

SCHEDULE 12

CONFLICT OF INTEREST MITIGATION PLAN

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OFFICIAL-SENSITIVE (COMMERCIAL)**SCHEDULE 12 - CONFLICT OF INTEREST MITIGATION PLAN****1 BACKGROUND**

- 1.1 The Supplier will use all reasonable endeavours to avoid being in a position where there is an actual or potential Conflict of Interest. In the event of a Conflict of Interest, Paragraph 7 of this Schedule 12 (*Conflict of Interest Mitigation Plan*) shall apply.
- 1.2 A Conflict of Interest may occur where the Supplier or an Affiliate is bidding or intends to bid for the opportunity to deliver services where the Supplier or an Affiliate has had involvement in the same or other related project that may give them an unfair advantage. Where there is a risk of conflict, the Supplier will promptly establish the necessary ethical firewall arrangements to prevent that risk from materialising. The Supplier must do this before it performs any bid activity for the relevant procurement. Where such a conflict arises in the circumstances anticipated by Schedule 8.5 (*Exit Management*), the provisions of Paragraph 5 and Annex 2 (*Draft Ethical Wall Agreement*) of that Schedule will apply.
- 1.3 This Schedule 12 (*Conflict of Interest Mitigation Plan*) will detail how the Supplier will undertake to implement and manage the mitigation strategies and procedures to effectively mitigate and prevent a potential or actual Conflict of Interest occurring under this Agreement.

2 MITIGATION STRATEGY

- 2.1 To minimize and/or eliminate any actual or perceived Conflict of Interest, this Schedule 12 (*Conflict of Interest Mitigation Plan*) provides for the proper handling of Authority Confidential Information and the establishment of enhanced information controls in support of the Agreement. The Supplier's Commercial Manager, responsible for the delivery of Services under this Agreement and identified in Schedule 9.2 (*Key Personnel*), shall be assigned responsibility for implementation and oversight of this Schedule 12 (*Conflict of Interest Mitigation Plan*), which, for the avoidance of doubt will apply to all Supplier Personnel.
- 2.2 The mitigation strategy for Conflict of Interest is to control and ensure the correct use of Authority Confidential Information obtained by the Supplier.
- 2.3 The strategy for this Schedule 12 (*Conflict of Interest Mitigation Plan*) will be accomplished through the implementation of:
- (a) a conflict of interest firewall - providing appropriate and reasonable organisation separation between Conflicted Personnel and all other Supplier Personnel through suitable information management controls (the "Firewall");
 - (b) appropriate training and guidance to Supplier Personnel of the rules and implications of conflict of interests and in particular the Firewall;
 - (c) a specific process to handle Conflict of Interest breaches and appropriate remedies; and
 - (d) a proactive continuous monitoring of the performance of the Supplier's obligations under this Schedule 12 (*Conflict of Interest Mitigation Plan*).

OFFICIAL-SENSITIVE (COMMERCIAL)**3 CONFLICT OF INTEREST FIREWALL**

3.1 The Supplier shall implement a Firewall between Conflicted Personnel and other Supplier Personnel as mitigation to prevent a Conflict of Interest arising. The Firewall shall only be in operation for as long as and to the extent that an actual or potential Conflict of Interest exists and/or until the future competitive procurement is concluded or withdrawn. For the avoidance of doubt:

3.1.1 where the Supplier is not bidding for the same or related projects for which a Conflict of Interest exists, there shall be no obligation to implement and/or maintain a Firewall in respect of the same; and

3.1.2 where such a Conflict of Interest arises in the circumstances anticipated by Schedule 8.5 (*Exit Management*), the provisions of Paragraph 5 and Annex 2 (*Draft Ethical Wall Agreement*) of that Schedule will apply.

3.2 The Supplier shall:

3.2.1 deliver, or procure the delivery of, specific training and guidance to Conflicted Personnel so that they understand the responsibilities, constraints and working practices required;

3.2.2 ensure that Conflicted Personnel:

3.2.2.1 comply with Clause 17 (*Confidentiality*) to the extent that they are Supplier Personnel; or

3.2.2.2 comply with DEFCON 531 to the extent that they are Sub-contractor or Affiliate personnel

prior to commencing any work under this Agreement;

3.2.3 procure that Conflicted Personnel shall not disclose any information disclosed to them arising out of or in connection with performance of the Agreement which creates or may create a Conflict of Interest to any other Supplier Personnel who are not Conflicted Personnel, the Supplier, any of its Sub-contractors or anyone outside the Authority without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed. This Paragraph shall not prevent the Supplier and/or any Sub-contractor from following its corporate governance arrangements/ requirements, provided that such arrangements/ requirements do not require disclosure of Authority Confidential Information to any person such that a disclosure would give rise to an unfair advantage to the Supplier and/or any Sub-contractor or give rise to any potential or actual Conflict of Interest;

3.2.4 deliver, or procure the delivery of, general training and guidance to all Supplier Personnel appropriate to conflict of interest and information management controls; and establish a register that records the Conflicted Personnel; and

3.2.5 subject to Paragraph 3.2.3, the Supplier shall ensure that Authority Confidential Information is not shared by Conflicted Personnel with other Conflicted Personnel except to the extent necessary to provide the Services and provided that those Conflicted Personnel are recorded on

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the register referenced in Paragraph 3.2.4 of this Schedule 12 (*Conflict of Interest Mitigation Plan*).

- 3.3 The Supplier shall provide to the Authority a complete and up to date list of the Conflicted Personnel and the Bid Team and reissue such list upon any change to it.
- 3.4 The Supplier assumes responsibility for the administration of the Firewall, including:
- (a) maintenance of confidentiality agreements throughout the Term, including updates to changes in Supplier Personnel governed by confidentiality agreements;
 - (b) provision of appropriate training provided to Supplier Personnel with up-to-date training records made available to the Authority upon request; and
 - (c) monitoring of the information controls set out in this Schedule 12 (*Conflict of Interest Mitigation Plan*) and ensuring that such arrangements are being fully complied with.
- 3.5 Conflicted Personnel will be mandated to sign the Exit Debriefing Certification (Appendix 2 to this Schedule 12 (*Conflict of Interest Mitigation Plan*)) upon cessation of working for the Supplier under this Agreement.

4 CONFLICT OF INTEREST IN ANY RE-PROCUREMENT

- 4.1 In the event that the Supplier and any Sub-contractors form a future team of individuals to work on a bid for a future competition involving the re-procurement of any part of the Services (the "**Bid Team**"), the Supplier shall comply with the terms of Schedule 8.5 (*Exit Management*) and in particular Paragraph 5 and Annex 2 (*Draft Ethical Wall Agreement*) thereof.

5 TRAINING

- 5.1 In accordance with Paragraphs 3.2.1 and 3.2.4 the Supplier shall deliver, or procure the delivery of, the following mandatory training to ensure compliance with this Schedule 12 (*Conflict of Interest Mitigation Plan*):
- 5.1.1 specific conflict of interest Firewall training for Conflicted Personnel; and
 - 5.1.2 the Supplier's standard training modules appropriate to mitigating conflict of interests and the protection of information for all Supplier Personnel.
- 5.2 In accordance with Paragraph 5.1 the Firewall training shall include the following:
- 5.2.1 a specific, tailor-made training module that details the Firewall work process, including guidance on information management controls, restrictions placed on Supplier Personnel in undertaking the Services and the process for reporting a breach of this Schedule 12 (*Conflict of Interest Mitigation Plan*). Annual training records for the appropriate Supplier Personnel shall be updated to record this completion;
 - 5.2.2 a brief to the appropriate Supplier Personnel of this Schedule 12 (*Conflict of Interest Mitigation Plan*) and its implications; and

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5.2.3 a brief to the appropriate Supplier Personnel of the confidentiality agreement in accordance with Paragraph 3.2.2.

5.3 The Supplier shall ensure that the mandatory training in accordance with Paragraph 5.1 is included and completed within the Supplier's annual training and learning plans for Supplier Personnel. Conflicted Personnel shall sign the confirmation of training received set out at Appendix 1 of this Schedule 12 (*Conflict of Interest Mitigation Plan*).

6 AUTHORITY CONFIDENTIAL INFORMATION

6.1 The Supplier shall ensure that:

- (a) Authority Confidential Information shall only always be treated on a 'need to know' basis; and
- (b) Conflicted Personnel shall undertake the Services to meet the needs of the Authority with objective outputs.

7 BREACH & REMEDIES

7.1 The Supplier undertakes to continually monitor its business and the Supplier's Commercial Manager, as defined in Schedule 9.2 (*Key Personnel*) shall, subject to Paragraph 9, report any perceived, alleged or actual breaches of this Schedule 12 (*Conflict of Interest Mitigation Plan*) by Supplier Personnel to the Authority Representative as soon as reasonably practicable after becoming aware of any such perceived, alleged or actual breach.

7.2 Upon notification, the Supplier shall immediately suspend all activities in support of the Services to which the breach relates, unless the Authority specifically requests for the Supplier not to suspend activities.

7.3 The Parties shall meet within two (2) Working Days of the notification in accordance with Paragraph 7.2 to discuss the breach and, including but not limited to:

- 7.3.1 determine and agree why the breach occurred;
- 7.3.2 assess the severity of the breach; and
- 7.3.3 agree when the Authority will report its assessment of the breach to the Supplier.

7.4 The Authority will report its assessment of the breach to the Supplier and if the Authority reasonably considers that the Conflict of Interest is capable of being avoided or removed, the Authority may require the Supplier to take such steps as are necessary to avoid or, as the case may be, remove such conflict of interest in accordance with the Rectification Plan Process (Clause 23 (*Rectification Plan Process*)).

7.5 Without prejudice to all other remedies and relief to which the Authority may be entitled under this Agreement and in law, following a breach of this Schedule 12 (*Conflict of Interest Mitigation Plan*) by the Supplier, the Authority shall be entitled, by notice in writing to the Supplier, to require the Supplier to as soon as reasonably possible (and in any event within five (5) Working Days (unless otherwise agreed by the Parties) of the date of the written notice);

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- 7.5.1 in the event of a breach that has a materially adverse effect on the Authority or where an unfair advantage has been received by the Supplier as a result of such a breach, withdraw from any future competition to the extent necessary to remove the relevant Conflict of Interest to which the breach of this Schedule 12 (*Conflict of Interest Mitigation Plan*) relates; and/or
 - 7.5.2 implement the Rectification Plan Process in accordance with Paragraph 7.4 above which may include, without limitation, specifying in the Rectification Plan the steps the Supplier will take to amend its internal procedures or implementation of any other reasonable and proportionate remedy proposed by the Supplier in relation to a specific breach under this Schedule 12 (*Conflict of Interest Mitigation Plan*).
- 7.6 For clarity, a breach under this Schedule 12 (*Conflict of Interest Mitigation Plan*) by the Supplier that causes a Conflict of Interest constitutes a material Default; where such material Default is not rectifiable, the Authority shall have the right to terminate in accordance with Clause 29 (*Termination Rights*). Where such material Default is rectifiable then the provisions of Clause 23 (*Rectification Plan Process*) and associated termination rights shall apply.
- 7.7 In deciding whether or not to exercise one or more of its rights under Paragraph 7.5 of this Schedule 12 (*Conflict of Interest Mitigation Plan*) following a breach of this Schedule 12 (*Conflict of Interest Mitigation Plan*), the Authority shall take into account the relevant circumstances and seek to act reasonably and proportionately to the nature of the breach and the extent to which any breach is inadvertent, deliberate or wilful, or the result of decisions of the Supplier or of Supplier Personnel.
- 7.8 Subject to Paragraph 7.7, the Authority's decision as to which if any remedy or remedies to pursue following a breach of this Schedule 12 (*Conflict of Interest Mitigation Plan*) shall be taken at the Authority's sole discretion.
- 7.9 The Supplier may implement disciplinary procedures for Supplier personnel in accordance with the Supplier's disciplinary procedures at the time when a breach has occurred.
- 7.10 A breach shall not have been deemed to have occurred where:-
- 7.10.1 the Authority Confidential Information has been made publicly available; or
 - 7.10.2 the alleged breach involves information that is proprietary or information that was lawfully received from another source and is not Authority Confidential Information.

8 AUDITING

- 8.1 The Supplier shall be proactive in monitoring the performance of its obligations under this Schedule 12 (*Conflict of Interest Mitigation Plan*) and shall raise any concerns with the Authority as soon as reasonably practicable.
- 8.2 The Supplier shall demonstrate its compliance with this Schedule 12 (*Conflict of Interest Mitigation Plan*) whenever reasonably required by the Authority and in such manner as is reasonably required by the Authority.

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- 8.3 Subject to Paragraph 9, the Authority or a representative nominated by the Authority shall have the right to Audit the Supplier's compliance with its obligations under this Schedule 12 (*Conflict of Interest Mitigation Plan*) in accordance with Schedule 7.5 (*Financial Reports and Audit Rights*).
- 8.4 Except to the extent that any information (including the Authority's assessment) contains Supplier Confidential Information or Commercially Sensitive Information, this Schedule 12 (*Conflict of Interest Mitigation Plan*) and the Authority's assessment of the Supplier's compliance with its obligations under this Schedule 12 (*Conflict of Interest Mitigation Plan*) shall be treated as Authority Confidential Information and may, subject to first conferring with the Supplier prior to disclosure, be disclosed by the Authority to relevant third parties, including, in order to provide reassurance to other relevant bidders involved in a future relevant competition, where the Authority (acting reasonably) deems it necessary or desirable.

9 PROTECTED INFORMATION

- 9.1 Notwithstanding any other provision of this Agreement, the Supplier shall not be required to comply with this Schedule 12 (*Conflict of Interest Mitigation Plan*) to the extent that doing so may cause the Supplier to be in breach of any Law.

OFFICIAL-SENSITIVE (COMMERCIAL)**APPENDIX 1: CONFLICT OF INTEREST MITIGATION PLAN BRIEFING****CONFLICT OF INTEREST BRIEFING AND TRAINING**

The Supplier's Commercial Manager must ensure that this Schedule 12 (*Conflict of Interest Mitigation Plan*) is briefed to Conflicted Personnel. Appropriate training is provided to Conflicted Personnel prior to commencement of this work. Upon completion of this Conflict of Interest training, notification of such completion shall be given to the Authority and recorded by the Supplier.

CERTIFICATION OF NON-DISCLOSURE OF AUTHORITY CONFIDENTIAL INFORMATION

I certify that I have received the required Supplier Conflict of Interest Mitigation Plan briefing and appropriate training and understand the importance of such training and awareness of potential Conflict of Interest situations in order to protect the Supplier and the Authority's interests. I understand the restrictions and obligations placed on me by this Schedule 12 (*Conflict of Interest Mitigation Plan*) and the confidentiality agreement that I have signed and shall abide by these restrictions in respect to all work undertaken for the Term of this Agreement.

NAME: LAST

FIRST

SIGNATURE:

DATE:

When completed, this form will be retained in the official contract file and will be made available for Audit, upon request.

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APPENDIX 2: CONFLICT OF INTEREST EXIT DEBRIEFING

The Supplier's Commercial Manager in coordination with the Supplier's security team must ensure an exit debriefing for all Supplier Personnel exiting the Supplier's programme team in support of this Agreement.

When completed, this form will be retained in the official contract file and will be made available for Audit, upon request.

CERTIFICATION OF NON-DISCLOSURE OF TBC

I certify that, as set forth in the conflict of interest Firewall confidentiality agreement I previously executed as a condition of my employment or authorisation for access to Authority Confidential Information, I agreed not to use, publish or otherwise disclose either during or subsequent to my employment any data that the Supplier is obligated to maintain in strict confidence. I hereby certify that I have surrendered all documents and written materials, computer programs (cards, tapes, disks, etc.) and any other recorded forms of Authority Confidential Information and any other items which by their nature, are for use only by the Supplier and the Authority. I recognise that my obligations under the confidentiality agreement do not expire as a result of leaving the programme in support of this Agreement or my employment by the Supplier.

NAME: LAST

FIRST

SIGNATURE:

DATE:

When completed, this form will be retained in the official contract file and will be made available for Audit, upon request.