



Smart Meters Programme Schedule 8.5

(Exit) (CSP Central version)

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Amendment History		
Version	Date	Status
v.1	Signature Date	Execution Copy

SCHEDULE 8.5 EXIT

PART A – GENERAL

1. OVERVIEW

1.1 This Schedule 8.5 sets out the key principles for the exit and service transfer arrangements that:

(a) are intended to achieve an orderly transition of the Services from the Contractor to the DCC and/or any Replacement Contractor in the event of the expiry or termination (including partial termination) of this Agreement for any reason; and

(b) will form the basis of the Exit Plan.

1.2 This Schedule 8.5 comprises the following parts:

Part	Scope
Part A	General
Part B	Obligations during the Term and Service Period
Part C	Re-tendering obligations
Part D	Preparation of the Exit Plan
Part E	Continuation of the Services
Part F	Termination Assistance Services
Part G	Transfer of assets, contracts and personnel
Part H	Obligations after the Termination Assistance Period
Appendix 1	Relevant Agreements
Appendix 2	OTA/Subscription Management Exit Strategy
Appendix 3	MVNO Exit Strategy
Appendix 4	New Solution Exit Strategy
Appendix 5	Contractor IPR applicable to Exit Strategies

2. APPLICATION OF THIS SCHEDULE

2.1 This Schedule 8.5 shall apply in the event of the expiry or termination (including partial termination) of this Agreement for any reason, including:

(a) the expiry of the Initial Term or any Extension Period;

- (b) termination by the DCC in connection with Clause 60.1 and Clause 60.2;
 - (c) termination by the DCC for convenience in accordance with Clause 60.3;
 - (d) termination by the DCC as a result of a Change of Control in accordance with Clause 60.8;
 - (e) termination by the Contractor in accordance with Clause 60.12; and
 - (f) termination as a result of a prolonged Force Majeure Event in accordance with Clause 60.15.
- 2.2 In respect of a partial termination of this Agreement, this Schedule 8.5 and any relevant provision of the Exit Plan shall apply to the extent that they are relevant to the orderly transition from the Contractor to the DCC and/or any Replacement Contractor of the specific Services which are subject to the partial termination of this Agreement.

3. GENERAL OBLIGATIONS OF THE PARTIES

3.1 Subject to paragraph 3.2, the Contractor:

- (a) is required to ensure the orderly transition of the Services from the Contractor to the DCC and/or any Replacement Contractor in the event of the expiry or termination of this Agreement; and
- (b) shall be responsible for the overall management of the exit arrangements in this Schedule 8.5.

3.2 The DCC shall, and shall procure that any Replacement Contractor shall, co-operate with the Contractor to such extent as is reasonably necessary to enable the Contractor to perform its obligations under this Schedule 8.5.

3.3 Without limiting the Contractor's obligations under paragraph 3.1, the Contractor shall co-operate with the DCC and, where applicable, any Replacement Contractor to ensure the orderly transition of the Services from the Contractor to the DCC and/or any Replacement Contractor.

3.4 The parties acknowledge that the transfer of the Services from the Contractor to the DCC and/or any Replacement Contractor may be phased, such that certain of the Services are handed over before others. Any such arrangements shall be described in detail in the Exit Plan.

4. TERMINATION OF THE TERMINATION ASSISTANCE PERIOD

4.1 The DCC shall have the right to terminate:

- (a) the provision of the Termination Assistance Services by the Contractor;
- (b) the continuation of the Services under Part E of this Schedule 8.5; and/or

- (c) any other activities being conducted by the Contractor or any Contractor Person under or in relation to this Schedule 8.5,

by serving not less than ninety (90) days' written notice upon the Contractor to such effect.

5. MITIGATION OF TERMINATION COSTS

5.1 Unless otherwise agreed by the parties in writing, during the period between (i) the service of a Termination Notice (including partial termination) of this Agreement and (ii) the Termination Date, the Contractor shall take all reasonable steps, which are necessary and consistent with its continuing obligations, to mitigate any Losses which the Contractor may incur as a result of the termination, including to:

- (a) cancel all capital and recurring cost commitments in connection with the Implementation Plan and/or the provision of Services on the most cost-effective terms;
- (b) terminate all relevant contracts or the relevant parts of relevant contracts with its Sub-contractors in connection with the provision of Services on the most favourable terms as can be achieved in the particular circumstances, having first ascertained from the DCC whether such contracts are required to be transferred to the DCC or any Replacement Contractor instead; and
- (c) reduce labour costs by the redeployment or release of Contractor Personnel other than Key Personnel to the extent possible in the circumstances.

PART B – OBLIGATIONS DURING THE TERM AND SERVICE PERIOD

1. ASSET REGISTER

1.1 The Contractor shall ensure that the Asset Register contains the following information (in addition to the requirements set out in Schedule 4.2 (Technical Infrastructure)):

- (a) a register of all of the Assets, detailing:
 - (i) whether each Asset is capable of being transferred to the DCC and/or any Replacement Contractor following the expiry or termination of this Agreement (each, a "**Transferable Asset**"). For the avoidance of doubt, all Exclusive Assets and all Communications Hubs shall be deemed to be Transferable Assets;
 - (ii) if not, whether each Asset is otherwise capable of being made available by the Contractor for use by the DCC and/or any Replacement Contractor following the expiry or termination of this Agreement (each, an "**Ongoing Access Asset**");
 - (iii) the ownership status of each Transferable Asset and each Ongoing Access Asset;
 - (iv) the value of each Transferable Asset, calculated using the Net Book Value, remaining lease payments or such other valuation method as approved by the DCC in respect of specific Relevant Assets (as defined in paragraph 1.2 of this Part B) and, in any event, in compliance with the Applicable Accounting Standards of the Contractor (the "**Transferable Asset Value**");
- (b) a register of all of the Software (in the format specified in Schedule 5.2 (Software));
- (c) a register of all other Intellectual Property Rights relevant to the performance of the Services (including the Intellectual Property Rights referred to in Schedule 5.1 (Intellectual Property Rights)); and
- (d) a register of all Sub-contracts and other agreements (including software licences, maintenance and support agreements and equipment, rental and lease agreements) required for the performance of the Services.

1.2 In this Schedule 8.5, "**Relevant Assets**" means the Transferable Assets and the Ongoing Access Assets.

1.3 The Contractor shall maintain the Asset Register in the format specified in Schedule 4.2 (Technical Infrastructure) (or such other format as is agreed by the parties from time to time).

1.4 The Contractor shall review and update the Asset Register in accordance with Schedule 4.2 (Technical Infrastructure).

2. OBLIGATIONS REGARDING THE RELEVANT ASSETS

- 2.1 The Contractor shall not, without the DCC's prior written consent, encumber any Relevant Assets (excluding the Communications Hubs) in any way which would:
- (a) require the consent of a third party to the exercise by the DCC of any of its rights under this Schedule 8.5; or
 - (b) otherwise restrict the exercise by the DCC of any of its rights under this Schedule 8.5;

For the purposes of this paragraph 2.1, "**encumber**" shall include any interest or equity of any person (including any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignment, security interest, any other security agreement or arrangement or which otherwise restricts the Contractor's ability to use and deal with the Relevant Asset.

- 2.2 The Contractor shall ensure that all Exclusive Assets listed in the Asset Register are clearly marked to identify that they are exclusively used for the provision of the Services under this Agreement.

3. **OBLIGATIONS REGARDING SUB-CONTRACTS ETC.**

- 3.1 In this Schedule 8.5, "**Relevant Agreements**" means all Sub-contracts and other agreements with third parties (including software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services, including the Sub-contracts and other agreements referred to in Appendix 1 of this Schedule 8.5.

- 3.2 Subject to paragraph 3.5, the Contractor shall (unless otherwise agreed by the DCC in writing) procure that all Relevant Agreements shall be capable of either (at the discretion of the DCC):

- (a) novation to the DCC (and/or its nominee) and/or any Replacement Contractor in accordance with a novation agreement in the form reasonably requested by the DCC; or
- (b) assignment to the DCC (and/or its nominee) and/or any Replacement Contractor in accordance with an assignment agreement in the form reasonably requested by the DCC,

and without (i) any restriction (including any need to obtain the consent or approval of the relevant contract counterparty or any third party) or (ii) the payment of any amount by the DCC and/or any Replacement Contractor (except as expressly set out in Appendix 1 of this Schedule 8.5).

- 3.3 Subject to paragraph 3.5, where the Contractor is unable to procure that any Relevant Agreement which the Contractor proposes to enter into after the Effective Date complies with the requirements of paragraph 3.2, the Contractor shall promptly notify the DCC of this and the parties shall (acting reasonably and without undue delay) discuss the appropriate action to be taken which, where the DCC so directs, may include the Contractor seeking an alternative Relevant Agreement, to be agreed with the DCC.

- 3.4 The Contractor confirms that each of the Relevant Agreements specified in Part A of Appendix 1 of this Schedule 8.5 complies with the requirements of paragraph 3.2.
- 3.5 Paragraphs 3.2 and 3.3 shall not apply to the Relevant Agreements specified in Part B of Appendix 1 of this Schedule 8.5. The Contractor shall comply with its obligations under paragraph 3.9 of Part G of this Schedule 8.5 in respect of such Relevant Agreements.

4. **APPOINTMENT OF EXIT MANAGERS**

- 4.1 Each party will appoint an Exit Manager and provide written notification of such appointment to the other party within thirty (30) days after the Effective Date.
- 4.2 The Contractor's Exit Manager will be responsible for ensuring that the Contractor and the relevant Contractor Persons comply with this Schedule 8.5. The Contractor shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Contractor as are reasonably necessary to enable the Contractor and the relevant Contractor Persons to comply with the requirements set out in this Schedule 8.5.
- 4.3 The Contractor's Exit Manager shall be deemed to be a member of the Key Personnel for the purposes of this Agreement.
- 4.4 The parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of this Agreement and all matters connected with this Schedule 8.5 and each party's compliance with it.
- 4.5 Either party may request a meeting of the Exit Managers by giving the other not less than five (5) days' written notice. Such meeting shall take place within thirty (30) days after the date of such notice at a mutually convenient time and venue. For the avoidance of doubt, this paragraph 4.5 does not limit the ability of the Exit Managers to meet on a day-to-day basis in accordance with paragraph 4.4 as agreed by the parties from time to time.
- 4.6 Where any of the Services are to be transferred to a Replacement Contractor, the DCC shall ensure that:
- (a) as soon as reasonably practicable (including, where practicable, not less than three (3) months before the start of the Termination Assistance Period), the Replacement Contractor appoints a transition manager, and prepares a transition plan, in relation to the transfer of the relevant Services from the Contractor to the Replacement Contractor; and
 - (b) such transition manager attends meetings with the Exit Managers in relation to the transfer of the relevant Services.

PART C – RE-TENDERING OBLIGATIONS

1. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

1.1 The Contractor shall provide the DCC with such information relating to the Services as is reasonably requested by the DCC from time to time in order to facilitate the preparation by the DCC of any invitation to tender for the provision of some or all of the Services and/or to facilitate any potential Replacement Contractor undertaking due diligence in relation to some or all of the Services. Such information may include:

- (a) details of the Services, including such information regarding the manner in which the Services are provided as is reasonably requested by the DCC;
- (b) a general overview of the Contractor Solution;
- (c) details of the Transferable Assets, including:
 - (i) make, model and asset number;
 - (ii) the Transferable Asset Value of each Transferable Asset; and
 - (iii) details of their condition and physical location,but excluding specific details of the Contractor's Smart m2m platform and its infill (mesh) code;
- (d) details of the Ongoing Access Assets, including:
 - (i) make, model and asset number; and
 - (ii) details of their condition and physical location;
- (e) a general description of any other Assets;
- (f) a general overview of the use of the Assets in relation to the Services (including high-level technical specifications);
- (g) details of the Relevant Agreements (including the scope and purpose of such agreements);
- (h) a general description of the DCC Confidential Information and other DCC Data in the Contractor's possession or control;
- (i) details of all technical and operational interfaces between:
 - (i) the Contractor System; and
 - (ii) the Systems of any other DCC Eco-System Entity (including any Other ESP Solution and the DCC Environment);
- (j) a copy of the Asset Register, as updated by the Contractor up to the date of delivery to the DCC under this Part C; and

- (k) summary versions of the Contractor's Staff List and Staffing Information (together with any other information required to be prepared by the Contractor under Schedule 9.1 (TUPE)), excluding any Personal Data.
- 1.2 The Contractor shall comply with any request from the DCC under paragraph 1.1 within a reasonable time (but, in any event, within fifteen (15) Working Days after the date of the request).
- 1.3 The Contractor acknowledges and agrees that the DCC may provide any information requested by the DCC under paragraph 1.1 to any potential Replacement Contractors for the purposes of participating in any tender process contemplated by this Part C (including undertaking due diligence in relation to some or all of the Services). The DCC acknowledges that the rights of the DCC, and the obligations of the Contractor, under this paragraph 1.3 are subject to the DCC complying with its obligations under Clause 50 (Confidentiality), including Clauses 50.3 and 50.9.
- 1.4 The DCC shall be entitled to issue a request under paragraph 1.1 at any time prior to the Termination Date.

PART D – PREPARATION OF THE EXIT PLAN

1. PREPARATION OF THE INITIAL EXIT PLAN

1.1 By no later than eighteen (18) months after the Effective Date, the Contractor shall deliver to the DCC a draft of the Initial Exit Plan which:

- (a) sets out the Contractor's proposed methodology for achieving an orderly transition of the Services from the Contractor to the DCC and/or any Replacement Contractor in the event of the expiry or termination of this Agreement;
- (b) complies with the requirements set out in this Schedule 8.5 (including paragraph 2 of this Part D); and
- (c) contains an appropriate and reasonable level of detail, taking account of the information available to the Contractor (having given the matter reasonable consideration and analysis).

1.2 As at the Effective Date, the parties have identified three potential strategies for the transition of the Services from the Contractor to the DCC and/or any Replacement Contractor in the event of the expiry or termination of this Agreement (each, an "**Exit Strategy**"), being:

- (a) OTA/Subscription Management;
- (b) MVNO; or
- (c) the implementation of a new solution by the Replacement Contractor

(as further described in Appendix 2 to 4 of this Schedule 8.5).

1.3 Within thirty (30) days after receipt of the draft Initial Exit Plan from the Contractor, the DCC shall notify the Contractor if it (acting reasonably) considers that:

- (a) the draft Initial Exit Plan is insufficiently detailed to be properly evaluated (or does not address each of the Exit Strategies in adequate detail);
- (b) the draft Initial Exit Plan does not comply with any of the requirements set out in this Schedule 8.5 (including paragraph 2 of this Part D);
- (c) any of the obligations on the DCC and/or the Replacement Contractor specified by the Contractor in the draft Initial Exit Plan are unreasonable or impractical for any reason (taking account of the relevant resources likely to be available to the DCC and the Replacement Contractor); or
- (d) the draft Initial Exit Plan is otherwise not sufficient to ensure an orderly transition of the Services from the Contractor to the DCC and/or any Replacement Contractor

(each, for the purposes of this paragraph 1, a "**non-conformity**").

- 1.4 By no later than thirty (30) days after receipt of a notice from the DCC under paragraph 1.3 or 1.5, the Contractor shall:
- (a) make any amendments to the Initial Exit Plan that are necessary to address the non-conformities notified by the DCC under paragraph 1.3 or 1.5; and
 - (b) re-submit the revised Initial Exit Plan to the DCC for approval.
- 1.5 Within thirty (30) days after receipt of the revised Initial Exit Plan from the Contractor, the DCC shall, acting reasonably, notify the Contractor of:
- (a) any outstanding non-conformities from the previous draft of the Initial Exit Plan; and/or
 - (b) any new non-conformities appearing in the revised Initial Exit Plan.
- 1.6 The process in this paragraph 1 will then be repeated until the DCC notifies the Contractor that the Initial Exit Plan is approved. Any dispute relating to the existence of non-conformities in the Initial Exit Plan shall be referred to the Dispute Resolution Procedure.
- 1.7 The DCC shall provide any information or assistance reasonably requested by the Contractor in relation to the preparation of the Initial Exit Plan under this paragraph 1 (or any updates under paragraph 3).

2. REQUIRED CONTENT OF THE EXIT PLAN

General requirements

- 2.1 The Exit Plan shall:
- (a) address each of the issues set out in this Schedule 8.5 to facilitate an orderly transition of the Services from the Contractor to the DCC and/or any Replacement Contractor with the aim of ensuring that:
 - (i) there is no disruption in the supply of the Services; or
 - (ii) there is no degradation in the quality of delivery of the Services,

during the Termination Assistance Period;
 - (b) address the matters set out in this paragraph 2 in relation to both:
 - (i) a full termination or expiry of the Services; or
 - (ii) a partial termination of this Agreement in relation to any of the Work Packages;
 - (c) contain a detailed description of any arrangements relating to the phased transfer of Services from the Contractor to the DCC and/or any Replacement Contractor (as further described in paragraph 3.4 of Part A); and

- (d) contain the management structure and communication arrangements to be put in place and employed during the Termination Assistance Period.

Emergency Exit provisions

- 2.2 The Exit Plan shall contain separate mechanisms for dealing with an Ordinary Exit and an Emergency Exit, including:
 - (a) a detailed description of how the management structure and the communication arrangements referred to in paragraph 2.1(d) will be amended in relation to an Ordinary Exit and an Emergency Exit;
 - (b) a detailed description of how any timetable contained in the Exit Plan will be amended in relation to an Ordinary Exit and an Emergency Exit; and
 - (c) a detailed description of any amendments to the activities (including the scope of the Termination Assistance Services), processes and arrangements set out in the Exit Plan in relation to an Ordinary Exit and an Emergency Exit.

Transfer of Services

- 2.3 The Exit Plan shall document how the Services will transfer to the DCC and/or any Replacement Contractor, including:
 - (a) details of the activities to be undertaken by the Contractor, the DCC and/or any Replacement Contractor in relation to the transfer of the Services;
 - (b) a timetable for the transfer of the Services from the Contractor to the DCC and/or any Replacement Contractor;
 - (c) details of the processes, documentation, data transfer, systems migration, security and the segregation of the DCC's technology components from any technology components operated by the Contractor or any Contractor Person (where applicable); and
 - (d) a handover plan for all of the Contractor's responsibilities as set out in the Security Management Plan to be implemented under Schedule 2.5 (Security Management Plan).

Continuation of the Services during the Termination Assistance Period

- 2.4 The Exit Plan shall:
 - (a) set out a detailed description of the continuing provision of the Services during the Termination Assistance Period (which complies with the requirements of Part E); and
 - (b) detail appropriate measures to minimise any disruption in the supply of the Services.

Termination Assistance Services

- 2.5 The Exit Plan shall:
- (a) set out details of the Termination Assistance Services to be provided by the Contractor;
 - (b) specify the estimated Charges that would be payable for the provision of the Termination Assistance Services (calculated in accordance with the charging methodology set out in Schedule 7.1 (Charges and Payment));
 - (c) describe how the Termination Assistance Services will be provided during the Termination Assistance Period; and
 - (d) contain details of the Contractor Personnel and other resources that will be required by the Contractor to provide the Termination Assistance Services.

Handover of Data

- 2.6 The Exit Plan shall contain a detailed description of the process and timetable for the transfer to the DCC and/or any Replacement Contractor of the DCC Data.

Transfer of assets, contracts and personnel

- 2.7 Without limiting the DCC's rights under Part G of this Schedule 8.5, the Exit Plan shall contain a detailed description of the process, timetable and documentation required for:
- (a) the transfer of the Transferable Assets to the DCC and/or any Replacement Contractor;
 - (b) the continued use of the Ongoing Access Assets by the DCC and/or any Replacement Contractor; and
 - (c) the assignment, novation or other transfer of the Relevant Agreements.
- 2.8 The Exit Plan shall set out procedures to deal with requests made by the DCC and/or a Replacement Contractor for the Contractor's Staff List and/or Staffing Information (or any other information required to be prepared by the Contractor under Schedule 9.1 (TUPE)).

Exit Strategies

- 2.9 The Exit Plan shall contain a detailed description of each of the Exit Strategies, including the specific requirements referred to in Appendix 2 to 4 of this Schedule 8.5.

3. UPDATES TO THE INITIAL EXIT PLAN

- 3.1 The Contractor shall review and update the Initial Exit Plan so as to ensure that it accurately reflects the then current Services and the manner in which

they are provided, and otherwise continues to comply with the requirements of this Schedule 8.5:

- (a) on an annual basis by no later than each anniversary of the Effective Date; and
 - (b) within thirty (30) days after the end of any Quarter in which:
 - (i) the commencement of operational use of any Catalogue Service took place or any Catalogue Service ceased to be provided (as the case may be);
 - (ii) any material Change was implemented.
- 3.2 In relation to any updated version of the Initial Exit Plan under paragraph 3.1(a) or 3.1(b), the parties shall comply with the procedure set out in paragraph 1 relating to the approval of the updated version of the Initial Exit Plan by the DCC.

4. **PREPARATION OF THE FINAL EXIT PLAN**

4.1 By no later than twenty (20) Working Days after the date of receipt by the Contractor of any Termination Assistance Notice issued by the DCC under Part F of this Schedule 8.5, the Contractor shall review and update the Initial Exit Plan so as to ensure that it:

- (a) accurately reflects the then current Services and the manner in which they are provided;
- (b) reflects the specific Exit Strategy required by the DCC (as notified to the Contractor by the DCC in writing);
- (c) is consistent with the reasonable transition requirements of the Replacement Contractor (as notified to the Contractor by the DCC);
- (d) otherwise complies with the requirements of this Schedule 8.5; and
- (e) is capable of being immediately implemented,

(the "**Final Exit Plan**") and provide a copy of the draft Final Exit Plan to the DCC. The DCC shall provide the Contractor with an updated version of the Replacement Contractor's transition plan as soon as reasonably practicable.

4.2 The parties shall use all reasonable endeavours to agree the contents of the Final Exit Plan as soon as reasonably practicable. If the parties are unable to agree the contents of the Final Exit Plan within fifteen (15) Working Days after receipt of the draft Final Exit Plan by the DCC under paragraph 4.1, then either party may refer the matter to the Fast Track Dispute Resolution Procedure.

4.3 Until such time as the Final Exit Plan has been agreed in accordance with paragraph 4.2, the Contractor shall provide the Termination Assistance Services in accordance with, and otherwise comply with, the requirements of the then current Initial Exit Plan.

PART E – CONTINUATION OF THE SERVICES

1. OBLIGATION TO CONTINUE TO PROVIDE THE SERVICES

- 1.1 Unless otherwise agreed by the parties, the Contractor shall continue to provide the Services in accordance with this Agreement at all times during the Termination Assistance Period.
- 1.2 Without limiting paragraph 1.1 but subject to paragraph 1.3, the Contractor shall provide the Services to meet or exceed the Performance Measures at all times during the Termination Assistance Period.
- 1.3 Where the Contractor demonstrates to the DCC's reasonable satisfaction that:
- (a) the performance of its obligations under this Schedule 8.5 during the Termination Assistance Period will have a material and unavoidable adverse effect on the Contractor's ability to meet a particular Performance Measure; and
 - (b) such adverse effect is not due to a failure by the Contractor to comply with its obligations under this Schedule 8.5 or any other applicable provisions of this Agreement,
- then the parties shall vary the relevant Performance Measure and/or the applicable Service Credits to take account of such adverse effect.
- 1.4 The Charges payable in relation to the provision of the Services during the Termination Assistance Period shall be determined in accordance with Schedule 7.1 (Charges and Payment).

PART F – TERMINATION ASSISTANCE SERVICES

1. GENERAL

- 1.1 During the Termination Assistance Period, the Contractor shall provide the Termination Assistance Services.
- 1.2 The charges payable for the provision of the Termination Assistance Services shall be calculated in accordance with the charging methodology set out in Schedule 7.1 (Charges and Payment) and shall be specified in the Exit Plan.
- 1.3 In addition to the Termination Assistance Services, the Contractor shall provide any assistance during the Termination Assistance Period that is reasonably requested by the DCC to:
 - (a) ensure that there is no disruption in the supply of the Services during the Termination Assistance Period;
 - (b) ensure that there is no degradation in the quality of delivery of the Services during the Termination Assistance Period; and
 - (c) achieve an orderly transition of the Services from the Contractor to the DCC and/or any Replacement Contractor.
- 1.4 The Contractor shall use all reasonable endeavours to provide the assistance referred to in paragraph 1.3 without additional cost to the DCC. However, if this is not possible, any additional costs incurred by the Contractor in providing such assistance (which are not already in the scope of the Termination Assistance Services or the Exit Plan) will be subject to agreement in accordance with the Change Control Procedure (such agreement not to be unreasonably withheld or delayed by either party).

2. NOTIFICATION OF REQUIREMENTS

- 2.1 The DCC shall be entitled to require the provision of Termination Assistance Services by notice in writing to the Contractor ("**Termination Assistance Notice**") at any time prior to the expiry or termination (including partial termination) of this Agreement. The DCC shall issue any Termination Assistance Notice as soon as reasonably practicable (taking account of the circumstances of the expiry or termination of this Agreement).
- 2.2 The Termination Assistance Notice shall specify:
 - (a) the scope of the Termination Assistance Services required;
 - (b) the date from which Termination Assistance Services are required (which shall be no earlier than thirty-six (36) months prior to the date of expiry or termination of this Agreement); and
 - (c) the period during which it is anticipated that the Termination Assistance Services will be required (which shall be no longer than forty-eight (48) months in total, including any period during which the Termination Assistance Services are provided prior to the date of expiry or termination of this Agreement).

- 2.3 The DCC may, from time to time, extend the Termination Assistance Period beyond the period originally specified in the Termination Assistance Notice, provided that:
- (a) the overall Termination Assistance Period does not extend beyond the period specified in paragraph 2.2(c); and
 - (b) the DCC notifies the Contractor of such requirement no later than twenty (20) Working Days before the date on which the Termination Assistance Period is otherwise due to expire.
- 2.4 As part of the initial preparation and periodic updating of the Exit Plan in accordance with Part D of this Schedule 8.5, the parties shall discuss:
- (a) the likely exit scenarios under this Agreement (including each of the scenarios referred to in paragraph 2.1 of Part A of this Schedule 8.5); and
 - (b) in relation to each such scenario:
 - (i) the duration of the Termination Assistance Period that is likely to be required; and
 - (ii) the manner in which the Termination Assistance Period may be optimally divided between the periods before and after the date of expiry or termination of this Agreement.

Any discussions between the parties under this paragraph 2.4 shall be without prejudice to the DCC's rights under paragraph 2.2 of this Part F (except where an amendment to paragraph 2.2 has been agreed in writing by the parties).

3. **COMPLIANCE WITH EXIT PLAN**

At all times during the Termination Assistance Period, each party shall comply with its obligations under the Exit Plan (and the DCC shall procure that any Replacement Contractor complies with its obligations under the Exit Plan).

4. **SCOPE OF TERMINATION ASSISTANCE SERVICES**

- 4.1 The Termination Assistance Services to be provided by the Contractor shall include such of the following services (insofar as they relate to the Services) as the DCC may specify in the Termination Assistance Notice:
- (a) ceasing all non-critical Software changes (by agreement with the DCC and subject, where applicable, to paragraph 1.3 of Part E of this Schedule 8.5);
 - (b) notifying the Contractor Persons of the procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
 - (c) providing an adequate explanation of the procedures, standards and operations used to provide the Services (where such information is not already detailed in the Operations Manual) to the extent necessary to

enable a competent services provider to provide the Services following the expiry or termination of this Agreement;

- (d) providing reasonable support and assistance to enable the DCC and/or any Replacement Contractor to:
 - (i) understand any operational and/or business processes and procedures used by the Contractor or any other Contractor Person in the provision of the Services and which will need to be replicated by the DCC and/or the Replacement Contractor;
 - (ii) re-write and implement such processes and procedures so that they are appropriate for use by the DCC and/or any Replacement Contractor in providing the Services after the end of the Termination Assistance Period;
- (e) delivering to the DCC the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports relating to the twelve (12) month period immediately before the start of the Termination Assistance Period;
- (f) providing details of work volumes and staffing requirements over the twelve (12) month period immediately before the start of the Termination Assistance Period;
- (g) with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition to the DCC and/or any Replacement Contractor;
- (h) providing the DCC with any problem logs which have not previously been provided to the DCC;
- (i) providing assistance and expertise as necessary to examine all external governance and reporting procedures in place for the provision of the Services and providing reasonable support and assistance to the DCC and/or any Replacement Contractor in re-writing and implementing such procedures so that they are appropriate for use by the DCC and/or any Replacement Contractor in providing the Services after the end of the Termination Assistance Period;
- (j) providing assistance and expertise as necessary to examine all relevant personnel roles and responsibilities in place for the provision of the Services;
- (k) reviewing all software libraries used in connection with the Services and providing details of these to the DCC and/or any Replacement Contractor;
- (l) assisting in establishing naming conventions for the new production site;
- (m) analysing and providing information regarding:

- (i) historical performance data in relation to the Services (including performance against the Performance Measures) in relation to the twelve (12) month period immediately before the start of the Termination Assistance Period;
 - (ii) capacity and performance requirements;
 - (iii) processor requirements and bandwidth requirements; and
 - (iv) known planned requirements for capacity growth in relation to the Services;
- (n) agreeing with the DCC a handover plan for all of the Contractor's responsibilities as set out in the Security Management Plan to be implemented under Schedule 2.5 (Security Management Plan). The Contractor will co-operate fully in the execution of the agreed plan, providing skills and expertise of a suitable standard;
- (o) assisting in the execution of a parallel operation of the Services at the same time as any Replacement Services;
- (p) assisting in the execution of a parallel operation of the maintenance and support of the Contractor System until the end of the Termination Assistance Period or as otherwise specified by the DCC (provided that these Services end on a date no later than the end of the Termination Assistance Period);
- (q) providing existing training materials directly relating to the Services to the DCC and/or any Replacement Contractor;
- (r) providing reasonable support and assistance to the DCC and/or any Replacement Contractor regarding their analysis of the training requirements of the DCC and/or any Replacement Contractor in relation to the provision of the Services following the end of the Termination Assistance Period;
- (s) providing up to two (2) "train the trainer" training events for those personnel of the DCC and/or any Replacement Contractor responsible for internal training in connection with the provision of the Services following the end of the Termination Assistance Period;
- (t) providing for transfer to the DCC and/or any Replacement Contractor of such knowledge as reasonably required by the DCC and/or the Replacement Contractor for the provision of the Services following the end of the Termination Assistance Period;
- (u) answering all reasonable questions from the DCC and/or its Replacement Contractor regarding the Services; and
- (v) agreeing with the DCC and/or the Replacement Contractor a plan for the migration of the DCC Data to the DCC and/or the Replacement Contractor. The Contractor will fully co-operate in the execution of the agreed plan by the DCC and/or the Replacement Contractor, providing skills and expertise of a reasonably acceptable standard.

5. **DISPUTES RELATING TO TERMINATION ASSISTANCE SERVICES**

Where there is any Dispute between the parties regarding the manner in which the Termination Assistance Services are to be performed, such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

PART G – TRANSFER OF ASSETS, CONTRACTS AND PERSONNEL

1. PROVISION OF UPDATED ASSET REGISTER

Within five (5) Working Days after receipt of a Termination Assistance Notice from the DCC, the Contractor shall provide the DCC with an up-to-date copy of the Asset Register.

2. RELEVANT ASSETS

No modifications or disposals by the Contractor

- 2.1 Following the service of a Termination Notice under this Agreement by either party and during the Termination Assistance Period, the Contractor shall not, without the DCC's prior written consent (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Relevant Assets or acquire any new Relevant Assets.

Notification by the DCC

- 2.2 Within thirty (30) days of receipt of the up-to-date Asset Register from the Contractor pursuant to paragraph 1, the DCC shall notify the Contractor:

- (a) which of the Transferable Assets the DCC requires to be transferred to the DCC or any Replacement Contractor; and
- (b) which of the Ongoing Access Assets the DCC requires to be made available by the Contractor for use by the DCC and/or any Replacement Contractor following the expiry or termination of this Agreement.

- 2.3 Where requested by the DCC and/or any Replacement Contractor, the Contractor shall provide all reasonable assistance to the DCC and/or any Replacement Contractor to enable it to determine which Relevant Assets the DCC and/or its Replacement Contractor requires in order to provide the Services after the end of the Termination Assistance Period.

Transfer of Transferable Assets

- 2.4 In respect of any Transferable Assets identified by the DCC under paragraph 2.2, the Contractor shall, with effect from the expiry of the Termination Assistance Period, assign to the DCC (and/or its nominated Replacement Contractor), free from all liens, charges, options, encumbrances and third party rights, title to and all rights and interests in those Transferable Assets.

- 2.5 The Transferable Assets (other than the Communications Hubs) will be acquired:

- (a) at no cost to the DCC or its nominated Replacement Contractor where:
 - (i) such Transferrable Assets are transferred following the expiry of this Agreement; or
 - (ii) a Termination Payment under Schedule 7.2 (Payments on Termination) is payable by the DCC (in which case, payment

for such Transferable Assets shall be deemed to be included within the Termination Payment); and

- (b) otherwise, for a consideration equal to their Net Book Value (which shall be payable by the DCC within thirty (30) days after (i) the expiry of the Termination Assistance Period or (ii) the transfer of the relevant Transferable Assets being completed, whichever is the later).

2.6 The Communications Hubs will be acquired:

- (a) at no cost to the DCC or its nominated Replacement Contractor where the Communications Hubs are transferred following the expiry of this Agreement; or
- (b) otherwise, for a consideration equal to the relevant amount determined in accordance with the Communications Hub Termination Table (as set out in the Financial Model).

2.7 If the Contractor transfers any Transferable Assets under this paragraph 2 to the DCC or any Replacement Contractor which have not been maintained in accordance with Good Industry Practice such that they cannot reasonably be used by the DCC or any Replacement Contractor for the provision of the Services, then the Contractor shall indemnify the DCC against all reasonable costs incurred by the DCC or any Replacement Contractor in repairing or replacing those Transferable Assets.

2.8 Title and risk in any Transferable Assets transferred to the DCC or any Replacement Contractor under this paragraph 2 shall pass to the DCC or the Replacement Contractor (as applicable) upon completion of delivery (except in relation to the Communications Hubs, where title shall pass with effect from the expiry of the Termination Assistance Period and risk shall pass in accordance with Part F of Schedule 11).

Ongoing Access Assets

2.9 The basis on which the Ongoing Access Assets will be made available to the DCC and/or any Replacement Contractor is further described in Appendix 2 to 4 of this Schedule 8.5.

3. RELEVANT AGREEMENTS

No termination or variation by the Contractor

3.1 Following the service of a Termination Notice under this Agreement by either party and during the Termination Assistance Period, the Contractor shall not, without the DCC's prior written consent, terminate or vary any Relevant Agreement that is set out in Part A of Appendix 1.

Notification by the DCC of Transferring Agreements

3.2 Within thirty (30) days of receipt of the up-to-date Asset Register from the Contractor pursuant to paragraph 1, but subject to paragraph 3.3 of Part B, the DCC will notify the Contractor which of the Relevant Agreements set out in Part A of Appendix 1 the DCC requires to be assigned or novated to the DCC or any Replacement Contractor (the "**Transferring Agreements**").

- 3.3 Where requested by the DCC and/or any Replacement Contractor, the Contractor shall provide all reasonable assistance to the DCC and/or any Replacement Contractor to enable it to determine which Relevant Agreements the DCC and/or its Replacement Contractor requires in order to provide the Services after the end of the Termination Assistance Period (including the Relevant Agreements set out in Part B of Appendix 1, in which case, the DCC may exercise its rights under paragraph 3.9 of this Part G).

Transfer of Transferring Agreements

- 3.4 In respect of any Transferring Agreements identified by the DCC under paragraph 3.2, the Contractor shall, with effect from the expiry of the Termination Assistance Period, assign or procure the novation to the DCC or a Replacement Contractor of such Transferring Agreements. The Contractor shall execute such documents and provide such other assistance as the DCC reasonably requires to effect this novation or assignment. Except as otherwise agreed by the parties:
- (a) a novation of a Transferring Agreement shall be on the terms of a novation agreement in the form reasonably requested by the DCC; and
 - (b) an assignment of a Transferring Agreement shall be on the terms of an assignment agreement in the form reasonably requested by the DCC.
- 3.5 The DCC shall:
- (a) accept assignments from the Contractor or join with the Contractor in procuring a novation of each Transferring Agreement (as applicable); and
 - (b) once a Transferring Agreement is novated or assigned to the DCC and/or any Replacement Contractor, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Agreement and exercise its rights arising under that Transferring Agreement, or as applicable, procure that a Replacement Contractor does the same.
- 3.6 The Contractor shall hold any Transferring Agreements on trust for the DCC until such time as the transfer of the Transferring Agreements to the DCC and/or the Replacement Contractor has been effected in accordance with this paragraph 3.
- 3.7 The Contractor shall indemnify the DCC (and/or any Replacement Contractor, as applicable) against each Loss arising out of any Claims made by a counterparty to a Transferring Agreement which has been assigned or novated to the DCC (and/or any Replacement Contractor) under this paragraph 3 in relation to any matters arising prior to the date of assignment or novation of such Transferring Agreement.
- 3.8 The DCC may notify the Contractor of any obligation under any Transferring Agreement which has been assigned or novated to the DCC (and/or any Replacement Contractor) under this paragraph 3 which it or the applicable Replacement Contractor is unable to carry out or perform without the assistance of the Contractor. The Contractor shall provide all reasonable assistance to the DCC or the applicable Replacement Contractor to enable it to

comply with that obligation, provided that any costs directly incurred by the Contractor as a result of such assistance may be recovered in accordance with the Change Control Procedure (such agreement not to be unreasonably withheld or delayed by either party).

Obligations regarding other Relevant Agreements

- 3.9 In respect of each Relevant Agreement set out in Part B of Appendix 1, the Contractor shall (where requested by the DCC) use reasonable endeavours during the Termination Assistance Period to procure that the counterparty to the Relevant Agreement enters into a replacement contract directly with the DCC or the Replacement Contractor on terms that are reasonably consistent with the terms of the Relevant Agreement (including as to price).

4. CONTRACTOR IPR

The parties acknowledge and agree that a perpetual licence of the Contractor Software, the Specially Written Software and the Project Specific IPRs in relation to the period following the expiry or termination of this Agreement is set out in paragraph 2 of Schedule 5.1 (Intellectual Property Rights).

5. CONTRACTOR PERSONNEL

The parties acknowledge and agree that in the event of the Contractor ceasing to provide the Services or part of them for any reason, Schedule 9.1 (TUPE) shall apply.

6. APPORTIONMENTS

- 6.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferable Assets and Transferring Agreements transferred to the DCC and/or any Replacement Contractor pursuant to paragraph 2 or 3 shall be apportioned between the DCC and the Contractor and/or the Replacement Contractor and the Contractor, as applicable.

- 6.2 This apportionment will be carried out as follows:

- (a) the payments will be annualised and divided by three hundred and sixty-five (365) to reach a daily rate;
- (b) the DCC shall be responsible for (or shall procure that the Replacement Contractor shall be responsible for) or entitled to (as the case may be) an amount equal to the number of complete days during the period of the relevant invoice following the transfer pursuant to paragraph 2 or 3, multiplied by the daily rate; and
- (c) the Contractor shall be responsible for or entitled to (as the case may be) the rest of the invoice.

- 6.3 Each party shall pay and/or the DCC shall procure that the Replacement Contractor shall pay any monies due under paragraph 6.2 within thirty (30) days after receipt of an invoice from the relevant party. Any dispute relating to any invoice shall be resolved in accordance with the Dispute Resolution Procedure.

PART H – OBLIGATIONS AFTER THE TERMINATION ASSISTANCE PERIOD

1. PROVISION OF DCC DATA

At the end of the Termination Assistance Period (or earlier if this does not adversely affect the Contractor's performance of the Services and the Termination Assistance Services and its compliance with the other provisions of this Schedule 8.5), the Contractor shall provide the DCC and/or its nominated Replacement Contractor with a complete and uncorrupted version of the DCC Data in accordance with Clause 62.5.3, together with all relevant data schema and data definitions.

2. GENERAL

2.1 Without prejudice to the generality of Clause 50.17 and subject to Clause 50.19, if directed to do so by the DCC at any time in writing and promptly following the Termination Date (and in any event within twelve (12) months of the Termination Date), the Contractor shall:

(a) securely, confidentially and permanently destroy, delete and erase (in accordance with HMG Information Assurance Standard No. 5 or such equivalent standard as the DCC may notify from time to time) all DCC Data (or procure such destruction, deletion and erasure) from any computers, storage devices and storage media that have been used, at any time, by any Contractor Person in relation to the Services and which are not being transferred to the DCC;

(b) securely and confidentially return to the DCC such of the following as is in the Contractor's possession or control:

(i) all copies of the DCC Software and any other software licensed by the DCC to the Contractor under this Agreement;

(ii) all materials created by the Contractor under this Agreement, the IPRs in which are owned by the DCC;

(iii) any parts of the Contractor System and any other equipment, Assets or Hardware which belong to the DCC;

(iv) any items that have been on-charged to the DCC, such as consumables; and

(v) all security credentials; and

(c) vacate any DCC Premises.

2.2 Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the DCC to the Contractor in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

2.3 Each party will return to the other party all Confidential Information of the other party, as required by Clauses 50.17 to 50.19 (inclusive).

3. **DELIVERY OF DOCUMENTS**

At the end of the Termination Assistance Period, the Contractor shall deliver up-to-date copies of the following documents:

- (a) the Asset Register;
- (b) the Operations Manual; and
- (c) any other documents identified in the Exit Plan as being delivered at the end of the Termination Assistance Period.

Appendix 1 – Relevant Agreements



Appendix 2 – OTA/Subscription Management Exit Strategy



Appendix 3 – MVNO Exit Strategy



Appendix 4 – New Solution Exit Strategy



Appendix 5 – Contractor IPR applicable to Exit Strategies

