Schedule 7.2 - Lot 2

Payments on Termination

Version 5.0

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CHANGE HISTORY

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1 Definitions

1.1 In construing this Schedule 7.2 (Payments on Termination), unless otherwise expressly specified in this Schedule terms defined and used in Schedule 1 (Definitions) will have the same meaning in this Schedule.

2 Termination Payment

2.1 The Termination Payment payable pursuant to Clause 34.3(a) (Payments by the Authority) where (subject to Clause 34.12) this Agreement is terminated by the Authority pursuant to Clause 33.1(a) (Termination by the Authority) or by the Supplier pursuant to Clause 33.3(a) (Termination by the Supplier), shall be an amount equal to the aggregate of the Breakage Costs Payment and the Unrecovered Payment.

3 Breakage Costs Payment

3.1 The Supplier may recover through the Breakage Costs Payment only those costs incurred by the Supplier directly as a result of the termination of this Agreement which:

(a) would not have been incurred had this Agreement continued until expiry of the Term;

(b) are unavoidable, proven, reasonable, and not capable of recovery;

(c) are incurred under arrangements or agreements that are directly associated with this Agreement;

(d) are not Contract Breakage Costs relating to contracts or Sub-contracts with Affiliates of the Supplier or any Group or Related Party Supply; and

(e) relate directly to the termination of the Services.

Limitation on Breakage Costs Payment

3.2 Subject always to Clause 34.12, the Breakage Costs Payment shall not exceed the lower of:

(a) the relevant limit set out in Annex 1; and

(b) 120% of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

Redundancy Costs

3.3 The Authority shall not be liable under this Schedule for any costs associated with Supplier Personnel (whether relating to redundancy, redeployment or otherwise) other than the Redundancy Costs.

3.4 Where the Supplier can demonstrate that a member of Supplier Personnel will be made redundant following termination of this Agreement, but redeployment of such person is possible and would offer value for money to the Authority when compared with redundancy, then the Authority shall pay the Supplier the actual direct costs incurred by the Supplier or its

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Sub-contractor arising out of the redeployment of such person (including retraining and relocation costs) subject to a maximum amount of £30,000 per relevant member of the Supplier Personnel.

Contract Breakage Costs

3.5 The Supplier shall be entitled to Contract Breakage Costs only in respect of Third Party Contracts or Sub-contracts which:

(a) are not assigned or novated to a Replacement Supplier at the request of the Authority in accordance with Schedule 8.5 (Exit Management); and

(b) the Supplier can demonstrate:

(i) are surplus to the Supplier's requirements after the Termination Date, whether in relation to use internally within its business or in providing services to any of its other customers; and

(ii) have been entered into by it in the ordinary course of business.

3.6 The Supplier shall seek to negotiate termination of any Third Party Contracts or Sub-contracts with the relevant third party or Sub-contractor (as the case may be) using all reasonable endeavours to minimise the cancellation or termination charges.

3.7 Except with the prior written agreement of the Authority, the Authority shall not be liable for any costs (including cancellation or termination charges) that the Supplier is obliged to pay in respect of:

(a) the termination of any contractual arrangements for occupation of, support of and/or services provided for, Supplier premises which may arise as a consequence of the termination of this Agreement; and/or

(b) Assets not yet installed at the Termination Date.

4 Unrecovered Payment

4.1 Subject always to Clause 34.12, the Unrecovered Payment shall not exceed the lowest of:

(a) the relevant limit set out in Annex 1, such limit to increase by any applicable AC Reconciliation Payment, (save that, when determining the calculation of the AC Reconciliation Payment for the purposes of this Paragraph 4.1(a), any references to the "Expiry Date" in Paragraph 8.1 of Part A of Schedule 7.1 (Charges and Invoicing) shall be deemed to be the "Termination Date");

(b) 120% of the estimate for the Unrecovered Payment set out in any relevant Termination Estimate; and

(c) the Charges that but for the termination of this Agreement would have been payable by the Authority after the Termination Date in accordance with Schedule 7.1 (Charges and Invoicing) as forecast in the Financial Model.

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5 Mitigation Of Contract Breakage Costs, Redundancy Costs And Unrecovered Costs

5.1 The Supplier agrees to use all reasonable endeavours to minimise and mitigate Contract Breakage Costs, Redundancy Costs and Unrecovered Costs by:

(a) the appropriation of Assets, employees and resources for other purposes;

(b) at the Authority's request, assigning any Third Party Contracts and Sub-contracts to the Authority or a third party acting on behalf of the Authority; and

(c) in relation to Third Party Contracts and Sub-contracts that are not to be assigned to the Authority or to another third party, terminating those contracts at the earliest possible date without breach or where contractually permitted.

5.2 If Assets, employees and resources can be used by the Supplier for other purposes, then there shall be an equitable reduction in the Contract Breakage Costs and Unrecovered Costs payable by the Authority or a third party to the Supplier. In the event of any Dispute arising over whether the Supplier can use any Assets, employees and/or resources for other purposes and/or over the amount of the relevant equitable reduction, the Dispute shall be referred to an Expert for determination in accordance with the procedure detailed in Schedule 8.3 (Dispute Resolution Procedure).

6 Compensation Payment

6.1 The Compensation Payment payable pursuant to Clause 34.3(b) (Payments by the Authority) where either of the periods stated in Clause 34.3(b)(i) or Clause 34.3(b)(ii) is less than three hundred and sixty five (365) days, shall (subject to Clause 34.12) be an amount equal to the total forecast Charges over the Shortfall Period (as stated in the Financial Model) multiplied by the profit (calculated using profit before tax percentage forecast over the entire term of the contract, taken from the Financial Model).

6.2 For the purposes of Paragraph 6.1, the **"Shortfall Period"** means:

(a) where the Authority terminates this Agreement pursuant to Clause 33.1(a) (Termination by the Authority), a number of days equal to the number of days by which the notice given (or deemed given pursuant to Paragraph 2.1(a) of Part D of Schedule 7.1 (Charges and Invoicing)) measured from the date the notice is given to the Termination Date falls short of three hundred and sixty five (365) days; or

(b) where the Supplier terminates this Agreement pursuant to Clause 33.3 (Termination by the Supplier), a number of days equal to the number of days by which the period from (and including) the date of the non-payment by the Authority to (and including) the Termination Date falls short of three hundred and sixty five (365) days,

but in each case subject to the limit set out in Paragraph 6.3.

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6.3 Subject always to Clause 34.12, the Compensation Payment shall be no greater than the lower of:

(a) the relevant limit set out in Annex 1; and

(b) 120% of the estimate for the Compensation Payment set out in the relevant Termination Estimate.

7 Full And Final Settlement

Any Termination Payment and/or Compensation Payment paid under this Schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Authority pursuant to Clause 33.1(a) (Termination by the Authority) or termination by the Supplier pursuant to Clause 33.3 (Termination by the Supplier) (as applicable), and the Supplier shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

8 Invoicing For The Payments On Termination

All sums due under this Schedule shall be payable by the Authority to the Supplier in accordance with the payment terms set out in Schedule 7.1 (Charges and Invoicing).

9 Set Off

The Authority shall be entitled to set off any outstanding liabilities of the Supplier against any amounts that are payable by it pursuant to this Schedule.

10 No Double Recovery

10.1 If any amount payable under this Schedule (in whole or in part) relates to or arises from any Transferring Assets then, to the extent that the Authority makes any payments pursuant to Schedule 8.5 (Exit Management) in respect of such Transferring Assets, such payments shall be deducted from the amount payable pursuant to this Schedule.

10.2 The value of the Termination Payment and/or the Compensation Payment shall be reduced or extinguished to the extent that the Supplier has already received the Charges or the financial benefit of any other rights or remedy given under this Agreement so that there is no double counting in calculating the relevant payment.

10.3 Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.

11 Estimate Of Termination Payment And Compensation Payment

11.1 The Authority may issue a Request for Estimate at any time during the Term provided that no more than two (2) Requests for Estimate may be issued in any six (6) month period.

11.2 The Supplier shall within twenty (20) Working Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written estimate of the Termination Payment and the Compensation Payment that would be payable by the Authority

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based on a postulated Termination Date specified in the Request for Estimate (such estimate being the "**Termination Estimate**"). The Termination Estimate shall:

(a) be based on the relevant amounts set out in the Financial Model;

(b) include:

(i) details of the mechanism by which the Termination Payment is calculated;

(ii) full particulars of the estimated Contract Breakage Costs in respect of each Subcontract or Third Party Contract and appropriate supporting documentation; and

(iii) such information as the Authority may reasonably require; and

(c) state the period for which that Termination Estimate remains valid, which shall be not less than twenty (20) Working Days.

11.3 The Supplier acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by the Authority to terminate this Agreement.

11.4 If the Authority issues a Termination Notice to the Supplier within the stated period for which a Termination Estimate remains valid, the Supplier shall use the same mechanism to calculate the Termination Payment as was detailed in the Termination Estimate unless otherwise agreed in writing between the Supplier and the Authority.

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