

OFFICIAL-SENSITIVE - COMMERCIAL

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**SCHEDULE 8.5**

**EXIT MANAGEMENT**

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*Armed Forces Recruiting - Recruitment Services Agreement v1.0*

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## 1 DEFINITIONS

In this Schedule 8.5 (*Exit Management*), the following definitions shall apply:

**“Application Programming Interface” or “API”**

Means a piece of software that facilitates access to the Supplier’s application(s) to provide access to business functionality and/or Authority Data to support any relevant Termination Services which conforms to the Government Digital Service API technical and data standards set available online at:

<https://www.gov.uk/guidance/gds-api-technical-and-data-standards>

**“Emergency Exit”**

any termination of this Agreement which is a:

- (a) termination of the whole or part of this Agreement in accordance with Clause 29 (*Termination Rights*) except where the period of notice given under that Clause is greater than or equal to six (6) months;
- (b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 29 (*Termination Rights*); or
- (c) wrongful termination or repudiation of this Agreement by either Party;

**“Ethical Wall Agreement”**

means an ethical wall agreement in a form similar to the draft ethical wall agreement set out at Annex 2 of this Schedule 8.5 (*Exit Management*);

**“Exclusive Assets”**

those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services;

**“Exit Information”**

has the meaning given in Paragraph 4.1;

**“Exit Manager”**

the person appointed by each Party pursuant to Paragraph 3.3 for managing the Parties’

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|                                 |   |
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|                                 | respective obligations under this Schedule 8.5 ( <i>Exit Management</i> );  |
| <b>“Loaned Assets”</b>          | means any Authority Assets loaned to the Supplier by the Authority and used in connection with the provision of the Services;   |
| <b>“Non-Exclusive Assets”</b>   | those Assets (if any) which are used by the Supplier or a Key Sub-contractor in connection with the Services, but which are also used by the Supplier or Key Sub-contractor for other purposes of material value;   |
| <b>“Ordinary Exit”</b>          | any termination of the whole or part of this Agreement which occurs: <ul style="list-style-type: none"><li>(a) pursuant to Clause 29 (<i>Termination Rights</i>) where the period of notice given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to 6 months; or</li><li>(b) as a result of the expiry of the Initial Term or any Option Period;</li></ul>   |
| <b>“Registers”</b>              | the registers to be created pursuant to Paragraph 3.1 below;  |
| <b>“Transferable Assets”</b>    | those of the Exclusive Assets which are capable of legal transfer to the Authority;   |
| <b>“Transferable Contracts”</b> | the Sub-contracts, licenses for Supplier's Software, licenses for Third Party Software or other agreements which are necessary to enable the Authority or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licenses all relevant Documentation, and in the case of Software only, where the relevant licenses are identified as being transferable in the Software Lists defined in Schedule 5 ( <i>Intellectual Property Rights</i> ); and |
| <b>“Transferring Contracts”</b> | has the meaning given in Paragraph 8.2(b).  |

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- 2.1 This Schedule 8.5 (*Exit Management*) lays out the principles and processes to be followed at the termination of this Agreement or any other termination event (including Partial Termination).
- 2.2 The Supplier shall do all things necessary to achieve the orderly transition of the Services from the Supplier to any Replacement Supplier in the event of expiry or termination (including Partial Termination) of this Agreement for any reason.
- 2.3 This Schedule 8.5 (*Exit Management*) sets out the principles of the re-tendering, exit and service transfer arrangements that are intended to facilitate re-tendering during the Term and/or to achieve such orderly transition and which shall form the basis of the Exit Plan. The Supplier shall be responsible for the overall management of the re-tendering support, exit and service transfer arrangements made pursuant to this Schedule 8.5 (*Exit Management*). The Supplier shall comply with the provisions of Annex 3 of this Schedule 8.5 (*Exit Management*) which sets out the Supplier's outline Exit Plan and Annex 4 of this Schedule 8.5 (*Exit Management*) which sets out the Supplier's further commitments to ensure a smooth exit. For the avoidance of doubt, subject to Clause 1.3 in the event of a conflict between the terms of Annex 3 and 4, and the rest of this Agreement, the conflict shall be resolved in favour of terms provided for elsewhere in this Agreement (with the exception of Schedule 4.1 (*Supplier Solution*) and its annexes which shall remain at the same level of precedence as Annex 3 and 4 of this Schedule 8.5 (*Exit Management*)).
- 2.4 This Schedule 8.5 (*Exit Management*) also applies to the extent relevant where a requirement for any Service ceases following a Partial Termination whether or not such Service is to be replaced or re-provisioned and regardless of whether a re-competition or re-tender in respect of the ceased Service is to take place.
- 2.5 In this Schedule 8.5 (*Exit Management*), references to a Replacement Supplier shall be deemed to include reference to more than one Replacement Supplier where more than one is appointed to provide Replacement Services.

**3 OBLIGATIONS DURING THE TERM TO FACILITATE EXIT**

- 3.1 During the Term, the Supplier shall:
- (a) create and maintain a register of all:
    - (i) Assets, detailing their:
      - (A) make, model and asset number;
      - (B) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
      - (C) Net Book Value;
      - (D) condition and physical location; and

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- (E) use (including technical specifications); and
  - (ii) 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;
  - (b) 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 enable 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 amount of disruption;
  - (c) agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and
  - (d) at all times keep the Registers up to date, in particular in the event that Assets, Sub-contracts or other relevant agreements are added to or removed from the Services.
- 3.2 The Supplier shall procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Agreement.
- 3.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule 8.5 (*Exit Management*) and provide written notification of such appointment to the other Party within three (3) months of SCD1. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule 8.5 (*Exit Management*). The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule 8.5 (*Exit Management*). The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this Schedule 8.5 (*Exit Management*) and each Party's compliance with it.

**4 OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES**

- 4.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the 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:
- (a) details of the Service(s) (including the scope of Services currently provided and potential new Services or material changes that are in the contemplation of the Parties);

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- (b) a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
  - (c) if applicable, details of all escrow materials, including but not limited to source code and licensing details;
  - (d) an inventory of Authority Data in the Supplier's possession or control;
  - (e) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
  - (f) a copy of each Sub-contract;
  - (g) a list of ongoing and/or threatened disputes in relation to the provision of the Services;
  - (h) to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Agreement, including Schedule 9.1 (*Transfer Regulations*); and
  - (i) such other material and information as the Authority shall reasonably request, (together, the "**Exit Information**").
- 4.2 The Supplier acknowledges that the Authority may (subject to reasonable written confidentiality undertakings executed directly between the actual or prospective Replacement Supplier and the Supplier (whose consent it not to be unreasonably withheld)) disclose the Exit Information, including where contained therein the Supplier's 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 4.2 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-contractors' prices or costs).
- 4.3 The Supplier shall:
- (a) notify the Authority within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Authority regarding such proposed material changes; and
  - (b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Authority.
- 4.4 The Supplier may charge the Authority on a time and materials basis in accordance with the day rates set out in table 1 in Annex 1 of Schedule 7.1 (*Charges and Invoicing*) for its reasonable additional costs to the extent the Authority requests more than four (4) updates in any six (6) month period.

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- 4.5 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:
- (a) prepare an informed offer for those Services; and
  - (b) not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).
- 4.6 The Supplier shall be required to comply with the provisions of this Paragraph 4 at any time during the Term in connection with a proposed re-tendering exercise in respect of all or any part of the Services, regardless of whether either Party has served a Termination Notice or whether the expiry of this Agreement is imminent.
- 5 OBLIGATION TO ENTER INTO AN ETHICAL WALL AGREEMENT ON RE-TENDERING OF SERVICES**
- 5.1 The Authority may require the Supplier to enter into the Ethical Wall Agreement at any point during a re-tendering or contemplated re-tendering of the Services or any part of the Services.
- 5.2 If required to enter into the Ethical Wall Agreement, the Supplier will return a signed copy of the Ethical Wall Agreement within ten (10) Working Days of receipt. The Supplier's costs of entering into the Ethical Wall Agreement will be borne solely by the Supplier.
- 6 EXIT PLAN**
- 6.1 The Supplier shall, at its own cost and within three (3) months after SCD1, deliver to the Authority's Commercial Manager an Exit Plan for approval. Such Exit Plan shall be (i) based upon the Outline Exit Plan submitted as part of the tender and appended to this Schedule 8.5 (*Exit Management*) at Annex 3, and (ii) must:
- (a) set out the Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the Supplier to the Authority and/or its Replacement Supplier on Partial Termination, expiry or termination of this Agreement;
  - (b) comply with the requirements set out in Paragraph 6.4; and
  - (c) be otherwise acceptable to the Authority.
- 6.2 Following receipt of the Exit Plan from the Supplier, the Authority shall:
- (a) review and comment on the Exit Plan as soon as reasonably practicable; and
  - (b) notify the Supplier in writing that it approves or rejects the Exit Plan no later than twenty (20) Working Days after the date on which the Exit Plan is first delivered to the Authority.
- 6.3 If the Authority rejects the Exit Plan:

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- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall then revise the Exit Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised Exit Plan to the Authority for the Authority's approval within twenty (20) Working Days of the date of the latter of (i) the Authority's notice of rejection, or (ii) the Authority's reasons pursuant to Paragraph 6.3(a). The provisions of Paragraph 6.2 and this Paragraph 6.3 shall apply again to any resubmitted Exit Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

6.4 In order for the Exit Plan to be accepted in accordance with Paragraph 6.2 above, it must set out, as a minimum:

- (a) how the Exit Information is obtained;
- (b) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Authority shall require to enable the Authority or its Sub-contractors to provide the Services;
- (c) a mechanism for dealing with Partial Termination on the assumption that the Supplier will continue to provide the remaining Services under this Agreement;
- (d) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
- (e) the management structure to be employed during the Termination Assistance Period;
- (f) a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
- (g) how the Services will transfer to the 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);
- (h) the scope of the Termination Services that may be required for the benefit of the Authority (including such of the services set out in Annex 1 of this Schedule 8.5 (*Exit Management*) as are applicable);
- (i) a timetable and critical issues for providing the Termination Services;

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- (j) any charges that would be payable for the provision of the Termination Services (calculated on a time and materials basis in accordance with the rates specified in Schedule 7.1 (*Charges and Invoicing*)), together with an estimate of such charges;
  - (k) how the Termination Services would be provided (if required) during the Termination Assistance Period;
  - (l) procedures to deal with requests made by the Authority and/or a Replacement Supplier for staffing information pursuant to Schedule 9.1 (*Transfer Regulations*); and
  - (m) how each of the issues set out in this Schedule 8.5 (*Exit Management*) will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of minimising disruption to or degradation of the Services during the Termination Assistance Period.
- 6.5 The Parties acknowledge that the migration of the Services from the Supplier to the Authority and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.
- 6.6 The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule 8.5 (*Exit Management*) in the first month of each Contract Year (commencing with the second Contract Year) and if requested by the Authority following the occurrence of a Financial Distress Event or such other event as determined by the Authority (in its sole discretion and acting reasonably) and communicated to the Supplier, within fourteen (14) days of such request, 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) Working 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) Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

**Finalisation of the Exit Plan**

- 6.7 Within twenty (20) Working Days after service of a Termination Notice by either Party, or twenty-four (24) 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 8.5 (*Exit Management*) and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
- 6.8 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) Working Days following its delivery to the Authority, then such Dispute shall be resolved in accordance with the Dispute

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Resolution Procedure. 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 8.5 (*Exit Management*) and the last approved version of the Exit Plan (insofar as relevant).

**Provision of Adjusted Services during the Termination Assistance Period**

- 6.9 During any Termination Assistance Period, and if required by the Authority, the Authority shall be entitled to adjust the volume of Services so as to facilitate a phased transition of Services on more than one date of Service transfer. The adjustment may relate to all Services or particular Services.
- 6.10 The Authority shall notify the Supplier of its detailed requirements as soon as is reasonably practicable prior to or following commencement of the Termination Assistance Period. The Supplier shall provide such adjusted Services during the Termination Assistance Period on the terms of this Agreement, save that:
- (a) any minimum Service volume thresholds shall not apply during the Termination Assistance Period;
  - (b) the Parties shall agree, as an urgent Change using the Change Control Procedure, the necessary changes to this Agreement to reflect:
    - (i) any changes in the nature and volume of the Services necessitated by the Authority's requirements;
    - (ii) the period during which the adjusted Services are to be provided; and
    - (iii) any other matter within this Agreement that necessarily needs to change as a result of the changes to the provisions referred to in this Paragraph 6.10.
- 6.11 Following agreement between the Parties of the adjustments referred to in Paragraph 6.10, the adjustments shall be made so as to apply to the relevant Services with effect from the commencement of the adjustment in place of the then current provisions.

**7 TERMINATION SERVICES****Notification of Requirements for Termination Services**

- 7.1 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 Partial Termination, 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:
- (a) the date from which Termination Services are required;
  - (b) the nature of the Termination Services required; and

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- (c) the period during which it is anticipated that Termination Services will be required, which shall continue no longer than twenty-four (24) months after the expiry of the Initial Term or any Option Period or earlier termination of this Agreement.

**7.2 The Authority shall have:**

- (a) an option to extend the Termination Assistance Period beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend the Termination Assistance Period beyond the date which is 30 months after expiry of the Initial Term or any Option Period or earlier termination of this Agreement and provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Services is otherwise due to expire; and
- (b) the right to terminate its requirement for Termination Services by serving not less than twenty (20) Working Days' written notice upon the Supplier to such effect.

**Termination Assistance Period**

**7.3 Throughout the Termination Assistance Period, or such other shorter period as the Authority may notify to the Supplier, the Supplier shall:**

- (a) continue to provide the Services (as applicable) and, if required by the Authority pursuant to Paragraph 7.1, provide the Termination Services;
- (b) in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the Partial Termination, termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
- (c) use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 7.3(b) without additional costs to the Authority;
- (d) provide the Services and the Termination Services at no detriment to the Target Performance Levels, save to the extent that the Parties agree otherwise in accordance with Paragraphs 6.10(b)(iii) and 7.5; and
- (e) at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.

**7.4 Without prejudice to the Supplier's obligations under Paragraph 7.3(c), if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 7.3(b) without additional costs to the Authority, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.**

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- 7.5 If the Supplier demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Target Performance Level(s), the Parties shall vary the relevant Target Performance Level(s) and/or the applicable Service Credits to take account of such adverse effect.

**Termination Obligations**

- 7.6 The Supplier shall comply with all of its obligations contained in the Exit Plan in respect of any Partial Termination or termination.
- 7.7 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 8.5 (*Exit Management*)) in respect of the Services that have been terminated, the Supplier shall, as soon as possible:
- (a) cease to use the Authority Data;
  - (b) provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
  - (c) 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 all Authority Data and promptly certify to the Authority that it has completed such deletion;
  - (d) return to the Authority such of the following as is in the Supplier's possession or control:
    - (i) all copies of the Authority Software and any other software licensed by the Authority to the Supplier under this Agreement;
    - (ii) all materials created by the Supplier under this Agreement in which the IPRs are owned by the Authority;
    - (iii) any parts of the IT Environment and any other equipment which belongs to the Authority; and
    - (iv) any items that have been on-charged to the Authority, such as consumables;
  - (e) vacate any Authority Premises unless access is required to continue to deliver the Services;
  - (f) provide access during normal working hours to the Authority and/or the Replacement Supplier for up to twelve (12) months after the Partial Termination, expiry or termination of this Agreement to:

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- (i) such information relating to the Services as remains in the possession or control of the Supplier; and
- (ii) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this Paragraph 7.7(f)(ii).

7.8 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 8.5 (*Exit Management*)), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.

7.9 Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the terminated Services shall be terminated with effect from the end of the Termination Assistance Period.

## **8 ASSETS, SUB-CONTRACTS AND SOFTWARE**

8.1 Following notice of termination or Partial Termination of this Agreement and during the Termination Assistance Period, the Supplier shall not, in respect of the terminated Services, without the Authority's prior written consent:

- (a) terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges;
- (b) (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
- (c) terminate, enter into or vary any licence for software in connection with the Services.

8.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 7.3(e), the Authority shall provide written notice to the Supplier setting out:

- (a) which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier in respect of the terminated Services ("**Transferring Assets**");

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(i) which, if any, of:

- the Exclusive Assets that are not Transferable Assets; and
- the Non-Exclusive Assets,

the Authority and/or the Replacement Supplier requires the continued use of;  
and

(b) which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the “**Transferring Contracts**”),

in order for the Authority and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Authority and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Services or Replacement Services. Where requested by the Supplier, the Authority/and or its Replacement Supplier shall discuss in good faith with the Supplier which Transferable Contracts are used by the Supplier in matters unconnected to the Services or Replacement Services.

8.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall:

(a) sell the Transferring Assets to the Authority and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where:

- (i) a Termination Payment is payable by the Authority to the Supplier, in which case, payment for such Assets shall be included within the Termination Payment; or
- (ii) the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Agreement, in which case the Authority shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges;

(b) return any Loaned Assets still in Supplier’s possession to the Authority and/or its nominated Replacement Supplier and terminate (or transfer to the nominated Replacement Supplier, as appropriate) any loan agreements relating to such Loaned Assets.

8.4 Risk in the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) on payment for the same.

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- 8.5 Where the Supplier is notified in accordance with Paragraph 8.2 that the Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
- (a) save in respect of Software and other IPRs dealt with under Schedule 5 (*Intellectual Property Rights*) procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
  - (b) procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 8.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
- 8.7 The Authority shall:
- (a) accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
  - (b) once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 8.8 The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.
- 8.9 The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Supplier) pursuant to Paragraph 8.6 both:
- (a) in relation to any matters arising prior to the date of assignment or novation of such Sub-contract; and
  - (b) in relation to any matters arising after the date of assignment or novation of such Sub-contract where the loss, liability or cost arises as a result of the Supplier's failure to comply with Schedule 5 (*Intellectual Property Rights*).

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**OFFICIAL-SENSITIVE COMMERCIAL****9 SUPPLIER PERSONNEL**

- 9.1 The transfer of Supplier Personnel to the Authority or a Replacement Supplier upon the termination, Partial Termination or Expiry of this Agreement shall be regulated by Part 2 of Schedule 9.1 (*Staff Transfers*).
- 9.2 In the event of a conflict between the provisions of this Schedule 8.5 (*Exit Management*) and Part 2 of Schedule 9.1 (*Staff Transfers*) in relation to the transfer of Supplier Personnel, upon termination, Partial Termination or Expiry of this Agreement, then the provisions of Part 2 of Schedule 9.1 (*Staff Transfers*) will take precedence.

**10 INFRASTRUCTURE MATTERS**

- 10.1 The obligations contained in Paragraph 9 of Schedule 13 (Infrastructure Matters) are subject to and supplement the obligations contained in this Schedule 8.5 (*Exit Arrangements*).
- 10.2 In the event of a conflict between the provisions of this Schedule 8.5 (*Exit Management*) and Paragraph 9 of Schedule 13 (*Infrastructure*) in relation to the transfer of assets (GFR, Authority Premises, Supplier sites, or equipment) upon termination, Partial Termination or Expiry of this Agreement, then the provisions of this Schedule 8.5 (*Exit Management*) will take precedence.

**11 EMBEDDED SERVICE PERSONNEL**

- 11.1 The Parties arrangements in relation to the provision of Embedded Service Personnel upon the termination, Partial Termination or Expiry of this Agreement shall be regulated by Paragraph 17 of Schedule 9.3 (*Embedded Service Personnel*).
- 11.2 In the event of a conflict between the provisions of this Schedule 8.5 (*Exit Management*) and Schedule 9.3 (*Embedded Service Personnel*) in relation to the provision of Embedded Service Personnel upon termination, Partial Termination or Expiry of this Agreement, then the provisions of Schedule 9.3 (*Embedded Service Personnel*) will take precedence.

**12 CHARGES**

- 12.1 During the Termination Assistance Period (or for such shorter period as the Authority may require the Supplier to provide the Termination Services), the Authority shall pay the Charges to the Supplier in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Change Control Procedure.
- 12.2 Where the Authority requests an extension to the Termination Services beyond the Termination Assistance Period in accordance with Paragraph 7.2:

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- (a) where more than six (6) months' notice is provided, the same rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable; and
  - (b) where less than six (6) months' notice is provided, no more than one point two (1.2) times the rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable.
- 12.3 For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.
- 12.4 Except as otherwise expressly specified in this Agreement, the Supplier shall not make any charges for the Services provided by the Supplier pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule 8.5 (*Exit Management*) including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

**13 APPORTIONMENTS**

- 13.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
- (a) the amounts shall be annualised and divided by three hundred and sixty-five (365) to reach a daily rate;
  - (b) the Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
  - (c) the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 13.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 13.1 as soon as reasonably practicable.

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## **ANNEX 1: SCOPE OF THE TERMINATION SERVICES**

- 1.1 The Termination Services to be provided by the Supplier shall include such of the following services as the Authority may specify:
- (a) ceasing all non-critical Software changes (except where agreed in writing with the Authority);
  - (b) notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
  - (c) providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate and suitable to be handed over for use by the Authority and/or the Replacement Supplier after the end of the Termination Assistance Period;
  - (d) delivering to the Authority the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports, all in such format as the Authority shall specify and relating to the twelve (12) month period immediately prior to the commencement of the Termination Services;
  - (e) providing details of work volumes and staffing requirements over the twelve (12) month period immediately prior to the commencement of the Termination Services;
  - (f) 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;
  - (g) providing the Authority with any problem logs which have not previously been provided to the Authority;
  - (h) providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of twelve (12) months after the Termination Assistance Period;
  - (i) providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;
  - (j) agreeing with the Authority an effective communication strategy and joint communications plan which sets out the implications for Supplier Personnel, Authority Personnel, Embedded Service Personnel, customers and key stakeholders;

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- (k) reviewing all Software libraries used in connection with the Services and providing details of these to the Authority and/or the Replacement Supplier;
- (l) providing assistance and expertise as necessary to support the Authority and/or the Replacement Supplier develop the migration plan for business operations and Authority Data to the Replacement Supplier, which may include migration approach, testing of plans, contingency options, and handling of historic or archived Authority Data;
- (m) provide all necessary support, Documentation, equipment, tools, and Software such as data migration services and/or Automated Programming Interfaces, in order to enable and support the execution of the migration plan by the Authority and/or Replacement Supplier;
- (n) making available to the Authority and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Authority (acting reasonably) at the time of termination or expiry;
- (o) analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- (p) generating a computer listing of the Source Code of relevant Software in a form and on media reasonably requested by the Authority;
- (q) agreeing with the Authority a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
- (r) delivering copies of the production databases (with content listings) to the Authority's and/or the Replacement Supplier's operations staff (on appropriate media and in such format as the Authority shall specify) as reasonably requested by the Authority;
- (s) assisting with the loading, testing and implementation of the production databases;
- (t) assisting in the execution of a parallel operation until the effective date of expiry or termination of this Agreement;
- (u) in respect of the maintenance and support of the Supplier System, providing historical performance data for the previous twelve (12) months;
- (v) assisting in the execution of a parallel operation of the maintenance and support of the Supplier System until the end of the Termination Assistance Period or as otherwise specified by the Authority (provided that these Services shall end on a date no later than the end of the Termination Assistance Period);
- (w) providing an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;

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- (x) answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services;
- (y) agreeing with the Authority and/or the Replacement Supplier a plan for the migration of the Authority Data to the Authority and/or the Replacement Supplier;
- (z) providing access to the Authority and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding six (6) months afterwards for the purpose of the smooth transfer of the Services to the Authority and/or the Replacement Supplier:
  - (i) to information and documentation relating to the Transferring Services that is in the possession or control of the Supplier or its Sub-contractors (and the Supplier agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
  - (ii) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
- (aa) knowledge transfer services, including:
  - (i) transferring all training material and providing appropriate training to those Authority and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;
  - (ii) providing for transfer to the Authority and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, data, records and documents;
  - (iii) providing the Supplier and/or the Replacement Supplier with access to such members of the Supplier's or its Sub-contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors, and subject to the Parties working together to manage any impact such access may have on the provision of the Services; and
  - (iv) allowing the Authority and/or the Replacement Supplier to work alongside and observe the performance of the Services by the Supplier at its Sites used to fulfil the Services (subject to compliance by the Authority and the Replacement Supplier with any applicable security and/or health and safety restrictions and subject to the Parties working together to manage any impact such working alongside/ observation may have on the provision of the Services),

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and any such person who is provided with such knowledge transfer services will sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require)).

1.2 The Supplier shall:

- (a) provide a documented plan relating to the training matters referred to in Paragraph 1.1(n) for agreement by the Authority at the time of termination or expiry of this Agreement;
- (b) co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1(q), providing skills and expertise of a suitable standard; and
- (c) fully co-operate in the execution of the Authority Data migration plan agreed pursuant to Paragraph 1.1(y), providing skills and expertise of a suitable standard.

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

1.4 The information which the Supplier shall provide to the Authority and/or the Replacement Supplier pursuant to Paragraph 1.1(aa) shall include:

- (a) copies of up-to-date procedures and operations manuals;
- (b) product information;
- (c) agreements with third party suppliers of goods and services/ Sub-contractors which are to be assigned, novated or transferred to the Authority and/or the Replacement Supplier (to the extent not already provided as part of the Exit Information);
- (d) key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Authority pursuant to this Schedule 8.5 (*Exit Management*);
- (e) information regarding any unresolved problems, faults or maintenance in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
- (f) details of physical and logical security processes and tools which will be available to the Authority;
- (g) any relevant interface information; and
- (h) any other information the Authority reasonably requests.

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And such information shall be updated by the Supplier at the end of the Termination Assistance Period.

- 1.5 During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and Suppliers) of the Replacement Supplier and/or the Authority access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:
- (a) any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph 1.5 shall:
    - (i) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
    - (ii) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Supplier, acting reasonably, deems reasonable; and
  - (b) the Authority and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

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**ANNEX 2: DRAFT ETHICAL WALL AGREEMENT**

[THE AUTHORITY]

and

[THE COUNTERPARTY]

**ETHICAL WALL AGREEMENT**

**OFFICIAL-SENSITIVE COMMERCIAL**

*Armed Forces Recruiting - Recruitment Services Agreement v1.0*

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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

- A. The Authority is obliged to ensure transparency, fairness, non-discrimination and equal treatment in relation to its procurement process pursuant to the Procurement Regulations (defined below). The purpose of this document (“Agreement”) is to define the protocols to be followed to prevent, identify and remedy any conflict of interest (whether actual, potential or perceived) in the context of the Purpose (defined below).
- B. The Authority is conducting a procurement exercise for the [supply/purchase] of [insert details of project/goods/services] (the “Purpose”).
- C. The Parties wish to enter into this Agreement to ensure that a set of management processes, barriers and disciplines are put in place to ensure that conflicts of interest do not arise, and that the Counterparty does not obtain an unfair competitive advantage over Other Bidders.

## IT IS AGREED:

### 1 DEFINITIONS AND INTERPRETATION

- 1.1 The following capitalised words and expressions shall have the following meanings in this Agreement and its recitals:

“Affiliate” means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;

“Agreement” means this ethical walls agreement duly executed by the Parties;

“Bid Team” means any Representatives of the Counterparty, any of its Affiliates and/or any Sub-contractors connected to the preparation of an ITT Response;

“Central Government Body” means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics, including:

- (a) Government Departments;



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

(c) Non-Ministerial Departments; or

(d) Executive Agencies;

**“Conflicted Personnel”** means any Representatives of:

a) the Counterparty;

b) any of the Counterparty’s Affiliates; and/or

c) any Sub-contractors,

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

**“Contract”** means any pre-existing or previous contract between

the Authority and:

a) the Counterparty and/or an Affiliate;

b) any of the Counterparty’s Affiliates;

c) any Sub-contractor; and

d) any other Third Party, relating to the subject matter of the Purpose at the date of the commencement of the ITT Process

**“Control”** means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and **“Controls”** and **“Controlled”** shall be interpreted accordingly;

**“Effective Date”** means the date of this Agreement as set out above;

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

**“ITT Process”** means, with regard to the Purpose, the relevant procedure provided for in the Procurement Regulations (as amended), which the Authority has elected to use to select a contractor, 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 Sub-contractors 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, sub-contractor, 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 sub-contractors engaged in connection with the ITT Process;

**“Sub-contractor”** means an existing or proposed sub-contractor of:

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

who is connected to the preparation of an ITT Response (including key sub-contractors 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.

- 1.2 Reference to the disclosure of information includes any communication or making available information and includes both direct and indirect disclosure.
- 1.3 Reference to the disclosure of information, or provision of access, by or to the Authority, the Counterparty, any of the Counterparty’s Affiliates and/or any Sub-contractors includes disclosure, or provision of access, by or to the Representatives

of the Authority, the Counterparty, any of its Affiliates and/or any Sub-contractors (as the case may be).

- 1.4 Reference to persons includes legal and natural persons.
- 1.5 Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time.
- 1.6 Reference to clauses and recitals is to clauses of and recitals to this Agreement.
- 1.7 Reference to any gender includes any other.
- 1.8 Reference to writing includes email.
- 1.9 The terms “associate”, “holding company”, “subsidiary”, “subsidiary undertaking” and “wholly owned subsidiary” have the meanings attributed to them in the Companies Act 2006, except that for the purposes of section 1159(1)(a) of that Act, the words ‘holds a majority of the voting rights’ shall be changed to ‘holds 30% or more of the voting rights’, and other expressions shall be construed accordingly.
- 1.10 The words “include” and “including” are to be construed without limitation.
- 1.11 The singular includes the plural and vice versa.
- 1.12 The headings contained in this Agreement shall not affect its construction or interpretation.

## 2 ETHICAL WALLS

- 2.1 In consideration of the sum of £1 payable by the Authority to the Counterparty, receipt of which is hereby acknowledged, the Parties agree to be bound by the terms of this Agreement:

### **Conflicts of Interest**

- 2.2 The Counterparty:
  - (a) shall take all appropriate steps to ensure that neither the Counterparty, nor its Affiliates, nor any Sub-contractors 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 Sub-contractors and/or any Representatives and the duties owed to the Authority under any Contract or pursuant to an open and transparent ITT Process; and
  - (b) acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty, any of its Affiliates, any Sub-contractors and/or any Representatives intends to take part in the ITT Process and because of the Counterparty’s, any of its Affiliates’, any Sub-contractors’ and/or any Representatives’ relationship with the Authority under any Contract, the Counterparty, any of its Affiliates, any Sub-contractors and/or Representatives have or have had access to information which could provide the Counterparty and/or its Affiliates, and any Sub-contractors and/or any

Representatives with an advantage and render unfair an otherwise genuine and open competitive ITT Process.

- 2.3 Where there is or is likely to be a conflict of interest or the perception of a conflict of interest of any kind in relation to the ITT Process, the Counterparty shall take such steps that are necessary to eliminate the conflict of interest to the Authority's satisfaction, including one or more of the following:
- (a) not assigning any of the Conflicted Personnel to the Bid Team at any time;
  - (b) providing to the Authority promptly upon request a complete and up to date list of the Conflicted Personnel and the personnel comprising the Bid Team and reissue such list to the Authority promptly upon any change to it;
  - (c) ensuring that no act or omission by itself, its staff, its Affiliates, any Sub-contractors and/or any Representatives results in information of any kind or in any format and however so stored:
    - (i) about the ITT Process (gleaned from the performance of any Contract or otherwise); and or
    - (ii) which would or could in the opinion of the Authority confer an unfair advantage on the Counterparty in relation to its participation in the ITT Process;
  - (d) ensuring that by no act or omission by itself, its Affiliates, any Sub-contractors and/or 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;
  - (e) ensuring that agreements which flow down the Counterparty's obligations in this Agreement are entered into as necessary between the Counterparty and its Affiliates and any in a form to be approved by the Authority;
  - (f) physically separating the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;
  - (g) providing regular training to its Affiliates, any Sub-contractors and/or Representatives to ensure it is complying with this Agreement;
  - (h) 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 Sub-contractors and/or any Representatives have put in place in order to comply with this Agreement;
  - (i) ensuring that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
  - (j) complying with any other action as the Authority, acting reasonably, may direct in connection with the ITT Process and/or this Agreement.

## Notification of Conflicts of Interest

### 2.4 The Counterparty shall:

- (a) notify the Authority immediately of all perceived, potential and/or actual conflicts of interest that arise;
- (b) submit in writing to the Authority full details of the nature of the perceived, potential and/or actual conflict including (without limitation) 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 future conflicts of interests from arising ("**Proposed Avoidance Measures**"); and
- (c) 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 **Error! Reference source not found.** until such time as the Authority grants approval or the Counterparty withdraws from the ITT Process).

2.5 The Counterparty will provide to the Authority, on demand, any and all information in relation to its adherence with its obligations set out under Clauses 2.2 and 2.3 as reasonably requested by the Authority.

2.6 The Authority reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under Clauses 2.2 and 2.3.

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

### Exclusion from the ITT Process

2.8 Where, in the reasonable opinion of the Authority, there has been any breach by the Counterparty of Clauses **Error! Reference source not found.**, **Error! Reference source not found.**, or **Error! Reference source not found.** or failure to obtain the Authority's approval of the Proposed Avoidance Measures the Authority shall be entitled to exclude the Counterparty, or any of its Affiliates and/or any Representatives, from the ITT Process, and the Authority may, in addition to the right to exclude, take such other steps as it deems necessary.

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

### Bid Costs

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

- (a) the Counterparty or any of its Affiliates, and Representatives and/or any Sub-contractors; or
- (b) any Third Party,

as a result of any breach of this Agreement by the Counterparty, any of its Affiliates, any Sub-contractors and/or Representatives, including where the Counterparty, any of its Affiliates, any Sub-contractors or Representatives, or any Third Party is or are excluded from the ITT Process.

### **Specific Remedies**

2.11 The Counterparty acknowledges and agrees that:

- (a) neither damages nor specific performance are adequate remedies in the event of its breach of the obligations in Clause 2; and
- (b) in the event of such breach of any of its obligations in Clause 2 which cannot be effectively remedied the Authority shall have the right to terminate both this Agreement and the Counterparty's participation in the ITT Process in each case with immediate effect on written notice.

## **3 SOLE RESPONSIBILITY**

3.1 It is the sole responsibility of the Counterparty to comply with the terms of this Agreement, including ensuring its Affiliates, any Sub-contractors, 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 Sub-contractors and/or their Representatives to the Authority shall discharge the Counterparty's obligations.

## **4 WAIVER AND INVALIDITY**

- 4.1 No failure or Delay by any Party in exercising any right, power or privilege under this Agreement or by law shall constitute a waiver of that or any other right, power or privilege, nor shall it restrict the further exercise of that or any other right, power or privilege. No single or partial exercise of such right, power or privilege shall prevent or restrict the further exercise of that or any other right, power or privilege.
- 4.2 If any provision of this Agreement is prohibited or unenforceable in any jurisdiction in relation to any Party, such prohibition or unenforceability will not invalidate the remaining provisions of this Agreement or affect the validity or enforceability of the provisions of this Agreement in relation to any other Party or any other jurisdiction.

## **5 ASSIGNMENT AND NOVATION**

- 5.1 The Counterparty shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.
- 5.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:

- (a) any Central Government Body; or
- (b) to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority; and
- (c) the Counterparty shall, at the Authority's request, enter into a novation agreement in such form as the Authority may reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 5.

5.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

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

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

## **7 TRANSPARENCY**

7.1 The parties acknowledge and agree that the Authority is under a legal duty pursuant to the Procurement Regulations to run transparent and fair procurement processes. Accordingly, the Authority may disclose the contents of this Agreement to Other Bidders (and/or potential Other Bidders) for the purposes of transparency and in order to evidence that a fair procurement process has been followed.

## **8 NOTICES**

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

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

| <b>Manner of Delivery</b> | <b>Deemed time of service</b>                 | <b>Proof of service</b>  |
|---------------------------|---|--|
| 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 <sup>TM</sup> 1 <sup>st</sup> 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. |

- 8.3 Notices shall be sent to the addresses set out below or at such other address as the relevant party may give notice to the other party for the purpose of service of notices under this Agreement:

**Authority:**

[Contact]

[Address]

[Email]

**Counterparty:**

[Contact]

[Address]

[Email]

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



## 9 WAIVER AND CUMULATIVE REMEDIES

- 9.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or Delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 9.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

## 10 TERM

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

## 11 GOVERNING LAW AND JURISDICTION

- 11.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 11.2 The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

Signed by the Authority

Name:

Signature:

Position in Authority:

Signed by the Counterparty

Name:

Signature:

Position in Authority:

**ANNEX 3: OUTLINE EXIT PLAN**

**REDACTED**

**ANNEX 4: FURTHER COMMITMENTS**

Elements from the Supplier's bid containing further commitments of the Supplier in respect of facilitating a smooth exit:

REDACTED