

## **1. Introduction**

- a. This Code of Conduct replaces the Re-transition Code of Conduct of PON dated 1 September 2005, version 0.9.
- b. This Code of Conduct serves as a supplement to the contract example of the PON-Sourcing Contract Working Group and the Code of Conduct for transfer of employees in case of Re-outsourcing for outsourcers and suppliers of October 2013.
- c. This Code of Conduct distinguishes the following interested parties:
  - i. the Outsourcer
  - ii. the Acquiring (receiving) Supplier, and
  - iii. the Leaving Supplier.
- d. Parties concur with the objectives (subclause 2) and principles (subclause 3) of this Code of Conduct.
- e. The glossary is included at the end of this Code of Conduct.

## **2. Objectives of the Re-transition Code of Conduct**

- a. To emphasise the joint interest and responsibilities of the interested parties, all the more because Suppliers are sometimes a Leaving Supplier and other times an Acquiring Supplier.
- b. To create an effective cooperative relationship between the Acquiring Supplier and the Leaving Supplier, in order to optimise a manageable transfer of the responsibility for the provision of service.
- c. To optimise the continuity and availability of the provision of services during and after a re-transition.
- d. To increase the awareness of the risk with regard to governance, IT, financial, HR, and legal risks related to a process of re-transition.

## **3. Principles of the Re-transition Code of Conduct**

### **3.1 The joint interest**

- a. Re-transition applies when (a part of) a (former) service agreement ("Agreement") is terminated and responsibilities for the provision of services are (in full or in part) transferred from the Leaving Supplier to the Acquiring Supplier or the Outsourcer. The preceding also applies when the responsibilities are transferred to several service providers. This makes the following necessary:

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<sup>2</sup> This Code of Conduct is the result of a proposal from the Transition Working Group of PON (i.a. chairman Raymond van Gils (Quint Wellington Redwood), Serge Gijrath (C-Legal) and Lydia van der Laan (KPN Commercial Market) with input from Bart van Reeken (De Brauw Blackstone Westbroek), the chairmen of other PON working groups and the PON board.

1. Consensus between the Outsourcer and the Leaving Supplier about the re-transition activities and responsibilities on the basis of a complete and definitive re-transition plan which contains the transfer of the 'end-to-end' responsibility for provision of services from the Leaving to the Acquiring Supplier.
  2. Agreement between the Outsourcer and the Acquiring Supplier about a complete and definitive transition plan (including transfer and transformation planning) and about a draft re-transition plan (for when the provision of services by the Acquiring Supplier ends).
  3. Connection between the re-transition plan referred to under 1 and the transition plan referred to under 2; preferably in the form of an agreement between the Outsourcer, the Acquiring Supplier and the Leaving Supplier. The re-transition of the Leaving Supplier will be organised in connection with the transition of the Acquiring Supplier within one single project in the course of which there will be consensus between parties about the duration and intended date of transfer (in a form which may be implemented without further detailing, for example in the form of a project plan).
  4. Every Supplier shall keep the re-transition plan (concerning him) (including the accompanying cost specification) up-to-date in consultation with the Outsourcer, at least once per year, or as often as necessary if the provision of service changes.
  5. At the Outsourcer's request the Leaving Supplier shall adjust the required re-transition activities and operationally coordinate this with the Acquiring Supplier.
  6. The Leaving Supplier shall provide the Acquiring Supplier (or the Outsourcer) with the data, information and resources necessary for a smooth transfer. Intellectual property and confidentiality of information will be respected only to the extent this does not prevent a smooth transfer.
  7. Agreement between the Outsourcer and the Leaving Supplier about the period of aftercare and support (on the basis of an obligation to use best endeavours) after completion of the re-transition.
- b. The Leaving Supplier distinguishes between:
- i. all that is necessary for a transfer of the provision of services to the Acquiring Supplier (re-transition) and
  - ii. that which is not necessary for this (for example that which is necessary to wind down or terminate the provision of services to the Outsourcer; the de-commissioning)
- and limits the re-transition plan to that which is necessary for the transfer of the provision of services; for example does not make the de-commissioning activities part of the re-transition plan. If the Leaving Supplier wants a separate contribution from the Outsourcer then the Leaving Supplier will arrange this in the context of terminating the Agreement. This ought not to impact the transfer of the provision of services.

### **3.2 Cooperation**

- a. The Acquiring Supplier and the Leaving Supplier shall strive to cooperate in a pleasant manner with each other and the Outsourcer, in order to ensure a smooth transfer of the responsibilities for the provision of services. Preferably parties will work together by means of consultative bodies in which they will all be represented.
- b. The interested parties shall ensure that no restrictive measures or technology are used in the provision of services which could obstruct a successful transition as re-transition and ensure that data, information and resources can be transferred and used freely between these parties.
- c. In case of a re-transition the Leaving Supplier shall provide an up-to-date re-transition plan, with a complete overview of all data (including meta data), information and resources, within four weeks after a request from the Outsourcer.

- d. Upon commencement of the re-transition (preferably already upon the conclusion of the Agreement) the Outsourcer and the Leaving Supplier shall agree on the value of the resources to be transferred in accordance with the valuation method agreed in the Agreement (for example the book value or market value) and the manner of transfer. In this context parties shall also determine how they will deal with user agreements.
- e. In case of a re-transition the Leaving Supplier will not be obliged to hand over its internal procedures and operating instructions (unless recorded in a contract document, for example in an attachment setting out processes and procedures), internal (monitoring) tools, internal (reporting) systems, etc.
- f. The Acquiring and Leaving Supplier shall each clearly record in their own re-transition plan the stages the re-transition project is made up of, including a detailed budget.
- g. Unless agreed otherwise in the Agreement between the Outsourcer and the Acquiring Supplier or Leaving Supplier, the re-transition activities will be charged for on the basis of "time & material". The Outsourcer and the Acquiring Supplier or Leaving Supplier will in advance determine a "ceiling" for the budget (per stage) to manage the "time & material". For termination due to attributable failure ('for cause'), parties specify a fixed price in the service agreement, or agree that the re-transition costs are not subject to the limitation of liability. Parties shall cooperate to keep the total costs for the re-transition to a minimum.

### **3.3 Control of continuity**

- a. The Leaving and the Acquiring Supplier shall coordinate their transition and re-transition activities with due care, in order to optimally guarantee the continuity of the service provision and the business operations of the Outsourcer.
- b. The Leaving Supplier shall grant the Outsourcer a right use in respect of those items which are its property and which the Outsourcer requires to guarantee the continuity of the provision of service. The payment for this ought not to be higher than that which was (explicitly or implicitly) charged for this during the term of the Agreement.
- c. Parties shall safeguard the continuity of the provision of services and the transfer within the control of the operation (run) as responsible project control. Parties shall agree on the manner in which parties and their officers will mutually cooperate during the transition and re-transition.
- d. During the transition and re-transition the Leaving and the Acquiring Supplier shall comply with the guidelines of the Outsourcer with regard to architecture and safety, just as during the ordinary service provision, unless agreed otherwise.
- e. Neither the Leaving nor the Acquiring Supplier may suspend its cooperation to the conclusion and implementation of the re-transition plan if a dispute occurs.

### **3.4 Risk limitation**

- a. The Leaving and the Acquiring Supplier shall ensure that, if at the commencement of the transition and re-transition a realistic risk framework has been agreed with the Outsourcer, the risk awareness between and within the parties will be maximised.
- b. The Leaving Supplier will bear the ultimate responsibility for the agreed quality (including "service levels") of the (not yet transferred) provision of services until the Outsourcer or the Acquiring Supplier has accepted the transfer of the provision of services. Parties shall make arrangements about the extent to which the quality of the provision of services during the transition and the re-transition can be compromised.
- c. The Leaving Supplier shall keep the employees who are involved in the provision of services (or at least their knowledge and experience) available for the implementation of the re-transition, too.
- d. If the Outsourcer requests an audit to verify whether parties have fulfilled their (mutual) transition and re-transition obligations, the other parties shall cooperate therewith.

#### 4. Glossary

- **The Outsourcer**  
The organisation (contracting party/client) who terminates an Agreement in full or in part and who wishes to have the provision of services executed, in replacement, by a successive service provider (an Acquiring Supplier) or by means of activities under its own management.
- **Leaving Supplier**  
The service provider who, because of the Re-outsourcing or Insourcing, will provide fewer services to the Outsourcer than was previously the case under the Agreement.
- **Acquiring Supplier**  
The service provider who, because of the Re-outsourcing, will provide services to the Outsourcer and will therefore succeed the Leaving Supplier.
- **Re-outsourcing**  
When provision of services to an Outsourcer is taken over by a Supplier (the Acquiring Supplier) from another Supplier (the Leaving Supplier).
- **Insourcing**  
When an Outsourcer terminates the provision of services by a third party (the Leaving Supplier) and replaces this by activities under its own management.
- **Agreement**  
A service agreement between the Outsourcer and the Leaving Supplier.