

OFFICIAL
MEMORANDUM OF AGREEMENT - CABINET OFFICE AND THE DEPARTMENT OF WORK
AND PENSIONS

DATED 16th MARCH 2015

(1) THE MINISTER FOR THE CABINET OFFICE

- and -

(2) THE SECRETARY OF STATE FOR WORK AND PENSIONS

**MEMORANDUM OF
AGREEMENT**

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THIS agreement is made on

16th MARCH

2015

BETWEEN:

- (1) **THE MINISTER FOR THE CABINET OFFICE** acting for and on behalf of the Cabinet Office as part of the Crown whose office is at 70 Whitehall, London, SW1A 2AS ("**Framework Authority**"); and
- (2) **THE SECRETARY OF STATE FOR WORK AND PENSIONS** whose office is at Caxton House, Tothill Street, Westminster, London, SW1H 9NA ("**Customer**").

BACKGROUND:

- A On 18 July 2014, the Framework Authority advertised the Contract Notice, which set out its intention to establish a single supplier framework with the Supplier for the provision of Data Centre Co-Location Services to the Crown and other public sector bodies and invited expressions of interest from the private sector in becoming a private sector partner and subscribing for shares in the Supplier.
- B Following the subscription referred to above, the Supplier will be a joint venture company which is owned by the UK Government and the private sector partner selected pursuant to the procurement process outlined above.
- C The Framework Agreement establishes the basis on which Potential Customers may require the Supplier to provide various Services as identified in the Framework Agreement. The terms and conditions pursuant to which the Services are provided shall be set out in the Framework Agreement and the Call-Off Agreement.
- D This Memorandum of Agreement ("**MoA**") establishes the terms of reference for the Customer's interaction with the Framework Authority across the Framework Agreement and Call-Off Agreement and the commitments that the Framework Authority and the Customer are making to each other.

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IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 In this MoA (unless the context otherwise requires), the following words and phrases shall have the following meanings:

"Accounting Officer" means the officer nominated as such by the Customer and notified to the Framework Authority;

"Achieved" has the meaning given to it in the Framework Agreement;

"Additional Services" means the services identified as such in the Service Description;

"Approved Data Centre(s)" has the meaning given to it in the Framework Agreement;

"Available Capacity Level" means the minimum level of capacity (kW) which the Supplier shall make available for Customers within the Data Centres during the near range forecast period as agreed by the Framework Authority and the Supplier pursuant to Schedule 6.8 (Capacity Management Procedure) to the Framework Agreement;

"BCDR Plan" means:

- (a) from the Framework Effective Date to the date of approval by the Framework Authority of the Detailed BCDR Plan in accordance with paragraph 2.1 of Schedule 6.7 (Business Continuity and Disaster Recovery) to the Framework Agreement, the Outline BCDR Plan; and
- (b) from the date of such approval, the Detailed BCDR Plan;

"Benchmark Review" means a review of any or all of the Services conducted pursuant to clause 13 and Schedule 5.1 (Benchmarking) to the Framework Agreement to establish whether or not such Services are good value;

"Cabinet" means a cabinet unit designed to hold hardware devices comprising a frame, rack, side panels and doors;

"Cabinet Power Density" means the utilised power (in kW) within a standard Cabinet as a proportion of the total power available (both utilised and non-utilised) in that Cabinet (in kW);

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"Cabinet Space" means space in a Cabinet unit, located within a Mixed Tenant Data Hall;

"Cabinet Space Density" means the number of slots used within a standard Cabinet as a proportion of the total number of slots in that Cabinet;

"Call-Off Agreement" means a completed Call-Off Order Form and any appendices to it and any documents attached to it entered into between the Supplier and the Customer in accordance with the Call-Off Procedure and incorporating the Standard Terms;

"Call-Off Order Form" means the completed Call-Off Order Form entered into between the Customer and the Supplier in accordance with the Call-Off Procedure;

"Call-Off Procedure" means the procedure set out in Schedule 2.1 (Call-Off Procedure) to the Framework Agreement;

"Carbon Change in Law" has the meaning given to it in the Framework Agreement;

"Central Government Body" means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics;

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

"Change" means any change to a Call-Off Agreement which is agreed by the parties to the relevant Call-Off Agreement in accordance with Schedule 4.1 (Change Control Procedure) to the Call-Off Agreement;

"Change Control Procedure" means the relevant change control procedure:

- (a) to effect Framework Contract Changes set out in Schedule 6.2 (*Change Control Procedure*) to the Framework Agreement; or
- (b) to effect changes to the Call-Off Agreement set out in Schedule 4.2 (*Change Control Procedure*) to the Call-Off Agreement;

"Change in Law" means any change in Law, which impacts on the performance of the Services which comes into force after the Framework Effective Date;

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"Charges" means the charges payable in respect of the Call-Off Agreement;

"Contract & Operations Board" has the meaning given to it in clause 6.10;

"Contract Notice" means the contract notice published in the Official Journal of the European Union with reference 2014/S136-244533;

"Crown Appeals Board" means the board established by the Framework Authority which shall consider and resolve intra-Government issues;

"Customer Collaboration Board" has the meaning given to it in clause 6.3;

"Data Centre" means a data centre operated by the Supplier which has Achieved the Data Centre Assurance Criteria and is thereby authorised by the Framework Authority as a site from which Services may be provided to Customers;

"Data Centre Assurance Criteria" has the meaning given to it in the Framework Agreement;

"Data-Centre Co-Location Services" means the services identified as such in the Service Description;

"Data Hall" means an area within a Data Centre operated by the Supplier which has Achieved the Data Centre Assurance Criteria and is thereby authorised by the Framework Authority as a hall from which Services may be provided to Customers;

"Dedicated Data Hall" means a physically separated Data Hall reserved for the exclusive use of the Customer;

"Dedicated Data Hall Space" means space within a Dedicated Data Hall;

"Detailed BCDR Plan" means the detailed BCDR Plan prepared by the Supplier to the Framework Authority pursuant to Schedule 6.7 (Business Continuity and Disaster Recovery) to the Framework Agreement;

"Direct Agreement" means (as the context permits) the agreements entered into between the Framework Authority and the Supplier which are designed to allow Customers to have continuing rights to occupy space within the Data Hall:

(a) if an insolvency event or a Step-In Trigger Event occurs; or

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(b) following the expiry or termination of a Call-Off Agreement.

"Dispute" means any dispute, difference or question of interpretation arising out of or in connection with this MoA;

"Dispute Meeting" has the meaning given to it in clause 8.3;

"Dispute Notice" means a written notice served by one Party on the other stating that the party serving the notice believes that there is a Dispute;

"Dispute Resolution Procedure" means the procedure set out in Schedule 1 to this MoA;

"Disputed Matter" has the meaning given to it in clause 8.1;

"Disputed Matter Notice" has the meaning given to it in clause 8.1;

"EIRs" means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;

"Floor Space" means space within a Mixed Tenant Data Hall;

"Financial Year" means the twelve (12) month period commencing on 1 April and ending on 31 March;

"Framework Agreement" means the framework agreement to be awarded by the Framework Authority to the Supplier pursuant to the Contract Notice;

"Framework Contract Change" means any change to the Framework Agreement;

"Framework Effective Date" means the date on which the Framework Agreement becomes effective;

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under that Act together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation;

"Founder Customers" means the Department for Work & Pensions, the Home Office and the Highways Agency;

"Impact Assessment" has the meaning given to it in the Framework Agreement;

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"Implementation Plan" has the meaning given to it in the Framework Agreement;

"Information" means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);

"Initial Framework Costs" has the meaning in clause 7.1.1 of this MoA;

"Intervention Cause" has the meaning given to it in clause 34.1 of the Framework Agreement;

"Key Sub-contract" has the meaning given to it in the Framework Agreement;

"Law" means any applicable law, statute, bylaw, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;

"Maintenance Schedule" has the meaning given to it in the Framework Agreement;

"Mixed Tenant Data Hall" means a Data Hall that is used by multiple customers of the Supplier;

"Notifiable Default" has the meaning given to it in clause 33.1 of the Framework Agreement;

"Other Customer" means a Potential Customer (other than the Customer) who has entered into a Call-Off Agreement with the Supplier under the Call-Off Procedure;

"Outline BCDR Plan" means the outline business continuity and disaster recovery plan, set out at Appendix 1 to Schedule 6.7 (Business Continuity and Disaster Recovery) of the Framework Agreement;

"Parties" means the parties to this MoA;

"Permitted Contract Change" means any change to the contents of the Call-Off Order Form;

"Potential Customers" means any person who is identified in the Contract Notice as a person who may order Services under the Framework Agreement, which includes all UK Government departments, their arms' length bodies and executive agencies, non-departmental public bodies, NHS bodies and local authorities;

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"Prohibited Act" means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Framework Authority, the Customer or any Other Customer or Service Recipient a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Framework Agreement or the Call-Off Agreement;
- (c) an offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (ii) under legislation or common law concerning fraudulent acts; or
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Framework Authority, the Customer or any Other Customer or Service Recipient; or
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

"Public Sector Standards" means each of the standards, policies and guidelines identified as "Public Sector Standards" in Schedule 3.5 (Standards) to the Framework Agreement and/or any standard, policy and/or guideline referenced in Schedule 3.6 (Security Management) to the Framework Agreement;

"Rectification Plan" means a plan produced by the Supplier to address the impact of, and prevent the reoccurrence of a Notifiable Default;

"Regulatory Body" means those Government Departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt

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with in the Framework Agreement, the Call-Off Agreement or any other affairs of the Framework Authority or any Customer or Service Recipient;

"Relevant Requirements" means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

"Rental Charges" has the meaning given to it in the Framework Agreement;

"Request for Information" means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs;

"Security Management Plan" means the Supplier's security plan as attached at Annex 2 of Schedule 3.6 (Security Management) to the Framework Agreement and as subsequently developed and revised pursuant to paragraphs 3 and 4 of Schedule 3.6 (Security Management) to the Framework Agreement;

"Service Description" means the description of the Services set out in Schedule 3.1 (Service Description) to the Framework Agreement;

"Service Levels" means the levels of service required to be provided, as prescribed in Schedule 3.3 (Service Levels) to the Framework Agreement (as amended from time to time by the Framework Authority and Supplier in accordance with the Change Control Procedure);

"Service Recipient" means each of the entities which receive the benefit of any of the Services provided under the Call-Off Agreement which are identified as such in the Call-Off Order Form;

"Service Request" means an order for Services pursuant to Schedule 3.3 (Service Request Procedure) to the Call-Off Agreement;

"Service Request Matrix" means the matrix of all Services Requests agreed with/undertaken for a Customer to be maintained by the Supplier in accordance with Schedule 3.3 (Service Request Procedure) to the Call Off Agreement;

"Services" means any and all of the Data Centre Co-Location Services and the Additional Services which may be ordered by a Customer;

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"Small Customer" means a customer which has called off an average of less than 50 kW per month of Cabinet Space, Floor Space or Dedicated Data Hall Space over the preceding six (6) calendar months;

"Specific Change in Law" means a Change in Law that relates specifically to the business of one or more Potential Customers, Customers and/or Service Recipients;

"Step-In Plan" means the step-in plan developed in accordance with clause 36.11 of the Framework Agreement;

"Supplier" means Data Hosting Ltd, a joint venture company as at the date of this MoA owned by the UK Government and the private sector partner referred to in Recital B;

"Supplier Personnel" means all directors, officers, employees, agents, consultants and Suppliers of the Supplier and/or of any sub-contractor engaged in the performance of the Supplier's obligations under the Framework Agreement and the Call-Off Agreement; and

"Technical Sub-committee" has the meaning given to it in the Framework Agreement;

"Working Day" means any day other than a Saturday, Sunday or public holiday in England and Wales.

1.2 In this MoA, unless the context otherwise requires:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 a reference to a gender includes the other gender and the neuter;
- 1.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
- 1.2.4 a reference to a Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- 1.2.5 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";
- 1.2.6 references to "writing" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of

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representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;

1.2.7 the headings are for ease of reference only and shall not affect the interpretation or construction of this MoA;

1.2.8 unless otherwise provided, references to clauses and schedules are references to the clauses and schedules of this MoA, 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

1.2.9 references to this MoA are references to this MoA as amended from time to time.

2. SCOPE AND DURATION OF THE MOA

2.1 This MoA governs the relationship between the Framework Authority and the Customer in respect of the use and access to the Framework Agreement and Call-Off Agreement.

2.2 The Parties agree to collaborate and cooperate in good faith in order to adhere to the provisions of this MoA, and the relevant provisions of the Framework Agreement and the Call-Off Agreement.

2.3 This MoA shall take effect from the date of this MoA and continue until the earlier of:

2.3.1 expiry or, if earlier, termination of the Framework Agreement; or

2.3.2 expiry or, if earlier, termination of the Call-Off Agreement,

("Term").

3. PRINCIPLES

3.1 The Parties agree to adopt the following principles when carrying out their respective roles in relation to this MoA, the Framework Agreement and the Call-Off Agreement ("**Principles**"):

3.1.1 *collaborate and co-operate* - to establish and adhere to the governance structure set out in this MoA to ensure that activities are delivered and actions are taken as required;

3.1.2 *be accountable* - to take on, manage and account to each other for the performance of their respective roles and responsibilities set out in this MoA;

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- 3.1.3 ***be open*** - to communicate openly about major concerns, issues or opportunities relating to the Framework Agreement and the Call-Off Agreement;
- 3.1.4 ***learn, develop and seek to achieve full potential*** - to share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort and mitigate risk with the overall aim of reducing cost;
- 3.1.5 ***adhere to statutory requirements and best practice*** - to comply with all applicable laws and standards including EU procurement rules, data protection and freedom of information legislation and best practice;
- 3.1.6 ***act in a timely manner*** - to recognise the time critical nature of the various elements of the Framework Agreement and the Call-Off Agreement and to respond promptly to requests for support;
- 3.1.7 ***manage stakeholders effectively*** - as appropriate, to engage relevant stakeholders on a timely basis to ensure they are appropriately informed in relation to the Framework Agreement and the Call-Off Agreement and any concerns they have are managed effectively to avoid as far as possible unexpected surprises;
- 3.1.8 ***deploy appropriate resources*** - to ensure sufficient appropriately experienced, qualified and trained personnel are available and authorised to fulfil the responsibilities set out in this MoA, subject to the overriding principle of reducing cost; and
- 3.1.9 ***act in good faith*** - to act in good faith in support of the aims of this MoA.

4. FRAMEWORK AUTHORITY'S COMMITMENTS

General

- 4.1 The Framework Authority warrants to the Customer that it has carried out and will continue to:
 - 4.1.1 carry out its duties and obligations under the Framework Agreement and this MoA in accordance with the terms of the Framework Agreement and this MoA and that it has exercised, and will continue to exercise, reasonable skill, care and diligence in the performance of those duties and obligations;

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- 4.1.2 maintain and enforce its rights under the Framework Agreement;
- 4.1.3 monitor the Supplier's compliance with its obligations under the Framework Agreement and use reasonable endeavours to notify the Customer of:
 - 4.1.3.1 any issues arising under the Framework Agreement which the Framework Authority considers may have a material adverse impact on the Call-Off Agreement; and/or
 - 4.1.3.2 any other issues of which the Framework Authority is aware and considers, in its reasonable opinion, may have a material adverse impact on the Call-Off Agreement; and
- 4.1.4 use all reasonable endeavours to ensure that it has sufficient, appropriately-skilled and experienced resource required to comply with its obligations under the Framework Agreement.
- 4.2 The Parties acknowledge and agree that the Framework Authority will satisfy its obligations pursuant to clause 4.1.3 to notify, liaise with, and provide information to the Customer if it provides such notification and information, where appropriate, through the Customer Collaboration Board.
- 4.3 The Framework Authority shall use reasonable endeavours to recover loss or damages suffered by the Customer in connection with a breach of a provision of the Framework Agreement by the Supplier.

Services

- 4.4 The Framework Authority shall:
 - 4.4.1 provide such policy and general marketing guidance to the Customer in respect of the Services as the Framework Authority reasonably considers necessary;
 - 4.4.2 promptly inform the Customer of any proposed changes to the scope of the Services;
 - 4.4.3 explore opportunities to secure enhancements in the Services to be provided by the Supplier;

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- 4.4.4 provide reasonable assistance to Customers with smaller service request volumes to facilitate an effective way for one Customer to request an aggregated service request for the group of Small Customers;
- 4.4.5 liaise with the Customers when agreeing the Maintenance Schedule with the Supplier; and
- 4.4.6 take into account any comments from the Customer in relation to any proposed changes to the scope of the Services when considering whether or not to approve the proposed changes.

Audits

- 4.5 The Customer may provide to the Framework Authority the Customer's requirements for audit prior to the Framework Authority carrying out a scheduled audit under the Framework Agreement. The Framework Authority shall use reasonable endeavours to take the Customer's requirements into account when agreeing the scope of audit with the Supplier.

Benchmark Reviews

- 4.6 The Framework Authority shall commission and manage the Benchmark Review process in accordance with the provisions of Schedule 5.1 (Benchmarking) to the Framework Agreement.
- 4.7 The Customer may provide to the Framework Authority the Customer's comments prior to a Benchmark Review under the Framework Agreement. The Framework Authority shall use reasonable endeavours to take the Customer's requirements into account when carrying out a Benchmark Review. The Framework Authority shall notify the Customer in writing of the results and outputs from any Benchmark Review.
- 4.8 The Framework Authority may equitably apportion between the Customers any costs and expenses incurred by it in relation to the Benchmark Review. Any dispute as to the apportionment of such costs may be referred to the Dispute Resolution Procedure.

Contract Changes

- 4.9 The Framework Authority shall:
 - 4.9.1 provide the Customer with reasonable notice of any Framework Contract Changes proposed by either the Framework Authority or the Supplier pursuant to

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Schedule 6.2 (Change Control Procedure) to the Framework Agreement and the potential impacts of the implementation of any such Framework Contract Change together with a copy of the relevant Impact Assessment; and

- 4.9.2 take into account any comments from the Customer in relation to the proposed Framework Contract Change when considering whether or not to approve the Framework Contract Change.

Changes in Law and Public Sector Standards

4.10 The Framework Authority shall promptly inform the Customer of any notification from the Supplier of any Specific Change in Law, Carbon Change in Law and/or change in Public Sector Standards and the likely implications for the Customer of such Specific Change in Law, Carbon Change in Law or change in Public Sector Standards (as the case may be), including:

4.10.1 whether any Framework Contract Change to the Services, the Charges or any change to the Call-Off Agreement is required; and

4.10.2 whether any relief from compliance with the Supplier's obligations is required under the Framework Agreement or the Call-Off Agreement.

4.11 The Framework Authority shall take into account any comments from the Customer in relation to the likely implications of the Specific Change in Law, Carbon Change in Law or change in Public Sector Standards (as the case may be) when discussing and seeking to agree the impact of the Specific Change in Law, Carbon Change in Law or change in Public Sector Standards (as the case may be) on the Framework Agreement and the Call-Off Agreement.

Supplier Personnel and Supply Chain

4.12 The Framework Authority shall:

4.12.1 notify the Customer of any exercise by the Framework Authority of its rights under clause 19 of the Framework Agreement to direct the Supplier to end the involvement of any of the Supplier Personnel that the Framework Authority reasonably believes are unsuitable to undertake work in respect of the Framework Agreement or the Call-Off Agreement; and

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- 4.12.2 consider in good faith and respond promptly to any request by the Customer that the Framework Authority exercises such rights in respect of any Supplier Personnel undertaking work on the Call-Off Agreement.
- 4.13 The Framework Authority shall:
- 4.13.1 use reasonable endeavours to provide prior notice (and where such prior notice is not practicable, provide notice as soon as reasonably possible) to the Customer of any proposal by the Supplier to enter into a new Key Sub-contract (including supplying any information received from the Supplier about a proposed Key Sub-contract) or terminate or materially amend a Key Sub-contract; and
- 4.13.2 take into account any comments from the Customer as regards the suitability of that new Key Sub-contractor or the acceptability of the proposed amendment to, or termination of, the Key Sub-contract.

Notifiable Defaults

- 4.14 The Framework Authority shall use reasonable endeavours to provide prior notice (and where such prior notice is not practicable, provide notice as soon as reasonably possible) to the Customer of the occurrence of any Notifiable Default and shall supply the Customer with:
- 4.14.1 the details of such occurrence and the actual or anticipated effect of the Notifiable Default; and
- 4.14.2 any Rectification Plan.
- 4.15 The Framework Authority shall use reasonable endeavours to provide the draft Rectification Plan to the Customer. The Customer may as soon as reasonably practicable and in any event within three (3) Working Days of receipt of the draft Rectification Plan provide to the Framework Authority the Customer's comments on the draft Rectification Plan, and the Framework Authority shall use reasonable endeavours to take the Customer's comments into account when agreeing the Rectification Plan with the Supplier where such comments impact on the Call-Off Agreement.

Intervention Cause

- 4.16 The Framework Authority shall notify the Customer of the occurrence of any Intervention Cause and shall supply the Customer with the details of such occurrence.

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Suspension

- 4.17 The Framework Authority shall use reasonable endeavours to provide prior notice (and where such prior notice is not practicable, provide notice within ten (10) Working Days) to the Customer of the issue by the Framework Authority of any notice suspending the Call-Off Procedure pursuant to clause 37 of the Framework Agreement and the reasons for such suspension.
- 4.18 If a notice to suspend the Call-Off Procedure will have a direct impact on the Call-Off Agreement, the Framework Authority shall provide such notice to the Customer at the same time as it is issued by the Framework Authority to the Supplier.

Prevention of Fraud and Bribery

- 4.19 Provided that no Party may be required to act unlawfully or illegally, each Party shall notify the other on becoming aware of the Supplier or any Supplier Personnel having:
- 4.19.1 prior to the Framework Effective Date:
- 4.19.1.1 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
- 4.19.1.2 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; or
- 4.19.2 during the term of the Framework Agreement or the Call-Off Agreement:
- 4.19.2.1 committed a Prohibited Act; and/or
- 4.19.2.2 done or suffered anything to be done which would cause the Framework Authority, any Customer or any Service Recipient or any employees, consultants, contractors, sub-contractors or agents of the same to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements,
- and (without prejudice to clause 4.17) the Framework Authority shall notify the Customer's Accounting Officer if it intends to exercise its rights under clause

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45.6 of the Framework Agreement to suspend the Call-Off Procedure or require the Supplier to remove from performance of this Framework Agreement any Supplier Personnel whose acts or omissions have caused the Supplier's breach.

Accounting Officer Assurance

4.20 The Framework Authority will provide the Customer's Accounting Officer with a letter of assurance on the Supplier's performance annually, such letter to be in a form to be agreed between the Parties and shall include:

4.20.1 an assurance on the effectiveness of the control arrangements;

4.20.2 a balanced assessment of the effectiveness of internal control to include identifying and managing the key risks to delivery; and a statement of internal control from the Supplier.

Capacity Management

4.21 Where pursuant to Schedule 6.8 (Capacity Management Procedure) to the Framework Agreement, the Supplier has notified the Framework Authority that demand is or is reasonably likely to exceed the applicable Available Capacity Level, the Framework Authority shall consult with the affected Customers, taking into account the Customer's requirement and also the requirements of the Other Customers. The Customer acknowledges that following such consultation, the Framework Authority shall instruct the Supplier whether to proceed to accept the relevant Service Request(s) or recommend an adjustment to the Service Request.

Volume Rebate

4.22 The Framework Authority shall, on a monthly basis, monitor the application of the volume rebate calculated pursuant to Schedule 3.2 (Pricing) to the Framework Agreement and advise Customers of the percentage volume rebate to be applied to each Customer's invoice in the relevant month.

Security Management

4.23 To facilitate the development of the Customer's own risk management and accreditation of information ("RMADs"), the Framework Authority shall provide a copy of the Supplier's Security Management Plan to the Customers as soon as reasonably practicable following its

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approval of the Security Management Plan pursuant to Schedule 3.6 (Security Management) to the Framework Agreement.

Data Centre Onboarding

- 4.24 The Framework Authority shall upon the formal request of the Customer Collaboration Board initiate a spot check pursuant to Schedule 3.8 (Data Centre Onboarding) to the Framework Agreement.
- 4.25 The Framework Authority shall provide any report prepared outlining the outcome of a spot check to the Customers via the Customer Collaboration Board.

Step-In

- 4.26 Upon the Framework Authority becoming aware of the occurrence of a Step-In Trigger Event (including any Financial Distress Event in respect of the Supplier, the Guarantor or an Ark Entity), the Framework Authority shall (as soon as reasonably possible) use reasonable endeavours to:
- 4.26.1 notify the Customer of the occurrence of the Step-In Trigger Event; and
- 4.26.2 provide the Customer with reasonable details of the Step-In Trigger Event.
- 4.27 The Customer may, as soon as reasonably possible and in any event within the period notified by the Framework Authority, inform the Framework Authority of any actions that the Customer wishes the Framework Authority to take in relation to the Step-In Trigger Event, including the exercise of any rights it may have under a Direct Agreement.
- 4.28 The Framework Authority shall use reasonable endeavours to:
- 4.28.1 take the Customer's requirements into account when determining any action the Framework Authority may take in response to the occurrence of a Step-In Trigger Event but the Parties acknowledge that the Framework Authority may not be able to do so (e.g. if step-in rights must be exercised urgently or the Customer's requirements adversely impact Other Customers);
- 4.28.2 provide the Customer with a copy of the Step-In Plan (as updated from time to time) to enable to the Customer to take appropriate measures to prepare for potential step-in action.

Exit Arrangements

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- 4.29 If the Customer wishes to remain in a Data Centre following the expiry or termination of its Call-Off Agreement, the Customer shall provide notice to the Framework Authority of any actions that the Customer wishes the Framework Authority to take under a Direct Agreement to support ongoing occupation of the Data Centre following expiry or termination of its Call-Off Agreement.
- 4.30 The Customer acknowledges and agrees that the Customer is responsible for providing sufficient notice to the Framework Authority if it requires the Framework Authority to take any action in relation to the expiry or termination of the Customer's Call-Off Agreement (including to ensure that any timeframes set out in the Direct Agreement can be met).
- 4.31 The Framework Authority and the Customer shall liaise in good faith to discuss the Customer's requirements and whether it is appropriate for the Framework Authority to exercise any rights it may have under the Direct Agreement (including having due regard for the impact of such rights on Other Customers).

5. CUSTOMER'S COMMITMENTS

General

- 5.1 The Customer agrees that, save in an emergency or otherwise where urgent action is required, the Customer will provide comments or notification in relation to any of the matters specified in clause 5 of this MoA arising from the Call-Off Agreement that impact on the Framework Agreement through the Customer Collaboration Board.

Call-Off Agreement

- 5.2 The Customer warrants to the Framework Authority that it has carried out and will continue to:
- 5.2.1 carry out its duties and obligations under the Call-Off Agreement in accordance with the terms of the Call-Off Agreement and that it has exercised, and will continue to exercise, reasonable skill, care and diligence in the performance of those duties and obligations;
 - 5.2.2 maintain and enforce its rights under the Call-Off Agreement;
 - 5.2.3 monitor the Supplier's compliance with its obligations under the Call-Off Agreement and escalate any relevant issues to the Framework Authority through the Customer Collaboration Board;

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- 5.2.4 ensure that it has sufficient, appropriately-skilled and experienced resource required to comply with its obligations under the Call-Off Agreement;
 - 5.2.5 manage any changes to the Call-Off Agreement in accordance with the terms of the Call-Off Agreement and liaise with the Framework Authority prior to initiating or agreeing to any such changes;
 - 5.2.6 be responsible for identifying any new service requirements that are to be delivered under a Call-Off Agreement within the scope of the Framework Agreement;
 - 5.2.7 where necessary, co-operate and provide reasonable assistance to the Supplier in developing and implementing improvements to the Services; and
 - 5.2.8 undertake the appropriate business process re-engineering required to ensure continued delivery of end-to-end services for the Customer's business.
- 5.3 The Customer shall not use the Call-Off Agreement to:
- 5.3.1 establish a further framework arrangement that sits beneath the Framework Agreement; or
 - 5.3.2 purchase services which are not within the scope of the Framework Agreement and the documentation which established it including the Contract Notice.

Changes to or Termination of the Call-Off Agreement

- 5.4 The Customer shall not, without the prior written consent of the Framework Authority (such consent not to be unreasonably withheld or delayed), permit or agree to:
- 5.4.1 any material amendment of the Call-Off Agreement;
 - 5.4.2 without prejudice to clause 6.2, the suspension, waiver, repudiation, revocation, annulment or cancellation of the whole of, or any material provision of, the Call-Off Agreement; or
 - 5.4.3 the assignment or transfer of the Call-Off Agreement.
- 5.5 Pursuant to Schedule 4.2 (Change Control Procedure) to the Call-Off Agreement, the Parties acknowledge that the Framework Authority is required to approve Permitted Contract Changes. The Framework Authority shall not unreasonably withhold or delay its approval to a

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Permitted Contract Change where the Customer has provided written confirmation to the Framework Authority, signed by the Customer and the Supplier, that the Permitted Contract Change does not have any impact on Other Customers or any other call-off agreement entered into pursuant to the Framework Agreement.

Audit

- 5.6 If an audit identifies that the Customer has underpaid any Charges, the Customer shall pay to the Supplier the amount of the under-payment.
- 5.7 Where, pursuant to the Framework Agreement, the cost of audit falls to the Framework Authority, the Customer shall reimburse the Framework Authority for such proportion of the cost of the audit (as equitably determined by the Framework Authority having regard to the volume of Services received by the Customer) incurred by the Framework Authority as notified to the Customer by the Framework Authority, within twenty (20) Working Days.

Capacity Management

- 5.8 The Customer shall:
- 5.8.1 use reasonable endeavours to co-operate with the Supplier to optimise the density of the racks utilised within a Commissioned Facility with a view to maintaining a Cabinet Space Density and/or a Cabinet Power Density of at least 60% across its Cabinets and seeking to avoid potential capacity shortages and location inefficiencies;
 - 5.8.2 ensure that the kW capacity of equipment installed in a Cabinet Space, Floor Space or in Dedicated Data Hall Space does not exceed 100% of the capacity commissioned for use as identified in the prevailing Service Request Matrix; and
 - 5.8.3 comply with its other responsibilities as set out in Schedule 3.4 (Customer Responsibilities) to the Call Off Agreement.

Data Centre Onboarding

- 5.9 Where the Customer has via the Customer Collaboration Board requested that a spot check of any Approved Data Centre(s) is initiated by the Framework Authority, the Customer shall bear the costs of any such spot check which fall to the account of the Framework Authority. If more than one Customer receives Services from the relevant Approved Data Centre, the costs of the spot check (to the extent they fall due to the Framework Authority) shall be shared

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equally by all affected Customers (or in such other equitable proportions as the Framework Authority may otherwise determine having regard to the volume of Services received by the Customer).

- 5.10 The Customer acknowledges and agrees that the Framework Authority may only initiate three (3) spot checks of the Approved Data Centre(s) in a twelve (12) month period.

Claims and liability

- 5.11 The Parties acknowledge that the Call-Off Agreement includes a limitation on the Supplier's liability which:

5.11.1 (in certain circumstances) is calculated by reference to the aggregate liability incurred by the Supplier to any Other Customers for the same or any related default under each customer's respective Call-Off Agreement ("**Cross-Customer Default**"); and

5.11.2 may limit the ability of a Customer (or any Other Customer) to fully recover the losses they may have suffered in respect of any such Cross-Customer Default.

- 5.12 The Customer shall use reasonable endeavours to promptly:

5.12.1 notify the Framework Authority of any event which may give rise to a claim or action by the Customer against the Supplier under the Call-Off Agreement which may constitute a Cross-Customer Default ("**Claim**"); and

5.12.2 provide the Framework Authority with reasonable details of any Claim the Customer wishes to make.

- 5.13 The Framework Authority and the Customer shall liaise in good faith to discuss the circumstances giving rise to the Claim and the potential impact of the Claim on Other Customers (including as a consequence of the limitations on liability for Cross-Customer Defaults) before the Customer makes any Claim.

- 5.14 The Framework Authority may, as soon as reasonably practicable, inform the Customer of any actions that the Framework Authority wishes the Customer to take in relation to the conduct of the Claim (including where relevant liaising with and working co-operatively with Other Customers affected by any Cross-Customer Default) and the Customer shall use reasonable endeavours to follow those recommendations in the conduct of the Claim.

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6. GOVERNANCE

Customer's Management Arrangements

6.1 The Customer may manage operational matters relating to the Call-Off Agreement, including the performance of its rights and obligations under this MoA, through either:

6.1.1 one or more of its own personnel; or

6.1.2 an Other Customer to whom the Customer has validly delegated responsibility for undertaking this role.

6.2 The Parties acknowledge and agree that nothing in this MoA is intended to place limits on the Customer's arrangements for the management of the Call-Off Agreement. The Parties acknowledge and agree that the Customer is entitled to manage the Call-Off Agreement in accordance with its own internal governance arrangements. The Framework Authority acknowledges and agrees that this shall include following the dispute resolution procedure in the Call-Off Agreement in parallel with the escalation procedures in this MoA, provided that the Customer has followed the escalation procedures in this MoA up to and including escalation to the Crown Appeals Board prior to any termination of the Call-Off Agreement.

Customer Collaboration Board

6.3 The Framework Authority shall establish a forum ("**Customer Collaboration Board**") where representatives of the Customer and the Other Customers can discuss, in the first instance, cross-cutting service and performance issues and any proposed changes to their respective Call-Off Agreements with the Supplier. The Customer shall provide a copy of the Call-Off Agreement to the Customer Collaboration Board and the Framework Authority shall ensure that the chair of the Customer Collaboration Board is familiar with the Call-Off Agreement.

6.4 The Parties acknowledge and agree that the Customer Collaboration Board shall:

6.4.1 represent the Customer in respect of decisions that affect the Customer and agree which are to be escalated to the Contract & Operations Board;

6.4.2 consider and communicate to the Framework Authority which requirements or changes need to be actioned by the Framework Authority with the Supplier;

6.4.3 refer matters to the Technical Sub-committee;

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- 6.4.4 escalate information on service management issues to the Contract & Operations Board for resolution;
 - 6.4.5 discuss any requirement for a spot check to be undertaken pursuant to Schedule 3.8 (Data Centre Onboarding) to the Framework Agreement; and
 - 6.4.6 use the Framework Authority as a co-ordination and planning function.
- 6.5 The Framework Authority shall ensure that the first meeting of the Customer Collaboration Board is held within sixty (60) days of the Framework Effective Date and subsequent meetings are held on a frequency agreed between members of the Customer Collaboration Board but no less frequently than once every three (3) months. The Parties acknowledge and agree that the quorum of the Customer Collaboration Board shall be one representative from the Framework Authority and two (2) from customers.
- 6.6 The Parties acknowledge and agree that the Framework Authority shall:
- 6.6.1 nominate one (1) representative as the chair of the Customer Collaboration Board; and
 - 6.6.2 be entitled to invite such other persons to attend the meetings of the Customer Collaboration Board as the Framework Authority sees fit.
- 6.7 The Customer shall be entitled to nominate one (1) representative as a member of the Customer Collaboration Board by notice in writing to the Framework Authority (which shall include a statement confirming that such representative is authorised to attend and represent the Customer) and the Customer shall ensure that its representative is appropriately qualified and has sufficient experience to represent the Customer. The Customer's representative may designate a deputy representative to attend in place of the representative, provided that such deputy representative is appropriately qualified and has sufficient experience to represent the Customer. The Customer's representative shall be entitled to invite appropriately qualified experts to meetings of the Customer Collaboration Board where specific items on the agenda are beyond the qualification and experience of the Customer's representative (or deputy representative).
- 6.8 The Parties acknowledge and agree that such representative (or deputy representative) may also be a representative of one or more Other Customers.
- 6.9 The Parties acknowledge that the Supplier must ensure that:

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- 6.9.1 it is represented at the relevant parts of the Customer Collaboration Board meetings as reasonably requested by the Framework Authority from time to time; and
- 6.9.2 its representatives at the relevant parts of the Customer Collaboration Board meetings are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

Contract & Operations Board

- 6.10 The Framework Authority shall establish a forum ("**Contract & Operations Board**") where the Framework Agreement and the Call-Off Agreements are formally and officially managed, including:
 - 6.10.1 ensuring that the Framework Agreement and each Call-Off Agreement is operated in a manner which optimises the value for money and operational benefit derived by the Framework Authority, the Customer, the Other Customers and Service Recipients;
 - 6.10.2 overseeing the management and provision of the Services;
 - 6.10.3 managing any current or proposed Benchmark Review;
 - 6.10.4 reviewing progress against the Implementation Plans;
 - 6.10.5 receiving reports from the Supplier (including the service reports) on matters including the performance against the Service Levels and compliance verification or other audits;
 - 6.10.6 authorising or rejecting Changes escalated to it from Customers, the Supplier or the Technical Sub-committee and further having the authority to commit the Framework Authority and/or the relevant Customer to any such Change;
 - 6.10.7 receiving reports from the Technical Sub-committee;
 - 6.10.8 referring technical / performance matters to the Technical Sub-committee;
 - 6.10.9 seeking to resolve Disputes escalated to it by the Framework Authority, Supplier or any Customer in accordance with Schedule 6.3 (Dispute Resolution Procedure); and

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- 6.10.10 reviewing and advising the Framework Authority and relevant Customers about any Rectification Plans or providing advice to the Framework Authority or relevant Customer as to whether a Rectification Plan should be approved.
- 6.11 The Parties acknowledge and agree that:
- 6.11.1 the Framework Authority shall nominate one (1) representative as the chair of the Contract & Operations Board;
- 6.11.2 the Framework Authority shall be entitled to invite such other persons to attend the meetings of the Contract & Operations Board as the Framework Authority sees fit;
- 6.11.3 the Customer Collaboration Board shall determine which three (3) of its members shall also be members of the Contract & Operations Board and at least one (1) of these three (3) members shall be a representative of a Small Customer; and
- 6.11.4 without prejudice to clause 6.11.3, the members of the Contracts & Operations Board will include one representative from each of the Founder Customers, and that such membership shall last until the expiry or termination of the relevant customer's call-off agreement unless agreed otherwise between the Framework Authority and the relevant customer.
- 6.12 The Framework Authority shall convene the Contract & Operations Board meetings and shall provide reasonable prior notice to the Customer of the times, dates and locations of such meetings. The Customer shall provide a copy of the Call-Off Agreement to the Contracts & Operations Board and the Framework Authority shall ensure that the chair of the Contracts & Operations Board is familiar with the Call-Off Agreement. The Parties acknowledge and agree that the quorum for the Contracts & Operations Board is one (1) Framework Authority member, one (1) Supplier member and one (1) Customer member.
- 6.13 The Framework Authority shall ensure that the first meeting of the Contract & Operations Board is held within sixty (60) days of the Framework Effective Date and subsequent meetings are held no less than frequently than once every month, unless the Framework Authority determines that the Contract & Operations Board is no longer required to meet at such frequency, in such case the subsequent meetings shall be held no less frequently than once every quarter. The Framework Authority (acting reasonably) shall be entitled to convene a meeting of the Contract & Operations Board on reasonable notice.

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- 6.14 In the event that the Customer (acting reasonably) considers that:
- 6.14.1 a matter will or is likely to have a material impact on the Call-Off Agreement such that if the matter is not resolved it is likely to result in the termination of all or part of the Call-Off Agreement; and
 - 6.14.2 such matter has not been resolved by the Contract & Operations Board to the satisfaction of the Customer,

the Accounting Officer (or an officer of equivalent level) of the Customer may escalate the matter to the Crown Appeals Board, which shall consider the issue within fifteen (15) Working Days and provide final directions.

Crown Appeals Board

- 6.15 The Crown Appeals Board shall be convened by the Framework Authority as required from time to time to resolve any major issues that have been escalated to it by the Customer Collaboration Board, Contract & Operations Board or individual Customers.
- 6.16 The Crown Appeals Board will be the highest escalation point in the governance structure for the Framework Agreement.
- 6.17 The Crown Appeals Board will make decisions, in accordance with the timescales in clause 6.14 above, representing the best interests of HMG overall and take responsibility for ensuring that individual Customers, who may be advantaged or disadvantaged through such decisions, are managed accordingly.
- 6.18 The Customer shall provide a copy of the Call-Off Agreement to the Crown Appeals Board and the Framework Authority shall ensure that the chair of the Crown Appeals Board is familiar with the Call-Off Agreement.
- 6.19 In the event that the Crown Appeals Board does not resolve the matter referred to it to the Customer's reasonable satisfaction, the Parties agree that the Customer may, where the dispute relates to an issue as between the Customer and the Supplier continue with the dispute resolution process under the Call-Off Agreement, including for the avoidance of doubt termination of the Call-Off Agreement, provided that the Customer notifies the Framework Authority of such termination.
- 6.20 The Crown Appeals Board shall be formed as an ad hoc committee of senior individuals from HMG, who are independent from the Customers and Framework Authority and are chosen

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given their particular knowledge and experience in relation to the dispute. All selected senior individuals must be present in order for the Crown Appeals Board to be quorate.

Sub-boards

- 6.21 Customer acknowledges that the Contract & Operations Board shall:
- 6.21.1 establish a Technical Sub-committee as a sub-board to consider technical and performance matters and the Customer shall provide at least one (1) representative to participate on the Technical Sub-committee; and
 - 6.21.2 establish a BCDR Governance sub-board on the occurrence of any business continuity event and/or disaster and the Customer shall provide at least one (1) representative to participate on the sub-board if affected by the business continuity event and/or disaster.
- 6.22 The Customer shall provide representatives to any other sub-board that may be established for the purposes of managing the Framework Agreement and Call-Off Agreements.

7. FRAMEWORK AUTHORITY COSTS

- 7.1 For the 2015/16 Financial Year only:
- 7.1.1 the Customer shall pay to the Framework Authority an amount equal to 20% of the aggregate Rental Charges payable by the Customer to the Supplier during the 2015/16 Financial Year under the Call-Off Agreement ("**Initial Framework Costs**");
 - 7.1.2 the Customer shall pay the Initial Framework Costs to the Framework Authority in arrears at the end of each quarter;
 - 7.1.3 at the end of each quarter, the Framework Authority will review the Initial Framework Costs and Framework Authority resourcing with Customers and may agree in writing to reduce the Initial Framework Costs payable by the Customer if continuation at the then current level would otherwise be likely to lead to an over-recovery of the running costs of the Framework Authority for the 2015/16 Financial Year; and
 - 7.1.4 the Initial Framework Costs will not increase during the 2015/16 Financial Year.

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- 7.2 The Framework Authority shall, prior to the start of the 2016/17 Financial Year and each subsequent Financial Year thereafter, estimate the costs it will incur in the exercise of its role as Framework Authority in the forthcoming Financial Year. Any estimates prepared shall be based on the expected/ forecasted demands from Customers and will be prepared on a fully costed basis in accordance with HMT's Fees and Charges Guidance. The cost estimates will be calculated on a rolling basis taking one Financial Year with another.
- 7.3 For the 2016/17 Financial Year and for each subsequent Financial Year thereafter, the Framework Authority shall share any estimates prepared with the Customers on an open and transparent basis.
- 7.4 For the 2016/17 Financial Year and each subsequent Financial Year thereafter, following preparation of the cost estimate for the relevant Financial Year, the Framework Authority will allocate costs between the Customers in proportion to the Customers' expected Charges for the forthcoming Financial Year (or such other basis as is agreed between the Framework Authority and Customers at the time) and the Customer shall pay the costs allocated to it to the Framework Authority.

8. TERMINATION OF AND DISPUTES UNDER THE CALL-OFF AGREEMENT

- 8.1 Prior to:
- 8.1.1 issuing any termination notice pursuant to clause 43 of the Call-Off Agreement;
 - or
 - 8.1.2 initiating any dispute pursuant to clause 58 of the Call-Off Agreement,
- the Customer shall issue a notice ("**Disputed Matter Notice**") to the Framework Authority and the Supplier setting out the circumstances giving rise to the dispute or the right to issue the termination notice ("**Disputed Matter**").
- 8.2 The Framework Authority shall be entitled to request from the Customer, within five (5) Working Days of receiving the Disputed Matter Notice, such additional information in relation to the Disputed Matter as the Framework Authority may reasonably require, and the Customer shall provide the Framework Authority with such information as soon as reasonably practicable (and in any event within five (5) Working Days) of such request.
- 8.3 The Framework Authority shall convene a meeting ("**Dispute Meeting**") with the Customer and the Supplier within fifteen (15) Working Days of receipt of the Disputed Matter Notice to discuss the Disputed Matter, and the Customer shall procure that the meeting is attended by:

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- 8.3.1 the Customer's representative at the Customer Collaboration Board; and
- 8.3.2 any personnel of the Customer as the Framework Authority may reasonably require in order to determine the Disputed Matter.
- 8.4 Prior to the Dispute Meeting, the Customer shall continue to seek to resolve the Disputed Matter with the Supplier and shall notify the Framework Authority promptly if the Disputed Matter is resolved.
- 8.5 Within five (5) Working Days of the Dispute Meeting, the Framework Authority shall provide written directions to the Customer and the Supplier setting out the various actions that each party should take in order to resolve the Disputed Matter.
- 8.6 The Customer shall promptly implement those actions allocated to it and report back to the Framework Authority on the progress of those actions.
- 8.7 If the Customer does not agree with the actions proposed by the Framework Authority, the Customer shall inform the Framework Authority and the Supplier of its objections and the Framework Authority will consider the Customer's objections (and any comments from the Supplier) in good faith and provide revised written directions as it sees fit.
- 8.8 Notwithstanding the timescales set out in this clause 8, the Customer may issue a request to the Framework Authority that this process be expedited where it reasonably believes that the Disputed Matter is having a material adverse impact on the Customer, and the Framework Authority shall consider any such request in good faith and in consultation with the Customer and the Supplier

9. WARRANTIES AND REPRESENTATIONS

- 9.1 The Customer warrants represents, and undertakes to the Framework Authority that:
 - 9.1.1 it has full capacity and authority and all necessary consents to enter into and perform its obligations under this MoA; and
 - 9.1.2 this MoA is executed by a duly authorised representative of the Customer.
- 9.2 The Framework Authority warrants represents, and undertakes to the Customer that:
 - 9.2.1 it has full capacity and authority and all necessary consents to enter into and perform its obligations under this MoA; and

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9.2.2 this MoA is executed by a duly authorised representative of the Framework Authority.

10. CONFIDENTIALITY

10.1 Each Party ("**Receiving Party**") shall keep confidential and not use (without the other Party's ("**Disclosing Party**") written consent) all or any information relating to the Disclosing Party's business supplied by the Disclosing Party pursuant to or as a result of this MoA, and shall not divulge the same to any third party except to the extent that any such information is or becomes public through no fault of the Receiving Party, or disclosure of the same is required by Law or by any other governmental or other regulatory body.

10.2 Nothing in this MoA shall prevent the Framework Authority from disclosing information received from one (1) customer to an Other Customer or where appropriate to the Supplier provided at all times such disclosure is strictly as required to enable the exercise of the Framework Authority's obligations under the Framework Agreement and the appropriate protective marking (if any) is applied.

11. FREEDOM OF INFORMATION

11.1 The Parties acknowledge that they are each subject to the requirements of the FOIA and the EIRs. Each Party shall:

11.1.1 provide all necessary assistance and cooperation (free of charge) as reasonably requested by the other Party ("**Requesting Party**") to enable the Requesting Party to comply with its obligations under the FOIA and EIRs;

11.1.2 provide the Requesting Party with a copy of all Information belonging to the Requesting Party requested in the Request for Information which is in its possession or control in the form that the Requesting Party requires within five (5) Working Days (or such other period as the Requesting Party may reasonably specify) of the Requesting Party's request for such Information; and

11.1.3 not respond directly to a Request for Information made to the Requesting Party unless authorised in writing to do so by the Requesting Party.

11.2 Each Party acknowledges that it may be required under the FOIA and EIRs to disclose Information without consulting or obtaining consent from the other Party. Each Party shall take reasonable steps to notify the other Party 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

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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 MoA) the Party requested to provide the information shall be responsible for determining in its absolute discretion whether any Information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

- 11.3 Each Party shall provide, where reasonably practicable within twenty four (24) hours and in any event within two (2) Working Days of receipt of a request from the Requesting Party, such information as the Requesting Party may reasonably require in response to any Parliamentary request for information or any other emergency request received from a Crown Body, Chief Officer of Police or other regulatory authority.

12. ANNOUNCEMENTS AND PUBLICITY

- 12.1 The Customer shall not make any press announcements or publicise this MoA and/or any use of a Call-Off Agreement pursuant to the Framework Agreement in any way without the written approval of the Framework Authority. In the event that the Customer obtains approval pursuant to this clause 12.1, the Customer shall have regard to any Information of the Framework Authority and the Supplier in publicising this MoA and/or any use of a Call-Off Agreement pursuant to the Framework Agreement.
- 12.2 The Framework Authority shall not make any press announcements or publicise this MoA in any way without having first consulted with the Customer. In the event that the Framework Authority obtains approval pursuant to this clause 12.2, the Framework Authority shall have regard to any Information of the Customer in publicising this MoA
- 12.3 Each Party shall take reasonable steps to ensure that its servants, agents, employees, sub-Suppliers, suppliers, professional advisors and consultants comply with this clause 12.
- 12.4 The Parties shall not do anything or permit to cause anything to be done, which may damage the reputation of the other Party or bring the other Party into disrepute.

13. ASSIGNMENT AND NOVATION

- 13.1 The Parties shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of the rights, obligations or liabilities under this MoA without the prior written consent of the other Party other than:

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13.1.1 in respect of the Framework Authority, to the party to whom the Framework Agreement is assigned, novated or otherwise transferred pursuant to clause 42.2 of the Framework Agreement; and/or

13.1.2 in respect of the Customer, to the party to whom the Call-Off Agreement is assigned, novated or otherwise transferred pursuant to clause 48.2 of the Call-Off Agreement,

provided that, where the Framework Authority's role in relation to the Framework Agreement has been assigned, novated or otherwise transferred to a private sector service provider ("**New Framework Authority**") pursuant to clause 42.2 of the Framework Agreement, the Framework Authority shall, and shall procure that the New Framework Authority shall, meet with the Customer in good faith and seek to negotiate such changes to this MoA as may be reasonably required to reflect the assignment, novation or transfer of the Framework Authority's role and responsibilities to the New Framework Authority.

14. WAIVER AND CUMULATIVE REMEDIES

Any temporary waiver or indulgence in the exercise of either Party's rights will not restrict it exercising any of its rights at a subsequent date.

15. RELATIONSHIP OF THE PARTIES

Except as expressly provided otherwise in this MoA, nothing in this MoA, nor any actions taken by the Parties pursuant to this MoA, 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.

16. FURTHER ASSURANCE

Each Party undertakes to the other, and at the cost of the requesting Party, to do all acts and execute all documents which may be necessary to give effect to the meaning of this MoA.

17. SEVERANCE

If any provision of this MoA is found by any judicial or other competent authority to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions of this MoA which shall remain in full force and effect.

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18. THIRD PARTY RIGHTS

Subject to clause 10 (Confidentiality), a person who is not a Party to this MoA has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this MoA, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

19. VARIATION

This MoA, including Schedules, may only be varied by written agreement between the Parties.

20. CHARGES

The Parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this MoA.

21. NOTICES

21.1 Any notices sent under or in relation to this MoA must be in writing.

21.2 The following table sets out the method by which notices may be served under this MoA 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	At the time recorded by the delivery service, provided	Properly addressed prepaid and delivered as evidenced by

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other prepaid, next working day service providing proof of delivery	that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or at 9.00am on the next Working Day (if after 5.00pm).	signature of a delivery receipt.
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21.3 For the purpose of clause 21.2 and calculating deemed receipt, all references to time are to local time in the place of deemed receipt.

21.4 Notices shall be sent to the addresses set out below 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 MoA.

	Customer	Framework Authority
Contact	Simon McKinnon	Crown Hosting - Team Leader
Address	Leeds City Office Park, Number One, City Office Park, Great Wilson Street, Leeds, LS11 5BD	10 Great George St, London, SW1P 3AE
Email	simon.mckinnon@dwp.gsi.gov.uk	crownhosting@cabinetoffice.gov.uk

21.5 This clause 21 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution (other than the service of a Dispute Notice under Schedule 1 (Dispute Resolution Procedure)). With respect to the service of any proceedings or other documents in any legal action or other method of dispute resolution other than that set out in Schedule 1 (Dispute Resolution Procedure), clause 21.6 shall apply.

21.6 In respect of the Framework Authority, any document in an action (including, but not limited to, a claim form or any other document to be served under the Civil Procedure Rules) may

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only be served on the Framework Authority by being delivered to the Solicitor for the Affairs of Her Majesty's Treasury at One Kemble Street, London WC2B 4TS.

22. ENTIRE AGREEMENT

22.1 This MoA 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.

22.2 Neither Party has been given, nor entered into this MoA in reliance on any warranty, statement, promise or representation other than those expressly set out in this MoA.

22.3 Nothing in this clause 22 shall exclude any liability in respect of misrepresentations made fraudulently.

23. DISPUTES

23.1 The Parties shall resolve Disputes arising out of or in connection with this MoA in accordance with the Dispute Resolution Procedure set out in Schedule 1.

23.2 The Parties shall continue to fulfil their obligations in this MoA in accordance with the terms of this MoA until a Dispute has been resolved.

24. LEGAL NATURE

24.1 The Parties acknowledge and agree that this agreement is not intended to be legally binding.

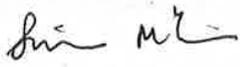
IN WITNESS whereof the Parties have executed this MoA the day and year first above written.

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Signed for and on behalf of **THE**)
MINISTER FOR THE CABINET)
OFFICE acting by an Authorised)
Person:)

Signature 
Title **DEPUTY FINANCE DIRECTOR**

Signed for and on behalf of)
THE SECRETARY OF)
STATE FOR WORK)
AND PENSIONS)

Signature *SIMON MCHUNWON*
Title 
IT Services Director

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SCHEDULE 1: DISPUTE RESOLUTION PROCEDURE

1. INTRODUCTION

- 1.1 All Disputes shall be handled in accordance with this Dispute Resolution Procedure.
- 1.2 If a Dispute arises, the Team Leader of the Framework Authority and the Contract Manager of the Customer shall attempt in good faith to resolve the Dispute.
- 1.3 If such attempts are not successful within thirty (30) days, the Framework Authority or the Customer may initiate the Dispute Resolution Procedure by serving a Dispute Notice:
- 1.4 The Dispute Notice shall:
 - 1.4.1 set out the material particulars of the Dispute; and
 - 1.4.2 set out the reasons why the party serving the Dispute Notice believes that the Dispute has arisen.
- 1.5 Unless agreed otherwise, with the exception of the subject matter of the Dispute, the Framework Authority and the Customer shall each continue to meet their respective obligations under this MoA regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.
- 1.6 The Customer and the Framework Authority shall seek to resolve Disputes:
 - 1.6.1 first by negotiation between the Customer retained function lead and the Framework Authority commercial lead;
 - 1.6.2 then, if the Dispute has not been resolved within thirty (30) days, by negotiation between the Customer's Director General IT and SRO of the Framework Authority; and
 - 1.6.3 then, if the Dispute has not been resolved within 30 days, by escalation to the Crown Appeals Board.