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PSN CONNECTIVITY

APPENDIX 15

SPECIAL TERMS

CALL-OFF FORM & APPENDICES

Changes have been made to the Call-Off Form and its Appendices and such amended Call-Off Form and Appendices are attached hereto.

CALL-OFF TERMS AND CONDITIONS

1. **Definitions and Interpretation:** Clause 1.1 of the Call-Off Terms shall be amended as follows:

“In this Agreement the definitions set out in Schedule 1 (Definitions) shall apply along with the definitions set out in Annex 1-1 and Annex 1-2 of Schedule 1 of the Call-Off Terms and, in respect of the As-Is Services, the Definitions set out in Part A of Annex 2 (As-Is Services) of Appendix 15 (Special Terms). If a capitalised term or phrase used in this Agreement is not defined within Schedule 1 (Definitions) or the Annexes mentioned above, it shall have the meaning as set out in Schedule 1 (Definitions) of the Framework Agreement and if it does not have an interpretation in the Framework Agreement it shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise it shall be interpreted in accordance with the Oxford English dictionary meaning. The Glossary of Industry Definitions in Annex 1-1 of Schedule 1 of the Call-Off Terms references out to the definitions used by ITIL and other industry definitions (as specified in the table in Annex 1-1 of Schedule 1) and if there is any conflict between the definitions in Schedule 1 (excluding Annex 1-1) and such referenced ITIL and other industry definitions, the definitions as specified in Schedule 1 (excluding the table in Annex 1-1 of Schedule 1) shall prevail.”

2. **Implementation Plan:** The first sentence of Clause 3.2 of the Call-Off Terms shall be amended as follows:

“The Contractor shall develop a draft Detailed Implementation Plan based on the Outline Implementation Plan and deliver it to the Customer Authority within one (1) month of the Effective Date (or such other period as set out in the Outline Implementation Plan Schedule 4.1 (Implementation Plan) or as otherwise agreed by the Parties in writing).”

3. **Implementation Plan:** Clause 3.2.3 of the Call-Off Terms shall be amended as follows:

“keep the Detailed Implementation Plan under review as set out in Paragraph 4.7 of Schedule 4.1 (Implementation Plan).”

4. **Implementation Plan** Clause 3.3 of the Call-Off Terms shall be amended as

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follows:

“All changes to the Outline Implementation Plan and Detailed Implementation Plan shall only be varied in accordance with the processes set out in ~~Paragraphs 3.2 and 4.7 of~~ Schedule 4.1 (Implementation Plan).

5. Implementation Plan: The CPS claims an exemption from publishing this information under Section 43(1) of the FOI Act 2000

6. Services: Clause 9.14 of the Call-Off Terms shall be amended as follows:

“Within ~~twenty~~^{sixty} (2060) Working Days of the Effective Date (or such other period as specified in the Implementation Plan or otherwise agreed by the Parties in writing), the Contractor shall deliver a draft Call-Off Operating Manual to the Customer Authority for its Approval. The Customer Authority shall not unreasonably withhold its Approval of the draft Call-Off Operating Manual. If the Customer Authority does not Approve the draft Call-Off Operating Manual it shall inform the Contractor of its reasons and the Contractor shall take those reasons into account in the preparation of a further draft Call-Off Operating Manual, which shall be resubmitted to the Customer Authority within five (5) Working Days (or such other period as specified in the Implementation Plan or as the Customer Authority may permit and notify to the Contractor in writing) of the rejection of the first draft. The Contractor shall comply with the Call-Off Operating Manual following its Approval by the Customer Authority. Approval of the Call-Off Operating Manual by the Customer Authority shall not relieve the Contractor of any responsibility to deliver the Services in accordance with this Agreement.”

7. Exclusivity: A new Clause 9.15 of the Call-Off Terms shall be inserted as follows:

“The Contractor acknowledges and agrees that nothing shall prevent the Customer Authority from performing itself, or obtaining from any third party (including the Agency Manager), any additional services that are the same as or similar to the Services provided under, or envisaged in, this Agreement, including in relation to the Service Catalogue.”

8. Equipment: Clause 14 of the Call-Off Terms shall be amended as follows:

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14. EQUIPMENT

- 14.1 Subject to Clause 14.2, the Contractor shall provide all Contractor Equipment and other Assets necessary to enable it to provide the Services. The Contractor shall procure the Contractor Procured Assets and the Contractor Procured Software during the Implementation Phase as provided in the Implementation Plan or as otherwise agreed between the Parties in writing. On the successful achievement of the relevant Milestone the ownership of the Contractor Procured Assets and the ownership of the licence to the Contractor Procured Software shall transfer to the Customer Authority on payment of the related Milestone Payment(s) and, thereafter, shall remain with the Customer Authority during the Term. The Contractor shall have a right to use such Contractor Procured Assets and Contractor Procured Software during the Term as provided by Appendix 7 (unless otherwise prevented by third party agreements),
- 14.2 The Customer Authority shall provide the Customer Authority Equipment, the Customer Authority Software, the Transferring-In Assets and the Transferring-In Software to the Contractor (including rights of use to the Contractor in respect of such Customer Authority Equipment, Customer Authority Software, Transferring-In Assets and Transferring-In Software (unless otherwise prevented by third party agreements)) and the Contractor shall use such Customer Authority Equipment, Customer Authority Software, Transferring-In Assets and Transferring-In Software in its performance of the Services. The Contractor shall be responsible for maintaining the Customer Authority Equipment, Customer Authority Software, Transferring-In Assets and Transferring-In Software, including without limitation managing all third party support and maintenance agreements in respect of the same. Notwithstanding the foregoing, the Contractor shall procure the Contractor Procured Assets and the Contractor Procured Software and each shall be owned by the Customer Authority in accordance with Paragraphs 1.3 and 5.3 of Appendix 7 (Customer Authority Equipment).

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- 14.3 If, after the Effective Date, the Customer Authority wishes to provide additional Customer Authority Equipment or Customer Authority Software, it shall do so through the Change Control Procedure. During that process the Contractor shall be given the opportunity to carry out due diligence as agreed with the Customer Authority. Clauses 14.1, 14.2 and 14.4 to 14.11 (inclusive) shall apply to the additional Customer Authority Equipment or Customer Authority Software (as applicable).
- 14.4 If, after the Effective Date, the Customer Authority wishes the Contractor to procure additional Contractor Procured Assets or Contractor Procured Software, it shall do so through the Change Control Procedure. During that process the Contractor shall be given the opportunity to carry out due diligence as agreed with the Customer Authority. Clauses 14.1, 14.2 and 14.4 to 14.11 (inclusive) shall apply to the additional Contractor Procured Assets or Contractor Procured Software (as applicable).
- 14.5 The Customer Authority and any other owner of Customer Authority Equipment or the Customer Authority Software makes no warranty as to the condition or suitability for the Services of the Customer Authority Equipment and the Customer Authority Software.
- 14.6 All Exclusive Assets will be used by the Contractor solely for the purposes of providing the Services to the Customer Authority and will not be used for the Contractor's own purposes or in providing any other services to third parties (including the Standard Services). However, where Services provided only for the benefit of the Customer Authority become provided on a shared basis to Customers under other PSN Connectivity Call-Off Contracts (for example where more than one Direct Customer and/or Indirect Customer is sharing Services to a single building) then such Exclusive Assets may be used for the purpose of providing the Services to the Customer Authority and all other relevant Customers. However such Assets shall remain designated as Exclusive Assets and in such cases, the Customer Authority shall be responsible for agreeing with any other relevant Customer(s) which of them shall be entitled to exercise the rights under this Agreement (or the parallel rights under any other PSN Connectivity Call-Off Contract) in relation to such Exclusive Assets.
- 14.7 The Contractor shall be solely responsible for obtaining all permits relating to and for the cost of carriage of Contractor Equipment to the Sites and to the Customer Authority Premises, including its import and clearance through customs, payment of any duties or imposts, off-loading, removal of all packaging and all other associated costs. If the Customer Authority wishes to follow a particular process the Contractor shall cooperate with the Customer Authority in this. Likewise on termination or expiry of this Agreement, except where the Customer Authority acquires such equipment and does not wish it to be removed the Contractor shall be responsible for the removal of all relevant Contractor Equipment (and of any Customer Authority Equipment transferred to the Contractor pursuant to Clause 14.4 or Schedule 6.4 (Exit Management)) from the Customer Authority Premises, including the cost of packing, carriage and making good the Customer Authority Premises or any objects contained therein following removal.

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- 14.8 Subject to any encumbrances set out in Paragraph 4 of Appendix 7 of the Call-Off Form, the Contractor hereby assigns to the Customer Authority the beneficial interest in all such Assets as the Customer Authority may otherwise be entitled to acquire under this Agreement (including in accordance with Clause 48.3), such assignment to take effect either now or at the time in the future when the Asset is acquired. All such Assets shall remain in the Contractor's possession and subject to a lien which shall be discharged only upon the Customer Authority paying any sums due in respect of such Assets at or after the time stipulated in this Agreement. If the Customer Authority indicates that it does not wish to acquire all or any of such Assets, such Assets shall then at once be automatically assigned to the Contractor.
- 14.9 All the Contractor's property located on the Sites and Customer Authority Premises, including Contractor Equipment, shall remain at the sole risk and responsibility of the Contractor, except that the Customer Authority shall be liable (subject to Clause 42.3.1) for loss of or damage to any of the Contractor's property located on Customer Authority Premises which is due to the negligent or malicious act or omission of the Customer Authority. Where such negligent or malicious act or omission affects the Contractor's ability to provide the Services, this shall be a Customer Authority Cause. The Contractor shall be liable for loss of or damage to any of the Customer Authority Equipment caused by any act or omission by the Contractor, its Affiliates, its and their employees, officers, agents or Sub-contractors.
- 14.10 Where a failure of an item of Equipment or any component part of Equipment causes two (2) or more Service Failures in any twelve (12) month period, the Contractor shall notify the Customer Authority in writing and shall, at the Customer Authority's request (acting reasonably), replace such Equipment or component part thereof at its own cost with a new item of Equipment or component part thereof (of the same specification or having the same capability as the Equipment being replaced).
- 14.11 Annex 10-7 of Appendix 10 sets out those Customer Authority Assets which the Contractor has identified will reach their end of life during the term of this Agreement and may be replaced by the Customer Authority at the estimated costs set out therein. All such replacements shall be at the sole option of the Customer Authority and the provisions of Paragraph 8 of Appendix 10 shall apply.
9. **DEPENDENCIES:** A new Clause 15.15 shall be inserted as follows:

15.15 Dependencies

- 15.15.1 Annex 1 to this Appendix 15 (Special Terms) sets out the Dependencies accepted by the Customer Authority at the Effective Date. The Customer Authority acknowledges that the Contractor's Charges are based upon these Dependencies being fulfilled. For the avoidance of doubt, the Contractor shall not be able to rely on any other dependencies set out in this Agreement unless such dependencies are set out in Annex 1 to this Appendix 15.
- 15.15.2 If a Dependency is not fulfilled, the Contractor shall as soon as it becomes aware of such failure, notify the Customer Authority in writing accordingly

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and the Parties shall meet and agree in good faith the steps required to mitigate such failure and the cost of fulfilling such Dependency. Such cost shall be payable by the Customer Authority provided the Contractor has taken all reasonable steps to mitigate the effects of the failure to fulfil any Dependency.

10. **REPRESENTATIVES:** Clause 20.1 of the Call-Off Terms shall be amended as follows:

“Each Party appoints the persons named in Appendix 2 of the Call-Off Form as the Customer Authority Representative and the Contractor Representative. Where any such persons are not named in Appendix 2 but marked as “TBA” all such names shall be notified to the other Party in writing and recorded in a Change Authorisation Note.”

11. **KEY PERSONNEL:** Clause 26.5 of the Call-Off Terms shall be amended as follows:

“The Parties have agreed the appointment of the Key Personnel as set out in Appendix 2 of the Call-Off Form. Where any such persons are not named in Appendix 2 but marked as “TBA” all such names shall be notified to the other Party in writing and recorded in a Change Authorisation Note.”

12. **NOT USED**

13. **Employment Indemnity:** Clause 27 of the Call-Off Terms shall be amended as follows:

The Contractor shall indemnify the Customer Authority and/or the Outgoing Service Providers (as applicable) against all Employee Liabilities that may arise as a result of any claims brought against the Customer Authority and/or the Outgoing Service Providers by any of the Customer Authority's employees or former employees and/or any of the Contractor Personnel where such claim arises from any act or omission of the Contractor, any Sub-contractor or any Contractor Personnel

14. **Staff Transfer:** Clause 28 of the Call-Off Terms shall be amended as follows:

“The Parties acknowledge that the commencement of the provision of the Services (or any part of them) and the termination of the provision of the Services (or any part of them) by the Contractor pursuant to this Agreement ~~may~~ will constitute a relevant transfer for the purposes of the Employment Regulations, and agree that the provisions of Schedule 7.1 (Staff Transfer) will apply in relation to such commencement or termination.”

15. **Contractor's Obligations:** At the end of Clause 35.1.3 the following shall be inserted or amended, as follows:

35.1.3 The following sentence shall be added to the end of Clause 35.1.3:

“The obligations under this Clause 35.1.3 also require the Contractor to cooperate with the Agency Manager in addition to other such suppliers;”

35.1.4 “in addition to its obligations under any Call-Off Cooperation Agreement the Contractor shall cooperate with suppliers of other PSN Services, and GCN

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Service Providers and the Agency Manager to enable the efficient operation of the Public Services Network in accordance with the PSN Operating Model;”

“35.1.5 enter into a Call-Off Cooperation Agreement with any relevant Customer Authority Third Parties (including the Agency Manager) if reasonably required by the Customer Authority;”

16. Confidential Information

16.1 The following Clause shall be added as a new Clause 34.10.6:

“to the Agency Manager solely and exclusively for the purposes of the Agency Manager carrying out its obligations in connection with this Agreement, including in relation to Category 3 (Agency Management Requirements) set out in Part A of Appendix 3 (Service Requirements, Contractor Service Descriptions and Customer Authority Responsibilities) and the corresponding response to Part A in the Contractor Solution set out in Part B of Appendix 3 (Service Requirements, Contractor Service Descriptions and Customer Authority Responsibilities).”

16.2. The following Clause shall be added as a new Clause 34.21:

“Notwithstanding Clause 34.11, the provisions of Clause 34.10.6 are subject always to the Customer Authority’s obligations to: (i) ensure the Agency Manager protects the Contractor’s Confidential Information securely in accordance with the security and confidentiality obligations set out in the relevant agreement(s) between the Agency Manager and the Customer Authority and the Policies, Processes and Procedures (PPP); and that (ii) the Agency Manager uses the Contractor’s Confidential Information only for the purposes of fulfilling its obligations as Agency Manager to the Customer Authority and strictly in accordance with the Agency Manager responsibilities and obligations set out in (a) the relevant agreement(s) between the Agency Manager and the Customer Authority, and (b) Category 3 (Agency Management Requirements) in Part A of Appendix 3 (Service Requirements, Contractor Service Descriptions and Customer Authority Responsibilities) and the corresponding response to Part A in the Contractor Solution in Part B of Appendix 3 (Service Requirements, Contractor Service Descriptions and Customer Authority Responsibilities).”

14. Limitations on Liability

Clause 42.2.2 of the Call-Off Terms shall be amended as follows:

“for all loss of or damage to the Customer Authority Premises, Customer Authority Equipment, property or assets (including technical infrastructure, Customer Authority Assets or equipment but excluding any loss or damage to the Customer Authority Data or any other data) of the Customer Authority caused by the Contractor's Default shall be limited to one million pounds sterling (£1,000,000) (or such other amount specified in Appendix 2 of the Call-Off Form).

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17. **Initial Term: Delay prior to the Operational Service Commencement Date:** the following shall be inserted as new Clause 44.2 of the Call-Off Terms:

“Notwithstanding any other provision of the Call-Off Contract, where a delay in government approval occurs at any time between the Effective Date and the relevant Operational Services Commencement Date, the Customer Authority may at any time prior to the relevant Operational Service Commencement Date by notice in writing change the Operational Service Commencement Date to a later date by a period up to the delay caused by the delayed government approval.”

18. **Steps to Mitigate Losses:** The first paragraph of Clause 48.4 of the Call-Off Terms shall be amended as follows:

“Unless the Customer Authority otherwise requires, and subject always to prior approval by the Customer Authority’s Exit Manager, during the time between service of a Termination Notice and such termination or exercise taking effect, the Contractor shall take all steps which are necessary and consistent with its continuing obligations, to mitigate any Losses which the Contractor may incur as a result of the termination, including to:”

19. **Step-In Rights:** The following sub-Clauses will be added to the end of Clause 49.7.1 of the Call-Off Terms:

49.7.1 “..... The Parties agree that a Required Action shall include but not be limited to the following actions, the Customer Authority:

49.7.1.1 requiring the Contractor to undertake training as reasonably specified by the Customer Authority;

49.7.1.2 appointing Customer Authority personnel or any third party to shadow Contractor Personnel in the performance of all or any of the affected Services to try to evaluate any underlying cause or nature of the problem or concern which triggered the Step-In Action and identify any activities required to remedy the problem or concern and/or prevent any recurrence of such problem or concern;

49.7.1.3 requiring that the Contractor includes the Customer Authority and/or any third party appointed by the Customer Authority in any remediation discussions and planning undertaken by the Contractor;

49.7.1.4 to the extent appropriate given the nature and location of the affected Services, supervise, directing and controlling any Contractor Personnel in the performance of all or any of the affected Services;

49.7.1.5 taking such steps itself or engaging others (including any Indirect Customers or other third party) to take such steps; and/or

49.7.1.6 suspending the Contractor’s performance of all or any part of the affected Services and performing such Services itself and/or procuring services that are equivalent to the affected Services from an Indirect Customer or other third party for the duration of

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the Step-In Action.”

And Clause 49.1.5 of the Call-Off Terms shall be amended by the insertion of the word “rolling” between “any” and “period” in line 2.”

20. **Counterparts:** A new Clause 57.4 shall be inserted into the Call-Off Terms as follows:

“This Call-Off Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.”

AMENDED SCHEDULES & REPLACEMENT SCHEDULES &

ATTACHMENT 15-1 (SCHEDULE 1 – DEFINITIONS)

Schedule 1 of the Call-Off Terms shall be amended as shown in Attachment 15-1 to this Appendix 15 (Special Terms).

ATTACHMENT 15-2 (SCHEDULE 2.1 – PERFORMANCE MONITORING)

Schedule 2.1 of the Call-Off Terms shall be amended as shown in Attachment 15-2 to this Appendix 15 (Special Terms).

ATTACHMENT 15-3 (SCHEDULE 2.2 – SECURITY REQUIREMENTS AND PLAN)

Schedule 2.2 of the Call-Off Terms shall be replaced in full by Attachment 15-3 to this Appendix 15 (Special Terms).

SCHEDULE 2.3 – SERVICE LEVELS AND RELATED REMEDIES

Paragraphs 1 to 9.4.3 of Schedule 2.3 shall be deleted and replaced by the following new Paragraph 1:

“The Service Levels and Related Remedies for this Call-Off Contract are set out in Appendix 4 (Service Levels and Related Remedies).”

ATTACHMENT 15-4 (SCHEDULE 4.1 – IMPLEMENTATION PLAN)

Schedule 4.1 of the Call-Off Terms shall be replaced in full by Attachment 15-4 to this Appendix 15 (Special Terms).

SCHEDULE 4.2 – TESTING PROCEDURES

Paragraph 6 of shall be replaced as follows:

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“The Test Success Criteria for the Milestone Achievement Certificates and Test Certificates shall be have been agreed by the Parties in accordance with the provisions of Schedule 4.1 (Implementation Plan) before the Effective Date and are set out in Appendix 9 of the Call-Off Form.”

ATTACHMENT 15-5 (SCHEDULE 5.1 - INVOICING)

Schedule 5.1 of the Call-Off Terms shall be amended as shown in Attachment 15-5 to this Appendix 15 (Special Terms).

ATTACHMENT 15-6 (SCHEDULE 5.4 – FINANCIAL MODEL)

Schedule 5.4 of the Call-Off Terms shall be amended as shown in Attachment 15-6 to this Appendix 15 (Special Terms).

SCHEDULE 6.1 – GOVERNANCE

Paragraph 2.1 shall be amended as follows: “~~Subject to Paragraph 4.3 below, t~~The Parties shall establish the Services Board, ~~and the Contractor Board,~~ the Partnering Board, the TSB and the ICT Director Board.”

Paragraph 3.5 shall be amended as follows: “~~The Services Boards and the Contractor Board shall meet at the frequencies set out in Appendix 12 least once every three (3) months (commencing from the Effective Date), or more frequently if requested by the Customer Authority or in order to resolve any Dispute. At the Customer Authority’s discretion (acting reasonably), the Boards shall meet either in person, via telephone conference or via video-conference. Furthermore, nothing shall prevent the Customer Authority from electing (at its sole discretion and upon written notice to the Contractor) not to hold any Board Services Board and/or the Contractor Board meetings when scheduled, or at all.~~”

Paragraphs 4.1 and 4.2 shall be deleted and the roles and responsibilities of the Boards shall be as set out in Paragraphs 1.1, 2.1, 3.1, 4.1 and 5.1 of Appendix 12.

ATTACHMENT 15-7 (SCHEDULE 6.7 – CALL-OFF COOPERATION AGREEMENT)

Schedule 6.7 of the Call-Off Terms shall be amended as shown in Attachment 15-7 to this Appendix 15 (Special Terms).

ATTACHMENT 15-8 (SCHEDULE 7.1 – STAFF TRANSFER)

Schedule 7.1 of the Call-Off Terms shall be amended as shown in Attachment 15-8 to this Appendix 15 (Special Terms).

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ANNEX 1
DEPENDENCIES

In accordance with Paragraph 9 of this Appendix 15, the Dependencies are set out in the table below in this Annex 1.

The CPS claims an exemption from publishing this information under Section 43(1) of the FOI Act 2000

ANNEX 2
AS-IS SERVICES

In accordance with Paragraph 5 of this Appendix 15, the As-Is Services are set out in this Annex 2, which is attached as a separate document.

The CPS claims an exemption from publishing this information under Section 43(1) of the FOI Act 2000