

Schedule 19: Disengagement

1. Purpose

Part 1 of this Schedule 19 describes the obligations of the Contractor to ensure that there is, following service by the Transport Agency of a Disengagement Services Notice on the Contractor (pursuant to clause 84.1 (Disengagement Services Notice) of the Base Agreement), an orderly and timely migration of responsibility for providing the Services from the Contractor to any New Contractor or to the Transport Agency with no, or minimal, disruption to the Transport Agency's business or the Project.

2. Disengagement and Core Disengagement Services

2.1 General

The scope, nature and extent of the Disengagement Period and the Core Disengagement Services provided or to be provided by the Contractor, are or will be as specified in this Schedule 19 and in the Disengagement Plan.

2.2 Disengagement Plan

- (a) The Contractor must:
- (i) not less than 18 months prior to the Expiry Date; or
 - (ii) within 10 Business Days of the Transport Agency requesting it to do so while a Contractor Default is subsisting or if a Termination Notice has been given,

prepare and submit to the Transport Agency a draft Disengagement Plan which complies with the requirements for such plan as set out in Schedule 9 (Operative Documents) and this Schedule 19 and which must be Finalised under Schedule 8 (Review Procedures) in accordance with the timeframes specified in Schedule 9.

- (b) If a Disengagement Services Notice is issued before a Disengagement Plan is Finalised, the provisions of this Schedule 19 will provide the basis for the Core Disengagement Services and the obligations the Contractor is required to perform for the purposes of the Core Disengagement Services, to bring about the seamless migration referred to in this Schedule 19.

2.3 Tender or other succession process

The Contractor acknowledges that the Transport Agency may, without prejudice to the terms of the Project Documents and the Financier Direct Deed, on or following the commencement of the Disengagement Period:

- (a) invite any person to tender for the provision of all or any part of the Services (each a **Tenderer**); or
- (b) adopt another process for the appointment of a New Contractor.

2.4 Assistance with the re-tendering or handover process

The Contractor will, following an invitation from the Transport Agency to a Tenderer or other potential New Contractor:

- (a) provide reasonable assistance in the tendering process or other handover process for the relevant Services;
- (b) provide a Tenderer, or other potential New Contractor, within five Business Days of a request by the Transport Agency, with copies of the Handover Package;
- (c) provide all Design Documentation in its then-current form and such additional information in respect of the design and construction of the P2Wk Project as the Transport Agency or any Tenderer or other potential New Contractor may reasonably require;
- (d) provide the Transport Agency and any Tenderer or other potential New Contractor nominated by the Transport Agency with reasonable access to Contractor Personnel, the Disengagement Deliverables and other assets and information relevant to the provision of the Services;
- (e) provide such additional information about the Services as the Transport Agency or any Tenderer or other potential New Contractor may reasonably require;
- (f) provide reasonable assistance with the verification of any information relating to the provision of the Services including the provision of answers to verification questions; and
- (g) use all reasonable endeavours to ensure that:
 - (i) all information, as at the date provided by it, constitutes true, correct and complete copies and is not misleading, whether by omission or otherwise; and
 - (ii) there are not in existence any other agreements to which the Contractor or a Contractor Related Person is a party, or documents of which the Contractor or a Contractor Related Person has knowledge, replacing or relating to any of the information that would materially affect the interpretation or application of the information,

and, to the extent the Contractor has not provided true, correct and complete information, it expressly clarifies with reasons that failure,

provided that the Transport Agency has first procured a confidentiality undertaking from the Tenderer or other potential New Contractor in a form acceptable to the Contractor (acting reasonably).

2.5 Assistance to facilitate seamless migration

- (a) The Contractor will do all things reasonably necessary to facilitate a seamless migration of responsibility for the provision of the Services from the Contractor to the New Contractor or to the Transport Agency during the Disengagement Period, including:
 - (i) providing such training and consultancy services required by the Transport Agency to fully understand the processes, techniques and methodologies employed by the Contractor in its delivery of the Services generally; and
 - (ii) otherwise complying with the provisions of the Disengagement Plan and this Schedule 19,

provided that the Contractor shall not be required to provide the AMM Services as part of the Core Disengagement Services.

- (b) Provided that the Transport Agency has first procured a confidentiality undertaking from the New Contractor in a form acceptable to the Contractor (acting reasonably), the Contractor will or will procure that the Transport Agency and the New Contractor is, for a period of 12 months following the end of the Contract Term, given reasonable access to:
- (i) such information relating to the Services as remains in the possession or control of the Contractor or a Contractor Related Person; and
 - (ii) such Contractor Personnel as have been involved in the design, development, implementation and provision of the Services and who are still employed or retained by the Contractor, with such access to be reasonable in the context of that person's current role and geographic location,

and the Contractor will not do anything which prejudices or frustrates the seamless migration of the responsibility for the provision of the Services from the Contractor to the New Contractor or the Transport Agency.

2.6 Hand Back Requirements

To the extent the Hand Back Requirements have not been met as at the Expiry Date or the Actual Termination Date (as applicable), the Contractor must, as part of the Core Disengagement Services, undertake such actions and works as are required to meet the Hand Back Requirements.

3. Disengagement Period

3.1 Conduct of business

The Contractor will, during the Disengagement Period:

- (a) maintain all Disengagement Deliverables that the Transport Agency may elect to have transferred to it in good operating condition and repair in accordance with the terms of this Agreement and otherwise in accordance with Good Industry Practice;
- (b) not dispose of, lease or allow any Security Interest to subsist over, any Disengagement Deliverable that the Transport Agency may elect to have transferred to it, without the prior written consent of the Transport Agency; and
- (c) continue to comply with all its applicable obligations under the Project Documents.

3.2 Disengagement completion

- (a) All Core Disengagement Services and the completion of the transfer of all Disengagement Deliverables are to be effected on or prior to the relevant dates or the last day of the relevant timeframes, each as agreed in the Disengagement Plan, or as otherwise directed by the Transport Agency (acting reasonably).
- (b) Possession of, and (where appropriate), risk in and title to or responsibility for, the Disengagement Deliverables will be given on or prior to the relevant dates or the last day of the relevant timeframes, each as agreed in the Disengagement Plan, or as otherwise directed by the Transport Agency (acting reasonably) with, to the extent that the Contractor is able (having used reasonable endeavours) to procure the assignment of the same, the benefit of all warranties and guarantees provided by third parties in respect of those Disengagement Deliverables.

- (c) If the Contractor fails to deliver or make available to the Transport Agency a Disengagement Deliverable by the relevant dates or the last day of the relevant timeframes, each as agreed in the Disengagement Plan, or as otherwise directed by the Transport Agency (acting reasonably), the Transport Agency will have the right to enter the Contractor's premises to remove such Disengagement Deliverable, at the Contractor's risk and cost.
- (d) The Contractor warrants that as at the relevant completion date for a Disengagement Deliverable it has full right and entitlement to sell, transfer or novate that Disengagement Deliverable to the Transport Agency (or its nominee) as required by the terms of this Schedule 19.
- (e) Where a Disengagement Deliverable comprises equipment, fittings, furniture, hardware, physical electronic components or other assets of a tangible nature, the Contractor must deliver to the Transport Agency at the end of the Contract Term any documents of title or other documentary evidence of ownership held by the Contractor in respect of those Disengagement Deliverables, together with signed change of ownership forms for the same where applicable.
- (f) As at the completion date for a Disengagement Deliverable, the Contractor must deliver to the Transport Agency releases of all Security Interests over that Disengagement Deliverable.
- (g) The Transport Agency acknowledges that nothing in this Schedule 19 imposes any obligation on the Contractor to deliver or transfer to the Transport Agency:
 - (i) its licence in, or otherwise provide the Transport Agency with any right to use any commercially available third party software used by the Contractor to provide the Services, including any shrink-wrapped Intellectual Property; or
 - (ii) any facilities, plant and/or equipment required on the P2Wk Project Site for the execution of the P2Wk Project, but not forming part of the P2Wk Project.

3.3 Additional obligations of Contractor on disengagement

The Contractor will, in accordance with the Disengagement Plan or as otherwise directed by the Transport Agency:

- (a) deliver all Intellectual Property Materials of the Transport Agency used in connection with the P2Wk Project to the Transport Agency;
- (b) to the extent it is impossible or impracticable to comply with paragraph (a), ensure that all copies of the Intellectual Property Materials of the Transport Agency that are retained by the Contractor or by any Contractor Personnel are securely stored or destroyed (at the direction of the Transport Agency);
- (c) deliver all Intellectual Property Materials that have been developed in relation to the Project during the Contract Term (including any Intellectual Property rights, to the extent that the Transport Agency has such Intellectual Property rights, whether owned or licensed, in accordance with clause 57 (Intellectual Property) of the Base Agreement) to the Transport Agency, including, in the case of Intellectual Property Materials that are software:
 - (i) and are Developed IP, an up to date copy of the source code and object code of the software; and
 - (ii) such software tools, other tools, object libraries, data configuration management tools, detailed designs and other documentation in order to enable the Transport Agency to access, use, reproduce, adopt, modify, create new

versions or derivative works of that software and to otherwise use and deal with that software as owner of the same, whether as owner of Developed IP under clause 57.4 (Developed IP) of the Base Agreement or as owner of a licence of Contractor Background IP under clause 57.6 (Licensing of Contractor Background IP) of the Base Agreement;

- (d) deliver the originals of all reports and records that the Contractor is required to maintain pursuant to the Project Documents to the Transport Agency; and
- (e) effect transfer to the Transport Agency (or its nominee) of all of the data in accordance with the Disengagement Plan, by way of a data migration process that ensures that none of that data is lost or corrupted and that none of the data so transferred remains available to or accessible by the Contractor.

4. Employment Offers

4.1 Offers

The Transport Agency (or its nominee) may, at any time during the Disengagement Period by giving the Contractor at least 20 Business Days' notice in writing, make an offer of employment (an **Employment Offer**) to such of the Contractor Personnel employed in undertaking the Services as it elects in its discretion, on the Transport Agency's (or its nominee's) terms and conditions. Each Employment Offer must be capable of acceptance by the Contractor Personnel to whom it is made at any time with effect from the later of ten Business Days after it is made and the end of the Disengagement Period.

4.2 Consultation and co-operation

- (a) The Contractor and the Transport Agency must each:
 - (i) consult and co-operate with the other during the course of negotiations with Contractor Personnel employed or engaged in undertaking the Services then retained by the Contractor or a Contractor Related Person with respect to whom an Employment Offer has been made; and
 - (ii) use all reasonable endeavours to encourage each of those Contractor Personnel to accept such Employment Offer (provided that, in the case of the Contractor, such terms are no less favourable than the Contractor Personnel's then-current terms), but without any obligation to incur any financial cost or to require any Contractor Related Person to act in a way that may repudiate any employment agreement with its employees or otherwise prejudice the employer/employee relationship.
- (b) The Contractor must release or obtain the release from his or her employment of each of the Contractor Personnel who accepts an Employment Offer, such release to be effective on or prior to the end of the Disengagement Period.

4.3 Other accrued entitlements

Where any Contractor Personnel employed or engaged in undertaking the Services accepts an Employment Offer, his or her entitlements to accrued annual leave, days in lieu not taken, long service leave accrued and other accrued entitlements (based on the then-current rates) will be assumed by the Transport Agency (or its nominee). Where any Contractor Personnel does not accept or receive an Employment Offer, his or her entitlements to accrued annual leave, days in lieu not taken, long service leave accrued and other accrued entitlements then become payable by the Contractor.

5. Further assurances

Each party must, whenever requested by the other party, execute, sign and deliver all documents and do all things reasonably necessary or appropriate to complete the transfer to the Transport Agency of the Disengagement Deliverables or otherwise to give effect to the provisions of this Schedule 19, whether before, during or after the Disengagement Period.