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Department for Work and Pensions

Schedule 12: Exit and Service Transfer Arrangements

SCHEDULE 12 EXIT AND SERVICE TRANSFER ARRANGEMENTS

1. Introduction

1.1 This Schedule 12 (Exit and Service Transfer Arrangements) describes the duties and responsibilities of the CONTRACTOR and the AUTHORITY leading up to and covering the exit from this Agreement and the transfer of provision of the Services.

2. Objectives

2.1 The objectives of this Schedule 12 (Exit and Service Transfer Arrangements) are to:

- (A) ensure a smooth transition of Services from the CONTRACTOR to a Replacement Contractor or back to the AUTHORITY at the termination or expiry of this Agreement;
- (B) ensure that the responsibilities of both parties to this Agreement are clearly defined in the event of exit and transfer; and
- (C) ensure that all relevant Assets are transferred.

3. General

3.1 Where the AUTHORITY intends to continue equivalent or substantially similar services to the Services after termination or expiry, either by performing them itself or by means of a Replacement Contractor, the CONTRACTOR shall ensure the smooth transition to the Replacement Contractor and shall co-operate with the AUTHORITY or the Replacement Contractor as required in order to fulfil the obligations under this Schedule.

3.2 The CONTRACTOR shall co-operate fully with the AUTHORITY and any potential Replacement Contractors tendering for any re-competition for the Services, including enabling the transfer of responsibility for the provision of the Services previously performed by the CONTRACTOR to be achieved with the minimum of disruption to the extent that this is within the CONTRACTOR's reasonable control. In particular:

- (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 Contractor, the CONTRACTOR 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, access to and provision of all performance reports, agreed procedures, and any other relevant (non-financial) information (including the configurations set up for the AUTHORITY and procedures used by the CONTRACTOR for handling Data) reasonably necessary to achieve an effective transition provided always that the AUTHORITY shall use its reasonable endeavours to answer all queries from such actual or potential Replacement Contractors in the first instance and provided further that:

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- (1) the CONTRACTOR shall not be obliged to provide any information concerning the costs of delivery of the Services or any part thereof or disclose the financial records of the CONTRACTOR to any such party;
- (2) the CONTRACTOR shall not be obliged to disclose any such information for use by an actual or potential Replacement Contractor unless such a party shall have entered into a confidentiality agreement as set out in Schedule 25 (Confidentiality); and
- (3) whilst supplying information as contemplated in this paragraph 3.2(A) the CONTRACTOR shall provide sufficient information to comply with the reasonable requests of the AUTHORITY to enable an effective tendering process to take place but shall not be required to provide information or material which the CONTRACTOR may not disclose as a matter of law.

3.3 In assisting the AUTHORITY and/or the Replacement Contractor to transfer the Services the following commercial approach shall apply:

- (A) where the CONTRACTOR does not have to utilise resources in addition to those normally used to deliver the Services prior to termination or expiry, the CONTRACTOR shall make no additional Charges. The AUTHORITY may reasonably request that support and materials already in place to provide the Services may be redeployed onto work required to effect the Services transfer provided always that where the AUTHORITY agrees in advance that such redeployment will prevent the CONTRACTOR from meeting any Service Levels, achieving any other key dates or from providing any specific deliverables to the AUTHORITY, the AUTHORITY shall not be entitled to claim any Service Credits or other remedy for failure to meet that Service Level, achieve that key date or provide that deliverable and the AUTHORITY will pay for any such support and materials at the appropriate rate set out in Schedule 15 (Charges); and
- (B) where any support and materials necessary to undertake the transfer work or any costs incurred by the CONTRACTOR are additional to those in place as part of the proper provision of the Services the AUTHORITY shall pay the CONTRACTOR for staff time agreed in advance at the rates as set out in Schedule 15 (Charges) and for materials and other costs at a reasonable price which shall be agreed with the AUTHORITY in advance or as more particularly described in Schedule 15 (Charges).

3.4 If so required by the AUTHORITY, on the provision of no less than one (1) month's notice in writing, the CONTRACTOR shall continue to provide the Services or an agreed part of the Services for a period not less than one (1) month and not exceeding twelve (12) months beyond the date of termination or expiry of the Agreement. In such event the AUTHORITY shall reimburse the CONTRACTOR for such elements of the Services as are provided beyond the date of termination or expiry date of the Agreement on the basis that:

- (A) materials and other costs will be charged at a reasonable price which shall be agreed in advance between the Parties; and/or

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- (B) staff time agreed in advance between the Parties will be charged at the CONTRACTOR's rates in force under Schedule 15 (Charges) at the time of termination or expiry.
- 3.5 The AUTHORITY may only exercise the right set out in paragraph 3.4 above on two (2) occasions, subject to the provision of no less than two week's notice for the second occasion on which the right is exercised. For the avoidance of doubt, the cumulative period of any extension shall be no greater than the period of twelve (12) months beyond the date of termination or expiry of the Agreement.
- 3.6 If required, the CONTRACTOR shall provide to the AUTHORITY an analysis of the volumetrics (or other measure(s) of usage) of the Services to the extent reasonably necessary to enable the AUTHORITY to plan migration of such workload to a Replacement Contractor provided always that this analysis involves providing performance data already delivered to the AUTHORITY as part of the performance monitoring regime.
- 3.7 The CONTRACTOR shall provide such information as the AUTHORITY reasonably considers to be necessary for the actual Replacement Contractor, or any potential Replacement Contractor during any re-procurement process, 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.
- 3.8 If so required by the AUTHORITY, the CONTRACTOR shall save in the circumstances set out in clauses 47.2(A) to 47.2(E) of the Agreement, make available such Key Personnel who have been involved in the provision of the Services as the Parties may agree to assist the AUTHORITY or a Replacement Contractor (as appropriate) in the continued support of the Services beyond the expiry or termination of the Agreement, in which event the AUTHORITY shall pay for the services of such Key Personnel on a time and materials basis at the rates specified in Schedule 15 (Charges).
- 3.9 The CONTRACTOR shall co-operate with the AUTHORITY during the handover to a Replacement Contractor and such co-operation shall extend to, but shall not be limited to, inter-working, co-ordinating on cut-over and access to and provision of all operational and performance documents, reports, summaries produced by the CONTRACTOR for the AUTHORITY, including the configurations set up for the AUTHORITY and any and all information to be provided by the CONTRACTOR to the AUTHORITY under any other term of this Agreement necessary to achieve an effective transition without disruption to routine operational requirements.
4. **Replacement Contractor**
- 4.1 In the event that the Services are to be transferred to a Replacement Contractor, the AUTHORITY will use reasonable endeavours to ensure that the Replacement Contractor co-operates with the CONTRACTOR during the handover of the Services.

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5. **Subcontractors**

- 5.1 The CONTRACTOR agrees to provide the AUTHORITY with details of the Subcontractors used in the provision of the Services in accordance with Schedule 18 (Approved Subcontractors). The CONTRACTOR will not restrain or hinder its Subcontractors from entering into agreements with other prospective service providers for the delivery of supplies or services to the Replacement Contractor.

6. **Transfer of Configuration Management Database**

- 6.1 Three (3) months prior to expiry or within one (1) week's notice of termination of this Agreement the CONTRACTOR shall deliver to the AUTHORITY a full, accurate and up to date cut of content from the Configuration Management Database (or equivalent) used to store details of Configurable Items and Configuration Management data for all products used to support delivery of the Services.

7. **Transfer of Assets**

- 7.1 Three months prior to expiry or within one week of notice of termination of the Agreement the CONTRACTOR shall deliver to the AUTHORITY the Asset Register comprising:

- (A) a list of all Assets eligible for transfer to the AUTHORITY; and
- (B) a list identifying all other Assets, (other than human resources, skills and know-how), that are ineligible for transfer but which are essential to the delivery of the Services. The purpose of each component and the reason for ineligibility for transfer shall be included in the list.

- 7.2 Within one month of receiving the Asset Register as described above, the AUTHORITY shall notify the CONTRACTOR of the Assets it requires to be transferred, (the "**Required Assets**"), and the AUTHORITY and the CONTRACTOR shall provide for the approval of the AUTHORITY a draft plan for the Asset transfer.

- 7.3 In the event that the Required Assets are not located on AUTHORITY premises:

- (A) the CONTRACTOR shall be responsible for the dismantling and packing of the Required Assets and to ensure their availability for collection by the AUTHORITY or its authorised representative by the date agreed for this;
- (B) any charges levied by the CONTRACTOR for the Required Assets not owned by the AUTHORITY shall be fair and reasonable in relation to the condition of the Assets and the then fair market value; and
- (C) for the avoidance of doubt, the AUTHORITY will not be responsible for the Assets.

- 7.4 The CONTRACTOR warrants that the Required Assets and any components thereof transferred to the AUTHORITY or Replacement Contractor benefit from any remaining

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manufacturer's warranty relating to the Required Assets at that time, always provided such warranties are transferable to a third party.

8. **Transfer of Software Licences**

- 8.1 Three (3) months prior to expiry or within one (1) week's notice of termination of this Agreement the CONTRACTOR shall deliver to the AUTHORITY all licences for Software used in the provision of Services which were purchased by the AUTHORITY.
- 8.2 On notice of termination of this Agreement the CONTRACTOR shall, within one (1) week of such notice, deliver to the AUTHORITY details of all licences for CONTRACTOR Software and CONTRACTOR Third Party Software used in the provision of the Services, including the terms of the software licence agreements. For the avoidance of doubt, the AUTHORITY shall be responsible for any costs incurred in the transfer of licences from the CONTRACTOR to the AUTHORITY or to a Replacement Contractor provided such costs shall be agreed in advance. Where transfer is not possible or not economically viable the Parties will discuss alternative licensing arrangements.
- 8.3 Within one (1) month of receiving the software licence information as described above, the AUTHORITY shall notify the CONTRACTOR of the licences it wishes to be transferred, and the CONTRACTOR shall provide for the approval of the AUTHORITY a draft plan for licence transfer, covering novation of agreements with relevant software providers, as required. Where novation is not possible or not economically viable the Parties will discuss alternative licensing arrangements.

9. **Transfer of Gateway Software**

- 9.1 Three (3) months prior to expiry or within one (1) week's notice of termination of this Agreement the CONTRACTOR shall deliver, or otherwise certify in writing that it has delivered, to the AUTHORITY a full, accurate and up to date version of the Gateway Software including up to date versions and latest releases of, but not limited to:
- (A) Source Code (with source tree) and associated documentation;
 - (B) application architecture documentation and diagrams;
 - (C) release documentation for functional, technical and interface specifications;
 - (D) a plan with allocated resources to handover code and design to new development and test teams (this should include architectural design and code 'walk-through');
 - (E) Gateway specific development tools e.g. the SOAP client tool;
 - (F) Source Code and supporting documentation for testing framework tool and performance tool;
 - (G) test director database;
 - (H) test results for the latest full runs of the testing framework tool and performance tool on each environment; and
 - (I) a Gateway specific test harness (ATF and performance tool).

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10. **Transfer of Documentation**

- 10.1 Three (3) months prior to expiry or within one (1) week's notice of termination of this Agreement the CONTRACTOR shall deliver to the AUTHORITY a full, accurate and up-to-date set of Documentation that relates to any element of the Services as defined in Schedule 2 (Services).

11. **Transfer of Service Management Process**

- 11.1 Three months prior to expiry or within two (2) weeks' notice of termination of this Agreement the CONTRACTOR shall deliver to the AUTHORITY:

- (A) a plan for the handover and continuous delivery of the Service Desk function and allocate the required resources;
- (B) full and up to date, both historical and outstanding Service Desk ticket data including, but not limited to:
 - (1) Incidents;
 - (2) Problems;
 - (3) Service Requests;
 - (4) Changes;
 - (5) Service Level reporting data;
- (C) AUTHORITY's Customer contact details;
- (D) a list and topology of all tools and products associated with the provision of the Gateway and the Services;
- (E) full content of software builds and server configuration details for software deployment and management; and
- (F) monitoring software tools and configuration.

12. **Transfer of Knowledge Base**

- 12.1 Three (3) months prior to expiry or within one (1) weeks notice of termination of this Agreement the CONTRACTOR shall deliver to the AUTHORITY a full, accurate and up to date cut of content from the knowledge base (or equivalent) used to troubleshoot issues arising with the Services but shall not be required to provide information or material which the CONTRACTOR may not disclose as a matter of law.

13. **Transfer of Service Builds**

- 13.1 Three (3) months prior to expiry or within one (1) week's notice of termination of this Agreement the CONTRACTOR shall deliver to the AUTHORITY a full, accurate and up to date version of the following, as a minimum:

- (A) archive of records including:

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- (1) Questionnaire Packs;
 - (2) project plans and sign off;
 - (3) Acceptance Criteria; and
 - (4) Post Implementation Reviews.
- (B) list of the AUTHORITY's Customers contacts;
- (C) programme plan of all work in progress currently accepted and those in progress;
- (D) latest version of Gateway core documentation set;
- (E) Source Code (if appropriate) and all documentation to support the services build tool (currently called "Services Gateway") with any documentation for 'workarounds' that have taken place;
- (F) Source Code, application architecture documentation/diagram and other documentation for Payment Engine;
- (G) Source Code, application architecture documentation/diagram and other documentation for Helpdesk; and
- (H) project plan and resource required to hand Service Build capability over to the new team.

14. **Transfer of Data**

- 14.1 In the event of expiry or termination of this Agreement the CONTRACTOR shall cease to use the AUTHORITY Data and, at the request of the AUTHORITY, shall destroy all such copies of the AUTHORITY Data then in its possession to the extent specified by the AUTHORITY.
- 14.2 Except where, pursuant to paragraph 14.1 above, the AUTHORITY has instructed the CONTRACTOR to destroy such AUTHORITY Data as is held and controlled by the CONTRACTOR, three (3) months prior to expiry or within one (1) month of termination of this Agreement, the CONTRACTOR shall deliver to the AUTHORITY:
- (A) an inventory of the AUTHORITY Data held and controlled by the CONTRACTOR, plus any other data required to support the Services; and/or
 - (B) a draft plan for the transfer of the AUTHORITY Data held and controlled by the CONTRACTOR and any other available data to be transferred.

15. **Training Services on Transfer**

- 15.1 The CONTRACTOR shall comply with the AUTHORITY's reasonable request to assist in the identification and specification of any training requirements following expiry or termination. The purpose of such training shall be to enable the AUTHORITY or a Replacement Contractor to adopt, integrate and utilise the Data and Assets transferred and to deliver an equivalent service to that previously provided by the CONTRACTOR.

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- 15.2 The provision of any training services and/or deliverables and the charges for such services and/or deliverables shall be agreed in accordance with Schedule 15 (Charges).
- 15.3 Subject to paragraph 15.2 above, the CONTRACTOR shall produce for the AUTHORITY's consideration and approval three (3) months prior to expiry or within fifteen (15) Working Days of issue of notice of termination:
- (A) a training strategy, which details the required courses and their objectives;
 - (B) training materials (including assessment criteria); and
 - (C) a training plan of the required training events.
- 15.4 Subject to paragraph 15.2 above, the CONTRACTOR shall schedule all necessary resources to fulfil the training plan, and deliver the training as agreed with the AUTHORITY.
16. **Transfer Support Activities**
- 16.1 Six (6) months prior to expiry or within fifteen (15) Working Days of issue of notice of termination, the CONTRACTOR shall assist the AUTHORITY or Replacement Contractor to develop a viable exit transition plan which shall contain details of the tasks and responsibilities required to enable the transition from the Services provided under this Agreement to the Replacement Contractor or the AUTHORITY, as the case may be.
- 16.2 The exit transition plan shall be in a format (eg: Microsoft Project) to be agreed with the AUTHORITY and shall include, but not be limited to:
- (A) a timetable of events;
 - (B) resources;
 - (C) assumptions;
 - (D) activities;
 - (E) responsibilities; and
 - (F) risks.
- 16.3 The CONTRACTOR shall supply to the AUTHORITY or a Replacement Contractor Gateway specific materials including but not limited to:
- (A) Change Request log;
 - (B) entire back-up history; and
 - (C) dump of database contents including the Asset Register, problem management system and operating procedures. For the avoidance of doubt this shall not include

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proprietary software tools of the CONTRACTOR which are used for project management purposes generally within the CONTRACTOR's business.

- 16.4 The CONTRACTOR shall supply to the AUTHORITY or a Replacement Contractor proposals for the retention of Key Personnel for the duration of the transition period.
- 16.5 On the date of expiry the CONTRACTOR shall provide to the AUTHORITY refreshed versions of the materials required under paragraph 16.3 above which shall reflect the position as at the date of expiry.
- 16.6 The CONTRACTOR shall provide to the AUTHORITY or to any Replacement Contractor within fifteen (15) Working Days of expiry or termination a full and complete copy of the Incident log book and all associated documentation recorded by the CONTRACTOR during the three (3) months prior to the date of expiry or termination.
- 16.7 The CONTRACTOR shall provide for the approval of the AUTHORITY a draft plan to transfer or complete work-in-progress at the date of expiry or termination.

17. **Use of AUTHORITY Premises**

- 17.1 Prior to expiry or on notice of termination of this Agreement, the CONTRACTOR shall provide for the approval of the AUTHORITY a draft plan specifying the necessary steps to be taken by both the CONTRACTOR and the AUTHORITY to ensure that the AUTHORITY's Premises are vacated by the CONTRACTOR.
- 17.2 Unless otherwise agreed, the CONTRACTOR shall be responsible for all costs associated with the CONTRACTOR's vacation of the AUTHORITY's Premises, removal of equipment and furnishings, redeployment of CONTRACTOR Personnel, termination of arrangements with Subcontractors and service contractors and restoration of the AUTHORITY Premises to their original condition (subject to a reasonable allowance for wear and tear).

18. **Transfer Regulations**

- 18.1 The CONTRACTOR agrees to satisfy all of its obligations up to the Transfer Date with respect to all outgoings and accrued liabilities in respect of the Employees involved in performing the CONTRACTOR's obligations under this Agreement.
- 18.2 The CONTRACTOR shall six (6) months before the expiry of this Agreement or the expiry of any extended period or as soon as reasonably practicable after either party has served notice to terminate this Agreement ("Relevant Period"), deliver up, or use best endeavours to procure the delivery up, to the AUTHORITY or such other person as the AUTHORITY may nominate (providing that the AUTHORITY procures that such other person shall keep the information confidential and shall not pass it to any third party other than for the purpose of taking legal or financial advice), such information concerning the number, identity, terms of employment (including job title and job description), and the percentage of their working time that they are concerned with the Services during the preceding twelve (12) months of any individuals employed or engaged in the provision of the Services by the CONTRACTOR or any Subcontractor (as at the date of the provision of

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the information). The AUTHORITY may communicate any such information to any person intending to tender to execute works of the nature of the Services (providing that the AUTHORITY procures that such person or persons shall keep the information confidential and shall not pass it to any third party other than for the purpose of taking legal or financial advice). The CONTRACTOR shall warrant the accuracy of any such information relating to the CONTRACTOR in all respects as at the date of disclosure. The CONTRACTOR shall within reason enable and assist the AUTHORITY and such persons as the AUTHORITY may determine to communicate with and meet those employees and their trade union or other employee representatives. If any obligation under this clause would cause the CONTRACTOR to breach any legal obligation (including any obligation under the Data Protection Act 1998) or do any unlawful act, the CONTRACTOR shall do such things as are reasonably practicable to comply with its obligations under this clause without breaching any legal obligation or doing any unlawful act, including, if relevant, providing information in an anonymised form.

- 18.3 During any Relevant Period, the CONTRACTOR shall not without the AUTHORITY's prior written consent (which shall not be unreasonably withheld), and shall use best endeavours to procure that no other employer (other than the AUTHORITY) shall materially vary the contracts of employment of (except to honour any pre-agreed obligation), redeploy (except at the request of the individual), or terminate the employment of any of the Employees who are wholly or mainly employed in the provision of the Services (except in a case of gross misconduct or serious poor performance, for which, for the avoidance of doubt, the CONTRACTOR shall not require the AUTHORITY's prior written consent in order to terminate the relevant Employee's employment) or (except to fill a vacancy or to meet the relevant Service Levels) recruit any person for employment in connection with, or assign any additional employee who will spend the whole or a majority of their time allocated to all or any of the Services.
- 18.4 No later than fourteen (14) days following the Transfer Date, the CONTRACTOR shall provide to the AUTHORITY (who may then provide to any Replacement Contractor) updated payroll information following the final payroll run details in respect of the Assigned Employees.