

Schedule 10

Exit Management

1. Overview

- 1.1 The objectives of the exit management process are to facilitate the smooth transfer of the Services to a Successor Supplier in a way that preserves business continuity for the Authority and ensures a smooth and efficient transfer of the Services to a Successor Supplier. In performing the exit management process, both Parties will use all reasonable efforts to adhere to the partnering principles set out in Clause 6 (Partnering and Joint Objectives) in order to minimise risks and costs for both Parties.
- 1.2 This Schedule 10 (**Exit Management**) sets out the process by which the Supplier must provide Termination Assistance. It is acknowledged that the provision of Termination Assistance may be triggered by the expiry of this Agreement or otherwise as provided in this Agreement.

2. General Support and Assistance

The Supplier undertakes (at no additional cost to the Authority) to provide all reasonable assistance and support to the Authority with regard to:

- (a) any review carried out by the Authority as to whether to transfer Services back to the Authority; and
- (b) any possible Procurement Process being considered by the Authority;

in accordance with the provisions of Appendix 1.

3. Assistance prior to transfer of Services

During the Exit Period the Supplier undertakes to continue to provide the Services and to assist with exit management by providing Termination Assistance in accordance with the provisions of Appendix 2.

4. Assistance following a transfer of Services

If the Authority appoints a Successor Supplier other than the Supplier to provide the Services (or any part of the Services) then, with effect from the Services Transfer Date, the Supplier shall provide Termination Assistance in accordance with the provisions of Appendix 3.

5. TUPE

The Parties undertake to comply with the provisions of Appendix 4 with regard to TUPE and any employees who may transfer to a Successor Supplier.

6. Outline Exit Management Plan

6.1 Within twelve (12) months of the Effective Date, the Supplier must provide an Outline Exit Management Plan for review by the Authority. The Outline Exit Management Plan must include, but not be limited to, the elements set out in Appendix 5.

6.2 The Authority may notify the Supplier of any suggested revisions which must be incorporated into the Outline Exit Management Plan or discussed and resolved as soon as practicable by the Parties.

6.3 The Parties shall review and update the Outline Exit Management Plan:

- (a) annually, by each anniversary of the Effective Date; or
- (b) as soon as reasonably practicable in the event of a material change in any aspect of the Services which could reasonably be expected to impact upon the Outline Exit Management Plan,

in order to ensure that the Outline Exit Management Plan remains relevant as the Services develop and in order to reflect changes to any part of the Services.

6.4 Whenever either Party proposes that changes are required to the Outline Exit Management Plan, the Parties must, as soon as reasonably practicable, discuss the proposed amendments and (acting reasonably) give their written approval to a new Outline Exit Management Plan.

7. Ordinary Course of Business

Throughout any Exit Period, the Supplier must:

- (a) not embark on any actions that fall outside the Ordinary Course of Business without the Authority's prior written consent;
- (b) continue to devote such time and resources to the continued provision of the Services so as to ensure that there is no disruption to the Services and no reduction in Service Levels; and
- (c) notify the Authority of any act, omission or conduct which adversely affects

the Supplier Systems, Hardware, Software or Personnel required to deliver any of the Services during the Term.

8. Conflicts of Interest

With effect from the date on which the Authority notifies the Supplier in writing of its intention to commence a Procurement Process (unless a different date is agreed between the Parties), the Supplier must:

- (a) ensure that no individual who participates or has participated or is or has been involved in the provision of the Services is also a member of (nor is transferred into) its bid team in respect of the Services covered by the Procurement Process; and
- (b) that the Supplier maintains in place effective Ethical Walls in order to ensure that any information that may be relevant to the bid team is not communicated to it by those involved in the provision of the Services.

9. Charging for Termination Assistance

Save where expressly provided to the contrary in this Schedule, the Supplier shall provide Termination Assistance to the Authority at no additional cost.

10. Subcontractors

Where a provision in Appendixes 1, 2, 3 or 4 imposes an obligation on the Supplier and/or where the Supplier provides an indemnity, undertaking or warranty in those Appendixes, the Supplier shall procure that each of its Subcontractors shall comply with such obligation and/or provide such indemnity, undertaking or warranty to the Authority and/or Successor Supplier.

Appendix 1

General Support and Assistance

1. General

Whenever notified that the Authority intends to commence a Procurement Process, the Supplier must, with effect from such notice, co-operate (fully and in good faith) with the Authority for the purposes of any Procurement Process and provide the Termination Assistance set out in this Appendix 1 in order to ensure a seamless and successful transition of the Services to a Successor Supplier.

2. Provision of Exit Information

2.1 In the circumstances referred to in Paragraph 1 of this Appendix 1, the Authority may require the Supplier to provide the Authority (within twenty (20) Working Days of a written request unless otherwise agreed by the Parties) with accurate and complete Exit Information (as defined in Paragraph 2.2 below of this Appendix 1) and other co-operation regarding the Supplier's provision of the Services. The level of detail to be provided by the Supplier must be such as would in circumstances where the Authority has communicated the possibility of its pursuing a Procurement Process, be reasonably necessary for a third party to:

- (a) prepare an informed, non-qualified offer for those Services; and
- (b) not be disadvantaged in the Procurement Process compared to the Supplier (if the Supplier is invited to participate).

2.2 Where used in this Schedule "**Exit Information**" shall mean any written or oral information or data which is material in detail or in substance and which describes:

- (a) the nature of any of the Operational Services provided to the Authority and details of any new work being undertaken as part of the Services;
- (b) the following information about the provision of those Services:
 - (i) number of staff involved in the provision of the Services that are the subject of the Procurement Process (the "**Relevant Services**");
 - (ii) all such information which a transferor is obliged to notify to a transferee pursuant to Regulation 11(2) of TUPE ("**Employee Liability information**") about staff involved in the provision of the

Relevant Services;

- (c) such other information and data as a reasonable contractor would require in order to ensure a seamless and successful transition of the Services to a Successor Supplier.
- 2.3 The information provided under paragraph 2.2(b) may be anonymised or coded by the Supplier in such a way as to prevent the disclosure of Personal Data. If the disclosure of Personal Data is unavoidable, the Authority acting as Data Controller undertakes that:
 - (a) it will only use the Personal Data for the purposes set out in this Schedule; and
 - (b) it will keep the Personal Data secure in accordance with the DPA.
- 2.4 The Authority shall obtain from each potential tenderer to whom it discloses such information pursuant to this Schedule a binding, written undertaking that such potential tenderer shall:
 - (a) not disclose such information;
 - (b) not use such information for any purpose other than the purpose of preparing a bid;
 - (c) keep such information secure; and
 - (d) return or destroy such information once the Authority has notified the potential tenderer of its decision not to proceed with a bid by the tenderer giving the undertaking.
- 2.5 Within twenty (20) Working Days (unless otherwise agreed between the Parties) of being so requested by the Authority, the Supplier shall provide, and during the Term keep updated and accessible to the Authority, in a fully indexed and catalogued format, all the information relating to the Personnel reasonably necessary to enable:
 - (a) the Authority to issue tender documents for the future provision of services which are the same as or similar to the Services, and
 - (b) a third party to prepare an informed, non-qualified offer for those services and not be disadvantaged in any Procurement Process compared to the Supplier (if the Supplier is invited to participate).

3. Updating of the Information

The Supplier must:

- (a) notify the Authority of any material changes to the Exit Information referred to in Paragraph 2.2 above which may adversely impact upon the provision of any of the Services and must consult with the Authority regarding such proposed material changes; and
- (b) provide complete updates of the Exit Information on an as requested basis, such updates to be provided to the Authority as soon as reasonably practicable and in any case within two (2) weeks of a request in writing from the Authority. The Supplier must also update the Exit Information as at the Services Transfer Date.

4. Use of Services Information

The Exit Information to be compiled and provided pursuant to this Appendix 1, as well as any Exit Information obtained during the Term, may be used by the Authority for its, or any potential Successor Supplier's, information (and, in particular, may be disclosed by the Authority as part of its Procurement Process), subject to the appropriate and reasonable confidentiality undertakings being given by any potential Successor Supplier that is a third party.

Appendix 2

Termination Assistance in the period prior to the Services Transfer Date

1. Application of Appendix 2

With effect from the beginning of the Exit Period, the Supplier must provide the Termination Assistance set out in this Appendix 2.

2. Development of the Exit Management Plan and Services Transfer Plan

Exit Management Plan

- 2.1 Within twenty (20) Working Days (unless otherwise agreed) of the beginning of the Exit Period the Supplier must provide the Authority with a draft Exit Management Plan. At a minimum, the draft Exit Management Plan must contain provisions covering the items listed in the Outline Exit Management Plan and such other information and plans as would be required in order to ensure a seamless and successful transition of the Services.
- 2.2 The Authority will respond within twenty (20) Working Days (unless otherwise agreed) with its comments on the draft Exit Management Plan. The Supplier must take due and proper regard of the Authority's comments and undertakes to incorporate all reasonable comments and requests of the Authority in a revised draft Exit Management Plan.
- 2.3 Within three (3) months (unless otherwise agreed) of the beginning of the Exit Period, the Parties shall meet to discuss in good faith and agree the final Exit Management Plan. Both Parties agree to act reasonably in order to finalise as soon as possible any discussions regarding the Exit Management Plan.
- 2.4 The Parties must review and update the Exit Management Plan every three (3) months throughout the Exit Period in order to ensure that the Exit Management Plan remains current and relevant.

Services Transfer Plan

- 2.5 On the appointment of a Successor Supplier, the Supplier must commence discussions with the Authority and the Successor Supplier concerning the development of the Services Transfer Plan, to be based on the Exit Management Plan agreed by the Supplier and the Authority, with a view to the Services Transfer Plan being agreed and finalised as soon as reasonably practicable before the

planned/anticipated Services Transfer Date.

- 2.6 The final Services Transfer Plan shall be agreed between the Parties after consultation with the Successor Supplier (if any) and shall only become effective once approved in writing by the Authority. The Supplier must then implement the Services Transfer Plan.
- 2.7 Regardless of when any Successor Supplier is appointed, and notwithstanding the foregoing, the Supplier must promptly incorporate all the Authority's and the Successor Supplier's reasonable suggestions and amendments before promptly finalising any Services Transfer Plan and ensure that the Services Transfer Plan contains all such information as would be required in order to ensure a seamless and successful transition of the Services to a Successor Supplier. The Supplier agrees that the Successor Supplier shall have at least twenty (20) Working Days to review the draft Services Transfer Plan.

3. Exit Management Roles and Progress Reports

Exit Management

- 3.1 As soon as reasonably practicable following the commencement of an Exit Period and in any event within twenty (20) Working Days, both Parties shall appoint a suitable representative ("**Exit Manager**") to manage the process of transfer on a daily basis. The appointment of the Supplier's Exit Manager shall be subject to the Authority's prior approval.
- 3.2 The Supplier must use all reasonable efforts to minimise:
- (a) the Authority's costs and management time resulting from the transfer of the Services; and
 - (b) the time for agreeing the Exit Management Plan and the Services Transfer Plan and implementing them.

Progress Reports

- 3.3 The Supplier must provide fortnightly progress reports detailing the status of the exit tasks as against the Exit Management Plan and the Services Transfer Plan, setting out any actual or anticipated problems or delays and the actions that the Supplier is taking to resolve such problems.

4. Compliance with Exit Management Plan

- 4.1 If the Supplier fails to comply with any of its obligations with respect to the Exit Management Plan and/or Services Transfer Plan, it must arrange (at its own cost) all such additional resources as are necessary to fulfil the applicable obligation as soon as reasonably practicable.
- 4.2 Unless otherwise agreed, the Supplier must take responsibility for the overall management of all the Supplier's transfer and exit activities envisaged in this Schedule and must ensure that:
- (a) the tasks are kept on schedule in accordance with any timetable set out in the Exit Management Plan and/or Services Transfer Plan; and
 - (b) any problems encountered in the timely completion of each task identified in the Exit Management Plan and/or Services Transfer Plan, whether the task is the responsibility of the Supplier or not are promptly identified and resolved, or assist the Authority and the Successor Supplier in the resolution of such problem or task.

5. Successor Supplier's Access

Co-operation

- 5.1 If a party other than the Supplier is appointed as the Successor Supplier, the Supplier must, as part of its Termination Assistance obligations, co-operate fully with the Authority and the Successor Supplier in order to effect a seamless and successful transfer of the Services.

Attendance at project meetings

- 5.2 After the appointment of the Successor Supplier, the Authority may be accompanied by the Successor Supplier at project meetings with the Supplier in respect of the provision of the Services, provided that the Supplier may require the Successor Supplier to absent itself from part or all of such meetings where sensitive commercial or business issues concerning the Supplier's business are to be discussed. The Supplier must also consult the Authority (and allow the Authority to involve the Successor Supplier, if required, in the opinion of the Authority) about planned changes to the provision of any of the Services particularly where any activities and events address matters which affect the Services or which are to be implemented after the Services Transfer Date.

6. Security and Fraud

The Supplier must continue to comply with its security obligations under Schedule 9

(**Information Security Assurance and Accreditation**) and obligations relating to the detection of fraud referenced elsewhere in this Agreement.

7. Provision of Information Lists

- 7.1 Unless already provided by the Supplier pursuant to an obligation under Appendix 1, the Supplier must provide the Exit Information referred to in Paragraph 2.2 of Appendix 1 and update the same at the intervals referred to in Paragraph 3 of Appendix 1.
- 7.2 The Supplier must provide copies of the Exit Information list to the Authority and/or any Successor Supplier, whenever requested by the Authority.

8. TUPE

The Parties acknowledge and accept that the Authority may appoint a Successor Supplier to provide services to replace the Services or may provide such services itself on or after the Termination Date or following any termination or partial termination of Services pursuant to this Agreement. The Parties recognise that TUPE is unlikely to apply and shall use all commercially reasonable endeavours to minimise the application of TUPE. However, the Parties accept that, unless the Supplier is re-appointed, the appointment of a Successor Supplier or provision of such services by the Authority may result in a transfer on the Services Transfer Date of the Termination Transfer Employees' employment to the Successor Supplier (or its subcontractors) or the Authority (or its subcontractors) in accordance with TUPE. In the event that TUPE does apply, the provisions relevant to the period prior to the Services Transfer Date set out in Appendix 4 shall apply.

Appendix 3

Termination Assistance on and following the Services Transfer Date

1. Intellectual Property Rights

- 1.1 With effect from the Services Transfer Date, the Supplier must cease all use of, and either destroy or return (at the Authority's option), all Authority Data, Authority Software, Authority Materials and other such information regarding the Authority's Service Requirements.
- 1.2 Upon request from the Authority to do so, the Supplier shall confirm in writing that it has complied in full with its obligations under Paragraph 1.1 above.

2. TUPE

As described in Paragraph 8 of Appendix 2, the Parties recognise that TUPE is unlikely to apply and shall use all commercially reasonable endeavours to minimise the application of TUPE. However, the Parties accept that, unless the Supplier is re-appointed, the appointment of a Successor Supplier or provision of such services by the Authority may result in a transfer on the Services Transfer Date of the Termination Transfer Employees' employment to the Successor Supplier (or its subcontractors) or the Authority (or its subcontractors) in accordance with TUPE. In the event that TUPE does apply, the provisions relevant to the period on and following the Services Transfer Date set out in Appendix 4 shall apply.

Appendix 4

Transfer of Undertakings (TUPE)

1. General

- 1.1 In the event of the termination or expiry of this Agreement or the termination of any part of the Services provided by the Supplier under this Agreement, the provisions of TUPE may apply to transfer an employee or employees of the Supplier or its Subcontractors to a Successor Supplier or Successor Suppliers.
- 1.2 The Supplier and the Authority shall (and the Supplier shall procure that any Subcontractor shall) fully comply and provide all reasonable assistance to each other and to any Successor Supplier to enable them to fully comply with all of their respective obligations under TUPE or other applicable legislation.
- 1.3 In the event that TUPE applies, the Termination Transfer Employees shall transfer to the Successor Supplier on the Services Transfer Date.
- 1.4 In the Outline Exit Management Plan, the Supplier shall provide details of the TUPE consultation and notification processes and a plan defining the key steps within a TUPE transfer, including the following:
 - (a) when employee data is provided;
 - (b) what employee data is provided;
 - (c) data structures and formats;
 - (d) detailed employee consultation processes, including the consultation document production and review;
 - (e) termination joint personnel/human resource team establishment and management;
 - (f) benefits transfer arrangements, particularly issues relating to the transfer of pension rights and/or obligations of compensation events for pensions; and
 - (g) any ongoing grievances, or disputes with, individual employees.

2. Termination Assistance in the Period Prior to the Services Transfer Date

- 2.1 The Supplier shall supply the information regarding staff as set out in Paragraph 2.2 of Appendix 1 as part of the Exit Information provided on request by the Authority on notification of its intention to commence a Procurement Process
- 2.2 Where Employee Liability Information has been provided and the Supplier makes or becomes aware of any changes or discovers any new information, the Supplier shall notify the Authority as soon as reasonably practicable.
- 2.3 The Supplier warrants to the Authority that any Employee Liability Information (including copies thereof) when provided shall be complete and accurate in all respects and shall be kept complete and accurate in accordance with this Agreement.

Draft List

- 2.4 Within thirty (30) Working Days of a written request by the Authority, the Supplier shall compile a draft list of the Personnel (if any) whom it considers will transfer to the Successor Supplier as a result of TUPE.
- 2.5 The draft list shall be finalised five (5) Working Days prior to the Services Transfer Date and shall at a minimum include Employee Liability Information in relation to such Personnel.
- 2.6 The Supplier warrants that to the best of its knowledge and belief as at the date five (5) Working Days prior to the Services Transfer Date:
- (a) the final approved list and the Employee Liability Information relating to the Termination Transfer Employees shall be complete and accurate in all material respects;
 - (b) all the Termination Transfer Employees shall be employed by the Supplier or a Subcontractor and no person employed by the Supplier or a Subcontractor (other than the Termination Transfer Employees) shall be wholly or mainly assigned to work in the provision of the Services being transferred (or, on a partial cessation of the Services, the Services ceasing to be performed by the Supplier); and
 - (c) it has disclosed to the Authority to the extent it can lawfully do so all material terms and conditions of employment relating to the Termination Transfer Employees.

- 2.7 If there are any changes to the information provided in Paragraph 2.6 above between the date upon which the Supplier's final list of Termination Transfer Employees is produced and the Services Transfer Date, the Supplier shall promptly notify the Authority and warrant the revised information to the same extent as listed in this Paragraph as at the time of such notification.
- 2.8 The Authority shall be permitted to copy information provided to it under these provisions:
- (a) to any person who has been invited to tender for the provision of services which are the same as or similar to the Services; and
 - (b) to any Successor Supplier;
- provided that the Authority complies (and procures compliance by recipients) with the DPA and any other relevant obligations or restrictions imposed by Law.
- 2.9 The Authority shall obtain from each potential tenderer to whom it discloses such information pursuant to this Schedule a binding, written undertaking that such potential tenderer shall:
- (a) not disclose such information;
 - (b) not use such information for any purpose other than the purpose of preparing a bid;
 - (c) keep such information secure; and
 - (d) return or destroy such information once the Authority has notified the potential tenderer of its decision not to proceed with a bid by the tenderer giving the undertaking.
- 2.10 If a party other than the Supplier is appointed as the Successor Supplier (which, for the avoidance of doubt, may include the Authority), the Supplier shall as reasonably requested, co-operate fully and in good faith with the Authority and any Successor Supplier (as the case may be) in order to effect a smooth transfer of the Services and Termination Transfer Employees.

Regulation 13 - Consultation

- 2.11 Where all or part of the Services (or substantially similar services) are to be provided by a Successor Supplier(s) (or subcontractors to the Successor Supplier(s)) after the Services Transfer Date, the Authority will or will procure, in good time before the

Services Transfer Date, that the Successor Supplier(s) (or subcontractors to the Successor Supplier(s)) provide to the Supplier or any appropriate Subcontractor such information as is necessary for the Supplier or the Subcontractor to discharge their duties under Regulation 13 of TUPE.

- 2.12 The Supplier also agrees that it shall provide the Authority and the Successor Supplier with an update of the data referred to at Paragraph 2.6 of this Appendix 4 immediately before the Services Transfer Date and that such data shall be complete and accurate in all material respects.
- 2.13 Prior to the Services Transfer Date, the Supplier shall take all reasonable steps that are required to ensure that there is a smooth transfer of the Termination Transfer Employees to the Successor Supplier(s) (or their respective subcontractors), as appropriate.

Meetings and Communication

- 2.14 The Authority and the Successor Supplier shall be offered the opportunity to hold their own meetings with the Termination Transfer Employees prior to the Services Transfer Date in the presence of the Supplier, and attend and participate in any meetings held or participated in by the Supplier, prior to the Services Transfer Date, at which information is given to, or there is consultation with, Termination Transfer Employees and their representatives.
- 2.15 The Authority or the Successor Supplier (as appropriate depending on which the employees are transferring to) and the Supplier shall jointly communicate with the Termination Transfer Employees in relation to the transfer of their employment, using a notice in a form to be agreed between the parties before the Services Transfer Date.

3. TUPE - Restrictions prior to Termination

- 3.1 At any time during the twelve (12) months prior to the Termination Date and during any Exit Period, the Supplier shall not, without the prior written consent of the Authority (which shall not be unreasonably withheld or delayed) (and where applicable shall procure that any of its affiliates or agents and Subcontractors will not):
- (a) vary, purport or promise to vary the terms or conditions of employment or engagement or service of any Termination Transfer Employees (including promises to make any additional payment or bonus or provide any additional benefit) except:

- (i) in the Ordinary Course of Business; and/or
- (ii) in line with the Supplier's or Subcontractor's normal employment practices;

provided that the Supplier shall notify the Authority of all such variations and explain to the Authority the background for such variations;

- (b) terminate (or give notice to terminate) the employment or engagement of any of the Personnel other than lawfully for misconduct or lack of capability or otherwise in the Ordinary Course of Business;
- (c) recruit any new employee, contractor, subcontractor or consultant (other than those already providing any part of the Services) in order to provide any of the Services or assign any additional individuals to the provision of the Services (other than as reasonably required to ensure the Supplier's ability to comply with its obligations under this Agreement);
- (d) change the role or responsibilities of any person so that he or she becomes involved in the provision of the Services to a sufficient degree that he or she would become a Termination Transfer Employee;
- (e) transfer any Personnel involved in the provision of the Services away from the provision of the Services otherwise than in the Ordinary Course of Business; or
- (f) prevent or restrict or hinder any Personnel (or seek to do any of the foregoing) from working for the Authority or a Successor Supplier.

Termination Assistance in relation to TUPE on and following the Services Transfer Date

Accrued Liabilities

3.2 The Supplier undertakes with the Authority and any Successor Supplier:

- (a) that it shall continue to perform and observe all of its obligations in connection with the contracts of employment of the Termination Transfer Employees up to the Services Transfer Date;
- (b) to pay to the Termination Transfer Employees all sums to which they are entitled up to the Services Transfer Date including all wages and salaries, sick pay, maternity pay, any liability to taxation, expenses, accrued bonus, commission and other sums payable in respect of any period up to the

Services Transfer Date and to make all appropriate statutory deductions in respect of payments made to the Termination Transfer Employees; and

- (c) that by the Services Transfer Date it shall (and will use reasonable endeavours to procure that any Subcontractor shall) have satisfied all of its obligations with respect to all outgoing and accrued liabilities for which it is liable as employer of the Termination Transfer Employees who transfer to the Authority or a Successor Supplier in accordance with TUPE, including wages, contractual bonuses, pension contributions, commission, payments of PAYE, tax, social security and national insurance contributions.

3.3 The Authority undertakes with the Supplier to, or to procure that any Successor Supplier shall, pay to the Termination Transfer Employees all sums to which they are entitled arising on or after the Services Transfer Date including all wages and salaries, sick pay, maternity pay, any liability to taxation, expenses, accrued bonus, commission and other sums payable in respect of any period on or after the Services Transfer Date and make all appropriate statutory deductions in respect of payments made to the Termination Transfer Employees.

3.4 No later than ten (10) Working Days following the Services Transfer Date, the Supplier must (and will use reasonable endeavours to procure that any Subcontractor shall) provide to the Authority or the Successor Supplier updated payroll information following the final payroll run and relevant tax and statutory details in relation to any Termination Transfer Employees.

No solicitation of Termination Transfer Employees

3.5 The Supplier agrees that, in the period of six (6) months after the Services Transfer Date it shall not (and shall use reasonable endeavours to procure that no Subcontractor shall) solicit any Termination Transfer Employee from the Authority or a Successor Supplier or a subcontractor to a Successor Supplier to which the relevant Termination Transfer Employee's employment has transferred on or following such termination or expiry without the Authority's or the Successor Supplier's or subcontractor to a Successor Supplier's (as appropriate) prior written consent. This Paragraph shall not prevent the Supplier from employing any Termination Transfer Employee who has made an unsolicited response to a general recruitment advertisement published by the Supplier.

Administering the Transfer of Employment

3.6 The Supplier shall (and shall use reasonable endeavours to procure that any Subcontractor shall) fully and promptly co-operate in good faith with all reasonable requests of the Authority to procure the seamless and successful transfer to the

Successor Supplier of the Termination Transfer Employees who transfer to the Authority or a Successor Supplier or a subcontractor to a Successor Supplier.

3.7 If TUPE shall have effect, the following provisions shall apply:

- (a) The Authority shall notify the Supplier as soon as reasonably practicable before the date of termination or cessation who shall be the Successor Supplier(s). The Authority shall use all reasonable endeavours to procure that any Successor Supplier shall comply with its duties pursuant to regulation 13 of TUPE and shall provide to the Supplier such information as it shall reasonably require in order to meet its obligations as employer pursuant to regulation 13 of TUPE.
- (b) The Supplier shall, during the Exit Period upon reasonable request by the Authority and subject to compliance with the DPA and any other applicable Laws, provide the Authority with anonymised Employee Liability Information relating to such relevant employment records as it may reasonably require to put in place administrative arrangements for the transfer of Termination Transfer Employees. Subject to compliance with the DPA and any other applicable Laws, the Supplier will allow the Authority to have copies of any such records and will provide copies of all necessary and relevant records relating to the Termination Transfer Employees to the Successor Supplier on the Services Transfer Date.
- (c) The Authority and the Supplier acknowledge and accept that under TUPE, the contracts of employment of each Termination Transfer Employee shall have effect (except in relation to occupational pension scheme benefits excluded under regulation 10 of TUPE) from the Services Transfer Date as if originally made between the Termination Transfer Employees and the Successor Supplier.
- (d) If any person challenges that there is a relevant transfer (or establishes that there is not) the Parties nevertheless agree (and the Authority shall procure that any Successor Supplier shall agree) to apply the provisions of this Paragraph as though TUPE did so apply. This shall include the Successor Supplier agreeing to employ the Termination Transfer Employees with continuity of service (where legally possible) and on substantially the same terms and conditions of employment.
- (e) The Supplier warrants to the Authority and to the Successor Supplier that as at the Services Transfer Date no Termination Transfer Employee (save where the Supplier shall have notified the Authority and the Successor Supplier to the contrary):

- (i) shall be entitled or subject to any additional terms and conditions of employment other than those disclosed to the Authority;
- (ii) shall be the subject of formal disciplinary proceedings;
- (iii) shall have received a written warning (other than a warning that shall have lapsed);
- (iv) shall have taken or shall be the subject of a grievance procedure;
- (v) shall have objected in accordance with regulation 4(7) of TUPE to his or her employment transferring to the Successor Supplier under TUPE; or
- (vi) shall have threatened to commence or commenced legal proceedings against the Supplier or any Subcontractor (as the case may be).

4. TUPE Indemnities

Indemnities given by the Supplier

4.1 The Supplier shall indemnify the Authority and the Successor Supplier and their subcontractors in relation to:

- (a) any claim (save for any claim for personal injury which is covered by insurance) by or on behalf of any Termination Transfer Employee in respect of any fact or matter concerning or arising from that Termination Transfer Employee's employment by the Supplier, or its termination, before the Services Transfer Date; and
- (b) any claim by any Termination Transfer Employee or any appropriate representative of any Termination Transfer Employee relating to any failure by the Supplier to comply with the obligations of Regulation 13 of TUPE (obligation to inform and where appropriate consult appropriate representatives of employees affected by a transfer of an undertaking), save to the extent such claim arises from any failure of the Authority or the Successor Supplier or their subcontractors to comply with their respective obligations under Regulation 13.

Successor Supplier's Indemnity

- 4.2 The Authority shall and shall procure that the Successor Supplier shall indemnify the Supplier against all Losses arising out of or in connection with:
- (a) the employment or termination of employment by the Authority, the Successor Supplier or their subcontractors of any Termination Transfer Employee in the period on and after the Services Transfer Date;
 - (b) any claim or other legal recourse brought by or on behalf of any Termination Transfer Employee arising out of the resignation of such Termination Transfer Employee before the Services Transfer Date on account of substantial detrimental changes to his contract of employment that are proposed or shall occur as a consequence of the actions of the Authority, the Successor Supplier or their subcontractors in the period on or after the Services Transfer Date; or
 - (c) any failure by the Authority, the Successor Supplier or their subcontractors to provide sufficient information to the Supplier to enable the Supplier to comply with its obligations under regulation 13 of TUPE.

Subcontractors

- 4.3 The Supplier must:
- (a) use reasonable endeavours to procure that each of the Subcontractors provides an indemnity to the Authority and any Successor Supplier and any subcontractor engaged by the Authority and any Successor Supplier (which is enforceable directly by the Authority and the Successor Supplier and any such subcontractor) in respect of any Termination Transfer Employee previously employed by that Subcontractor to the same extent as the Supplier is providing indemnities in respect of Termination Transfer Employees previously employed by the Supplier; or
 - (b) provide such indemnity itself.

5. Apportionments, Information and General

- 5.1 Subject to Paragraphs 5.2 and 5.3 below, in respect of the Termination Transfer Employees there shall be apportioned as at the Services Transfer Date pro rata all emoluments and outgoings (including all wages, benefits, bonuses, PAYE, and employers' NICs) between the Supplier and the Successor Supplier. The Supplier shall be responsible for the period up to the Services Transfer Date and the Authority shall or shall procure that the Successor Supplier shall be responsible for the Services Transfer Date and the period after the Services Transfer Date.

- 5.2 If any Termination Transfer Employee has taken holiday in excess of holiday entitlement which has accrued in respect of that Termination Transfer Employee at the Services Transfer Date, the Authority shall or shall procure that the Successor Supplier shall pay to the Supplier within one (1) month of the Services Transfer Date a sum equivalent to pay in lieu of such excess holiday. If any Termination Transfer Employee has not taken all holiday which has accrued to that Termination Transfer Employee at the Services Transfer Date, the Supplier will pay to the Authority or the Successor Supplier (as appropriate) within one (1) month of the Services Transfer Date a sum equivalent to pay in lieu of such accrued but untaken holiday.
- 5.3 The Supplier must, at the request of the Authority or the Successor Supplier, deliver or make available to the Authority or the Successor Supplier, as soon as practicable following the Services Transfer Date on receipt of such request, copies of all personal files, tax, PAYE, social security and national insurance records and copies of any other documents or records (agreed by the Authority, the Successor Supplier and the Supplier) which in the reasonable opinion of the Authority or the Successor Supplier are relevant to the Termination Transfer Employees, and:
- (a) the Supplier shall preserve the originals of such records or documents for a period of at least three (3) years (or such longer period as may be required by any relevant Laws) after the Services Transfer Date and shall allow the Authority or the Successor Supplier access to the same at all reasonable times to the extent necessary to enable the Authority or the Successor Supplier to deal with any matters relating to the Termination Transfer Employees and any employees who transfer pursuant to TUPE and shall, as and when requested by the Authority or the Successor Supplier to do so, produce the same to the relevant authorities; and
 - (b) not dispose of or destroy any such records or documents after the expiration of three (3) years after the Services Transfer Date without first informing the Authority and the Successor Supplier of its intention to do so and, if the Authority or the Successor Supplier so requests, delivering to the requesting party such of the records or documents as the Authority or the Successor Supplier may request.

6. Additional employees

The Parties agree that if any employee of the Supplier who was employed immediately prior to the Services Transfer Date (other than a Termination Transfer Employee) should claim to be employed by the Successor Supplier or the Authority as a result of the provisions of TUPE applying in relation to this Agreement then:

- (a) the Authority shall, upon becoming aware of such claim, notify the Supplier in

writing within fourteen (14) Working Days and allow the Supplier the period of twenty eight (28) Working Days from receipt of such notification either to offer employment to that person or to take other steps with a view to obtaining a written withdrawal of the person's claim to be employed by the Successor Supplier or the Authority;

- (b) if the person is accepted into employment by the Supplier, the Authority shall, or shall procure that the Successor Supplier shall, immediately release that person from his or her employment or alleged employment;
- (c) the Supplier shall remain responsible throughout the period between the Services Transfer Date and either the date of withdrawal of that person's claim or the Successor Supplier's or the Authority's release for the payment of all salary and benefits to that person and shall indemnify the Authority and the Successor Supplier against all Losses arising out of or in connection with non-payment of the same;
- (d) if the person's claim that they are employed by the Successor Supplier or the Authority is not withdrawn or resolved within twenty eight (28) Working Days of the Supplier being notified, the Successor Supplier or the Authority may terminate that person's employment within fourteen (14) Working Days of the twenty eight (28) Working Day period expiring; and in such circumstances the Supplier shall indemnify the Authority and the Successor Supplier against all Losses arising out of or in connection with:
 - (i) any Claim brought by such person in respect of any fact or matter concerning or arising from employment with the Supplier prior to the Services Transfer Date;
 - (ii) such person's salary and benefits from the Services Transfer Date to the date of termination of his employment; and
 - (iii) the termination of the employment of such person by the Successor Supplier or the Authority but excluding any Losses, and claims and demands arising out of or in connection with any claim of discrimination, any failure of the Successor Supplier or the Authority to follow any statutory minimum dismissal procedures or the payment by the Successor Supplier or the Authority of any ex gratia sum or settlement which is not approved in writing in advance by the Supplier,

provided that the Authority, the Successor Supplier or their subcontractors take all reasonable steps to minimise all losses.

Appendix 5

Outline Exit Management Plan

1. General

The Supplier must address and/or provide as part of the Outline Exit Management Plan;

- (a) details of the Termination Assistance to be provided by the Supplier prior to the Services Transfer Date;
- (b) details of the support and consultancy to be provided by the Supplier after the Services Transfer Date;
- (c) how it will continue to provide the Services so as to ensure that there is no disruption to the Services and no reduction in the Service Levels during the Exit Period; and
- (d) details of any Authority obligations necessary for the effective provision of Termination Assistance by the Supplier.

2. Additional

Without prejudice to the generality of the foregoing, the Supplier's Outline Exit Management Plan shall also cover the following areas:

- (a) The Supplier shall provide:
 - (i) all information in respect of governance and reporting arrangements including project management, escalation and notification, Change Control Procedures, approval, quality control, risk and issues management and actions management;
 - (ii) a fully populated and resourced project plan;
 - (iii) completed risk and issues logs;
 - (iv) provision of information and data (including for relevant staff and the overall Services);
 - (v) details of where information and data is stored and/or available;

- (vi) an outline of dependencies and interoperability of subject areas;
 - (vii) Authority resources required to enact the Outline Exit Management Plan, (e.g., by types, skills, numbers and timeframes); and
 - (viii) details of relevant review processes.
- (b) The Supplier shall detail:
 - (i) how and when each of the Services will transfer with minimal disruption and how each of the Services will be provided throughout the transfer in a secure environment, disaster recovery arrangements and arrangements to ensure a seamless transfer of Services;
 - (ii) what specific security tasks are necessary at termination;
 - (iii) migration of data; and
 - (iv) Staff Transfer.
- (c) The Supplier shall provide details of the TUPE consultation and notification processes and a plan defining the key steps within a TUPE transfer, including the information set out in Paragraph 1.4 of Appendix 4.
- (d) For communications, the Supplier shall provide support to the Authority in preparing and disseminating communications material for key stakeholders within the Authority.