

## **APPENDIX ONE (1)**

### **EXIT MANAGEMENT PROCEDURE**

### **CALL OFF TERMS AND CONDITIONS CARE & SUPPORT FOR ADULTS WITH A LEARNING DISABILITY AND/OR AUTISM**

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1. In this Appendix, the following definitions shall apply:**

Exclusive Assets:	those Assets used by the Provider or a key sub-contractor which are used exclusively in the provision of the Services
Exit Information:	has the meaning given in Paragraph 3.1
Exit Manager:	the person appointed by each Party pursuant to Paragraph 2.3 for managing the Parties' respective obligations under this Schedule
Net Book Value:	the net book value of the relevant Asset(s) calculated in accordance with the asset depreciation policy of the Provider which shall be reasonable and shall be sent to the Authority by the Provider within 3 months of the Occupation Date
Non-Exclusive Assets:	those Assets (if any) which are used by the Provider or a key sub-contractor in connection with the Services but which are also used by the Provider or key sub-contractor for other purposes of material value
Exit:	any termination of the Contract as a result of the expiry of the Initial Term or any Extension Period or for any other reason
Registers:	the register and configuration database referred to in Paragraphs 2.1.1 and 2.1.2
Transferable Assets:	those of the Exclusive Assets which are capable of legal transfer to the Authority
Transferable Contracts:	the sub-contracts, licences for Provider's Software, licences for Third Party Software or other agreements which are necessary to enable the Authority to perform the Services or the replacement Services, including in relation to licences all relevant Documentation; and all utility supply contracts
Transferring Contracts:	has the meaning given in Paragraph 6.2.2.

### **1.2. Any reference to the Provider shall be deemed to include a reference to any replacement provider or Provider of the Services and any reference to the Authority shall be deemed to include any replacement Authority or replacement Provider or successor body responsible for purchasing the Services.**

### **1.3. Unless otherwise defined in the Appendix the definitions and interpretation Clauses in the Contract shall apply to the words in this Schedule.**

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

- 2.1. During the Contract Period the Provider shall:
  - 2.1.1. create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Provider provides the Services, which shall contain sufficient detail to permit the Authority to understand how the Provider provides the Services and to enable the smooth transition of the Services with the minimum of disruption;
- 2.2. Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Appendix to prepare and agree an Exit Plan as described in paragraph 10 of this Appendix and provide written notification of such appointment to the other Party within 1 month of the Occupation Date.
- 2.3. Each Party shall bear its own costs incurred in preparing an Exit Plan except that any unreasonable failure to appoint a suitable manager or to cooperate with the preparation of an Exit Plan shall be deemed to be a material breach of the Contract and any Loss incurred by either Party as a result of not having an agreed Exit Plan in place at the termination date shall be recoverable from the Party in default by either a deduction from the Contract Price or payment of a sum as an indemnity.
- 2.4. The Provider's Exit Manager shall be responsible for ensuring that its employees, agents and Sub-contractors comply with this Schedule 7.
- 2.5. The Provider shall ensure that its Exit Manager has the requisite Authority to arrange and procure any resources of the Provider as are reasonably necessary to enable the Provider to comply with the requirements set out in this Appendix.
- 2.6. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of the Contract and all matters connected with this Schedule and each Party's compliance with it.

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

- 3.1. On reasonable notice at any point during the Contract Period the Provider shall provide to the Authority and/or its potential replacement provider (subject to the potential replacement provider entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation of any invitation to tender and/or to facilitate any potential replacement Providers undertaking due diligence:
  - 3.1.1. details of the Service(s);
  - 3.1.2. an inventory of Authority Data in the Provider's possession or control;
  - 3.1.3. details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
  - 3.1.4. a list of on-going and/or threatened disputes in relation to the provision of the Services;

- 3.1.5. to the extent permitted by applicable Law, all information relating to Transferring Provider's Employees required to be provided by the Provider under the Contract; and
- 3.1.7. such other material and information as the Authority shall reasonably require.  
  
(all together, the "Exit Information").
- 3.2. The Provider acknowledges that the Authority may disclose the Provider's Confidential Information to an actual or prospective replacement provider 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 information relating to the Provider's or its sub-contractors' prices or costs).
- 3.3. The Provider shall provide complete updates of the Exit Information on an 'as-requested' basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the Authority.
- 3.4. The Authority may not request more than 6 updates in any 6 month period.
- 3.5. The Exit Information shall be accurate, detailed and complete in all material respects such as would be reasonably necessary to enable a third party to:
  - 3.5.1. prepare an informed offer to provide the Services; and
  - 3.5.2. not be disadvantaged in any subsequent procurement process compared to the Provider (if the Provider is invited to participate).

#### **4. EXIT PLAN**

##### **Preparation of an Exit Plan**

- 4.1. The Provider shall, within 3 months after the Occupation Date deliver to the Authority an Exit Plan which:
  - 4.1.1. sets out the Provider's proposed methodology for achieving an orderly transition of the Services from the Provider to the Authority and/or its replacement Provider on the expiry or termination of the Contract
  - 4.1.2. complies with all the requirements set out in this Appendix and
  - 4.1.3. is otherwise reasonably satisfactory to the Authority.
- 4.2. The Exit Plan shall set out, as a minimum:
  - 4.2.1. the management structure to be employed during both transfer and cessation of the Services;
  - 4.2.2. a detailed description of both the transfer and cessation processes, including a timetable and including details of the handover processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Provider or its sub-

contractors (where applicable); and

- 4.2.3. procedures to deal with requests made by the Authority and/or a replacement Provider for Staffing Information pursuant Contract Clause 15.1

### **Finalisation of the Exit Plan**

- 4.3. Within 20 Working Days after service of a Notice of termination or 9 months prior to the expiry of the Contract, the Provider will submit for the Authority's approval an 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 Appendix and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
- 4.4. If the Parties are unable to agree the contents of the Exit Plan within 10 Working Days following its delivery to the Authority then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Provider shall provide act in accordance with the principles set out in this Appendix and the last approved version of the Exit Plan (insofar as relevant).
- 4.5. In addition to providing the Services the Provider shall provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the termination or expiry of the Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its replacement Provider;

## **5. OTHER TERMINATION OBLIGATIONS**

- 5.1. The Provider shall comply with all of its obligations contained in the Exit Plan.
- 5.2. Upon termination or expiry (as the case may be) of the Contract the Provider shall:
  - 5.2.1. cease to use the Authority's Data;
  - 5.2.2. provide the Authority and/or the replacement Provider with a complete and uncorrupted version of the Authority's Data in electronic form (or such other format as reasonably required by the Authority);
  - 5.2.3. erase from any computers, storage devices and storage media that are to be retained by the Provider after the end of the Contract all Provider Data and promptly certify to the Provider that it has completed such deletion;
  - 5.2.4. return to the Authority such of the following as is in the Provider's possession or control:
    - 5.2.4.1. all copies of the Authority's Software and any other software licensed by the Authority to the Provider under the Contract;
    - 5.2.4.2. all materials created by the Provider under the Contract in which the IPRs are owned by the Authority;

- 5.2.4.3. any parts of the IT Environment and any other equipment which belongs to the Authority; and
- 5.2.4.4. any items that have been on-charged to the Authority, such as consumables;
- 5.2.5. vacate the Premises and shall:
  - 5.2.5.1. Provide contact details of personnel responsible for responding to any schedule of dilapidations that may be served by the Authority and to co-operate fully and in a timely way in its settlement;
  - 5.2.5.2. Together with the Authority's representative take readings of water, gas and electricity meters at the termination date to provide an agreed record of the total consumption of resources up to that date and provide a date stamped photographic record of the readings;
  - 5.2.5.3. Arrange for the transfer to the Authority or replacement provider or terminate, as required by the Authority, of utility services supply contracts including water, gas, electricity, telephone and broadband;
  - 5.2.5.4. Arrange for the transfer to the Authority or replacement provider or terminate as required by the Authority, of property contracts including maintenance, repair, servicing, security and health and safety contracts and handover associated documentation;
  - 5.2.5.5. Together with the Authority's representative agree the inventory/asset register for the Premises and as required by the Authority which items are to be removed or to remain in accordance with paragraphs 2 and 6;
  - 5.2.5.6. Provide contact details of personnel responsible for and undertake key handover.
- 5.2.6 provide access during normal working hours to the Authority for up to 12 months after expiry or termination to:
  - 5.2.6.1. such information relating to the Services as remains in the possession or control of the Provider; and
  - 5.2.6.2. such members of the Provider's Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Provider, provided that the Authority shall pay the reasonable costs of the Provider actually incurred in responding to requests for access under this Paragraph 5.2.6.2.
- 5.3. Upon termination or expiry each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's 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 replacement Services or for any statutory compliance purposes.

- 5.4. Except where the Contract provides otherwise, all licences, leases and authorisations granted by the Authority to the Provider in relation to the Services shall be terminated with effect from the termination date unless otherwise agreed.

**6. ASSETS, SUB-CONTRACTS AND SOFTWARE**

- 6.1. Following notice of termination of the Contract the Provider shall not, without the Authority's prior written consent:
- 6.1.1. terminate, enter into or vary any sub-contract except to the extent that such change does not or will not affect the provision of Services;
  - 6.1.2. (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
  - 6.1.3. terminate, enter into or vary any licence for software in connection with the Services.
- 6.2. Within 20 Working Days of receipt of the up-to-date Registers provided by the Provider pursuant to Paragraph 5.3, the Authority shall provide written notice to the Provider setting out:
- 6.2.1. which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the replacement Provider ("Transferring Assets"):
    - 6.2.1.1. which, if any, of:
      - 6.2.1.1.1. the Exclusive Assets that are not Transferable Assets; and
      - 6.2.1.1.2. the Non-Exclusive Assets
    - 6.2.1.2. the Authority and/or the replacement Provider requires the continued use of; and
    - 6.2.1.3. which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the replacement Provider (the "Transferring Contracts");
  - 6.2.2. When requested by the Authority and/or its replacement Provider, the Provider shall provide all reasonable assistance to the Authority and/or its replacement Provider to enable it to determine which Transferable Assets and Transferable Contracts the Authority and/or its replacement Provider requires to provide the Services or replacement services.
- 6.3. With effect from the Termination date, the Provider shall transfer the Transferring Assets to the Authority and/or its nominated replacement Provider for a consideration equal to their Net Book Value, except where the cost of the Transferring Asset has been partially or fully paid for by the Authority by the Occupation Date or through the fees at the time of expiry or termination of this Agreement, in which case the Authority shall pay the Provider the Net Book Value of the Transferring Asset less the amount already paid.

- 6.4. Risk in the Transferring Assets shall pass to the Authority or the replacement Provider (as appropriate) at the termination date and title to the Transferring Assets shall pass to the Authority on the termination date.
- 6.5. Where the Provider is notified in accordance with Paragraph 6.2.2 that the Authority and/or the replacement Provider requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Provider shall as soon as reasonably practicable:
  - 6.5.1. procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority for the Authority and/or the replacement Provider to use such assets (with a right of sub- licence or assignment on the same terms); or failing which
  - 6.5.2. procure a suitable alternative to such assets and the Authority or the replacement Provider shall bear the reasonable proven costs of procuring the same.
- 6.6. The Provider shall as soon as reasonably practicable assign or procure the novation to the Authority of the Transferring Contracts. The Provider shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
- 6.7. The Provider shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority has been effected.
- 6.8. The Provider shall indemnify the Authority (and/or the replacement Provider, 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 Authority pursuant to Paragraph 6.6 in relation to any matters arising prior to the date of assignment or novation of such Sub-contract.

## **7. PROVIDER PERSONNEL**

- 7.1. The Authority and Provider agree and acknowledge that in the event of the Provider ceasing to provide the Services or part of them for any reason, Contract Clause 15 shall apply.
- 7.2. The Provider shall give the Authority reasonable access to the Provider's personnel to present the case for transferring their employment to the Authority and/or the replacement Provider.
- 7.3. The Provider shall immediately notify the Authority of any period of notice given by the Provider or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 7.4. The Provider shall not for a period of 12 months from the date of transfer re-employ or re-engage or entice any employees, Providers or sub-contractors whose employment or engagement is transferred to the Authority, except that this paragraph shall not apply where the employee, Provider or sub-contractor applies in response to a public advertisement of a vacancy.



**8. NON CHARGING**

- 8.1 Except as otherwise expressly specified in this Appendix, the Provider shall not make any charges for the services provided by the Provider pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Provider in relation to its compliance with, this Appendix including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the termination of the Contract.

**9. APPORTIONMENTS**

- 9.1. All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Provider and the Provider (as applicable) as follows:
- 9.1.1. the amounts shall be annualised and divided by 365 to reach a daily rate;
  - 9.1.2. the Authority shall be responsible for (or shall procure that the replacement Provider 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 Provider shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 9.2. Each Party shall pay (and/or the Authority shall procure that the replacement Provider shall pay) any monies due under Paragraph 9.1 as soon as reasonably practicable.

**10. THE SCOPE OF THE EXIT PLAN**

- 10.1. The Exit Plan shall include all necessary and such of the following services as the Authority may specify to enable a smooth transfer or responsibilities for providing the Services to Individuals:
- 10.1.1. ceasing all non-critical Software changes (except where agreed in writing with the Authority);
  - 10.1.2. notifying the Sub-contractors of procedures to be followed during the termination period and providing management to ensure these procedures are followed;
  - 10.1.3. providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Purchase after termination Assistance Period;
  - 10.1.4. delivering to the Authority the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all

relating to the 12 month period immediately prior to the expected termination date;

- 10.1.5. providing details of work volumes and staffing requirements and staffing costs over the 12 month period immediately prior to the expected termination date;
- 10.1.6. providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the termination date;
- 10.1.7. reviewing all Software libraries used in connection with the Services and providing details of these to the Authority;
- 10.1.8. making available to the Authority expertise to analyse training requirements and provide all necessary training for such staff as are nominated by the Authority (acting reasonably) at the time of termination or expiry;
- 10.1.9. generating a computer listing of any relevant Software in a form and on media reasonably requested by the Authority;
- 10.1.10. assisting in the execution of a parallel operation until the effective date of expiry or termination of the Contract;
- 10.1.11. providing an information pack listing and describing the Services for use by the Authority in the procurement of the replacement services;
- 10.1.12. answering all reasonable questions from the Authority regarding the Services;
- 10.1.13. agreeing with the Authority a plan for the migration of the Authority Data to the Authority;
- 10.1.14. following reasonable notice and during the Provider's normal business hours, providing access to members of the Authority Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Provider or its sub-contractors; and
- 10.1.15. knowledge transfer services, including:
  - 10.1.15.1. transferring all training material and providing appropriate training to those Authority staff responsible for internal training in connection with the provision of the Services;
  - 10.1.15.2. providing for transfer to the Authority of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and
  - 10.1.15.3. providing any replacement Provider with access to such members of the Provider's or its sub-contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Provider or its sub-contractors.

10.2. The information which the Provider shall provide to the Authority shall include:

- 10.2.1. copies of up-to-date procedures and operations manuals;
- 10.2.2. product information;
- 10.2.3. agreements with third party Providers of goods and services which are to be transferred to the Authority;
- 10.2.4. key support contact details for third party Provider personnel under contracts which are to be assigned or novated to the Authority pursuant to this Schedule;
- 10.2.5. information regarding any unresolved faults in progress at the termination date;
- 10.2.6. details of physical and logical security processes and tools which will be available to the Authority; and
- 10.2.7. any relevant interface information.