



Home Office

AUTHORITY: The Secretary of State for the Home Department

SCHEDULE 9
EXIT MANAGEMENT

NEXT GENERATION OUTSOURCED VISA SERVICES

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SCHEDULE 9

EXIT MANAGEMENT

1. OVERVIEW

- 1.1 The objective of the exit management process is to facilitate the smooth transfer of the Services Requirements to a Successor Supplier, in the circumstances set out in Section 1.5 below, in a way that preserves business continuity for the Authority.
- 1.2 This Schedule sets out the process by which the Supplier shall provide assistance in respect of Removed Services that are to be provided through a third party or by the Authority itself.
- 1.3 The Supplier shall provide assistance where the Authority wishes to hold a Procurement Process and, in this respect, there is a general requirement on the supplier to cooperate fully and in good faith with all actual and potential suppliers.
- 1.4 The Authority may choose at any time to exercise any of its rights under this Schedule through a replacement supplier.
- 1.5 The Supplier shall provide the assistance set out in this Schedule commencing from the following dates:
- 1.5.1 where the Authority wishes to hold a Procurement Process in relation to any of the Services Requirements, from the date that the Authority first gives public notice of that process;
 - 1.5.2 if one Party has served notice of Termination, from the date that such notice is received by the recipient Party, or the date twelve (12) months prior to the Termination Date in the case of the expiry of the Agreement; or
 - 1.5.3 where, pursuant to any right under the Agreement or at Law, the Authority has given such notice as is required to remove any Services Requirements from the scope of the Agreement (whether following a competitive bid process or otherwise), from the date on which the Supplier received such notice,
- (and each or all of the above commencement dates shall be known as the “**Assistance Commencement Date**”).
- 1.6 The Supplier shall comply with the Exit Plan from the applicable Assistance Commencement Date, and/or shall comply with any mutually agreed Services Transition Plan from the date of its agreement, until the Services Transfer Date or the date of removal of the particular Services, as applicable.
- 1.7 Notwithstanding the generality of Section 1.6 above, at the Authority’s request, the Supplier shall continue to comply with its obligations under the Exit Plan and/or any agreed Services Transition Plan for up to three (3) months, or such longer period that is mutually agreed to transition the

relevant Removed Services, following the Termination Date or removal of the Services (as the case may be).

- 1.8 The Parties agree and acknowledge that this Schedule shall continue in full force and effect notwithstanding the Termination of the Agreement.

2. SUPPORT FOR A PROCUREMENT PROCESS

- 2.1 In the case of a Procurement Process, the Supplier shall assist and support the Authority with the Procurement Process from the Assistance Commencement Date in accordance with the provisions of Annex 9-1.

3. ASSISTANCE PRIOR TO TRANSFER OF THE SERVICES

- 3.1 The Supplier agrees to continue to provide the Supplier's Solution, and to assist with exit management and Termination Assistance during the Exit Period, in accordance with the provisions of Annex 9-2.

4. ASSISTANCE ON TERMINATION

- 4.1 If the Authority appoints a Successor Supplier, other than the Supplier, to fulfil the Services Requirements then, with effect from the Services Transfer Date, the provisions of Annex 9-3 shall apply.
- 4.2 In the case of Termination for Default, the Supplier shall use all Commercially Reasonable Efforts to assign or novate in favour of the Authority or to any person or Successor Supplier as may be designated for the purpose by the Authority all relevant resources, including any equipment leases, third party hardware, network services, maintenance agreements and support agreements as the Authority may designate which are relevant and necessary for the fulfilment of the Services Requirements including agreements relating to the Third Party Software, Third Party Material, and the Work Product in accordance with and subject to Clause 45 of the Terms and Conditions (**Consequences of Termination**).

5. OUTLINE EXIT PLAN

- 5.1 Annex 9-4 sets out the initial areas to be included in the Outline Exit Plan and the elements which shall, at a minimum (unless otherwise agreed), be part of such Outline Exit Plan. The Outline Exit Plan shall be populated at the "Country by Country" level by the Supplier.
- 5.2 The Parties shall review and update the Outline Exit Plan within twelve (12) months of the anniversary of the Effective Date, and annually thereafter on the anniversary of the Effective Date, to ensure that it remains relevant as the Supplier's Solution develops and to reflect changes to the Services Requirements.

- 5.3 Whenever either Party decides that changes are required to the Outline Exit Plan, they shall discuss, and agree pursuant to Schedule 10 (**Change Control**) a new document that shall replace the current Outline Exit Plan set out in Annex 9-4.
- 5.4 In terms of the scope of the Outline Exit Plan, the Supplier must address:
- 5.4.1 the activities required to enable the Authority to re-tender the provision of the Supplier's Solution;
 - 5.4.2 the activities necessary to support any Successor Supplier in carrying out any necessary due diligence;
 - 5.4.3 details of the transition services to be provided by the Supplier prior to the Services Transfer Date;
 - 5.4.4 support for the Successor Supplier or the Authority during its preparation of any relevant transition plan for the transition of the Services to the Successor Supplier or the Authority, including prior to and during such reasonable transition period as may be required by the Successor Supplier or the Authority; and
 - 5.4.5 the maintenance of a 'business as usual' environment for the Authority during all transition activities for such reasonable transition period as may be required by the Successor Supplier or the Authority.
- 5.5 Unless otherwise agreed by the Authority, the Outline Exit Plan shall relate to the following general activities:
- 5.5.1 production and updating of the initial Outline Exit Plan to include, as a minimum, the elements specified in this Schedule and Annex 9-4. This activity is anticipated to support any Procurement Process and preferred potential Successor Supplier due-diligence activities; and
 - 5.5.2 updating and reviewing of the Outline Exit Plan, in accordance with Section 5.3 above, and there will be the following phases as a minimum:
 - (a) the first phase of implementation activity, triggered by the need for transfer, is anticipated to be due diligence and transition planning activity to be carried out by the Successor Supplier within the period leading up to the Services Transfer Date, including staggered transfer of required business knowledge;
 - (b) the second phase of implementation which will be mainly concerned with support to the Successor Supplier in the actual transitioning of the Supplier's Solution; and
 - (c) the final phase is post-transfer support and consultancy.

6. ORDINARY COURSE OF BUSINESS

6.1 Throughout any Procurement Process and/or Exit Period, the Supplier shall:

- 6.1.1 not embark on any actions related to the Services Requirements that fall outside the Ordinary Course of Business, without the Authority's prior written consent;
- 6.1.2 continue to devote such time and resources to the continued fulfilment of the Services Requirements, so as to ensure that there is no disruption to the Services Requirements and no reduction in Service Levels;
- 6.1.3 notify the Authority of any act, omission or conduct which adversely affects the Assets or personnel required to deliver any part of the Services Requirements during and after the Term; and
- 6.1.4 take active steps as reasonable to monitor the Supplier Personnel to ensure there is no degradation in the quality of the Supplier's Solution.

7. CHARGES – EXIT PLAN / SERVICE TRANSITION PLAN

7.1 Except as set out in Section 8.2 below, all costs associated with the creation, implementation and delivery of the Exit Plan and/or any agreed Services Transition Plan shall be at the Supplier's cost.

7.2 These include, but are not limited to, acts necessary to deal with the following categories of asset or activity in a way designed, through the Exit Plan, to enable a transfer of responsibility for provision of Services with no loss of continuity for the Authority notwithstanding Termination:

- 7.2.1 Supplier Subcontracts;
- 7.2.2 Intellectual Property Rights;
- 7.2.3 Assets;
- 7.2.4 Premises;
- 7.2.5 Transition Planning, and;
- 7.2.6 Successor Supplier Assistance Shadowing.

8. CHARGES FOR TERMINATION ASSISTANCE BEFORE AND AFTER TRANSFER DATE

8.1 Termination Assistance before the Services Transfer Date

- 8.1.1 The Supplier shall, so far as is reasonably practicable, and unless otherwise agreed in the Exit Plan, provide the Termination Assistance described in this Schedule from the

Assistance Commencement Date to the Services Transfer Date using existing Supplier Personnel with no increase to the Service Charges and at its own cost.

8.1.2 If it is not reasonably practicable to provide the Termination Assistance using existing Supplier Personnel without degradation to the Supplier's fulfilment of the Services Requirements or achievement of the Service Levels, the Supplier shall notify the Authority and the Parties shall discuss and agree, at the Authority's option:

- (a) a relaxation or waiver of certain Services Requirements or Service Levels to release Supplier Personnel to perform such Termination Assistance (which Termination Assistance shall, for the avoidance of doubt, be provided as part of the Service Charges); and/or
- (b) that the Supplier in agreement with the Authority may use additional or new resources to perform such Termination Assistance, in which case the Authority shall reimburse the Supplier's reasonable additional costs and expenses of using such additional resources where applicable.

8.2 Termination Assistance after the Services Transfer Date

Where, at any time after the applicable Services Transfer Date, the Supplier:

- 8.2.1 makes available any Supplier Personnel who do not transfer to the Authority or a Successor Supplier in order to facilitate the transfer of knowledge and skills (as described in Section 2 of Annex 9-3);
- 8.2.2 provides services or resources (as described in Annex 9-3); or
- 8.2.3 provides any other assistance in accordance with this Schedule after the Services Transfer Date, including, without limitation, to the obligations under the Exit Plan and/or any agreed Services Transition Plan,

the Supplier shall be entitled to charge the Authority or the Successor Supplier, as applicable, for such assistance at the prevailing contractual rates set out in Schedule 6 (**Pricing, Payment and Invoicing**) for such assistance or, where no such rates are specified, at reasonable commercial rates..

8.3 Indemnity

- 8.3.1 The Supplier shall indemnify the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority or any Successor Supplier arising from any deficiency or inaccuracy in information which the Authority has required the Supplier to provide under this Schedule.

8.3.2 The Supplier shall use Commercially Reasonable Efforts to procure that its Supplier Subcontractors shall indemnify the Authority and any Successor Suppliers to the same extent as the Supplier is providing indemnities under this Schedule.

9. **PROVISION OF INFORMATION**

9.1 The Supplier shall ensure that the information that the Supplier is required to provide under this Schedule is true and accurate.

9.2 The Supplier shall use Commercially Reasonable Efforts to ensure that the information that the Supplier is required to provide under this Schedule is complete in all material aspects.

ANNEX 9-1

ASSISTANCE WITH A PROCUREMENT PROCESS

1. GENERAL CO-OPERATION DURING THE PROCUREMENT PROCESS

- 1.1 Whenever it is notified that the Authority is going to re-tender the Services Requirements or any part of the Services Requirements, the Supplier shall co-operate (fully and in good faith) with the Procurement Process.
- 1.2 Subject always to Section 7.3 of this Annex 9-1, with effect from the Assistance Commencement Date of the Procurement Process until the Services Transfer Date, the Supplier shall provide to the Authority such Information and other co-operation regarding the Supplier's fulfilment of the Services Requirements, as and when reasonably requested by the Authority unless otherwise specified in this Annex as would be reasonably necessary for a third party to:
 - 1.2.1 carry out a Due Diligence Exercise;
 - 1.2.2 prepare an informed, non-qualified offer for those Services Requirements; and
 - 1.2.3 not be disadvantaged in the Procurement Process compared to the Supplier (if the Supplier is invited to participate) in respect of access to information regarding the Services Requirements and the manner in which such requirements are met at the time of the Procurement Process .
- 1.3 Where used in this Schedule, "**Information**" shall mean any written or oral information (including information for due diligence purposes) which is material in detail or in substance and which describes the nature of any of the Services Requirements provided to the Authority or the method by which those Services Requirements are provided by the Supplier.
- 1.4 With effect from the date on which the Authority publishes official notice of the Procurement Process, or with effect from the date on which the Supplier notifies the Authority of an intention to bid pursuant to the Procurement Process (whichever is the earlier), the Supplier shall, so far as reasonably practicable, ensure that (except with the Authority's prior written consent) no individual who participates in its operations team is also a member of (nor is transferred into) its bid team in respect of the services covered by the Procurement Process. The Supplier shall notify the Authority if it is not reasonably practicable to maintain such an ethical wall between its operations team and its bid team and the Authority shall not unreasonably withhold its consent to a reasonable request from the Supplier to waive such requirement.
- 1.5 The obligation contained within this Schedule for the Supplier to assist and provide the relevant and appropriate data to enable a non-incumbent to take part in a potential Procurement Process is not limited any form.
- 1.6 At the reasonable request of the Authority and subject to the relevant potential Successor Supplier entering into an appropriate confidentiality undertaking with the Supplier, such potential

Successor Supplier shall be entitled on reasonable notice, to carry out a site visit on any of the Supplier's sites being used in the delivery of the Services.

2. SUPPLIER PERSONNEL

- 2.1 No later than twenty-one (21) days after receipt of a written request from the Authority, (or within such other period agreed in the Exit Plan) the Supplier shall provide the Authority, by VAC and in each Country in which it operates, with full and accurate details regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those Supplier Personnel which, as at that date, are assigned to the fulfilment of the Services Requirements, or any part of the Services Requirements, together with a summary of the total staffing costs (including, but not limited to, salary, benefits and any additional payments arising from an obligation on an employer such as social security or national insurance contributions) relating to each VAC.
- 2.2 The Supplier shall thereafter, upon reasonable request provide the Authority with an updated list. If the Acquired Rights Directive or any equivalent local law is in force in the relevant Country, the list shall also identify the following categories of job titles, skills, job descriptions, positions and the country where they work:
- 2.2.1 those which are assigned to the Services Requirements on a full-time basis; and
- 2.2.2 those which are assigned to the Services Requirements on a shared basis to the extent to which shared personnel work on the Authority's account.
- 2.3 The Parties agree that Information provided pursuant to Section 2.1 of this Annex 9-1 shall, be provided in compliance with the applicable data protection or privacy legislation and, at a minimum, be broken down by reference to organisational groupings and full-time equivalent positions and other relevant detailed information reasonably required by a third party to make an unqualified bid to provide services that are required to fulfil requirements similar to the Services Requirements.

3. SUPPLIER SUBCONTRACTS

Within one (1) month of the Assistance Commencement Date, the Supplier shall provide the Authority with an up-to-date list of the Supplier Subcontracts. With effect from the Assistance Commencement Date, the Supplier shall notify the Authority of any material changes to the Supplier Subcontracts which may adversely impact the fulfilment of any of the Services Requirements and shall consult with the Authority regarding such proposed material changes.

4. INTELLECTUAL PROPERTY RIGHTS

- 4.1 With effect from the Assistance Commencement Date, the Supplier shall not make any material changes in the position as regards the Intellectual Property Rights and/or Software created or used during the fulfilment of any of the Services Requirements, which may adversely impact the

fulfilment of any of the Services Requirements without first obtaining the prior written consent of the Authority regarding such proposed material changes.

- 4.2 The Supplier shall maintain and update a list of all relevant Software (including any Intellectual Property Rights therein) created or used by the Supplier, including any Work Product created during the Term, and shall provide such list within one (1) month of the Assistance Commencement Date for the Procurement Process (or within such other period agreed in the Exit Plan).

5. ASSETS

- 5.1 The Supplier shall provide the list of Assets used in the fulfilment of the Services Requirements, as maintained in accordance with Clause 23 of the Terms and Conditions, to the Authority within one (1) month of the Assistance Commencement Date for the Procurement Process (or within such other period agreed in the Exit Plan)
- 5.2 The Parties shall agree the level of detail and content to be provided by the Supplier in connection with the list referred to in Section 5.1 of this Annex 9-1. Notwithstanding the foregoing, the Parties agree that the list shall include the Authority Assets.

6. PREMISES

- 6.1 The Supplier shall maintain a list of the Visa Application Centres used in the fulfilment of the Services Requirements. The Supplier shall provide the Authority with such list no later than two (2) months after the receipt of a written request from the Authority in connection with the Procurement Process (or within such other period agreed in the Exit Plan).
- 6.2 The Parties shall agree the level of detail and content to be provided by the Supplier in connection with the list referred to in Section 6.1 above. Notwithstanding the generality of the foregoing, the parties agree that the list shall include:
- 6.2.1 the address of the accommodation;
 - 6.2.2 a brief description of the location;
 - 6.2.3 the nature and amount of accommodation used in connection with the Services Requirements;
 - 6.2.4 the type of work carried out at the location; and
 - 6.2.5 the hours of operation.
- 6.3 As part of the Supplier's Exit Plan and subject to the Successor Supplier complying with the Supplier's reasonable security and confidentiality requirements, the Supplier shall permit the Successor Supplier to access, and use such accommodation to the extent necessary to transition the applicable Services Requirements.

7. USE OF SERVICES INFORMATION

- 7.1 The lists and information to be compiled and provided pursuant to Sections 2 to 6 of this Annex 9-1 as well as any information obtained during the Contract Term, including volumes, Service Level information, system information and the relevant documentation, may be used by the Authority (subject to the appropriate confidentiality undertakings) to develop its tender documentation for the Procurement Process including, in particular, to develop its services requirements against which potential Successor Suppliers shall bid for the Removed Services.
- 7.2 Subject to Section 7.3 below and to appropriate confidentiality undertakings being given and put in place by any potential Successor Supplier, the Authority may disclose to a potential Successor Supplier such information relating to the total staff numbers and staffing costs by Country, facilities, third party contracts and assets used by the Supplier to fulfil the Services Requirements.
- 7.3 Nothing in this Annex 9-1 shall permit the Authority to disclose to potential suppliers any of the Supplier's Confidential Information relating to the manner in which, or the methods it uses to fulfil the Services Requirements, including but not limited to its business processes and practices, know-how, ideas, designs, specifications, research, current and future products and services, internal management information, marketing plans and techniques.

8. DISPUTES

- 8.1 During any Procurement Process, the Supplier shall maintain and update a list of on-going and/or threatened disputes with third parties in relation to the Supplier's Solution and/or Supplier Subcontracts, and shall use its Commercially Reasonable Efforts to resolve such disputes.
- 8.2 During any Procurement Process, the Supplier shall not settle any disputes referred to in Section 8.1 above with a third party, nor accept any liability (either on its own behalf or that of the Authority) without obtaining the Authority's prior written consent (which consent shall not be unreasonably withheld).

ANNEX 9-2**ASSISTANCE IN THE PERIOD PRIOR TO THE TERMINATION DATE****1. INTRODUCTION**

- 1.1 This Annex 9-2 sets out the Termination Assistance to be provided by the Supplier from the Assistance Commencement Date to the Services Transfer Date if there is a Termination or a Services Removal.
- 1.2 The Supplier shall use its Commercially Reasonable Efforts to minimise the Authority's costs and management time resulting from any Termination or Services Removal (as the case may be) and to minimise the implementation time for the agreed Exit Plan and/or Services Transition Plan.

2. TRANSITION PLANNING

- 2.1 Within fourteen (14) days of the applicable Assistance Commencement Date, the Supplier shall provide the Authority with a draft Exit Plan. At a minimum, the draft Exit Plan shall contain provisions covering the items listed in the Outline Exit Plan as set out in Annex 9-4.
- 2.2 The Authority will respond within seven (7) days with its comments on the draft Exit Plan.
- 2.3 The Supplier shall respond to any of the Authority's suggestions to improve or amend the draft Exit Plan within seven (7) days of receipt of the same. Unless otherwise agreed, within four (4) weeks of the Assistance Commencement Date, the Parties shall meet to discuss in good faith and agree the final form Exit Plan.
- 2.4 The Parties shall review and update the Exit Plan quarterly throughout the Exit Period, on the rolling tri-monthly anniversary of the Assistance Commencement Date, to ensure that it remains relevant.
- 2.5 On the appointment of a Successor Supplier, the Supplier shall participate in discussions with the Authority and, if applicable, the Successor Supplier concerning a detailed Services Transition Plan, which shall be supported by and aligned to the Exit Plan, with a view to the Services Transition Plan being agreed and finalised at least twelve (12) months prior to the Termination Date.
- 2.6 The final form of the Services Transition Plan shall be agreed after consultation between the Authority and the Supplier and, if applicable, the Successor Supplier. The Supplier will make such adjustments to the Exit Plan as are reasonably necessary to align with and support the Services Transition Plan.

3. GENERAL TERMINATION ASSISTANCE

- 3.1 Both Parties shall comply fully with their obligations under the Exit Plan and this Schedule.

- 3.2 Both Parties shall appoint a suitable representative (“**Exit Manager**”) to manage the process of transition on a day-to-day basis. The appointment of the Supplier’s Exit Manager shall be subject to the Authority’s prior approval (which approval will not be unreasonably withheld).
- 3.3 The Supplier’s Termination Assistance may include training for the Authority and/or the Successor Supplier personnel, consultants or subcontractors, as agreed.
- 3.4 If the Supplier fails to comply with any of its obligations with respect to the Exit Plan, it shall arrange (at its own cost) all such additional resources as are necessary to fulfil the applicable obligation as soon as reasonably practicable.
- 3.5 Unless otherwise agreed, the Supplier shall be responsible for the overall management of all the exit activities envisaged in this Schedule and the Supplier shall:
- 3.5.1 seek to keep the tasks on schedule in accordance with any timetable set out in the Exit Plan; and
- 3.5.2 identify any problems encountered in the timely completion of each task identified in the Exit Plan and resolve such problem if the task is the responsibility of the Supplier, or assist the Authority and the Successor Supplier in the resolution of, any problems encountered in the timely completion of each task identified in the Exit Plan, whether the task is the responsibility of the Supplier or not.

4. SUCCESSOR SUPPLIER ASSISTANCE SHADOWING

- 4.1 If a party other than the Supplier is appointed as a Successor Supplier, the Supplier agrees to reasonably co-operate with the Authority and the Successor Supplier, as directed by the Authority, in relation to arrangements to effect a smooth transfer of the Services Requirements, any Transferring Employees and any Key Personnel. Such co-operation shall include reasonably assisting the Successor Supplier to familiarise itself as to the method of fulfilment of those Services Requirements in the period prior to the Services Transfer Date. In particular, the Supplier agrees that in the twelve (12) month period prior to the Services Transfer Date, it shall allow a Successor Supplier reasonable access to the following (so that the Authority and/or Successor Supplier, as directed by the Authority, can observe the fulfilment of the relevant Services Requirements and prepare for the transition of the Services Requirements from the Supplier (subject to compliance by the Authority and the Successor Supplier with any applicable security restrictions and confidentiality undertakings being put in place)):
- 4.1.1 its facilities used to fulfil the Services Requirements (subject to compliance by the Authority and the Successor Supplier with any applicable security restrictions and confidentiality undertakings being put in place);
- 4.1.2 the Supplier Personnel; and
- 4.1.3 such Information as the Authority may deem necessary to ensure a seamless transfer of the relevant Services Requirements on the Services Transfer Date.

- 4.2 During the six (6) months prior to the Services Transfer Date, and subject to compliance by the Authority and the Successor Supplier with any applicable security restrictions and confidentiality undertakings being put in place, the Supplier agrees to ensure that knowledge transfer from the Supplier to the Authority and/or Successor Supplier, as directed by the Authority, occurs as early as possible. The Supplier agrees to allow the Authority and/or Successor Supplier's personnel, as directed by the Authority, to work alongside the Supplier, so that:
- 4.2.1 the Authority and/or Successor Supplier, as directed by the Authority, can observe the fulfilment of the relevant Services Requirements and prepare for the transition of the Services Requirements from the Supplier;
 - 4.2.2 the facilitation of knowledge transfer from the Supplier to the Authority and/or Successor Supplier, as directed by the Authority, occurs as early as possible; and
 - 4.2.3 the Authority and the Successor Supplier, as directed by the Authority, can participate in decisions that will affect the fulfilment of the Services Requirements after the Services Transfer Date.
- 4.3 Subject to Section 8.1 of this Schedule 9, the Supplier shall make available (to the extent that it does not impact upon the fulfilment of the Service Requirements) sufficient numbers of suitably experienced and skilled Supplier Personnel for such time as is reasonably necessary during the six (6) month period described in Section 4.2 of this Annex 9-2, to explain relevant procedures and operations (including management processes and other standards and procedures) to the operations personnel of the Authority and/or Successor Supplier, as directed by the Authority.
- 4.4 The information and assistance which the Supplier shall provide to the Authority and/or Successor Supplier shall be subject to all confidentiality obligations or licence restrictions to which the Authority and/or Successor Supplier is subject under this Agreement including Section 7 of Annex 9-1 but, as a minimum, shall include:
- 4.4.1 available product information and detailed system documentation, including user manuals, technical manuals, operations procedures and applicable vendor correspondence applicable to the Transferring Assets;
 - 4.4.2 relevant available information about proprietary products, tools and methods;
 - 4.4.3 information about current project work for which the Authority or a Successor Supplier will assume responsibility after the Termination Date;
 - 4.4.4 copies of Supplier Subcontracts which are to be transferred to the Successor Supplier; and
 - 4.4.5 information regarding unresolved faults in the Supplier's Solution in progress at the commencement of the Termination Assistance as well as those expected to be in progress at the Services Transfer Date.

This information shall be updated by the Supplier at the Services Transfer Date.

- 4.5 After the appointment of the Successor Supplier, the Authority may be accompanied by the Successor Supplier at project meetings with the Supplier regarding the fulfilment of the Services. The Supplier shall also consult the Authority (and allow the Authority to involve the Successor Supplier) about planned changes to the fulfilment of any of the Services Requirements.

5. SECURITY

The Supplier shall continue to comply with its security obligations in accordance with Schedule 4 (**Security**) in carrying out its obligations under this Schedule.

6. ASSETS

- 6.1 The Supplier shall only make changes to the list of Assets provided by the Supplier in accordance with Section 5.1 of Annex 9-1 as and when Asset changes are required in order to continue the fulfilment of the Services Requirements in the Ordinary Course of Business.
- 6.2 The Supplier shall provide copies of the updated Asset list to the Authority and/or any Successor Supplier, whenever reasonably requested by the Authority.
- 6.3 The Authority shall the right to retain at no cost all Assets which it has paid for.
- 6.4 The Authority shall notify to the Supplier which of the Exclusive Assets it elects to buy on a Termination or Services Removal (the “**Transferring Assets**”).
- 6.5 On the relevant Services Transfer Date, the Authority shall have the right to buy, and the Supplier shall sell (or procure the sale of), the Transferring Assets owned exclusively by the supplier. The purchase price for the Transferring Assets shall be their Net Book Value.
- 6.6 The Parties shall treat Shared Assets owned exclusively by the supplier in the manner agreed pursuant to Clause 23.3 of the Terms and Conditions. This may include, for example, agreeing that:
- 6.6.1 the Supplier shall retain the Shared Asset and the Authority shall purchase a suitable replacement for such Shared Asset;
- 6.6.2 the Supplier shall retain the Shared Asset but shall purchase a suitable replacement for such Shared Asset and sell that asset to the Authority, in which case such asset shall be treated as a Transferring Asset; or
- 6.6.3 the Authority shall have the option to buy a Shared Asset on a Termination or Services Removal, in which case such Shared Asset shall be treated as a Transferring Asset.

7. REPORTING DURING THE EXIT PERIOD

The Supplier shall provide progress reports detailing the status of the exit tasks as against the Exit Plan and/or Services Transition Plan (as applicable), setting out any actual or anticipated problems or delays and the actions that the Supplier is taking to resolve such problems.

8. SUPPLIER SUBCONTRACTS

- 8.1 During the Exit Period and in accordance with the Exit Plan, the Supplier shall not vary, terminate, assign, novate, purport to vary, nor allow any of the listed Supplier Subcontracts to expire without the Authority's prior written consent, which consent shall not be unreasonably withheld.
- 8.2 The Supplier shall provide a list of the Supplier Subcontracts to the Authority and/or any Successor Supplier, as directed by the Authority, if reasonably requested by the Authority during the Exit Period.
- 8.3 The Authority shall notify to the Supplier which of the Supplier Subcontracts (if any) need to be assigned, novated or otherwise transferred from the Supplier to the Authority and/or Successor Supplier (the "**Transferring Subcontracts**"). The Transferring Subcontracts shall not include any Supplier Subcontracts for which the Authority has, pursuant to Section 3.2.3 of Schedule 12 (**Subcontractors**), waived the Supplier's obligation to obtain a Subcontract Transfer Right or any Supplier Subcontract which is not exclusively dedicated to the fulfilment of the Services Requirements.
- 8.4 The Supplier shall ensure that a Subcontract Transfer Right is agreed within each of its subcontract agreements and will liaise with the relevant Subcontractors to ensure, the successful transfer, assignment or novation (as required) of the Transferring Subcontracts, including obtaining any transfer, assignment or novation agreements (as applicable) in a comparable form that is acceptable to the Authority.
- 8.5 Each Party shall bear its own legal and administrative costs in connection with the transfer of the Transferring Subcontracts. If the Authority has agreed, pursuant to Section 3.2.3 of Schedule 12 (**Subcontractors**), to waive the requirement for the Supplier to obtain a Subcontract Transfer Right or has agreed to pay any fee levied by the Supplier Subcontract on such transfer, the Authority shall pay any fee levied by the Supplier Subcontract in connection with the transfer of the Transferring Subcontracts. In other circumstances where the Supplier has not negotiated a Subcontract Transfer Right, any fees levied by the Supplier Subcontract in connection with the transfer of the Transferring Subcontracts shall be paid by the Supplier.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 Software List

The Supplier shall maintain and update a list of all relevant Software (including any Intellectual Property Rights therein) created or used by the Supplier, including any Work Product created

during the Term, and shall provide such list within one (1) month of the commencement of the Exit Period for the Procurement Process.

9.2 **Supplier Software and Material**

The Supplier shall grant the licence for Supplier Software and Supplier Material in the circumstances described in, and in accordance with, Clause 32.3.3 of the Terms and Conditions.

9.3 **Third Party Software and Material**

9.3.1 The Authority shall notify to the Supplier which of the Third Party Software and Third Party Material (if any) it requires to be licensed to itself and/or Successor Supplier after the Termination Date (the “**Transferring IPR**”). The Transferring IPR shall not include any Third Party Software or Third Party Material for which the Authority has, pursuant to Clause 32.4.3 of the Terms and Conditions, waived the Supplier’s obligation to obtain an IPR Transfer Right.

9.3.2 The Supplier shall liaise with the relevant third party licensors to ensure, as far as it is able, as applicable, the successful:

- (a) transfer, assignment or novation (as required) of the Transferring IPR to the Authority or a Successor Supplier, including obtaining any transfer, assignment or novation agreements (as applicable) in a comparable form that is acceptable to the Authority; or
- (b) grant to the Authority or a Successor Supplier of a licence for the Transferring IPR on terms substantially similar to the terms of the Supplier’s existing licence for such Transferring IPR.

9.3.3 Each Party shall bear its own legal and administrative costs in connection with the transfer of, or the grant of a licence for, the Transferring IPR. If the Authority has agreed, pursuant to Clause 32.4.3 of the Terms and Conditions, to waive the requirement for the Supplier to obtain an IPR Transfer Right or has agreed to pay any fee levied by the licensor for such transfer or grant, the Authority shall pay any fee levied by the licensor in connection with the transfer or grant of the Transferring IPR. In other circumstances where the Supplier has not negotiated an IPR Transfer Right, any fees levied by the licensor in connection with the transfer of the Transferring IPR shall be paid by the Supplier. The Authority or the Successor Supplier shall pay the licence fees for the Transferring IPR after the Termination Date.

10. **RESTRICTIONS PRIOR TO TERMINATION**

10.1 The Supplier shall maintain an open and proactive communication line with the Supplier Personnel.

- 10.2 Where the Acquired Rights Directive (or any equivalent or analogous local Law) applies to any Termination or Services Removal or where the Supplier has agreed that the Authority or any Successor Supplier may offer employment to any Supplier Personnel on a Termination or Services Removal, from the Assistance Commencement Date, the Supplier shall:
- 10.2.1 on receiving a request from the Authority provide in respect of any Supplier Personnel full and accurate details regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those Supplier Personnel who it is expected, if they remain in the employment or engagement of the Supplier or the Supplier Subcontractors until immediately before the Termination Date, would be Transferring Supplier Employees (the “**Employee Liability Information**”);
 - 10.2.2 provide the Employee Liability Information promptly, in compliance with applicable data protection or privacy legislation (and at no cost to the Authority if the Acquired Rights Directive applies);
 - 10.2.3 if the Acquired Rights Directive (or any equivalent or analogous local Law) applies but not otherwise, notify the Authority forthwith in writing of any material changes to the Employee Liability Information as and when such changes arise;
 - 10.2.4 be precluded from making any material increase or decrease in the numbers of Supplier Personnel otherwise than in the Ordinary Course of Business or with the Authority’s prior written consent;
 - 10.2.5 be precluded from making any increase in the remuneration or other change in the terms and conditions of the Supplier Personnel other than in the Ordinary Course of Business and with the Authority’s prior written consent; and
 - 10.2.6 if the Acquired Rights Directive (or any equivalent or analogous local Law) applies and except in the case where a member of the Supplier Personnel objects to the proposed transfer or as otherwise expected in accordance with the Ordinary Course of Business, be precluded from transferring any of the Supplier Personnel to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in fulfilling the Services Requirements to fulfil the Services Requirements save with the Authority’s prior written consent.
- 10.3 Where the Acquired Rights Directive (or any equivalent or analogous local Law) applies in a relevant Country, the Supplier shall indemnify and shall keep indemnified in full the Authority against all Losses arising from any claim by any party as a result of:
- 10.3.1 the Supplier failing to comply with the terms of such Law;

- 10.3.2 the Supplier failing to provide or promptly to provide the Authority with any Employee Liability Information relating to the relevant Country or to provide full Employee Liability Information relating to the relevant Country; or
 - 10.3.3 any material inaccuracy in or omission from the Employee Liability Information relating to the relevant Country; or
 - 10.3.4 the Supplier's treatment or employment of any such employee prior to transfer.
- 10.4 In addition to paragraph 10.3 of this Annex 9-2, the indemnity on transfer of employees will also cover the full range of liabilities set out in paragraph 5 of Annex 9-3.
- 10.5 In respect of the indemnity given in Section 10.3, the indemnification procedures set out in Clause 42.3 of the Terms and Conditions shall apply.

11. DISPUTES

- 11.1 During the Exit Period, the Supplier shall maintain and update a list of on-going and/or threatened disputes with third parties in relation to any of the Supplier's Solution or Supplier Subcontracts, and shall use its Commercially Reasonable Efforts to resolve such disputes.
- 11.2 During any Procurement Process, the Supplier shall not settle any dispute in relation to a Transferring Subcontract settlement would, if implemented, have the effect of increasing the Authority's or a Successor Supplier's liability (as applicable) under such Transferring Subcontract without obtaining the Authority's prior written consent (which consent shall not be unreasonably withheld).

ANNEX 9-3

TERMINATION AND TRANSITION TO THE SUCCESSOR SUPPLIER

1. INTRODUCTION

This Annex sets out the Termination Assistance to be provided by the Supplier to the Successor Supplier as directed by the Authority from the Termination Date.

2. AVAILABILITY OF THE SUPPLIER PERSONNEL AFTER TERMINATION

2.1 Notwithstanding the provisions of Section 6 of Schedule 11 (**Personnel**), on or after the Termination Date, and at the Successor Supplier's request, the Supplier shall make available to the Successor Supplier, for the continued support of the Services Requirements on a full time basis or any other basis as may be agreed between the Supplier, the Authority or the Successor Supplier, any Supplier Personnel who do not transfer to the Authority or a Successor Supplier in accordance with the Acquired Rights Directive or for any reason, for a period of not greater than three (3) months following the Termination Date.

2.2 Such availability of the Supplier Personnel shall be provided as reasonable in order to facilitate the transfer of knowledge and skills in relation to providing the Services to the Successor Supplier's personnel as directed by the Authority, as shall be necessary to ensure, uninterrupted continuity in the fulfilment of the Services Requirements.

2.3 Upon Termination and at the direction of the Authority, the Supplier shall return to the Authority or destroy the Authority Data, applicable Material, Software, Work Product and Equipment and/or return to the Authority or destroy any other third party data, as may be designated by the Authority.

3. TRANSFERRED ASSETS

3.1 If the Supplier transfers any Transferring Assets to the Successor Supplier, it shall provide, as reasonable:

3.1.1 all relevant documentation, user manuals and other such information as far as it is able;

3.1.2 a suitable warranty regarding condition and title; and

3.1.3 that all leasing, rental or other similar arrangements (including reinstatement and dilapidations) have been fully terminated so that full and unencumbered title is passed.

3.2 The Supplier shall certify to the Successor Supplier that it has complied with its obligations under this Section 3, in such format as the Authority shall reasonably request.

4. INTELLECTUAL PROPERTY RIGHTS

- 4.1 With effect from the Termination Date or the date of removal of the relevant Services Requirements, the Supplier shall cease all use of, and either destroy or return (at the Authority's option), the Authority Software and the Authority Materials (and all Intellectual Property Rights therein).
- 4.2 Upon request from the Authority to do so, the Supplier shall confirm in writing that it has complied in full with its obligations under Section 4.1 of this Annex 9-3.

5. TRANSFERRING SUPPLIER EMPLOYEES

- 5.1 This Section 5 shall apply only where the Acquired Rights Directive (or any equivalent or analogous Law) is applicable in the relevant Country or Region. The application of the Acquired Rights Directive (or any equivalent or analogous Law) to the Termination of this Agreement and the Supplier Personnel shall be determined in accordance with the applicable Law as at the Termination Date.
- 5.2 For the purposes of this Schedule 9 "**Transferring Supplier Employees**" shall mean those employees wholly or mainly engaged in the fulfilment of the Services Requirements as the case may be immediately before the Termination Date whose employment transfers to the Authority or a Successor Supplier by operation of Law. Upon the Termination Date (such date being termed the "**Transferring Supplier Employee Date**"), the provisions of this Section 5.2 of this Annex 9-3 will apply:
- 5.2.1 The Supplier shall or shall procure that all wages, salaries and other benefits of and all tax deductions, social security payments and national insurance contributions relating thereto in respect of the Supplier Personnel up to the Transferring Supplier Employee Date are satisfied; and
- 5.2.2 Without prejudice to Section 5.2.1 of this Annex 9-3, the Supplier shall:
- (a) remain responsible for all the Supplier Personnel (other than the Transferring Supplier Employees) on or after the Termination Date and shall indemnify the Authority and any Successor Supplier against any Loss and/or Claim incurred by the Authority or any Successor Supplier resulting from any claim whatsoever whether arising before on or after the Transferring Supplier Employee Date by or on behalf of any of the Supplier Personnel who do not constitute the Transferring Supplier Employees;
 - (b) in respect of those employees who constitute Transferring Supplier Employees, the Supplier shall indemnify the Authority and any Successor Supplier against any Loss and/or Claim incurred by the Authority or any Successor Supplier resulting from any claim whatsoever by or on behalf of any of the Transferring Supplier Employees in respect of the period on or before the Transferring

Supplier Employee Date (whether any such claim, attributable to the period up to and on the Transferring Supplier Employee Date, arises before, on or after the Transferring Supplier Employee Date) including, but not limited to, any failure by the Supplier to comply with its information and consultation obligations under the ARD, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Authority or any Successor Supplier. The Authority shall be entitled to assign the benefit of this indemnity to any Successor Supplier;

- (c) on the Transferring Supplier Employees Date provide the Authority and any Successor Supplier with all records concerning the Transferring Supplier Employees; and
- (d) give to the Authority and each and every Successor Supplier all reasonable assistance to establish a mirror payroll system and any relevant tax, social security or national insurance details in relation to the Transferring Supplier Employees.

6. TERMINATION AND TRANSITION

- 6.1 In the case of Termination and Transition the Supplier shall use all Commercially Reasonable Efforts to assign or novate in favour of the Authority or to any person or Successor Supplier as may be designated for the purpose by the Authority all relevant resources, including any equipment leases, third party hardware, network services, maintenance agreements and support agreements as the Authority may designate which are relevant and necessary for the fulfilment of the Services Requirements including agreements relating to the Third Party Software, Third Party Material, and the Work Product in accordance with and subject to Clause 45 of the Terms and Conditions (**Termination**).

ANNEX 9-4

OUTLINE EXIT PLAN

The Supplier shall provide a suggested format for the Outline Exit Plan to cover, as a minimum, the following areas:

1. THE SUPPLIER ACTIVITIES

1.1 The Supplier shall provide, as reasonable, further details:

- 1.1.1 of how the transition of the Services Requirements will be managed and conducted and the information required to support this; and
- 1.1.2 describing how each relevant part of the Services Requirements will be transferred.

2. MANAGEMENT AND INFORMATION REQUIREMENTS

2.1 The Supplier shall provide, as reasonable:

- 2.1.1 all information for governance and reporting arrangements including project management, escalation and notification, Change Control Procedures, approval, quality control, risk and issues management and actions management;
- 2.1.2 a fully populated and resourced project plan;
- 2.1.3 a completed risk and issues logs;
- 2.1.4 provision of information and data (including for relevant staff and the overall Supplier's Solution);
- 2.1.5 details of where information and data is stored and/or available;
- 2.1.6 an outline of dependencies and interoperability of subject areas;
- 2.1.7 The Authority resources required to enact the Outline Exit Plan, (e.g., by types, skills, numbers and timeframes); and
- 2.1.8 details of relevant review processes.

3. SERVICE AND STAFF ITEMS

3.1 In relation to the transition of the Services Requirements to the Successor Supplier as directed by the Authority, the Supplier shall detail, as applicable and as reasonable:

- 3.1.1 how and when each of the Services Requirements will transfer with minimal disruption, how each Service Requirements will be provided throughout the transfer in a secure environment and disaster recovery arrangements and arrangements to ensure a seamless

- transfer of Services Requirements to the Successor Supplier, including those with external interfaces;
- 3.1.2 transfer of the technical infrastructure;
- 3.1.3 Asset tracking and recording methods;
- 3.1.4 what infrastructure Assets will transfer including application software;
- 3.1.5 when and how these Assets transfer;
- 3.1.6 what specific security tasks are necessary at Termination;
- 3.1.7 migration of data; and
- 3.1.8 staff transfer.
- 3.2 In respect of Assets, the Supplier shall provide, as applicable, details of:
 - 3.2.1 original purchase price and date of purchase;
 - 3.2.2 the level of depreciation to date;
 - 3.2.3 any leasing or other finance arrangements in place;
 - 3.2.4 the existing status of ownership of legal title;
 - 3.2.5 whether the Assets are used solely in the fulfilment of the Services Requirements;
 - 3.2.6 IT equipment and software transfer;
 - 3.2.7 non-IT equipment transfer;
 - 3.2.8 transfer/novation and expiry of software licences;
 - 3.2.9 escrow arrangements;
 - 3.2.10 apportionment and reconciliation of fees paid for any licences;
 - 3.2.11 disposal requirements;
 - 3.2.12 any other relevant information; and
- 3.3 The Supplier shall effect Intellectual Property Rights transfers by carrying out the following:
 - 3.3.1 identification of each Party's Intellectual Property Rights; and
 - 3.3.2 processes and responsibilities for transfer of licences to use and ownership of Intellectual Property Rights.

- 3.4 In relation to the Visa Application Centres, the Supplier shall provide a definition of the processes required to transfer occupation of such premises, including information relating to:
- 3.4.1 leases;
 - 3.4.2 dilapidations;
 - 3.4.3 reinstatement;
 - 3.4.4 rates; and
 - 3.4.5 utilities.
- 3.5 For Supplier Subcontracts, the Supplier shall provide:
- 3.5.1 contract identification;
 - 3.5.2 notifications of intent to assign/novate; and
 - 3.5.3 transfer request.
- 3.6 For communications, the Supplier shall provide reasonable support to the Authority in preparing and disseminating communications material for key stakeholders and external customers.