

**Schedule 25**  
**Exit Management**

**1 Definitions**

In this Schedule, the definitions in Schedule 1 (Definitions) shall apply.

**2 Obligations during the Term to facilitate exit**

**2.1 During the Term, each Supplier shall:**

2.1.1 create and maintain a register of the following (collectively, the **Registers**):

(a) Assets (if applicable), detailing their:

- (i) make, model and asset number;
- (ii) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
- (iii) Net Book Value;
- (iv) condition and physical location; and
- (v) use (including technical specifications); and

(b) 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;

2.1.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which each Supplier provides the Services, which shall contain sufficient detail to permit the Authority and/or Replacement Supplier to understand how each Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;

2.1.3 agree the format of the Registers with the Authority as part of the process of agreeing the relevant Exit Plan; and

2.1.4 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.

2.2 Each 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 Contract.

2.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within three (3) months of the Effective Date. Each Supplier's Exit Manager shall be responsible for ensuring that each Supplier and its employees, agents and Sub-contractors comply with this Schedule. Each Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of that Supplier as are reasonably necessary to enable that Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Contract and all matters connected with this Schedule and each Party's compliance with it.

**3 Obligations to assist on re-tendering of Services**

3.1 On reasonable notice at any point during the Term, each 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:

- 3.1.1 details of the Service(s); (including, but not restricted to processes, scripts, documents, data and other information as requested);
- 3.1.2 a copy of the Registers, updated by each Supplier up to the date of delivery of such Registers;
- 3.1.3 an inventory of Authority Data in each Supplier's possession or control;
- 3.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
- 3.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;
- 3.1.6 to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by each Supplier under this Contract; and
- 3.1.7 such other material and information as the Authority shall reasonably require,  
(together, the **Exit Information**).
- 3.2 Each Supplier acknowledges that the Authority may disclose the relevant Supplier's Confidential Information to an actual or prospective Replacement Supplier to the extent that such disclosure is necessary for it to establish the provision of the Replacement Services (except that the Authority may not under this Paragraph 3.2 disclose any Supplier's Confidential Information which is information relating to each Supplier or its Sub-contractors' prices or costs).
- 3.3 Each Supplier shall:
  - 3.3.1 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
  - 3.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Authority.
- 3.4 Each Supplier may charge the Authority for its reasonable additional costs to the extent the Authority requests more than four (4) updates in any six (6) month period.
- 3.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by each Supplier shall be such as would be reasonably necessary to enable a third party to:
  - 3.5.1 prepare an informed offer for those Services; and
  - 3.5.2 not be disadvantaged in any subsequent procurement process compared to each Supplier (if either Supplier is invited to participate).
- 4 Obligation to enter into an Ethical Wall Agreement on re-tendering of Services**
  - 4.1 The Authority may require each 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.
  - 4.2 If required to enter into the Ethical Wall Agreement, the relevant Supplier will return a signed copy of the Ethical Wall Agreement within ten (10) Working Days of receipt. Each Supplier's costs of entering into the Ethical Wall Agreement will be borne solely by the relevant Supplier.

## **5 Exit Plan**

- 5.1 Supplier A shall, within six (6) months after the Effective Date, deliver to the Authority an Exit Plan for a Supplier A Exit (ERP). Supplier B shall, within six (6) months after the Effective Date, deliver to the Authority an Exit Plan for a Supplier B Exit (SI). Both Suppliers shall deliver to the Authority a joint Exit Plan for either an Emergency Exit or Ordinary Exit where there is termination of the whole Contract, within six (6) months after the Effective Date. Each Exit Plan shall:
- 5.1.1 set out the relevant Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the relevant Supplier to the Authority and/or its Replacement Supplier on the Partial Termination, expiry or termination of this Contract;
  - 5.1.2 comply with the requirements set out in Paragraph 5.2; and
  - 5.1.3 be otherwise reasonably satisfactory to the Authority.
- 5.2 The Parties shall use reasonable endeavours to agree the contents of the relevant Exit Plan. If the Parties are unable to agree the contents of the relevant Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 5.3 The relevant Exit Plan shall set out, as a minimum:
- 5.3.1 how the Exit Information is obtained;
  - 5.3.2 separate mechanisms for dealing with Supplier A Exit (ERP) and Supplier B Exit (SI) in the context of an Ordinary Exit or Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that either 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 relevant Supplier of all such reasonable assistance as the Authority shall require to enable the Authority or its sub-contractors to provide the Services;
  - 5.3.3 a mechanism for dealing with Partial Termination on the assumption either that the relevant Supplier will continue to provide the remaining Services under this Contract or the Services will be provided by Replacement Supplier as the case may be;
  - 5.3.4 the management structure to be employed during both transfer and cessation of the Services in a Supplier A Exit (ERP) or Supplier B Exit (SI) in the context of an Ordinary Exit or an Emergency Exit;
  - 5.3.5 the management structure to be employed during the Termination Assistance Period;
  - 5.3.6 a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of a Supplier A Exit (ERP) or Supplier B Exit (SI) in the context of an Ordinary Exit and an Emergency Exit;
  - 5.3.7 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 relevant Supplier or its Sub-contractors (where applicable);
  - 5.3.8 the scope of the Termination Services that may be required for the benefit of the Authority (including such of the services set out in Appendix A as are applicable);
  - 5.3.9 a timetable and critical issues for providing the Termination Services;

- 5.3.10 any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;
  - 5.3.11 how the Termination Services would be provided (if required) during the Termination Assistance Period;
  - 5.3.12 procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 28 (Staff Transfer); and
  - 5.3.13 how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the relevant Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.
- 5.4 The Parties acknowledge that the migration of the Services from the relevant Supplier to the Authority and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.
- 5.5 Each Supplier shall review and (if appropriate) update the relevant Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year) and if requested by the Authority following the occurrence of a Financial Distress Event, within fourteen (14) days of such request, to reflect any changes in the Services that have occurred since the relevant Exit Plan was last agreed. Following such update, each 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(s). If the Parties are unable to agree the contents of the revised Exit Plan(s) within that twenty (20) Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

#### **Finalisation of the Exit Plan**

- 5.6 Within twenty (20) Working Days after service of a Termination Notice by either Party or six (6) months prior to the expiry of this Contract, the relevant Supplier(s) will submit for the Authority's approval the relevant Exit Plan in a final form that could be implemented immediately. The final form of the relevant Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the relevant Exit Plan was last agreed.
- 5.7 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the relevant Exit Plan. If the Parties are unable to agree the contents of the relevant Exit Plan within twenty (20) Working Days following its delivery to the Authority then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the relevant Exit Plan, the relevant Supplier shall provide the Termination Services in accordance with the principles set out in this Schedule and the last approved version of the relevant Exit Plan (insofar as relevant).

### **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 relevant Supplier (a **Termination Assistance Notice**) at least four (4) months prior to the date of termination or expiry of this Contract 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:
- 6.1.1 the date from which Termination Services are required;

- 6.1.2 the nature of the Termination Services required; and
  - 6.1.3 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 Extension Period or earlier termination of this Contract.
- 6.2 The Authority shall have:
- 6.2.1 an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that:
    - (a) such extension shall not extend the Termination Assistance period beyond the date which is thirty (30) months after expiry of the Initial Term or any Extension Period or earlier termination of this Contract; and
    - (b) it shall notify the relevant 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
  - 6.2.2 the right to terminate its requirement for Termination Services by serving not less than twenty (20) Working Days' written notice upon the relevant Supplier to such effect.

**Termination Assistance Period**

- 6.3 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the relevant Supplier shall:
- 6.3.1 continue to provide the Services (as applicable) and, if required by the Authority pursuant to Paragraph 6.1, provide the Termination Services;
  - 6.3.2 in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the Partial Termination, termination or expiry of this Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
  - 6.3.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 6.3.2 without additional costs to the Authority;
  - 6.3.4 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 Paragraph 6.5; and
  - 6.3.5 at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.
  - 6.3.6 at the Authority's request, deliver up-to-date Exit Information to the Authority as soon as possible and in any event within ten (10) Working Days of such request; and
  - 6.3.7 provide progress reports to the Authority (at frequencies agreed and set out in the relevant Exit Plan) detailing progress (or any lack of progress, dependencies and issues) towards completion of all tasks referred to in the relevant Exit Plan, by reference to any agreed timescales and/or milestones.
- 6.4 Without prejudice to each Supplier's obligations under Paragraph 6.3.3, if it is not possible for the relevant Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.3.2 without additional costs to the Authority, any additional costs incurred by the relevant Supplier in providing such reasonable assistance which is not already in the scope of

the Termination Services or the relevant Exit Plan shall be subject to the Change Control Procedure.

- 6.5 If the relevant 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 relevant 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 by means of the Change Control Procedure.

**Termination Obligations**

- 6.6 Each Supplier shall comply with all of its obligations contained in the relevant Exit Plan in respect of any Partial Termination or termination.
- 6.7 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 relevant Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule) in respect of the Services that have been terminated, the relevant Supplier shall:
- 6.7.1 cease to use the Authority Data;
  - 6.7.2 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);
  - 6.7.3 erase from any computers, storage devices and storage media that are to be retained by the relevant Supplier after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;
  - 6.7.4 return to the Authority such of the following as is in the relevant Supplier's possession or control:
    - (a) all copies of the Authority Software and any other software licensed by the Authority to the relevant Supplier under this Contract;
    - (b) all materials created by the relevant Supplier under this Contract in which the IPRs are owned by the Authority;
    - (c) any parts of the IT Environment and any other equipment which belongs to the Authority; and
    - (d) any items that have been on-charged to the Authority, such as consumables;
  - 6.7.5 vacate any Authority Premises unless access is required to continue to deliver the Services; and
  - 6.7.6 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 Contract to:
    - (a) such information relating to the Services as remains in the possession or control of the relevant Supplier; and
    - (b) such members of the relevant Supplier's Personnel as have been involved in the design, development and provision of the Services and who are still employed by the relevant Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the relevant Supplier actually incurred in responding to requests for access under this Paragraph 6.7.6(b).
- 6.8 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 relevant

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 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.

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

## **7 Assets, Sub-contracts and Software**

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

- 7.1.1 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;
- 7.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
- 7.1.3 terminate, enter into or vary any licence for software in connection with the Services.

- 7.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the relevant Supplier pursuant to Paragraph 6.3.5, the Authority shall provide written notice to the relevant Supplier setting out:

- 7.2.1 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**);

- (a) which, if any, of:

- (i) the Exclusive Assets that are not Transferable Assets; and
  - (ii) the Non-Exclusive Assets,

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

- 7.2.2 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 relevant 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 relevant Supplier, the Authority and/or its Replacement Supplier shall discuss in good faith with the relevant Supplier which Transferable Contracts are used by the relevant Supplier in matters unconnected to the Services or Replacement Services.

- 7.3 With effect from the expiry of the Termination Assistance Period, the relevant Supplier shall sell the Transferring Assets to the Authority and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where:

- 7.3.1 a Termination Payment is payable by the Authority to the relevant Supplier, in which case, payment for such Assets shall be included within the Termination Payment; or
- 7.3.2 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 Contract, in which case the Authority shall pay the relevant Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges.
- 7.4 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.
- 7.5 Where the relevant Supplier is notified in accordance with Paragraph 7.2.2 that the Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are neither Transferable Assets nor Non-Exclusive Assets and (in the case of Supplier B) subject to Paragraph 3.18 of Schedule 32B (Intellectual Property Rights), the relevant Supplier shall as soon as reasonably practicable:
  - 7.5.1 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
  - 7.5.2 procure a suitable alternative to such assets and the Authority shall bear the reasonable proven costs of procuring the same and/or ensure that the Replacement Supplier shall do so.
- 7.6 The relevant 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 relevant Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
- 7.7 The Authority shall:
  - 7.7.1 accept assignments from the relevant Supplier or join with the relevant Supplier in procuring a novation of each Transferring Contract; and
  - 7.7.2 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.
- 7.8 The relevant 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.
- 7.9 The relevant 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 7.5.1 both:
  - 7.9.1 in relation to any matters arising prior to the date of assignment or novation of such Sub-contract; and
  - 7.9.2 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 relevant Supplier's failure to comply with Clause 16 (Intellectual Property Rights) and/or Schedule 32 (Intellectual Property Rights).



- 7.10 In the event of either a Supplier A Exit (ERP) or a Supplier B Exit (SI), the outgoing Supplier shall as soon as reasonably practicable assign or procure the novation to the remaining Supplier of the Transferring Contracts, only to the extent required to maintain the remaining Supplier's delivery of the relevant Services for the remainder of the relevant Term. The Suppliers shall execute such documents (between them and with the Authority) as is required and the Parties shall provide such other assistance to each other as may be reasonably required to give effect to this novation or assignment.

## **8 Supplier personnel**

- 8.1 The Authority and each Supplier agree and acknowledge that in the event of either Supplier ceasing to provide the Services or part of them for any reason, Schedule 28 (Staff Transfer) shall apply.
- 8.2 The relevant Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) 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.
- 8.3 During the Termination Assistance Period, the relevant Supplier shall give the Authority and/or the Replacement Supplier reasonable access to the relevant Supplier's personnel to present the case for transferring their employment to the Authority and/or the Replacement Supplier.
- 8.4 The relevant Supplier shall immediately notify the Authority or, at the direction of the Authority, the Replacement Supplier of any period of notice given by the relevant Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 8.5 The relevant Supplier shall not for a period of twelve (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 where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

## **9 Charges**

- 9.1 During the Termination Assistance Period (or for such shorter period as the Authority may require the relevant Supplier to provide the Termination Services), the Authority shall pay the Charges to the relevant Supplier in respect of the Termination Services in accordance with:
- 9.1.1 the Charges for Termination Services that are the same or similar to the Services;  
or
- 9.1.2 the rates set out in the relevant Exit Plan for any other services required pursuant to the Termination Assistance Notice.
- 9.2 The Authority shall not be required to pay costs in excess of the estimate set out in the relevant 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.
- 9.3 Where the Authority requests an extension to the Termination Services beyond the Termination Assistance Period in accordance with Paragraph 6.2, the same rate as set out in the relevant Exit Plan (or the Charges when not stated in the relevant Exit Plan) shall be payable.
- 9.4 For the purpose of calculating the costs of providing the Termination Services for inclusion in the relevant 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.
- 9.5 Except as otherwise expressly specified in this Contract, neither Supplier shall make any charges for the services provided by that Supplier pursuant to, and the Authority shall not be

obliged to pay for costs incurred by either Supplier in relation to its compliance with, this Schedule including the preparation and implementation of the relevant Exit Plan.

- 9.6 Neither Supplier shall be entitled to claim any additional charges, costs or expenses in relation to the following:
- 9.6.1 providing any information, documentation and reports for exit related purposes which the relevant Supplier is under an obligation to provide under terms of this Contract;
  - 9.6.2 providing any information, documentation and reports for exit related purposes which can be produced without material incremental cost using information already held by the relevant Supplier or any Sub-contractor;
  - 9.6.3 costs and expenses incurred by the relevant Supplier as a result of its default or delay in performing its exit obligations save where such default or delay is caused by the default or delay of the Authority and/or any Replacement Supplier;
  - 9.6.4 making available access to the relevant Supplier's and Sub-contractors' premises for exit related purposes;
  - 9.6.5 where any such charges, costs or expenses have been or will be recovered pursuant to Payments on Termination; and
  - 9.6.6 to the extent that the relevant Supplier has recovered or will recover such charges, costs or expenses pursuant to any other provision of this Contract.

## **10 Apportionments**

- 10.1 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 relevant Supplier and/or the Replacement Supplier and the relevant Supplier (as applicable) as follows:
- 10.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;
  - 10.1.2 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
  - 10.1.3 the relevant Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 10.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 10.1 as soon as reasonably practicable.

## **Appendix A**

### **Scope of the Termination Services**

- 1 Termination Services
- 1.1 The Termination Services to be provided by the relevant Supplier shall include such of the following services as the Authority may specify:
  - 1.1.1 ceasing all non-critical Software changes (except where agreed in writing with the Authority);
  - 1.1.2 notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
  - 1.1.3 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 for use by the Authority and/or the Replacement Supplier after the end of the Termination Assistance Period;
  - 1.1.4 delivering to the Authority the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the twelve (12) month period immediately prior to the commencement of the Termination Services;
  - 1.1.5 providing details of work volumes and staffing requirements over the twelve (12) month period immediately prior to the commencement of the Termination Services;
  - 1.1.6 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;
  - 1.1.7 providing the Authority with any problem logs which have not previously been provided to the Authority;
  - 1.1.8 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;
  - 1.1.9 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;
  - 1.1.10 agreeing with the Authority an effective communication strategy and joint communications plan which sets out the implications for Supplier Personnel, Authority staff, customers and key stakeholders;
  - 1.1.11 reviewing all Software libraries used in connection with the Services and providing details of these to the Authority and/or the Replacement Supplier;
  - 1.1.12 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;

- 1.1.13 provide all necessary support, 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;
- 1.1.14 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;
- 1.1.15 assisting in establishing naming conventions for any new production site;
- 1.1.16 analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- 1.1.17 agreeing with the Authority a handover plan for all of the relevant Supplier's responsibilities as set out in the Security Management Plan;
- 1.1.18 delivering copies of the production databases (with content listings) to the Authority's and/or the Replacement Supplier's operations staff (on appropriate media) as reasonably requested by the Authority;
- 1.1.19 assisting with the loading, testing and implementation of the production databases;
- 1.1.20 assisting in the execution of a parallel operation until the effective date of expiry or termination of this Contract;
- 1.1.21 in respect of the maintenance and support of the relevant Supplier's System, providing historical performance data for the previous Quarter;
- 1.1.22 assisting in the execution of a parallel operation of the maintenance and support of the relevant Supplier's 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);
- 1.1.23 providing an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;
- 1.1.24 answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services;
- 1.1.25 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;
- 1.1.26 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:
  - (a) to information and documentation relating to the Transferring Services that is in the possession or control of the relevant Supplier or its Sub-contractors (and the relevant 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
  - (b) following reasonable notice and during the relevant Supplier's normal business hours, to members of the relevant Supplier's Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the relevant Supplier or its Sub-contractors; and

- 1.1.27 knowledge transfer services, including:
- (a) 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;
  - (b) 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, records and documents;
  - (c) providing the relevant 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 relevant Supplier or its Sub-contractors; and
  - (d) allowing the Authority and/or the Replacement Supplier to work alongside and observe the performance of the Services by the relevant 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 any such person who is provided with such knowledge transfer services will sign a confidentiality undertaking in favour of the relevant Supplier (in such form as the relevant Supplier shall reasonably require)).

1.2 Each Supplier shall:

- 1.2.1 provide a documented plan relating to the training matters referred to in Paragraph 1.1.14 for agreement by the Authority at the time of termination or expiry of this Contract;
- 1.2.2 co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1.17, providing skills and expertise of a suitable standard; and
- 1.2.3 fully co-operate in the execution of the Authority Data migration plan agreed pursuant to Paragraph 1.1.25, providing skills and expertise of a reasonably acceptable standard.

1.3 To facilitate the transfer of knowledge from the relevant Supplier to the Authority and/or its Replacement Supplier, the relevant 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 relevant Supplier shall provide to the Authority and/or the Replacement Supplier pursuant to Paragraph 1.1.25 and 1.1.26 shall include:

- 1.4.1 copies of up-to-date procedures and operations manuals;
- 1.4.2 product information;
- 1.4.3 agreements with third party suppliers of goods and services which are to be transferred to the Authority and/or the Replacement Supplier;
- 1.4.4 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;
- 1.4.5 information regarding any unresolved faults 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;
- 1.4.6 details of physical and logical security processes and tools which will be available to the Authority; and

1.4.7 any relevant interface information,

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

1.5 During the Termination Assistance Period the relevant 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:

1.5.1 any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph 1.5 shall:

(a) sign a confidentiality undertaking in favour of the relevant Supplier (in such form as the relevant Supplier shall reasonably require); and

(b) during each period of access comply with the security, systems and facilities operating procedures of the relevant Supplier relevant to such Site and that the Authority deems reasonable; and

1.5.2 the Authority and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the relevant Supplier incurred in facilitating such access.

## Appendix B

### Draft Ethical Wall Agreement

[●The Authority]

and

[●The Counterparty]

### Ethical Wall Agreement

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

#### Between:

- (1) [●Insert name of authority] (the **Authority**) [●acting on behalf of the Crown] of [●insert Authority's address]; and
  - (2) [●Name of counterparty] a [●company]/[●limited liability partnership] registered in England and Wales under registered number [●insert registered number] whose registered office is at [●insert Counterparty's registered address] (the **Counterparty**),
- together the **Parties** and each a **Party**.

#### Background

- (A) The Authority is obliged to ensure transparency, fairness, non-discrimination and equal treatment in relation to its procurement process pursuant to the Procurement Regulations (defined below). The purpose of this document (**Agreement**) is to define the protocols to be followed to prevent, identify and remedy any conflict of interest (whether actual, potential or perceived) in the context of the Purpose (defined below).
- (B) The Authority is conducting a procurement exercise for the [●supply/purchase/provision] of [●insert details of project/goods/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:

<b>Affiliate</b>	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;
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<b>Agreement</b>	means this ethical walls agreement duly executed by the Parties;
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<b>Bid Team</b>	means any Representatives of the Counterparty, any of its Affiliates and/or any Subcontractors
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connected to the preparation of an ITT Response;

**Central Government Body**

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

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

**Conflicted Personnel**

means any Representatives of:

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

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

**Contract**

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

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

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

**Control**

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

**Effective Date**

means the date of this Agreement as set out above;



<b>Invitation to Tender or ITT</b>	means an invitation to submit tenders issued by the Authority as part of an ITT Process (and shall include an Invitation to Negotiate);
<b>ITT Process</b>	means, with regard to the Purpose, the relevant procedure provided for in the Procurement Regulations (as amended), which the Authority has elected to use to select a contractor or contractors, together with all relevant information, data, correspondence and/or documents issued and/or made available by or on behalf of the Authority as part of that procurement exercise and all information, correspondence and/or documents issued and/or made available by or on behalf of the bidders in response together with any resulting contracts;
<b>ITT Response</b>	means the tender(s) submitted, or to be submitted, by the Counterparty, any of its Affiliates and/or any Subcontractors in response to any invitation(s) to submit bids under the ITT process;
<b>Other Bidder</b>	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;
<b>Procurement Process</b>	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;
<b>Procurement Regulations</b>	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;
<b>Professional Advisor</b>	means a supplier, subcontractor, advisor or consultant engaged by the Counterparty and/or any of its Affiliates under the auspices of compiling its ITT response;
<b>Purpose</b>	has the meaning given to it in recital B to this Agreement;
<b>Representative</b>	refers to a person's officers, directors, employees, advisers (including the officers, directors, employees, advisers and agents of any Professional Advisors), agents and, where

the context admits, providers or potential providers of finance (including their representatives) to the Counterparty, any of its Affiliates and/or any subcontractors engaged in connection with the ITT Process;

**Subcontractor** means an existing or proposed subcontractor of:

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

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

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

**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 Subcontractors includes disclosure, or provision of access, by or to the Representatives of the Authority, the Counterparty, any of its Affiliates and/or any Subcontractors (as the case may be).
- 1.4 Reference to persons includes legal and natural persons.
- 1.5 Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time.
- 1.6 Reference to 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:

- 2.2.1 shall take all appropriate steps to ensure that neither the Counterparty, nor its Affiliates, nor any Subcontractors nor any Representatives are in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives and the duties owed to the Authority under any Contract or pursuant to an open and transparent ITT Process; and
- 2.2.2 acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives intend to take part in the ITT Process and because of the Counterparty's, any of its Affiliates', any Subcontractors' and/or any Representatives' relationship with the Authority under any Contract, the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives have or have had access to information which could provide the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives with an advantage and render unfair an otherwise genuine and open competitive ITT Process.

2.3 Where there is or is likely to be a conflict of interest, or the perception of a conflict of interest, of any kind in relation to the ITT Process, the Counterparty shall take such steps that are necessary to eliminate the conflict of interest to the Authority's satisfaction, including one or more of the following:

- 2.3.1 not assigning any of the Conflicted Personnel to the Bid Team at any time;
- 2.3.2 providing to the Authority promptly upon request a complete and up to date list of any Conflicted Personnel and the personnel comprising the Bid Team and reissue such list to the Authority promptly upon any change to it;
- 2.3.3 ensuring that no act or omission by itself, its Affiliates, any Subcontractors and/or any Representatives results in information of any kind, however conveyed, or in any format and however so stored:
  - (a) about the ITT Process (gleaned from the performance of any Contract or otherwise); and/or
  - (b) which would or could in the opinion of the Authority confer an unfair advantage on the Counterparty in relation to its participation in the ITT Process,

becoming available to the Bid Team where the Authority has not made generally available that information to Other Bidders;

- 2.3.4 ensuring that by no act or omission by itself, its Affiliates, any Subcontractors and/or any Representatives and in particular the Bid Team results in information of any kind, however conveyed, in any format and however so stored about the ITT Process, its operation and all matters connected or ancillary to it becoming available to the Conflicted Personnel;
- 2.3.5 ensure that agreements that flow down the Counterparty's obligations in this Agreement, are entered into as necessary, between the Counterparty and its Affiliates and any Subcontractors [•in a form to be approved by the Authority];
- 2.3.6 physically separating the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;
- 2.3.7 providing regular training to its Affiliates, any Subcontractors and/or Representatives to ensure it is complying with this Agreement;

- 2.3.8 monitoring Conflicted Personnel movements within restricted areas (both physical and electronic online areas) to ensure it is complying with this Agreement and to ensure adherence to the ethical wall arrangements the Counterparty, its Affiliates, any Subcontractors and/or any Representatives have put in place in order to comply with this Agreement;
- 2.3.9 ensuring that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
- 2.3.10 complying with any other action as the Authority, acting reasonably, may direct in connection with the ITT Process and/or this Agreement.

#### **Notification of Conflicts of Interest**

- 2.4 The Counterparty shall:
  - 2.4.1 notify the Authority immediately in writing of all perceived, potential and/or actual conflicts of interest that arise or have arisen;
  - 2.4.2 submit in writing to the Authority full details of the nature of the perceived, potential and/or actual conflict of interest including full details of the risk assessments undertaken, the impact or potential impact of the perceived, potential and/or actual conflict, the measures and arrangements that have been established and/or are due to be established, to eliminate the perceived, potential and/or actual conflict, and the Counterparty's plans to prevent potential conflicts of interests from arising (**Proposed Avoidance Measures**); and
  - 2.4.3 seek the Authority's approval to the Proposed Avoidance Measures which the Authority shall have the right to grant, grant conditionally or deny (if the Authority rejects the Proposed Avoidance Measures the Counterparty shall repeat the process set out in this Clause 2.4 until such time as the Authority grants approval or the Counterparty withdraws from the ITT Process).
- 2.5 The Counterparty will provide to the Authority, on demand, any and all information in relation to its adherence with its obligations set out under 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 2.2, 2.3, or 2.4 or failure to obtain the Authority's approval of the Proposed Avoidance Measures the Authority shall be entitled to exclude the Counterparty, or any of its Affiliates and/or any Representatives, from the ITT Process, and the Authority may, in addition to the right to exclude, take such other steps as it deems necessary.
- 2.9 The actions of the Authority pursuant to Clause 2.8 shall not prejudice or affect any right of action or remedy under this Agreement or at law which shall have accrued or shall thereafter accrue to the Authority.

#### **Bid Costs**

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

2.10.1 the Counterparty or any of its Affiliates, any Representatives and/or any Subcontractors; or

2.10.2 any Third Party,

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

### **Specific Remedies**

2.11 The Counterparty acknowledges and agrees that:

2.11.1 neither damages nor specific performance are adequate remedies in the event of a breach of the obligations in Clause 2; and

2.11.2 in the event of a breach of any of the 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

It is the sole responsibility of the Counterparty to comply with the terms of this Agreement, including ensuring its Affiliates, any Subcontractors, and/or any Representatives comply with the terms of this Agreement. No approval by the Authority of any procedures, agreements or arrangements provided by the Counterparty, any of its Affiliates, any Subcontractors and/or their Representatives to the Authority shall discharge the Counterparty's obligations.

4 Waiver and invalidity

4.1 No failure or delay by any Party in exercising any right, power or privilege under this Agreement or by law shall constitute a waiver of that or any other right, power or privilege, nor shall it restrict the further exercise of that or any other right, power or privilege. No single or partial exercise of such right, power or privilege shall prevent or restrict the further exercise of that or any other right, power or privilege.

4.2 If any provision of this Agreement is prohibited or unenforceable in any jurisdiction in relation to any Party, such prohibition or unenforceability will not invalidate the remaining provisions of this Agreement, or affect the validity or enforceability of the provisions of this Agreement in relation to any other Party or any other jurisdiction.

5 Assignment and novation

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

5.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:

5.2.1 any Central Government Body; or

5.2.2 to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority; and

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

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

7 Transparency

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

8 Notices

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

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

Manner of delivery	Deemed time of service	Proof of service
Email	9.00 am 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 9.00 am and 5.00 pm on a Working Day. Otherwise, delivery will occur at 9.00 am 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 9.00 am and 5.00 pm on a Working Day. Otherwise, delivery will occur at 9.00 am on the same Working Day (if delivery before 9.00 am) or on the next Working Day (if after 5.00 pm)	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
<b>Contact</b>		

<b>Address</b>		
<b>Email</b>		

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

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

## 11 Governing law and jurisdiction

11.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

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

**Signed by the Authority** )

.....  
Name

.....  
Signature

.....  
Position in Authority

**Signed by the Counterparty** )

.....  
Name

.....  
Signature

.....  
Position in Counterparty