

Large Boat Aerial Delivery

Draft Contract Schedule 13 (Exit Management Plan)

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Schedule 13
Exit Management

1 Acknowledgements

- 1.1 The Parties acknowledge that upon the termination or expiry of this Contract the Authority may, in its discretion:
- 1.1.1 decide to perform the Contractor Deliverables (in whole or in part) itself; or
 - 1.1.2 to transfer the right and obligation to provide the Contractor Deliverables, in whole or in part, from the Contractor to one or more Third Parties who will provide all or part of the relevant Contractor Deliverables, or Contractor Deliverables similar to the relevant Contractor Deliverables.
- 1.2 In order to exercise its rights under paragraph 1.1 any Replacement Contractor or the Authority (as appropriate) will be required to obtain a detailed understanding of the operation management and provision of the relevant Contractor Deliverables before it is required to take over the performance of the relevant Contractor Deliverables, or Contractor Deliverables similar to the relevant Contractor Deliverables. Accordingly:
- 1.2.1 the Parties shall co-operate fully in good faith with regard to the procedure for the transfer of the right and obligation to provide the relevant Contractor Deliverables from the Contractor to any Replacement Contractor or to the Authority (as appropriate);
 - 1.2.2 the Contractor shall comply with the provisions of this paragraph 1 and the Exit Management Plan, in relation to the orderly transition of the relevant Contractor Deliverables to the Authority or a Replacement Contractor;
 - 1.2.3 the Contractor shall use all reasonable endeavours to promptly comply with all reasonable requests from the Authority and/or a Replacement Contractor for information concerning the Contractor Deliverables to be transferred; and
 - 1.2.4 the Contractor shall ensure the orderly transition of Contractor Deliverables and transfer of assets to a Replacement Contractor or the Authority to the extent within its reasonable control.
- 1.3 The Contractor acknowledges and confirms that it will be responsible for the delivery of Exit Management in accordance with this Schedule 13 (Exit Management) at no additional cost to the Authority.
- 1.4 For the purposes of this Schedule 13 (Exit Management), references to:
- 1.4.1 termination or expiry of this Contract;
 - 1.4.2 termination or expiry of the Contractor's performance of the whole or any part of the Contractor Deliverables,
- shall be deemed to include where the Authority relies on any other remedy under this Contract.

- 1.5 Further, for the purposes of this Schedule 13 (Exit Management), references to termination or expiry of this Contract shall be deemed to include termination or expiry of the Contractor's performance of the whole or any part of the Contractor Deliverables.

2 Asset Registers

- 2.1 During the Contract Period, the Contractor shall create and maintain:

- 2.1.1 a register of all Assets detailing their:

- (i) make, model and asset number;
- (ii) ownership;
- (iii) Net Book Value;
- (iv) condition and physical location; and
- (v) use (including technical specifications); and

- 2.1.2 a register of all Subcontracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Contractor Deliverables, detailing their key terms; and

- 2.1.3 a configuration database detailing the technical infrastructure and operating procedures through which the Contractor provides the relevant Contractor Deliverables, which shall contain sufficient detail to permit the Authority and/or Replacement Contractor to understand how the Contractor provides the Contractor Deliverables and to enable the smooth transition of the Contractor Deliverables with the minimum of disruption.

- 2.2 For the purposes of this Schedule 13 (Exit Management), Net Book Value shall be calculated on the assumption that the value of Contractor Assets is written down over the period starting on the Effective Date and ending on the Original Expiry Date. In the event the Contractor chooses to re-value Contractor Assets in the period starting on the Contract Date and ending on the Original Expiry Date, any gain arising shall be paid to the Authority and such gain may be recoverable by the Authority as a debt.

- 2.3 The Contractor shall:

- 2.3.1 produce and maintain the Registers in the format directed by the Authority; and

- 2.3.2 at all times keep the Registers up to date, in particular in the event that Assets, Subcontracts or other relevant agreements are added to, varied, or removed from the Contractor Deliverables and procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are used exclusively for the provision of the Contractor Deliverables.

3 Access to Data

- 3.1 Within thirty (30) Business Days of written request at any point during the Contract Period, the Contractor shall provide to the Authority and/or (subject to the Authority procuring appropriate confidentiality undertakings) any Replacement Contractor, the following information and materials (whether relating directly or indirectly to the Contractor Deliverables) in order to facilitate a re-tender of the Contractor Deliverables

and/or the preparation by the Authority of an invitation to tender and/or any potential tenderers or Replacement Contractor to undertake due diligence:

- 3.1.1 details of the Contractor Deliverables (in such detail as to enable a potential Replacement Contractor to have a full understanding the nature and extent of the Contractor Deliverables and of how the Contractor Deliverables are provided);
- 3.1.2 a copy of the Registers, updated by the Contractor up to the date of delivery of such Registers;
- 3.1.3 to the extent not contained in the Registers, details of all Assets (including technical specifications, manuals, maintenance schedules and agreement, and materials) and details of all GFA (including condition and physical location);
- 3.1.4 details of all technical infrastructure and equipment, software and hardware used to provide the Contractor Deliverables (including ownership and licensing details)
- 3.1.5 details of any key terms of any Subcontracts and Third Party contracts and licences, particularly as regards service scope, charges, termination, assignment and novation;
- 3.1.6 details of all licences, consents, authorisations and approvals required to provide the Contractor Deliverables;
- 3.1.7 an inventory of Authority Data in the Contractor's possession or control;
- 3.1.8 details of all Intellectual Property used in connection with the Contractor Deliverables;
- 3.1.9 details of work volume and staffing requirements over the previous twelve (12) months;
- 3.1.10 with respect to work in progress, details of current status and work required to complete;
- 3.1.11 a list of ongoing and/or threatened disputes or other liabilities (whether contingent or otherwise);
- 3.1.12 to the extent permitted by applicable Law, all information relating to transferring Contractor Employees required to be provided by the Contractor under this Contract;
- 3.1.13 [delivering copies of Contractor Deliverables related databases to the Authority and/or any Replacement Contractor;] and
- 3.1.14 any other data, records (including title documents, invoices, service and maintenance records, technical manuals and specifications and user guides), reports, accounts, and such other financial, operational, management or other information as the Authority or any tenderer or Replacement Contractor shall reasonably require,

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

The Contractor confirms and agrees that the Exit Information may contain Contractor Commercially Sensitive Information, and that it may be disclosed for the purposes stated above notwithstanding the terms of the Freedom of Information Act 2000.

3.2 The Contractor shall:

- 3.2.1 notify the Authority within five (5) Business Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Contractor Deliverables and shall consult with the Authority regarding such proposed material changes; and
- 3.2.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Business Days of a request in writing from the Authority.

3.3 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Contractor shall be such as would be reasonably necessary to:

- 3.3.1 facilitate a re-tender of the Contractor Deliverables and/or the preparation by the Authority of any invitation to tender and/or to facilitate any tenderer (including its advisors) undertaking due diligence;
- 3.3.2 facilitate the exercise of any of the Authority's rights in accordance with this Contract;
- 3.3.3 enable any tenderer to obtain a reasonably informed view of the Contractor Deliverables (including how it is performed and the Assets required for the Contractor Deliverables) and to prepare an informed offer for those Contractor Deliverables and not be disadvantaged in any subsequent procurement process compared to the Contractor (if the Contractor is invited to participate).

3.4 The Contractor authorises the Authority, at any point during the Contract Period (subject to the Authority procuring appropriate confidentiality undertakings), to release any information held by the Authority or provided by the Contractor to the Authority relating to the Contractor Deliverables, to be transferred to Third Parties whom the Authority has invited to tender to provide the relevant Contractor Deliverables but who have not yet entered into an agreement with the Authority to provide the relevant Contractor Deliverables.

3.5 The Authority shall use its reasonable endeavours to obtain from any Replacement Contractor an appropriate confidentiality undertaking whereby the Replacement Contractor will agree only to use such information for the purposes of progressing its bid for the provision of the relevant Contractor Deliverables by the Replacement Contractor.

3.6 The Exit Information shall be made available and provided to the Authority in such format as the Authority shall require.

4 Obligation to enter into an Ethical Wall Agreement on re-tendering of Contractor Deliverables

4.1 The Authority may require the Contractor to enter into the Ethical Wall Agreement at any point during a re-tendering or contemplated re-tendering of the Contractor Deliverables or any part of the Contractor Deliverables.

- 4.2 If required to enter into the Ethical Wall Agreement, the Contractor will return a signed copy of the Ethical Wall Agreement within ten (10) Business Days of receipt. The Contractor's costs of entering into the Ethical Wall Agreement will be borne solely by the Contractor.

5 Exit Management Plan

- 5.1 The Parties acknowledge that the migration of the Contractor Deliverables from the Contractor to the Authority and/or any Replacement Contractor may be phased or that there may be multiple occasions of migration of the Contractor Deliverables or any part of them from the Contractor to the Authority and/or any Replacement Contractor, such that certain of the Contractor Deliverables are handed over before others.
- 5.2 The Contractor shall review and (if appropriate) update the Exit Management Plan (EMP) on a basis consistent with the principles set out in DID 21.
- 5.3 Following a Termination Notice by either Party for service, within thirty (30) Business Days and no later than six (6) months prior to the termination or expiry of this Contract, the Contractor will submit for the Authority's approval the EMP in a final form that could be implemented immediately (The final EMP shall reflect any changes in the Contractor Deliverables that have occurred since the EMP was last agreed).
- 5.3.1 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the EMP.
- 5.4 If at any time during the contract the Parties are unable to agree the contents of the EMP within thirty (30) Business Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

6 Transfer Notice and Transfer Services

- 6.1 The Authority shall be entitled to require the provision of Transfer Services at any stage prior to expiry of the Contract Period or, in the context of termination of this Contract (or part thereof), as soon as reasonably practicable following the service of a Termination Notice pursuant to Clause 10 of the LBAD Terms and Conditions, by serving a Transfer Notice on the Contractor. The Authority may serve one or more Transfer Notices.

Transfer Services

- 6.2 Unless the Authority notifies the Contractor otherwise, the Transfer Services to be provided by the Contractor are such Contractor Deliverables as may reasonably be expected to be provided by an outgoing Contractor to the Authority and/or any Replacement Contractor to ensure an orderly and efficient transfer of Contractor Deliverables, including (without limitation):
- 6.2.1 the provision of an information pack listing the Contractor Deliverables;
- 6.2.2 the provision of the Contractor Deliverables agreed and specified in the Exit Management Plan;
- 6.2.3 the provision of information to enable the Authority to create a data library suitable to give replacement service providers a full and detailed knowledge of the Contractor Deliverables;

- 6.2.4 details of all operational and business processes (including supporting documentation) in place, such that they may be suitable for use by the Authority and/or any Replacement Contractor;
- 6.2.5 upon reasonable request, the provision of up-to-date copies of operations manuals;
- 6.2.6 an up to date spares list detailing manufacturers, part numbers, descriptions, NSN's, DofQ's, MOQ's, leadtimes and unit prices. The Contractor will also provide procedures to help maintain continuity of supply of spares as detailed in the Exit Management Plan;
- 6.2.7 notifying Subcontractors of procedures to be followed during the Transfer Period;
- 6.2.8 providing details of all operational and business processes (including supporting documentation) in place;
- 6.2.9 delivering to the Authority the existing systems support profiles, monitoring or systems logs, and documentation and status reports relating to the twelve (12) month period prior to the commencement of the Transfer Services;
- 6.2.10 providing details of work volumes and staffing requirements over the previous twelve (12) months;
- 6.2.11 with respect to work in progress as at the termination or expiry of this Contract and end of the Transfer Period, providing details of current status and work required to complete;
- 6.2.12 providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Contractor Deliverables;
- 6.2.13 providing all assistance and expertise as necessary to examine relevant roles and responsibilities in place of the provision of the Contractor Deliverables;
- 6.2.14 identifying and transferring all existing training material;
- 6.2.15 providing appropriate training, including holding an agreed number of workshops and training sessions for the Authority and/or any Replacement Contractor;
- 6.2.16 making senior and key employees available and answering all reasonable questions from the Authority and/or any Replacement Contractor in relation to the Contractor Deliverables;
- 6.2.17 allowing a reasonable number of Authority and/or any Replacement Contractor staff to shadow Contractor personnel engaged in the performance of the Contractor Deliverables for reasonable periods, including allowing staff to observe day-to-day activities and to gain practical exposure to the performance of the Contractor Deliverables;
- 6.2.18 providing information about capacity and performance requirements and planned requirements for growth;

- 6.2.19 agreeing a handover plan for all security (logical and physical) matters and a security management control procedures manual;
 - 6.2.20 delivering copies of Contractor Deliverables related databases to the Authority and/or any Replacement Contractor;
 - 6.2.21 providing such other information services and assistance as may reasonably be requested by the Authority to transition the whole or any part of the Contractor Deliverables.
- 6.3 The Transfer Services shall also include providing access (on reasonable prior notice) to the Authority and/or any Replacement Contractor, for a period not exceeding twelve (12) months after the Contract Period, to information and documentation retained by the Contractor and which relates to the Contractor Deliverables.
- 6.4 No additional payment shall be made by the Authority for the Transfer Services.

Transfer Notice

- 6.5 A Transfer Notice shall contain the following details (to the extent practicable):
- 6.5.1 the expected duration of the Transfer Period (which shall continue no longer than twelve (12) months after the date on which the Contractor ceases to provide the Contractor Deliverables), unless extended pursuant to paragraph 6.6;
 - 6.5.2 to the extent not included in the Exit Information, or already requested, any information the Authority requires the Contractor to provide in relation to the Contractor Deliverables;
 - 6.5.3 details of the Transfer Services required;
 - 6.5.4 confirmation of implementation of the Exit Management Plan (in whole or in part);
 - 6.5.5 details of any Replacement Contractor (if relevant and if any Replacement Contractor has been identified at that stage); and
 - 6.5.6 such other matters as the Authority, in the circumstances, considers appropriate.
- 6.6 The Authority shall have an option to extend the Transfer Period beyond the period specified in the Transfer Notice provided that such extension shall not extend for more than six (6) months beyond the date specified in the Transfer Notice. The Authority shall notify the Contractor to such effect no later than twenty (20) Business Days prior to the date on which the provision of Transfer Services is otherwise due to expire.
- 6.7 The Authority shall have the right to terminate its requirement for Transfer Services, at any time, by serving not less than twenty (20) Business Days' Notice upon the Contractor to such effect.
- 6.8 Within ten (10) Business Days of the issue of the Transfer Notice, the Parties shall meet to discuss:
- 6.8.1 the process for implementing the Exit Management Plan;

- 6.8.2 the details of the Contractor Deliverables and Assets to be transferred;
 - 6.8.3 the details of any shared assets which are to be segregated before or at the expiry of the Contract Period or expiry of the Transfer Period;
 - 6.8.4 and the timing of any segregation of such assets;
 - 6.8.5 the details of any required Transfer Services;
 - 6.8.6 the terms of any required Transition Services Agreement;
 - 6.8.7 the terms on which senior management of the Contractor will be engaged on the exit arrangements;
 - 6.8.8 the information the Authority requires the Contractor to provide in relation to the Contractor Deliverables; and
 - 6.8.9 which services or work (if any) will be carried out by the Contractor after the Transfer Period.
- 6.9 The Parties shall use their best endeavours to agree provisions 6.8.1 to 6.8.9 within one (1) month of the issue of the Transfer Notice.
- 6.10 Where the Parties fail to reach agreement within the time period set out in paragraph 6.9, then the Authority shall be entitled to direct the Contractor in relation to the matters specified in paragraph 6.8 to the extent reasonably required to ensure an orderly and efficient handover to the Authority or to any Replacement Contractor (as relevant) and provided that the Contractor may refer the matter to DEFCON 530 (Dispute Resolution Procedure) (with the Parties complying with such direction until otherwise determined under the DEFCON 530).

7 Transfer Period

- 7.1 Throughout the Transfer Period or such shorter period as the Authority may require, the Contractor shall:
- 7.1.1 continue to provide the Contractor Deliverables and, if required, perform the Transfer Services in accordance with the requirements set out in the Transfer Notice with a view to ensuring an orderly and efficient handover of Contractor Deliverables to the Authority or to the Replacement Contractor (as relevant);
 - 7.1.2 continue to provide the Contractor Deliverables with no detriment to the performance standards required under this Contract;
 - 7.1.3 perform the Transfer Services, and/or ensure that the Transfer Services are performed, at all times:
 - (i) in accordance with any specific performance standards or obligations applicable to them contained in this Contract;
 - (ii) (in the absence of any specific performance standards or obligations applicable to it contained in this Contract) in accordance with Law, regulations, any required consents and Good Industry Practice; and
 - (iii) in a manner that is not likely to be injurious to health or to cause damage to property;

- 7.1.4 use all reasonable endeavours to reallocate resources to provide the Transfer Services without additional cost to the Authority.

8 Personnel

- 8.1 If requested to do so by the Authority, the Contractor shall provide familiarisation training via Emergent Work Authorisation for any employees of any Replacement Contractor in order assist the employees of the Replacement Contractor to obtain a sound knowledge and understanding of the Contractor Deliverables to be transferred and an understanding of the location at which the Contractor Deliverables are performed.

9 Termination Obligations

- 9.1 The Contractor shall comply with all of its obligations contained in the Exit Management Plan and Transfer Notice.
- 9.2 Upon the termination or expiry of this Contract or such other date specified by the Authority, the Contractor shall:
 - 9.2.1 cease to use the Authority Data and at the Authority's discretion either erase from any computers, storage devices and storage media retained by the Contractor and all Authority Data or transfer all Authority Data in its possession or control to the Authority;
 - 9.2.2 return all property of the Authority (in compliance with the terms of this Contract), and all other property, information and records belonging to the Authority (including any security passwords and access codes);
 - 9.2.3 comply with all provisions of this Contract relating to termination and/or expiry; and
 - 9.2.4 if required by the Authority, enter into an Asset Transfer Agreement and/or Transition Services Agreement with the Replacement Contractor, the Authority (or its nominee).
- 9.3 Following the issue of a Termination Notice or during the Transfer Period, the Contractor shall not, without the Authority's prior written consent (save in the ordinary course of business):
 - 9.3.1 terminate, enter into or vary any Subcontractor;
 - 9.3.2 make any material modifications to, or dispose of, any Contractor Assets or acquire any additional Contractor Assets; or
 - 9.3.3 terminate, enter into or vary any licence for software in connection with the Contractor Deliverables.

10 Right to continued use of assets

- 10.1 In the event of termination or expiry of this Contract or the Transfer Period, the Authority shall have the option (exercisable by notice to be given not later than one (1) month after termination or one (1) month prior to expiry) to continue (or procure that any Replacement Contractor may continue) with the use of Assets which are not Exclusive Assets but are required to continue with the provision of the Contractor Deliverables.

- 10.2 As soon as reasonably practicable after the Contractor has been notified in accordance with paragraph 10.1, the Contractor shall procure a non-exclusive, perpetual, royalty-free licence for the Authority and/or Replacement Contractor and/or Subcontractors to use, for such reasonable period as may be required by the Authority and/or Replacement Contractor, such assets specified under such paragraph, failing which the Contractor shall as soon as reasonably practicable and (at its cost) procure suitable alternative assets to be used by the Authority and/or Replacement Contractor.

11 Transfer of Subcontracts

- 11.1 The Contractor shall, if required by the Authority, and with effect from the termination or expiry of this Contract, assign the benefit of or novate in favour of the Authority or any Replacement Contractor any Subcontract:
- 11.1.1 under which, as at the date of service of the Termination Notice, a material part of the Contractor Deliverables to be transferred are being performed by a Subcontractor; and/or
 - 11.1.2 which is necessary (in the reasonable opinion of the Authority) to enable the Authority or any Replacement Contractor to perform the Contractor Deliverables or services substantially similar to the Contractor Deliverables.
- 11.2 The Contractor shall ensure that its Subcontracts contain a provision giving effect to this paragraph 11.
- 11.3 The Contractor shall use all reasonable endeavours to procure that any such Subcontractor co-operates with the Authority and any Replacement Contractor with a view to continuing to provide the relevant sub-contracted Contractor Deliverables notwithstanding termination or expiry.
- 11.4 The Parties shall execute such documents and provide such other assistance as the Authority reasonably requires to give effect to this paragraph 11. The Contractor shall hold such Subcontracts on trust for the Authority or any Replacement Contractor until such time as the relevant Subcontract has been transferred.
- 11.5 The Contractor shall indemnify the Authority and any Replacement Contractor against all losses, liabilities and costs arising out of any claims made by a counterparty to a transferring Subcontract both:
- 11.5.1 in relation to matters arising prior to the date of assignment or novation; and
 - 11.5.2 in relation to any matters arising after the date of assignment or novation and which arise as a result of any act, neglect or default of the Contractor.

12 Return or Destruction of Classified Documents

- 12.1 On expiry or termination of this Contract, the Contractor shall, as advised by the Authority, return or destroy all copies of classified documents (including drawings) issued to the Contractor by the Authority pursuant to (or for the purposes of the execution of) this Contract and certify that this has been done, unless written approval has been given for their retention.

APPENDIX 1: DRAFT ETHICAL WALL AGREEMENT

THE SECRETARY OF STATE FOR DEFENCE

and

[THE COUNTERPARTY]

ETHICAL WALL AGREEMENT

This Agreement is dated [] 20[] (the "**Effective Date**").

Between:

- (1) **THE SECRETARY OF STATE FOR DEFENCE** (the "**Authority**") acting on behalf of the Crown; 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**"),

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

BACKGROUND

- A. The Authority is obliged to ensure transparency, fairness, non-discrimination and equal treatment in relation to its procurement process pursuant to the Procurement Regulations (defined below). 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 Purpose (defined below).
- B. The Authority is conducting a procurement exercise for the [supply/purchase/provision] of [insert details of project/goods/Contractor Deliverables] (the "**Purpose**").
- C. 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 capitalised words and expressions shall have the following meanings in this Agreement and its recitals:

"**Affiliate**" means 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;

"**Agreement**" means this ethical wall agreement duly executed by the Parties;

"**Bid Team**" means any Representatives of the Counterparty, any of its Affiliates and/or any Subcontractors connected to the preparation of an ITT Response;

"**Central Government Body**" means 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, including:

- a) Government Departments;
- b) Non-Departmental Public Bodies or Assembly Sponsored Public Bodies (advisory, executive, or tribunal);
- c) Non-Ministerial Departments; or

d) Executive Agencies;

"Conflicted Personnel" means any Representatives of:

- a) the Counterparty;
- b) any of the Counterparty's Affiliates; and/or
- c) any Subcontractors,

who, because of the Counterparty's, any of its Affiliates' and/or any Subcontractors' relationship with the Authority under any Contract, have or have had access to information which creates or may create a conflict of interest or provide the Bid Team with an unfair advantage as regards information Other Bidders would not have;

"Contract" means any pre-existing or previous contract between the Authority and:

- a) the Counterparty;
- b) any of the Counterparty's Affiliates;
- c) any Subcontractor; and
- d) any other Third Party,

relating to the subject matter of the Purpose at the date of the commencement of the ITT Process;

"Control" means 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 **"Controls"** and **"Controlled"** shall be interpreted accordingly;

"Effective Date" means the date of this Agreement as set out above;

"Invitation to Tender" or **"ITT"** means an invitation to submit tenders issued by the Authority as part of an ITT Process (and shall include an Invitation to Negotiate);

"ITT Process" means, with regard to the Purpose, the relevant procedure provided for in the Procurement Regulations (as amended), which the Authority has elected to use to select a contractor or contractors, together with all relevant information, data, correspondence and/or documents issued and/or made available by or on behalf of the Authority as part of that procurement exercise and all information, correspondence and/or documents issued and/or made available by or on behalf of the bidders in response together with any resulting contracts;

"ITT Response" means the tender(s) submitted, or to be submitted, by the Counterparty, any of its Affiliates and/or any Subcontractors in response to any invitation(s) to submit bids under the ITT process;

"Other Bidder" means any other bidder or potential bidder that is not the Counterparty or any of its Affiliates that has taken or is taking part in the ITT Process;

"Procurement Process" means the period commencing on the earlier of: (a) the publication of the first notice in relation to the Purpose; and (b) the execution of this Agreement, and ending on the occurrence of: (i) the publication by the Authority of all

contract award notices that result from the ITT Process; or (ii) the abandonment or termination of the ITT Process as notified by the Authority;

"Procurement Regulations" means the Public Contracts Regulations 2015, the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020, the Defence and Security Public Contracts Regulations 2011, the Utilities Contracts Regulations 2016, and the Concession Contracts Regulations 2016, each as amended from time to time;

"Professional Advisor" means a supplier, subcontractor, advisor or consultant engaged by the Counterparty and/or any of its Affiliates under the auspices of compiling its ITT response;

"Purpose" has the meaning given to it in recital B to this Agreement;

"Representative" refers to a person's officers, directors, employees, advisers (including the officers, directors, employees, advisers and agents of any Professional Advisors), agents and, where the context admits, providers or potential providers of finance (including their representatives) to the Counterparty, any of its Affiliates and/or any subcontractors engaged in connection with the ITT Process;

"Subcontractor" means an existing or proposed subcontractor of:

- a) the Counterparty; and/or
- b) any of the Counterparty's Affiliates,

who is connected to the preparation of an ITT Response (including key subcontractors named in the ITT Response);

"Third Party" means any person who is not a Party, including Other Bidders, their Affiliates and/or their Representatives; and

"Business Day" means any day of the week other than a weekend, when Banks in England and Wales are open for business.

- 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, the Counterparty, any of the Counterparty's Affiliates and/or any Subcontractors includes disclosure, or provision of access, by or to the Representatives of the Authority, the Counterparty, any of its Affiliates and/or any Subcontractors (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 paragraphs and recitals is to paragraphs 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 Parties agree to be bound by the terms of this Agreement.

Conflicts of Interest

2.2 The Counterparty:

2.2.1 shall take all appropriate steps to ensure that neither the Counterparty, nor its Affiliates, nor any Subcontractors nor any 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, any of its Affiliates, any Subcontractors and/or any Representatives and the duties owed to the Authority under any Contract or pursuant to an open and transparent ITT Process; and

2.2.2 acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives intend to take part in the ITT Process and because of the Counterparty's, any of its Affiliates', any Subcontractors' and/or any Representatives' relationship with the Authority under any Contract, the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives have or have had access to information which could provide the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives with an advantage and render unfair an otherwise genuine and open competitive ITT Process.

2.3 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, the Counterparty shall take such steps that are necessary to eliminate the conflict of interest to the Authority's satisfaction, including one or more of the following:

2.3.1 not assigning any of the Conflicted Personnel to the Bid Team at any time;

2.3.2 providing to the Authority promptly upon request a complete and up to date list of any Conflicted Personnel and the personnel comprising the Bid Team and reissue such list to the Authority promptly upon any change to it;

2.3.3 ensuring that no act or omission by itself, its Affiliates, any Subcontractors and/or any Representatives results in information of any kind, however conveyed, or in any format and however so stored:

- (a) about the ITT Process (gleaned from the performance of any Contract or otherwise); and/or
- (b) 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 where the Authority has not made generally available that information to Other Bidders;

- 2.3.4 ensuring that by no act or omission by itself, its Affiliates, any Subcontractors and/or any Representatives and in particular the Bid Team results in information of any kind, however conveyed, 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;
- 2.3.5 ensure that agreements that flow down the Counterparty's obligations in this Agreement, are entered into as necessary, between the Counterparty and its Affiliates and any Subcontractors [in a form to be approved by the Authority];
- 2.3.6 physically separating the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;
- 2.3.7 providing regular training to its Affiliates, any Subcontractors and/or Representatives to ensure it is complying with this Agreement;
- 2.3.8 monitoring Conflicted Personnel movements within restricted areas (both physical and electronic online areas) to ensure it is complying with this Agreement and to ensure adherence to the ethical wall arrangements the Counterparty, its Affiliates, any Subcontractors and/or any Representatives have put in place in order to comply with this Agreement;
- 2.3.9 ensuring that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
- 2.3.10 complying with any other action as the Authority, acting reasonably, may direct in connection with the ITT Process and/or this Agreement.

Notification of Conflicts of Interest

2.4 The Counterparty shall:

- 2.4.1 notify the Authority immediately in writing of all perceived, potential and/or actual conflicts of interest that arise or have arisen;
- 2.4.2 submit in writing to the Authority full details of the nature of the perceived, potential and/or actual conflict of interest including full details of the risk assessments undertaken, the impact or potential impact of the perceived, potential and/or actual conflict, the measures and arrangements that have been established and/or are due to be established, to eliminate the perceived, potential and/or actual conflict, and the Counterparty's plans to prevent potential conflicts of interests from arising ("**Proposed Avoidance Measures**"); and

- 2.4.3 seek the Authority's approval to the Proposed Avoidance Measures which the Authority shall have the right to grant, grant conditionally or deny (if the Authority rejects the Proposed Avoidance Measures the Counterparty shall repeat the process set out in this paragraph 2.4 until such time as the Authority grants approval or the Counterparty withdraws from the ITT Process).
- 2.5 The Counterparty will provide to the Authority, on demand, any and all information in relation to its adherence with its obligations set out under paragraphs 2.2 and 2.3 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 paragraphs 2.2 and 2.3.
- 2.7 The Counterparty acknowledges that any provision of information or demonstration of measures, in accordance with paragraphs 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.

Exclusion from the ITT Process

- 2.8 Where, in the reasonable opinion of the Authority, there has been any breach by the Counterparty of paragraphs 2.2, 2.3, or 2.4 or failure to obtain the Authority's approval of the Proposed Avoidance Measures the Authority shall be entitled to exclude the Counterparty, or any of its Affiliates and/or any Representatives, from the ITT Process, and the Authority may, in addition to the right to exclude, take such other steps as it deems necessary.
- 2.9 The actions of the Authority pursuant to paragraph 2.8 shall not prejudice or affect any right of action or remedy under this Agreement or at law which shall have accrued or shall thereafter accrue to the Authority.

Bid Costs

- 2.10 In no event shall the Authority be liable for any bid costs incurred by:
- 2.10.1 the Counterparty or any of its Affiliates, any Representatives and/or any Subcontractors; or
- 2.10.2 any Third Party,
- as a result of any breach of this Agreement by the Counterparty, any of its Affiliates, any Subcontractors and/or Representatives, including where the Counterparty, any of its Affiliates, any Subcontractors or Representatives, or any Third Party is or are excluded from the ITT Process.

Specific Remedies

- 2.11 The Counterparty acknowledges and agrees that:
- 2.11.1 neither damages nor specific performance are adequate remedies in the event of a breach of the obligations in paragraph 2; and
- 2.11.2 in the event of a breach of any of the obligations in paragraph 2 which cannot be effectively remedied the Authority shall have the right to terminate both this

Agreement and the Counterparty's participation in the ITT Process in each case with immediate effect on written notice.

3 SOLE RESPONSIBILITY

- 3.1 It is the sole responsibility of the Counterparty to comply with the terms of this Agreement, including ensuring its Affiliates, any Subcontractors, and/or any Representatives comply with the terms of this Agreement. No approval by the Authority of any procedures, agreements or arrangements provided by the Counterparty, any of its Affiliates, any Subcontractors and/or their Representatives 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 The Counterparty 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:
- 5.2.1 any Central Government Body; or
 - 5.2.2 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
 - 5.2.3 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 paragraph 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

- 6.1 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 or remedy of any person which exists or is available otherwise than pursuant to that Act.

7 TRANSPARENCY

- 7.1 The Parties acknowledge and agree that the Authority is under a legal duty pursuant to the Procurement Regulations to run transparent and fair procurement processes. Accordingly, the Authority may disclose the contents of this Agreement to Other Bidders (and/or potential Other Bidders) 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 Business 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 Business Day. Otherwise, delivery will occur at 9.00am on the next Business Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt.
Prepaid, Royal Mail Signed For™ 1 st Class or other prepaid, next Business 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 Business Day. Otherwise, delivery will occur at 9.00am on the same Business Day (if delivery before 9.00am) or on the next Business Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

- 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:

	Counterparty	Authority
Contact		
Address		
Email		

- 8.4 This paragraph 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

- 10.1 Each Party's obligations under this Agreement shall continue in full force and effect for period of [] years from the Effective Date/[or for the period of the duration of the Procurement Process]

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:

Signed by the Counterparty

Name:

Signature:

Position in Counterparty:

Appendix 2 – Exit Agreements

Part 1 – Transition Services Agreement

Transition Services Agreement

Dated

[]
(the Outgoing Contractor)

[] (the Incoming Contractor)

Transition Services Agreement

Dated

Between

- (1) ** (the Outgoing Contractor) [a company incorporated in England and Wales (registered number **) whose registered office is at **] [a corporation organised and existing under the laws of; and
- (2) ** (the Incoming Contractor) [a company incorporated in England and Wales (registered number **) whose registered office is at **] [a corporation organised and existing under the laws of ** whose principal place of business is at **].

Recitals

- A The Outgoing Contractor currently provides ** to the Secretary of State for Defence.
- B The Secretary of State for Defence has conducted a competition in relation to the continued provision of the services referred to in Recital A and the Incoming Contractor has been successful in that competition.
- C As a result of its success in the competition referred to in Recital B, the Incoming Contractor will be responsible for providing the services referred to in Recital A from [DN: insert date].
- D Prior to the sale, the Outgoing Contractor supplied the Outgoing Contractor Services to the [Business] and the Incoming Contractor wishes the Outgoing Contractor to continue providing the Outgoing Contractor Services for a limited time.

It is agreed

1 Definitions and Interpretation

- 1.1 In this Agreement the following definitions apply.

Agreement means this Transitional Services Agreement as the same may be amended or supplemented from time to time in accordance with the terms hereof.

Applicable Law means any applicable law, enactment, statute, proclamation, by-law, directive, decision, notice, court decree or judgment, regulation, European Union legislation, authorisation, rule, order, rule of court or delegated or subordinate legislation including directions, requirements or guidance issued pursuant to any legislation (provided such directions, requirements or guidance are derived from a valid legal authority, including any nuclear regulator or Regulatory Body) and any Government, NBC or other [Authority (in its statutory capacity and not as contractual counterparty)] documents or publications having the force of law in each case in force in the United Kingdom at any time or from time to time.
[

Completion means ** [DN: insert date].

Contract Manager shall have the meaning given in Clause 7.1.

Force Majeure has the meaning given in Clause 8.1 of the LBAD Terms and Conditions.

Outgoing Contractor Services means those Services provided by the Outgoing Contractor or its Subsidiaries as set out in Schedule 1.

Parties means the Outgoing Contractor and the Incoming Contractor, and Party means either of them.

Services means:

the Outgoing Contractor Services; and

[the Third Party Services],

and Service means any one of the above as the context may require.

Service Provider means:

that Party providing Services to the other Party; [or]

[a Third Party Service Provider].

Subsidiaries means those entities which are subsidiaries [or subsidiary undertakings] of the relevant Party.

Tax Authority means any government, state or municipality or any local, state, federal or other authority, body or official anywhere in the world exercising a fiscal, revenue, customs or excise function (including without limitation, HM Revenue and Customs).

Termination Date means [DN: insert term] months from the date hereof unless Schedule 1, or **Error! Reference source not found.** provide otherwise or this Agreement is terminated pursuant to Clause 9.

[Third Party Service Provider means a third party in a contractual relationship with one Party for the provision of any Service.]

[Third Party Services means those Services provided by a third party as set out in Schedule 2, or agreed between the Parties from time to time.]

VAT means:

any tax imposed in compliance with the council directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112) (including value added tax imposed by VATA and legislation and regulations supplemental thereto); and

any other tax of a similar nature (including, without limitation, any value added tax, turnover tax, sales tax, use tax, goods and services tax and consumption tax), whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in (a), or elsewhere.

VAT Group means a group for the purposes of the VAT Grouping Legislation.

VAT Grouping Legislation means (a) sections 43 to 43D (inclusive) of VATA and (b) the Value Added Tax (Groups: eligibility) Order 2004 (SI 2004/1931).

VATA means the Value Added Tax Act 1994.

1.2 In this Agreement, unless otherwise specified:

- (a) the words and expressions defined in sections 1159, 1161 and 1162 of the Companies Act 2006 have the same meanings, except that a company is to

be treated as a member of another company for the purposes of subsections 1159(1)(b) and (c) even if its shares in that other company are registered in the name of:

- (i) its nominee or any other person acting on its behalf, or
 - (ii) another person by way of security over those shares;
- (b) reference to any statute, bye law, regulation, rule, delegated legislation or order is to any statute, bye law, regulation, rule, delegated legislation or order as amended, modified or replaced from time to time and to any statute, bye-law, regulation, rule, delegated legislation or order replacing or made under any of them;
- (c) references to any Clause, paragraph or Schedule are to those contained in this Agreement and all Schedules to this Agreement are an integral part of this Agreement;
- (d) headings are for ease of reference only and shall not be taken into account in construing this Agreement;
- (e) reference to any English legal concept, term, action, remedy, method of judicial proceeding, legal document, legal status, court or official shall, in respect of any jurisdiction other than England and Wales, be deemed to refer to what most nearly approximates to it in that jurisdiction;
- (f) reference to any English statute, bye-law, regulation, rule, delegated legislation or order shall, in relation to any assets owned, liabilities incurred, company incorporated or business carried on in any jurisdiction other than England and Wales, be deemed to include what most nearly approximates to it in that jurisdiction;
- (g) the expression **this Clause** shall unless followed by reference to a specific provision be deemed to refer to the whole Clause (not merely the sub-clause, paragraph or other provision) in which the expression occurs;
- (h) **person** includes any individual, firm, company or other incorporated or unincorporated body;
- (i) **in writing** includes any communication made by letter or facsimile transmission;
- (j) **business day** means a day (not being a Saturday or Sunday) on which banks are open for normal banking business in London;
- (k) the expressions **hereof**, **herein** or **hereunder** shall unless followed by reference to a specific provision be deemed to refer to the whole clause (not merely the sub-clause, paragraph or other provision) in which the expression occurs; and

- (l) any reference in this Agreement to any person, when construing any provision in relation to VAT, shall (where appropriate and unless the context otherwise requires) be construed, at any time when such person is treated as a member of a VAT Group, to include a reference to the representative member of such group at such time (so that a reference to x, for example, would read "x or the relevant representative member of the VAT Group of which x is a member (as the case may be)") (the term "representative member" to have the same meaning as for the purposes of the VAT Grouping Legislation).

2 Outgoing Contractor Services

- 2.1 The Outgoing Contractor agrees to provide or procure that its Subsidiaries [or a Third Party Service Provider] provide the Outgoing Contractor Services to the Incoming Contractor [Group].
- 2.2 [The Outgoing Contractor's obligation to deliver any Third Party Service is conditional upon its obtaining the consent of the relevant Third Party Service Provider. If that consent cannot reasonably be obtained, the Parties will use reasonable efforts to arrange for alternative methods of delivering any such Service.]

3 Duration

- 3.1 Subject to Clauses 4.4 and 9, this Agreement shall commence upon Completion **[DN: to discuss timing of the commencement of the transitional services]** and shall terminate upon the expiry of [twelve (12)] months from the date hereof, except insofar as Schedule 1, or **Error! Reference source not found.** provide a different Termination Date for a particular Service.
- 3.2 The duration of this Agreement may be extended by written agreement between the Parties. [No later than **[DN: insert period]** months from the date hereof, the Parties will discuss whether to enter into longer-term arrangements with respect to any Services.]
- 3.3 Neither the termination nor expiry of this Agreement shall affect:
- (a) the liability of any Party for breach of this Agreement;
 - (b) the obligations of any Party to make payments when due hereunder; or
 - (c) the provisions contained in Clauses 4, 5, 7, 9 and 24 and the related definitions, each of which shall survive the termination or expiration of this Agreement.

4 Pricing and Payment

- 4.1 Payment for the Services shall be payable by the Incoming Contractor [monthly] [quarterly] [yearly] on the basis set out in Schedule 3. **[DN - Outgoing Contractor will be entitled to recover all of its costs (plus profit) of performing these Services and this will include allowances for complying with the general**

obligations under this Contract (such as maintaining approvals and providing assistance as reasonably requested.)

- 4.2 Credit Terms will be [thirty (30)] calendar days from the date of [receipt of] each invoice.
- 4.3 [The invoice for the Services performed in a particular country shall be rendered by the relevant Service Provider in that country on a separate invoice each month. Invoice amounts shall be stated in local currency and payments shall be made in such local currency within [thirty (30)] calendar days of the date of receipt of the relevant invoice.]
- 4.4 If the Parties agree to extend the Termination Date with respect to any Service, any such Service rendered shall be charged to and payable by the Incoming Contractor [at a price agreed by the Parties in writing, or if no price is agreed at costs typical for providing such Services.]

5 VAT

- 5.1 All sums or other consideration set out in this Agreement or otherwise payable or otherwise provided by the Incoming Contractor to the Outgoing Contractor pursuant to this Agreement shall be deemed to be exclusive of any VAT which is chargeable on the supply or supplies for which such sums or other consideration (or any part thereof) are the whole or part of the consideration for VAT purposes.
- 5.2 Where, pursuant to the terms of this Agreement, the Outgoing Contractor makes a supply to the Incoming Contractor for VAT purposes and VAT is or becomes chargeable on such supply, the Incoming Contractor shall pay to the Outgoing Contractor (in addition to and at the same time as any other consideration for such supply) a sum equal to the amount of such VAT and the Outgoing Contractor shall provide the Incoming Contractor with a valid VAT invoice in respect of such supply.
- 5.3 Where either party is required by the terms of this Agreement to reimburse or indemnify the other party for any cost, expense or other liability, such first party shall reimburse or indemnify such other party for the full amount of such cost, expense or other liability, including such part thereof as represents VAT, save to the extent that such other party is entitled to credit or repayment in respect of such VAT from the relevant Tax Authority.

6 Warranties

- 6.1 The Outgoing Contractor warrants that the Services performed by it [and by each of its Subsidiaries] shall be performed:
- (a) in accordance with good industry practice;
 - (b) with reasonable skill and care;
 - (c) by individuals qualified for the tasks to which they are assigned;

- (d) at a quality consistent with that provided prior to the date of this Agreement;
and
 - (e) in compliance with all Applicable Laws.
- 6.2 The Outgoing Contractor warrants that it will provide all co-operation, information and assistance as reasonably requested by the Incoming Contractor in relation to the Services.
- 6.3 The Outgoing Contractor warrants that it will obtain and maintain in force all licences, permissions, authorisations, consents and permits needed to provide the Services (or the benefit thereof) and to perform the Services in accordance with this Agreement.
- 6.4 Upon a written request by the Incoming Contractor, the Outgoing Contractor shall use reasonable efforts to pursue (on the Incoming Contractor's behalf) all rights under any contract to which it is a party with a Third Party Service Provider relating to any Service provided by the Third Party Service Provider to the Incoming Contractor. The Incoming Contractor shall fully indemnify the Outgoing Contractor for costs in connection with pursuing any such rights.
- 6.5 The Outgoing Contractor undertakes that if it experiences any shortage, interruption, delay, inadequacy or limitation in the availability of any of the Services (by reason of Force Majeure or otherwise) and is unable to fulfil all the requirements of the other Party, it shall ensure the other Party is treated no less favourably than any Subsidiary of the Party providing the Service in the allocation of such Services which remain to be performed.
- 6.6 [DN: to consider further obligations depending upon the nature of the services supplied. E.g. obligations not to introduce computer viruses, regarding data protection and information security etc. if the services provided include IT services]

7 Contract Management

- 7.1 Each party will at all times have a nominated representative (**Contract Manager**) to act as its primary point of contact for co-ordination of the provision or receipt of Services. Each party will notify the other party in writing within five (5) Business Days of any change to the identity of its Contract Manager. As at the date of this Agreement, the Incoming Contractor's Contract Manager is [insert details] and the Outgoing Contractor's Contract Manager is [insert details].
- 7.2 The Parties will procure that the Contract Managers will meet at least once in each month and at such other intervals as reasonably requested by the Incoming Contractor to discuss the provision and receipt of the Services. The meetings will take place at the dates, times and places agreed by the Contract Managers.
- 7.3 Each party will ensure that its Contract Manager is available on reasonable notice during business hours to discuss the Services and this Agreement.
- 7.4 [DN: to consider further provisions as necessary, e.g. re involvement of key personnel etc.]

8 Confidentiality

- 8.1 The Parties and their respective employees may receive or have access to information or materials that are confidential or proprietary to the other Party. The Parties, their [Subsidiaries] and their respective employees shall access and use such information and materials only in connection with the performance of Services hereunder, and shall safeguard such confidential and proprietary information and materials against disclosure to all others, both for the duration of this Agreement and for a period of [two (2)] years thereafter.
- 8.2 This Clause shall not apply to any such information or material that:
- (a) was already known to such person prior to disclosure in connection herewith;
 - (b) is or becomes public knowledge without disclosure by such person in connection herewith;
 - (c) is lawfully acquired by such person, its agents, counsel or other advisers from a source not under any obligation to the Parties regarding disclosure of such information;
 - (d) is disclosed by such Person under operation of law or with the prior consent of the Parties; or
 - (e) is not identified in writing as confidential and proprietary at the time of disclosure.
- 8.3 The Parties will use reasonable efforts to cause any Third Party Service Provider to enter into a confidentiality agreement, containing substantially the same restrictions as are contained in Clause 8.1 of this Agreement.

9 Termination

- 9.1 This Agreement shall be construed as a separate and independent agreement for each and every Service provided under this Agreement. Any termination or expiration of this Agreement with respect to any Service shall not terminate this Agreement with respect to any other Service then being provided under this Agreement.
- 9.2 Subject to Clause 9.1 hereof, upon written notice the Incoming Contractor may terminate this Agreement relating to any Service if the Outgoing Contractor has committed a material breach of this Agreement with respect to such Service, unless within a period of thirty (30) calendar days after receipt of such notice the Outgoing Contractor remedies the breach. For the purposes of this Agreement, material breach shall include the occurrence of numerous immaterial breaches, whether they occur simultaneously or over a period of time, if the aggregate effect of such breaches is material.
- 9.3 The Outgoing Contractor may suspend or terminate this Agreement on and by immediate written notice to the Incoming Contractor where the Incoming Contractor,

without proper justification, fails to pay any charge as and when due, and such failure continues for a period of at least thirty (30) calendar days after written notice from the Outgoing Contractor.

- 9.4 Upon the expiration or termination of this Agreement with respect to any Service, all rights under this Agreement to receive such Service will cease.

10 Force Majeure

- 10.1 Neither the Parties nor any of their Subsidiaries shall be held responsible for failure or delay in delivery of Services hereunder, nor shall the Parties or any of their Subsidiaries be held responsible for failure or delay in receiving Services hereunder, if such failure or delay is due to an event of Force Majeure. Subject to Clause 10.2, in the event of failure or delay in the provision or acceptance of Services under this Agreement as a result of a Force Majeure, the invoice price of such Services ordered may be reduced accordingly by written notice by either Party to the other.
- 10.2 If the performance of this Agreement by either Party hereunder is prevented, restricted or interfered with by reason of a Force Majeure event, the Party whose performance is so affected, upon giving prompt notice to the other Party, shall be excused from such performance to the extent of such Force Majeure event; provided however, that the Party so affected shall take all reasonable steps to avoid or remove such causes of non-performance and shall continue performance whenever such causes are removed.

11 Limitation of liability

- 11.1 [Liability under this Agreement, whether in contract, tort or otherwise, arising out of or in connection with the performance of the obligations in this Agreement shall be limited to [the [yearly] payment due in accordance with Clause 4 in aggregate.]
- 11.2 For the avoidance of doubt, nothing in this Agreement shall exclude or limit either Party's liability for:
- (a) death or personal injury resulting from negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) for breach of its obligations arising under Section 2 of the Supply of Goods and Services Act 1982; or
 - (d) any other matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.

12 Successors and assigns

This Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by either Party without the prior express written consent of the other Party.

13 [Employees]

- 13.1 The Outgoing Contractor agrees and undertakes that any employee it uses, appoints or seconds to fulfil its obligations to the Incoming Contractor under this Agreement is and shall for all purposes remain the employee of the Outgoing Contractor and that it is not intended that the contracts of employment of any such persons will transfer to the Incoming Contractor or any Third Party which may be substituted for the Incoming Contractor (the Substitute) on termination or expiry of this Agreement (or any part of it).
- 13.2 Not used
- 13.3 Before terminating the employment of any such employee who has transferred to the Incoming Contractor contrary to the Parties' intentions in Clause 13.1 above, the Incoming Contractor must give the Outgoing Contractor a reasonable opportunity to re-employ that employee.
- 13.4 This indemnity will survive termination or expiry of this Agreement only in relation to terminations of employment which take place within one (1) month of the termination or expiry of this Agreement.
- 13.5 In this Clause:

claim includes a claim by any person (including a trade union, a governmental or statutory or local authority or commission).

liability and **liabilities** include any award, compensation, damages, fine, loss, order, payment made by way of settlement, costs and expenses (including legal expenses on an indemnity basis) properly incurred in connection with a claim and also includes the costs and expenses of any investigation by the Equality and Human Rights Commission and of implementing any requirements which may arise from any such investigation.

- 13.6 If the Transferee becomes aware of any matter which might give rise to a claim for an indemnity under this Clause from the Transferor, the following provisions shall apply:
- (a) The Transferee shall immediately give written notice to the Transferor of the matter in respect of which the indemnity is being claimed (stating in reasonable detail the nature of the matter and, so far as practicable, the amount claimed) and shall consult with the Transferor with respect to the matter.
 - (b) The Transferee shall:
 - (i) take such action and institute such proceedings, and give such information and assistance, as the Transferor or its insurers may reasonably request to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter and enforce against any person (other than the Transferor) the rights of the Transferee or its insurers in relation to the matter;

- (ii) in connection with any proceedings related to the matter (other than against the Transferor) use professional advisers nominated by the Transferor or its insurers and, if the Transferor or its insurers so request, allow the Transferor or its insurers the exclusive conduct of the proceedings in each case on the basis that the Transferor shall fully indemnify the Transferee for all costs incurred as a result of any request or nomination by the Transferor or its insurers; and
 - (iii) not admit liability in respect of or settle the matter without the prior written consent of the Transferor, such consent not to be unreasonably withheld or delayed.
- (c) If the Transferor has conduct of any litigation and negotiations in connection with a claim, the Transferor shall promptly take all proper action to deal with the claim so as not, by any act or omission in connection with the claim, to cause the Transferee to be in breach of its obligations to its current or past employees or to cause the Transferee's business interests to be materially prejudiced.

14 Entire agreement

14.1 This Agreement and the documents referred to herein:

- (a) constitute the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement; and
- (b) (in relation to such subject matter) supersede all prior discussions, understandings and agreements between the Parties and their agents (or any of them) and all prior representations and expressions of opinion by any Party (or its agent) to the other Party (or its agent).

14.2 Each of the Parties acknowledges that it is not relying on any statements, warranties or representations given or made by either of them in relation to the subject matter hereof, save those expressly set out in this Agreement and the other documents referred to above, and that it shall have no rights or remedies with respect to such subject matter otherwise than under this Agreement (and the documents executed at the same time as it or referred to in it) save to the extent that they arise out of the fraud or fraudulent misrepresentation of any party.

15 Survival

The termination or expiration of this Agreement, for whatever reason, shall not affect any of the provisions of this Agreement which are expressly or by implication to come into or continue in force after such termination or expiration.

16 Variation

No variation of this Agreement shall be effective unless made in writing and signed by or on behalf of each of the Parties.

17 Severance

If at any time any provision of this Agreement is or becomes invalid or illegal in any respect, such provision shall be deemed to be severed from this Agreement but the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby.

18 Waivers

A failure by any party to exercise and any delay, forbearance or indulgence by any party in exercising any right, power or remedy under this Agreement shall not operate as a waiver of that right, power or remedy or preclude its exercise at any subsequent time or on any subsequent occasion. The single or partial exercise of any right, power or remedy shall not preclude any other or further exercise of that right, power or remedy. No custom or practice of the Parties at variance with the terms of this Agreement shall constitute a waiver of the rights of any party under this Agreement. The rights, powers and not exclusive of any rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law.

19 Costs

The Parties shall pay their own costs and expenses in relation to the preparation, execution and carrying into effect of this Agreement.

20 Third party rights

The Parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Agreement.

21 No partnership or agency

Nothing in this Agreement and no action taken by the Parties in connection with it will create a partnership or joint venture between the Parties or give either Party authority to act as the agent of or in the name of or on behalf of the other Party or to bind the other Party or to hold itself out as being entitled to do so.

22 Independent contractors

Each Party agrees that it is an independent contractor and is entering into this Agreement as principal and not as agent for or for the benefit of any other person.

23 Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and which together shall constitute one and the same Agreement. Unless otherwise provided in this Agreement, this Agreement shall become effective and be dated (and each counterpart shall be dated) on the date on

which the last counterpart of this Agreement has been signed and delivered by the last of the Parties to execute this Agreement.

24 Notices

24.1 Any notice required to be given under this Agreement shall be in writing signed by (or by some person duly authorised by) the Party giving it and may be served by delivering it personally or by confirmed facsimile transmission with a copy by overnight delivery, receipt required, and shall be deemed to have been given when so delivered one (1) business day after the date on which the same was sent by facsimile and overnight delivery to the addresses in Clause 24.2 below (unless otherwise specified by a Party in a written notice to the other Parties).

24.2 Any notice required to be given under this Agreement shall be sent to:

[The Outgoing Contractor] at: **

Facsimile No: **

For the attention of: **

With copies to: **

Facsimile No: **

For the attention of: **

[The Incoming Contractor] at: **

Facsimile No: **

For the attention of: **

With copies to: **

Facsimile No: **

For the attention of: **

25 Dispute Resolution

25.1 Any dispute arising under this Agreement shall be referred to ** as a representative of the Incoming Contractor and to ** as a representative of the Outgoing Contractor for resolution (or such other successor representative identified by the appropriate Party).

25.2 If the persons referred to in Clause 25.1 are unable to achieve an acceptable resolution within thirty (30) calendar days of the referral, either Party may demand that the matter be referred to the [insert role] of the Outgoing Contractor and the [insert role] of the Incoming Contractor for resolution.

25.3 If the matter cannot be resolved within thirty (30) calendar days after the referral to the respective representatives referred to in Clause 25.2, the matter in question shall

be submitted to binding arbitration pursuant to the rules of the International Chamber of Commerce using three arbitrators, one appointed by each of the Parties and the third appointed jointly by such arbitrators. The seat of the arbitration shall be London.

26 Governing law

English law governs:

- (a) this Agreement and its interpretation; and
- (b) any non-contractual obligations arising from or connected with this Agreement.

As witness the hands of the duly authorised representatives of the Parties hereto the day and year full above written.

Signed by ** for the Outgoing Contractor)

Signed by ** for the Incoming Contractor)

Schedule 1 – Outgoing Contractor Services

Ref	Function And Service Area	No. Of Months Service Required	Estimated Costs	Further Information
		[-]	[-]	
		[-]	[-]	
		[-]	[-]	
		[-]	[-]	
		[-]	[-]	
		[-]	[-]	
		[-]	[-]	
		[-]	[-]	

Schedule 2 – Third Party Services

Ref	Function And Service Area	No. Of Months Service Required	Estimated Costs	Further Information

Schedule 3 – Payment

Part 2

Asset Transfer Agreement principles

Intention: The Asset Transfer Agreement is to be used where the Authority exercises its option to purchase (or procure the purchase of) the ATA Assets (as defined below) in accordance with paragraph **Error! Reference source not found.** of the Exit Management Plan (the "**Option**").

This Contract contains provisions for the transfer of records, registers, IP, employees and sub-contracts from the Outgoing Contractor to the *Authority* so such items will not be dealt with in the Asset Transfer Agreement.

If the Authority exercises the Option, the Parties shall act in good faith with a view to agreeing a definitive Asset Transfer Agreement to reflect the following principles.

1 **The ATA Assets**

The assets to be transferred will comprise:

- (a) all the tangible moveable Exclusive Assets (valued in excess of £25,000) (moveable plant and equipment, stock and consumables) exclusively in, or held exclusively for, the provision of the Services in respect of which the Contract has expired or has been terminated, and
- (b) the benefit (subject to the burden) of any contract (subject to such contract(s) having been made available to the Authority pursuant to the Exit Management Plan which relates to:
 - (i) the servicing, maintenance, support or functioning of any such asset; or
 - (ii) the rights of the Contractor to use any such asset and which, in each case, does not terminate at, or as a consequence of, the expiry or termination of the Contract; and
- (c) such other assets (if any) as the Parties may mutually agree,

(the "**ATA Assets**") but excluding the "**Excluded Assets**" set out in Paragraph 2 below.

2 **Excluded Assets**

The "Excluded Assets" will comprise:

- (a) any asset owned or used by the Contractor which is not used exclusively to provide the Contractor Deliverables in respect of which the Contract has expired or has been terminated;
- (b) any asset which is owned or licensed to the Contractor by the Authority; and

- (c) any asset which will be used by the Contractor in the provision of services to the Authority which in whole or in part replace the Contractor Deliverables provided under this Contract.

3 Liabilities

From completion of the transfer of the ATA Assets, the Incoming Contractor shall assume and discharge all obligations and liabilities which attach, or relate, to the ATA Assets after such date. Where the Contractor, acting reasonably, is not satisfied with the financial covenant of the Incoming Contractor, the Contractor shall notify the Authority but in any event the Authority shall assume and discharge all financial obligations and liabilities which attach, or relate to the ATA Assets (or procure that the Incoming Contractor does so).

4 Basis of sale

The Contractor will sell such right title and interest as it has in the ATA Asset save that any encumbrance granted to secure indebtedness of the Contractor or a member of its group will be released on completion of the transfer. The Contractor shall warrant that:

- (a) it has capacity to enter into and perform the agreement;
- (b) it has title and interest in the ATA Assets;
- (c) it has received no notice of any defect in its title to any material ATA Asset which it has not disclosed;
- (d) that the ATA Assets have been maintained in accordance with applicable maintenance records; and
- (e) the ATA Assets maintenance history is as set out in the Registers under paragraph 6.2 of the Exit Management Plan).

5 Price and valuation

The ATA Assets will be sold at the price determined in accordance with paragraph **Error! Reference source not found.** of the Exit Management Plan (the **Price**).

If the Price is not agreed between the Parties, or determined by an independent valuer (appointed by agreement of the Parties), seven (7) days prior to completion, the price to be paid at completion will be based on the Contractor's good faith estimate of the value of the assets at that date (subject to retrospective adjustment).

The Price will be adjusted after completion to reflect movements in the level of stock and consumables between signing and completion. The nature and quantity of any stock and consumables shall be determined by reference to the Contractor's latest accounting records. At any time, the Authority (or Incoming Contractor) may, upon request and subject to reasonable notice, inspect the level of stock and consumables to confirm nature and quantity.

6 Duties and taxes

The Authority shall assume and discharge (or procure that the Incoming Contractor shall assume and discharge) all taxes and duties arising in respect of the sale (other than taxes on the Contractor's own profits and gains) or as otherwise agreed in the Parties' absolute discretion.

7 Timing and conditions

The agreement will be entered into as soon as reasonably practicable after the date on which notice is given to the Contractor to terminate the Contract and completion shall occur no later than the end of the notice period.

The only condition precedent to completion will be the coming into effect of a new contract for the Contractor Deliverables which shall not be subject to any substantive conditions.

8 Terms

The Asset Transfer Agreement shall contain boilerplate clauses typical for a document of this nature including, but not limited to, further assurance, confidentiality, notices, assignment, entire agreement, exclusion of third party rights and counterparts. The Asset Transfer Agreement will be governed by English law.