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CH Framework Agreement
Framework Terms

Date: 2015

The Minister for the Cabinet Office

Crown Hosting Data Centres Limited

Crown Hosting Framework Agreement
Framework Terms

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THIS FRAMEWORK AGREEMENT is made on

2015

BETWEEN:

- (1) **THE MINISTER FOR THE CABINET OFFICE** acting for and on behalf of the Cabinet Office being part of the Crown whose office is at the Cabinet Office, 70 Whitehall, London, SW1A 2AS (the "**Framework Authority**"); and
- (2) **CROWN HOSTING DATA CENTRES LIMITED** a company registered in England and Wales under company number 9274699 whose registered office is at Cabinet Office, 1 Horse Guards Road, London, SW1A 2HQ (the "**Supplier**"),

each a "**Party**" and together the "**Parties**".

INTRODUCTION

- (A) On 18 July 2014, the Framework Authority advertised the Contract Notice in the Official Journal of the European Union setting out its intention to establish a single supplier framework with the Supplier for the provision of data centre co-location services to Central Government Bodies and other public sector bodies and invited expressions of interest from the private sector in becoming a PSP 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 Minister for the Cabinet Office and a PSP selected pursuant to the procurement process outlined above.
- (C) This Framework Agreement establishes the basis on which a Central Government Body and other public sector bodies within the scope of the Contract Notice may, during the Call-Off Period, enter into Call-Off Agreements with the Supplier for the provision of the Services and the terms and conditions pursuant to which such Services shall be provided.

IT IS AGREED as follows:

SECTION A - PRELIMINARIES

1 Definitions and Interpretation

- 1.1 In this Framework Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 In this Framework Agreement, unless the context otherwise requires:
 - (a) the singular includes the plural and vice versa;
 - (b) a reference to a gender includes the other gender and the neuter;
 - (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Contracting Authority;

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- (d) a reference to a Law includes a reference to that Law as modified, amended, extended, consolidated or re-enacted from time to time;
 - (e) the words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
 - (f) references to "writing" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - (g) the headings are for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
 - (h) unless otherwise provided and save for references in Schedule 7 (Guarantee), references to Clauses and Schedules are references to the clauses and schedules of this Framework Agreement, and references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear; and
 - (i) references to this Framework Agreement are references to this Framework Agreement as amended from time to time.
- 1.3 Where a standard, policy or document is referred to in this Framework Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Framework Authority and the Parties shall update this Framework Agreement with a reference to the replacement hyperlink.
- 1.4 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the Clauses;
 - (b) Schedule 1 (Definitions);
 - (c) all other Schedules to this Framework Agreement and their Annexes and appendices excluding Schedules 2.3 (Standard Terms) and 4.1 (Supplier Solution);
 - (d) Schedule 2.3 (Standard Terms);
 - (e) any Framework Contract Controlled Documents;
 - (f) Schedule 4.1 (Supplier Solution); and
 - (g) any other document referred to in Schedule 4.1 (Supplier Solution).

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- 1.5 Any change to the Framework Agreement shall have no effect on any Call-Off Agreement unless the change has been agreed by the parties to the Call-Off Agreement and is made in accordance with the terms of the Call-Off Agreement.
- 1.6 The Framework Authority's co-operation in the development and/or approval of any Framework Documentation under this Framework Agreement shall not relieve the Supplier of its obligation to comply with this Framework Agreement or to comply with any Call-Off Agreement entered into under this Framework Agreement.
- 1.7 Subject to this Framework Agreement and any Call-Off Agreement, rights granted to a Customer are also granted to any Service Recipients as applicable.
- 1.8 The Parties acknowledge and agree that this Framework Agreement and any Call-Off Agreement:
- (a) are intended to set out the arrangements under which the Supplier shall provide data centre co-location services to Customers and are:
 - (i) not intended to be construed as creating any landlord and tenant relationship, any form of lease or other similar property interest in relation to the Data Centres; and
 - (ii) intended to grant the necessary licence for Customers to occupy and use the Data Centres for the purposes of receiving the Services; and
 - (b) may include rights and options that subsequently create or result in a property interest being granted following further action by the parties, but that such rights and options are not intended to affect the manner in which this Framework Agreement and any Call-Off Agreement are interpreted in accordance with Clause 1.8(a).

SECTION B – FRAMEWORK ARRANGEMENTS

2 Term of Framework Agreement

- 2.1 This Framework Agreement will begin on the Framework Effective Date and will end on the earlier of (i) the date on which this Framework Agreement is terminated in accordance with Clause 38 (Termination by the Framework Authority) or (ii) the date (which may be no earlier than the expiry of the Call-Off Period) on which all Call-Off Agreements have been terminated (the "**Framework Term**").

Condition Precedent

- 2.2 Save for Clauses 1 (Definitions and Interpretation), 2 (Term of Framework Agreement), 21 (Confidentiality), 22 (Freedom of Information), 23 (Publicity and Branding), 26 (Warranties), 31 (Limitations on Liability), 43 (Waiver and Cumulative Remedies), 44 (Relationship of the Parties), 46 (Severance), 48 (Entire Agreement), 49 (Third Party Rights), 50 (Notices), 51 (Disputes) and 52 (Governing Law and Jurisdiction), this Framework Agreement is conditional upon the valid execution and delivery to the Framework Authority of the Guarantee and the **REDACTED** (the "**Condition Precedent**"). The Framework Authority may in its sole discretion at any time agree to waive compliance with the Condition Precedent by giving the Supplier notice in writing.

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- 2.3 The Supplier shall satisfy, or procure the satisfaction of, the Condition Precedent as soon as possible. In the event that the Condition Precedent is not satisfied within twenty (20) Working Days of the Framework Effective Date then, unless the Condition Precedent is waived by the Framework Authority in accordance with Clause 2.2:
- (a) this Framework Agreement shall automatically cease and shall not come into effect; and
 - (b) neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.
- 2.4 The Supplier shall consult with the Framework Authority in relation to the steps it takes to satisfy the condition set out in Clause 2.2 and shall keep the Framework Authority fully informed of its progress in satisfying the condition and of any circumstances which are likely to result in the condition not being satisfied by the date set out in Clause 2.3.

3 Scope of Framework Agreement

- 3.1 The Framework Authority appoints the Supplier as a provider of the Services and the Supplier accepts such appointment.
- 3.2 The Supplier shall provide the Services to Customer(s) under the terms of the Call-Off Agreement entered into with the relevant Customer in accordance with the procedure set out in Schedule 2.1 (Call-Off Procedure).
- 3.3 The Supplier acknowledges that there is no requirement for any Customer or any Potential Customer to procure the Services from the Supplier.
- 3.4 The Supplier further acknowledges that:
- (a) IaaS Customers may from time to time appoint IaaS Service Providers to perform IaaS Services; and
 - (b) to facilitate efficient and secure operation of the IaaS Services, IaaS Customers may wish to mandate (in the applicable procurement process conducted with the IaaS Service Provider) that IaaS Services are performed by the IaaS Service Provider using infrastructure co-located within the Data Centres ("**Co-Location Service Requirement**").
- 3.5 The Supplier shall assist the IaaS Customers in implementing the Co-Location Service Requirement by:
- (a) offering and (where appropriate) agreeing to enter into terms and conditions with IaaS Service Provider(s) on an arms-length basis, for the provision of co-location services sufficient to enable the IaaS Service Provider to meet the Co-Location Service Requirement ("**IaaS Co-Location Contract**");
 - (b) ensuring the terms and conditions of the IaaS Co-Location Contract:
 - (i) allow the IaaS Service Provider to receive the benefit of co-location services within the Data Centres, as necessary to meet the Co-Location Service

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Requirement, to a specification and standard equivalent to the Services, Standards and Service Levels in this Framework Agreement;

- (ii) include a charging regime which compensates the Supplier for provision of the co-location services to the IaaS Service Provider at a rate consistent with (and not to exceed) the Charges in this Framework Agreement (having regard to any discounts to the Charges set out in the Framework Agreement); and
 - (iii) do not (as far as reasonably practicable) deprive the IaaS Service Provider of the benefits conferred by the obligations in Clauses 3.5(b)(i) and 3.5(b)(ii) through terms of supply less favourable than the terms offered to Customers under the Framework Agreement and the Standard Terms;
 - (c) providing such information, assistance and support as may be reasonably required by any IaaS Customer or IaaS Service Provider to meet the Co-Location Service Requirements and / or concluding an IaaS Co-Location Contract; and
 - (d) engaging with each IaaS Service Provider participating in the procurement process on an equal basis as required by the IaaS Customer.
- 3.6 Without limiting the above, the Supplier acknowledges that a Customer may nominate an IaaS Service Provider to be a Service Recipient in respect of the receipt of Services where required to facilitate the provision of IaaS Services.

4 Call-Off Period and Call-Off Procedure

The Supplier:

- (a) may only enter into Call-Off Agreements during the Call-Off Period; and
- (b) shall enter into Call-Off Agreements,

in accordance with the procedure set out in Schedule 2.1 (Call-Off Procedure).

5 Responsibility for Awards

The Supplier acknowledges that the Potential Customers are independently responsible for the award of any Call-Off Agreements under this Framework Agreement and that the Framework Authority shall have no liability whatsoever to the Supplier in respect of the conduct of any Potential Customer (other than itself) in relation to this Framework Agreement.

6 Service Improvement

- 6.1 The Supplier shall have an ongoing obligation throughout the Framework Term to identify new or potential improvements to the Services in accordance with this Clause 6. As part of this obligation the Supplier shall identify and report as required by the Framework Authority once every twelve (12) months on:
- (a) the emergence of new and evolving relevant technologies which could improve the Services, and those technological advances potentially available to the Supplier and the Framework Authority which the Parties may wish to adopt;

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- (b) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
 - (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Framework Authority which might result in efficiency or productivity gains or in reduction of operational risk;
 - (d) changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Framework Authority; and/or
 - (e) changes to business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.
- 6.2 The Supplier shall ensure that the information that it provides to the Framework Authority shall be sufficient for the Framework Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Framework Authority requests.
- 6.3 If the Framework Authority wishes to incorporate any improvement identified by the Supplier, the Framework Authority shall send the Supplier a Change Request in accordance with Schedule 6.2 (Change Control Procedure).

7 Data Centre Onboarding

- 7.1 The Parties shall comply with the provisions of Schedule 3.8 (Data Centre Onboarding) in relation to the onboarding and assurance of Data Centres (including any Additional Data Centres).

8 Services and Maintenance

Services

- 8.1 The Supplier shall perform its obligations under this Framework Agreement and any Call-Off Agreement and shall provide the Services in accordance with:
- (a) the Standard Terms;
 - (b) Good Industry Practice;
 - (c) Schedule 3.1 (Service Description);
 - (d) Schedule 3.3 (Service Levels);
 - (e) Schedule 4.1 (Supplier Solution); and
 - (f) subject to Clause 16 (Change in Law), the Law.

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- 8.2 Schedules 3.1 and 4.1 shall be interpreted such that Schedule 3.1 sets out the scope of the Framework Authority's requirements for the Services and Additional Services that must be met and Schedule 4.1 sets out the manner in which the Supplier has committed to provide:
- (a) those Services and Additional Services; and
 - (b) benefits and/or commitments in addition to the Services and Additional Services.
- 8.3 The Supplier shall draw any conflict between any of the requirements of Clause 8.1 to the attention of the Framework Authority and shall comply with the Framework Authority's resolution (the Framework Authority acting reasonably) of that conflict.

Maintenance

- 8.4 Without prejudice to the Supplier's obligations to achieve the Service Levels and KPIs set out in Schedule 3.3 (Service Levels) of the Framework Agreement:
- (a) the Supplier shall create and maintain a rolling schedule of Permitted Maintenance in respect of the Data Centres ("**Maintenance Schedule**") which shall be agreed with the Framework Authority;
 - (b) the Supplier shall only undertake such Permitted Maintenance in accordance with the agreed Maintenance Schedule;
 - (c) the Supplier shall give as much notice as is reasonably practicable to the Framework Authority and Customer prior to carrying out any Emergency Maintenance; and
 - (d) the Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance). Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the IT Environment and the Services.

9 Forecasts

- 9.1 The Supplier and Framework Authority shall comply with the provisions of Schedule 6.8 (Capacity Management Procedure).

SECTION C – PAYMENTS, TAXATION AND VALUE FOR MONEY PROVISIONS

10 Framework Establishment Fee and Management Fee

- 10.1 In consideration of the establishment and award of this Framework Agreement and the management and administration by the Framework Authority of the same, the Supplier shall pay to the Framework Authority the Framework Establishment Fee and the Framework Management Fee in accordance with Clause 10.2.
- 10.2 The Framework Authority shall be entitled to submit invoices to the Supplier in respect of the Framework Establishment Fee and, in respect of the period up to 31 March 2018, the Framework Management Fee for payment of the amounts set out in the table below by the corresponding dates set out in the table below.

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Due Date of Payment	Framework Establishment Fee
Within 30 days of the Framework Anniversary Date for the first four Framework Anniversary Dates.	The amount calculated in accordance with Clause 10.5, payable for each Framework Anniversary Date (up to and including the fourth Framework Anniversary Date only).
Due Date of Payment	Framework Management Fee
Within thirty (30) days of the end of each quarter (i.e. 31 March, 30 June, 30 September and 31 December) (each a "Quarter"), with the first payment due on 31 July 2015 and the final payment due on 31 April 2018.	REDACTED per Quarter up to and including 31 March 2018.

10.3 The Framework Establishment Fee and the Framework Management Fee shall be exclusive of VAT. The Supplier shall pay the VAT on the Framework Establishment Fee and the Framework Management Fee at the rate and in the manner prescribed by Law.

10.4 Interest shall be payable on any late payment of the Framework Establishment Fee or the Framework Management Fee in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

10.5 The Framework Establishment Fee shall be calculated annually on each of the first four Framework Anniversary Dates, up to a cumulative maximum amount of **REDACTED**, as follows:

REDACTED where

A = **REDACTED**; and

B = **REDACTED**;

"Commissioned Capacity" means the **REDACTED**.

10.6 **REDACTED** For the avoidance of doubt:

- (a) Commissioned Capacity shall only be measured at the applicable Framework Anniversary Date;
- (b) the Supplier shall not be entitled to any reduction or reimbursement of any part of the Framework Establishment Fee in the event that the Commissioned Capacity in any 12 month period is lower than the Commissioned Capacity during any previous 12 month period, or due to changes in the power capacity commissioned for use in respect of any Commissioned Facilities during any 12 month period other than at a Framework Anniversary Date; and
- (c) if there is no increase in the Commissioned Capacity in the relevant 12 month period, the Framework Establishment Fee for the relevant year will be nil.

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11 Financial Reports, Records, Audit and Open Book Data

11.1 The Supplier shall comply with the provisions of:

- (a) Schedule 6.4 (Records Provisions) in relation to the maintenance and retention of Records; and
- (b) Part A of Schedule 5.3 (Financial Reports and Audit Rights) in relation to the maintenance of Open Book Data.

11.2 The Parties shall comply with the provisions of:

- (a) Part B of Schedule 5.3 (Financial Reports and Audit Rights) in relation to the provision of the Financial Reports; and
- (b) Part C of Schedule 5.3 (Financial Reports and Audit Rights) in relation to the exercise of the Audit Rights by the Framework Authority or any Audit Agents.

12 Obligation to Notify

12.1 Without prejudice to the Framework Authority's other rights or remedies or to the Supplier's other reporting obligations set out in this Framework Agreement or any Call-Off Agreement, the Supplier shall notify the Framework Authority in writing, as soon as reasonably practicable after it comes to the Supplier's attention of any event or circumstance which may adversely affect the performance of any of the Supplier's obligations under this Framework Agreement or a Call-Off Agreement or which is reasonably likely to result in any material delay in the implementation of a Service or a Default by the Supplier.

12.2 The Supplier shall promptly notify the Framework Authority and (as applicable) the relevant Customers of any Service Level Failure upon becoming aware of the Service Level Failure.

13 Benchmarking

13.1 The Parties shall comply with the provisions of Schedule 5.1 (Benchmarking) in relation to the benchmarking of any or all of the Services.

SECTION D – CONTRACT GOVERNANCE

14 Governance

The Parties shall comply with the provisions of Schedule 6.1 (Governance) in relation to the management and governance of this Framework Agreement and each Call-Off Agreement.

15 Contract Changes

All proposed changes to this Framework Agreement shall be processed by the Parties in accordance with the Change Control Procedure as outlined in Schedule 6.2.

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16 Change in Law

- 16.1 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Framework Agreement or under any Call-Off Agreement nor be entitled to an increase in the Charges as the result of:
- (a) a General Change in Law;
 - (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Framework Effective Date; or
 - (c) subject to Clauses 16.2 and 16.3 and Paragraph 9.2 of Schedule 3.2 (Pricing), a Carbon Change in Law.
- 16.2 If a Specific Change in Law or a Carbon Change in Law occurs or will occur during the Framework Term (other than as referred to in Clause 16.1(b) for a Specific Change in Law), the Supplier shall:
- (a) notify the Framework Authority as soon as reasonably practicable of the likely effects of that change, including:
 - (i) whether any Framework Contract Change is required to this Framework Agreement or whether any change is required to any Call-Off Agreement; and
 - (ii) whether any relief from compliance with the Supplier's obligations under this Framework Agreement, the Standard Terms and/or any Call-Off Agreement is required; and
 - (b) provide the Framework Authority with evidence:
 - (i) that the Supplier has used all reasonable endeavours to minimise any increase in costs or maximise any reduction in costs (including any tax, levy, impost or other charge imposed by the government or regulatory authority), including in respect of the costs of its Sub-contractors;
 - (ii) as to how the Specific Change in Law or Carbon Change in Law has affected the cost of providing the Services; and
 - (iii) demonstrating the extent to which any expenditure has been avoided (for example, as a result of any changes which have been or will be made under the provisions of Clause 6 (Service Improvement)) and has been taken into account in amending the Charges.

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- 16.3 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 16.1(b)) or any Carbon Change in Law shall be implemented in accordance with Schedule 6.2 (Change Control Procedure) of the Framework Agreement and in accordance with the Change Control Procedure set out in Schedule 4.2 (Change Control Procedure) of the Standard Terms (as applicable).

17 Change in Standards

- 17.1 The Supplier shall comply with the provisions of Schedule 3.5 (Standards).
- 17.2 The Supplier shall not be relieved of its obligations under this Framework Agreement (or any Call-Off Agreement) or entitled to an increase in the Charges as the result of:
- (a) any change in an Industry Standard ("**Industry Standard Change**"); or
 - (b) any change in a Public Sector Standard ("**Public Sector Standard Change**"), where the effect of that Public Sector Standard Change is known, or is reasonably foreseeable, at the Framework Effective Date.
- 17.3 If a Public Sector Standard Change occurs during the Framework Term (other than a change referred to in Clause 17.2(b)), the Supplier shall notify the Framework Authority of the likely effects of that change, including:
- (a) whether any Framework Contract Change or any change to any Call-Off Agreement is required; and
 - (b) whether any relief from compliance with the Supplier's obligations is required under this Framework Agreement or any Call-Off Agreement.
- 17.4 The Supplier shall only be entitled to increase the Charges where it demonstrates to the Framework Authority's reasonable satisfaction that compliance with the Public Sector Standard Change will have a material and unavoidable cost implication on the provision of any of the Services.
- 17.5 Any change to this Framework Agreement and any Call-Off Agreement resulting from an Industry Standard Change or a Public Sector Standard Change shall be implemented in accordance with Schedule 6.2 (Change Control Procedure) and in accordance with the Change Control Procedure set out in Schedule 4.2 (Change Control Procedure) of the Standard Terms (as applicable).

18 Collaboration Arrangements

- 18.1 The Supplier shall comply with the provisions of Schedule 6.9 (Collaboration Principles).

SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN

19 Supplier Personnel

- 19.1 The Supplier shall:
- (a) ensure that all Supplier Personnel:

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- (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 3.1 (Services Description); and
 - (iii) comply with the security requirements as set out in Schedule 3.6 (Security Management) to this Framework Agreement;
- (b) subject to the application of the Employment Regulations and Schedule 5.1 (Staff Transfers) to the Standard Terms, retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Framework Authority or any Customer;
- (c) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of any Supplier Personnel which results in a Default under this Framework Agreement or any Call-Off Agreement shall be a Default by the Supplier;
- (d) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- (e) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever; and
- (f) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel.
- 19.2 If the Framework Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Framework Agreement or any Call-Off Agreement, it may direct the Supplier to end the involvement in the provision of the Services of the relevant person(s). However, the Framework Authority shall consult with the Supplier (including by taking into account any reasonable representations made by the Supplier) before directing the Supplier to end the involvement in the provision of the Services of the relevant person(s).

Employment Indemnity

- 19.3 The Parties agree that the Supplier shall both during and after the Framework Term indemnify the Framework Authority and all Customers against all Employee Liabilities that may arise as a result of any claims brought against the Framework Authority or Customers, by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel except to the extent that the act or omission has been expressly authorised by the Framework Authority and/or a Customer in writing.

Income Tax and National Insurance Contributions

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

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

20 Supply Chain Rights

Sub-contracting

- 20.1 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that it is able to:
- (a) manage any Sub-contractors in accordance with Good Industry Practice; and
 - (b) comply with its obligations under this Framework Agreement and any Call-Off Agreement.
- 20.2 Prior to sub-contracting any of its obligations under this Agreement, the Supplier shall notify the Framework Authority in writing of:
- (a) the proposed Sub-contractor's name, registered office and company registration number;
 - (b) the scope of any Services to be provided by the proposed Sub-contractor; and
 - (c) where the proposed Sub-contractor is an Affiliate of the Supplier, provide evidence that demonstrates to the reasonable satisfaction of the Framework Authority that the proposed Sub-contract has been agreed conferring terms at least as beneficial to the Framework Authority and Customers as they would have obtained on an arm's-length negotiation.
- 20.3 If requested by the Framework Authority within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 20.2, the Supplier shall also provide:
- (a) a copy of the proposed Sub-contract; and
 - (b) any further information reasonably requested by the Framework Authority.
- 20.4 The Framework Authority may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 20.2 (or, if later, receipt of any further information requested pursuant to Clause 20.3), object to the appointment of the relevant Sub-contractor if it considers that:

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- (a) the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Framework Authority or any Customer;
- (b) the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
- (c) the proposed Sub-contractor employs unfit persons;
- (d) the economic or financial standing of the proposed Sub-contractor is such that it would permit the Framework Authority by Regulation 23 of the Public Contracts Regulations 2006 to treat as ineligible or not select the Sub-contractor to participate in a procurement process which would lead to the award of a public contract; and/or
- (e) the technical or professional ability of the Sub-contractor is such that it will be unable to meet any requirements of this Framework Agreement or any Call-Off Agreement, but only where and to the extent that those requirements are applicable to the performance by the proposed Sub-contractor of its obligations under the proposed Sub-contract.

in which case, the Supplier shall not proceed with the proposed appointment provided that if the Framework Authority intends to exercise its right to object to the appointment of a Sub-contractor, it shall first consult with the Supplier and take into account any reasonable representations made by the Supplier to rebut the grounds on which the Framework Authority has based its intention.

20.5 If:

- (a) the Framework Authority has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of ten (10) Working Days of receipt of:
 - (i) the Supplier's notice issued pursuant to Clause 20.1; and
 - (ii) any further information requested by the Framework Authority pursuant to Clause 20.3; and
- (b) the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Framework Authority in accordance with Clause 20.6 (Appointment of Key Sub-contractors),

the Supplier may proceed with the proposed appointment and, where the Sub-contract is entered into exclusively for the purpose of delivery of the Services, may notify the Framework Authority that the relevant Sub-contract shall constitute a Third Party Contract for the purposes of Schedule 4.4 (Third Party Contracts). For the avoidance of doubt, the Framework Authority shall be deemed to have already approved the appointment of the Sub-contractors set out in Schedule 4.4 (Third Party Contracts).

Appointment of Key Sub-contractors

- 20.6 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the Framework Authority, such consent not to be

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unreasonably withheld or delayed. For these purposes, the Framework Authority may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:

- (a) the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Framework Authority;
- (b) the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
- (c) the proposed Key Sub-contractor employs unfit persons;
- (d) the economic or financial standing of the proposed Sub-contractor is such that it would permit the Framework Authority by Regulation 23 of the Public Contracts Regulations 2006 to treat as ineligible or not select the Sub-contractor to participate in a procurement process which would lead to the award of a public contract; and/or
- (e) the technical or professional ability of the Sub-contractor is such that it will be unable to meet any requirements of this Framework Agreement or any Call-Off Agreement, but only where and to the extent that those requirements are applicable to the performance by the proposed Sub-contractor of its obligations under the proposed Sub-contract.

20.7 The Framework Authority consents to the appointment of the Key Sub-contractors listed in Schedule 4.3 (Notified Key Sub-contractors).

20.8 Except where the Framework Authority has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:

- (a) provisions which will enable the Supplier to discharge its obligations under this Framework Agreement;
- (b) a right under CRTPA for the Framework Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Framework Authority or any Customer;
- (c) a provision enabling the Framework Authority to enforce the Key Sub-contract as if it were the Supplier;
- (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Framework Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Framework Authority;
- (e) obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Framework Agreement in respect of:
 - (i) FOIA requirements set out in Clause 22 (Freedom of Information);
 - (ii) the obligation not to embarrass the Framework Authority or any Customer or Potential Customer or otherwise bring the Framework Authority or any Customer or Potential Customer into disrepute by engaging in an act or

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omission which is reasonably likely to diminish the trust that the public places in the Framework Authority or any Customer or Potential Customer, whether or not such act or omission is related to the Supplier's obligations under this Framework Agreement or any Call-Off Agreement;

- (iii) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
- (iv) the conduct of Audits set out in Part C of Schedule 5.3 (Financial Reports and Audit Rights);
- (f) provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Customer under Clauses 43.1 and 43.2 of the Standard Terms (Termination by the Customer) and 45.1 and 45.2 of the Standard Terms (Payments by the Customer);
- (g) a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Framework Authority;
- (h) a provision enabling the Supplier or the Framework Authority to appoint a Remedial Adviser on substantially the same terms as are set out in Clause 34;
- (i) a provision requiring the Key Sub-contractor to participate in, and if required by the Framework Authority in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure; and
- (j) a provision requiring the Key Sub-contractor to:
 - (i) notify the Supplier and the Framework Authority in writing as soon as possible of any of the following of which it is, or ought to be, aware:
 - (A) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; and
 - (B) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,

and in any event, provide such notification within ten (10) Working Days of the date on which the Key Sub-contractor first becomes aware of such; and

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- (ii) co-operate with the Supplier and the Framework Authority in order to give full effect to the provisions of Schedule 5.2 (Financial Distress) and Clause 36 (Step-In), including meeting with the Supplier and the Framework Authority to discuss and review the effect of the Financial Distress Event or Step-In Trigger Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Service Continuity Plan.

- 20.9 The Supplier shall not terminate or materially amend the terms of any Key Sub-contract without the Framework Authority's prior written consent, which shall not be unreasonably withheld or delayed.
- 20.10 The Framework Authority will not unreasonably withhold or delay its consent under clause 20.8 to the renewal or retendering of a Key Sub-contract on terms substantially the same as the terms previously approved by the Framework Authority for that Key Sub-contract.

Supply chain protection

- 20.11 The Supplier shall ensure that all Sub-contracts contain a provision:
- (a) requiring the Supplier to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice; and
 - (b) a right for the Framework Authority to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.
- 20.12 The Supplier shall pay any undisputed sums which are due from it to a Sub-contractor within 30 days from the receipt of a valid invoice.
- 20.13 Notwithstanding any provision of Clauses 21 (Confidentiality) and 23 (Publicity and Branding), if the Supplier notifies the Framework Authority that the Supplier has failed to pay a Sub-contractor's undisputed invoice within 30 days of receipt, or the Framework Authority otherwise discovers the same, the Framework Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

Competitive Terms

- 20.14 If the Framework Authority is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier or the Supplier Personnel in the supply of the Services ("**the Relevant Item**"), then subject to Clauses 20.17 and 20.18:
- (a) the Framework Authority may require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Framework Authority in respect of the Relevant Item; or

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- (b) any Customer may enter into a direct agreement with that Sub-contractor or third party in respect of the Relevant Item,

however, the Framework Authority shall consult with the Supplier before it or any Customer exercises any of the options pursuant to this Clause 20.14 and shall take into account any reasonable representations made by the Supplier, including in relation to:

- (c) the effect that replacing the existing commercial terms or entering into a direct agreement for the Relevant Item would or would be likely to have on the cost of delivering services to other customers of the Supplier (including as a result of any reduced volumes; and
- (d) the extent to which any Relevant Items are divisible from other goods, software or services used by the Supplier or the Supplier Personnel in the supply of the Services.

20.15 If either of its options set out in Clause 20.14 are exercised, then the Charges shall be reduced by an amount that is agreed in accordance with Schedule 6.2 of the Framework Agreement (Change Control Procedure) and in accordance with Schedule 4.2 (Change Control Procedure) of the Standard Terms (as applicable).

20.16 A Customer's right to enter into a direct agreement for the supply of the Relevant Items is subject to:

- (a) the Framework Authority making the Relevant Item available to the Supplier where this is necessary for the Supplier to provide the Services;
- (b) any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the Relevant Item, including in respect of any licence fees or early termination charges, or any additional costs incurred as a result of an impact notified to the Framework Authority under Clauses 20.14(c) and/or 20.14(d); and
- (c) the Framework Authority consenting to the entry into the direct agreement in accordance with Clause 20.17.

20.17 The Framework Authority shall:

- (a) act as a gatekeeper in respect of any option exercised in accordance with Clause 20.14; and
- (b) ensure that any option exercised in accordance with Clause 20.14 is only exercised if the Framework Authority considers that exercising the option is:
 - (i) compatible with the provision of the Services (having considered any risk, quality and integration of service issues); and
 - (ii) likely to deliver a material benefit to the Framework Authority and the Customers.

20.18 Clause 20.14 shall not apply to the replacement of the terms of, or a direct supply of any Relevant Item provided in accordance with:

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- (a) the Management Agreement entered into on or about the Framework Effective Date and made between the Supplier (1) and Ark Data Centres Limited (2) (excluding any Sub-contracts entered into under the Management Agreement other than the Key Sub-Contracts referred to in Clause 20.18(b)); and
- (b) any Key Sub-contracts entered into pursuant to the Management Agreement with companies within the Ark Group for the provision of the Data Centres (excluding any Sub-contracts entered into under those Key Subcontracts).

Retention of Legal Obligations

- 20.19 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 20, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own.

SECTION F – SECURITY AND CONFIDENTIALITY

21 Confidentiality

- 21.1 For the purposes of this Clause 21, the term **"Disclosing Party"** shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and **"Recipient"** shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 21.2 Except to the extent set out in this Clause 21, or where disclosure is expressly permitted elsewhere in this Framework Agreement, the Recipient shall:
- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials) which meets the requirements of Schedule 3.6 (Security Management);
 - (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Framework Agreement or without obtaining the Disclosing Party's prior written consent;
 - (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Framework Agreement; and
 - (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 21.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party if and to the extent that:
- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 22 (Freedom of Information) shall apply to disclosures required under the FOIA or the Environmental Information Regulations;
 - (b) the need for such disclosure arises out of or in connection with:

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

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

21.5 The Supplier may disclose the Confidential Information of the Framework Authority on a confidential basis only to:

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

Where the Supplier discloses Confidential Information of the Framework Authority pursuant to this Clause 21.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Framework Agreement by the persons to whom disclosure has been made, including by making Sub-contractors, auditors or other third party advisers aware of the obligations set out in this Clause 21.

21.6 The Framework Authority may disclose the Confidential Information of the Supplier:

- (a) on a confidential basis to any Customer or reasonably to any Potential Customer for any purpose connected with the operation of this Framework Agreement or any Call-Off Agreement;
- (b) on a confidential basis to any Central Government Body for any proper purpose of the Framework Authority or of the relevant Central Government Body;

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- (c) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (d) to the extent that the Framework Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (e) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clauses 21.6(a) or (b) (including any benchmarking organisation) for any purpose relating to or connected with this Framework Agreement and/or any Call-Off Agreement;
- (f) excluding any Commercially Sensitive Information which the Framework Authority determines in its absolute discretion is exempt from disclosure in accordance with the provisions of FOIA, as part of the Framework Authority's re-procurement process for the Services, on a confidential basis and subject to an appropriate confidentiality agreement to bidders for the purposes of undertaking due diligence and/or to a Replacement Supplier for the purposes of providing Replacement Services;
- (g) on a confidential basis for the purpose of the exercise of its rights under this Framework Agreement; or
- (h) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Framework Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Framework Authority under this Clause 21.

- 21.7 Nothing in this Clause 21 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Framework Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

Transparency

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

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- 21.10 The Supplier shall assist and co-operate with the Framework Authority to enable the Framework Authority to publish this Framework Agreement.

22 Freedom of Information

- 22.1 The Supplier acknowledges that the Framework Authority is subject to the requirements of the FOIA and the Environmental Information Regulations. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Framework Authority to enable the Framework Authority to comply with its obligations under the FOIA and the Environmental Information Regulations;
- (b) transfer to the Framework Authority all Requests for Information relating to this Framework Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
- (c) provide the Framework Authority with a copy of all Information belonging to the Framework Authority requested in the Request for Information (as defined in FOIA) which is in its possession, or control in the form that the Framework Authority requires within five (5) Working Days (or such other period as the Framework Authority may reasonably specify) of the Framework Authority's request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Framework Authority.

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

23 Publicity and Branding

- 23.1 The Supplier shall not:

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

without the prior written consent of the Framework Authority, which shall not be unreasonably withheld or delayed. However, this Clause 23 does not prevent the Supplier from advertising the Services available to Customers and Potential Customers under this Framework

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Agreement or using the Supplier's name or brand in any promotion or marketing of the Services.

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

24 Supplier's Obligations

- 24.1 The Supplier shall, and shall (to the extent applicable) ensure that Supplier Personnel:

- (a) obtain and maintain throughout the Framework Term, all the consents, licences and permissions (statutory, regulatory, contractual or otherwise) it or Supplier Personnel may require and which are necessary to enable the provision of any of the Services;
- (b) comply with all security accreditation requirements in accordance with Schedule 3.5 (Standards) throughout the Framework Term;
- (c) provide the Framework Authority with such assistance as the Framework Authority may reasonably require during the Framework Term in connection with the management and administration of this Framework Agreement;
- (d) not do or omit to do anything which may adversely affect the Framework Authority's exercise of any right to use the Step-In procedure detailed in Clause 36; and
- (e) promptly notify the Framework Authority and all Customers in the event that it undergoes a Change of Control.

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

- 24.3 The Supplier shall:

- (a) hold, and shall procure that any Affiliate shall hold, on trust for the benefit of all customers of the Supplier and its Affiliates, whether under this Framework Agreement or otherwise, the benefit of all warranties and indemnities provided by any third parties or Sub-contractor;
- (b) to the extent it is legally able to do so (and to do so in a manner that does not unfairly prejudice or otherwise interfere with or diminish the rights of any customer of the Supplier or customer of an Affiliate):
 - (i) hold on trust for the benefit of the Framework Authority, all warranties and indemnities provided by third parties or any Sub-contractor in respect of the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Framework Authority may notify from time to time to the Supplier;

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- (ii) assign to the Framework Authority on the Framework Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 24.3(b).

The Supplier acknowledges that in respect of this clause 24.3, the Framework Authority is acting as agent for the Customer and holds the legal and beneficial interest in all such warranties and indemnities for the benefit of all Customers on collective basis.

Quality Plans

- 24.4 The Supplier shall develop, within twenty (20) Working Days of the Effective Date, quality plans that ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").
- 24.5 The Supplier shall obtain the Framework Authority's written approval of the Quality Plans before implementing them, which approval shall not be unreasonably withheld or delayed. The Supplier acknowledges and accepts that the Framework Authority's approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Agreement.
- 24.6 Following the approval by the Customer of the Quality Plans:
 - (a) the Supplier shall design and deliver all Services and Deliverables in accordance with the Quality Plans; and
 - (b) any Changes to the Quality Plans shall be agreed in accordance with Schedule 6.2 (Change Control Procedure).

SECTION G – SUPPLIER AND FRAMEWORK AUTHORITY PROTECTIONS

25 Financial Distress

The Parties shall comply with the provisions of Schedule 5.2 (Financial Distress) in relation to the assessment of the financial standing of the Supplier and the consequences of a change to that financial standing.

26 Warranties

- 26.1 Each Party warrants and represents that:
 - (a) it has full capacity and authority to enter into and to perform this Framework Agreement;
 - (b) this Framework Agreement is executed by its duly authorised representative; and
 - (c) once duly executed, this Framework Agreement will constitute its legal, valid and binding obligations.

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- 26.2 The Supplier warrants and represents that:
- (a) as at the Framework Effective Date all statements and representations in the response to the Tender and any written correspondence in clarification or association with the Tender were at the time they were made true and accurate except to the extent that such statements and representations have been superseded by this Framework Agreement;
 - (b) it has and shall continue to have all necessary rights in and to any materials made available by the Supplier or any Sub-contractor to the Framework Authority which are necessary for the performance of the Supplier's obligations under this Framework Agreement and/or any Call-Off Agreement; and
 - (c) it has and shall maintain all necessary security accreditations as required in accordance with Schedule 3.5 (Standards).
- 26.3 Each of the representations and warranties set out in Clauses 26.1 and 26.2 shall be construed as a separate warranty and representation and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Framework Agreement.
- 26.4 Except as expressly stated in this Framework Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.
- 26.5 Each time a Call-Off Agreement is entered into the warranties, representations and undertakings in this Framework Agreement shall be deemed repeated by the Supplier to the Framework Authority and the relevant Customer with reference to the circumstances existing at the time that they are deemed to be repeated and any reference to the Framework Effective Date (whether express or implied) shall be construed as a reference to the relevant Call-Off Effective Date.
- 26.6 If at any time a Party becomes aware that a warranty or representation given by it under Clause 26.1 or 26.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

27 Guarantee

- 27.1 The Supplier shall procure that the Guarantor shall:
- (a) validly execute and unconditionally deliver to the Framework Authority the Guarantee in accordance with Schedule 7 (Guarantee) of the Framework Agreement by the Framework Effective Date; and
 - (b) deliver to the Framework Authority such evidence as it may reasonably require to satisfy itself that the Guarantee is properly executed and unconditionally delivered.

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28 Business Continuity and Disaster Recovery

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

29 Force Majeure

- 29.1 Subject to the remaining provisions of this Clause 29, (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 6.7 of the Framework Agreement (Business Continuity and Disaster Recovery)) either Party may claim relief under this Clause 29 from liability for failure to meet its obligations under this Framework Agreement for as long as and only to the extent the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Framework Agreement which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 29.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.
- 29.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 29 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated by any of the Services including the BCDR Services, but the Supplier has failed to do so; and/or
 - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Framework Agreement and/or any Call-Off Agreement.
- 29.4 Subject to Clause 29.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event including exercising the rights included in Clause 36 (Step-In).
- 29.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 29.6 Where, as a result of a Force Majeure Event, an Affected Party fails to perform its obligations in accordance with this Framework Agreement, then during the continuance of the Force Majeure Event:
- (a) the other Party shall not be entitled to exercise any rights to terminate this Framework Agreement in whole or in part as a result of such failure other than pursuant to Clause 38 (Termination by the Framework Authority); and

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- (b) neither Party shall be liable for any Default arising as a result of such failure.
- 29.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Framework Agreement.
- 29.8 Relief from liability for the Affected Party under this Clause 29 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Framework Agreement and shall not be dependent on the serving of notice under Clause 29.7.

SECTION I – INDEMNITIES, LIABILITY AND INSURANCE

30 Conduct of indemnity claims

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

31 Limitations on Liability

Unlimited liability

- 31.1 Neither Party limits its liability for:
- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);
 - (b) fraud or fraudulent misrepresentation by it or its employees;
 - (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - (d) any liability to the extent it cannot be limited or excluded by Law.
- 31.2 The Supplier's liability in respect of the indemnities in Clause 19.3 (Employment Indemnity) and Clause 19.4 (Income Tax and National Insurance Contributions), shall be unlimited.

Financial and other limits

- 31.3 Subject to Clauses 31.1 and 31.2 (Unlimited liability) and Clause 31.5 (Consequential losses) the Supplier's aggregate liability in respect of all other Losses (including those identified in clause 31.6) incurred by the Framework Authority under or in connection with this Framework Agreement as a result of Defaults by the Supplier shall in no event exceed **REDACTED** provided that where any such Losses referred to in this Clause 31.3 have been incurred by the Framework Authority as a result of the Supplier's abandonment of this Framework Agreement or the Supplier's wilful default, wilful breach of a fundamental term of this Framework Agreement or wilful repudiatory breach of this Framework Agreement, the references in this Clause 31.3 to **REDACTED** shall be deemed to be references to **REDACTED**.

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- 31.4 Subject to Clauses 31.1 and 31.5 (Consequential losses), the Framework Authority's total aggregate liability in respect of all Losses (including those identified in Clause 31.6) incurred by the Supplier under or in connection with this Framework Agreement shall in no event exceed **REDACTED**

Consequential losses

- 31.5 Subject to Clauses 31.1, 31.2 (Unlimited liability) and Clause 31.6 (Consequential Loss), neither Party shall be liable to the other Party for:

- (a) any indirect, special or consequential Loss; or
- (b) any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).

- 31.6 Notwithstanding Clause 31.5 (Consequential Loss) but subject to Clause 31.7 (Mitigation), the Supplier acknowledges that the Framework Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Framework Authority to the extent that they arise as a result of a Default by the Supplier:

- (a) any additional operational and/or administrative costs and expenses incurred by the Framework Authority, including costs relating to time spent by or on behalf of the Framework Authority in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;
- (c) the additional cost of procuring a replacement framework contract for the provision of Replacement Services should the Framework Authority terminate this Framework Agreement pursuant to Clause 38 (Termination by the Framework Authority);
- (d) any compensation or interest paid to a third party by the Framework Authority;
- (e) any fine or penalty incurred by the Framework Authority pursuant to Law and any costs incurred by the Framework Authority in defending any proceedings which result in such fine or penalty.

Mitigation

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

Relationship to Call-Off Agreements

- 31.8 This Clause 31 applies with respect to any liability arising between the Supplier and the Framework Authority and does not limit:

- (a) Clause 35 of the Standard Terms with respect to any liability arising between the Supplier and a Customer; or

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- (b) the Framework Authority's rights under Clause 49 (Third Party Rights) save to the extent that such rights would permit the recovery of Losses in excess of any limit on liability specified in this Clause 31.

32 Insurance

The Parties shall comply with the provisions of Schedule 3.7 of the Framework Agreement (Insurance Requirements) in relation to obtaining and maintaining insurance.

33 Rectification Plan Process

33.1 If:

- (a) there is, or is reasonably likely to be, a Delay in Achieving a Data Centre Onboarding Milestone; and/or
- (b) the Supplier commits a material Default under this Framework Agreement that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),

(each a "**Notifiable Default**"), the Supplier shall notify the Framework Authority and the relevant Customers of the Notifiable Default as soon as practicable but in any event within two (2) Working Days of becoming aware of the Notifiable Default detailing the actual or anticipated effect of the Notifiable Default.

Notification

33.2 If:

- (a) the Supplier notifies the Framework Authority pursuant to Clause 33.1 that a Notifiable Default has occurred; or
- (b) the Framework Authority informs the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

the Supplier shall comply with the Rectification Plan Process set out in Clause 33.4.

33.3 If, within ten (10) Working Days of a Notifiable Default (or such further period as the Parties may agree acting reasonably), a further Notifiable Default occurs either under this Framework Agreement or any Call-Off Agreement and the Supplier believes that the Notifiable Defaults are related, it shall notify the Framework Authority accordingly and the Supplier shall only be obliged to produce one (1) consolidated Rectification Plan in respect of those Notifiable Defaults and that draft Rectification Plan shall be delivered to the Framework Authority and each relevant Customer (if applicable) within the ten (10) Working Days of the original notification pursuant to Clause 33.2 or such other timescales as agreed with the Framework Authority.

33.4 The "**Rectification Plan Process**" is as follows:

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Submission of the draft Rectification Plan

- (a) The Supplier shall submit a draft Rectification Plan to the Framework Authority for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 33.2. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.
- (b) The draft Rectification Plan shall set out:
 - (i) full details of the Notifiable Default that has occurred, including a root cause analysis;
 - (ii) the actual or anticipated effect of the Notifiable Default;
 - (iii) the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable); and
 - (iv) the apportionment between the Framework Authority and the Supplier of any costs which may be incurred by the Framework Authority in respect of the Rectification Plan Process and the Rectification Plan.
- (c) The Supplier shall promptly provide to the Framework Authority any further documentation that the Framework Authority requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 6 of Schedule 6.3 (Dispute Resolution Procedure).

Agreement of the Rectification Plan

- (d) The Framework Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate in a material respect, for example because the draft Rectification Plan:
 - (i) is insufficiently detailed to be capable of proper evaluation;
 - (ii) will take too long to complete;
 - (iii) will not prevent reoccurrence of the Notifiable Default;
 - (iv) does not adequately deal with the apportionment of any costs which may be incurred by the Framework Authority in respect of the Rectification Plan Process and the Rectification Plan; and/or
 - (v) will rectify the Notifiable Default but in a manner which is unacceptable to the Framework Authority.
- (e) The Framework Authority shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Framework Authority rejects

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the draft Rectification Plan, the Framework Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Framework Authority for review within five (5) Working Days (or such other period as agreed between the Parties) of the Framework Authority's notice rejecting the first draft.

- (f) If the Framework Authority consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

34 Remedial Adviser

34.1 If:

- (a) any of the Intervention Trigger Events occur; or
- (b) the Framework Authority reasonably believes that any of the Intervention Trigger Events are likely to occur,

(each an "**Intervention Cause**"), the Framework Authority may give notice to the Supplier (an "**Intervention Notice**") giving reasonable details of the Intervention Cause and requiring a meeting between the Contract Director of the Framework Authority and the Chief Executive Officer and Chief Financial Officer of the Supplier to discuss the Intervention Cause.

34.2 Following such meeting, the Framework Authority may, at its discretion, give notice to the Supplier to require the appointment by the Supplier of a Remedial Adviser, as further described in this Clause 34. For the avoidance of doubt:

- (a) if the Intervention Cause is also a Supplier Termination Event, the Framework Authority has no obligation to exercise its rights under this Clause 34.2 prior to or instead of any of the Customers exercising their right to terminate their respective Call-Off Agreements; and
- (b) a Remedial Adviser may be appointed in respect of one or more Call-Off Agreements (for example, where an Intervention Cause affects multiple Call-Off Agreements).

34.3 If the Framework Authority gives notice that it requires the appointment of a Remedial Adviser:

- (a) the Remedial Adviser shall be:
 - (i) a person selected by the Supplier and approved by the Framework Authority (which approval shall not be unreasonably withheld); or
 - (ii) if none of the persons identified by the Supplier have been approved by the Framework Authority (or no person has been selected by the Supplier) within ten (10) Working Days following the date on which the Intervention Notice is given, a person identified by the Framework Authority (acting reasonably);
- (b) the terms of engagement agreed with the Remedial Adviser must be approved by the Framework Authority (which approval shall not be unreasonably withheld); and

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- (c) the Customers' right to terminate their Call-Off Agreements for the occurrence of that Intervention Cause shall be suspended for three (3) months from the date of the Intervention Notice (or such other period as may be agreed between the Parties) (the "**Intervention Period**").

34.4 The Remedial Adviser's overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this objective (but without diminishing the Supplier's responsibilities under this Framework Agreement or any Call-Off Agreement), the Parties agree that the Remedial Adviser may undertake any one (1) or more of the following actions:

- (a) observe the conduct of and work alongside the Supplier Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;
- (b) gather any information the Remedial Adviser considers relevant in the furtherance of its objective;
- (c) write reports and provide information to the Framework Authority in connection with the steps being taken by the Supplier to remedy the Intervention Cause;
- (d) make recommendations to the Framework Authority and/or the Supplier as to how the Intervention Cause might be mitigated or avoided in the future; and/or
- (e) take any other steps that the Framework Authority and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause, consistent with the terms on which the Remedial Adviser has been engaged by the Supplier.

34.5 The Supplier shall:

- (a) work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
- (b) ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Customer Equipment and the Data Centre(s);
- (c) procure that the Key-Sub-contractors provide the Remedial Adviser with all reasonable co-operation and access to the Key Sub-contractor's premises, systems and staff to enable the Remedial Adviser to carry out its objectives set out in Clause 34.4;
- (d) not terminate the appointment of the Remedial Adviser before the end of the Intervention Period without the prior consent of the Framework Authority (such consent not to be unreasonably withheld);
- (e) submit to such monitoring as the Framework Authority and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause; and

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- (f) implement any reasonable recommendations made by the Remedial Adviser that have been approved by the Framework Authority within the timescales given by the Remedial Adviser.

34.6 The Supplier shall be responsible for:

- (a) the costs of appointing, and the fees charged by, the Remedial Adviser; and
- (b) its own costs in connection with any action required by the Framework Authority and/or the Remedial Adviser pursuant to this Clause 34.

34.7 If:

- (a) the Supplier:
 - (i) fails to perform any of the steps required by the Framework Authority in an Intervention Notice; and/or
 - (ii) is in Default of any of its obligations under Clause 34.5; and/or
- (b) the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,

(each a “**Remedial Adviser Failure**”) each of the Customers shall be entitled to terminate their respective Call-Off Agreements.

35 Relief Events

35.1 If the Supplier can demonstrate that a Default by the Supplier would not have occurred but for a Framework Authority Cause, then (subject to the Supplier fulfilling its obligations in this Clause 35):

- (a) the Supplier shall not be treated as being in breach of this Framework Agreement to the extent the Supplier can demonstrate that the Default by the Supplier was caused by the Framework Authority Cause; and
- (b) where the Default by the Supplier constitutes the failure to Achieve a Milestone by its Milestone Date or a failure to meet a date by which the Supplier must perform an obligation in accordance with this Framework Agreement:
 - (i) the Milestone Date or date by which the Supplier must perform such an obligation shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Framework Authority Cause;
 - (ii) if the Framework Authority, acting reasonably, considers it appropriate, the relevant Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Framework Authority Cause; and
 - (iii) if the Supplier has incurred any other direct loss and/or expense as a result of a Delay due to a Framework Authority Cause, the Supplier shall be entitled to

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compensation to the extent that it cannot mitigate that loss or expense. The Supplier shall provide the Framework Authority with any information the Framework Authority may reasonably require in order to assess the validity of the Supplier's claim for compensation. If the Supplier is entitled to compensation in accordance with this Clause 35.1(b)(iii) then such compensation shall consist of the Supplier's reasonable additional costs and/or expenses arising from such Delay, provided that this calculation shall not operate so as to put the Supplier in a better position than it would have been but for the occurrence of the Framework Authority Cause.

35.2 In order to claim any of the rights and/or relief referred to in Clause 35.1, the Supplier shall within two (2) Working Days of becoming aware that a Framework Authority Cause has caused, or is likely to cause, a Default by the Supplier, give the Framework Authority notice (a "**Relief Notice**") setting out details of:

- (a) the Default;
- (b) the Framework Authority Cause and its effect or likely effect on the Supplier's ability to meet its obligations under this Framework Agreement;
- (c) any steps which the Framework Authority can take to eliminate or mitigate the consequences and impact of such Framework Authority Cause; and
- (d) the relief and/or compensation in accordance with 35.1(b)(iii) claimed by the Supplier.

35.3 Following the receipt of a Relief Notice, the Framework Authority shall as soon as reasonably practicable consider the nature of the Default by the Supplier and the alleged Framework Authority Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Framework Authority Cause and its entitlement to relief and/or compensation, consulting with the Supplier where necessary.

35.4 Without prejudice to Clause 51, (Disputes) if a Dispute arises as to:

- (a) whether a Default by the Supplier would not have occurred but for a Framework Authority Cause; and/or
- (b) the nature and/or extent of the relief and/or compensation claimed by the Supplier,

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

36 Step-In

36.1 The Framework Authority may take step-in action under this clause in the following circumstances (each a "**Step-In Trigger Event**"):

- (a) a Supplier Termination Event occurs;

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- (b) there is a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any part of the Services, including to IaaS Service Providers;
- (c) there is a Delay that has or the Framework Authority reasonably anticipates will result in the Supplier's failure to Achieve a Milestone by its Milestone Date;
- (d) a Force Majeure Event occurs which materially prevents or materially delays the performance of the Services or any part of the Services, including to IaaS Service Providers;
- (e) where the Supplier is not in breach of its obligations under a Call-Off Agreement but the Customer considers that the circumstances constitute an emergency;
- (f) where a regulatory body has advised the Customer that the exercise by the Customer of its rights under this clause is necessary;
- (g) to discharge a statutory duty;
- (h) a Financial Distress Event occurs in respect of the Guarantor, Supplier or any Key Sub-contractor;
- (i) on the occurrence of an Insolvency Event in respect of the Supplier, the Guarantor and/or any of the Ark Entities; and/or
- (j) where the Supplier is in breach of its obligations under Schedule 4.3 (Exit Management) of the Standard Terms.

36.2 On the occurrence of a Step-In Trigger Event, the Framework Authority may serve notice on the Supplier ("**Step-In Notice**") that it will be taking action under this Clause 36 (Step-In Rights), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause 21 (Confidentiality)) and that any such third party may not be an Ark Competitor. The Step-In Notice shall set out the following:

- (a) the action the Framework Authority wishes to take and in particular the Services that it wishes to control ("**Required Action**");
- (b) the Step-In Trigger Event that has occurred and whether the Framework Authority believes that the Required Action is due to the Supplier's Default;
- (c) the date on which it wishes to commence the Required Action;
- (d) the time period which it believes will be necessary for the Required Action;
- (e) whether the Framework Authority will require access to the Supplier's premises and/or the Data Centres; and
- (f) to the extent practicable, the impact that the Framework Authority anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.

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- 36.3 The Supplier shall notify the Framework Authority in writing prior to undertaking any action which would restrict the ability of the Framework Authority to exercise its right of step-in as set out in this Clause 36.
- 36.4 Following service of a Step-In Notice, the Framework Authority shall:
- (a) take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
 - (b) keep records of the Required Action taken and provide information about the Required Action to the Supplier;
 - (c) co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Framework Authority is not assuming control; and
 - (d) act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Framework Authority's rights under this Clause 36.
- 36.5 For so long as and to the extent that the Required Action is continuing, then:
- (a) the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
 - (b) unless the any step-in action is taken by the Framework Authority under Clauses 36.1(d), 36.1(e) or 36.1(g), the Charges payable in respect of provision of the relevant Services shall be reduced commensurately to take full account of the Framework Authority's reasonable costs of taking the Required Action;
 - (c) if any step-in action is taken by the Framework Authority under Clauses 36.1(d), 36.1(e) or 36.1(g):
 - (i) the Charges shall be reduced by an amount equivalent to the value of Charges associated with that proportion of the Services not provided by the Supplier as a result of the step-in action, *less* any reasonable and unavoidable costs incurred by the Supplier in relation to those non-performing Services (provided that such unavoidable costs shall in no event exceed the value of Charges for the non-performing Services); and
 - (ii) the Supplier shall use all reasonable endeavours to mitigate any costs incurred pursuant to paragraph 36.5(c)(i) above.
- 36.6 If the Supplier demonstrates to the reasonable satisfaction of the Framework Authority that the Required Action has resulted in:
- (a) the degradation of any Services not subject to the Required Action; or
 - (b) the non-Achievement of a Milestone,

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beyond that which would have been the case had the Framework Authority not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges.

- 36.7 Before ceasing to exercise its step-in rights under this Clause 36 the Framework Authority shall deliver a written notice to the Supplier ("**Step-Out Notice**"), specifying:
- (a) the Required Action it has actually taken; and
 - (b) the date on which the Framework Authority plans to end the Required Action ("**Step-Out Date**") subject to the Framework Authority being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause 36.8.
- 36.8 The Supplier shall, following receipt of a Step-Out Notice and not less than twenty (20) Working Days prior to the Step-Out Date, develop for the Framework Authority's approval a draft plan ("**Step-Out Plan**") relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of the relevant Call-Off Agreement(s).
- 36.9 If the Framework Authority does not approve the draft Step-Out Plan, the Framework Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Framework Authority for the Framework Authority's approval. The Framework Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
- 36.10 The Supplier shall bear its own costs in connection with any step-in by the Framework Authority under this Clause 36, provided that the Framework Authority shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Framework Authority under:
- (a) Clauses 36.1.4 of the definition of a Step-In Trigger Event; or
 - (b) Clauses 36.1.5 or 36.1.7 of the definition of a Step-in Trigger Event (insofar as the primary cause of the Framework Authority serving the Step-In Notice is identified as not being the result of the Supplier's Default).
- 36.11 The Supplier shall:
- (a) develop a Step-In Plan within sixty (60) Business Days of the Framework Effective Date for approval by the Framework Authority;
 - (b) ensure that the Step-In Plan
 - (i) describes the tasks, activities, responsibilities and timeframes necessary to ensure that the Framework Authority (or its nominee) can effectively exercise its step-in rights in accordance with this Framework Agreement;
 - (ii) is sufficiently detailed and contains or refers to all necessary information (including but not limited to copies of technical manuals, equipment lists, mechanical and electrical plant equipment lists, diagrams showing all relevant

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building infrastructure systems, structured cabling, cross connects and equipment operating manuals); and

- (iii) is consistent with this Framework Agreement;
- (c) regularly review and update the Step-In Plan no less than every 12 months (with such updates to be approved by the Framework Authority);
- (d) ensure that any tests conducted in accordance with Schedule 6.7 (Business Continuity and Disaster Recovery) also test the applicable parts of the Step-In Plan; and
- (e) comply with the approved Step-In Plan.

SECTION J – SUSPENSION AND TERMINATION

37 Suspension of the Call-Off Procedure

37.1 The Framework Authority may suspend the Call-Off Procedure by written notice (which the Framework Authority shall use reasonable endeavours to ensure is provided at least ten (10) Working Days prior to the suspension of the Call-Off Procedure) if:

- (a) the Supplier is in material Default of this Framework Agreement and the Supplier has not rectified such Default by the date specified in the Rectification Plan;
- (b) the Supplier is in material Default of two (2) or more Call-Off Agreements and the Supplier has not rectified such Defaults by the date(s) specified in the relevant Rectification Plan(s);
- (c) there is a Conflict of Interest under any Call-Off Agreement which in the reasonable opinion of the Framework Authority is material and has the potential to impact one (1) or more Other Call-Off Agreements;
- (d) the Supplier is in Default of its obligations under Schedule 3.6 of the Framework Agreement (Security Management) which, in the Framework Authority's reasonable opinion materially impacts the security of Customer Stored Data at a Data Centre;
- (e) the Framework Authority, in its reasonable opinion, believes that a material level of risk (either to the Crown or any individual Customer) might apply as a result of the continued use of the Call-Off Procedure;
- (f) the Supplier breaches Clause 45.1 or 45.2 (Prevention of Fraud and Bribery);
- (g) aggregate Customer demand for the Services exceeds the Available Capacity Level; or
- (h) a Remedial Adviser has been appointed.

37.2 The suspension of the Call-Off Procedure shall end when:

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- (a) the Supplier has rectified the material Default(s), where the Framework Authority has suspended the Call-Off Procedure pursuant to Clause 37.1(a) or 37.1(b);
- (b) the Supplier has carried out the steps required by the relevant Customer in accordance with Clause 52 of the Standard Terms and the Conflict of Interest has been resolved, where the Framework Authority has suspended the Call-Off Procedure pursuant to Clause 37.1(c);
- (c) the Framework Authority deems that the breach of Clause 45.1 or 45.2 (Prevention of Fraud and Bribery) has been remedied (and all necessary steps have been successfully implemented to prevent any future breach of these Clauses) to the satisfaction of the Framework Authority, where the Framework Authority has suspended the Call-Off Procedure pursuant to Clause 37.1(f);
- (d) the Remedial Adviser ceases to be appointed, where the Framework Authority has suspended the Call-Off Procedure pursuant to Clause 37.1(h); or
- (e) the Framework Authority has provided written notice to the Supplier that the suspension of the Call-Off Procedure has ended.

38 Termination by the Framework Authority

- 38.1 Subject to Clause 38.3, the Framework Authority may terminate this Framework Agreement by serving a Framework Termination Notice on the Supplier if all of the Customers have terminated their Call-Off Agreements pursuant to any of the provisions of the Call-Off Agreements and this Framework Agreement shall terminate on the date specified in the Framework Termination Notice.
- 38.2 The Framework Authority may exercise its right of termination under this Clause 38 without first instigating the Dispute Resolution Procedure or, where such Dispute Resolution Procedure is in progress, without awaiting its final outcome.
- 38.3 Before the Framework Authority serves any Termination Notice in accordance with this Clause 38, if all Call-Off Agreements have either expired or have been terminated by Customers in accordance with their termination for convenience rights, the Parties shall discuss in good faith whether the Framework Authority should serve a Termination Notice on the Supplier, or whether the Parties wish to take some other form of mutually agreed action as to how to proceed with, or terminate, this Framework Agreement.

39 Termination by the Supplier

- 39.1 The Supplier has no right to terminate this Framework Agreement.

40 Consequences of Expiry or Termination

- 40.1 The expiry or termination of this Framework Agreement in accordance with Clause 38 (Termination by the Framework Authority) shall not affect the accrued rights of any Party.
- 40.2 On expiry or the earlier termination of this Framework Agreement:

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- (a) each Party shall cease to use any of the other Party's Confidential Information (including any use by the Supplier of Framework Authority Data) except to the extent that such use is necessary for the Supplier to comply with its obligations under Schedule 4.3 (Exit Management) of the Standard Terms; and
- (b) the Supplier shall, at the Framework Authority's direction, provide the Framework Authority and/or the Replacement Supplier with a complete up to date and uncorrupted version of all Framework Authority Data in electronic form in a format and on media agreed with the Framework Authority.

40.3 On the earlier of:

- (a) the receipt of the other Party's written instructions after the date of expiry or termination of this Framework Agreement; or
- (b) twelve (12) months after the date of expiry or termination of this Framework Agreement,

each Party shall destroy or return all copies of the other Party's Confidential Information (including, if applicable, Framework Authority Data) and promptly provide written confirmation to the other Party that such data has been destroyed or returned.

40.4 Clause 40.3 shall not apply to any copies of the Confidential Information of the Framework Authority or any Framework Authority Data which the Supplier is required to keep by Law or this Framework Agreement. Nothing in this Clause 40.3 shall require any Party to return any Confidential Information, documents or correspondence which are held electronically and automatically backed up or saved by computer systems provided that such Confidential Information, documents and correspondence shall remain subject to the confidentiality undertakings set out in this Framework Agreement.

40.5 The provisions of Clauses 11 (Financial Reports, Records, Audit and Open Book Data), 21 (Confidentiality), 22 (Freedom of Information), 26 (Warranties), 27 (Guarantee), 30 (Conduct of Indemnity Claims), 31 (Limitations on Liability), 32 (Insurance), 40 (Consequences of Expiry or Termination), 43 (Waiver and Cumulative Remedies), 46 (Severance), 48 (Entire Agreement), 49 (Third Party Rights), 51 (Disputes) and 52 (Governing Law and Jurisdiction), and the provisions of Schedules 1 (Definitions), 3.7 (Insurance Requirements), 4.2 (Commercially Sensitive Information), 6.3 (Dispute Resolution Procedure), 6.4 (Records Provisions) and 6.5 (Conduct of Claims) and such other provisions which are expressly or by implication required to survive termination or expiry, shall survive expiry or the termination of this Framework Agreement and any Call-Off Agreement.

SECTION K – MISCELLANEOUS AND GOVERNING LAW

41 Compliance

Equality and Diversity

41.1 The Supplier shall:

- (a) perform its obligations under this Framework Agreement and under any Call-Off Agreement (including those in relation to the Services) in accordance with:

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- (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (ii) the Framework Authority's equality and diversity policy as provided to the Supplier from time to time; and
 - (iii) any other requirements and instructions which the Framework Authority reasonably imposes in connection with any equality obligations imposed on the Framework Authority at any time under applicable equality Law; and
- (b) take all necessary steps, and inform the Framework Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).

Official Secrets Act and Finance Act

41.2 The Supplier shall comply with the provisions of:

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

and any updates or amendments from time to time.

42 Assignment and Novation

42.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Framework Agreement without the prior written consent of the Framework Authority.

42.2 The Framework Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Framework Agreement and/or any associated licences to:

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

and the Supplier shall, at the Framework Authority's request, enter into a novation agreement in such form as the Framework Authority shall reasonably specify in order to enable the Framework Authority to exercise its rights pursuant to this Clause 42.2.

42.3 A change in the legal status of the Framework Authority such that it ceases to be a Central Government Body shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Framework Authority.

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43 Waiver and Cumulative Remedies

- 43.1 The rights and remedies under this Framework Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Framework Agreement or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 43.2 Unless otherwise provided in this Framework Agreement, rights and remedies under this Framework Agreement are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

44 Relationship of the Parties

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

45 Prevention of Fraud and Bribery

- 45.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Framework Effective Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 45.2 The Supplier shall not during the term of this Framework Agreement or any Call-Off Agreement:
- (a) commit a Prohibited Act; and/or
 - (b) do or suffer anything to be done which would cause the Framework Authority, any Customer 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.
- 45.3 The Supplier shall during the term of this Framework Agreement and any Call-Off Agreement:
- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and

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- (b) keep appropriate records of its compliance with its obligations under Clause 45.3(a) and make such records available to the Framework Authority and Customers on request.
- 45.4 The Supplier shall immediately notify the Framework Authority and any relevant Customer (together the "**Notified Parties**") in writing if it becomes aware of any breach of Clause 45.1 and/or 45.2, or has reason to believe that it has or any of the Supplier Personnel have:
 - (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Framework Agreement or any Call-Off Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Framework Agreement or any Call-Off Agreement has committed or attempted to commit a Prohibited Act.
- 45.5 If the Supplier makes a notification to the Notified Parties pursuant to Clause 45.4, the Supplier shall respond promptly to the Notified Parties' enquiries, co-operate with any investigation, and allow the Notified Parties to Audit any books, Records and/or any other relevant documentation in accordance with Clause 11 (Financial Reports, Records, Audit and Open Book Data).
- 45.6 If the Supplier is in Default under Clauses 45.1 and/or 45.2:
 - (a) the Framework Authority may by notice:
 - (i) suspend the Call-Off Procedure pursuant to Clause 37; and
 - (ii) require the Supplier to remove from performance of this Framework Agreement any Supplier Personnel whose acts or omissions have caused the Default; and
 - (b) each Customer may by notice:
 - (i) require the Supplier to remove from performance of their Call-Off Agreement any Supplier Personnel whose acts or omissions have caused the Default; or
 - (ii) immediately terminate their Call-Off Agreement.
- 45.7 Any notice served by the Framework Authority or Customer under Clause 45.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Framework Authority or Customer (as applicable) believes has committed the Prohibited Act and the action that the Framework Authority or Customer has elected to take (including, where relevant, the date on which the Call-Off Procedure shall be suspended or the relevant Call-Off Agreement shall terminate).

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46 Severance

- 46.1 If any provision of this Framework Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Framework Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Framework Agreement shall not be affected.
- 46.2 In the event that any deemed deletion under Clause 46.1 is so fundamental as to prevent the accomplishment of the purpose of this Framework Agreement or materially alters the balance of risks and rewards in this Framework Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Framework Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Framework Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 46.3 If the Parties are unable to agree on the revisions to this Framework Agreement within five (5) Working Days of the date of the notice given pursuant to Clause 46.2, the matter shall be dealt with in accordance with the Dispute Resolution Procedure.

47 Further Assurances

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

48 Entire Agreement

- 48.1 This Framework Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understandings, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 48.2 Neither Party has been given, nor entered into this Framework Agreement in reliance on any warranty, statement, promise or representation other than those expressly set out in this Framework Agreement.
- 48.3 Nothing in this Clause 48 shall exclude any liability in respect of misrepresentations made fraudulently.

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49 Third Party Rights

- 49.1 The provisions of Clause 21 (Confidentiality), Paragraphs 2.1, 2.6, and 5.2 of Part A, Paragraphs 2.1, 2.6, 3.1, 3.3 and 5.2 of Part B, Paragraphs 2.1 and 2.3 of Part C and Paragraphs 1.4, 2.3, 2.8, 3.2 and 2.12 of Part D of Schedule 5.1 (Staff Transfer) of the Standard Terms and the provisions of Schedule 4.3 (Exit Management) of the Standard Terms (together “**Third Party Provisions**”) confer benefits on persons named in such provisions other than the Parties (each such person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- 49.2 Each Customer and Service Recipient may, acting exclusively at all times through the Framework Authority as its agent and trustee, enforce any term of this Framework Agreement (other than a Third Party Provision) in its own name as a third party beneficiary pursuant to CRTPA and/or recover any loss, damage or liability suffered by that Customer or Service Recipient in connection with the breach of such provision provided that the Framework Authority agrees that the Supplier shall not be liable to the Framework Authority, a Customer or a Service Recipient in respect of the same loss, damage or liability if such loss, damage or liability would be recovered twice in any action by the Framework Authority, the Customer or the Service Provider. No consent of any Customer or Service Recipient shall be necessary for any variation (including any release or compromise in whole or in part of any liability) or termination of this Framework Agreement or any one or more clauses of it.
- 49.3 The Framework Authority will owe no duty to enforce any rights and it may conduct or compromise any relevant proceedings as it sees fit.
- 49.4 Subject to Clauses 49.1 to 49.3, a person who is not a Party to this Framework Agreement has no right under the CRTPA to enforce any term of this Framework Agreement, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 49.5 Subject to Clause 49.2, no Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Framework Authority, which may, if given, be given on and subject to such terms as the Framework Authority may determine.
- 49.6 Any amendments or modifications to this Framework Agreement may be made, and any rights created under Clause 49.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

50 Notices

- 50.1 Any notices sent under this Framework Agreement must be in writing.
- 50.2 Subject to Clause 50.4, the following table sets out the method by which notices may be served under this Framework Agreement and the respective deemed time and proof of service:

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

- 50.3 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 Framework Agreement:

	Supplier	Framework Authority
Contact	REDACTED	REDACTED
Address	REDACTED	REDACTED
Email	REDACTED	REDACTED

- 50.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 50.2:

- (a) any notices given under or in relation to Schedule 6.1 (Governance);
- (b) any notices given under or in relation to Schedule 6.2 (Change Control Procedure);
- (c) Force Majeure Notices;
- (d) Framework Termination Notice;
- (e) Termination Notices; and

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(f) Dispute Notices.

- 50.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 50.4 will invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 50.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- 50.6 This Clause 50.6 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 6.3 of the Framework Agreement (Dispute Resolution Procedure)).

51 Disputes

- 51.1 The Parties shall resolve Disputes arising out of or in connection with this Framework Agreement and any Call-Off Agreement in accordance with the Dispute Resolution Procedure detailed in Schedule 6.3 of the Framework Agreement (Dispute Resolution Procedure).
- 51.2 The Supplier shall continue to provide the Services in accordance with the terms of this Framework Agreement and/or any Call-Off Agreement until a Dispute has been resolved.

52 Governing Law and Jurisdiction

- 52.1 This Framework Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 52.2 Subject to Clause 51 (Disputes) and Schedule 6.3 (Dispute Resolution Procedure), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Framework Agreement or its subject matter or formation.

IN WITNESS of which this Framework Agreement has been duly executed by the Parties on the date which appears at the head of its page 1.

SIGNED for and on behalf of the **MINISTER**
FOR THE CABINET OFFICE

SIGNED for and on behalf of **CROWN**
HOSTING DATA CENTRES LIMITED:

Signature

Signature

Name

Name

Position

Position

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Date

Date