

SCHEDULE 16 (PAYMENTS ON TERMINATION)

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SCHEDULE 16

PAYMENTS ON TERMINATION

Schedule 16 (*Payments on Termination*)

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

- “Applicable Supplier Personnel”** any Supplier Personnel who:
- (a) at the Termination Date:
 - (i) are employees of the Supplier;
 - (ii) are Dedicated Supplier Personnel;
 - (iii) have not transferred (and are not in scope to transfer at a later date) to the Authority or the Replacement Supplier by virtue of the Employment Regulations; and
 - (b) are dismissed or given notice of dismissal by the Supplier within:
 - (i) forty (40) Working Days of the Termination Date; or
 - (ii) such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and
 - (c) have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and
 - (d) the Supplier can demonstrate to the satisfaction of the Authority:
 - (i) are surplus to the Supplier's requirements after the Termination Date notwithstanding its obligation to provide services to its other customers;
 - (ii) are genuinely being dismissed for reasons of redundancy; and
 - (iii) have been selected for redundancy by the Supplier on objective grounds other than the fact that the Supplier

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is entitled to reimbursement under this provision in respect of such employees;

“Breakage Costs Payment”	an amount equal to the Redundancy Costs and the Contract Breakage Costs as at the Termination Date as determined in accordance with Paragraph 3;
“Contract Breakage Costs”	the amounts payable by the Supplier to its Key Sub-contractors or other third parties (as applicable) for terminating all relevant Key Sub-contracts or Third Party Contracts as a direct result of the early termination of this Contract;
“Dedicated Supplier Personnel”	all Supplier Personnel then assigned to the Services or any part of the Services. If the Supplier is unsure as to whether Supplier Personnel are or should be regarded as so assigned, it shall consult with the Authority whose view shall be determinative provided that the employee has been materially involved in the provision of the Services or any part of the Services; and
“Redundancy Costs”	the total sum of any of the following sums paid to Applicable Supplier Personnel, each amount apportioned between the Supplier and the Authority based on the time spent by such employee on the Services as a proportion of the total Service duration: (a) any statutory redundancy payment; and (a) in respect of an employee who was a Transferring Former Supplier Employee or a Transferring Authority Employee, any contractual redundancy payment (or where such a contractual benefit on redundancy is a benefit payable from a pension scheme, the increase in cost to the Supplier as a net present value compared to the benefit payable on termination of employment without redundancy), provided that such employee was entitled to such contractual redundancy payment immediately prior to his or her transfer to the Supplier under the Employment Regulations.

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2 TERMINATION PAYMENT

- 2.1 The Termination Payment payable pursuant to Clause 33.3 (*Payments by the Authority*) shall be the Breakage Costs 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 Contract which:
- (a) would not have been incurred had this Contract continued until expiry of the Initial Term, or in the event that the Term has been extended, the expiry of the term of such extension;
 - (b) are unavoidable, proven, reasonable, and not capable of recovery;
 - (c) are incurred under arrangements or agreements that are directly associated with this Contract;
 - (d) are not Contract Breakage Costs relating to contracts or Sub-contracts with Affiliates of the Supplier; and
 - (e) relate directly to the termination of the Services.
- 3.2 The Breakage Costs Payment shall not exceed the relevant limit set out in Annex 1.

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 Contract, 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 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 25 (*Exit Management*); and

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- (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 Contract; and/or
- (b) Assets not yet installed at the Termination Date.

4 MITIGATION OF CONTRACT BREAKAGE COSTS AND REDUNDANCY COSTS

4.1 The Supplier agrees to use all reasonable endeavours to minimise and mitigate Contract Breakage Costs and Redundancy 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.

4.2 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 Redundancy 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 Dispute Resolution Procedure.

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5 FULL AND FINAL SETTLEMENT

- 5.1 Any Termination 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 32.1(a) (*Termination by the Authority*) or termination by the Supplier pursuant to Clause 32.3(a) (*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.

6 INVOICING FOR THE PAYMENTS ON TERMINATION

- 6.1 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 15 (*Charges and Invoicing*).

7 SET OFF

- 7.1 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.

8 NO DOUBLE RECOVERY

- 8.1 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 25 (*Exit Management*) in respect of such Transferring Assets, such payments shall be deducted from the amount payable pursuant to this Schedule.
- 8.2 The value of the Termination 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 Contract so that there is no double counting in calculating the relevant payment.
- 8.3 Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.

[REDACTED]

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ANNEX 1: MAXIMUM PAYMENTS ON TERMINATION

The table below sets out, by Contract Year, the maximum amount of the Breakage Costs Payment that the Authority shall be liable to pay to the Supplier pursuant to this Contract:

