

**SCHEDULE O****EXIT****1 GENERAL**

1.1. This Schedule O (Exit) 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 Services to the Authority or to any Replacement Supplier; and
- 1.1.3. the provisions relating to termination and exit.

1.2. In performing its obligations under this Schedule O (Exit), the Supplier shall use reasonable endeavours to co-operate with the Authority and any Replacement Supplier to facilitate a smooth migration from the provision of the Services by the Supplier to the provision of the Services or substantially similar services ("**Replacement Services**") by the Authority or by any Replacement Supplier.

1.3. There shall be no differentiation between the Termination Services required to be provided pursuant to this Schedule O (Exit) or for the different causes of termination, exit or expiry of this Agreement.

**2. OBLIGATIONS DURING THE TERM TO FACILITATE EXIT**

2.1. During the Term, the Supplier shall create and maintain the following registers:

- 2.1.1. the live GFA reporting system in accordance with Clause 38 (Government Furnished Assets and Supplier Assets);
- 2.1.2. a register of 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;
- 2.1.3. create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Authority and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption (together, "**the Registers**");
- 2.1.4. agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and
- 2.1.5. at all times keep the Registers up to date, in particular in the event that GFA, Sub-contracts or other relevant agreements are added to or removed from the Services.

- 2.2. The Supplier shall procure that all GFA listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Agreement.

### 3. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

- 3.1. On reasonable notice at any point during the Term, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to any 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);
  - 3.1.2. a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
  - 3.1.3. an inventory of the following in the Supplier's possession or control: Authority data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
    - 3.1.3.1. supplied to the Supplier by or on behalf of the Authority; and/or
    - 3.1.3.2. which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or
    - 3.1.3.3. any Personal Data for which the Authority is the Controller;
  - 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 Subsequent Transferring Employees required to be provided by the Supplier under this Agreement; and
  - 3.1.7. such other material and information as the Authority shall reasonably require,  
(together, the **"Exit Information"**).
- 3.2. The Supplier acknowledges that the Authority may disclose the Supplier's Commercially Confidential Information to an actual or prospective Replacement Supplier or any Third Party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this Paragraph 3.2 disclose any Supplier's Commercially Confidential Information which is information relating to the Supplier, the Supplier Related Parties or its Sub-contractors' prices or costs).
- 3.3. The Supplier shall:
- 3.3.1. notify the Authority within five (5) Business 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) Business Days of a request in writing from the Authority.

- 3.4. The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a Third Party to:

- 3.4.1. prepare an informed offer for those Services; and
  - 3.4.2. not be disadvantaged in any subsequent procurement process compared to the Supplier (if the 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 the Supplier to enter into the Ethical Wall Agreement in accordance with Annex B (Ethical Wall Template) 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 Supplier will return a signed copy of the Ethical Wall Agreement within ten (10) Business Days of receipt. The Supplier's costs of entering into the Ethical Wall Agreement will be borne solely by the Supplier.

#### **5. THE EXIT PLAN**

- 5.1. The Supplier shall, within three (3) months from the Commencement Date, deliver to the Authority an Exit Plan which:
  - 5.1.1. sets out the Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the Supplier to the Authority and/or any Replacement Supplier on the partial termination, expiry or termination of this Agreement;
  - 5.1.2. complies with the requirements set out in Paragraph 5.3 and
  - 5.1.3. is otherwise reasonably satisfactory to the Authority.
- 5.2. 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) Business Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure at Clause 57 and Schedule L.
- 5.3. The Exit Plan shall set out, as a minimum:
  - 5.3.1. how the Exit Information is obtained;
  - 5.3.2. provision for the supply by the Supplier of all such reasonable assistance as the Authority shall require to enable a Replacement Supplier, the Authority, or its sub-contractors to provide the Services;

- 5.3.3. a mechanism for dealing with partial termination in the event that the Supplier may continue to provide remaining Services under this Agreement;
  - 5.3.4. the management structure to be employed during both transfer and cessation of the Services;
  - 5.3.5. the management structure to be employed during any Termination Assistance Period;
  - 5.3.6. a detailed description of both the transfer and cessation processes, including a timetable;
  - 5.3.7. how the Services will transfer to any 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 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;
  - 5.3.9. a timetable and critical issues for providing the Termination Services;
  - 5.3.10. how the Termination Services would be provided (if required) during the Termination Assistance Period;
  - 5.3.11. procedures to deal with requests made by the Authority and/or any Replacement Supplier for any relevant information pursuant to Schedule N (Transfer Regulations); and
  - 5.3.12. how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to any 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 Supplier to the Authority and/or any Replacement Supplier may be phased, such that certain of the Services are handed over before others.
- 5.5. The Supplier shall review and (if appropriate) update the 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) to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update, the Supplier shall submit the revised Exit Plan to the Authority for review. Within twenty (20) Business 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. If the Parties are unable to agree the contents of the revised Exit Plan within that twenty (20) Business Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure at Clause 57 and Schedule L (Dispute Resolution Procedure).

## 6. FINALISATION OF THE EXIT PLAN

- 6.1. Within twenty (20) Business Days after service of a Termination Notice by either Party or twelve (12) months prior to the expiry of this Agreement, the Supplier will submit for the Authority's approval the Exit Plan in a final form that could be implemented immediately. The final form of the 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 Exit Plan was last agreed.
- 6.2. The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Business Days following its delivery to the Authority then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure at Clause 57 and Schedule L (Dispute Resolution Procedure). Until the agreement of the final form of the Exit Plan, the Supplier shall provide the Termination Services in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

## 7. TERMINATION SERVICES

- 7.1. The Authority shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a **"Termination Assistance Notice"**) at least four (4) months prior to the date of termination or expiry of this Agreement or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
  - 7.1.1. the date from which Termination Services are required;
  - 7.1.2. the nature of the Termination Services required; and
  - 7.1.3. the period during which it is anticipated that Termination Services will be required, which shall continue no longer than one (1) month after the Expiry Date or earlier termination of this Agreement.

## 8. TERMINATION ASSISTANCE PERIOD

- 8.1. Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:
  - 8.1.1. continue to provide the Services (as applicable) and, if required by the Authority pursuant to Paragraph 7.1, provide the Termination Services;
  - 8.1.2. 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 any partial termination, termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
  - 8.1.3. use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 3.3.2 without additional costs to the Authority;

- 8.1.4. provide the Services and the Termination Services at no detriment to the performance of the remaining Services; and
- 8.1.5. at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.

## **9. TERMINATION OBLIGATIONS**

- 9.1. The Supplier shall comply with all of its obligations contained in the Exit Plan in respect of any partial termination or termination.
- 9.2. Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule) in respect of the Services that have been terminated, the Supplier shall:
  - 9.2.1. cease to use any Authority data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
    - 9.2.1.1. supplied to the Supplier by or on behalf of the Authority; and/or
    - 9.2.1.2. which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or
    - 9.2.1.3. any Personal Data for which the Authority is the Data Controller;
  - 9.2.2. transfer to the Authority and/or the Replacement Supplier a complete and uncorrupted version of the Authority data referred to in Clause 3.1.3 in electronic form (or such other format as reasonably required by the Authority); save to the extent and for the limited period that such data is required for the purposes of providing any Services to the Authority under this Schedule O (Exit) including documents, LFE, templates and accumulated knowledge base;
  - 9.2.3. subject to Clause 35.2 (Retention of Records), erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period and all Authority data as referred to in Clause 3.1.3 and promptly certify to the Authority that it has completed such deletion;
  - 9.2.4. return to the Authority such of the following as is in the Supplier's possession or control:
    - 9.2.4.1. all copies of the Authority software and any other software licensed by the Authority to the Supplier under this Agreement;
    - 9.2.4.2. all materials created by the Supplier under this Agreement in which the IPR are owned by the Authority; and
    - 9.2.4.3. any parts of Authority IT systems (such as hardware and software and/or telecommunications networks or equipment)

and any other equipment which belongs to the Authority (including any GFA);

- 9.2.5. 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 equivalent) or this Agreement or unless access is required to continue to deliver the Services;
- 9.2.6. provide access during normal working hours to the Authority and/or the Replacement Supplier for up to one (1) month after the partial termination, expiry or termination of this Agreement to:
  - 9.2.6.1. such information relating to the Services as remains in the possession or control of the Supplier; and
  - 9.2.6.2. such members of the Engaged Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier.
- 9.3. 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 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 information classified OFFICIAL-SENSITIVE or higher and Commercially Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's information classified OFFICIAL-SENSITIVE or higher, or Commercially 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.
- 9.4. Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

## **10. ASSETS AND THIRD PARTY CONTRACTS**

- 10.1. On ceasing to provide any element of the Services and the Termination Services hereunder, the Supplier shall make available to the Authority, or deliver as the Authority shall specify, any GFA items used by the Supplier to supply those Services.
- 10.2. Following a Termination Notice, the Supplier 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 Services.
- 10.3. At the Authority's request the Supplier will, in relation to each Sub-contract required to perform the affected Services, use reasonable endeavours to:
  - 10.3.1. ensure that the Sub-contract is novated or assigned to the Authority or any Replacement Supplier; and

- 10.3.2. to the extent reasonably practicable, procure that all rights under the Sub-contract necessary for the performance of the Services are granted by the relevant Sub-contractor to the Authority or any Replacement Supplier.
- 10.4. In respect of Third Party services (including any Software licences) novated or assigned in accordance with Paragraph 10.3.1 of this Schedule O (Exit):
  - 10.4.1. the Supplier will use its reasonable endeavours to minimise any outstanding charges payable in respect thereof;
  - 10.4.2. the Supplier will be responsible for all financial obligations prior to novation or assignment; and
  - 10.4.3. the Authority or any Replacement Supplier will assume financial obligations, and accept transfer of the Third Party services from the end of the Termination Assistance Period, and charges payable after novation or assignment.

## **11. CHARGES**

- 11.1. During the Termination Assistance Period, Fees may continue to be payable in accordance with the terms and conditions of any Approved Tasking Order (or equivalent) and Schedule E (Payment and Performance Management).

## **12. FINANCIAL SETTLEMENTS**

- 12.1. Save as to where it is stated to the contrary within the Agreement, all costs, expenses and out-goings (including all taxes) paid or payable in connection with the Agreement, or assets and Third Party contracts which are to transfer to the Authority or any Replacement Supplier at the end of the Termination Assistance Period, shall be borne as follows:
  - 12.1.1. by the Supplier for the period up to the Termination Date; and
  - 12.1.2. by the Authority, or any Replacement Supplier (as applicable) for the period commencing immediately following the Termination Date.

## **13. SCOPE OF TERMINATION SERVICES**

- 13.1. The Termination Services to be provided by the Supplier in relation to any Services which have been terminated may include, but are not limited to:
  - 13.1.1. subject always to the Supplier'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 Services;
  - 13.1.2. notifying the Supplier's Sub-contractors of procedures to be followed during the Termination Assistance Period;
  - 13.1.3. 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;



- 13.1.4. 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;
- 13.1.5. providing details of work volumes and staffing requirements required to deliver the Services over the previous twelve (12) months;
- 13.1.6. providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services;
- 13.1.7. 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 Services from the Supplier to the Authority or any Replacement Supplier;
- 13.1.8. agreeing with the Authority an effective communication strategy and joint communications plan which sets out the implications for Engaged Personnel, Authority staff, customers and key stakeholders;
- 13.1.9. 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 Supplier will co-operate in the execution of the plan;
- 13.1.10. providing assistance and expertise as necessary to support the Authority and/or the Replacement Supplier develop and implement a migration plan for business operations and any Authority data to the Replacement Supplier, which may include migration approach, testing of plans, contingency options, and handling of historic or archived Authority data;
- 13.1.11. agreeing with the Authority and/or the Replacement Supplier a plan for the migration of any Authority data to the Authority and/or the Replacement Supplier; and
- 13.1.12. providing any further reasonable assistance requested by the Authority with a view to allowing the Services to continue without interruption or without adversely affecting the termination of any element of this Agreement and with a view to facilitating the orderly transfer of responsibility for and conduct of the Services to the Authority or any Replacement Supplier.

**SCHEDULE O – EXIT PLAN**

To be inserted following Agreement award, when Exit Plan is mutually agreed (three months from Commencement Date

