

Dated

2010

(1) NORTH EAST LINCOLNSHIRE COUNCIL

(2) BALFOUR BEATTY WORKPLACE LIMITED

Exit
Schedule 6

1. **Scope**

1.1 The purpose of this Schedule is to define the arrangements for exit management prior to, and following, the end of the Term.

1.2 The provisions of this Schedule shall operate in the event of:

1.2.1 termination of this Agreement (howsoever arising); or

1.2.2 the expiry of the Term.

1.3 For the avoidance of doubt this Schedule 6 also applies (mutatis mutandis) to the extent relevant to partial termination or termination of any of the Services.

1.4 This Schedule describes the provisions which shall operate to enable the orderly transfer of responsibilities, assets and obligations for the provision of the Services, or part thereof, from the Partner to the Council or to any Future Service Provider.

1.5 For the avoidance of doubt, the Partner shall, unless otherwise expressly stated in the clauses of the Agreement and/or this Schedule, perform its obligations described in this Schedule at no additional cost to the Council.

2. **Principles**

2.1 In performing its obligations under this Schedule 6, the Partner will have regard to and will seek to achieve the following principles:

2.1.1 The Partner will, upon exit, ensure the continuity of the Services upon any transfer of the whole or part of the Services and the orderly transition of the Services from the Partner to the Council or any Future Service Provider.

2.1.2 Where any of the Services are to be transferred to Third Parties nominated by the Council upon exit (including without limitation any Future Service Provider), the Partner agrees to give reasonable assistance to and to interface and cooperate with such Third Parties (and the Council) in all respects and at all times as are nominated by the Council in accordance with **clause 56.5** (Transition and Co-operation) of this Agreement. Such reasonable assistance and interface shall always be subject to the prior execution of a confidentiality agreement on terms substantially the same as those set out in **clause 59** (Confidentiality) of this Agreement.

2.1.3 The Partner agrees to adhere to the principles of exit outlined within this Schedule in respect of the transfer of Projects to the Council or a Future Service Provider in addition to the transfer of Services. Each

FBC should detail the terms of exit in respect of the relevant Project. The Partner shall review, and (if appropriate) update, the Exit Plan in accordance with paragraph 5.1 to incorporate the terms (where relevant) of the relevant FBC upon implementation of a Project.

2.1.4 The Partner shall (at the Partner's own cost) provide the Council and /or potential Future Service Providers with reasonable information to deal with requests for information about the Services during implementation of the Exit Plan.

2.1.5 Given the potential level of complexity arising from the development of Shared Services, where Services are shared, the Partner should clearly identify (in so far as it is able, with the reasonable assistance of the Council where necessary) the shared parts of processes, resources, assets etc that are required for delivery of the Services or Projects. These should be clearly defined and accessible to the Council/Future Service Provider/contractor at the time of exit.

3. **Preparation of Exit Plan**

3.1 The Partner shall perform all of the obligations in relation to exit outlined in **clause 56** (Termination and Expiry Consequences) of this Agreement.

4. **Content of Exit Plan**

4.1 The Partner shall ensure that the Exit Plan, unless otherwise agreed between the parties, incorporates the following as a minimum:

4.1.1 the processes, procedures and plans for migration of the Services and relevant Projects from the Partner to the Council and/or a Future Service Provider on exit (in overview format and broken down by Service Area/Project);

4.1.2 a description of the governance structure (which shall align with Schedule 15 (Programme Framework)) relating to the migration of the Services and relevant Projects (including any organisational structures, roles, responsibilities and reporting arrangements which need to be in place);

4.1.3 an up-to-date list of assets (tangible and intangible) (which shall be in the same format as the Agreement Asset Register), rights, agreements and resources which are integral to the delivery and support of the Services and any other information specified in **clause 56** (Termination and Expiry Consequences) of this Agreement;

- 4.1.4 a description of the hand-over activities which will be required in connection with the migration of the Services and relevant Projects from the Partner to the Council or Future Service Provider and what constitutes a successful hand-over;
- 4.1.5 a description of the process for identification, selection and appointment of an exit management team (the "Exit Team") including suitably experienced representatives of the Partner, the Council and, where appropriate, the Future Service Provider;
- 4.1.6 plans for the disclosure to the Council and/or the Future Service Provider of the documentation listed in accordance with **paragraph 4.1.3** above, and information in the possession or control of the Partner or any sub-contractor necessary to the use and operation of the Services (including, but not limited to, information in relation to any relevant interfaces (software or otherwise)) which are an integral part of the delivery of the Services (which, for the avoidance of doubt, shall not include any operational systems utilised by the Partner to facilitate the provision of the Services) and any information listed in **clause 56** (Termination and Expiry Consequences) of this Agreement;
- 4.1.7 identification and listing (to the extent possible as at the date of compilation or updating of the Exit Plan (as the case may be)) of all agreements (including rental agreements, licences, maintenance and support agreements) utilised by the Partner in connection with the performance of the Services together with details of any sub-contracts or agreements between the Partner and any sub-contractor, relevant lessors and service providers, the charges and payment terms, expiry dates and early termination provisions, assignment and novation rights (and any conditions relating thereto), and whether such agreements relate exclusively to the performance of the Services or otherwise;
- 4.1.8 plans for the transfer of Data then in the Partner's or any sub-contractor's possession or control from the Partner to the Council and/or a Future Service Provider in accordance with the obligations set out in **clause 56.4** (Data and Records) and **clause 57** (Records and Data) of this Agreement;
- 4.1.9 a process for providing up-to-date information on progress against the current Service Development Plan and Project plans on exit;
- 4.1.10 up-to-date information on progress against the current service delivery plan and project plans on exit; and
- 4.1.11 up-to-date process architecture; and

4.1.12 any other matters relating to exit which are reasonably required by the Council.

5. **Maintenance of Exit Plan**

5.1 The Partner shall review, maintain and (if appropriate following any review) update the Exit Plan during the Term in accordance with **clause 56** (Termination and Expiry Consequences) of this Agreement and upon the implementation of a Change or Project which is likely to have an impact on the existing Exit Plan.

5.2 The Partner shall work with the Council to update and agree draft Exit Plans for approval in accordance with **clause 56** (Termination and Expiry Consequences).

5.3 Annual review and update of the Exit Plan in accordance with **clause 56** shall be agreed and approved by Partnership Board.

6. **Exit Plan Implementation**

6.1 The provisions of the Exit Plan will be implemented with effect from the date of receipt of a notice of termination by the Partner or the Council (as appropriate) or (where relevant) with effect from 12 (twelve) calendar months before the expiry of this Agreement.

6.2 Following implementation of the Exit Plan in accordance with paragraph 6.1, the Council and the Partner will jointly establish the Exit Team in accordance with the provisions of the Exit Plan to co-ordinate the migration of the Services and to oversee the implementation of the Exit Plan. Each party will be responsible for ensuring that the correct levels of suitably skilled and experienced resources are made available from its organisation to constitute the Exit Team, such resources being as described in the Exit Plan.

6.3 Subject to the confidentiality provisions in **paragraph 7**, the Council may require personnel from a Future Service Provider to participate in the Exit Team where such participation is required by the Council, acting reasonably, to achieve an orderly hand-over of the Services from the Partner to the Council and/or to such Future Service Provider.

6.4 The Exit Team will agree the management processes and controls to be used in the implementation of the Exit Plan, where these are not already specified in the Exit Plan.

7. **Confidentiality**

7.1 Without prejudice to **clause 59** (Confidentiality), the Council shall procure that, in any process for the re-tendering of the Services, the Future Service Provider and/or each potential Future Service Provider, and any Third Party appointed by the Council in connection with any such process for re-tendering, shall, prior to

any activity being undertaken, enter into a confidentiality agreement with the Council which shall:

- 7.1.1 require the Future Service Provider, potential Future Service Provider or any such Third Party not to use any Confidential Information other than for the purposes of the re-tendering process and/or for the purposes of providing the Replacement Services (as the case may be);
 - 7.1.2 prohibit any disclosure to Third Parties (save where required for the purposes referred to in paragraph 7.1.1);
 - 7.1.3 require the Future Service Provider, potential Future Service Provider or any such Third Party to comply with the Partner's reasonable security requirements; and
 - 7.1.4 allow the Partner to enforce the terms of such confidentiality agreement against the Future Service Provider, potential Future Service Provider and any such Third Party directly to the extent necessary for the Partner to protect its Confidential Information.
- 7.2 Subject to compliance with the provisions of paragraph 7.1, for the purposes of the re-tendering by the Council of the Services, the Partner shall permit any potential Future Service Provider and/or Future Service Provider and/or other Third Party (provided that, in each case, such person has a legitimate interest in the re-tendering exercise) (for the purposes of this paragraph 7, "Interested Parties") reasonable, pre-arranged access to any of the Partner's premises at which the Services are provided and reasonable, pre-arranged access to the employees engaged in performing the Services. The Council shall provide the Partner with reasonable prior notice of all intended visits.

8. **Specific Information in relation to the Services**

- 8.1 The Partner shall provide the Council or, subject to compliance with the provisions of **paragraph 7**, any Future Service Provider with such reasonable financial information that will assist the Council with the retendering process and the Council and any Future Service Provider in the transition process.
- 8.2 The Partner shall provide the Council or any Future Service Provider with reasonable information in relation to commercial aspects of the Partnership, subject to any agreements with Third Parties containing obligations of confidentiality by which the Partner is bound, which information shall include:
 - 8.2.1 Agreement Asset Registers where applicable to the Services;

- 8.2.2 agreements entered into which relate to the Services including, terms, review, novation requirements, any novation charges, expiry/renewal dates; and
 - 8.2.3 information regarding any Third Parties involved with the Services.
- 8.3 Any specific requirements relating to particular Service Areas/Projects shall be agreed between the parties and detailed in the Exit Plan.