# PICTS Contract

# Schedule 14

# Exit Management

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Table of Contents


| | | |
|---|---|---|
| | **Schedule 14** | |
| 1 | Termination Assistance | 4 |
| 2 | Termination Assistance Charges | 5 |
| 3 | Sub-Contract Novation | 6 |
| | **Schedule 14 – Annex A – General Support and Assistance by PROVIDER Performing Termination Assistance** | **7** |
| 1 | General | 7 |
| 2 | Provision of Exit Information | 7 |
| 3 | DPA Requirements | 9 |
| 4 | Updating of the Information | 9 |
| 5 | Use of Services Information | 9 |
| | **Schedule 14 – Annex B – Termination Assistance Prior to the Transfer of the Services** | **11** |
| 1 | Application of Annex B | 11 |
| 2 | Development of the Exit Plan | 11 |
| 3 | Exit Management Roles and Progress Reports | 12 |
| 4 | Compliance with Exit Plan | 12 |
| 5 | Successor Provider's Access | 13 |
| 6 | Security | 14 |
| 7 | Provision of Information Lists | 14 |
| 8 | Third Party Contracts | 14 |
| 9 | Intellectual Property Rights | 15 |
| 10 | The Transfer Regulations Termination Transfer Employees | 16 |
| 11 | The Transfer Regulations – Restrictions prior to Termination | 17 |
| | **Schedule 14 – Annex C – Termination Assistance following a transfer of Services Termination** | **19** |
| 1 | The Transfer Regulations – Transfer of Termination Transfer Employees | 19 |
| 2 | Availability of Personnel following Service Transfer Date | 20 |
| 3 | General Obligations regarding Termination Transfer Employees | 20 |
| 4 | Transfer Regulations Indemnities | 21 |
| 5 | Apportionments, Information and General | 24 |
| 6 | Intellectual Property Rights | 24 |
| | **Schedule 14 – Annex D – Exit Plan** | **26** |
| 1 | Overarching Approach to Exit Planning | 26 |
| 2 | Activities | 27 |

## 1. Termination Assistance

1.1 The PROVIDER shall continue to provide Termination Assistance as detailed in this Schedule 14 (Exit Management) to assist the AUTHORITY in the smooth transfer of the provision of the Services at the expiry or termination of this Agreement to agreed new Successor Providers in a way that preserves business continuity for the AUTHORITY.

1.2 In providing Termination Assistance under this Agreement the PROVIDER shall:

(A) continue to provide general support and assistance to the AUTHORITY in accordance with Annex A to this Schedule 14 (Exit Management);

(B) continue to provide assistance prior to the relevant Service Transfer Dates in accordance with Annex B to this Schedule 14 (Exit Management);

(C) continue to provide assistance following the relevant Service Transfer Dates in accordance with Annex C to this Schedule 14 (Exit Management); and

(D) continue to maintain and update the existing Exit Plan in accordance with the directions given in Annex D to this Schedule 14 (Exit Management).

1.3 The Parties acknowledge and agree that the primary purpose of this Agreement is to continue and complete the Exit and Service Transfer process for the PICTS Infrastructure and Services that was commenced under the terms of the Previous Contract. As such, certain of the activities, deliverables and obligations detailed within this Schedule 14 have already been delivered, undertaken, completed, or partially completed as applicable under the terms of the Previous Contract.

1.4 Furthermore, the Parties acknowledge and agree that certain services provided under the Previous Contract have already been the subject of Service Transfer and are no longer provided by the PROVIDER under the terms of this Agreement. For the avoidance of doubt, these services are:

- WAN/LAN (except NDC LANs and non-NDC firewall support)
- OMNI Voice Service (except Blackberry handsets)
- Print (break/fix)
- Assistive Technology
- Hardware Break/fix, formerly provided by Getronics
- GAPS2
- nDelius application & nDelius reporting hosting and support. (This service is due to have transferred prior to the Commencement Date. In the event that Service Transfer is not completed by 31st December 2016, then the PROVIDER will, subject to agreement of terms with the AUTHORITY in accordance with the Change Control Procedures, continue to support the Service Transfer process in respect of this service until such time as the Service Transfer is completed.)

1.5 The Parties shall work collaboratively with each other and any nominated Successor Providers to plan, manage and undertake the Service Transfer of the remaining services that are being provided under this Agreement with the aim of completing the Exit process

for these services by the end of the Term of this Agreement.

1.6 Within 30 days (or such other period as is agreed between the Parties) of the Commencement Date, the Parties shall meet and agree the process to be followed in the event of an Emergency Exit. In the event that the Parties fail to agree the Emergency Exit Process within 30 days the Parties shall meet in good faith to agree either an extension of that period or to take such other actions as the Parties acting reasonably shall agree (including escalation of the matter in accordance with Clause 40 (Dispute Escalation)).

1.7 Within one month of the Commencement Date, the PROVIDER shall submit to the AUTHORITY for its approval (such approval not to be unreasonably withheld or delayed) an updated version of the Exit Plan. A section addressing the process to be followed in the event of an Emergency Exit shall, subject to the prior agreement of such process in accordance with Paragraph 1.6, be added to the Exit Plan at the next planned update. Such update shall confirm:

(A) the management structure to be employed during both transfer and cessation of the Services in an Emergency Exit; and

(B) a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Emergency Exit.

1.8 In the event of an Emergency Exit:

(A) the Parties acknowledge that the PROVIDER may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit; and

(B) the PROVIDER shall provide all such reasonable assistance as the AUTHORITY shall require to enable the AUTHORITY or its Replacement Provider(s) to provide the replacement services.

1.9 For the avoidance of doubt, any additional assistance referred to in Paragraph 1.8(B) above not covered within the Termination Assistance shall be chargeable to the AUTHORITY in accordance with the Day Rates set out in Schedule 5 (Payment Mechanism).

## 2. **Termination Assistance Charges**

2.1 Charges for Termination Assistance provided by the PROVIDER shall be as set out in Annex 3 to Schedule 5 (Payment Mechanism). For the avoidance of doubt, provision of any activities and/or deliverables related to Exit which are not otherwise addressed in this Agreement and/or included as part of the Termination Assistance as defined in this Schedule 14 shall be subject to the Change Control Procedures.

2.2 The provisions of paragraph 2.1 above shall not apply to individual 24-month Blackberry contracts entered into under the PICTS Blackberry Service where the AUTHORITY elects to terminate such 24-month contracts early. In such cases, the PROVIDER shall provide assistance but the AUTHORITY shall be liable for any associated termination charges.

## 3. **Sub-Contract Novation**

3.1 As further detailed in Annex B to this Schedule 14 (Exit Management) the PROVIDER agrees to use all reasonable endeavours to novate any relevant Sub-Contracts to a new Successor Provider. The PROVIDER shall use all reasonable endeavours to ensure that all Sub-Contracts or third party contracts that the PROVIDER enters into to support this Agreement shall provide for their novation as further detailed in this Schedule. Any fees within the Sub-Contracts for novation shall be borne by the PROVIDER. The Parties shall consider the treatment of any administrative costs incurred directly by the PROVIDER in respect of any such novation in accordance with the Change Control Procedures. The AUTHORITY shall pay such direct administrative costs (if any) as the Parties agree in accordance with the Change Control Procedures.

3.2 The Parties acknowledge that:

(A) the URN established by Buying Solutions for the PROVIDER as a “private authority”, and

(B) the PROVIDER’s account established with Vodafone to enable the PROVIDER to exploit the OGC Buying Solutions Frameworks

cannot be novated or transferred in any form to a Successor Provider.

## Schedule 14 - Annex A – General Support and Assistance by PROVIDER Performing Termination Assistance

### 1. General

1.1 The PROVIDER shall continue to co-operate (fully and in good faith) with the AUTHORITY for the purposes of supporting the transfer of the Services to the nominated Successor Providers and provide the Termination Assistance set out in this Annex A.

1.2 As soon as possible following any notice of termination being given (in the case of an early termination of this Agreement) and no later than three (3) months prior to the expiry of this Agreement (in the case of an expiry of the Agreement) the PROVIDER shall provide to the AUTHORITY or to a third party engaged by the AUTHORITY to support the Infrastructure and to provide the Services details of the identity (to the extent lawfully permitted) and terms of employment of all of the Staff who are then employed in the performance of the Services, as reasonably required by the AUTHORITY, in order to permit compliance by the AUTHORITY or a third party engaged by the AUTHORITY to support the Infrastructure with the provisions of the Transfer Regulations.

1.3 The PROVIDER shall:

(A) during any re-competition run by the AUTHORITY and in anticipation of the expiry or termination of the Agreement and irrespective of the identity of any potential or actual Replacement Provider(s), the PROVIDER shall comply with all reasonable requests by the AUTHORITY to provide information relating to the operation of the Services including but not limited to Hardware and Software used, inter-working, co-ordinating on cut-over and access to and provision of all documents, reports, procedures, summaries and any other information (including the configurations set up for the AUTHORITY and procedures used by the PROVIDER for handling data) necessary to achieve an effective transition;

(B) provide such advice as the AUTHORITY reasonably considers to be necessary for the actual Replacement Provider(s), or any potential Replacement Provider(s) during any re-competition, to define the tasks which would need to be undertaken in order to ensure the smooth transition of all or any part of the Services;

(C) co-operate fully with the AUTHORITY during the handover to any Replacement Provider(s): such co-operation shall extend to, but not be limited to, inter-working, co-ordinating on cut-over and access to and provision of all documents, reports, summaries and any other information (including the configurations set up for the AUTHORITY and procedures used by the PROVIDER for handling data) necessary to achieve an effective transition without disruption to routine operational requirements; and

(D) provide to the AUTHORITY an analysis of the workload volumetrics (or other measure(s) of usage) in a timely manner of the Services to the extent reasonably necessary in the opinion of the AUTHORITY to enable the AUTHORITY to plan migration of such workload to Replacement Provider(s).

### 2. Provision of Exit Information

2.1 Under the Previous Contract, the AUTHORITY required the PROVIDER to provide the AUTHORITY with accurate and complete Exit Information (as defined in Paragraph 2.2 below of this Annex A) and other co-operation regarding the PROVIDER's provision of the

Services and the PROVIDER has already provided such Exit Information and co-operation. The Parties agree that the level of detail provided by the PROVIDER to date is such as would:

(A) in circumstances when the AUTHORITY has communicated the possibility of it transferring the Services (or part of them) back to the AUTHORITY, enable the AUTHORITY to come to an informed view as to whether it is appropriate and viable for it to take back the Services (or part of them); or

(B) in circumstances where the AUTHORITY has communicated the possibility of it pursuing a Procurement Process, be reasonably necessary for a third party to:

(1) prepare an informed offer for those Services; and

(2) not be disadvantaged in the Procurement Process compared to the PROVIDER (if the PROVIDER is invited to participate).

2.2 Where used in this Schedule 14 (Exit Management), "Exit Information" shall mean any written or oral information or data which is material in detail or in substance and which describes:

(A) the nature of any of the Services provided to the AUTHORITY or the method by which those Services are provided by the PROVIDER and its Sub-Contractors and details of any new work being undertaken as part of the Services;

(B) the staffing requirements relating to the provision of those Services including:

(1) details of the job titles, descriptions, skills and job positions of Personnel that are or shall be the subject of the Exit process;

(2) details of the Personnel who are involved in the provision of the relevant Services on a part-time basis and approximate information as to the proportion of time spent by such Personnel in the provision of the relevant Services; and

(3) the terms of employment of the relevant Personnel including details of salary and benefits;

(C) a register with:

(1) details as to the key terms of any Sub-Contracts and licences, excluding charges, particularly as regards termination, assignment and novation and the PROVIDER shall use all reasonable endeavours to provide details on charges;

(2) copies of third party contracts which are either to be transferred to the AUTHORITY or the Successor Provider, or in respect of which the AUTHORITY is granted rights to use; and

(3) details of Hardware, Software or any other hardware or software used by the PROVIDER in order to perform the Services (whether directly or indirectly), its location and current ownership;

(D) a list of on-going and/or threatened Disputes in relation to the provision of the Services. The PROVIDER shall use all reasonable efforts to resolve such Disputes promptly, provided that where the Dispute is the subject of an indemnity the PROVIDER shall not settle any Dispute, nor accept any liability (either on its own behalf or that of the AUTHORITY) without obtaining the AUTHORITY's prior written consent; and

(E) detailed information relating to the Services including:

(1) available product information and detailed system documentation including user manuals, technical manuals, operations procedures and applicable vendor correspondence;

(2) relevant available information about proprietary products, tools and methods;

(3) key support contact details (name, email and telephone number) for the Personnel, including a contact listing of alternative sources of resources; and

(4) information regarding unresolved faults in existence at the commencement of the Termination Assistance as well as those expected to be in progress at the end of the Termination Assistance.

## 3. **DPA Requirements**

In so far as any part of this Annex A requires the PROVIDER to process data which would require the consent of the data subject under the DPA and such consent is not forthcoming, the PROVIDER shall provide the AUTHORITY with the relevant Exit Information in anonymised form.

## 4. **Updating of the Information**

The PROVIDER shall:

(A) as soon as reasonably practicable, notify the AUTHORITY of any material changes to the Exit Information referred to in Paragraph 2.2 above which may adversely impact upon the provision of any of the Services, consult with the AUTHORITY regarding such proposed material changes and provide updates to the Exit Information to reflect such material changes; and

(B) update the Exit Information relevant to the Service in question as at each Service Transfer Date.

## 5. **Use of Services Information**

The Exit Information:

(A) to be compiled and provided under this Annex A;

(B) obtained during the Term, including pursuant to open book accounts and accounting; and

(C) in respect of compliance with Service Levels and system information,

may be used by the AUTHORITY for its or any potential Successor Provider's information (subject to any such Successor Provider entering into confidentiality arrangements with the PROVIDER no less onerous than those in Clause 17) (and, in particular, may be disclosed by the AUTHORITY as part of its Procurement Process).

## Schedule 14 - Annex B – Termination Assistance Prior to the Transfer of the Services

Termination Assistance in the period prior to the Service Transfer Dates:

1. **Application of Annex B**

1.1 With effect from the Commencement Date and throughout the Term, the PROVIDER shall continue to provide the Termination Assistance set out in this Annex B.

2. **Development of the Exit Plan**

Exit Plan

2.1 The PROVIDER has provided the AUTHORITY with an Exit Plan which contains provisions covering the items listed in the Outline Exit Plan detailed in Annex D to this Schedule 14 (Exit Management).

2.2 Not used

2.3 Not used

2.4 The Parties shall review and update the Exit Plan at least every three (3) months throughout the Term of this Agreement in order to ensure that the Exit Plan remains current and relevant.

Services Transfer Plans

2.5 The PROVIDER shall continue discussions with the AUTHORITY and the Successor Providers concerning the development of Services Transfer Plans for each transferring Service, to be based on the Exit Plan agreed by the PROVIDER and the AUTHORITY, with a view to each Services Transfer Plan being agreed and finalised as soon as reasonably practicable before each planned/anticipated Service Transfer Date.

2.6 Unless otherwise agreed, the AUTHORITY shall be responsible for the creation of individual Service Transfer Plans, taking input as required from the PROVIDER and Successor Providers in order to create the plans. Service Transfer Plans will be shared with all parties directly involved in the Service Transfer, including the PROVIDER and the relevant Successor Provider(s).

2.7 The final form of each Services Transfer Plan shall be agreed between the Parties after consultation with the Successor Providers (if any) and shall only become effective once approved in writing by the AUTHORITY. The PROVIDER shall then implement each Services Transfer Plan.

2.8 Regardless of when any Successor Provider is appointed, and notwithstanding the foregoing, the AUTHORITY shall incorporate all the PROVIDER's and each Successor Providers' reasonable suggestions and amendments before finalising any Services Transfer Plan. Any Dispute in respect of the inclusion or rejection of any such suggestions or amendments in the Services Transfer Plan shall be escalated in accordance with Clause 40 (Dispute Escalation). The PROVIDER shall be given a reasonable period to review and agree the relevant Services Transfer Plan.

## 3. Exit Management Roles and Progress Reports

Exit Management

3.1 Both Parties have appointed a suitable representative ("Exit Manager") to manage the process of transfer on a daily basis and shall notify each other of any proposed change to those representatives as soon as reasonably practicable.

3.2 The PROVIDER shall use all reasonable efforts to minimise the AUTHORITY's costs and management time resulting from the transfer of the Services and to minimise the time for agreeing the Exit Plan and the Services Transfer Plans and implementing them.

Progress Reports

3.3 The PROVIDER shall continue to provide weekly Exit action reports and hold weekly commercial meetings which will also review Exit progress including detailing the status of the exit tasks and setting out any actual or anticipated problems or delays and the actions that the PROVIDER is taking to resolve such problems. Further Exit reviews will be held at a schedule to be agreed with the AUTHORITY.

Governance

3.4 The PROVIDER shall provide Exit action reports, the status of relevant exit tasks and any actions relating to Exit requiring escalation, to the Commercial and Finance Board for review. The Parties shall take any necessary action agreed at the Commercial and Finance Board.

## 4. Compliance with Exit Plan

4.1 If the PROVIDER fails to comply with any of its obligations with respect to the Exit Plan and/or Services Transfer Plans, it shall arrange (at its own cost) all such additional resources as are necessary to fulfil the applicable obligation as soon as reasonably practicable.

4.2 If the AUTHORITY fails to comply with any of its obligations with respect to the Exit Plan and/or Services Transfer Plans it shall arrange (at its own cost) the relevant resources as are necessary to fulfil the applicable obligation as soon as reasonably practicable.

4.3 Unless otherwise agreed, the PROVIDER shall continue to be responsible for the overall management of all the transfer and exit activities envisaged in this Schedule 14 (Exit Management) and shall use all reasonable efforts to:

(A) keep the tasks on schedule in accordance with any timetable set out in the Exit Plan and/or Services Transfer Plans; and

(B) identify and resolve, or assist the AUTHORITY and the Successor Provider in the resolution of, any problems encountered in the timely completion of each task identified in the Exit Plan and/or relevant Services Transfer Plan, whether the task is the responsibility of the PROVIDER or not.

4.4 The AUTHORITY shall comply with its obligations with respect to Exit and Service Transfer as set out in this Agreement, the Exit Plan, the Services Transfer Plans, any other documentation relating to the Exit and Service Transfer which is jointly agreed between the Parties in writing to have contractual effect in respect of this Agreement and any agreed Changes to this Agreement. These obligations include, without limitation, the nomination of and facilitation of liaison with, appropriate Successor Providers and the creation and agreement with the PROVIDER of an overarching strategy and schedule for the various components of the overall service transfer. Failure by the AUTHORITY to comply with its obligations as described in this Paragraph 4.4 shall constitute AUTHORITY Default.

## 5. **Successor Provider's Access**

Co-operation

5.1 The PROVIDER has and shall continue to, as part of its Termination Assistance obligations, co-operate fully with the AUTHORITY and any nominated Successor Providers in order to effect a smooth transfer of the Services and any Termination Transfer Employees. Such co-operation has and shall continue to include assisting those Successor Providers to familiarise themselves as to the method of provision of the relevant Services in the period prior to the relevant Service Transfer Date. In particular, the PROVIDER agrees that in the period beginning with the appointment of each Successor Provider and ending on the relevant Service Transfer Date, it shall for the foregoing purposes continue to allow the Successor Providers all reasonable access to:

(A) its facilities used to provide the Services (subject to compliance by the AUTHORITY and/or the Successor Providers with any applicable security restrictions set out in this Agreement);

(B) the Personnel and the Sub-Contractors;

(C) Key Personnel; and

(D) such information as is reasonably necessary in order to ensure a seamless transfer of the relevant Services on the relevant Service Transfer Date.

Parallel Working

5.2 In addition to its obligations set out in Paragraph 5.1 of this Annex B, during the period from the Commencement Date and ending on the relevant Service Transfer Date (or, in circumstances where this is demonstrably not practicable, such shorter period as the Parties, acting reasonably, shall agree), the PROVIDER shall permit the AUTHORITY and/or each Successor Provider's personnel to work alongside the PROVIDER for an agreed duration of up to twenty (20) Working Days in aggregate ("**the Parallel Working Period**"), so that:

(A) the AUTHORITY and/or each Successor Provider can observe the provision of the relevant Services and prepare for the transfer of the relevant Services (or part of them) from the PROVIDER;

(B) knowledge transfer from the PROVIDER to the AUTHORITY and/or each Successor Provider occurs as early as possible; and

(C) the AUTHORITY and each Successor Provider can participate in decisions that will affect the Services after the Term.

5.3 The PROVIDER shall make available sufficient numbers of suitably experienced and skilled Personnel during each Parallel Working Period, in order to explain relevant procedures and operations (including management processes and other standards and procedures) to personnel of the AUTHORITY and/or each Successor Provider. The AUTHORITY shall ensure its own personnel and the personnel of each Successor Provider are suitably experienced and skilled to understand the relevant procedures and operations. The availability of Personnel and agreement to Parallel Working Periods shall at all times be subject to such activities not causing disruption to the provision of the live Services or impacting the performance of those Services or any other obligations in this Agreement unless otherwise agreed in writing by the AUTHORITY.

Attendance at Project Meetings

5.4 The AUTHORITY may be accompanied by any relevant nominated Successor Provider at project meetings with the PROVIDER regarding the provision of the Services, provided that the PROVIDER may require any Successor Provider to absent itself from part or all of such meetings where sensitive commercial or business issues concerning the PROVIDER's business are to be discussed. The PROVIDER shall also consult the AUTHORITY (and allow the AUTHORITY to involve any relevant Successor Provider, if required, in the opinion of the AUTHORITY) about planned changes to the provision of any of the Services particularly where any activities and events address matters which affect the Services or which are expected to be implemented after the relevant Service Transfer Date.

## 6. **Security**

6.1 The PROVIDER shall continue to comply with its security obligations in accordance with this Agreement.

## 7. **Provision of Exit Information**

7.1 The PROVIDER has provided the Exit Information referred to in Paragraph 2.2 of Annex A of this Schedule 14 (Exit Management) and shall continue to update the same at the intervals referred to in Paragraph 4 of Annex A of this Schedule 14 (Exit Management). The Exit Information provided pursuant to this Paragraph 7.1 shall include details of all Hardware, Software and Intellectual Property Rights used in the provision of the Services, together with details of Disputes relating to the Services and details of third party contracts used in the provision of the Services.

7.2 The PROVIDER shall provide copies of the current Exit Information list to the AUTHORITY and/or any Successor Provider, whenever reasonably requested by the AUTHORITY.

## 8. **Third Party Contracts**

8.1 During the Term, the PROVIDER shall not, without the AUTHORITY's prior written consent:

8.1.1 vary, terminate, assign, novate or purport to vary any Sub-Contract;

8.1.2 allow any Sub-Contract to expire (without having attempted to renew such contracts)

unless such expiry is due to the Parties' failure to agree an appropriate Contract Change where necessary in order to facilitate a Sub-Contract renewal.

This paragraph 8.1 shall not apply to individual contracts for Blackberry devices under the PICTS Blackberry Service.

8.2 As part of the planning process for the implementation of the Exit Plan and each Services Transfer Plan, the Parties shall agree which of the Sub-Contracts (if any) need to be assigned, novated or otherwise transferred from the PROVIDER to the AUTHORITY and/or Successor Providers.

8.3 In connection with the Sub-Contracts, the PROVIDER shall:

(A) liaise with the relevant third parties and use all reasonable endeavours to ensure the transfer, assignment or novation (as required) of the Sub-Contracts, including obtaining any transfer, assignment or novation agreements (as applicable) in a form that is acceptable to the AUTHORITY;

(B) use all reasonable endeavours to ensure that the benefit of all warranties, indemnities and similar protections under the third party contracts shall pass to the AUTHORITY and/or the relevant Successor Provider (as the case may be); and

(C) pay any fees due in connection with the transfer of the third party contracts.

## 9. **Intellectual Property Rights**

Source Code

9.1 At a point to be agreed during the Term (if applicable) and at the cost of the AUTHORITY:

(A) in respect of modified AUTHORITY software, the PROVIDER shall provide to the AUTHORITY and/or the relevant Successor Provider(s) (as the AUTHORITY directs) a copy of the Source Code of such Software;

(B) in respect of Software, other than commercially available Software, produced or owned by Sub-Contractors, the PROVIDER shall use reasonable endeavours to procure that a copy of the Source Code is provided to the AUTHORITY and/or the relevant Successor Provider(s) (as the AUTHORITY directs); or

(C) where the PROVIDER is not able, despite using reasonable endeavours, to obtain Source Code, the Parties shall discuss, in good faith, what alternative arrangements can be put in place in order to enable the provision of services similar to the Services by the AUTHORITY or any Successor Provider.

Further Assurance

9.2 The PROVIDER shall execute, or procure the execution, of such documents as the AUTHORITY reasonably considers necessary in order to secure any continuing licence, assignment and/or novation as set out this Schedule 14 (Exit Management) and shall provide all such additional assistance as may reasonably be required.

## 10. **The Transfer Regulations Termination Transfer Employees**

Application of the Transfer Regulations

10.1 The Parties acknowledge and accept that the AUTHORITY has appointed Successor Providers who shall provide services to replace the Services in due course. The Parties further accept that the appointment of such Successor Providers may result in a transfer on or around the relevant Service Transfer Date of the Termination Transfer Employees' employment and/or the employment liabilities connected with the same to the Successor Providers (or their sub-contractors) in accordance with the Transfer Regulations.

Draft List

10.2 The PROVIDER has already compiled (under the Previous Contract) and will continue to maintain a draft list identifying those Personnel whom it considers will transfer on or around each applicable Service Transfer Date to the relevant Successor Provider (or its sub-contractors) as a result of the Transfer Regulations. The relevant elements of the draft list shall be finalised by the Parties prior to each applicable Service Transfer Date.

Regulation 10 – Consultation

10.3 Where:

(A) all or part of the Services (or substantially similar services) are to be provided by the AUTHORITY after termination, the AUTHORITY will in reasonable time before the applicable Service Transfer Date provide to the PROVIDER, or any appropriate Sub-Contractor, all such information as is necessary for the PROVIDER or the Sub-Contractor and the AUTHORITY to discharge their duties to inform and consult with employees and/or their Worker Representatives under the Transfer Regulations; and/or

(B) all or part of the Services (or substantially similar services) are to be provided by a Successor Provider(s) (other than the AUTHORITY) (or sub-contractors to the Successor Provider(s) (including sub-contractors to the AUTHORITY)) after the applicable Service Transfer Date, the AUTHORITY will procure that in good time before the applicable Service Transfer Date the Successor Provider(s) (or sub-contractors to the Successor Provider(s)) provide to the PROVIDER or any appropriate Sub-Contractor such information as is necessary for the PROVIDER or the Sub-Contractor and the Successor Provider(s) (or sub-contractors to the Successor Provider(s)) to discharge their duties to inform and consult with employees and/or their Worker Representatives under the Transfer Regulations.

10.4 The PROVIDER also agrees that it shall provide the AUTHORITY and each Successor Provider with an update of the relevant data referred to at Paragraphs 10.2 of this Annex B:

(A) at every three (3) Months during the Term (unless there has been no change to the data); and

(B) immediately before the applicable Service Transfer Date

and that such data shall be complete and accurate in all material respects. The

AUTHORITY agrees that it shall provide and shall procure that any Successor Provider other than the AUTHORITY shall provide the PROVIDER with an update of the data referred to at Paragraph 10.3 of this Annex B immediately before the applicable Service Transfer Date and that such data shall be complete and accurate in all material respects.

10.5 Prior to the applicable Service Transfer Date, the PROVIDER and the AUTHORITY shall take all reasonable steps that are required to ensure that there is a smooth transfer of the Termination Transfer Employees to the AUTHORITY and/or relevant Successor Providers (or their sub-contractors), as appropriate.

DPA Requirements

10.6 Insofar as any Paragraphs of this Annex B require the PROVIDER to obtain data subject consent and/or to act in accordance with the DPA the PROVIDER shall use its reasonable endeavours to do so. In the event that data subject consent is not forthcoming from any Termination Transfer Employee the PROVIDER agrees to provide the AUTHORITY and the relevant Successor Provider with anonymised information concerning those relevant Termination Transfer Employees, including copies of their anonymised conditions of employment.

Meetings and Communication

10.7 The AUTHORITY shall be offered and (where the AUTHORITY is not the only Successor Provider) the Successor Providers shall also be offered the opportunity to attend and participate in any relevant meetings held prior to the applicable Service Transfer Date at which information is given to, or there is consultation with, Termination Transfer Employees and their Worker Representatives.

10.8 The AUTHORITY, (where the AUTHORITY is not the only Successor Provider) the Successor Providers and the PROVIDER shall jointly communicate with the Termination Transfer Employees in relation to the transfer of their employment.

## 11. **The Transfer Regulations - Restrictions during Exit**

11.1 During the Term, the PROVIDER shall not (and where applicable shall procure that any of its affiliates, agents or Sub-Contractors will not), without the prior written consent of the AUTHORITY (such consent not to be unreasonably withheld or delayed):

(A) vary, purport or promise to vary the terms or conditions of employment or engagement or service of any Termination Transfer Employees (including promises to make any additional payment or bonus or provide any additional benefit) except:

(1) in the Ordinary Course of Business or as otherwise required by law or HM Revenue and Customs; and

(2) in line with the PROVIDER's published employment practices,

provided that the PROVIDER shall notify the AUTHORITY of all such variations (through the update mechanism described in Paragraph 10.4 above) and explain to the AUTHORITY the background for such variations, and provided further that the PROVIDER shall obtain the AUTHORITY's prior written consent to all variations

outside the parameters of (1) and (2) above;

(B) except in the circumstances contemplated by (C) below, reduce or vary the involvement of any Termination Transfer Employees in the provision of any of the Services except where such reduction or variation was contemplated by the Parties prior to such period;

(C) terminate (or give notice to terminate) the employment or engagement of any of the Termination Transfer Employees other than lawfully for misconduct or lack of capability or where continued employment of the Termination Transfer Employee would breach any applicable law;

(D) recruit any new employee (other than those already providing any part of the Services) in order to provide any of the Services or assign any additional individuals to the provision of the Services (in both cases, other than as is reasonably required to ensure the PROVIDER's ability to comply with its obligations under the Agreement);

(E) transfer any Personnel involved in the provision of the Services away from the provision of the Services (other than as is reasonably required in the PROVIDER's Ordinary Course of Business) unless such transfer was previously contemplated by the Parties prior to such period; nor

(F) prevent or restrict or hinder any Personnel (or seek to do any of the foregoing) from working for the AUTHORITY or a Successor Provider, except by operation of a contractual restriction agreed with any such Personnel and by the Parties prior to such period,

including where such variation, reduction, termination, recruitment, transfer or other action is designed first to take effect in whole or in part after the Agreement has terminated or expired.

## Schedule 14 - Annex C – Termination Assistance following a Transfer of Services

## Termination Assistance on and following a Service Transfer Date

1. The Transfer Regulations – Transfer of Termination Transfer Employees.

1.1 The PROVIDER and the AUTHORITY agree to comply fully and agree to provide all reasonable assistance to each other and to any Successor Providers (where the AUTHORITY is not the only Successor Provider) to enable them to comply fully with all of their respective obligations under the Transfer Regulations or other applicable legislation including (without limitation) their obligations regarding consultation and the provision of information and:

(A) the PROVIDER shall procure that any relevant Sub-Contractor does the same; and

(B) the AUTHORITY shall procure that any relevant Successor Provider other than the AUTHORITY or relevant sub-contractor of the Successor Provider or of the AUTHORITY (where the AUTHORITY is not the Successor Provider) does the same.

1.2 In the event that the Parties agree that the Transfer Regulations apply, the affected Termination Transfer Employees shall transfer to the relevant Successor Provider on the applicable relevant Service Transfer Date.

1.3 In the event that the Parties do not agree (including following referral to the Dispute escalation and resolution processes described in Clauses 40 and 41 of the Agreement) the Termination Transfer Employee list and/or that the Transfer Regulations apply in relation to any or all of the Termination Transfer Employees, the Parties will jointly instruct counsel (of at least seven (7) years' call specialising in employment law) or other suitable expert to provide an opinion as to whether or not on the balance of probabilities the Transfer Regulations apply, to which Termination Transfer Employees and when and to whom their employment transfers. It will be for the AUTHORITY to nominate three (3) suggested counsel or other suitable experts and the PROVIDER will not unreasonably reject all of the AUTHORITY's nominated counsel or other suitable experts if he or she satisfies the requirements of this Paragraph. If the PROVIDER expresses a preference from the three (3) counsel or other suitable experts nominated by the AUTHORITY, the preferred counsel or other suitable expert shall be instructed who will act as transfer expert and whose decision will be binding. The Parties will share the cost of the transfer expert's fees equally, and will accept the transfer expert's opinion as determinative as to whether or not the Transfer Regulations apply, to which of the disputed Termination Transfer Employees and when and to whom their employment transfers pursuant to the Transfer Regulations.

1.4 Irrespective of whether the transfer of the Services (or any part or particular sub-set thereof) or the provision of the same or substantially similar services by a Successor Provider constitutes a transfer to which the Transfer Regulations apply, the AUTHORITY shall ensure that if the transfer expert's opinion indicates that on the balance of probabilities the Transfer Regulations apply to one or more of the disputed Termination Transfer Employees the relevant Successor Provider (or its sub-contractors, as applicable) shall accept into its or their employment such Termination Transfer Employees with effect from the date of employment transfer determined by the transfer expert and employ such Termination Transfer Employees on the same terms and conditions of employment as if the Transfer Regulations had been applicable.

## 2. **Availability of Personnel following Service Transfer Date**

2.1 At the AUTHORITY's or any Successor Provider's written request, the PROVIDER shall (and shall procure that any Sub-Contractor shall) make available to the AUTHORITY or such Successor Provider on a full time basis (or any other basis as may be agreed between the PROVIDER, the AUTHORITY and/or the Successor Provider), any relevant Key Personnel or any agreed key individuals with specialist knowledge of the relevant Services who do not transfer to the AUTHORITY or the relevant Successor Provider in accordance with the Transfer Regulations or otherwise in accordance with the determination of the transfer expert provided that the involvement of any such person shall not exceed one hundred and ten (110) Working Days in the first six (6) months following the applicable Service Transfer Date and fifty-five (55) Working Days from the end of the preceding period to twelve (12) months following the applicable Service Transfer Date.

2.2 Such Personnel shall be provided in order to facilitate such transfer of knowledge and skills in relation to the provision of the relevant Services to the AUTHORITY's or a Successor Provider's personnel, as shall be necessary in order to ensure, to the AUTHORITY's reasonable satisfaction, uninterrupted continuity in the provision of the relevant Services. Availability of such Personnel shall at all times be subject to such activities not causing disruption to the provision of the live Services or impacting the performance of those Services or any other obligations in this Agreement unless otherwise agreed in writing by the AUTHORITY.

2.3 To the extent that such activities as described in this paragraph 2 are not already being provided as part of the Termination Assistance and paid for in accordance with Annex 3 of Schedule 5 (Payment Mechanism), the PROVIDER shall be entitled to charge the AUTHORITY for such assistance at the Day Rates specified in Schedule 5 of this Agreement and provision of such assistance shall (where relevant) be subject to the Change Control Procedures. In the event that it is necessary for the PROVIDER to employ replacement Personnel to enable it to meet its obligations under Paragraph 2.2 above, any reasonable costs associated with such employment shall be passed on to the AUTHORITY.

## 3. **General Obligations regarding Termination Transfer Employees**

Accrued Liabilities

3.1 The PROVIDER agrees that at or as soon as reasonably practicable after the relevant Employee Transfer Date it shall have satisfied all of its obligations with respect to all amounts due and payable in respect of the period prior to that Employee Transfer Date in respect of those of the relevant Termination Transfer Employees for which it is liable and

who transfer to the relevant Successor Provider under the Transfer Regulations or otherwise in accordance with the determination of the transfer expert including wages, contractual bonuses, ordinary employer pension contributions (at the relevant rate specified in the schedule of contributions or payment schedule or contracts of employment), commission, holiday remuneration, payments of PAYE, tax, social security and national insurance contributions and shall procure that any Sub-Contractor that employs any relevant Termination Transfer Employees does the same.

No Solicitation of Termination Transfer Employees

3.3 The PROVIDER agrees that, in the period of six (6) months after the relevant Employee Transfer Date it shall not solicit any Termination Transfer Employee from the AUTHORITY or any Successor Provider or a sub-contractor to a Successor Provider to which the relevant Termination Transfer Employees' employment has transferred without the AUTHORITY's or the relevant Successor Provider's (or a sub-contractor to that Successor Provider) (as appropriate) prior written consent and shall procure that any Sub-Contractor that seeks to employ any Termination Transfer Employee does the same. This Paragraph shall not prevent the PROVIDER or if applicable any Sub-Contractor from employing any Termination Transfer Employee who has made an unsolicited response to a general recruitment advertisement published by the PROVIDER or relevant Sub-Contractor.

Smooth Transfer

3.4 The PROVIDER shall co-operate fully and promptly in good faith with all reasonable requests of the AUTHORITY to procure the smooth transfer to any relevant Successor Provider of those of the Termination Transfer Employees who transfer to that Successor Provider or a sub-contractor to that Successor Provider and shall procure that any Sub-Contractor that employs any Termination Transfer Employees does the same.

## 4. **Transfer Regulations Indemnities**

Indemnities given by the PROVIDER

4.1 The PROVIDER shall fully and effectively indemnify defend and hold harmless each relevant Successor Provider and any sub-contractors of those Successor Providers from any and all Employment Losses and threatened Employment Losses arising from, in connection with, or based on the following:

(A) any claim (save for any claim for personal injury which is covered by insurance) by any Termination Transfer Employee in respect of any fact or matter concerning or arising from that Termination Transfer Employee's employment by the PROVIDER or Sub-Contractor (as applicable) or its termination, before the relevant Employee Transfer Date, including any claims of unfair dismissal, wrongful dismissal, unlawful deduction from wages, unpaid salary, notice monies, overtime, pension losses, threatened pension losses, breach of contract, discrimination on the grounds of sex, race, disability, sexual orientation, religion or belief or contrary to any other protected category, or any claim for a redundancy payment save to the extent that such claim arises as a result of:

(1) any act or omission of the AUTHORITY or any relevant Successor Provider before the relevant Employee Transfer Date; and/or

(2) any failure by the AUTHORITY or any relevant Successor Provider on or after the relevant Employee Transfer Date to provide any benefit which transferred to the AUTHORITY or that Successor Provider under the Transfer Regulations;

(B) any proceedings, claim or demand by HM Revenue and Customs or other statutory authority in respect of any financial obligations including, but not limited to, PAYE and primary and secondary national insurance contributions in relation to the Termination Transfer Employees, to the extent that the proceedings, claim or demand by the Inland Revenue or other statutory authority relates to financial obligations arising before the relevant Employee Transfer Date in relation to employment with the PROVIDER or the Sub-Contractor (as applicable); and

(C) any claim by any Termination Transfer Employee or any Worker Representative of any such Termination Transfer Employee relating to any failure by the PROVIDER or the Sub-Contractor (as applicable) to comply with the obligations to inform and where appropriate consult any Termination Transfer Employee and/or their Worker Representatives pursuant to the Transfer Regulations or otherwise arising from any other applicable statutory or contractual duty or recognition agreement with such Worker Representatives in respect of any Termination Transfer Employee (save to the extent that the failure is due to AUTHORITY's or any relevant Successor Provider's failure to comply with any corresponding statutory or contractual obligation to relay information to the PROVIDER or the applicable Sub-Contractor so as to facilitate the PROVIDER's or the applicable Sub-Contractor's obligation to inform and/or consult in such circumstances).

Liabilities in Respect of Those Persons not Identified by the PROVIDER

4.2 If either Party becomes aware of any Personnel, other than a Termination Transfer Employee, claiming that the Transfer Regulations applied on a date on or before the relevant Service Transfer Date so as to transfer his employment or pension rights or any employment or pension liabilities or his contract of employment to a Successor Provider or a sub-contractor of a Successor Provider, then:

(A) that Party shall notify the other Party as soon as reasonably practicable and shall provide full details of the claim to that other Party (and where the Successor Provider is not the AUTHORITY, the AUTHORITY shall procure that the Successor Provider shall provide such details);

(B) the PROVIDER and/or (if applicable) the Sub-Contractor may at its/their absolute discretion utilise a period of one (1) month from the date on which the PROVIDER becomes aware of the claim to attempt to resolve the matter with such person (the "Resolution Period"). If the PROVIDER and/or (if applicable) the Sub-Contractor attempts to resolve the matter in this manner it/they shall notify the AUTHORITY of such attempt in writing and of any successful resolution of the claim on or before the end of the Resolution Period;

(C) if the PROVIDER and/or (if applicable) the Sub-Contractor exercises its/their discretion under Paragraph 4.2(b) above and is unable to resolve the claim successfully the relevant Successor Provider or such sub-contractor may, within one (1) month of the end of the Resolution Period terminate the contract of employment

of such person. If the PROVIDER and/or (if applicable) the Sub-Contractor does not exercise such discretion the relevant Successor Provider or such sub-contractor may, within one (1) month of the AUTHORITY notifying the PROVIDER of the claim, terminate the contract of employment of the person to whom the claim relates; and

(D) if the PROVIDER and/or (if applicable) the Sub-Contractor is unable to resolve the claim successfully the PROVIDER shall fully and effectively indemnify defend and hold harmless the relevant Successor Provider or such sub-contractor in respect of such person:

(1) against all of the same matters in respect of which the PROVIDER is providing an indemnity in respect of Termination Transfer Employees under Paragraph 4.1 above; and

(2) if the contract of employment of such person is terminated pursuant to Paragraph 4.2(C) above against:

(a) all salary and benefits due to that person in respect of their employment between the relevant Service Transfer Date and the date of termination of employment (based upon salary and benefit entitlements prior to the relevant Service Transfer Date); and

(b) all Employment Losses and threatened Employment Losses arising from, in connection with, or based on any termination of such person's employment including any claim for breach of contract, unfair dismissal, unpaid salary, overtime, pension loss, shift pay, holiday pay, and notice monies, discrimination on the grounds of race, sex, disability, sexual orientation, religion or belief or other protected category except to the extent that:

(i) such termination was conducted in a discriminatory manner by the relevant Successor Provider or its relevant sub-contractor; and

(ii) any unfair dismissal compensation or settlement sum relating to unfair dismissal compensation is increased as a result of any failure by the relevant Successor Provider or the relevant sub-contractor of that Successor Provider to follow the statutory dismissal procedure.

Sub-Contractors

4.3 The PROVIDER shall:

(A) use its reasonable endeavours to procure that each of the Sub-Contractors indemnifies any Successor Provider and any sub-contractors of those Successor Providers in respect of any Termination Transfer Employee previously employed by that Sub-Contractor to the same extent as the PROVIDER is providing indemnities under Paragraphs 4.1 and 4.2 of this Annex in respect of Termination Transfer Employees previously employed by the PROVIDER; or

(B) provide such indemnity itself.

Employment tribunals and the transfer date

4.4 Where an employment tribunal or higher court on completion of any appeal process determines that a person's employment or their employment rights or liabilities transferred from the PROVIDER or Sub-Contractor to any relevant Successor Provider or a sub-contractor of that Successor Provider under the Transfer Regulations on a date other than the relevant Employee Transfer Date (or in respect of Paragraph 4.2 of this Annex the relevant Service Transfer Date), then references to the relevant Employee Transfer Date in Paragraphs 4.1, 4.3 and 4.4 of this Annex (and references to the relevant Service Transfer Date in Paragraph 4.2 of this Annex) shall be read as references to that date in respect of that person.

## 5. Apportionments, Information and General

5.1 The PROVIDER shall, at the reasonable request of the AUTHORITY or any relevant Successor Provider, deliver or make available to the AUTHORITY or that Successor Provider, as soon as practicable following the relevant Service Transfer Date on receipt of such request, copies of all tax, PAYE, social security and national insurance records and copies of any other documents or records (agreed by the AUTHORITY, the relevant Successor Provider and the PROVIDER) which in the reasonable opinion of the AUTHORITY or that Successor Provider are relevant to the Termination Transfer Employees, provided that:

(A) the PROVIDER shall preserve the originals of such records or documents for a period of at least three (3) years (or such longer period as may be required by any relevant laws) after the relevant Service Transfer Date and shall allow the AUTHORITY or the relevant Successor Provider access to the same at all reasonable times to the extent necessary to enable the AUTHORITY or that Successor Provider to deal with any matters relating to the relevant Termination Transfer Employees and any employees who transfer pursuant to the Transfer Regulations. The PROVIDER shall, as and when requested by the AUTHORITY or the relevant Successor Provider to do so, produce the same to the relevant authorities; and

(B) not dispose of or destroy any such records or documents prior to the expiration of three (3) years after the relevant Service Transfer Date without first informing the AUTHORITY and the relevant Successor Provider of its intention to do so and, if the AUTHORITY or that Successor Provider so requests, delivering to the requesting party such of the records or documents as the AUTHORITY or that Successor Provider may request.

## 6. Intellectual Property Rights

6.1 With effect from the relevant Service Transfer Date, the PROVIDER shall cease all use of, and either destroy or return (at the AUTHORITY's option), all relevant AUTHORITY Data, Authority Software, AUTHORITY materials and other such information or data regarding the relevant Services requirements where such Data, Software and materials are not required by the PROVIDER to continue delivering the remaining Services.

6.2 Upon written request from the AUTHORITY to do so, the PROVIDER shall confirm in writing that it has complied in full with its obligations under Paragraph 6.1 above.

## Schedule 14 - Annex D – Exit Plan

1. **Overarching Approach to Exit Planning**

1.1 To support the procurement of any Successor Providers and the transfer of responsibility of providing the Services, the PROVIDER has provided under the Previous Contract an Exit Plan. This Exit Plan addresses and provides an overview of:

(A) a plan of the key tasks of Termination Assistance and activities that the PROVIDER shall undertake to support the AUTHORITY and any new Successor Providers in effecting a smooth transition of service provision;

(B) a list of all service management systems and/or equipment utilised by the PROVIDER to provide the Services;

(C) a list of all Sub-Contracts utilised by the PROVIDER to provide the Services (the PROVIDER shall agree to the AUTHORITY providing contact details of critical Sub-Contractors to nominated Successor Providers);

(D) a complete and accurate Asset Register and Configuration Management Database;

(E) up to date Service descriptions and proposed changes to the Services;

(F) all Service Level statistics collected and maintained by the PROVIDER for the previous twelve (12) months and, subject to reasonable notice, in a format requested by the AUTHORITY;

(G) an up to date organisation chart for the PROVIDER's service team giving posts, grades and percentage of time dedicated to the AUTHORITY;

(H) all staff detailed in the organisation chart who the PROVIDER or AUTHORITY believes to be in scope for transfer (to the extent permissible under the Transfer Regulations and the Data Protection Act) including:

(1) annual salary and rates of pay;

(2) allowances;

(3) shifts, unsociable hours or other premium rates of pay;

(4) conditional hours of work;

(5) date that continuous employment commenced;

(6) sex;

(7) age;

(8) job description;

(9) leave entitlement;

(10) whether registered disabled; and

(11) those currently on maternity leave or other long term leave of absence;

(I) a list of software applications and an electronic form of the source code for applications developed by the PROVIDER or serviced by the PROVIDER but developed by other suppliers;

(J) how it will continue to provide the remaining services so as to ensure that there is no disruption to those services as services are transferred and describe any impact on the Performance Measures during the Exit Period; and

(K) details of any AUTHORITY obligations necessary for the effective provision of Termination Assistance by the PROVIDER.

1.2 The PROVIDER shall review, update and distribute the Exit Plan at least quarterly during the Term.

1.3 Without prejudice to the generality of the foregoing, the PROVIDER's Exit Plan shall also cover the following areas set out in Paragraph 2 below.

2. **Activities**

General

2.1 The PROVIDER shall provide details:

(A) of how the transfer of the Services will be managed and conducted and the information required to support this; and

(B) describing how each relevant part of the Services will be transferred.

Management and Information Requirements

2.2 The PROVIDER shall provide:

(A) all relevant information in respect of governance and reporting arrangements including project management, escalation and notification, Change Control Procedures, approval, quality control, risk and issues management and actions management;

(B) a schedule of Exit activities to a level of detail to be agreed with the AUTHORITY subject to visibility of the AUTHORITY's overarching plans and schedule for its future IT service provision;

(C) populated risk and issues logs related to Exit;

(D) relevant information and data (including for relevant staff and the overall Services);

(E) details of where information and data is stored and/or available;

(F) details of dependencies on the AUTHORITY and/or any Successor Providers;

(G) details of AUTHORITY resources required to enact the Exit Plan, (e.g. by types, skills, numbers and timeframes); and

(H) details of relevant review processes.

Service and staff items

2.3 In relation to the transfer of the PROVIDER's Services to any nominated Successor Providers, the PROVIDER has detailed and will update to the extent possible:

(A) how and when each of the Services will transfer with minimal disruption and how each of the Services will be provided throughout the transfer in a secure environment, with disaster recovery arrangements and arrangements to ensure a seamless transfer of Services;

(B) transfer of the Hardware and Software that make up the Services including details of what Hardware and Software will transfer and when and how they transfer;

(C) operational environments (system parameters, fix levels, add-ons, operational schedules);

(D) Hardware tracking and recording methods;

(E) what specific security tasks are necessary upon transfer;

(F) the data to be transferred and the process of migration; and

(G) transfer of the Termination Transfer Employees.

2.4 The PROVIDER has provided and will continue to update details of the consultation and notification processes under the Transfer Regulations, including the following:

(A) when employee data will be provided in relation to Termination Transfer Employees;

(B) what employee data will be provided in relation to Termination Transfer Employees;

(C) not used;

(D) detailed employee consultation processes, including the consultation document production and review in relation to Termination Transfer Employees;

(E) establishment and management of a joint personnel/human resource team to manage all aspects of the transfer of Termination Transfer Employees; and

(F) benefits transfer arrangements, particularly issues relating to the transfer of pension rights and/or obligations of compensation events for pensions in relation to Termination Transfer Employees.

2.5 Not used

2.6 The PROVIDER shall provide details of:

(A) ICT equipment and software transfer (trialling process);

(B) non-IT equipment transfer;

(C) consumables provision;

(D) points of contact;

(E) transfer/novation and expiry of software licences;

(F) escrow arrangements; and

(G) apportionment and reconciliation of fees paid for any licences or managed contracts.

2.7 The PROVIDER shall effect Intellectual Property Rights transfers by carrying out the following:

(A) identification of each Parties' Intellectual Property Rights;

(B) processes and responsibilities for transfer of licences to use and ownership of Intellectual Property Rights; and

(C) arrangements for the continued exploitation of Intellectual Property Rights after termination or expiry (if any).

2.8 Not Used

2.9 For communications, the PROVIDER shall provide support to the AUTHORITY in preparing and disseminating communications material for key stakeholders within the AUTHORITY.