

## **SCHEDULE 19**

### **Exit Management**

#### **1 OBLIGATIONS DURING THE CONTRACT TERM TO FACILITATE EXIT**

- 1.1 During the Contract Term, the Service Provider shall create and maintain a register of all GFA, Issued Property, GFF and GFI in accordance with DEFCON 611 and DEFCON 694.

#### **2 OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES**

- 2.1 On reasonable notice at any point during the Contract Term, the Service Provider shall provide to the Authority and/or its potential Successor Contractors (subject to the potential Successor Contractors entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Successor Contractors undertaking due diligence:

- (a) details of the Service(s);
- (b) a copy of the Registers and Records, updated by the Service Provider up to the date of delivery of such Registers;
- (c) an inventory of Authority Data in the Service Provider's possession or control;
- (d) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
- (e) a list of on-going and/or threatened disputes in relation to the provision of the Services;
- (f) to the extent permitted by applicable Law, all information relating to Subsequent Transferring Employees required to be provided by the Service Provider under this Contract; and
- (g) such other material and information as the Authority shall reasonably require,

(together, the "**Exit Information**").

- 2.2 The Service Provider acknowledges that the Authority may disclose the Service Provider's Confidential Information to an actual or prospective Successor Service Provider or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this Paragraph 2.2 disclose any Service Provider's Confidential Information which is information relating to the Service Provider's or its Sub-contractors' prices or costs).
- 2.3 The Service Provider shall:
- (a) notify the Authority within five Business Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Authority regarding such proposed material changes; and
  - (b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten Business Days of a request in writing from the Authority.
- 2.4 The Service Provider may charge the Authority for its reasonable additional costs to the extent the Authority requests more than four updates in any six month period.
- 2.5 The Service Provider warrants and represents to the Authority that the Exit Information shall be in all material respects true, accurate, complete and not misleading.

### **3 OBLIGATION TO ENTER INTO AN ETHICAL WALL AGREEMENT ON RE-TENDERING OF SERVICES**

- 3.1 The Authority may require the Service Provider to enter into the Ethical Wall Agreement at any point during a re-tendering or contemplated re-tendering of the Services or any part of the Services.
- 3.2 If required to enter into the Ethical Wall Agreement, the Service Provider will return a signed copy of the Ethical Wall Agreement within ten Business Days of receipt. The Service Provider's costs of entering into the Ethical Wall Agreement will be borne solely by the Service Provider.

## **4 EXIT PLAN**

- 4.1 The Parties shall review the draft Exit Plan during the Transition Period and the Service Provider shall deliver a final draft to the Authority on or before the Vesting Day for the Authority's written approval.
- 4.2 The Service Provider shall deliver to the Authority a final draft of the Exit Plan in accordance with Paragraph 4.1 which:
- (a) sets out the Service Provider's proposed methodology for achieving an orderly transition of the relevant Services from the Service Provider to the Authority and/or its Successor Service Provider on the partial termination, expiry or termination of this Contract;
  - (b) complies with the requirements set out in Paragraph 4.4; and
  - (c) is otherwise reasonably satisfactory to the Authority.
- 4.3 The Exit Plan shall be updated by the Service Provider annually, prior to the Annual Contract Performance Review and submitted for approval by the Authority.
- 4.4 The Authority shall review any Exit Plan submitted to it within ten (10) Business Days of receipt and shall notify the Service Provider of any required revisions. Revisions shall be discussed with the Authority and incorporated by the Service Provider into the Exit Plan within ten (10) Business Days of receipt of such required revisions. The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 30 Business Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 4.5 The Exit Plan shall set out, as a minimum:
- (a) the exit management organisation structure;
  - (b) key milestones and timescales;
  - (c) how the Exit Information is obtained;
  - (d) the reconciliation of GFA, Issued Property, GFF and GFI;

- (e) detailed timeline for Exit;
- (f) any security measures;
- (g) Intellectual Property;
- (h) Authority Data;
- (i) work in progress;
- (j) financial information as reasonably requested by the Authority;
- (k) the assignment by the Service Provider (insofar as it is able to do so) to the Authority (if it so requires) of all permits, licences, service contracts, maintenance agreements, support agreements (including sub-contracts), indemnities (including agreements relating to Transfer Regulations, environmental and third party claims, but not in respect of any claim which is outstanding) or other arrangements between the Service Provider and third parties which are necessary for the carrying out the SOR and all other contractual obligations at no cost to the Authority;
- (l) the cancellation/termination of the status of the Service Provider as an authorised demander under relevant Authority contracts;
- (m) staff and Transfer Regulations details including identification of all Service Provider's personnel engaged in meeting the Contract obligations, training plans, security clearance, redeployment and the information required in Schedule 24 (TUPE and Pensions), accommodation and communication plan with incoming contractor and existing staff;
- (n) service delivery information including methods for maintaining service delivery during the transfer period.
- (o) exit risk management and mitigation;
- (p) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Service Provider may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by

the Service Provider of all such reasonable assistance as the Authority shall require to enable the Authority or its sub-contractors to provide the Services;

- (q) a mechanism for dealing with partial termination on the assumption that the Service Provider will continue to provide the remaining Services under this Contract;
- (r) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
- (s) the management structure to be employed during the Termination Assistance Period;
- (t) a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
- (u) how the Services will transfer to the Successor Service Provider and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Service Provider or its Sub-contractors (where applicable);
- (v) the scope of the Termination Services that may be required for the benefit of the Authority (including such of the services set out in Annex 1 as are applicable);
- (w) a timetable and critical issues for providing the Termination Services;
- (x) any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;
- (y) how the Termination Services would be provided (if required) during the Termination Assistance Period;
- (z) how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Service Provider to the Successor Service Provider and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.

- 4.6 Where the Authority procures a Successor Service Provider for the Services, the Exit Plan shall need to include the same matters referred to under Paragraph 4.5 above save that:
- (a) The Authority may require assignments to be in favour of the Successor Service Provider rather than the Authority;
  - (b) The Authority may require staff who are subject to a Transfer Regulations transfer to be transferred to the Successor Service Provider rather than the Authority (if appropriate);
  - (c) The Authority may require GFA, Issued Property, GFF and GFI to be delivered to the Successor Service Provider rather than to the Authority.
- 4.7 The Parties acknowledge that the migration of the Services from the Service Provider to the Authority and/or its Successor Service Provider may be phased, such that certain of the Services are handed over before others.
- 4.8 The Service Provider shall review and (if appropriate) update the Exit Plan throughout the Contract Term at least annually and if requested by the Authority following the occurrence of a financial issue being raised by the Service Provider with the Authority, within 14 days of such request, to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. The Service Provider shall provide an updated version of the Exit Plan to the Authority on each anniversary of the Vesting Day (or more frequently as may be requested by the Authority). Revised versions of the Exit Plan shall, without limitation, take into account changes to the Public Store Account either planned or in place. Within 30 Business Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 30 Business Day period, such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 4.9 The Service Provider shall:
- (a) on request provide the latest version of the Exit Plan to the Authority or such other person as the Authority may specify;
  - (b) upon three (3) months' notice from the Authority prepare and keep complete and up to date:

- (i) any information in the Service Provider's possession or under its control which the Authority requires to produce at the time of a Re-competition (the "**Re-competition Data**"); and
  - (ii) copies of all relevant documentation, in hard and electronic copy, relevant to the Services for the purposes of Re-competition;
- (c) save that the Service Provider shall not be required to supply any information that it can demonstrate to the satisfaction of the Authority would be prejudicial to its competitive position in any Re-competition and is not strictly necessary for the purpose of the Re-competition.
- (d) whenever reasonably requested by the Authority, supply the Re-competition Data and all such information referred to in this Paragraph 4.9 to the Authority both in hard and electronic copy within fifteen (15) Business Days (or such other period as the parties acting reasonably may agree) of being requested to do so by the Authority. By entering into this Contract the Service Provider acknowledges and agrees that the Re-competition Data and such other information will be transferred to potential participants in any Re-competition and undertakes not to take any steps to prevent or hinder such transfer;
- (e) upon expiry or early termination, assign, transfer or novate in favour of the Authority or a Successor Service Provider any necessary agreements as required by the Authority; and
- (f) cooperate in any arrangements notified to it by the Authority, including but not limited to site visits by representatives of companies tendering for a replacement Contract, condition surveys and performance checks on all facilities used for the purposes of this Contract or to be used in relation to a replacement Contract;
- (g) comply with all Applicable Law and Good Industry Practice relating to staff employed in connection with this Contract whether by the Service Provider or someone else, and subject to obtaining appropriate consents in particular in accordance with the Data Protection Legislation, fully and accurately disclose to the Authority all information relating to Staff and other relevant employees as may be reasonably requested by the Authority. The Service Provider warrants that information supplied pursuant to this Paragraph 4.9 shall be complete and accurate in all respects and agrees to indemnify

and keep indemnified the Authority in respect of any claims, costs, demands and liabilities arising out of any breach of this warranty.

#### 4.10 Finalisation of the Exit Plan

- (a) Within 10 Business Days after service of a Termination Notice by either Party or six months prior to the Expiry Date, the Service Provider will submit for the Authority's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
- (b) The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 30 Business Days following its delivery to the Authority then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Service Provider shall provide the Termination Services in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

### 5 TERMINATION SERVICES

#### 5.1 Notification of Requirements for Termination Services

- (a) The Authority shall be entitled to require the provision of Termination Services at any time during the Contract Term by giving written notice to the Service Provider (a "**Termination Assistance Notice**") at least four months prior to the date of termination or expiry of this Contract or as soon as reasonably practicable (but in any event, not later than one month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
  - (i) the date from which Termination Services are required;
  - (ii) the nature of the Termination Services required; and
  - (iii) the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 24 months after the date that the Service Provider ceases to provide the terminated Services.



- (b) The Authority shall have:
- (i) an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice PROVIDED THAT such extension shall not extend for more than six months after the date the Service Provider ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and PROVIDED THAT it shall notify the Service Provider to such effect no later than 20 Business Days prior to the date on which the provision of Termination Services is otherwise due to expire; and
  - (ii) the right to terminate its requirement for Termination Services by serving not less than 20 Business Days' written notice upon the Service Provider to such effect.

## **5.2 Termination Assistance Period**

- (a) Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Service Provider shall:
- (i) continue to provide the Services (as applicable) and, if required by the Authority pursuant to Paragraph 5.1, provide the Termination Services;
  - (ii) in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the partial termination, termination or expiry of this Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Successor Service Provider;
  - (iii) use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 5.2(a)(ii) without additional costs to the Authority;
  - (iv) provide the Services and the Termination Services at no detriment to the Key Performance Indicators, save to the extent that the Parties agree otherwise in accordance with Paragraph 5.2(c); and

- (v) at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.
- (b) Without prejudice to the Service Provider's obligations under Paragraph 5.2(a)(iii), if it is not possible for the Service Provider to reallocate resources to provide such assistance as is referred to in Paragraph 5.2(a)(iii) without additional costs to the Authority, any additional costs incurred by the Service Provider in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.
- (c) If the Service Provider demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Service Provider's ability to meet one or more particular Key Performance Indicator(s), the Parties shall vary the relevant Key Performance Indicator(s) and/or the applicable Service Level Deductions to take account of such adverse effect.

### **5.3 Termination Obligations**

- (a) The Service Provider shall comply with all of its obligations contained in the Exit Plan in respect of any partial termination or termination.
- (b) Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Service Provider's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule) in respect of the Services that have been terminated, the Service Provider shall:
  - (i) as soon as reasonably practicable vacate the Site and deliver to the Authority all relevant keys to the Site and shall leave the Site in a clean and orderly condition;
  - (ii) carry out any reasonable instructions of the Authority required to give effect to and comply with this Schedule;
  - (iii) to provide any information to the Authority in relation to Intellectual Property Rights for the purposes of exercising its rights under Clause 22 of the Contract (Intellectual Property Rights);

- (iv) to comply with the Exit Plan agreed by the Authority in accordance with this Schedule; and
  - (v) as required provide the Authority with the documents and reports set out in Clause 18 of the Contract (Contract Management).
- (c) Upon partial termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Service Provider's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.
- (d) Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Authority to the Service Provider in relation to the terminated Services shall be terminated with effect from the end of the Termination Assistance Period.

## **6 GFA, SUB-CONTRACTS AND SOFTWARE**

6.1 Following notice of termination or partial termination of this Contract and during the Termination Assistance Period, the Service Provider shall not, in respect of the terminated Services, without the Authority's prior written consent:

- (a) terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Contract Price;
- (b) (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing GFA, Issued Property, GFF and GFI; or
- (c) terminate, enter into or vary any licence for software in connection with the Services.

6.2 The Authority shall confirm its receipt, in writing to the Service Provider within thirty (30) Business Days of such receipt, of any Assets returned or transferred by the Service Provider to the Authority.

- 6.3 Following termination of the Contract, the Contractor shall hand back the GFA, Issued Property, GFF and GFI to the Authority in accordance with DEFCON 611 and 694.

## **7 CONTRACTOR PERSONNEL**

- 7.1 The Authority and Service Provider agree and acknowledge that in the event of the Service Provider ceasing to provide the Services or part of them for any reason, Schedule 24 (TUPE and Pensions) shall apply.
- 7.2 The Service Provider shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Successor Service Provider.
- 7.3 During the Termination Assistance Period, the Service Provider shall give the Authority and/or the Successor Service Provider reasonable access to the Service Provider's personnel to present the case for transferring their employment to the Authority and/or the Successor Service Provider.
- 7.4 The Service Provider shall immediately notify the Authority or, at the direction of the Authority, the Successor Service Provider of any period of notice given by the Service Provider or received from any person referred to in the staffing information provided, regardless of when such notice takes effect.
- 7.5 The Service Provider shall not for a period of 12 months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Authority and/or the Successor Service Provider, except that this Paragraph shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

## **8 CHARGES**

- 8.1 During the Termination Assistance Period (or for such shorter period as the Authority may require the Service Provider to provide the Termination Services), the Authority shall pay the charges to the Service Provider in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this

results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Change Control Procedure.

- 8.2 Where the Authority requests an extension to the Termination Services beyond the Termination Assistance Period in accordance with Paragraph 5.1(b):
- (a) where more than six months' notice is provided, the same rate as set out in the Exit Plan (or the Contract Price when not stated in the Exit Plan) shall be payable; and
  - (b) where less than six months' notice is provided, no more than 1.2 times the rate as set out in the Exit Plan (or the Contract Price when not stated in the Exit Plan) shall be payable.
- 8.3 For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.
- 8.4 Except as otherwise expressly specified in this Contract, the Service Provider shall not make any charges for the services provided by the Service Provider pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Service Provider in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

## **ANNEX 1**

### **Scope of the Termination Services**

- 1 The Termination Services to be provided by the Service Provider shall include such of the following services as the Authority may specify:
- 1.1 notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
  - 1.2 providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Authority and/or the Successor Service Provider after the end of the Termination Assistance Period;

- 1.3 providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;
- 1.4 with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
- 1.5 providing the Authority with any problem logs which have not previously been provided to the Authority;
- 1.6 providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of 12 months after the Termination Assistance Period;
- 1.7 providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;
- 1.8 providing assistance and expertise as necessary to support the Authority and/or the Successor Service Provider develop the migration plan for business operations and Authority Data to the Successor Service Provider, which may include migration approach, testing of plans, contingency options, and handling of historic or archived Authority Data;
- 1.9 provide all necessary support, equipment, tools, and Software such as data migration services and/or automated programming interfaces, in order to enable and support the execution of the migration plan by the Authority and/or Successor Service Provider;
- 1.10 making available to the Authority and/or the Successor Service Provider expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Authority (acting reasonably) at the time of termination or expiry;
- 1.11 agreeing with the Authority a handover plan for all of the Service Provider's responsibilities as set out in the Security Management Plan;
- 1.12 delivering copies of the Successor Service Provider's operations staff (on appropriate media) as reasonably requested by the Authority;

- 1.13 assisting in the execution of a parallel operation until the effective date of expiry or termination of this Contract;
- 1.14 in respect of the maintenance and support of the Service Provider System, providing historical performance data for the previous twelve (12) months;
- 1.15 providing an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;
- 1.16 answering all reasonable questions from the Authority and/or the Successor Service Provider regarding the Services;
- 1.17 agreeing with the Authority and/or the Successor Service Provider a plan for the migration of the Authority Data to the Authority and/or the Successor Service Provider;
- 1.18 providing access to the Authority and/or the Successor Service Provider during the Termination Assistance Period and for a period not exceeding six months afterwards for the purpose of the smooth transfer of the Services to the Authority and/or the Successor Service Provider:
  - (a) to information and documentation relating to the Transferring Services that is in the possession or control of the Service Provider or its Sub-contractors (and the Service Provider agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
  - (b) following reasonable notice and during the Service Provider's normal business hours, to members of the Service Provider Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Service Provider or its Sub-contractors; and
- 1.19 knowledge transfer services, including:
  - (a) transferring all training material and providing appropriate training to those Authority and/or Successor Service Provider staff responsible for internal training in connection with the provision of the Services;

- (b) providing for transfer to the Authority and/or the Successor Service Provider of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and
- (c) providing the Service Provider and/or the Successor Service Provider with access to such members of the Service Provider's or its Sub-Contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Service Provider or its Sub-Contractors.

2 The Service Provider shall:

- 2.1 provide a documented plan relating to the training matters referred to in Paragraph 1.8 for agreement by the Authority at the time of termination or expiry of this Contract;
- 2.2 co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.11, providing skills and expertise of a suitable standard; and

3 To facilitate the transfer of knowledge from the Service Provider to the Authority and/or its Successor Service Provider, the Service Provider shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Authority and/or the Successor Service Provider.

4 The information which the Service Provider shall provide to the Authority and/or the Successor Service Provider pursuant to Paragraph 1.17 shall include:

- 4.1 copies of up-to-date procedures, training manuals and operations manuals;
- 4.2 agreements with third party suppliers of goods and services which are to be transferred to the Authority and/or the Successor Service Provider;
- 4.3 key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Authority pursuant to this Schedule;
- 4.4 information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;



- 4.5 details of physical and logical security processes and tools which will be available to the Authority; and
- 4.6 any relevant interface information.

**ANNEX 2**

**Draft Ethical Wall Agreement**

[THE AUTHORITY]

and

[THE COUNTERPARTY]

**ETHICAL WALL AGREEMENT**

**THIS AGREEMENT** is dated [       ] 20[    ]

## **BETWEEN**

- (1) **[INSERT NAME OF AUTHORITY]** (the "**Authority**") [acting on behalf of the Crown] of [insert Authority's address]; and
- (2) **[NAME OF COUNTERPARTY]** a [company]/[limited liability partnership] registered in England and Wales under registered number [insert registered number] whose registered office is at [insert Counterparty's registered address] (the "**Counterparty**").

## **BACKGROUND**

The Authority is obliged to ensure transparency, fairness, non-discrimination and equal treatment in relation to its procurement process pursuant to the Public Contracts Regulations 2015 (as amended) (the "**PCR**"). The purpose of this document ("**Agreement**") is to define the protocols to be followed to prevent, identify and remedy any conflict of interest (whether actual, potential or perceived) in the context of the Procurement.

The Authority is conducting a procurement exercise for the [supply/purchase] of [insert details of project/goods/services] (the "**Purpose**").

The Authority has an obligation to deal with conflicts of interest as set out in Regulation 24 (1) of the PCR. The concept of conflict of interest is wide. In the PCR it is described as covering at least *"any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure"* (Regulation 24(2)). "Staff members" refers to staff members of the Authority or of a procurement service provider acting on behalf of the Authority who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure. "Procurement service provider" refers to a public or private body which offers ancillary purchasing activities on the market.

Pursuant to Regulation 41 of the PCR, the Authority is under an obligation to ensure that competition is not distorted by the participation of any bidder. Accordingly, the Authority has identified that a potential distortion of competition could arise as a consequence of a bidder wishing to submit a Tender for this procurement, where it has also performed services for the Authority under existing contractual arrangements or as a subcontractor under those same arrangements.

The parties wish to enter into this Agreement to ensure that a set of management processes, barriers and disciplines are put in place to ensure that conflicts of interest do not arise, and that the Counterparty does not obtain an unfair competitive advantage over Other Bidders.

**IT IS AGREED:**

**1 DEFINITIONS AND INTERPRETATION**

1.1 The following words and expressions shall have the following meanings in this agreement and its recitals:

<b>Affiliate</b>	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
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<b>Agreement</b>	this ethical walls agreement duly executed by the Parties;
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<b>Bid Team</b>	any Counterparty, Affiliate, connected to the preparation of an ITT Response;
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<b>Central Government Body</b>	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:
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(a) Government Department;

(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);

(c) Non-Ministerial Department; or

(d) Executive Agency;

<b>Conflicted Personnel</b>	any Counterparty, Affiliate, staff or agents of the Counterparty or an Affiliate who, because of the Counterparty's relationship with the Authority under any Contract have or have had access to information which creates or may create a conflict of interest;
<b>Contract</b>	the [contract for [     ]] dated [     ] between the Authority and the Counterparty and/or an Affiliate;
<b>Control</b>	the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and " <b>Controls</b> " and " <b>Controlled</b> " shall be interpreted accordingly;
<b>Effective Date</b>	the date of this Agreement as set out above;
<b>Invitation to Tender or ITT</b>	an invitation to submit tenders issued by the Authority as part of an ITT Process;
<b>ITT Process</b>	with regard to the Purpose, the relevant procedure provided for in the PCR which the Authority has elected to use to select a contractor, together with all relevant information, correspondence and/or documents issued by the Authority as part of that procurement exercise, all information, correspondence and/or documents issued by the bidders in response together with any resulting contract;
<b>ITT Response</b>	the tender submitted or to be submitted by the Counterparty or an Affiliate [(or, where relevant, by an Other Bidder)] in response to an ITT;
<b>Other Affiliate</b>	any person who is a subsidiary, subsidiary undertaking or holding company of any Other Bidder;

<b>Other Bidder</b>	any other bidder or potential bidder that is not the Counterparty or any Affiliate that has or is taking part in the ITT Process;
<b>Parties</b>	the Authority and the Counterparty;
<b>Professional Advisor</b>	a supplier, subcontractor, advisor or consultant engaged by the Counterparty under the auspices of compiling its ITT Response;
<b>Purpose</b>	has the meaning given to it in recital (B) to this Agreement;
<b>Representative</b>	refers to a person's officers, directors, employees, advisers and agents and, where the context admits, providers or potential providers of finance to the Counterparty or any Affiliate in connection with the ITT Process and the representatives of such providers or potential providers of finance; and
<b>Third Party</b>	any person who is not a Party and includes Other Affiliates and Other Bidders.

- 1.2 Reference to the disclosure of information includes any communication or making available information and includes both direct and indirect disclosure.
- 1.3 Reference to the disclosure of information, or provision of access, by or to the Authority or the Counterparty includes disclosure, or provision of access, by or to the representatives of the Authority or Representatives of the Counterparty (as the case may be).
- 1.4 Reference to persons includes legal and natural persons.
- 1.5 Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time.
- 1.6 Reference to clauses and recitals is to clauses of and recitals to this Agreement.
- 1.7 Reference to any gender includes any other.

- 1.8 Reference to writing includes email.
- 1.9 The terms "**associate**", "**holding company**", "**subsidiary**", "**subsidiary undertaking**" and "**wholly owned subsidiary**" have the meanings attributed to them in the Companies Act 2006, except that for the purposes of section 1159(1)(a) of that Act, the words 'holds a majority of the voting rights' shall be changed to 'holds 30% or more of the voting rights', and other expressions shall be construed accordingly.
- 1.10 The words "**include**" and "**including**" are to be construed without limitation.
- 1.11 The singular includes the plural and vice versa.
- 1.12 The headings contained in this Agreement shall not affect its construction or interpretation.

## **2 ETHICAL WALLS**

- 2.1 In consideration of the sum of £1 payable by the Authority to the Counterparty, receipt of which is hereby acknowledged, the Counterparty:
- (a) shall take all appropriate steps to ensure that neither the Counterparty nor its Affiliates and/or Representatives are in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Counterparty or its Affiliates or Representatives and the duties owed to the Authority under the Contract or pursuant to an open and transparent ITT Process;
  - (b) acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty or an Affiliate intends to take part in the ITT Process and, because of the Counterparty's relationship with the Authority under any Contract, the Counterparty, its Affiliates and/or Representatives have or have had access to information which could provide the Counterparty and/or its Affiliates with an advantage and render unfair an otherwise genuine and open competitive ITT Process; and
  - (c) where there is or is likely to be a conflict of interest or the perception of a conflict of interest of any kind in relation to the ITT Process, shall comply with 2.2.

2.2 The Counterparty shall:

- (a) Not assign any of the Conflicted Personnel to the Bid Team at any time;
- (b) 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;
- (c) Ensure that by no act or omission by itself, its staff, agents and/or Affiliates results in information of any kind or in any format and however so stored:
  - (i) about the Contract, its performance, operation and all matters connected or ancillary to it becoming available to the Bid Team; and/or
  - (ii) which would or could in the opinion of the Authority confer an unfair advantage on the Counterparty in relation to its participation in the ITT Process becoming available to the Bid Team;
- (d) Ensure that by no act or omission by itself, its staff, agents and/or Affiliates and in particular the Bid Team results in information of any kind or in any format and however so stored about the ITT Process, its operation and all matters connected or ancillary to it becoming available to the Conflicted Personnel;
- (e) Ensure that confidentiality agreements which flow down the Counterparty's obligations in this Agreement are entered into as necessary between the Authority and the Counterparty, its Affiliates, its staff, agents, any Conflicted Personnel, and between any other parties necessary in a form to be prescribed by the Authority;
- (f) physically separate the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;
- (g) provide regular training to its staff, agents and its Affiliates to ensure it is complying with this Agreement;
- (h) monitor Conflicted Personnel movements within restricted areas (both physical and electronic online areas) to ensure it is complying with this Agreement ensure adherence to the ethical wall arrangements;



- (i) ensure that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
- (j) comply with any other action as the Authority, acting reasonably, may direct.

2.3 In addition to the obligations set out in clause 2.1(a) and 2.1(c), the Counterparty shall:

- (a) notify the Authority immediately of all perceived, potential and/or actual conflicts of interest that arise;
- (b) submit in writing to the Authority full details of the nature of the conflict including (without limitation) full details of the risk assessments undertaken, the impact or potential impact of the conflict, the measures and arrangements that have been established and/or are due to be established to eliminate the conflict and the Counterparty's plans to prevent future conflicts of interests from arising; and
- (c) seek the Authority's approval thereto,

which the Authority shall have the right to grant, grant conditionally or deny (if the Authority denies its approval the Counterparty shall repeat the process set out in clause 2.3 until such time as the Authority grants approval or the Counterparty withdraws from the ITT Process).

2.4 Any breach of clause 2.1, clause 2.2 or clause 2.3 shall entitle the Authority to exclude the Counterparty or any Affiliate or Representative from the ITT Process, and the Authority may, in addition to the right to exclude, take such other steps as it deems necessary where, in the reasonable opinion of the Authority there has been a breach of clause 2.1, clause 2.2 or clause 2.3.

2.5 The Counterparty will provide, on demand, any and all information in relation to its adherence with its obligations set out under clauses 2.1 and 2.2 as reasonably requested by the Authority.

2.6 The Authority reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under clauses 2.1(c) and 2.2.

2.7 The Counterparty acknowledges that any provision of information or demonstration of measures, in accordance with clauses 2.5 and 2.6, does not constitute acceptance by the Authority of the adequacy of such measures and does not discharge the Counterparty of its obligations or liability under this Agreement.

2.8 The actions of the Authority pursuant to clause 2.4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

2.9 In no event shall the Authority be liable for any bid costs incurred by:

(a) the Counterparty or any Affiliate or Representative; or

(b) any Other Bidder, Other Affiliate or Other Representative,

as a result of any breach by the Counterparty, Affiliate or Representative of this Agreement, including, without limitation, where the Counterparty or any Affiliate or Representative, or any Other Bidder, Other Affiliate or Other Representative are excluded from the ITT Process.

2.10 The Counterparty acknowledges and agrees that:

(a) neither damages nor specific performance are adequate remedies in the event of its breach of the obligations in clause 2; and

(b) in the event of such breach by the Counterparty of any of its obligations in clause 2 which cannot be effectively remedied the Authority shall have the right to terminate this Agreement and the Counterparty's participation in the ITT Process.

### **3 SOLE RESPONSIBILITY**

It is the sole responsibility of the Counterparty to comply with the terms of this Agreement. No approval by the Authority of any procedures, agreements or arrangements provided by the Counterparty or any Affiliate or Representative to the Authority shall discharge the Counterparty's obligations.

### **4 WAIVER AND INVALIDITY**

4.1 No failure or delay by any Party in exercising any right, power or privilege under this Agreement or by law shall constitute a waiver of that or any other right, power or privilege, nor shall it restrict the further exercise of that or any other right, power or privilege. No single or partial exercise of such right, power or privilege shall prevent or restrict the further exercise of that or any other right, power or privilege.

- 4.2 If any provision of this Agreement is prohibited or unenforceable in any jurisdiction in relation to any Party, such prohibition or unenforceability will not invalidate the remaining provisions of this Agreement or affect the validity or enforceability of the provisions of this Agreement in relation to any other Party or any other jurisdiction.

## **5 ASSIGNMENT AND NOVATION**

- 5.1 Subject to clause 5.2 the Parties 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 Agreement without the prior written consent of the Authority.
- 5.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this 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 Authority; and
  - (c) the Counterparty shall, at the Authority's request, enter into a novation agreement in such form as the Authority may reasonably specify in order to enable the Authority to exercise its rights pursuant to this clause 5.
- 5.3 A change in the legal status of the 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 Authority.

## **6 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a Party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any term of this Agreement but this does not affect any right remedy of any person which exists or is available otherwise than pursuant to that Act.

## 7 TRANSPARENCY

The parties acknowledge and agree that the Authority is under a legal duty pursuant to the PCR to run transparent and fair procurement processes. Accordingly, the Authority may disclose the contents of this Agreement to potential bidders in the ITT Process, for the purposes of transparency and in order to evidence that a fair procurement process has been followed.

## 8 NOTICES

8.1 Any notices sent under this Agreement must be in writing.

8.2 The following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

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	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

<b>Manner of Delivery</b>	<b>Deemed time of service</b>	<b>Proof of service</b>
	the next Working Day (if after 5.00pm).	

- 8.3 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 Agreement:

	<b>Counterparty</b>	<b>Authority</b>
<b>Contact</b>		
<b>Address</b>		
<b>Email</b>		

- 8.4 This clause 8 does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

## **9 WAIVER AND CUMULATIVE REMEDIES**

- 9.1 The rights and remedies under this 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 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.

- 9.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

## **10 TERM**

Each party's obligations under this Agreement shall continue in full force and effect for period of [ ] years from the Effective Date.

## **11 GOVERNING LAW AND JURISDICTION**

- 11.1 This 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.
- 11.2 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 Agreement or its subject matter or formation.

Signed by the Authority

Name:

Signature:

Position in Authority:

Counterparty Signed by the

Name:

Signature:

Position in Counterparty: