

Crown Hosting Framework Agreement

Schedule 5.2

Financial Distress

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Definitions

1.1 In this Schedule, the following definitions shall apply:

"Ark Entities" means REDACT and its Subsidiaries from time to time (each of which being an **"Ark Entity"**);

"Financial Covenants" means the covenants as set out in Annex 1 to this Schedule 5.2 (Financial Distress);

"Financial Distress Event" means:

- (a) in respect of the Supplier, the Guarantor and the Ark Entities the events specified in clause 4.1 below (as applicable); and
- (b) in respect of the Key Sub-contractors (other than any of the Ark Entities) an Insolvency Event occurs to such Key Sub-contractor or the events specified in clause 4.1 below save for clauses 4.1(a),(e),(f)(v)(vi) and (vii) replacing any reference to the Supplier with the relevant Key Sub-contractor;

"Financial Status Certificate" means a certificate in the form provided at Annex 2 to this Schedule 5.2 (Financial Distress);

"Quarter Day" means 1 January, 1 April, 1 July and 1 October in each calendar year of the Framework Term;

"Reporting Period" means each 3 month period ending on the day before the relevant Quarter Day; and

"Subsidiary" means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006.

2. Duty to Monitor and Notify

2.1 The Supplier shall:

- (a) monitor the financial performance of itself and of the Ark Entities with respect to the Financial Covenants; and
- (b) promptly notify the Framework Authority in writing if a breach of the Financial Covenants or a Financial Distress Event has occurred, will occur or is likely to occur, along with a summary of the circumstances of which it is aware that gave, or may give, rise to such an event, using the form of Financial Status Certificate.

3. Financial Covenants

3.1 The Supplier warrants and represents to the Framework Authority for the benefit of the Framework Authority and the Customers that as at the Quarter Day immediately preceding the Framework Effective Date and as at each Quarter Day thereafter (by reference to the facts and circumstances existing at such date), the Supplier and the Ark Entities are compliant with the Financial Covenants (as applicable). For the avoidance of doubt, the Ark Entities are required to

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report against the Financial Covenants on a consolidated basis only. The point of consolidation is at Ark Group Limited level, and includes each of its subsidiaries from time to time.

- 3.2 The Supplier shall demonstrate this by providing to the Framework Authority a Financial Status Certificate, together with reasonable detail of the calculation of the compliance with the Financial Covenants signed by two of the Supplier's directors, one of which being the Finance Director (or equivalent) within 30 Working Days following each Quarter Day certifying that there has been and is no breach of the Financial Covenants or Financial Distress Event.

4. **Financial Distress Events**

4.1 A "Financial Distress Event" is:

- (a) a failure by the Supplier or any Ark Entity to meet any of the Financial Covenants, or to provide a certificate of compliance in respect of the Supplier and/or any Ark Entity in accordance with paragraph 3.2 above;
- (b) the Guarantor or Supplier or an Ark Entity issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
- (c) there being an external investigation into improper financial accounting and reporting, suspected fraud or any other financial impropriety of the Supplier, any Ark Entity or the Guarantor;
- (d) the Supplier, the Guarantor or any Ark Entity committing a material breach of any covenant to any of its lenders;
- (e) a Key Sub-contractor notifying the Framework Authority that the Supplier has not satisfied any material sums properly due under a specified invoice which is not subject to a genuine dispute; or
- (f) any of the following:
 - (i) commencement of any litigation against the Supplier, the Guarantor or any Ark Entity with respect to financial indebtedness greater **REDACTED**, or obligations under a service contract with a total contract value greater than **REDACTED**, or (if lower) financial indebtedness / obligations under a contract with a value greater than **REDACTED** of the relevant entity's turnover, as stated in its latest Annual Financial Statement;
 - (ii) non-payment by the Supplier, the Guarantor or any Ark Entity of any financial indebtedness or taxes which fall due;
 - (iii) any financial indebtedness of the Supplier, the Guarantor or any Ark Entity becoming due as a result of an event of default;
 - (iv) the cancellation or suspension of any financial indebtedness in respect of the Supplier, the Guarantor or any Ark Entity;
 - (v) the unscheduled loss of a customer bringing in equal to or greater than **REDACTED** of the aggregate total annual lease rentals and hosting charges payable to the Ark Entities;

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- (vi) two Financial Status Certificates are delivered demonstrating (other than where more than eighteen months have elapsed between delivery of such Financial Status Certificates) that, in respect of the Reporting Period ending immediately before the previous Quarter Day, any of the actual figures for Income, Committed and Contracted Expenditure and Working Capital Requirements (as defined in Annex 1) showed an adverse variance of **REDACTED** or more from the figures used to calculate the Liquidity Headroom at the previous Quarter Day as shown in such previous Financial Status Certificates; or
- (vii) Annual Financial Statements of Ark Capital Partners I LP Inc are delivered demonstrating that (save where such variance has been explained to the satisfaction of the Framework Authority acting reasonably by reference to a reconciliation of appropriate adjustments to reflect the additional entities consolidated within the Annual Financial Statements), the figures in the Annual Financial Statements show an adverse variance of **REDACTED** or more from the actual figures reported in the Financial Status Certificates for the period covered by such Annual Financial Statements,

and save in respect of the events specified in clauses 4.1(d),(f)(i)(v)(vi) and (vii), which the Framework Authority reasonably believes could have, or is likely to have, a direct adverse impact on the continued performance and delivery of the Services in accordance with this Agreement.

- 4.2 Immediately upon notification of the Financial Distress Event (or if the Framework Authority becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Framework Authority shall, subject to paragraph 4.3, have the rights and remedies as set out in paragraphs 4.4 to 4.6.
- 4.3 In the event of a late or non-payment of a Key Sub-contractor as referred to in paragraph 4.1(e) the Framework Authority shall not exercise any of its rights or remedies under paragraph 4.4 without first giving the Supplier ten (10) Working Days to:
 - (a) rectify such late or non-payment; or
 - (b) demonstrate to the Framework Authority's reasonable satisfaction that there is a bona fide dispute as to whether such payment is due or the Supplier is, or reasonably believes it is, legally and contractually entitled to withhold such payment.
- 4.4 The Supplier shall (and shall procure that the Guarantor and any Ark Entities as requested by the Framework Authority) shall:
 - (a) at the request of the Framework Authority, meet with the Framework Authority as soon as reasonably practicable (and in any event within five (5) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other longer period as the Framework Authority may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event and to supply any information and/or copies of documentation as reasonably necessary concerning the continued performance and delivery of the Services in accordance with this Framework Agreement; and
 - (b) where the Framework Authority reasonably believes (taking into account the discussions and any representations made under paragraph 4.4(a) that the Financial Distress Event could, or is likely to, impact on the continued performance and delivery

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of the Services in accordance with this Framework Agreement, at the Framework Authority's option (and sole discretion):

- (i) submit to the Framework Authority for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Framework Authority may permit and notify to the Supplier in writing); and/or
- (ii) provide such financial information relating to the Supplier, any Ark Entity or the Guarantor as the Framework Authority may reasonably require; and/or
- (iii) allow the Framework Authority to appoint a third party investigating accountant to review the financial position of the Supplier, the Guarantor and/or any Ark Entity in order to report to the Framework Authority in respect of the Financial Distress Event (the costs of such third party investigating accountant to be borne by the Supplier); and/or
- (iv) submit to the escalation of the matter and/or use of the Dispute Resolution Procedure in respect of the Financial Distress Event.

4.5 The Framework Authority shall not withhold its approval of a draft Financial Distress Service Continuity Plan unreasonably. If the Framework Authority does not approve the draft Financial Distress Service Continuity Plan it shall inform the Supplier of its reasons and may (at its discretion, and without prejudice to the termination rights set out in paragraph 5.1 below) take one or more of the following actions:

- (a) require the Supplier to take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Framework Authority within five (5) Working Days of the rejection of the first draft. This process may (at the Framework Authority's sole discretion) be repeated until the Financial Distress Service Continuity Plan is approved by the Framework Authority or the matter is escalated pursuant to paragraph 4.5(c); and/or
- (b) agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan; and/or
- (c) escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.

4.6 Where the Framework Authority has requested the preparation of a Financial Distress Service Continuity Plan by the Supplier, the Supplier shall:

- (a) if approved by the Framework Authority, implement the Financial Distress Service Continuity Plan;
- (b) on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Services in accordance with this Framework Agreement;
- (c) where the Financial Distress Service Continuity Plan is not adequate or up to date, in accordance with paragraph 4.6(b), submit an updated Financial Distress Service

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Continuity Plan to the Framework Authority for its approval, and the provisions of paragraph 4.5 shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and

- (d) comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

4.7 Where the Supplier reasonably believes that the relevant Financial Distress Event under paragraph 4.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Framework Authority and the Parties, acting reasonably and in good faith, may agree that the Supplier shall be relieved of its obligations under paragraph 4.6.

4.8 The Supplier shall use reasonable endeavours to ensure each Key Sub-contractor:

- (a) complies with the flow down obligations specified in clause 20.8(j) of the Framework Agreement; and
- (b) to the extent the Supplier becomes aware of the occurrence of an Financial Distress Event affecting, or likely to affect any such Key Sub-contractor, promptly notify the Framework Authority of the same; and
- (c) co-operates with the Framework Authority in the exercise of its step-in rights pursuant to clause 36 of the Framework Agreement (where relevant).

5. Termination Rights

5.1 Each Customer shall be entitled to terminate its Call-Off Agreement if:

- (a) the Supplier fails to notify the Framework Authority of a Financial Distress Event within ten (10) Working Days of the Supplier becoming aware of or having notice of such event; or
- (b) the Supplier fails to comply with the requirements of the Framework Authority pursuant to any of paragraphs 4.4(b)(i), 4.4(b)(ii) or 4.4(b)(iii), 4.4(b)(iv), 4.5(a) or 4.6 above; or
- (c) where the Framework Authority has requested a Financial Distress Continuity Plan, the Framework Authority, in its reasonable opinion, considers that the Financial Distress Service Continuity Plan provided by the Supplier is insufficiently detailed to be properly evaluated, will take too long to complete or is unlikely to ensure the continued performance of the Supplier's obligations in accordance with the Agreement; or
- (d) where the Framework Authority has appointed an investigative accountant pursuant to paragraph 4.4(b)(iii), the Framework Authority, in its reasonable opinion and based on the findings of the report prepared by the investigative accountant, is not satisfied of the financial viability of the Supplier and its ability to continue to perform its obligations under this Agreement,

in each case, provided that the Framework Authority has provided its prior written consent to such termination by the relevant Customer(s).

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Annex 1

Financial Covenants

For the purposes of paragraph 3 of this Schedule 5.2 (Financial Distress), the Financial Covenants in respect of each relevant entity are as follows:

1. Financial definitions

In this Agreement:

"Accounting Principles" means generally accepted accounting principles in the United Kingdom (UK GAAP or IFRS) applicable to the Supplier, as notified to the Framework Authority by the Supplier as at the Framework Effective Date and as applied to Ark Capital Partners I LP Inc. as provided as Attachment 1 to this Annex 1;

REDACTED means:

- (a) **REDACTED** (b) **REDACTED "Financial Year"** means the annual accounting period of the Group;

"Group" means Ark Capital Partners I LP Inc and each of its Subsidiaries from time to time; and

"Lender's Covenants" REDACTED Financial condition

- 1.1 During the immediately preceding Reporting Period there has been no breach of the Lender's Covenants.

- 1.2 As at the relevant Quarter Day:

- (i) to the best of the knowledge and belief (having made due and careful enquiry of the Ark Entities and based on the information and facts available as at the relevant Quarter Day) of the directors of the Supplier, the Lender's Covenants will be satisfied during; and
- (ii) the Supplier and the Ark Entities (reporting on a consolidated basis) have a positive Liquidity Headroom of the greater of REDACTED (pounds sterling two million) or 30% of the Capital and Operational Expenditure, for,

in each case the period from such Quarter Day to the date falling on each of:

- (a) three months;
- (b) six months;
- (c) nine months; and
- (d) twelve months,

after each such Quarter Day (each such period being a **"Forward Testing Period"**).

For the purposes of paragraph 2.2:

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$$\text{Liquidity Headroom} = \text{Income} + \text{Available Working Capital} - \text{Required Working Capital}$$

Where:

"Available Working Capital" means the aggregate amount available and undrawn under the Working Capital Facilities at the relevant Quarter Day (to the extent the Working Capital Facilities are according to their terms and conditions, available without reduction for the whole of the relevant Forward Testing Period) and Cash Held at the relevant Quarter Day;

"Capital and Operational Expenditure" means the total capital and operational expenditure required by the Ark Entities and the Supplier for the relevant Forward Testing Period and calculated as:

$$= \text{Committed and Contracted Expenditure} + \text{Working Capital Requirements}$$

"Cash Held" means the total cash at bank held in the Supplier and the Ark Entities;

"Committed and Contracted Expenditure" means the aggregate capital expenditure that the Ark Entities and the Supplier are contractually or legally committed to incur in the relevant Forward Testing Period;

"Income" means the sum of monies contractually due to be paid to the Ark Entities and the Supplier (other than between themselves) for the relevant Forward Testing Period;

"Loan Repayments Due" means the aggregate amount of:

(a) all scheduled capital repayments and interest and any mandatory prepayments and costs and expenses falling due in the relevant Forward Testing Period in respect of the aggregate indebtedness due by the Ark Entities and the Supplier under the Working Capital Facilities and to any person providing loans or credit under any other committed facilities from time to time; and

(b) to the extent not covered above, the amount drawn under any uncommitted facilities at the relevant time repayment of which could be demanded during the relevant Forward Testing Period,

in each case excluding payments made between any of the Supplier and Ark Entities.

"Required Working Capital" means the working capital required by the Supplier and the Ark Entities for the relevant Forward Testing Period and calculated as:

$$= \text{Committed and Contracted Expenditure} + \text{Working Capital Requirements} \\ + \text{Loan Repayments Due}$$

"Working Capital Facilities" means the committed working capital facility provided by Ark Capital Partners I LP Inc to the Ark Entities pursuant to an agreement dated 2015 and any other committed debt facility available to the Supplier or the Ark Entities (other than between themselves) for the whole of the relevant Forward Testing Period, the existence of which has been notified in writing to the Framework Authority prior to the relevant Forward Testing Period; and

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"Working Capital Requirements" means the forecast aggregate operational cash expenditure of the Ark Entities and the Supplier (other than between themselves) for the relevant Forward Testing Period.

2.3 **Supplier's Covenant**

As at each Quarter Day, the Supplier's Available Working Capital shall not fall below the greater of REDACTED **For the purposes of this paragraph 2.3:**

Supplier's Available Working Capital means the aggregate of any undrawn balance under the committed working capital facility made available to the Supplier by Ark Data Centres Limited pursuant to an agreement dated 2015 or any replacement committed facility (to the extent that such facility is available for drawing for the whole of the next 12 months) and cash held by the Supplier at the relevant Quarter Day; and

Supplier's Anticipated Expenditure means the aggregate of the forecast operational expenditure of the Supplier for the 12 months after the relevant Quarter Day (excluding any payments made to the Ark Entities pursuant to any Key Sub-contract) and any capital expenditure that the Supplier is contractually or legally committed to incur during such period.

2. **Financial testing**

The financial covenants set out in paragraph 2 (*Financial condition*) shall be calculated in accordance with the Accounting Principles and the relevant Financial Status Certificates.

3. **Financial Information**

3.1 The Supplier shall procure that each set of Annual Financial Statements includes a balance sheet, profit and loss account and cashflow statement, each of which shall be prepared in accordance with the Accounting Principles. Each Financial Status Certificate shall, amongst other things:

- (a) set out (in reasonable detail) computations as to compliance with paragraph 2 of this Annex 1 (*Financial condition*);
- (b) shall be signed by two directors of the Supplier, one of which being the Finance Director (or equivalent); and
- (c) set out (in reasonable detail) a comparison between the figures for Income, Committed and Contracted Expenditure and Working Capital Requirements forecast in the previous Financial Status Certificate for the three months Forward Testing Period then starting, and the actual figures for such items for the Reporting Period just ended.

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Attachment 1 to Annex 1

Accounting Principles



Adobe Acrobat
Document

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Attachment 2 to Annex 1

The Lender's Covenants

4. The Borrower covenants with REDACTED as follows:

4.1 **Senior Interest Cover**

The ratio of Net Income to Interest for the Test Period ending on a Test Date set out in column 1 below shall not be less than the level set out opposite in column 2 below:

(1) Test Date	(2) Ratio
Each Test Date which falls in the period from 31 July 2011 to 31 January 2014	REDACTED
Each Test Date which falls in the period from 1 February 2014	REDACTED

4.2 **Loan to Value**

5. **REDACTED** The financial covenants shall be tested by reference to the latest Financial Statements of the Borrower or, if more recent, to the latest management accounts of the Group provided that, where any financial covenant is tested by reference to management accounts in relation to any Test Period ending on or around the end of a financial year, it shall be tested again by reference to the Financial Statements for such financial year when the relevant Financial Statements become available.

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Annex 2

Financial Status Certificate

To the Minister for the Cabinet Office
The Cabinet Office
70 Whitehall
London
SW1A 2AS

Date: [] 20[]

Dear Sir

Financial Status Certificate in respect of a Framework Agreement dated []
made between the (1) the Minister for the Cabinet Office and (2) []
Limited (the “Framework Agreement”)

[DN: 3 month period up to the Quarter Day] (the “**Preceding Reporting Period**”)

[] (the "Quarter Day")

Words and expressions defined in the Framework Agreement shall have the same meaning when used herein. Where any capitalised terms or terms beginning with a capital letter are used but not defined in this certificate or the Framework Agreement, they shall be given their generally accepted meaning in the context of UK accounting methodology or, if they do not have such a meaning, their ordinary meaning within the context of this certificate.

We refer to Schedule 5.2 of the Framework Agreement and certify the following:

1. REDACTED *[Insert reasonable detail of computations for compliance with Financial Covenants]*

[Insert comparison between the figures for Income, Committed and Contracted Expenditure and Working Capital Requirements forecast in previous Financial Status Certificate as against actual figures for the Preceding Reporting Period.]

As at the date of this letter there are no reasonably foreseeable circumstances that will result in the Supplier, any Ark Entity or the Guarantor not being able to meet its financial obligations during the next three months.

We give this certificate believing it to be true.

Yours faithfully

Director

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Director