

SCHEDULE P: EXIT STRATEGY

**SCHEDULE P**

**EXIT STRATEGY**

**1. GENERAL**

- 1.1 This Schedule P (Exit Strategy) describes:
- 1.1.1 the procedure for agreeing and implementing an Exit Plan;
  - 1.1.2 the rights and obligations of the Parties in effecting the transfer of the Engineering Delivery Partner Services to the Authority or the Replacement Service Provider; and
  - 1.1.3 the provisions relating to Termination and exit.
- 1.2 In performing its obligations under this Schedule P (Exit Strategy), the Contractor shall use reasonable endeavours to co-operate with the Authority and any Replacement Service Provider to facilitate a smooth migration from the provision of the Engineering Delivery Partner Services by the Contractor to the provision of the Engineering Delivery Partner Services or substantially similar services ("Replacement Services") by the Authority or by the Replacement Service Provider.
- 1.3 There shall be no differentiation between the Termination Services required to be provided pursuant to this Schedule P (Exit Strategy) or for the different causes of Termination, exit or expiry of this Contract.

**2. PROVISION OF INFORMATION**

- 2.1 Subject to any of the Contractor's rights in relation to Intellectual Property as set out in the relevant Approved Tasking Order (Part 2 of the EDP Task Form) and Part XII (*Intellectual Property, Information and Disclosure*) of the Terms and Conditions of this Agreement, upon any Termination or exit, the Contractor shall upon the Authority's written request, provide the Authority with a copy of:
- 2.1.1 its register of all assets, detailing their ownership and status, and all third party contracts (including Sub-Contracts) required for the performance of the Engineering Delivery Partner Services; and
  - 2.1.2 the information referred to in Paragraphs 3.1.1, 3.1.2 and 3.1.3 of this Schedule P (Exit Strategy), and any other information or documentation specified in this Schedule P (Exit Strategy) the Authority may reasonably require.

**3. RE-TENDERING OF SERVICES**

- 3.1 Upon the written request of the Authority and subject always to the Contractor's rights in relation to Intellectual Property as set out in the relevant Approved Tasking Order (Part 2 of the EDP Task Form) and Part XII (*Intellectual Property, Information and Disclosure*) of the Terms and Conditions of this Agreement, the Contractor shall provide to the Authority, within 60 (Sixty) Business Days, the following information in sufficient detail to enable the Authority to prepare for the future provision of Replacement Services by the Authority itself or to facilitate any potential Replacement Service Provider undertaking due diligence and/or tendering for the delivery of Replacement Services:
- 3.1.1 details of the Engineering Delivery Partner Service(s);

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- 3.1.2 where permitted by law or regulation, an inventory of data which belongs to, or has been supplied by, the Authority ("Authority Data") in the Contractor's possession or control;
  - 3.1.3 subject to the Contractor's obligations under applicable data protection legislation or the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 (as may be further amended from time to time) ("TUPE") and Schedule N (*Transfer Regulations*) of this Agreement, particulars of the Contractor's personnel and locations of all persons who may become transferring employees.
- 3.2 A minimum of 3 (Three) Months before the date on which this Agreement is due to expire, or within 40 (Forty) Business Days following notification from either Party of its intention to Terminate or exit any element of this Contract and upon full payment of any outstanding amounts owed to the Contractor as agreed between the Parties, the Contractor shall provide to the Authority the information referred to in Paragraph 3.1 above.
- 3.3 The Authority shall be entitled to disclose the information provided pursuant to Paragraph 3.1 and 3.2 of this Schedule P (Exit Strategy) above to the Replacement Service Provider in accordance with Part 1 (*Contract Terms and Conditions*) subject always to appropriate confidentiality arrangements being secured by the Authority, such confidentiality arrangements being made available by the Authority to the Contractor prior to disclosure, to protect the commercial interests of the Contractor and to protect any personal data as required by applicable data protection legislation.

**4. EXIT PLAN PRINCIPLES**

- 4.1 The Exit Plan shall:
- 4.1.1 enable the Contractor to cease supplying the Engineering Delivery Partner Services or elements of the Engineering Delivery Partner Services which are to be Terminated or exit (the "Removed Services") and for the Authority, or its nominated Replacement Service Provider, to perform the Replacement Services in place of the Removed Services, starting from the effective date of Termination in accordance with the Contract or as otherwise specified in the relevant Termination Notice and ending on the date to be agreed by the Parties pursuant to this Paragraph 4 (the "Termination Period");
  - 4.1.2 minimise any disruption to the Authority, during and as a result of the handover of the Removed Services;
  - 4.1.3 ensure that the Contractor shall provide all such reasonable assistance, within such timescales as the Authority shall reasonably require to enable the Authority, its Replacement Service Provider or its subcontractors to provide the Engineering Delivery Partner Services;
  - 4.1.4 identify the Contractor's overall business commitments (including but not limited to its employees and assets) which have been detrimentally affected for the purposes of assessing and agreeing how those affects will be mitigated and what support the Authority will provide towards such mitigation;
  - 4.1.5 ensure the Contractor is paid a fair and reasonable price for support to the Authority and/or its Replacement Service Provider, including the reasonable costs of complying with its obligation set out in this Schedule P (Exit Strategy), notwithstanding any Breakage Costs or Compensation Payments owed to the Contractor; and
  - 4.1.6 take due regard to any rights or remedies available to the Authority.

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- 4.2 The Exit Plan will, as a minimum, take into account the likely circumstances of Termination or expiry under this Agreement and shall:
- 4.2.1 specify the management structure to be employed by the Contractor during both transfer and cessation of the Engineering Delivery Partner Services;
  - 4.2.2 contain a description in reasonable detail of the process for both the transfer and cessation of the Engineering Delivery Partner Services, including a timetable;
  - 4.2.3 specify the scope of services to be carried by the Contractor out during the Termination Period (the "Termination Services"), the manner in which the Termination Services are to be provided by the Contractor, and the costs to be recovered by the Contractor;
  - 4.2.4 provide details of the personnel and other resources that the Contractor requires to provide the Termination Services; and
  - 4.2.5 provide a timetable and processes for conducting the Termination Services.
- 4.3 The Contractor shall not less than 3 (Three) Months before the date on which this Agreement is due to expire, or within 40 (Forty) Business Days of notification in writing from either Party of its intention to Terminate this Agreement, produce a first draft of the Exit Plan and will then subsequently produce Exit Plans in accordance with Paragraphs 4.4 and 4.5 of this Schedule P (Exit Strategy) below.
- 4.4 The Parties may at any time following production of the Exit Plan in accordance with Paragraph 4.3 of this Schedule P (Exit Strategy), including during the Termination Period, require the Contractor to revise and/or update the Exit Plan (or produce different versions of the Exit Plan for different exit scenarios), including such changes as may be agreed as being necessary to address the requirements of the Authority in particular circumstances. On receipt of the Authority's request pursuant to this Paragraph 4.4, the Contractor shall promptly (but in any event within a period of 20 (Twenty) Business Days of the Authority's request) prepare and submit a revised draft Exit Plan to the Authority for the Authority's approval. Alternatively, the Authority may update the draft Exit Plan and submit it for the Contractor's approval.
- 4.5 If the Authority does not or is unable to provide any information requested by the Contractor for inclusion in the Exit Plan, the Contractor shall prepare and submit the draft Exit Plan with appropriate assumptions and shall identify in the draft Exit Plan the outstanding information required and the assumptions made. Failure by the Authority to provide the required information may cause the Contractor to incur additional costs which shall be identified by the Contractor and may be recoverable from the Authority.

**5. EXIT MANAGEMENT PRINCIPLES**

- 5.1 The Parties Representatives within the Joint Programme Management Office shall, in the first instance ensure that all obligations under this Schedule P (Exit Strategy) are adhered to. Should the Contractor require additional personnel to ensure its obligations under this Schedule P (Exit Strategy) are adhered to this cost will be identified within the Exit Plan, pursuant to clauses 4.2.1, 4.2.3 and 4.2.4 (Exit Plan Principles).
- 5.2 The Parties Representatives within Joint Programme Management Office shall have the requisite authority to arrange and procure any resources of such Party as are reasonably necessary to enable the Party to comply with this Schedule P (Exit Strategy).
- 5.3 Without derogation to any of the Contractor's rights or remedies under the Contract the Authority may require and be entitled to allow any Replacement Service Providers or other

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third parties to participate in the Termination Services or in any meetings related to the Termination Services where their participation is required by the Authority to affect an orderly hand-over of the Engineering Delivery Partner Services from the Contractor to Replacement Service Providers provided always that the Replacement Service Provider are subject to and observe the provisions of confidentiality Paragraph 3.3 "Re-tendering of Services".

- 5.4 The Contractor shall provide such reports on progress against the Exit Plan and other information to the Authority as the Authority may reasonably require for the purpose of monitoring and verifying the Contractor's performance of its obligations under this Agreement and this Schedule P (Exit Strategy).

**6. TERMINATION OBLIGATIONS**

- 6.1 During the Termination Period, the Contractor shall provide, and/or shall procure that its Subcontractors provide, the Engineering Delivery Partner Services and the Termination Services as requested and funded by the Authority.

- 6.2 During the Termination Period the Termination Services will (unless otherwise agreed by the Parties and so far as is reasonably practicable) be provided by the Contractor at no detriment to the performance of the remaining Engineering Delivery Partner Services.

- 6.3 During the Termination Period (if practicable, and to the extent reasonably required where only part of the Engineering Delivery Partner Services are terminated) and in any event within 20 (Twenty) Business Days of expiry of the Termination Period (so far as permitted by law or regulation) unless a later date is agreed by the Parties to allow for continuation of Engineering Delivery Partner Services, the Parties will:

- 6.3.1 erase from its computers, storage devices and storage media that are to be retained by the Parties after the end of the Termination Period any software containing the Parties Intellectual Property and return to the other Party:

- (A) all copies of any software (if any) licensed by one Party to the other Party under this Contract;
- (B) any equipment which belongs to the other Party; and
- (C) any unused items that have been on-charged to the Authority, such as unused consumables.

- 6.3.2 transfer to the Authority any data relating to the Authority in the Contractor's possession save to the extent and for the limited period that such data is required for the purposes of providing any Engineering Delivery Partner Services to the Authority under this Schedule P (Exit Strategy) including documents, LFE, templates and accumulated knowledge base;

- 6.3.3 the Contractor vacate any Authority premises and return any staff access passes to the extent that this does not conflict with the provisions or delivery of the remaining obligations under any Approved Tasking Order or this Agreement; and

- 6.3.4 return to the other Party all information classified OFFICIAL-SENSITIVE or higher to the Party supplying the information and certify that it does not retain the confidential information save to the extent and for the limited period that such information needs to be retained by the other Party for the purposes of providing the Engineering Delivery Partner Services or the Termination Services and certify to the other Party that it has done so.

- 6.4 Except where this Agreement otherwise provides, or the Authority otherwise directs, relevant licences, leases and authorisations granted by the Authority to the Contractor in relation to the

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Engineering Delivery Partner Services which are Terminated shall terminate effective from the end of the Termination Period.

- 6.5 Upon any Termination, the provisions of Paragraph 6 and Paragraph 7 of this Schedule P (Exit Strategy) shall apply.

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**7. TERMINATION SERVICES**

- 7.1 The Termination Services to be provided by the Contractor in relation to any Engineering Delivery Partner Services which have been terminated may include, but are not limited to:
- 7.1.1 notifying the Contractor's subcontractors of procedures to be followed during the Termination and providing management to ensure these procedures are followed;
  - 7.1.2 subject always to the Contractor's Intellectual Property rights under this Agreement, providing assistance and expertise as necessary to examine certain material operational and business processes (including supporting documentation) relating to the Engineering Delivery Partner Services;
  - 7.1.3 providing details of work volumes and staffing requirements required to deliver the Engineering Delivery Partner Services over the previous 12 (twelve) months;
  - 7.1.4 providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Engineering Delivery Partner Services;
  - 7.1.5 preparing and agreeing with the Authority a handover plan for certain IT security (logical and physical) matters and security management control procedures manual in accordance with the Authority's security requirements. The Contractor will co-operate in the execution of the plan;
  - 7.1.6 procuring the attendance of relevant personnel at meetings as may reasonably be required and making available sufficient SQEP resource to assist with the planning and execution of the transition of the relevant Engineering Delivery Partner Services from the Contractor to the Authority or the Replacement Service Provider;
  - 7.1.7 supplying the Authority with updates to all details provided in accordance with Paragraph 3.1 of this Schedule P (Exit Strategy) above; and
  - 7.1.8 providing any further reasonable assistance requested by the Authority with a view to allowing the Engineering Delivery Partner Services to continue without interruption or adversely effects the Termination of any element of this Agreement and with a view to facilitating the orderly transfer of responsibility for and conduct of the Engineering Delivery Partner Services to the Authority or its Replacement Service Provider.
- 7.2 Should the Contractor believe there are costs associated with the provision of the Termination Services that are in excess of costs already agreed between the Parties, the Contractor shall specify the scope of any additional services it believes are required to be carried out by the Contractor following the Termination Notice, the manner in which those additional Services are to be provided by the Contractor, and any cost recovery the Contractor believes it is reasonably entitled to receive in accordance with Paragraph 4.2.3 above.
- 8. ASSETS AND THIRD PARTY CONTRACTS**
- 8.1 On ceasing to provide any element of Engineering Delivery Partner Services and the Termination Services hereunder, the Contractor shall make available to the Authority, or deliver as the Authority shall specify, any GFA items used by the Contractor to supply those Engineering Delivery Partner Services.

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- 8.2 Where such Engineering Delivery Partner Services provided to the Authority are dependent on equipment which is not used exclusively for the provision of the Engineering Delivery Partner Services to the Authority (and which is not owned by the Authority) the Contractor will endeavour to procure the necessary migration of programs, data and other materials from such equipment to similar equipment owned by the Authority or the Replacement Service Provider. Implementation of the change shall be carried out by the Contractor in such a way as to cause the minimum possible disruption to the supply of the Engineering Delivery Partner Services. The Authority recognises that this obligation may not always be possible or practicable for the Contractor to achieve or affordable for the Authority and therefore the Contractor shall act reasonably to identify other mechanisms to support.
- 8.3 Following a Termination Notice, the Contractor will not, without the Authority's prior written consent, terminate any relevant Sub-Contract or vary any relevant Sub-Contract in a way that would have a material impact on the provision of the affected Engineering Delivery Partner Services.
- 8.4 At the Authority's request the Contractor will, in relation to each Sub-Contract required to perform the affected Engineering Delivery Partner Services, use reasonable endeavours to:
- 8.4.1 ensure that the Sub-Contract is novated or assigned to the Authority or its Replacement Service Provider; and
  - 8.4.2 to the extent reasonably practicable, procure that all rights under the Sub-Contract necessary for the performance of the Engineering Delivery Partner Services are granted by the relevant Contractor Related Party to the Authority or its Replacement Service Provider.
- 8.5 The Contractor will consult with the Authority and obtain the Authority's consent (which shall not be unreasonably withheld or delayed) to licensing and maintenance fees and other material licence terms before entering into any licences for third party software during the Termination Period in so far as such software relates to the provision of the affected Engineering Delivery Partner Services.
- 8.6 In respect of third party services (including without limitation maintenance agreements and Software licences) novated or assigned in accordance with Paragraph 8.4 of this Schedule P (Exit Strategy):
- 8.6.1 the Contractor will use its reasonable endeavours to minimise any outstanding charges payable in respect thereof;
  - 8.6.2 the Contractor will be responsible for all financial obligations prior to novation or assignment; and
  - 8.6.3 the Authority or its Replacement Service Provider will assume financial obligations, and accept transfer of the third party services from the end of the Termination Period, and charges payable after novation or assignment.

**9. CHARGES**

- 9.1 During the Termination Period, the charges may continue to be payable in accordance with the terms and conditions of any Approved Tasking Order and Schedule F (*Payment and Performance Management*).

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- 9.2 Upon agreement between the Parties on the charges to be paid by the Authority to the Contractor for any exit support required during Termination Services, the Parties shall embody such charges utilising Formal Amendments to the Agreement at Clause 20 of this Agreement. Such charges are to be paid in accordance with an agreement payment plan with full payment made by the Authority to the Contractor no later than completion of the Termination Services.
- 9.3 Where Breakage Costs, Compensation Payments and/or any other costs that may be reasonably incurred by the Contractor as a result of termination apply, such charges shall be invoiced by the Contractor and paid by the Authority as a one-off payment prior to completion of Termination Services or the Termination Period whichever is the sooner.

**10. FINANCIAL SETTLEMENTS**

- 10.1 Save as to where it is stated to the contrary within the Contract, all costs, expenses and out-goings (including all taxes) paid or payable in connection with the Contract, or assets and third party contracts which are to transfer to the Authority or the Replacement Service Provider at the end of the Termination Period, shall be borne as follows:
- 10.1.1 by the Contractor for the period up to the Termination Date; and
  - 10.1.2 by the Authority, or the Replacement Service Provider (as applicable) for the period commencing immediately following the Termination Date.