the Conditions Precedent is/are not satisfied within twenty (20) Working Days after the date of this Call-Off Agreement then, unless the Conditions Precedent are waived by the Customer in accordance with Clause 2.1:
 - (a) this Call-Off Agreement shall automatically cease and shall not come into effect; and
 - (b) neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.
- 2.3 The Supplier shall consult with the Customer in relation to the steps it takes to satisfy the Conditions Precedent and shall keep the Customer fully informed of its progress in satisfying the condition(s) and of any circumstances which are likely to result in the condition(s) not being satisfied by the date set out in Clause 2.2.

3. Due Diligence

- 3.1 The Supplier acknowledges that:
 - (a) the Customer has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Call-Off Agreement;
 - (b) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information; and
 - (c) it has satisfied itself (having raised all relevant due diligence questions with the Customer before the Call-Off Effective Date) of all relevant details relating to:
 - (i) the Services; and
 - (ii) the operating processes and procedures and the working methods of the Customer.

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- 3.2 The Supplier shall not be excused from the performance of any of its obligations under this Call-Off Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges arising as a result of:
- (a) any misinterpretation of the Services; and/or
 - (b) any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

SECTION B - Implementation and Testing

4. Not Used

5. Implementation

- 5.1 The Parties shall comply with the provisions relating to implementation of Services commissioned by the Customer, as set out in either the Call-Off Order Form or in any Service Request agreed between the Customer and the Supplier in accordance with Schedule 3.3 (Service Request Procedure) of the Standard Terms.
- 5.2 The Supplier shall:
- (a) comply with its obligations in any Implementation Plan specified in the Call-Off Order Form and any Service Request; and
 - (b) ensure that any Milestones set out in the Implementation Plan are Achieved on or before the earlier of the relevant Milestone Date or the date Services commissioned for use by the relevant Service Commission Date are required to begin (as applicable).
- 5.3 The Customer shall comply with its obligations in any Implementation Plan specified in the Call-Off Order Form and any Service Request.
- 5.4 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:
- (a) it shall:
 - (i) notify the Customer in accordance with Clause 38.1 (Rectification Plan Process);
 - (ii) comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
 - (iii) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
 - (b) if the Delay or anticipated Delay relates to a Key Milestone, the provisions of Clause 40 (Delay Payments) shall apply.
- 5.5 Within thirty (30) days of the First Service Request Date, the Supplier shall submit to the Customer a document detailing all technology, service management or other interfaces between the Supplier and the Customer (including those described in Schedule 4.1 (Supplier Solution) to the Framework Agreement) in respect of the Services for the Customer's approval (the "**Service**

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Interface Document"), such approval not to be unreasonably withheld, delayed or subject to unreasonable conditions.

- 5.6 The Supplier shall update the Service Interface Document as required to reflect any changes to the interfaces which have been approved by the Customer and issue such updated Service Interface Document to the Customer.

6. Testing

- 6.1 The Parties shall comply with the testing provisions of any Implementation Plan agreed between the Customer and Supplier pursuant to Clause 5.1 above to determine whether a Milestone has been Achieved.

SECTION C – CALL-OFF SERVICES

7. Services

- 7.1 The Customer may require the Supplier to provide the Services described in Schedule 3.1 (Service Description) to the Framework Agreement by issuing a Service Request in accordance with the Service Request Procedure. As part of that procedure, the Supplier shall maintain a record of all Service Requests made by the Customer in an up to date Service Request Matrix in accordance with Schedule 3.3 (Service Request Procedure) of the Standard Terms.

- 7.2 The Supplier shall provide the Services for each Commissioned Facility referred to in the Service Request Matrix from the relevant Service Commission Date until expiry of the Term (or any earlier Service Decommission Date) and shall ensure that:

- (a) the Services comply in all respects with the description of those Services in Schedule 3.1 (Service Description) to the Framework Agreement; and
- (b) the Services are supplied in accordance with the Supplier Solution and the provisions of this Call-Off Agreement.

- 7.3 The Supplier shall:

- (a) perform its obligations under this Call-Off Agreement, including in relation to the supply of the Services, in accordance with:
 - (i) all applicable Law;
 - (ii) Good Industry Practice;
 - (iii) the Standards;
 - (iv) the Service Levels specified in Schedule 3.3 (Service Levels) to the Framework Agreement;
 - (v) the Quality Plans; and
 - (vi) the Supplier's own established procedures and practices relating to Clauses 7.3(a)(i) to 7.3(a)(v) to the extent the same do not conflict with the requirements of Clauses 7.3(a)(i) to 7.3(a)(v); and

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- (b) deliver the Services using efficient business processes and ways of working having regard to the Customer's obligation to ensure value for money.

7.4 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 7.3(a)(i) to 7.3(a)(v) the Supplier shall immediately notify the Customer Representative in writing of such inconsistency and the Customer Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

Supplier Covenants

7.5 The Supplier shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to provide the Services in accordance with this Call-Off Agreement;
- (b) obtain, and maintain throughout the duration of this Call-Off Agreement, all the consents, approvals, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary for the provision of the Services;
- (c) ensure that:
 - (i) it shall continue to have all necessary rights in and to all IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Customer which are necessary for the performance of the Supplier's obligations under this Call-Off Agreement and/or the receipt of the Services by the Customer and/or Service Recipients;
 - (ii) all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification; and
 - (iii) the Supplier System and any equipment used by the Supplier or any Key Sub-contractor in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Customer);
- (d) minimise any disruption to the Services, the IT Environment and/or the Customer's operations when carrying out its obligations under this Call-Off Agreement;
- (e) ensure that any Documentation and training provided by the Supplier to the Customer is comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (f) consistent with the principles set out in Schedule 6.9 (Collaboration Principles) to the Framework Agreement, co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Agreement for any reason, to enable the timely transition of the Services (or any of them) to the Customer and/or to any Replacement Supplier;

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- (g) provide the Customer with such assistance as the Customer may reasonably require during the Term in connection with this Call-Off Agreement in respect of the supply of the Services;
- (h) gather, collate and provide such information and co-operation as the Customer may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Call-Off Agreement;
- (i) notify the Customer in writing within ten (10) Working Days of becoming aware of any Change of Control of the Supplier or any Key-subcontractor taking place;
- (j) notify the Customer in writing within ten (10) Working Days of becoming aware of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any Key-subcontractor that might affect its ability to perform its obligations under this Call-Off Agreement; and
- (k) ensure that neither it, nor any of its Sub-contractors or Affiliates, embarrasses the Customer or otherwise brings the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Supplier's obligations under this Call-Off Agreement.

Continuing Obligation to Provide the Services

- 7.6 The Supplier shall continue to perform all of its obligations under this Call-Off Agreement and shall not suspend the supply of the Services, notwithstanding:

- (a) the existence of an unresolved Dispute; and/or
- (b) any failure by the Customer to pay any Charges,

unless the Supplier is entitled to terminate this Agreement under Clause 43.3(a) (Termination by the Supplier) for failure to pay undisputed Charges.

Service Interfaces

- 7.7 The Supplier shall not change any Service Interfaces without the prior written consent of the Customer unless as agreed and specified in the Supplier Solution.
- 7.8 Where the Supplier proposes any change to the Service Interfaces and the Customer consents to the change, the Supplier shall bear the Customer's reasonable and documented costs incurred in respect of implementing such change.
- 7.9 Where the Customer proposes any change to the Services Interfaces, it shall notify the Supplier and the Supplier shall provide the Customer with the costs of and an implementation plan for such change. Following approval by the Customer of the costs and the implementation plan, the Supplier shall implement the change in accordance with the approved implementation plan and the Supplier shall be entitled to invoice the Customer for the approved costs.

8. Equipment and Maintenance

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Equipment

- 8.1 The Supplier undertakes the safe custody of and due return of all Customer Equipment and shall be responsible for all loss or damage to the Customer Equipment (except to the extent such loss or damage is caused by the Customer's Default) and shall indemnify the Customer against such loss and damage.
- 8.2 Subject to Clause 8.1, title and risk in the Customer Equipment shall remain with the Customer at all times.
- 8.3 The Supplier shall permit the Customer and each Service Recipient access at all reasonable times (including out of hours access where agreed between the parties, such agreement not to be unreasonably withheld) to the Customer Equipment at the Data Centres, as the Customer and/or Service Recipient (as applicable) may reasonably require.

9. NOT USED

10. Service Levels

The Parties shall comply with the provisions of Schedule 3.3 (Service Levels) to the Framework Agreement.

SECTION D – FINANCIAL AND TAXATION MATTERS

11. Charging and Invoicing

- 11.1 In consideration of the Supplier carrying out its obligations, including the provision of the Services under this Call-Off Agreement, the Customer shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 3.1 (Charges and Invoicing) of the Standard Terms.
- 11.2 If the Customer fails to pay any undisputed Charges properly invoiced under this Call-Off Agreement, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 11.3 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 6.1 (Testing), 16 (Records, Reports, Audits and Open Book Data), 24 (Freedom of Information), and 25 (Protection of Personal Data).

12. VAT

- 12.1 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a valid VAT invoice issued in accordance with the invoicing procedure specified in Schedule 3.1 (Charges and Invoicing) of the Standard Terms.
- 12.2 The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Call-Off Agreement. Any amounts due under this Clause 12.2 shall be paid in cleared funds by the Supplier to the Customer and/or relevant

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Service Recipient not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

13. Set-Off and Withholding

- 13.1 The Customer may set off any amount owed by the Supplier to the Framework Authority, the Customer or any Other Customer against any amount due to the Supplier under this Call-Off Agreement or under any other agreement between the Supplier and the Customer.
- 13.2 If the Customer wishes to set off any amount owed by the Supplier to the Customer or any part of the Customer against any amount due to the Supplier pursuant to Clause 11 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Customer's reasons for withholding or retaining the relevant Charges.

14. Promoting Tax Compliance

- 14.1 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- (a) notify the Customer in writing of such fact within five (5) Working Days of its occurrence; and
 - (b) promptly provide to the Customer:
 - (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonably require.

SECTION E - CONTRACT GOVERNANCE

15. Governance

- 15.1 The Parties shall comply with the provisions of Schedule 6.1 (Governance) to the Framework Agreement.

16. Records, Reports, Audits and Open Book Data

- 16.1 The Supplier shall comply with Clause 11 (Financial Reports, Records, Audit and Open Book Data) of the Framework Agreement.
- 16.2 The Supplier shall provide the Customer with reporting as required by Schedule 3.4 (Service Reports) to the Framework Agreement.

17. Change

Change Control Procedure

- 17.1 All proposed changes to this Call-Off Agreement and agreed Service Requests (to the extent changes to agreed Service Requests are not otherwise dealt with in accordance with the

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Framework Agreement or this Call-Off Agreement) shall be implemented by the Parties in accordance with Schedule 4.2 (Change Control Procedure).

Change in Law

- 17.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with this Call-Off Agreement nor be entitled to an increase in the Charges as the result of a Change in Law (other than as agreed between the Framework Authority and the Supplier in accordance with Clause 16 (Change in Law) of the Framework Agreement).
- 17.3 Subject to Clause 17.2, the Parties shall implement any change to the Call-Off Order Agreement made necessary by a Change in Law in accordance with Schedule 4.2 (Change Control Procedure) of the Standard Terms.
- 17.4 Each Party will promptly inform the other Party in writing upon becoming aware of any Specific Change in Law.

Change in Standards

- 17.5 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with this Call-Off Agreement nor be entitled to an increase in the Charges as the result of a change in any Standards (other than as agreed between the Framework Authority and the Supplier in accordance with Clause 17 (Change in Standards) of the Framework Agreement).
- 17.6 Subject to Clause 17.5, the Parties shall implement any change to the Call-Off Agreement made necessary by a change in Standards in accordance with Schedule 4.2 (Change Control Procedure) of the Standard Terms.

SECTION F - PERSONNEL

18. Supplier Personnel

- 18.1 The Supplier shall:
- (a) ensure that all Supplier Personnel:
 - (i) are appropriately qualified, trained and experienced to provide Services with all reasonable, skill, care and diligence;
 - (ii) are vetted in accordance with Good industry Practice and, where applicable comply with the security requirements set out in the Call-Off Order Form; and
 - (iii) comply with the security requirements as set out in Schedule 3.6 (Security Management) to the Framework Agreement;
 - (b) subject to the application of the Employment Regulations and subject to Schedule 5.1 (Staff Transfer) of the Standard Terms, retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Customer;

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- (c) be liable at all times for all acts and omissions of Supplier Personnel, so that any act or omission of Supplier Personnel which results in a Default under this Call-Off Agreement shall be a Default by the Supplier;
- (d) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- (e) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever; and
- (f) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel.

Employment Indemnity

18.2 The Parties agree that:

- (a) the Supplier shall both during and after the Term indemnify the Customer against all Employee Liabilities that may arise as a result of any claims brought against the Customer by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel except to the extent that the act or omission has been expressly authorised by the Customer in writing; and
- (b) the Customer shall both during and after the Term indemnify the Supplier against all Employee Liabilities that may arise as a result of any claims brought against the Supplier by any person where such claim arises from any act or omission of the Customer or any of the Customer's employees, agents, consultants and contractors except to the extent that the act or omission has been expressly authorised by the Supplier in writing.

Income Tax and National Insurance Contributions

18.3 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Call-Off Agreement, the Supplier shall:

- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- (b) indemnify the Customer against any income tax, national insurance and social security contributions and any other any other employment related tax or statutory liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

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19. Staff Transfers

19.1 The Parties agree that:

- (a) where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 5.1 (Staff Transfers) of the Standard Terms shall apply as follows:
 - (i) where the Relevant Transfer involves the transfer of Transferring Customer Employees, Part A of Schedule 5.1 (Staff Transfers) of the Standard Terms shall apply;
 - (ii) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Schedule 5.1 (Staff Transfers) of the Standard Terms shall apply;
 - (iii) where the Relevant Transfer involves the transfer of Transferring Customer Employees and Transferring Former Supplier Employees, Parts A and B of Schedule 5.1 (Staff Transfers) of the Standard Terms shall apply; and
 - (iv) where any of paragraphs 19.1(a)(i) - (iii) apply, Part C of Schedule 5.1 (Staff Transfers) of the Standard Terms shall not apply;
- (b) where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 5.1 (Staff Transfer) of the Standard Terms shall apply and Parts A and B of Schedule 5.1 shall not apply; and
- (c) Part D of Schedule 5.1 (Staff Transfer) of the Standard Terms shall apply on the expiry or termination of the Services or any part of the Services.

SECTION G - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

20. Intellectual Property Rights

20.1 Except as expressly set out in this Call-Off Agreement:

- (a) the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors; and
- (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors.

20.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights in the performance of this Call-Off Agreement that is inconsistent with the allocation of title set out in Clause 20.1, it shall, at its own costs, assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

20.3 The Customer shall not have any right to use any of the Supplier's names, logos or trade marks on any of its products or services without the Supplier's prior written consent. The Supplier shall not have any right to use any of the Customer's names, logos or trade marks on any of its products or services without the Customer's prior written consent.

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21. IPR Indemnity

- 21.1 The Supplier shall at all times, during and after the Term, on written demand indemnify each Indemnified Person, and keep each Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
- 21.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:
- (a) procure for the relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
 - (b) replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on the Services or the IT Environment;
 - (iii) there is no additional cost to the relevant Indemnified Person; and
 - (iv) the terms and conditions of this Call-Off Agreement shall apply to the replaced or modified Services.
- 21.3 If the Supplier elects to procure a licence in accordance with Clause 21.2(a) or to modify or replace an item pursuant to Clause 21.2(b), but this has not avoided or resolved the IPRs Claim, then:
- (a) the Customer may terminate this Call-Off Agreement (if subsisting) with immediate effect by written notice to the Supplier; and
 - (b) without prejudice to the indemnity set out in Clause 21.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

22. Customer Stored Data and Customer Data

Customer Stored Data

- 22.1 The Supplier shall not store, copy, disclose, or use Customer Stored Data during the course of performing the Services, but acknowledges that Customer will store Customer Stored Data within the Data Centres and accordingly shall not through any act or omission on its part adversely impact integrity of and or cause corruption or loss of such Customer Stored Data during the Term.

Customer Data

- 22.2 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.

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- 22.3 The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under this Call-Off Agreement or as otherwise expressly authorised in writing by the Customer.
- 22.4 To the extent that Customer Data is held and/or processed by the Supplier, the Supplier shall supply an uncorrupted version of that Customer Data to the Customer as requested within a reasonable period of time and at no additional cost and in the format and on the media reasonably specified by the Customer.
- 22.5 The Supplier shall preserve the integrity of Customer Data and prevent the corruption or loss of Customer Data including of any copy of the Customer Data at all times that the relevant Customer Data is under its control or the control of any Sub-contractor.
- 22.6 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that meets the requirements of Schedule 3.6 (Security Management) to the Framework Agreement.

23. Confidentiality

- 23.1 For the purposes of this Clause 23, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 23.2 Except to the extent set out in this Clause 23 or where disclosure is expressly permitted elsewhere in this Call-Off Agreement, the Recipient shall:
- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials) which meets the requirements of Schedule 3.6 (Security Management) to the Framework Agreement;
 - (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Call-Off Agreement or without obtaining the Disclosing Party's prior written consent, provided that the Customer may disclose the Supplier's Confidential Information to the Service Recipients;
 - (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Call-Off Agreement; and
 - (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 23.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party if and to the extent that:
- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 24 (Freedom of Information) shall apply to disclosures required under the FOIA or the Environmental Information Regulations;
 - (b) the need for such disclosure arises out of or in connection with:

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- (i) any legal challenge or potential legal challenge against the Customer arising out of or in connection with this Call-Off Agreement;
 - (ii) the examination and certification of the Customer's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer is making use of any Services provided under this Call-Off Agreement; or
 - (iii) the conduct of a Central Government Body review and/or a major projects review and/or any such similar assurance review carried out by or on behalf of HMG in respect of this Call-Off Agreement; or
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is or any of the Disclosing Party's directors, officers, employees, agents, consultants or contractors are involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

23.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

23.5 The Supplier may disclose the Confidential Information of the Customer on a confidential basis only to:

- (a) Supplier Personnel who are directly involved in the provision of the Services and who need to know the Confidential Information to enable performance of the Supplier's obligations under this Call-Off Agreement;
- (b) its auditors; and
- (c) its professional advisers for the purposes of obtaining advice in relation to this Call-Off Agreement.

Where the Supplier discloses Confidential Information of the Customer pursuant to this Clause 23.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Call-Off Agreement by the persons to whom disclosure has been made, including by making Sub-contractors, Auditors or other third party advisers aware of the obligations set out in this Clause 23.

23.6 The Customer may disclose the Confidential Information of the Supplier:

- (a) on a confidential basis to the Framework Authority;
- (b) on a confidential basis to any Other Customer or service recipient under an Other Call-Off Agreement;
- (c) on a confidential basis to any Contracting Authority for any proper purpose of the Customer or of the relevant Contracting Authority;

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- (d) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (e) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (f) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by the Framework Authority, a Customer, a Service Recipient or Contracting Authority (including any benchmarking organisation) for any purpose relating to or connected with this Call-Off Agreement;
- (g) excluding any Commercially Sensitive Information which the Customer determines in its absolute discretion is exempt from disclosure in accordance with the provisions of FOIA, as part of the Customer's re-procurement process for the Services, on a confidential basis and subject to an appropriate confidentiality agreement to bidders for the purposes of undertaking due diligence and/or to a Replacement Supplier for the purposes of providing Replacement Services;
- (h) on a confidential basis for the purpose of the exercise of any of its rights under this Call-Off Agreement, including the Audit Rights and its rights under Clause 46 (Exit Management); or
- (i) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Call-Off Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this Clause 23.

- 23.7 Nothing in this Clause 23 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Call-Off Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

Transparency

- 23.8 The Parties acknowledge that, except for any Information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Call-Off Agreement is not Confidential Information. The Customer shall determine whether any of the content of this Call-Off Agreement (including Commercially Sensitive Information) is exempt from disclosure in accordance with the provisions of the FOIA. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 23.9 Notwithstanding any other provision of this Call-Off Agreement, the Supplier hereby gives its consent for the Customer to publish to the general public this Call-Off Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Call-Off Agreement agreed from time to time.

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- 23.10 The Supplier shall assist and co-operate with the Customer to enable the Customer to publish this Call-Off Agreement.

24. Freedom of Information

- 24.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Customer, at no additional cost to the Customer, to enable the Customer to comply with its obligations under the FOIA and Environmental Information Regulations;
- (b) transfer to the Customer all Requests for Information relating to this Call-Off Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
- (c) provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Customer.

- 24.2 The Supplier acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Call-Off Agreement) the Customer shall be responsible for determining in its absolute discretion whether any Information (including Commercially Sensitive Information) is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations.

25. Protection of Personal Data

- 25.1 With respect to the Parties' rights and obligations under this Call-Off Agreement, the Parties acknowledge that, to the extent that the Supplier's provision of the Services involves the processing of Personal Data, the Customer is a Data Controller and that the Supplier is a Data Processor.

- 25.2 The Supplier shall:

- (a) Process the Personal Data only in accordance with instructions from the Customer to perform its obligations under this Call-Off Agreement;
- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data, including the measures as set out in Clause 22 (Customer Stored Data and Customer Data) of these Standard Terms and in Schedule 3.6 (Security Management) to the Framework Agreement;

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- (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Customer (save where such disclosure or transfer is specifically authorised under this Call-Off Agreement);
- (d) take all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
 - (i) are aware of and comply with the Supplier's duties under this Clause 25 and Clauses 23 (Confidentiality) and 22 (Customer Stored Data and Customer Data) and under Schedule 3.6 (Security Management) to the Framework Agreement;
 - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Call-Off Agreement; and
 - (iii) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
- (e) notify the Customer (within five (5) Working Days) if it receives:
 - (i) from a Data Subject (or third party on their behalf):
 - (A) a Data Subject Access Request (or purported Data Subject Access Request);
 - (B) a request to rectify, block or erase any Personal Data; or
 - (C) any other request, complaint or communication relating to the Customer's obligations under the DPA;
 - (ii) any communication from the Information Commissioner's Office or any other regulatory authority in connection with Personal Data; or
 - (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (f) provide the Customer with full cooperation and assistance (within the timescales reasonably required by the Customer in relation to any complaint, communication or request made (as referred to in Clause 25.2(e)(i)(C))), including by promptly providing:
 - (i) the Customer with full details of the complaint, communication or request;
 - (ii) where applicable, such assistance as is reasonably requested by the Customer to enable the Customer to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
 - (iii) the Customer, on request, with any Personal Data it holds in relation to a Data Subject; and

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- (g) if requested by the Customer, provide a written description of the measures that it has taken and the technical and organisational security measures that it has in place for the purpose of compliance with its obligations pursuant to this Clause 25 and provide to the Customer copies of all documentation relevant to such compliance including protocols, procedures, guidance, training and manuals.
- 25.3 The Supplier shall not Process or otherwise transfer or permit the transfer of any Personal Data in or to any country outside the United Kingdom (each an **"Offshore Location"**). If, after the Call-Off Effective Date, the Supplier (or any Sub-contractor) wishes to Process and/or transfer or permit the transfer of any Personal Data in or to any Offshore Location, the following provisions shall apply:
- (a) the Supplier shall submit a RFC to the Customer which, if the Customer agrees to such RFC, shall be dealt with in accordance with Schedule 4.2 (Change Control Procedure) of the Standard Terms and Clauses 25.3(b) to 25.3(c);
 - (b) the Supplier shall set out in its RFC and/or Impact Assessment details of the following:
 - (i) the Personal Data which will be transferred to and/or Processed in or to any Offshore Location;
 - (ii) the Offshore Location(s) to which the Personal Data will be transferred and/or Processed in;
 - (iii) any Sub-contractors or other third parties who will be Processing and/or receiving Personal Data in such Offshore Location(s); and
 - (iv) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to such Offshore Location(s) so as to ensure the Customer's compliance with DPA;
 - (c) in providing and evaluating the RFC and Impact Assessment, the Parties shall ensure that they have regard to and comply with then-current Customer, Central Government Bodies and Information Commissioner's Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data in or to any such Offshore Location(s); and
 - (d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Customer may notify in writing, including:
 - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) in this Call-Off Agreement or a separate data processing agreement between the Parties; and
 - (ii) procuring that any Sub-contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Offshore Location(s) either enters into:
 - (A) a direct data processing agreement with the Customer on such terms as may be required by the Customer; or

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- (B) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Customer and the Sub-contractor relating to the relevant Personal Data transfer,

and in each case which the Supplier acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) and technical and organisation measures which the Customer deems necessary for the purpose of protecting Personal Data.

- 25.4 The Supplier shall use its reasonable endeavours to assist the Customer to comply with any obligations under DPA and shall not perform its obligations under this Call-Off Agreement in such a way as to cause the Customer to breach any of its obligations under the DPA to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

26. Publicity and Branding

- 26.1 The Supplier shall not:

- (a) use the Customer's name or brand in any promotion or marketing or announcement of orders; or
- (b) make any press announcements or publicise this Call-Off Agreement or its contents in any way,

without the prior written consent of the Customer, which shall not be unreasonably withheld or delayed. However, this Clause 26 does not prevent the Supplier from advertising the Services available to Customers and Potential Customers under the Framework Agreement or using the Supplier's name or brand in any promotion or marketing of the Services.

- 26.2 Each Party acknowledges to the other that nothing in this Call-Off Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services, the Supplier System and the Customer System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

SECTION H - SUPPLIER AND CUSTOMER PROTECTIONS

27. Supplier's Obligations

- 27.1 Subject to its obligations under this Call-Off Agreement, the Supplier shall provide the Customer with such additional assistance as the Customer may reasonably require in connection with this Call-Off Agreement provided that such assistance does not require the Supplier to incur material additional cost.
- 27.2 In addition to where these Standard Terms expressly require the Supplier to comply with certain provisions of the Framework Agreement, the Supplier shall comply with its obligations in Clauses 13 (Benchmarking), 16 (Change in Law), 17 (Change in Standards), 19 (Supplier Personnel), 20 (Supply Chain Rights), 24.1(c) (Supplier's Obligations), 27 (Guarantee), 32 (Insurance), 34 (Remedial Adviser) and 45 (Prevention of Fraud and Bribery) of the Framework Agreement.

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27.3 The Parties shall comply with the provisions of Schedule 3.7 (Insurance Requirements) to the Framework Agreement.

27.4 An obligation on the Supplier to do, or refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.

28. Customer Responsibilities

The Customer shall comply with the Customer Responsibilities.

29. Warranties, Representations and Undertakings

29.1 The Customer represents and warrants that:

- (a) it has full capacity and authority to enter into and to perform this Call-Off Agreement;
- (b) this Call-Off Agreement is executed by its duly authorised representative;
- (c) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Call-Off Agreement; and
- (d) its obligations under this Call-Off Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

29.2 The Supplier represents and warrants that:

- (a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- (b) it has full capacity and authority to enter into and to perform this Call-Off Agreement;
- (c) this Call-Off Agreement is executed by its duly authorised representative;
- (d) it has all necessary consents and regulatory approvals to enter into this Call-Off Agreement;
- (e) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Call-Off Agreement;
- (f) its execution, delivery and performance of its obligations under this Call-Off Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which the Supplier is bound;

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- (g) its obligations under this Call-Off Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
 - (h) all written statements and representations in any written submissions made by the PSP as part of the procurement process, including without limitation its response to the PQQ and Tender and any written correspondence in clarification or association with Tender were at the time they were made and remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Call-Off Agreement or to the extent that the Supplier has otherwise disclosed to the Customer in writing prior to the date of this Call-Off Agreement;
 - (i) it has notified the Customer in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
 - (j) it has all necessary rights in and to any materials made available by the Supplier (and/or any Sub-contractor) to the Customer which are necessary for the performance of the Supplier's obligations under this Call-Off Agreement and/or the receipt of the Services by the Customer;
 - (k) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Call-Off Agreement; and
 - (l) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue.
- 29.3 The representations and warranties set out in Clause 29.2 shall be deemed to be repeated by the Supplier on the Call-Off Effective Date by reference to the facts then existing.
- 29.4 Each of the representations and warranties set out in Clauses 29.1 and 29.2 shall be construed as a separate warranty and representation and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Call-Off Agreement.
- 29.5 If at any time a Party becomes aware that a warranty or representation given by it under Clause 29.1 or 29.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 29.6 For the avoidance of doubt, the fact that any provision within this Call-Off Agreement is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of breach of that provision by the Supplier.

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- 29.7 Except as expressly stated in this Call-Off Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

SECTION I - RISK PROTECTION

30. Security Requirements

- 30.1 The Parties shall comply with the provisions of Schedule 3.6 (Security Management) to the Framework Agreement.

31. Business Continuity and Disaster Recovery

The Parties shall comply with the provisions of Schedule 6.7 (Business Continuity and Disaster Recovery) to the Framework Agreement.

32. Force Majeure

- 32.1 Subject to the remaining provisions of this Clause 32, (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 6.7 (Business Continuity and Disaster Recovery) to the Framework Agreement) a Party may claim relief under this Clause 32 from liability for failure to meet its obligations under this Call-Off Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Call-Off Agreement which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 32.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.
- 32.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 32 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated by any of the Services including the BCDR Services, but the Supplier has failed to do so; and/or
 - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar in all material respects to the Services, operating to the standards required by this Call-Off Agreement.
- 32.4 Subject to Clause 32.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 32.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in

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accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

32.6 Where, as a result of a Force Majeure Event:

- (a) an Affected Party fails to perform its obligations in accordance with this Call-Off Agreement, then during the continuance of the Force Majeure Event:
 - (i) the other Party shall not be entitled to exercise any rights to terminate this Call-Off Agreement in whole or in part as a result of such failure other than pursuant to Clause 43.1(c) (Termination by the Customer) or Clause 43.3(b) (Termination by the Supplier); and
 - (ii) neither Party shall be liable for any Default arising as a result of such failure;
- (b) the Supplier fails to perform its obligations in accordance with this Call-Off Agreement:
 - (i) the Customer shall not be entitled:
 - (A) to receive Delay Payments pursuant to Clause 40 (Delay Payments) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
 - (B) to receive Service Credits to the extent that a Service Level Failure has been caused by the Force Majeure Event; and
 - (ii) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Call-Off Agreement during the occurrence of the Force Majeure Event.

32.7 The Affected Party shall notify the other Party and the Framework Authority as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Call-Off Agreement.

32.8 Relief from liability for the Affected Party under this Clause shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Call-Off Agreement and shall not be dependent on the serving of notice under Clause 32.7.

SECTION J – INDEMNITIES AND LIABILITY

33. Not Used

34. Conduct of Indemnity Claims

34.1 Where under this Call-Off Agreement one Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 6.5 (Conduct of Claims) to the Framework Agreement in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

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35. Limitations on Liability

Unlimited Liability

35.1 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
- (b) fraud or fraudulent misrepresentation by it or its employees;
- (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any liability which cannot be limited or excluded by Law.

35.2 The Supplier's liability in respect of the indemnities in Clause 12.2 (VAT), Clause 18.2(a) (Employment Indemnity), Clause 18.3(b) (Income Tax and National Insurance Contributions), Clause 21 (IPR Indemnity), Schedule 5.1 (Staff Transfers) to the Standard Terms and the Annexes to Schedule 5.1 (Staff Transfers) to the Standard Terms shall be unlimited.

35.3 The Customer's liability in respect of the indemnities in Clause 18.2(b) (Employment Indemnity), Schedule 5.1 (Staff Transfer) to the Standard Terms shall be unlimited.

Financial Limits and other Limits

35.4 Subject to Clauses 35.1 and 35.2 (Unlimited Liability) and 35.7 (Consequential Losses), in any 12 month period (where the first period commences on the Effective Date):

- (a) the Supplier's aggregate liability in respect of loss of or damage to property or assets of the Customer (including technical infrastructure, assets or equipment but excluding any loss or damage to the Customer's Data or any other data) that is caused by Defaults of the Supplier shall be limited to **REDACTED**;
- (b) the Supplier's aggregate liability in respect of any loss, destruction, corruption, degradation, or damage to Customer Stored Data and Customer Data caused by the Supplier's Default shall be limited to an amount equal to the higher of:
 - (i) **REDACTED** of the Charges paid or due to be paid to the Supplier under this Call-Off Agreement in respect of the 12 (twelve) month period immediately preceding the occurrence of the Default; or
 - (ii) **£REDACTED**; and
- (c) the Supplier's aggregate liability in respect of all other Losses (including those identified in Clause 35.8) incurred by the Customer under or in connection with this Call-Off Agreement as a result of Defaults by the Supplier shall in no event exceed an amount equal to the higher of:
 - (i) **REDACTED** of the Charges paid or due to be paid to the Supplier under this Call-Off Agreement in respect of the 12 (twelve) month period immediately preceding the occurrence of the Default; or

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(ii) **REDACTED,**

provided that where any Losses referred to in Clause 35.4(c) have been incurred by the Customer as a result of the Supplier's abandonment of this Call-Off Agreement or the Supplier's wilful Default, wilful breach of a fundamental term of this Call-Off Agreement or wilful repudiatory breach of this Call-Off Agreement, the references in this Clause to **REDACTED** shall be deemed to be references to **REDACTED**,

provided always that the Supplier's aggregate liability to the Customer shall be limited in accordance with Clauses 35.10 to 35.13.

35.5 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clause 35.4(c).

35.6 Subject to Clauses 35.1 and 35.3 (Unlimited Liability) and Clause 35.7 (Consequential Losses) and without prejudice to the Customer's obligation to pay the Charges as and when they fall due for payment:

(a) the Customer's total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Call-Off Agreement as a result of early termination of this Call-Off Agreement by the Customer pursuant to Clause 43.1(a) (Termination by the Customer) or by the Supplier pursuant to Clause 43.3(a) (Termination by the Supplier) shall in no event exceed the amount stated in Clause 45.2(b); and

(b) the Customer's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Call-Off Agreement as a result of Defaults of the Customer shall in no event exceed **REDACTED** of the total Charges paid or payable by the Customer under this Call-Off Agreement in respect of the 12 (twelve) month period immediately preceding the occurrence of the Default.

Consequential Losses

35.7 Subject to Clause 35.1, 35.2 and 35.3 (Unlimited Liability) and Clause 35.8, neither Party shall be liable to the other Party under this Call-Off Agreement for:

(a) any indirect, special or consequential loss; or

(b) any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).

35.8 Notwithstanding Clause 35.7, the Supplier acknowledges that the Customer may amongst other things recover from the Supplier; the following Losses incurred by the Customer to the extent that they arise as a result of a Default by the Supplier under this Call-Off Agreement:

(a) any additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of the Default;

(b) any wasted expenditure or charges;

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- (c) the additional cost of procuring Replacement Services for the remainder of the Term, which shall include any incremental costs associated with such Replacement Services above those which would have been payable under this Call-Off Agreement;
- (d) any compensation or interest paid to a third party by the Customer; and
- (e) any fine or penalty incurred by the Customer pursuant to Law and any costs incurred by the Customer in defending any proceedings which result in such fine or penalty.

35.9 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Call-Off Agreement, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Call-Off Agreement.

Aggregate Liability Cap

35.10 Subject to Clauses 35.1 and 35.2 (Unlimited Liability) and 35.7 (Consequential Losses), the Supplier's aggregate liability for all Losses incurred by the Customer and all Other Customers under this Call-Off Agreement and each Other Call-Off Agreement (as applicable) arising out of, or in connection with:

- (a) any single event; or
- (b) substantially similar or linked events arising out of the same root cause that affects the Customer and/or one or more Other Customers),

shall in no event exceed **REDACTED** (the "**Aggregate Liability Cap**").

35.11 The Customer acknowledges and agrees that:

35.11.1 the Supplier may be liable to Other Customers under Other Call-Off Agreements which may reduce the total amount able to be recovered by the Customer and Other Customers under the Aggregate Liability Cap (the "**Available Aggregate Liability Cap**"); and

35.11.2 if the Supplier's liability under this Call-Off Agreement would result in the Supplier incurring liability in excess of the Available Aggregate Liability Cap, the Customer shall only be entitled to recover an amount up to and including the Available Aggregate Liability Cap.

35.12 For the purposes of Clauses 35.10 to 35.13, the Aggregate Liability Cap shall also apply, to the extent applicable, to any Losses incurred by a Service Recipient under this Call-Off Agreement and service recipients under any Other Call-Off Agreement).

35.13 The Supplier shall:

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- (a) keep details of any claim made against the Supplier by the Customer or any Other Customer, or payment made, which may fall within the scope of the Aggregate Liability Cap and promptly provide those details to the Customer and the Framework Authority upon the occurrence of any such claim; and
- (b) promptly notify the Customer and the Framework Authority of any change to the Available Aggregate Liability Cap and identify the new Available Aggregate Liability Cap.

SECTION K - REMEDIES AND RELIEF

36. Obligation to Notify

- 36.1 In the event of any Default by the Supplier, the Supplier shall notify the Framework Authority and the Customer of the Default as soon as practicable but in any event within two (2) Working Days of becoming aware of the Default, detailing the actual or anticipated effect of the Default and whether the Default is a Notifiable Default.

37. Fix First

- 37.1 Notwithstanding any other provision in this Call-Off Agreement (but subject to Clause 41), in the event of a Default by the Supplier (or an anticipated Default by the Supplier), the Supplier shall:
 - 37.1.1 (if the Default occurs) remedy the Default as soon as possible; and
 - 37.1.2 use all reasonable endeavours to eliminate or mitigate the consequences or delay of any such Default or anticipated Default on the Framework Authority, the Customer and all Other Customers and Service Recipients at no cost to the Customer.

38. Rectification Plan Process

- 38.1 In the event that:
 - (a) there is, or is reasonably likely to be, a Delay;
 - (b) in any Service Period there has been a Service Level Failure; and/or
 - (c) the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),

(each a “**Notifiable Default**”), the Supplier shall notify the Customer and the Framework Authority of the Notifiable Default as soon as practicable but in any event within three (3) Working Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default and, unless the Notifiable Default also constitutes a Rectification Plan Failure or other Supplier Termination Event, the Customer may not terminate this Call-Off Agreement in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process.

Notification

- 38.2 If:

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- (a) the Supplier notifies the Customer pursuant to Clause 38.1 that a Notifiable Default has occurred; or
- (b) the Customer informs the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

then, unless the Notifiable Default also constitutes a Supplier Termination Event and the Customer serves a Termination Notice, the Supplier shall comply with the Rectification Plan Process.

38.3 If a "Notifiable Default" has occurred under an Other Call-Off Agreement and/or the Framework Agreement within ten (10) Working Days of a Notifiable Default occurring under this Call-Off Agreement (or such further period as the Parties may agree acting reasonably) and the Supplier believes that the "Notifiable Defaults" are related and require the same remedial actions, it shall notify the Customer accordingly and it shall only be obliged to produce one consolidated Rectification Plan in respect of those related "Notifiable Defaults" and that draft Rectification Plan shall be delivered to the Framework Authority, the Customer and the Other Customer(s) (each a **"Rectification Plan Approver"**) within ten (10) Working Days of the first Notifiable Default or such other timescales as agreed with the Framework Authority.

38.4 The "Rectification Plan Process" shall be set out in Clauses 38.5 (Submission of the draft Rectification Plan) to 38.10 (Agreement of the Rectification Plan).

Submission of the draft Rectification Plan

38.5 The Supplier shall submit a draft Rectification Plan to the Customer for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties, or, where Clause 38.3 applies, the Framework Authority) after the original notification pursuant to Clause 38.2. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

38.6 The draft Rectification Plan shall set out:

- (a) full details of the Notifiable Default that has occurred, including a root cause analysis;
- (b) the actual or anticipated effect of the Notifiable Default (including the actual or anticipated effect on the performance of its obligations under any Other Call-Off Agreements); and
- (c) the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).

38.7 The Supplier shall promptly provide to the Customer (or, where applicable, the Rectification Plan Approvers collectively) any further documentation that the Customer (or, where applicable, the Rectification Plan Approvers collectively) requires to assess the Supplier's root cause analysis. If the Parties (or, where applicable, the Supplier and the Rectification Plan Approvers collectively) do not agree on the root cause set out in the draft Rectification Plan, either Party (or, where applicable, the Supplier or the Rectification Plan Approvers collectively) may refer the matter to be determined by an expert in accordance with the Dispute Resolution Procedure.

Agreement of the Rectification Plan

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- 38.8 The Customer (or, where applicable, the Rectification Plan Approvers collectively) may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- (a) is insufficiently detailed to be capable of proper evaluation;
 - (b) will take too long to complete;
 - (c) will not prevent reoccurrence of the Notifiable Default; and/or
 - (d) will rectify the Notifiable Default but in a manner which is unacceptable to the Customer (or, where applicable, the Rectification Plan Approvers collectively).
- 38.9 The Customer (or, where applicable, the Rectification Plan Approvers collectively) shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Customer (or, where applicable, the Rectification Plan Approvers collectively) rejects the draft Rectification Plan, the Customer (or, where applicable, the Rectification Plan Approvers collectively) shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Customer (or, where applicable, the Rectification Plan Approvers collectively) for review within five (5) Working Days (or such other period as agreed between the Parties) of the Customer's (or, where applicable, the Rectification Plan Approvers' collectively) notice rejecting the first draft.
- 38.10 If the Customer (or, where applicable, the Rectification Plan Approvers collectively) consents to the Rectification Plan:
- (a) the Supplier shall immediately start work on the actions set out in the Rectification Plan and
 - (b) the Customer may no longer terminate this Call-Off Agreement in whole or in part on the grounds of the relevant Notifiable Default unless there has been a Rectification Plan Failure or subsequent Supplier Termination Event.

39. Not Used

40. Delay Payments

- 40.1 Where any Implementation Plan agreed between the Customer and Supplier in respect of this Call-Off Agreement in accordance with Clause 5.1 above identifies that Delay Payments shall be applicable to any Key Milestones set out in that Implementation Plan, or any Service Request identifies that Delay Payments shall be applicable to implementation of Services by an Service Commission Date, the Supplier shall pay such Delay Payments to the Customer on demand in the event of a Delay. Unless agreed otherwise, Delay Payments shall accrue for each day of delay from and including the relevant date set out in the Implementation Plan or Service Request until and including the date on which the relevant Key Milestone or Service Commencement Date has been Achieved (as applicable).

41. Customer Cause

- 41.1 Notwithstanding any other provision of this Call-Off Agreement, if the Supplier has failed to:

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- (a) Achieve a Milestone by its Milestone Date;
- (b) provide the Services in accordance with the Service Levels set out in Schedule 3.3 (Service Levels) of the Framework Agreement; and/or
- (c) otherwise comply with its obligations under this Call-Off Agreement,

(each a "**Supplier Non-Performance**"), and can demonstrate that the Supplier Non-Performance would not have occurred but for a Customer Cause, then (subject to the Supplier fulfilling its obligations in this Clause 41 and Clause 40):

- (d) the Supplier shall not be treated as being in breach of this Call-Off Agreement to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Customer Cause;
- (e) the Customer shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Call-Off Agreement pursuant to Clause 43.1(b) (Termination by the Customer); and
- (f) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
 - (i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Customer Cause;
 - (ii) if the Customer, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Customer Cause; and
- (g) if the Milestone is a Key Milestone, the Supplier shall have no liability to pay any Delay Payments associated with the Key Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Customer Cause.

41.2 In order to claim any of the rights and/or relief referred to in Clause 41.1, the Supplier shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware that a Customer Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Customer notice (a "**Relief Notice**") setting out details of:

- (a) the Supplier Non-Performance;
- (b) the Customer Cause and its effect or likely effect on the Supplier's ability to meet its obligations under this Call-Off Agreement;
- (c) any steps which the Customer can take to eliminate or mitigate the consequences and impact of such Customer Cause; and
- (d) the relief and/or compensation claimed by the Supplier.

41.3 Following the receipt of a Relief Notice, the Customer shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Customer Cause and whether it agrees with the Supplier's assessment set out in the Customer Cause as to the effect

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of the relevant Customer Cause and its entitlement to relief and/or compensation, consulting with the Supplier where necessary.

41.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Customer Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

41.5 If a Dispute arises as to:

(a) whether a Supplier Non-Performance would not have occurred but for a Customer Cause; and/or

(b) the nature and/or extent of the relief and/or compensation claimed by the Supplier,

either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.

41.6 Any change that is required to the Implementation Plan or to the Charges pursuant to this Clause 41 shall be implemented in accordance with Schedule 4.2 (Change Control Procedure).

SECTION L - TERM, TERMINATION AND EXIT MANAGEMENT

42. Term

42.1 This Call-Off Agreement shall:

(a) come into force on the Call-Off Effective Date, save for Clauses 1 (Definitions and Interpretation), 23 (Confidentiality), 24 (Freedom of Information), 26 (Publicity and Branding), 29 (Warranties, Representations and Undertakings), 35 (Limitations on Liability), 42 (Term), 49 (Waiver and Cumulative Remedies), 50 (Relationship of the Parties), 53 (Severance), 55 (Entire Agreement), 56 (Third Party Rights), 57 (Notices), 58 (Disputes) and 59 (Governing Law and Jurisdiction), which shall be binding and enforceable as between the Parties from the date of signature of the Call-Off Agreement; and

(b) unless terminated at an earlier date by operation of Law or in accordance with Clause 43 (Termination Rights), terminate:

(i) at the end of the Initial Term; or

(ii) if the Customer elects to extend the Initial Term in accordance with 42.2 below , at the end of the Extension Period.

42.2 The Customer shall have the right to extend the Initial Term for two (2) further periods of up to one (1) year (each an "**Extension Period**") by giving the Supplier at least 30 (thirty) days' notice before the end of the then current Term. Without limiting clause 44.2, each Extension Period shall take effect on the terms of the Framework Agreement and this Call-Off Agreement in force immediately prior to the Extension Period taking effect.

43. Termination Rights

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Termination by the Customer

43.1 The Customer may terminate this Call-Off Agreement by issuing a Termination Notice to the Supplier:

- (a) for convenience at any time;
- (b) if a Supplier Termination Event occurs; or
- (c) if a Force Majeure Event endures for a continuous period of more than 90 (ninety) days;

and this Call-Off Agreement shall terminate on the date specified in the Termination Notice. However, if the Customer has a right to terminate the Call-Off Agreement for the occurrence of an Intervention Cause, that right shall be suspended for three (3) months from the date of the Intervention Notice issued by the Framework Authority in accordance with Clause 34 of the Framework Agreement (or such other period as may be agreed between the Supplier and the Framework Authority).

43.2 Where the Customer:

- (a) is terminating this Call-Off Agreement under Clause 43.1(b) due to the occurrence of either sub-clause (b) and/or (f) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults have been remedied) which taken together constitute a material Default; and/or
- (b) has the right to terminate this Call-Off Agreement under Clause 43.1(b) or Clause 43.1(c), it may, prior to or instead of terminating the whole of this Call-Off Agreement, serve a Termination Notice requiring the Partial Termination of any part of the Services which are materially affected by the relevant circumstances.

Termination by the Supplier

43.3 The Supplier may, by issuing a Termination Notice to the Customer, terminate:

- (a) this Call-Off Agreement if the Customer fails to pay an undisputed sum due to the Supplier under this Call-Off Agreement which in aggregate exceeds **REDACTED** of the average monthly Charges paid during the previous 12 (twelve) months' and such amount remains outstanding 40 (forty) Working Days after the receipt by the Customer of a notice of non-payment from the Supplier; or
- (b) any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than 90 (ninety) days,

and this Call-Off Agreement or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice). If the operation of Clause 43.3(b) would result in a Partial Termination, the provisions of Clause 43.4 (Partial Termination) shall apply.

Partial Termination

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- 43.4 If the Supplier notifies the Customer pursuant to Clause 43.3(b) (Termination by the Supplier) that it intends to terminate this Call-Off Agreement in part and the Customer, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Customer Requirements, then the Customer shall be entitled to terminate the remaining part of this Call-Off Agreement by serving a Termination Notice to the Supplier within one (1) month of receiving the Supplier's Termination Notice. For the purpose of this Clause 43.4, in assessing the significance of any part of the Customer Requirements, regard shall be had not only to the proportion of that part to the Customer Requirements as a whole, but also to the importance of the relevant part to the Customer.
- 43.5 The Parties shall agree the effect of any change necessitated by a Partial Termination in accordance with Schedule 4.2 (Change Control Procedure), including the effect the Partial Termination may have on any other Services and the Charges, provided that:
- (a) the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;
 - (b) any adjustment to the Charges (if any) shall be calculated in accordance with the Financial Model and must be reasonable; and
 - (c) the Supplier shall not be entitled to reject the Change.

44. Survival

- 44.1 The provisions of Clauses 12.2 (VAT), 13 (Set-Off and Withholding), 20 (Intellectual Property Rights), 23 (Confidentiality), 24 (Freedom of Information), 25 (Protection of Personal Data), 26 (Publicity and Branding), 34 (Conduct of Indemnity Claims), 35 (Limitations on Liability), 45 (Payments made on Termination), 46 (Exit Management), 53 (Severance), 55 (Entire Agreement), 56 (Third Party Rights) and 59 (Governing Law and Jurisdiction), and the provisions of Schedules: 1 (Definitions), 3.1 (Charges and Invoicing), 4.3 (Exit Management) and 5.1 (Staff Transfers) and such other provisions which are expressly or by implication required to survive termination or expiry, shall survive the termination or expiry of this Call-Off Agreement.
- 44.2 The Parties agree that references in this Call-Off Agreement to the Framework Agreement shall be deemed to be references to the version of the Framework Agreement specified in the Call-Off Order Form (or if none is specified, the version existing at the Call-Off Effective Date) and not to any subsequent variation in or substitution of the Framework Agreement unless the Parties to this Call-Off Agreement agree in writing to such variation in accordance with Clause 17.

45. Payments Made on Termination

Payments by the Customer

- 45.1 The Customer shall not be liable to make any payment to the Supplier as compensation for:
- (a) the termination of this Call-Off Agreement where this Call-Off Agreement is terminated in accordance with Clause 43.1(b), 43.1(c) or 43.4; or
 - (b) the expiry of this Call-Off Agreement;

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save in respect of any unpaid Charges for Services which have been properly performed prior to the date of termination.

45.2 Where this Call-Off Agreement is terminated in accordance with Clauses 43.1(a), 43.3(a), or 43.2(b) (where the Partial Termination by the Customer is for convenience under Clause 43.1(a)) of this Call-Off Agreement the Customer shall pay the Supplier:

- (a) any unpaid Charges for Services which have been properly performed prior to the date of termination specified in the Termination Notice; and
- (b) the aggregate charges which the Customer would have been liable to pay to the Supplier pursuant to paragraph 2.6 of Schedule 3.2 (Pricing) of the Framework Agreement if it were to have issued a Service Request to decommission the relevant Commissioned Facilities which are subject to termination by the relevant termination date.

Payments made by the Supplier

45.3 Without prejudice to Clause 45.2, in the event of termination or expiry of a Call-Off Agreement the Supplier shall repay to the Customer all Charges it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination of this Call-Off Agreement.

46. Exit Management

46.1 The Parties shall comply with the provisions of Schedule 4.3 (Exit Management) of the Standard Terms and any current Exit Plan in relation to orderly transition of the Services to the Customer or a Replacement Supplier.

SECTION M - MISCELLANEOUS AND GOVERNING LAW

47. Compliance

Health and Safety

47.1 The Supplier shall perform its obligations under this Call-Off Agreement (including those in relation to the Services) in accordance with all applicable Law regarding health and safety.

Equality and Diversity

47.2 The Supplier shall:

- (a) perform its obligations under this Call-Off Agreement (including those in relation to the Services) in accordance with:
 - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (ii) the equality and diversity policy as provided to the Supplier by the Framework Authority from time to time; and

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- (iii) any other requirements and instructions which the Framework Authority reasonably imposes in connection with any equality obligations imposed on the Framework Authority at any time under applicable equality Law; and
- (b) take all necessary steps, and inform the Customer of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).

Official Secrets Act and Finance Act

47.3 The Supplier shall comply with the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989,

and any updates or amendments of those Acts from time to time.

48. Assignment and Novation

48.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Call-Off Agreement without the prior written consent of the Customer.

48.2 The Customer may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Call-Off Agreement and/or any associated licences to:

- (a) any Contracting Authority; or
- (b) to a body other than a Contracting Authority (including any private sector body) which performs any of the functions that previously had been performed by the Customer,

and the Supplier shall, at the Customer's request, enter into a novation agreement in such form as the Customer shall reasonably specify in order to enable the Customer to exercise its rights pursuant to this Clause 48.2.

48.3 A change in the legal status of the Customer (including if it ceases to be a Contracting Authority) shall not (subject to Clause 48.4) affect the validity of this Call-Off Agreement and this Call-Off Agreement shall be binding on any successor body to the Customer.

48.4 If the Customer assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Call-Off Agreement to a body which is not a Contracting Authority, or if a body which is not a Contracting Authority succeeds the Customer, (any such body a "**Successor Body**"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the rights of termination of the Customer under limb (i) of the definition of Supplier Termination Event (as if references in that limb (i) to the Supplier and the Guarantor and references to a Party in the definition of Insolvency Event were references to the Successor Body).

49. Waiver and Cumulative Remedies

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49.1 The rights and remedies under this Call-Off Agreement may be waived only by written notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Call-Off Agreement or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

49.2 Unless otherwise provided in this Call-Off Agreement, rights and remedies under this Call-Off Agreement are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

50. Relationship of the Parties

50.1 Except as expressly provided otherwise in this Call-Off Agreement, nothing in this Call-Off Agreement, nor any actions taken by the Parties pursuant to this Call-Off Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

51. Prevention of Fraud and Bribery

51.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Call-Off Effective Date:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

51.2 The Supplier shall not during the term of this Call-Off Agreement:

- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Customer and/or the Service Recipient or any of the Customer's and/or Service Recipient's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

51.3 The Supplier shall during the term of this Call-Off Agreement:

- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
- (b) keep appropriate records of its compliance with its obligations under Clause 51.3(a) and make such records available to the Customer on request.

51.4 The Supplier shall immediately notify the Customer and the Framework Authority in writing if it becomes aware of any breach of Clause 51.1 and/or 51.2, or has reason to believe that it has or any of the Supplier Personnel have:

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- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Call-Off Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Call-Off Agreement has committed or attempted to commit a Prohibited Act.
- 51.5 If the Supplier makes a notification to the Customer and Framework Authority pursuant to Clause 51.4, the Supplier shall respond promptly to the Customer's and/or Framework Authority's enquiries, co-operate with any investigation, and allow the Customer and/or Framework Authority to Audit any books, Records and/or any other relevant documentation in accordance with Clause 16 (Records, Reports, Audits and Open Book Data).
- 51.6 If the Supplier is in Default under Clauses 51.1 and/or 51.2, the Customer or Framework Authority may by notice:
- (a) require the Supplier to remove from performance of this Call-Off Agreement any Supplier Personnel whose acts or omissions have caused the Default; or
 - (b) immediately terminate this Call-Off Agreement.
- 51.7 Any notice served by the Customer or Framework Authority under Clause 51.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Customer or Framework Authority believes has committed the Prohibited Act and the action that the Customer or Framework Authority has elected to take (including, where relevant, the date on which this Call-Off Agreement shall terminate).
- 52. Conflicts of Interest**
- 52.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any of the Supplier Personnel are placed in a position where (in the reasonable opinion of the Customer) there is or may be an actual conflict, or potential conflict, between the pecuniary or personal interests of the Supplier or the Supplier Personnel and the duties owed to the Customer (a **"Conflict of Interest"**).
- 52.2 The Supplier shall promptly notify and provide full particulars to the Customer if a Conflict of Interest arises or it is reasonably foreseeable that it will arise.
- 52.3 Following receipt of notice pursuant to Clause 53.2, the Customer may direct the Supplier as to the steps to take in respect of that Conflict of Interest and the Supplier shall comply with such directions.
- 53. Severance**
- 53.1 If any provision of this Call-Off Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent

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necessary to ensure that the remaining provisions of this Call-Off Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Call-Off Agreement shall not be affected.

- 53.2 In the event that any deemed deletion under Clause 53.1 is so fundamental as to prevent the accomplishment of the purpose of this Call-Off Agreement or materially alters the balance of risks and rewards in this Call-Off Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Call-Off Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Call-Off Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 53.3 If the Parties are unable to agree on the revisions to this Call-Off Agreement within five (5) Working Days of the date of the notice given pursuant to Clause 53.2, the matter shall be escalated for resolution in accordance with paragraph 4 (Commercial Negotiation) of Schedule 6.3 (Dispute Resolution Procedure) to the Framework Agreement except that if the representatives are unable to resolve the dispute within thirty (30) Working Days of the matter being referred to them, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this Clause 53.3.

54. Further Assurances

- 54.1 Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this Call-Off Agreement.

55. Entire Agreement

- 55.1 This Call-Off Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 55.2 Neither Party has been given, nor entered into this Call-Off Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Call-Off Agreement.
- 55.3 Nothing in this Clause 55 shall exclude any liability in respect of misrepresentations made fraudulently.

56. Third Party Rights

- 56.1 The provisions of Clauses 1.6, 7.5(c), 8.3, 23.2(b) and 51.2(b) (together "**Third Party Provisions**") confer benefits on persons named in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- 56.2 Each Service Recipient may, acting exclusively at all times through the Customer as its agent and trustee, enforce any term of this Call-Off Agreement in its own name as a third party beneficiary pursuant to CRTPA and/or recover any loss, damage or liability suffered by that

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Service Recipient in connection with the breach of such provision provided that the Customer agrees that the Supplier shall not be liable to the Customer in respect of the same loss, damage or liability if such loss, damage or liability would be recovered twice in any action by the Customer. No consent of any Service Recipient shall be necessary for any variation (including any release or compromise in whole or in part of any liability) or termination of this Call-Off Agreement or any one or more clauses of it.

- 56.3 The Customer will owe no duty to enforce any rights and it may conduct or compromise any relevant proceedings as it sees fit.
- 56.4 Subject to Clauses 56.1, 56.2 and 56.3, a person who is not a Party to this Call-Off Agreement has no right under the CRTPA to enforce any term of this Call-Off Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 56.5 Subject to Clause 56.3, no Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Customer, which may, if given, be given on and subject to such terms as the Customer may determine.
- 56.6 Any variations, amendments or modifications to this Call-Off Agreement may be made, and any rights created under Clause 56.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

57. Notices

- 57.1 Any notices sent under this Call-Off Agreement must be in writing.
- 57.2 Subject to Clause 57.5, the following table sets out the method by which notices may be served under this Call-Off Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of delivery	Proof of Service
Email	9.00am on the first Working Day after sending.	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt.
Prepaid, Royal Mail Signed For™ 1st Class or other prepaid, next working day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

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	same Working Day (if delivery before 9.00am) or at 9.00am on the next Working Day (if after 5.00pm).	
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57.3 Notices shall be sent to the addresses set out in Items 10 and 11 of the relevant Call-Off Order Form or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Call-Off Agreement.

57.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 57.2:

- (a) any notices given under or in relation to Schedule 6.1 (Governance) to the Framework Agreement
- (b) notices issued by the Supplier pursuant to Clause 43.3 (Termination by the Supplier) of the Standard Terms;
- (c) Force Majeure Notices;
- (d) Termination Notices; and
- (e) Dispute Notices.

57.5 Failure to send the original notice by personal delivery or recorded delivery in accordance with Clause 57.4 shall invalidate the service of any e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or recorded delivery (as set out in the table in Clause 57.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

57.6 This Clause 57 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 6.3 (Dispute Resolution Procedure) to the Framework Agreement).

58. Disputes

58.1 The Parties shall resolve Disputes arising out of or in connection with this Call-Off Agreement in accordance with the Dispute Resolution Procedure.

58.2 The Supplier shall continue to provide the Services in accordance with the terms of this Call-Off Agreement until a Dispute has been resolved.

59. Governing Law and Jurisdiction

59.1 This Call-Off Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

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- 59.2 Subject to Clause 58 (Disputes) and Schedule 6.3 (Dispute Resolution Procedure) to the Framework Agreement (including the Customer's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Call-Off Agreement or its subject matter or formation.