SCHEDULE O

EXIT

1. GENERAL
   1. This Schedule O (Exit) describes:
      1. the procedure for agreeing and implementing an Exit Plan;
      2. the rights and obligations of the Parties in effecting the transfer of the Services to the Authority or to any Replacement Supplier; and
      3. the provisions relating to termination and exit.
   2. In performing its obligations under this Schedule O (Exit), the Supplier shall use reasonable endeavours to co-operate with the Authority and any Replacement Supplier to facilitate a smooth migration from the provision of the Services by the Supplier to the provision of the Services or substantially similar services ("**Replacement Services**") by the Authority or by any Replacement Supplier.
   3. There shall be no differentiation between the Termination Services required to be provided pursuant to this Schedule O (Exit) or for the different causes of termination, exit or expiry of this Agreement.
2. OBLIGATIONS DURING THE TERM TO FACILITATE EXIT
   1. During the Term, the Supplier shall create and maintain the following registers:
      1. the live GFA reporting system in accordance with Clause 38 (Government Furnished Assets and Supplier Assets);
      2. a register of Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;
      3. create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Authority and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption

(together, “the **Registers**”);

* + 1. agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and
    2. at all times keep the Registers up to date, in particular in the event that GFA, Sub-contracts or other relevant agreements are added to or removed from the Services.
  1. The Supplier shall procure that all GFA listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Agreement.

1. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES
   1. On reasonable notice at any point during the Term, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to any potential Replacement Suppliers 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 Replacement Suppliers undertaking due diligence:
      1. details of the Service(s);
      2. a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
      3. an inventory of the following in the Supplier’s possession or control: Authority data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
         1. supplied to the Supplier by or on behalf of the Authority; and/or
         2. which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or
         3. any Personal Data for which the Authority is the Controller;
      4. details of any key terms of any Third Party contracts and licences, particularly as regards charges, termination, assignment and novation;
      5. a list of on-going and/or threatened disputes in relation to the provision of the Services;
      6. to the extent permitted by Applicable Law, all information relating to Subsequent Transferring Employees required to be provided by the Supplier under this Agreement; and
      7. such other material and information as the Authority shall reasonably require,

(together, the “Exit Information”).

* 1. The Supplier acknowledges that the Authority may disclose the Supplier's Commercially Confidential Information to an actual or prospective Replacement Supplier 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 3.2 disclose any Supplier’s Commercially Confidential Information which is information relating to the Supplier, the Supplier Related Parties or its Sub-contractors’ prices or costs).
  2. The Supplier shall:
     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 Services and shall consult with the Authority regarding such proposed material changes; and
     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. The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a Third Party to:
     1. prepare an informed offer for those Services; and
     2. not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

1. OBLIGATION TO ENTER INTO AN ETHICAL WALL AGREEMENT ON RE-TENDERING OF SERVICES
   1. The Authority may require the Supplier to enter into the Ethical Wall Agreement in accordance with Annex 2 (Ethical Wall Template) at any point during a re-tendering or contemplated re-tendering of the Services or any part of the Services.
   2. If required to enter into the Ethical Wall Agreement, the Supplier will return a signed copy of the Ethical Wall Agreement within ten (10) Business Days of receipt. The Supplier’s costs of entering into the Ethical Wall Agreement will be borne solely by the Supplier.
2. THE EXIT PLAN
   1. The Supplier shall, within three (3) months from the Commencement Date, deliver to the Authority an Exit Plan which:
      1. sets out the Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the Supplier to the Authority and/or any Replacement Supplier on the partial termination, expiry or termination of this Agreement;
      2. complies with the requirements set out in Paragraph 5.3 and
      3. is otherwise reasonably satisfactory to the Authority.
   2. 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 twenty (20) Business Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure at Clause 57 and Schedule L.
   3. The Exit Plan shall set out, as a minimum:
      1. how the Exit Information is obtained;
      2. provision for the supply by the Supplier of all such reasonable assistance as the Authority shall require to enable a Replacement Supplier, the Authority, or its sub-contractors to provide the Services;
      3. a mechanism for dealing with partial termination in the event that the Supplier may continue to provide remaining Services under this Agreement;
      4. the management structure to be employed during both transfer and cessation of the Services;
      5. the management structure to be employed during any Termination Assistance Period;
      6. a detailed description of both the transfer and cessation processes, including a timetable;
      7. how the Services will transfer to any Replacement Supplier 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 Supplier or its Sub-contractors (where applicable);
      8. the scope of the Termination Services that may be required for the benefit of the Authority;
      9. a timetable and critical issues for providing the Termination Services;
      10. how the Termination Services would be provided (if required) during the Termination Assistance Period;
      11. procedures to deal with requests made by the Authority and/or any Replacement Supplier for any relevant information pursuant to Schedule N (Transfer Regulations); and
      12. how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to any Replacement Supplier 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. The Parties acknowledge that the migration of the Services from the Supplier to the Authority and/or any Replacement Supplier may be phased, such that certain of the Services are handed over before others.
   5. The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year) to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update, the Supplier shall submit the revised Exit Plan to the Authority for review. Within twenty (20) 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 twenty (20) Business Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure at Clause 57 and Schedule L.
3. FINALISATION OF THE EXIT PLAN
   1. Within twenty (20) Business Days after service of a Termination Notice by either Party or twelve (12) months prior to the expiry of this Agreement, the Supplier 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.
   2. 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 twenty (20) Business Days following its delivery to the Authority then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure at Clause 57 and Schedule L. Until the agreement of the final form of the Exit Plan, the Supplier 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).
4. TERMINATION SERVICES
   1. The Authority shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a “Termination Assistance Notice”) at least four (4) months prior to the date of termination or expiry of this Agreement or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
      1. the date from which Termination Services are required;
      2. the nature of the Termination Services required; and
      3. the period during which it is anticipated that Termination Services will be required, which shall continue no longer than one (1) month after the Expiry Date or earlier termination of this Agreement.
5. TERMINATION ASSISTANCE PERIOD
   1. Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:
      1. continue to provide the Services (as applicable) and, if required by the Authority pursuant to Paragraph 7.1, provide the Termination Services;
      2. 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 any partial termination, termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
      3. use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 3.3.2 without additional costs to the Authority;
      4. provide the Services and the Termination Services at no detriment to the performance of the remaining Services; and
      5. at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.
6. **TERMINATION OBLIGATIONS**
   1. The Supplier shall comply with all of its obligations contained in the Exit Plan in respect of any partial termination or termination.
   2. 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 Supplier'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 Supplier shall:
      1. cease to use any Authority data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
         1. supplied to the Supplier by or on behalf of the Authority; and/or
         2. which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or
         3. any Personal Data for which the Authority is the Data Controller;
      2. transfer to the Authority and/or the Replacement Supplier a complete and uncorrupted version of the Authority data referred to in Clause 3.1.3 in electronic form (or such other format as reasonably required by the Authority); save to the extent and for the limited period that such data is required for the purposes of providing any Services to the Authority under this Schedule O (Exit) including documents, LFE, templates and accumulated knowledge base;
      3. subject to Clause 35.2 (Retention of Records), erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period and all Authority data as referred to in Clause 3.1.3 and promptly certify to the Authority that it has completed such deletion;
      4. return to the Authority such of the following as is in the Supplier's possession or control:
         1. all copies of the Authority software and any other software licensed by the Authority to the Supplier under this Agreement;
         2. all materials created by the Supplier under this Agreement in which the IPR are owned by the Authority; and
         3. any parts of Authority IT systems (such as hardware and software and/or telecommunications networks or equipment) and any other equipment which belongs to the Authority (including any GFA);
      5. vacate any Authority premises and return any staff access passes to the extent that this does not conflict with the provisions or delivery of the remaining obligations under any Approved Tasking Order (or equivalent) or this Agreement or unless access is required to continue to deliver the Services;
      6. provide access during normal working hours to the Authority and/or the Replacement Supplier for up to one (1) month after the partial termination, expiry or termination of this Agreement to:
         1. such information relating to the Services as remains in the possession or control of the Supplier; and
         2. such members of the Engaged Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier.
   3. 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 Supplier'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 information classified OFFICIAL-SENSITIVE or higher and Commercially Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's information classified OFFICIAL-SENSITIVE or higher, or Commercially 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.
   4. Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.
7. ASSETS AND THIRD PARTY CONTRACTS
   1. On ceasing to provide any element of the Services and the Termination Services hereunder, the Supplier shall make available to the Authority, or deliver as the Authority shall specify, any GFA items used by the Supplier to supply those Services.
   2. Following a Termination Notice, the Supplier will not, without the Authority's prior written consent, terminate any relevant Sub-contract or vary any relevant Sub-contract in a way that would have a material impact on the provision of the affected Services.
   3. At the Authority's request the Supplier will, in relation to each Sub-contract required to perform the affected Services, use reasonable endeavours to:
      1. ensure that the Sub-contract is novated or assigned to the Authority or any Replacement Supplier; and
      2. to the extent reasonably practicable, procure that all rights under the Sub-contract necessary for the performance of the Services are granted by the relevant Sub-contractor to the Authority or any Replacement Supplier.
   4. In respect of Third Party services (including any Software licences) novated or assigned in accordance with Paragraph 10.3.1 of this Schedule O (Exit):
      1. the Supplier will use its reasonable endeavours to minimise any outstanding charges payable in respect thereof;
      2. the Supplier will be responsible for all financial obligations prior to novation or assignment; and
      3. the Authority or any Replacement Supplier will assume financial obligations, and accept transfer of the Third Party services from the end of the Termination Assistance Period, and charges payable after novation or assignment.
8. CHARGES
   1. During the Termination Assistance Period, Fees may continue to be payable in accordance with the terms and conditions of any Approved Tasking Order (or equivalent) and Schedule E (Payment and Performance Management).

1. FINANCIAL SETTLEMENTS
   1. Save as to where it is stated to the contrary within the Agreement, all costs, expenses and out-goings (including all taxes) paid or payable in connection with the Agreement, or assets and Third Party contracts which are to transfer to the Authority or any Replacement Supplier at the end of the Termination Assistance Period, shall be borne as follows:
      1. by the Supplier for the period up to the Termination Date; and
      2. by the Authority, or any Replacement Supplier (as applicable) for the period commencing immediately following the Termination Date.
2. SCOPE OF TERMINATION SERVICES
   1. The Termination Services to be provided by the Supplier in relation to any Services which have been terminated may include, but are not limited to:
      1. subject always to the Supplier’s Intellectual Property Rights under this Agreement, providing assistance and expertise as necessary to examine certain material operational and business processes (including supporting documentation) relating to the Services;
      2. notifying the Supplier’s Sub-contractors of procedures to be followed during the Termination Assistance Period;
      3. delivering to the Authority the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the twelve (12) month period immediately prior to the commencement of the Termination Services;
      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;
      5. providing details of work volumes and staffing requirements required to deliver the Services over the previous twelve (12) months;
      6. providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services;
      7. procuring the attendance of relevant personnel at meetings as may reasonably be required and making available sufficient SQEP resource to assist with the planning and execution of the transition of the relevant Services from the Supplier to the Authority or any Replacement Supplier;
      8. agreeing with the Authority an effective communication strategy and joint communications plan which sets out the implications for Engaged Personnel, Authority staff, customers and key stakeholders;
      9. preparing and agreeing with the Authority a handover plan for certain IT security (logical and physical) matters and security management control procedures manual in accordance with the Authority's security requirements. The Supplier will co-operate in the execution of the plan;
      10. providing assistance and expertise as necessary to support the Authority and/or the Replacement Supplier develop and implement a migration plan for business operations and any Authority data to the Replacement Supplier, which may include migration approach, testing of plans, contingency options, and handling of historic or archived Authority data;
      11. agreeing with the Authority and/or the Replacement Supplier a plan for the migration of any Authority data to the Authority and/or the Replacement Supplier; and
      12. providing any further reasonable assistance requested by the Authority with a view to allowing the Services to continue without interruption or without adversely affecting the termination of any element of this Agreement and with a view to facilitating the orderly transfer of responsibility for and conduct of the Services to the Authority or any Replacement Supplier.

**SCHEDULE O – EXIT PLAN**

To be inserted following Agreement award, when Exit Plan is mutually agreed

## **ANNEX 2: DRAFT ETHICAL WALL AGREEMENT**

[THE AUTHORITY]

and

[THE COUNTERPARTY]

ETHICAL WALL AGREEMENT

This Agreement is dated [ ] 20[ ] (the “Effective Date”).

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**"),

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

BACKGROUND

1. 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).
2. The Authority is conducting a procurement exercise for the [supply/purchase/provision] of [insert details of project/goods/services] (the "**Purpose**").
3. 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. 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 walls 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:

1. Government Departments;
2. Non-Departmental Public Bodies or Assembly Sponsored Public Bodies (advisory, executive, or tribunal);
3. Non-Ministerial Departments; or
4. Executive Agencies;

"**Conflicted Personnel**" means any Representatives of:

1. the Counterparty;
2. any of the Counterparty’s Affiliates; and/or
3. 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:

* + - * 1. the Counterparty;
        2. any of the Counterparty's Affiliates;
        3. any Subcontractor; and
        4. 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 supplier or suppliers, 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:

1. the Counterparty; and/or
2. 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

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

* + 1. Reference to the disclosure of information includes any communication or making available information and includes both direct and indirect disclosure.
    2. 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).
    3. Reference to persons includes legal and natural persons.
    4. Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time.
    5. Reference to clauses and recitals is to clauses of and recitals to this Agreement.
    6. Reference to any gender includes any other.
    7. Reference to writing includes email.
    8. 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.
    9. The words "**include**" and "**including**" are to be construed without limitation.
    10. The singular includes the plural and vice versa.
    11. The headings contained in this Agreement shall not affect its construction or interpretation.
  1. ETHICAL WALLS
     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**

* + 1. The Counterparty:
       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. 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. 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:
       1. not assigning any of the Conflicted Personnel to the Bid Team at any time;
       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;
       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:
          1. about the ITT Process (gleaned from the performance of any Contract or otherwise); and/or
          2. 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;

* + - 1. 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. 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];
      3. physically separating the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;
      4. providing regular training to its Affiliates, any Subcontractors and/or Representatives to ensure it is complying with this Agreement;
      5. 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;
      6. ensuring that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
      7. 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

* + 1. The Counterparty shall:
       1. notify the Authority immediately in writing of all perceived, potential and/or actual conflicts of interest that arise or have arisen;
       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
       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 Clause The Counterparty shall: until such time as the Authority grants approval or the Counterparty withdraws from the ITT Process).
    2. The Counterparty will provide to the Authority, on demand, any and all information in relation to its adherence with its obligations set out under Clauses The Counterparty: and 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: as reasonably requested by the Authority.
    3. The Authority reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under Clauses The Counterparty: and 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:.
    4. The Counterparty acknowledges that any provision of information or demonstration of measures, in accordance with Clauses The Counterparty will provide to the Authority, on demand, any and all information in relation to its adherence with its obligations set out under Clauses The Counterparty: and 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: as reasonably requested by the Authority. and The Authority reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under Clauses The Counterparty: and 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:., 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**

* + 1. Where, in the reasonable opinion of the Authority, there has been any breach by the Counterparty of Clauses The Counterparty:, 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:, or The Counterparty shall: 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. The actions of the Authority pursuant to Clause Where, in the reasonable opinion of the Authority, there has been any breach by the Counterparty of Clauses The Counterparty:, 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:, or The Counterparty shall: 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. 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**

* + 1. In no event shall the Authority be liable for any bid costs incurred by:
       1. the Counterparty or any of its Affiliates, any Representatives and/or any Subcontractors; or
       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**

* + 1. The Counterparty acknowledges and agrees that:
       1. neither damages nor specific performance are adequate remedies in the event of a breach of the obligations in Clause ETHICAL WALLS; and
       2. in the event of a breach of any of the obligations in Clause ETHICAL WALLS 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.
  1. SOLE RESPONSIBILITY
     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.
  2. WAIVER AND INVALIDITY
     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.
     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.
  3. ASSIGNMENT AND NOVATION
     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.
     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:
        1. any Central Government Body; or
        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
        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 Clause 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.
  4. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999
     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.
  5. TRANSPARENCY
     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.
  6. NOTICES
     1. Any notices sent under this Agreement must be in writing.
     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 the next Working Day (if after 5.00pm). | Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt. |

* + 1. 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** |  |  |

* + 1. This Clause NOTICES does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.
  1. WAIVER AND CUMULATIVE REMEDIES
     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.
     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.
  2. TERM
     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]
  3. GOVERNING LAW AND JURISDICTION
     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.
     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: |