



**Maritime Command and Staff Trainer (MCAST)**

**Annex C – Exit Management Plan**

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**Defence Equipment & Support**

OFFICIAL-SENSITIVE COMMERCIAL

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## **1 Introduction**

- 1.1 This Annex provides further requirements of the Authority relating to exit management and is to be read in conjunction with Clause 43 (*Exit Plan*) of this Contract. The obligations set out in this Annex C (*Exit Management Plan*) are in addition to and without prejudice to the obligations of the Contractor in Clause 40 (*Termination*) and Clause 43 (*Exit Plan*).
- 1.2 Capitalised terms used but not defined in this Annex C (*Exit Management Plan*) are defined in Part C Special Conditions (1. *Definitions and Interpretations*) of this Contract.

## **2 Introduction and Background**

- 2.1 The Annex:
- 2.1.1 describes the general principles that apply to the Contractor's obligations under this Annex (see paragraph 3 below);
  - 2.1.2 describes the process for the development of the Exit Plan and the Parties' obligations to perform the activities set out in the Exit Plan (see paragraph 4 below);
  - 2.1.3 describes the requirements relating to the allocation of an Exit Manager (see paragraph 5 below);
  - 2.1.4 describes each Parties' obligations during each Exit Period (see paragraph 6 below);
  - 2.1.5 describes the process for transferring and management of assets, information and materials relating to the Contract, including knowledge, IPR, Sub-contracts and software as defined by the Exit Plan (together, for the purposes of this Annex C (*Exit Management Plan*), the "Assets") upon expiry or termination of this Contract (see paragraph 8 below); and
  - 2.1.6 describes the principles that apply to the Contractor's obligations to provide data, information and materials and other general provisions relating to the Contractor's obligations under this Annex (see paragraph 9 below).

## **3 General**

- 3.1 The Contractor may be required by the Authority to provide continuing assistance and the provision of Exit Management Information to the Authority and any Follow-On Contractor during any Exit Period in relation to the procurement of replacement Contractor deliverables and in connection with any associated Exit Service for MCAST.
- 3.2 The transfer of the Assets from the Contractor to the Authority (and/or the Follow-On Contractor) may be phased so that certain Assets are transferred to the Authority (and/or the Follow-On Contractor) at different times or at the same time. There may be one or more Exit Periods where there has been a partial termination of the Contract. The Contractor may be required by the Authority to provide Exit Management Information and continuing assistance to the Authority (and/or the

Follow-On Contractor) during any Exit Period in relation to the expiry or termination of all or part of the Contract.

- 3.3 The Parties acknowledge that two or more Exit Periods may operate concurrently.

#### **4 Exit Planning**

##### **Development of the Exit Plans**

- 4.1 The Contractor will develop a Draft Exit Plan to be provided as part of the bidder's response to the ITN. An updated draft will be provided at Initial Operating Capability (IOC) to account for business as usual. A Final deliverable will be provided 6 months before end of contract and updated for each extension of the contract. The Contractor shall develop and deliver to the Authority a draft Exit Plan that addresses, as a minimum, the requirements set out in Appendix 1 to this Annex. The Exit Plan shall set out the Contractor's proposed overall methodology for achieving an orderly transfer of all of the services and goods from the Contractor to the Authority (or the Follow-On Contractor) upon the expiry or termination of this Contract (whether in whole or in part) for any reason whatsoever.

##### **Review of Exit Plans**

- 4.2 Within twenty (20) Working Days after receipt by the Authority of any draft Exit Plan, the Parties shall meet to discuss and seek to agree such Exit Plan. The Contractor shall ensure that any comments, suggestions, or amendments suggested by the Authority (acting reasonably) are incorporated into the relevant draft Exit Plan and shall issue an updated copy of the relevant draft Exit Plan to the Authority within ten (10) Working Days of such comments, suggestions or amendments being communicated to the Contractor by the Authority.
- 4.3 If the Parties cannot agree any draft Exit Plan and/or the Authority does not accept that such Exit Plan has been drafted in accordance with the requirements set out in Appendix 1 to this Annex either Party may refer this matter for in accordance with the Dispute Resolution Procedure (DEFCON 530).
- 4.4 The Contractor shall:
- 4.4.1 keep the then current Exit Plan under review every six (6) months and shall update and submit to the Authority for review and authorisation; and
  - 4.4.2 where an impact assessment in respect of a Change, Option and/or any other matter identifies that an update to the then current Exit Plan is required, update the then current Exit Plan (issuing the same to the Authority for review within ten (10) Working Days of the relevant event giving rise to the requirement for an update) and the provisions of paragraph 4.3 shall apply in the case of any disagreement between the Parties relating to the revised Exit Plan.
- 4.5 The Contractor shall ensure that any draft Exit Plan submitted to the Authority in accordance with paragraphs 4.1, 4.2 and 4.4 above:
- 4.5.1 takes into account any changes affecting the Contractor Deliverables since the previously agreed version of the Exit Plan;

- 4.5.2 where appropriate, aligns with, incorporates, or references any activities, dates, timescales, or milestones reasonably set by the Authority; and
- 4.5.3 is adaptable and shall include provisions to deal with full, partial and unexpected termination of all or part of the Contractor Deliverables, taking into account the circumstances described in paragraph 2 of this Annex.

#### **Finalising Exit Plans**

- 4.6 The Contractor's performance of the activities and obligations set out in any Exit Plan which are additional to those referred to in Clause 43 (*Exit Plan*), shall be the subject of a Change (to which the Contractor shall not have the right to object where the Authority has issued a Change Control Procedure Form and accepts the Contractor's Estimate (however revised by agreement of the Parties)) and shall be confirmed in accordance with the procedure set out in Clause 5 (*Formal Amendments to the Contract*) and Appendix H (*Change Control Procedure*) of this Contract.

### **5 Allocation of Exit Manager**

- 5.1 The Contractor shall allocate a suitable Exit Manager and appropriate resource to manage the process of exit and transfer of Assets to the Authority (or the Follow-On Contractor), including the preparation and implementation of the Exit Plan. The Contractor shall provide written notification of such allocation to the Authority two (2) Working Days following commencement of the Exit Period.
- 5.2 The Contractor shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Contractor as are reasonably necessary to enable the Contractor to comply with the requirements set out in the Exit Plan, including a team to manage the process of exit and transfer of the Assets to the Authority (or the Follow-On Contractor).

### **6 Exit Period**

- 6.1 Without prejudice to its general obligations the Contractor shall be responsible for the completion of the Exit Plan, including project management of the overall exit process. The Contractor shall ensure that exit is completed in a smooth, efficient and orderly manner which minimises any disruption to the business of the Authority and any third parties.

#### **Exit Period Duration**

- 6.2 An Exit Period shall commence on the earlier of:
  - 6.2.1 the date notified by the Authority to the Contractor in writing, provided that such date falls after the date which is six (6) months prior to the Expiry Date; or
  - 6.2.2 immediately following the issue of a Termination Notice.
- 6.3 An Exit Period shall end on the date on which all the activities in the Exit Plans have been completed to the satisfaction of the Authority.

#### **Exit Information**

6.4 During each Exit Period, the Contractor shall:

6.4.1 update the Exit Management Plan:

- (i) within ten (10) Working Days of the start of such Exit Period; and
- (ii) thereafter, update the Exit Management Information no less than twice each month during such Exit Period;

6.4.2 make the Exit Management Information (as updated in accordance with paragraph 6.4.1 above) available to the Authority (and the Follow-On Contractor) to download electronically at any time in an editable format from an email to the Authority's Project or Commercial manager during the Exit Period;

6.4.3 provide to the Authority (and/or the Follow-On Contractor), or procure the provision of, all such information, other data and deliverables relevant to the expiring or terminated Contractor Deliverables, together with a sufficient explanation and the full rights to use such information, other data and deliverables as detailed in the Exit Plan in its then current format or in a format reasonably requested by the Authority, together with all related documentation, and any other information and copies thereof owned by the Authority; and

6.4.4 promptly make available to the Authority (and the Follow-On Contractor) to download electronically in editable format from an email to the Authority's Project or Commercial manager all other information, as is reasonably requested by the Authority in connection with the wind-down or transfer of all or part of the system; and

6.4.5 grant access to the Authority (and/or any Follow-On Contractor) to any premises used by the Contractor in the provision of the Contractor Deliverables to facilitate the smooth transfer of responsibility for the provision of the Contractor Deliverables (or any part of the Contractor Deliverables) to the Authority or Follow-On Contractor.

#### **Exit Assistance**

6.5 Without prejudice to Clause 43 (*Exit Plan*) and paragraph 6.3, during each Exit Period the Contractor shall perform its obligations set out in the Exit Plan and the Contractor shall continue to provide any Contractor Deliverables that are due to terminate or expire pursuant to the terms of this Contract or any Termination Notice, in accordance with its obligations under this Contract until such time as the responsibility for the provision of such Contractor Deliverables (or in the case of partial termination, the relevant Contractor Deliverables) has transferred to the Authority (and/or the Follow-On Contractor) in accordance with the processes set out in the Exit Plan ("**Exit Assistance**").

### **7 Vacation of Authority Sites**

7.1 At the end of each Exit Period (or earlier if this does not adversely affect the Contractor's performance of the Contractor Deliverables and the performance by the Contractor of all of its other obligations in accordance with the Exit Plan), the



Contractor shall (and shall procure that the Sub-Contractors shall) perform the following to the extent that the relevant software, Authority Data, Assets, Issued Property, Authority Sites and Controlled Information is not required by the Contractor to perform the Contractor Deliverables that the Contractor shall continue to perform after the end of the relevant Exit Period:

- 7.1.1 vacate any Authority Sites, remove any property not to be returned under paragraph 7.1.2 and, without prejudice to Clause 46 (Limitations on *Liability*), rectify any loss or damage that may have occurred during its, or its Sub-contractors', occupancy of any Authority sites;
- 7.1.2 Return to the Authority all Controlled Information of the Authority and certify that it does not retain the Authority's Controlled Information save to the extent (and for the limited period) that:
  - (i) such information needs to be retained by the Contractor for the purposes of providing or receiving any Contractor Deliverables or complying with its obligations in this Annex C (*Exit Management Plan*); or
  - (ii) the Contractor is obliged under the terms of this Contract, or any Laws to retain such information after termination or expiry of this Contract.
- 7.2 All licences, leases and authorisations granted by the Authority to the Contractor in relation to any expiring or terminating Contractor Deliverables shall be terminated with effect from the end of the relevant Exit Period.
- 7.3 The Authority may dispense of any items left at the Authority Sites for more than ten (10) days following vacation in accordance with paragraph 7.1.1.

## **8 Assets, Sub-Contracts and Software**

### **General Provisions**

- 8.1 Following expiry or termination (however arising) of this Contract (or any relevant part of it) and during each Exit Period, the Contractor shall not, without the Authority's approval:
  - 8.1.1 (Subject to normal maintenance requirements) make material modifications to, or dispose of, any existing goods or acquire any new Assets; or
  - 8.1.2 terminate, enter into, or vary any licence for software in connection with the Contractor Deliverables.
- 8.2 Following receipt of any up-to-date relevant information provided by the Contractor pursuant to paragraph 4.4.1 above, the Authority may provide written notice to the Contractor setting out:
  - 8.2.1 which Assets the Authority requires to be transferred to the Authority (or the Follow-On Contractor); and

- 8.2.2 a requirement for the Contractor to provide to the Authority within three (3) Working Days of request a copy of all relevant Sub-contracts to enable the Authority to consider if it requires an assignment, novation, or transfer of any relevant Sub-contract pursuant to Clause 33 of this Contract (*Sub-Contracts*); and
- 8.2.3 which Sub-contracts and other agreements the Authority at its option requires to be assigned, novated, or transferred to the Authority (or the Follow-On Contractor) (together, for the purposes of this Annex C (*Exit Management Plan*), the “**Transferring Contracts**”), and
- 8.2.4 where requested by the Authority, the Contractor shall provide all reasonable assistance to the Authority (and the Follow-On Contractor) to enable it to determine which Assets and Transferring Contracts the Authority (or the Follow-On Contractor) requires in order to provide the Contractor Deliverables. Access to Assets may be required by the Authority (or the Follow-On Contractor) before any identified time period or date in accordance with the Exit Plan in order to continue to deliver the Contractor Deliverables or business as usual and consent to this shall not be unreasonably withheld or delayed by the Contractor.

#### **Further Provisions on Transferring Contracts**

- 8.3 The Contractor shall assign or procure the novation to the Authority (or the Follow-On Contractor) of the Transferring Contracts. The Contractor shall execute such documents and provide such other assistance as the Authority reasonably requires to affect this novation or assignment.
- 8.4 The Authority shall:
  - 8.4.1 accept assignments from the Contractor or join with the Contractor in procuring a novation of each Transferring Contract; and
  - 8.4.2 once a Transferring Contract is novated or assigned to the Authority (or the Follow-On Contractor), 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.
- 8.5 The Contractor shall hold any Transferring Contracts on trust for the Authority (or the Follow-On Contractor) until such time as the transfer of the contract to the Authority (or the Follow-On Contractor) has been affected.
- 8.6 The Contractor shall indemnify the Authority (and the Follow-On Contractor) against each loss, liability and cost arising out of or in connection with any claims made by a counterparty to a Sub-contract which is assigned or novated to the Authority (or the Follow-On Contractor) pursuant to paragraph 8.3 above in relation to any matters arising prior to the date of assignment or novation of such Sub-contract. Such indemnification shall be provided pursuant to Clause 46 (*Limitations on Liability*) of this Contract.

**9     Other**

- 9.1     Where this Annex requires the Contractor to provide data, information or materials, including any relevant information and any Exit Management Information, the Contractor shall provide such data, information or materials in the format specified in this Annex, or in the absence of such format being specified, shall provide such data, information or materials in their then current format or in a format reasonably requested by the Authority. Where such data, information or materials are provided in an alternative format, the Contractor shall ensure the accuracy and completeness of such data, information or materials is not adversely affected by the conversion to that format.
- 9.2     Within twenty (20) Working Days of being requested to do so by the Authority, the Contractor shall provide the Authority with a breakdown of any Exit Management Information so that the Authority is able to identify which information relates to one or more of the Contractor Deliverables (or one or more parts of the Contractor Deliverables). The Authority may from time to time require the Contractor to break down, or otherwise divide, the Exit Management Information and the Contractor shall provide such break downs to the Authority (and the Follow-On Contractor) within ten (10) Working Days from the relevant request.
- 9.3     Any material breach of the obligations that the Contractor is obliged to perform pursuant to this Schedule during the Exit Period shall be a material breach of this Contract.
- 9.4     Except as expressly stated in any Exit Plan, the obligations stated in the Exit Plan shall be in addition to, and not in substitution for the provision of the Contractor Deliverables and the Contractor shall continue to provide the Contractor Deliverables on the terms and conditions of this Contract.

Appendix 1

Exit Plan Product Description

**1 Introduction**

- 1.1 The Exit Plan shall meet the requirements of the Exit Plan Product Description set out in this Appendix 1.

**2 Format of Product**

- 2.1 The Contractor shall prepare the Exit Plan in electronic format, readable by Microsoft Office, Adobe Reader or other application agreed by the parties. All of the content of the Exit Plan shall be supported by a Gantt chart that shows the timetable for all of the activities to be undertaken before, during and after each Exit Period. The Final Exit Plan will have a fully detailed Gantt chart that shows the timetable for all of the activities to be undertaken before, during and after each Exit Period.

**3 Content**

- 3.1 The Exit Plan shall include:
- 3.1.1 details of the activities to be performed by the Parties before, during and after each Exit Period, and set out the key milestones, trigger events (such as the serving of a Termination Notice) and the required resourcing for such activities;
  - 3.1.2 a draft timetable of the activities to be performed by the Parties;
  - 3.1.3 details (including the name and contact details) of the Parties' point of contact for issues relating to Exit Management;
  - 3.1.4 the Contractor's management structure to be implemented during each Exit Period;
  - 3.1.5 details of methods the Contractor shall use to report on the progress of the Exit Plan and the frequency of such reports;
  - 3.1.6 at such time as such information is known after the relevant Termination Notice has been served or prior to expiry of this Contract, the scope of the exit, which shall include:
    - (i) confirmation of the Contractor Deliverables that are terminating or expiring;
    - (ii) a description of the Contractor Deliverables at the beginning of each Exit Period, including details of any work in progress;
    - (iii) a description of the Contractor Deliverables at the conclusion of each Exit Period; and

- (iv) details of the scope of the Exit Assistance that may be required for the benefit of the Authority;
- 3.1.7 details of all the Assets that are to be transferred to the Authority (or the Follow-On Contractor) and for each of those Assets:
  - (i) details of the process to novate or assign the relevant Transferring Contracts, including relevant meetings between the relevant parties; and
  - (ii) details of the process for transferring the Assets that are to be transferred to the Authority (or the Follow-On Contractor), including details of any documentation that needs to be signed to implement the transfer and the proposed dates for finalising and executing such documentation;
- 3.1.8 details of how the Assets shall transfer to the Authority (or the Follow-On Contractor) and 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 Contractor or its Sub-contractors (where applicable) and details of how the Contractor Deliverables would be provided (if required) during each Exit Period;
- 3.1.9 details of the processes that the Contractor uses to deal with risks arising in relation to the transfer of the Assets to the Authority (or the Follow-On Contractor);
- 3.1.10 details of individuals (posts and responsibilities) who shall be made available by the Contractor to facilitate the re-procurement and exit of the Contractor Deliverables in accordance with this Schedule;
- 3.1.11 relevant information regarding the transfer of security related processes and arrangements, such as information security and physical and logical access control;
- 3.1.12 details of the significant risks, issues, assumptions and dependencies as they apply to the Exit Plan, provided that any new GFA shall be agreed through Appendix H (*Change Control Procedure*) and shall not be construed as being GFA until they have been agreed through this procedure;
- 3.1.13 descriptions of the activities required to ensure that the Contractor continues to provide the Contractor Deliverables in accordance with this Contract;
- 3.1.14 details as to how the Contractor will ensure that there will be minimum disruption in the provision of the Contractor Deliverables whilst the Contractor Deliverables are transferred to the Authority (or the Follow-On Contractor) (including details of any mitigation and contingency planning, briefing papers, training materials, training to be provided and access required to Contractor's Premises) to ensure that there is no deterioration

in the quality of delivery of the Contractor Deliverables during each Exit Period;

- 3.1.15 details of any on-going projects or other work carried out pursuant to this Contract;
- 3.1.16 details of the procedures to be followed to ensure that all GFA information is to be erased; and
- 3.1.17 details relating to the provisions set out in DEFCON 687B (Shared Data Environment System Transfer Arrangements); and
- 3.1.18 without prejudice and in addition to the obligations of the Contractor in Clause 43 of this Contract (*Exit Plan*), details relating to the provision of data that may be necessary for the re-procurement of the Contractor Deliverables to a Follow-On Contractor, which may include:
  - (i) performance data sufficient to allow the Authority and any Follow-On Contractor to monitor the current and past performance of the Contractor Deliverables and/or systems;
  - (ii) technical documents relevant to the Contractor Deliverables and/or systems being re-procured including:
    - (A) operating manuals;
    - (B) training documents;
    - (C) latest documents that are required to be provided by the Contractor in accordance with this Contract;
  - (iii) all relevant registers including necessary consents and Intellectual Property;
  - (iv) without prejudice to paragraph 8.2.2 of Annex C (*Exit Management Plan*), copies of any relevant Sub-contracts pursuant to which the Sub-Contractor has obligations to the Contractor after the end of the Contract Period; and
  - (v) any other Information in the possession or control of the Contractor required by law in connection with the re-competition activities, including details of agents, Employees (subject to Data Protection Legislation), suppliers, Sub-Contractors and/or licenses required by international trafficking regulations.)

The initial draft Exit Plan shall not include detailed iterations of 3.1.2, 3.1.3, 3.1.4 and 3.1.5, the Contractor shall provide them to a suitable level of detail at the given time.

Appendix 2

[Exit Plan as at Effective Date]

Appendix 2 (*Exit Plan as at Effective Date*) of this Annex C (*Exit Management Plan*) is the document in the Agreed Form entitled “Exit Plan”