Defence
Infrastructure
Organisation

Call-Off Schedule 10

Exit Management

Built Estate

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CALL-OFF SCHEDULE 10

EXIT MANAGEMENT (AND TERMINATION)

1. OBLIGATIONS DURING THE CONTRACT PERIOD TO FACILITATE EXIT

1.1 The Supplier shall within 30 Working Days from the Effective Date provide to the Buyer a copy of its depreciation policy to be used for the purposes of calculating Net Book Value.

1.2 During the Contract Period, the Supplier shall promptly:

1.2.1 create and maintain a detailed register of all Supplier Assets (including description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and Sub-contracts and other relevant agreements required in connection with the Deliverables; and

1.2.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Deliverables ("**Registers**").

1.3 The Supplier shall:

1.3.1 ensure that all Exclusive Assets listed in the Registers are clearly physically identified as such; and

1.3.2 procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation (at no cost or restriction to the Buyer) at the request of the Buyer to the Buyer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Deliverables (or part of them) and if the Supplier is unable to do so then the Supplier shall promptly notify the Buyer and the Buyer may require the Supplier to procure an alternative Subcontractor or provider of Deliverables.

1.4 Each Party shall appoint an Exit Manager within three (3) Months of the Effective Date. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry, or termination in part of whole, of this Contract.

2. OBLIGATIONS TO ASSIST ON RE-TENDERING OF DELIVERABLES

2.1 The Supplier shall, on reasonable notice, provide to the Buyer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), such information and Documentation (including any access) as the Buyer shall reasonably require in order to facilitate the preparation by the Buyer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence (the "**Exit Information**").

2.2 The Supplier acknowledges that the Buyer may disclose the Supplier's Confidential Information (excluding the Supplier’s or its Subcontractors’ prices or costs) to an actual or prospective Replacement Supplier to the extent that such disclosure is necessary in connection with such engagement.

2.3 The Supplier shall provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and notify the Buyer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Deliverables (and shall consult the Buyer in relation to any such changes).

2.4 The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Deliverables; and not be disadvantaged in any procurement process compared to the Supplier.

3. EXIT PLAN

3.1 The Supplier shall, at the end of the Mobilisation Period[1], deliver to the Buyer an Exit Plan which complies with the requirements set out in Paragraph 3.3 of this Schedule and is otherwise reasonably satisfactory to the Buyer.

3.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of the latest date for its submission pursuant to Paragraph 3.1, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

3.3 The Exit Plan shall set out, as a minimum:

3.3.1 a detailed description of both the transfer and termination processes, including a timetable;

3.3.2 how the Deliverables will transfer to the Replacement Supplier and/or the Buyer taking account of the critical activities for a new supplier mobilisation that are listed within Call-Off Schedule 28 Part 4;

3.3.3 details of any contracts which will be available for transfer to the Buyer and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to affect such transfer;

3.3.4 proposals for the training of key members of the Replacement Supplier’s staff in connection with the continuation of the provision of the Deliverables following the Expiry Date;

[1] A draft Exit Plan was provided as part of the Supplier’s Tender.

3.3.5 proposals for providing the Buyer or a Replacement Supplier copies of all Documentation relating to the use and operation of the Deliverables and required for their continued use;

3.3.6 proposals for the assignment or novation of all services utilised by the Supplier in connection with the supply of the Deliverables;

3.3.7 proposals for the identification and return of all Buyer assets in the possession of and/or control of the Supplier or any third party;

3.3.8 proposals for the disposal of any redundant Deliverables and materials;

3.3.9 how the Supplier will ensure that there is no disruption to or degradation of the Deliverables during the Termination Assistance Period; and

3.3.10 any other information or assistance reasonably required by the Buyer or a Replacement Supplier.

3.4 The Supplier shall:

3.4.1 maintain and update the Exit Plan no less frequently than:

(a) every twelve (12) months throughout the Contract Period; and

(b) no later than twenty (20) Working Days after a request from the Buyer for an up-to-date copy of the Exit Plan;

(c) as soon as reasonably possible following a Termination Assistance Notice, and in any event no later than ten (10) Working Days after the date of the Termination Assistance Notice;

(d) as soon as reasonably possible following, and in any event no later than twenty (20) Working Days following, any material change to the Deliverables (including all changes under the Variation Procedure); and

3.4.2 jointly review and verify the Exit Plan if required by the Buyer and promptly correct any identified failures.

3.5 Only if (by notification to the Supplier in writing) the Buyer agrees with a draft Exit Plan provided by the Supplier under Paragraph 3.2 or 3.4 (as the context requires), shall that draft become the Exit Plan for this Contract.

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

4. TERMINATION ASSISTANCE

4.1 The Buyer shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Supplier (a **"Termination Assistance Notice"**) at least four (4) Months prior to the Expiry Date 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:

4.1.1 the nature of the Termination Assistance required; and

4.1.2 the start date and period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than six (6) Months after the date that the Supplier ceases to provide the Deliverables.

4.2 The Buyer shall have an option to extend the Termination Assistance Period beyond the Termination Assistance Notice period provided that such extension shall not extend for more than six (6) Months beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier of such this extension no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Buyer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier. It is recognised by the Buyer that such an extension may reasonably result in a Recompense Request for reasonable additional costs.

4.3 In the event that Termination Assistance is required by the Buyer but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 3, the Supplier will provide the Termination Assistance in good faith and in accordance with the principles in this Schedule and the last Buyer approved version of the Exit Plan (insofar as it still applies).

5. TERMINATION ASSISTANCE PERIOD

5.1 Throughout the Termination Assistance Period the Supplier shall:

5.1.1 continue to provide the Deliverables (as applicable) and otherwise perform its obligations under this Contract and, if required by the Buyer, provide the Termination Assistance;

5.1.2 provide to the Buyer and/or its Replacement Supplier any reasonable assistance and/or access requested by the Buyer and/or its Replacement Supplier including assistance and/or access to facilitate the orderly transfer of responsibility for and conduct of the Deliverables to the Buyer and/or its Replacement Supplier;

5.1.3 use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the Buyer;

5.1.4 subject to Paragraph 5.3, provide the Deliverables and the Termination Assistance at no detriment to the KPIs, the provision of the Management Information or any other reports nor to any other of the Supplier's obligations under this Contract;

5.1.5 at the Buyer's request and on reasonable notice, deliver up-to-date Registers to the Buyer;

5.1.6 seek the Buyer's prior written consent to access any Buyer Premises from which the de-installation or removal of Supplier Assets is required.

5.2 If it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 5.1.2 without additional costs to the Buyer, any additional costs incurred by the Supplier in providing such reasonable assistance shall be subject to the Variation Procedure.

5.3 If the Supplier demonstrates to the Buyer's reasonable satisfaction that the provision of the Termination Assistance will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular KPI(s), the Parties shall vary the relevant KPI(s) and/or the applicable KPI Credits accordingly.

6. EXPIRY AND TERMINATION OBLIGATIONS

6.1 The Supplier shall comply with all obligations contained in the Exit Plan.

6.2 Upon termination or expiry or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Deliverables and the Termination Assistance), the Supplier shall:

6.2.1 vacate any Buyer Premises;

6.2.2 remove the Supplier Equipment together with any other materials used by the Supplier to supply the Deliverables and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible the removal of signs, branding and insignia and for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier;

6.2.3 provide access during normal working hours to the Buyer and/or the Replacement Supplier for up to twelve (12) Months after expiry or termination to:

(a) such information relating to the Deliverables as remains in the possession or control of the Supplier; and

(b) such members of the Supplier Staff as have been involved in the design, development and provision of the Deliverables and who are still employed by the Supplier, provided that the Buyer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to such requests for access.

6.3 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Buyer to the Supplier in relation to the Deliverables shall be terminated with effect from the end of the Termination Assistance Period.

7. ASSETS, SUBCONTRACTS AND SOFTWARE

7.1 Following notice of termination of this Contract and during the Termination Assistance Period, the Supplier shall not, without the Buyer's prior written consent:

7.1.1 terminate, enter into or vary any Sub-contract or licence for any software in connection with the Deliverables; or

7.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets.

7.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier, the Buyer shall notify the Supplier setting out:

7.2.1 which, if any, of the Transferable Assets the Buyer requires to be transferred to the Buyer and/or the Replacement Supplier ("**Transferring Assets**");

7.2.2 which, if any, of:

(a) the Exclusive Assets that are not Transferable Assets; and

(b) the Non-Exclusive Assets,

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

7.2.3 which, if any, of Transferable Contracts the Buyer requires to be assigned or novated to the Buyer and/or the Replacement Supplier (the **"Transferring Contracts"**),

for the Buyer and/or its Replacement Supplier to provide the Deliverables from the expiry of the Termination Assistance Period. The Supplier shall provide all reasonable assistance required by the Buyer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts are required to provide the Deliverables or the Replacement Goods and/or Replacement Services.

7.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Buyer and/or the Replacement Supplier for their Net Book Value less any amount already paid for them through the Charges.

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

7.5 Where the Buyer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:

7.5.1 procure a non-exclusive, perpetual, royalty-free licence for the Buyer 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, the Buyer or the Replacement Supplier to bear the reasonable proven costs of procuring the same.

7.6 The Supplier shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the Buyer and/or the Replacement Supplier. The Supplier shall execute such documents and provide such other assistance as the Buyer reasonably requires to effect this novation or assignment.

7.7 The Buyer shall:

7.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and

7.7.2 once a Transferring Contract is novated or assigned to the Buyer and/or the Replacement Supplier, 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 Supplier shall hold any Transferring Contracts on trust for the Buyer until the transfer of the relevant Transferring Contract to the Buyer and/or the Replacement Supplier has taken place.

7.9 The Supplier shall indemnify the Buyer (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 Buyer (and/or Replacement Supplier) pursuant to Paragraph 7.6 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract. Clause 19 Core Terms (Other people's rights in this contract) shall not apply to this Paragraph

7.9 which is intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

8. CHARGES

8.1 Unless otherwise stated, the Buyer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule.

9. APPORTIONMENTS

9.1 All outgoings, expenses, rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Buyer and/or the Replacement and the Supplier as follows:

9.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;

9.1.2 the Buyer or Replacement Supplier (as applicable) 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

9.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.