

OFFICIAL - SENSITIVE - COMMERCIAL

HMRC Standard Goods and Services Model Contract v1.0

SCHEDULE 8.5

EXIT MANAGEMENT (TRANSITION)

Exit Management

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"Assistance Commencement Date"	has the meaning set out in Paragraph 6.1(a)
"Exclusive Assets"	those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services to the Authority;
"Exit Information"	has the meaning given in Paragraph 4.1;
"Exit Manager"	the person appointed by each Party pursuant to Paragraph 3.4 for managing the Parties' respective obligations under this Schedule;
"Government Controlled Company"	means any body governed by public law, including as created pursuant to Regulation 12 of the Public Contracts Regulations 2015 or such other body created through or derived through public law;
"Fair Market Value"	means the transfer value of any applicable assets or consumables, as determined with reference to assets of a similar type and condition, bought and sold in 'arms length' transactions in an open market. In the absence of agreement between the Parties, Fair Market Value shall be determined by an independent valuation expert appointed by the Parties;
"Net Book Value"	the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier (which the Supplier shall ensure is in accordance with Good Industry Practice);
"Non-Exclusive Assets"	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;
"Public Procurement Process"	means the acquisition by public means of a public contract of works, suppliers or

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services by one or more contracting authorities from economic operators chosen by those contracting authorities, whether or not the works, suppliers or services are intended for a public purpose, as the same is defined (as 'procurement') in section 2 of the Public Contracts Regulations 2015;

"Registers"

the register and configuration database referred to in Paragraphs 3.2(a) and 3.2(b);

"Services Transfer Date"

the date on which the Services are transferred from the control of and provision by the Supplier to the control of and provision by a Replacement Supplier;

"Termination Assistance Notice"

has the meaning given in Paragraph 6.1;

"Termination Assistance Period"

in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Services as such period may be extended by the Parties from time to time;

"Termination Services"

the activities to be performed by the Supplier pursuant to the Exit Plan, and any other assistance required by the Authority pursuant to the Termination Assistance Notice;

"Transferring Assets"

has the meaning given in Paragraph 8.2(a);

"Transferring Contracts"

has the meaning given in Paragraph 8.2(c);

"Transferring Services"

means the Services or parts of a Service which are removed by the Authority in accordance with the provisions of the Agreement including on termination of the Agreement (in whole or in part);

"Termination Services"

the services and activities to be performed by the Supplier pursuant to the Exit Plan, and any other services required pursuant to the Termination Assistance Notice.

2 OVERVIEW

- 2.1 This Schedule sets out the exit management process by which the Supplier shall transfer Services to a Replacement Supplier (including to the Authority or a Government Controlled Company).

3 OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

- 3.1 The Supplier shall within 30 days from the Effective Date provide to the Authority a copy of its depreciation policy to be used for the purposes of calculating Net Book Value.
- 3.2 The Supplier shall, within six (6) following the Effective Date and during the Term:
- (a) create and maintain a register of all Assets including their description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and Sub-contracts and other relevant agreements required in connection with the Services; and
 - (b) create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services,
- (the “Registers”)
- 3.3 The Supplier shall ensure 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.
- 3.4 Each Party shall appoint an Exit Manager within three (3) months of the Effective Date. The Parties' Exit Managers shall liaise with one another in relation to all issues relevant to the expiry or termination of this Agreement.

4 OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

- 4.1 On reasonable notice at any point(s) during the Term, the Supplier shall provide to the Authority such reasonable assistance as the Authority may require to enable the Authority to retender for Replacement Services and 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 (including access to it) 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 and/or to assist the Authority and/or its Replacement Supplier with the orderly transition of the Services from the Supplier to the Replacement Supplier:
- (a) details of the Service(s);
 - (b) a copy of the Registers (including details of where and how the Registers are held), updated by the Supplier up to the date of delivery of such Registers;
 - (c) an inventory of Authority Data in the Supplier's possession or control;
 - (d) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - (e) a list of on-going and/or threatened disputes in relation to the provision of the Services;

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- (f) to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees or those who may be Transferring Supplier Employees required to be provided by the Supplier under this Agreement, such information to include the Staffing Information as defined in Schedule 9.1 (*Staff Transfer*); and
- (g) such other material and information as the Authority shall reasonably require,

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

- 4.2 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information (excluding the Supplier's or its Subcontractors' prices or costs) 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.
- 4.3 The Supplier shall provide updates of the Exit Information on an as-requested basis as soon as reasonably practicable and shall notify the Authority within 5 Working Days of any material change to the Exit Information which may adversely affect the financial condition, business or operations of the Authority or adversely impact upon the potential transfer and/or continuance of any Services, and shall consult with the Authority in relation to any such changes.
- 4.4 The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Services; and not be disadvantaged in any procurement process compared to the Supplier.
- 4.5 No later than two (2) months prior to the Services Transfer Date, the Supplier shall provide to the Authority and/or its Replacement Supplier an example of the Supplier's format of the payroll information using anonymised data to assist the Authority and/or its Replacement Supplier to carry out a trial run of the payroll for the Transferring Employees.

5 EXIT PLAN

- 5.1 The Supplier shall, within three (3) months after the Effective Date, deliver to the Authority a draft Exit Plan in a format agreed by the Authority which:
 - (a) sets out the Supplier's proposed methodology for achieving an orderly transition of Services (or a particular sub-set of the Services) from the Supplier to the Authority and/or its Replacement Supplier on the expiry or termination (in whole or in part) of this Agreement, and the maintenance of a 'business as usual' environment for the Authority during the Termination Assistance Period;
 - (b) complies with the requirements set out in Paragraph 5.3;
 - (c) is otherwise reasonably satisfactory to the Authority.

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- 5.2 The Parties shall use reasonable endeavours to agree the Exit Plan. If the Parties are unable to agree the Exit Plan within 20 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 5.3 The Exit Plan shall set out, as a minimum:
- (a) a detailed description of both the transfer and cessation processes, including a timetable;
 - (b) how the Services will transfer to the Replacement Supplier(s) and/or the Authority;
 - (c) details of any contracts which will be available for transfer to the Authority and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer;
 - (d) proposals for the training of key members of the Replacement Supplier's staff in connection with the continuation of the provision of the Services following the Services Transfer Date;
 - (e) proposals for providing the Authority or a Replacement Supplier copies of all documentation relating to the use and operation of the Services and required for their continued use;
 - (f) proposals for the assignment or novation of all services utilised by the Supplier in connection with the supply of the Services;
 - (g) proposals for the identification and return of all Authority Assets in the possession of and/or control of the Supplier or any third party;
 - (h) proposals for the disposal of any redundant Deliverables and materials;
 - (i) how the Supplier will ensure that there is no disruption to or degradation of the Services during the Termination Assistance Period;
 - (j) any other information or assistance reasonably required by the Authority or a Replacement Supplier;
 - (k) how the Termination Services would be provided (if required) during the Termination Assistance Period, together with a timetable, any critical issues, any charges applicable in accordance with this Agreement and a capped estimate of such charges, in each case for those Termination Services; and
 - (l) procedures to:
 - (i) deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 9.1 (*Staff Transfer*);
 - (ii) determine which Supplier Personnel are or are likely to become Transferring Supplier Employees; and

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- (iii) identify or develop any measures for the purpose of the Employment Regulations envisaged in respect of Transferring Supplier Employees.

5.4 The Supplier shall:

- (a) maintain and update the Exit Plan no less frequently than:
 - (i) once every six (6) months;
 - (ii) no later than twenty (20) Working Days after a request from the Authority for an up-to-date copy of the Exit Plan; and
 - (iii) as soon as reasonably possible following a Termination Assistance Notice or 6 months prior to the expiry of this Agreement (or such other period as required by the Authority), and in any event no later than twenty (20) Working Days after the date of the Termination Assistance Notice, to prepare a final form that could be implemented immediately;
 - (iv) as soon as reasonably possible following, and in any event no later than twenty (20) Working Days following, any material change to the Services,and shall submit each updated Exit Plan for the Authority's agreement in accordance with paragraph 5.2 above; and
- (b) jointly review and verify the Exit Plan if required by the Authority and promptly correct any identified failures.

5.5 Only if (by notification to the Supplier in writing) the Authority agrees with a draft Exit Plan provided by the Supplier under Paragraph 5.2, shall that draft become the Exit Plan for this Contract.

5.6 A version of an Exit Plan agreed between the parties shall not be superseded by any draft submitted by the Supplier.

5.7 In the event that Termination Assistance is required by the Authority but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 5.2, the Supplier shall provide the Termination Services in good faith and in accordance with the principles in this Schedule and the last Authority approved version of the Exit Plan (insofar as it still applies).

6 TERMINATION SERVICES

Notification of Requirements for Termination Services

6.1 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**");

- (a) at least 4 months prior to the date of termination or expiry of this Agreement or as soon as reasonably practicable (but in any event, not later than 1 month) following the service by either Party of a Termination Notice; or

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- (b) where, pursuant to any right under the Agreement or at Law, the Authority has given written notice to remove any Services (or a particular sub-set of the Services) from the scope of the Agreement (whether following a competitive bid process or otherwise).

The Termination Assistance Notice shall specify:

- (a) the date from which the Supplier shall commence providing the Termination Services ("**Assistance Commencement Date**");
- (b) the nature of the Termination Services required; and
- (c) the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 12 months after the date that the Supplier ceases to provide the Services.

- 6.2 The Authority shall have an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than 6 months after the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire. The Authority shall have the right to terminate its requirement for Termination Services by serving not less than 20 Working Days' written notice upon the Supplier to such effect.

Termination Assistance Period

- 6.3 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:
- (a) continue to provide the Services (as applicable) and otherwise perform its obligations under this Agreement and, if required by the Authority pursuant to Paragraph 6.1, provide the Termination Services;
 - (b) provide to the Authority and/or its Replacement Supplier any reasonable assistance and/or access requested by the Authority or the Replacement Supplier including assistance and/or access to allow the Services to continue without interruption following the 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 6.3(b) without additional costs to the Authority; and
 - (d) subject to Paragraph 6.5, provide the Services and the Termination Services at no detriment to the KPI's, the provision of the Management Information or any other reports nor to any other of the Supplier's obligations under this Agreement;
 - (e) seek the Authority's prior written consent to access any Authority Premises from which the de-installation or removal of any Assets is required.

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- 6.4 Without prejudice to the Supplier's obligations under Paragraph 6.3(c), if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(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.
- 6.5 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 KPI's, the Parties shall vary the relevant KPI(s) and/or any applicable Service Credits to take account of such adverse effect.

7 TERMINATION OBLIGATIONS

- 7.1 The Supplier shall comply with all of its obligations contained in the Exit Plan.
- 7.2 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), the Supplier shall:
- (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. The Supplier shall also delete all copies of any Personal Data unless it is required to be retained by EU or member state laws;
 - (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;

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- (f) provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after expiry or termination to:
 - (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 such requests for access.
- 7.3 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), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party 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.
- 7.4 Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.
- 8 ASSETS, SUB-CONTRACTS AND SOFTWARE (NOT APPLICABLE)**
- 8.1 Following notice of termination of this Agreement and during the Termination Assistance Period, the Supplier shall not, 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 20 Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 6.3(e), the Authority shall provide written notice to the Supplier setting out:
 - (a) which, if any, of the Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier ("**Transferring Assets**");
 - (b) which, if any, of:
 - (i) the Exclusive Assets that are not Transferring Assets; and

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(ii) the Non-Exclusive Assets,

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

(c) which, if any, of the Sub-contracts the Authority does not require to be assigned or novated to the Authority and/or the Replacement Supplier and all other Sub-contracts shall be 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. The Supplier shall provide all reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine which Transferring Assets and Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Replacement Services.

- 8.3 With effect from the expiry of the Termination Assistance Period, should the Authority so require, the Supplier shall sell the Transferring Assets to the Authority and/or its nominated Replacement Supplier for their [Net Book Value] less any amount already paid for them through the Charges or any Termination Payment.
- 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 them.
- 8.5 Where the Supplier is notified in accordance with Paragraph 8.2(b) that the Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferring Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
- (a) 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 During the Termination Assistance Period, the Supplier shall not vary, terminate, assign, novate, purport to vary, nor allow any of the listed Transferring Contracts used wholly or mainly to provide the Transferring Services to expire, without the Authority's prior written consent (such consent not to be unreasonably withheld).
- 8.7 The Supplier shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the Authority and/or the Replacement Supplier. The Supplier shall provide full copies of the Transferring Contracts to the Authority (and/or the Replacement Supplier at the Authority's request) no less than [4] weeks before the date the novation or assignment is to take effect. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.

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8.8 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.

8.9 The Supplier shall hold any Transferring Contracts on trust for the Authority until the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has taken place.

8.10 The Supplier shall transfer to the Replacement Supplier the benefit of any manufacturers' warranties ("**Manufacturer's Warranties**") applicable wholly to the Transferring Services where the Supplier is able to transfer the benefit thereunder. To the extent that the benefit of any such Manufacturer's Warranty cannot be transferred to the Replacement Supplier except by way of a novation agreement or by obtaining a consent, an approval, a waiver or the like from the manufacturer or other third party ("**Consents**"):

- (a) the Supplier shall (unless otherwise agreed) use commercially reasonable efforts to procure such Consents or the novation of the relevant Manufacturer's Warranties to the Replacement Supplier; and
- (b) unless or until any such Manufacturer's Warranty is so novated or any necessary Consent is obtained, the Supplier will receive and hold the benefit of the relevant Manufacturer's Warranty for the Replacement Supplier and the Authority will pay or reimburse any sums (as agreed between the Parties) properly payable in connection with such Manufacturer's Warranty after each Services Transfer Date, as the case may be.

8.11 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 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract.

9 SUPPLIER PERSONNEL

9.1 The Authority and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 9.1 (*Staff Transfer*) shall apply.

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- 9.2 The Supplier shall not and shall procure that any relevant Sub-contractor shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) without the prior written consent of the Authority to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier or Replacement Sub-contractor.
- 9.3 During the Termination Assistance Period, the Supplier shall and shall procure that any relevant Sub-contractor shall:
- (a) give the Authority and/or the Replacement Supplier and/or Replacement Sub-contractor reasonable access to the Supplier's personnel and/or their consultation representatives to present the case for transferring their employment to the Authority and/or the Replacement Supplier and/or to discuss or consult on any measures envisaged by the Authority, Replacement Supplier and/or Replacement Sub-contractor in respect of persons expected to be Transferring Supplier Employees;
 - (b) consent to any election by the Authority, Replacement Supplier and/or Replacement Sub-contractor to carry out pre-transfer collective consultation under S198A - 198B of the Trade Union and Labour Relations (Consolidation) Act 1992 and thereafter facilitate such consultation;
 - (c) co-operate with the Authority and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Services.
- 9.4 The Supplier shall not for a period of 12 months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Authority and/or the Replacement Supplier, except that this paragraph shall not apply either where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy or where an offer is made pursuant to an express right to make such offer under Schedule 9.1 (*Staff Transfer*) in respect of a Transferring Supplier Employee not identified in the Supplier's Final Supplier Personnel List.

10 CHARGES (Not Applicable)

- 10.1 The Authority shall pay the Charges to the Supplier in respect of the Termination Services carried out during the Termination Assistance Period (or for such shorter period as the Authority may require the Supplier to provide the Termination Services), in accordance with the rates set out in Annex A of Schedule 7.1 (Charges and Invoicing), subject to a cap of [£XX]. The Authority shall not be required to pay any other costs in respect of the Termination Services.
- 10.2 Except as otherwise expressly specified in this Agreement, the Supplier shall not charge 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 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.

11 APPORTIONMENTS (Not Applicable)

11.1 Where applicable, all outgoing 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 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.

11.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 11.1 as soon as reasonably practicable.

12 DISPUTES

During any Termination Assistance Period, the Supplier shall maintain and update a list of on-going and/or threatened disputes in relation to any of the Supplier's Solution or Transferring Contracts in so far as they relate to the Transferring Services and shall use its commercially reasonable efforts to resolve such disputes. The Supplier shall not settle any such dispute(s) nor accept any liability (either on its own behalf or that of the Authority) without obtaining the Authority's prior written consent (which shall not be unreasonably withheld) where any such settlement affects the interests of the Authority.

13 Ethical Walls Agreement

The Supplier shall prior to the expiry or earlier termination of this Agreement enter into an agreement in the form set out at Annex 1 of this Schedule 8.5 without which the Authority may elect at its sole discretion that the Supplier may not take part in any future procurement exercise carried out by the Authority in relation to the Services (including Replacement Services).

ANNEX 1: ETHICAL WALLS AGREEMENT

This Agreement is dated [] 20[]

Between

- (1) THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS of 100 Parliament Street, Westminster, London SW1A 2BQ (the "**Authority**"); and
- (2) [NAME OF COUNTERPARTY] whose [registered office][principal place of business] is at [ADDRESS OF COUNTERPARTY][and whose company number is [COUNTERPARTY COMPANY NUMBER]] (the "**Counterparty**").

BACKGROUND

- A. The Authority is obliged to ensure transparency, fairness, non-discrimination and equal treatment in relation to its procurement process pursuant to the Public Contracts Regulations 2015 (as amended) (the "**PCR**").
- 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 a set of management processes, barriers and disciplines are put in place that ensure conflicts of interest do not arise, and that the Counterparty does not obtain an unfair competitive advantage over Other Bidders.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

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

"**Affiliate**" means any person who is a subcontractor, subsidiary, subsidiary undertaking or holding company of the Counterparty;

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

"**Bid Team**" means any Counterparty or Affiliate, connected to the preparation of an ITT Response;

"**Conflicted Personnel**" means any Counterparty, Affiliate, staff or agents of the Counterparty or an Affiliate who, because of the Counterparty's relationship with the Authority under any Contract have or have had access to information which creates or may create a conflict of interest.

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“Contract” means the [contract for [] dated [] between the Authority and the Counterparty and/or an Affiliate;

“Government Body” means a Crown body or any department, agency, office or other emanation of the Crown together with any of its arms length bodies;

“Invitation to Tender” or **“ITT”** means an invitation to submit tenders issued by the Authority as part of an ITT Process;

“ITT Process” means, with regard to the Purpose, the relevant procedure provided for in the PCR which the Authority has elected to use to select a contractor, together with all relevant information, correspondence and/or documents issued by the Authority as part of that procurement exercise, all information, correspondence and/or documents issued by the bidders in response together with any resulting contract;

“ITT Response” means the tender submitted or to be submitted by the Counterparty or an Affiliate (or, where relevant, by an Other Bidder) in response to an ITT;

“Other Affiliate” any person who is a subsidiary, subsidiary undertaking or holding company of any Other Bidder;

“Other Bidder” means any other bidder or potential bidder that is not the Counterparty or any Affiliate that has or is taking part in the ITT Process;

“Parties” means the Authority and the Counterparty;

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

- 1.2 Reference to the disclosure of information includes any communication or making available of information and includes both direct and indirect disclosure;
- 1.3 Reference to the disclosure of information, or provision of access, by or to the Authority or the Counterparty includes disclosure, or provision of access, by or to the representatives of the Authority or Representatives of the Counterparty (as the case may be);
- 1.4 Reference to the representatives of any person includes the officers, directors, employees, advisers and agents of that person and, where the context admits, providers or potential providers of finance to the Counterparty or any Affiliate in connection with the ITT Process and the representatives of such providers or potential providers of finance;
- 1.5 Reference to persons includes legal and natural persons;
- 1.6 Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time;

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- 1.7 Reference to clauses and recitals is to clauses of and recitals to this Agreement;
- 1.8 Reference to any gender includes any other;
- 1.9 Reference to writing includes email;
- 1.10 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;
- 1.11 The words “include” and “including” are to be construed without limitation;
- 1.12 The singular includes the plural and vice versa; and
- 1.13 The headings contained in this Agreement shall not affect its construction or interpretation.

2 ETHICAL WALLS

- 2.1 In consideration of the sum of £1 payable by the Authority to the Counterparty, receipt of which is hereby acknowledged, the Counterparty:
 - 2.1.1 shall take all appropriate steps to ensure that neither the Counterparty nor its Affiliates and/or Representatives are in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Counterparty or its Affiliates or Representatives and the duties owed to the Authority under the Contract or pursuant to an open and transparent ITT Process;
 - 2.1.2 acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty or an Affiliate intends to take part in the ITT Process and, because of the Counterparty’s relationship with the Authority under any Contract, the Counterparty, its Affiliates and/or Representatives have or have had access to information which could provide the Counterparty and/or its Affiliates with an advantage and render unfair an otherwise genuine and open competitive ITT Process; and
 - 2.1.3 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, shall comply with Clause 2.2.
- 2.2 The Counterparty shall:
 - 2.2.1 not assign any of the Conflicted Personnel to the Bid Team at any time;

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- 2.2.2 provide to the Authority a complete and up to date list of the Conflicted Personnel and the Bid Team and reissue such list upon any change to it;
- 2.2.3 ensure that by no act or omission by itself, its staff, agents and/or Affiliates results in information of any kind or in any format and however so stored:
 - (a) about the Contract, its performance, operation and all matters connected or ancillary to it becoming available to the Bid Team; and/or
 - (b) which would or could in the opinion of the Authority confer an unfair advantage on the Counterparty in relation its participation in the ITT Process becoming available to the Bid Team.
- 2.2.4 ensure that by no act or omission by itself, its staff, agents and/or Affiliates and in particular the Bid Team results in information of any kind or in any format and however so stored about the ITT Process, its operation and all matters connected or ancillary to it becoming available to the Conflicted Personnel;
- 2.2.5 ensure that confidentiality agreements which flow down the Counterparty's obligations in this Agreement are entered into as necessary between the Authority and the Counterparty, its Affiliates, its staff, agents, any Conflicted Personnel, and between any other parties necessary in a form to be prescribed by the Authority;
- 2.2.6 physically separate the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;
- 2.2.7 provide regular training to its staff, agents and its Affiliates to ensure it is complying with this Agreement;
- 2.2.8 monitor Conflicted Personnel movements within restricted areas (both physical and electronic online areas) to ensure it is complying with this Agreement ensure adherence to the ethical wall arrangements;
- 2.2.9 ensure that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
- 2.2.10 comply with any other action as the Authority, acting reasonably, may direct.
- 2.3 In addition to the obligations set out in Clause 2.1.1 and 2.1.3, the Counterparty shall:
 - 2.3.1 notify the Authority immediately of all potential and/or actual conflicts of interest that arise; and

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- 2.3.2 submit in writing to the Authority full details of the nature of the conflict including (without limitation) full details of the risk assessments undertaken, the impact or potential impact of the conflict, the measures and arrangements that have been established and/or are due to be established to eliminate the conflict and the Counterparty's plans to prevent future conflicts of interests from arising; and
- 2.3.3 seek the Authority's approval thereto,
- which the Authority shall have the right to grant, grant conditionally or deny (if the Authority denies its approval the Counterparty shall repeat the process set out in clause 2.3 until such time as the Authority grants approval or the Counterparty withdraws from the ITT Process).
- 2.4 Any breach of Clause 2.1, Clause 2.2 or Clause 2.3 shall entitle the Authority to exclude the Counterparty or any Affiliate or Representative from the ITT Process, and the Authority may, in addition to the right to exclude, take such other steps as it deems necessary where, in the reasonable opinion of the Authority there has been a breach of Clause 2.1, Clause 2.2 or Clause 2.3.
- 2.5 The Counterparty will provide, on demand, any and all information in relation to its adherence with its obligations set out under Clauses 2.1 and 2.2 as reasonably requested by the Authority.
- 2.6 The Authority reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under Clauses 2.1.3 and 2.2.
- 2.7 The Counterparty acknowledges that any provision of information or demonstration of measures, in accordance with Clauses 2.5 and 2.6, does not constitute acceptance by the Authority of the adequacy of such measures and does not discharge the Counterparty of its obligations or liability under this Agreement.
- 2.8 The actions of the Authority pursuant to Clause 2.4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 2.9 In no event shall the Authority be liable for any bid costs incurred by:
- 2.9.1 the Counterparty or any Affiliate or Representative; or
- 2.9.2 any Other Bidder, Other Affiliate or Other Representative,
- as a result of any breach by the Counterparty, Affiliate or Representative of this Agreement, including, without limitation, where the Counterparty or any Affiliate or Representative, or any Other Bidder, Other Affiliate or Other Representative are excluded from the ITT Process.

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2.10 The Counterparty acknowledges and agrees that:

- 2.10.1 neither damages nor specific performance are adequate remedies in the event of its breach of the obligations in clause 2; and
- 2.10.2 in the event of such breach by the Counterparty of any of its obligations in clause 2 which cannot be effectively remedied the Authority shall have the right to terminate this Agreement and the Counterparty's participation in the ITT Process.

3 SOLE RESPONSIBILITY

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

4 WAIVER AND INVALIDITY

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

5 ASSIGNMENT AND NOVATION

- 5.1 Subject to clause 6.2 the Parties shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.
- 5.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:
 - 5.2.1 any Government Body; or
 - 5.2.2 to a body other than a Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority; and

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5.2.3 the Counterparty shall, at the Authority's request, enter into a novation agreement in such form as the Authority may reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 6.

5.3 A change in the legal status of the Authority such that it ceases to be a 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 Save for any other Government Body whose information is disclosed pursuant to or by virtue of this Agreement, a person who is not party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Agreement. For the avoidance of doubt, the consent of any person who is not a party to this Agreement is not required to effect a termination or variation of this Agreement.

6.2 Any Government Body whose information is disclosed pursuant to or by virtue of this Agreement shall have the right to enforce the terms of this Agreement as though it is the Authority.

7 TRANSPARENCY

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

8 NOTICES

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

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

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt

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	Otherwise, delivery will occur at 9.00am on the next Working Day.	
Prepaid, Royal Mail Signed For™ 1 st 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:

	Counterparty	Authority
Contact		
Address		
Email		

- 8.4 This Clause 9 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 GOVERNING LAW AND JURISDICTION

- 10.1 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.
- 10.2 The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

Signed by the Authority

Name:

Signature:

Position in Authority:

Signed by the Counterparty

Name:

Signature:

Position in Counterparty: