



Ministry of
JUSTICE

Hosting

Schedule 7.2: Payments on Termination

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1. PURPOSE OF SCHEDULE

1.1 This schedule 7.2 (Payments on Termination) sets out the calculation of the Termination Payment that may be paid by the Authority to the Hosting Supplier pursuant to clause 60.

1.2 If this Agreement is terminated for any reason other than pursuant to clause 57.4 (Termination for Convenience by the Authority) or clause 57.6 (Termination by the Hosting Supplier) or clause 57.3 (Partial Termination) (other than the Partial Termination circumstances referred to later in this paragraph 1.2) such as, without limitation, any termination by the Authority pursuant to clauses 57.1 (Termination for Cause by the Authority), 57.5 (Termination for Change of Control), 57.3 (Partial Termination) which arises as a result of a Hosting Supplier Default or by the Authority pursuant to clause 57.7 (Termination for Continuing Force Majeure Event), no Termination Payment shall be due to the Hosting Supplier and the following paragraphs of this schedule 7.2 (Payments on Termination) shall not be applicable:

1.2.1 paragraph 3 (Termination Payments);

1.2.2 paragraph 5 (Full and Final Settlement);

1.2.3 paragraph 6 (Mitigation of Breakage Costs);

1.2.4 paragraph 7 (Invoicing for the Payments on Termination);

1.2.5 paragraph 8 (Set Off); and

1.2.6 paragraph 9 (No Double Recovery).

2. CHARGES TO SUPPORT EXIT MANAGEMENT

2.1 The Hosting Supplier shall perform the Termination Services in accordance with any Termination Assistance Notice issued by the Authority pursuant to schedule 8.5 (Exit Management). The Hosting Supplier shall charge for the Termination Services in accordance with schedule 8.5 (Exit Management).

3. TERMINATION PAYMENTS

3.1 In the event that either:

3.1.1 the Authority terminates this Agreement, in whole or part, pursuant to clause 57.3 or 57.4; or

3.1.2 the Hosting Supplier terminates this Agreement pursuant to clause 57.6,

then, subject to paragraph 3.2 below, the Authority shall pay to the Hosting Supplier the Termination Payment, as calculated in accordance with the provisions set out in this paragraph 3. No other termination or compensation payments (including Compensation Payments) shall be payable in relation to termination or expiry of this Agreement. The parties acknowledge that this Agreement is intended to facilitate a planned phased cessation of the Hosting Services over the Term of the Agreement as more particularly described in Schedule 8.5 (Exit

Management) and therefore the parties agree that no Compensation Payment shall be payable by the Authority to the Hosting Supplier under this Agreement whether this Agreement is terminated in whole or in part pursuant to clause 57.3 or 57.4, the Hosting Supplier terminates this Agreement pursuant to clause 57.6, or the Hosting Services are otherwise ceased as may be agreed between the parties.

- 3.2 If the Authority exercises its right to terminate part of this Agreement pursuant to clause 57.3 (Partial Termination) and provides at least one (1) month's written notice of such Partial Termination to the Hosting Supplier, the Authority shall pay to the Hosting Supplier the Termination Payment, as calculated in accordance with the provisions set out in this paragraph 3, save that the Authority shall not make payment of the Hosting Supplier's own redundancy costs or any of the Hosting Supplier's Key Sub-contractor(s) own redundancy costs, and such redundancy costs shall be the sole responsibility of the Hosting Supplier, unless TUPE applies in which case the provisions in schedule 9.1 (Staff Transfers) shall apply. No other termination or compensation payments (including Compensation Payments) shall be payable in relation to termination of part of this Agreement pursuant to clause 57.3 where the Authority provides at least one (1) months' written notice of such Partial Termination to the Hosting Supplier.
- 3.3 Not used.
- 3.4 Not Used.

Termination Payment

- 3.5 Subject to the limit set out in clause 54.4.2 (Limitations on Liability), Breakage Costs may be payable by the Authority for losses reasonably and properly incurred by the Hosting Supplier as a direct consequence of either termination of this Agreement by the Authority pursuant to clause 57.4 or termination by the Hosting Supplier pursuant to clause 57.6, in respect of costs incurred by the Hosting Supplier under any Sub-contracts in respect of Hosting Services or goods provided under this Agreement which cannot be cancelled without losses being incurred where the following conditions apply:
- 3.5.1 the Hosting Supplier and any relevant Sub-contractor have each used reasonable endeavours to mitigate the losses;
 - 3.5.2 full disclosure of information to support the loss is provided; and
 - 3.5.3 no element of overhead recovery or profit is added to the loss.
- 3.6 Regardless of the notice period given for a termination for convenience, or whether this Agreement is terminated by the Hosting Supplier pursuant to clause 57.6, the Hosting Supplier may submit a termination charge specifically where any unrecoverable expenditure has been incurred in relation to on-going projects (including the deployment of project assets) that will not now Achieve any Milestone under this Agreement due directly to the termination.
- 3.7 The Termination Payment shall include payment in relation to the Assets to the extent and calculated in accordance with paragraph 4, although this sum shall be subject always to paragraphs 6 to 9.

3.8 In the absence of any termination of this Agreement, in the final 12 months of the Term the value of any Termination Payment shall be reduced proportionately to reflect the period of time remaining until expiry.

3.9 Not Used.

4. CHARGES FOR ASSETS AT EXPIRY OR TERMINATION

4.1 This paragraph 4 shall apply where the Authority has notified the Hosting Supplier which Assets the Authority requires to be transferred to the Authority and/or its Replacement Hosting Supplier(s) in accordance with schedule 8.5 (Exit Management).

4.2 The Termination Payment in relation to the Exclusive Assets shall consist of the capital costs incurred by the Hosting Supplier in relation to such Exclusive Assets as forecast in the Hosting Supplier's Financial Model (or, if lower, the actual capital costs incurred) to the extent that such costs would, in accordance with the Hosting Supplier's Financial Model and schedule 7.5 (Financial Model), be recovered through the Charges up to the end of the Term reduced by the greater of:

4.2.1 the amount of such costs which have actually been recovered through the Charges prior to the date of termination specified in the Termination Notice; and

4.2.2 the amount of such costs which ought, in accordance with the rules in the Hosting Supplier's Financial Model and schedule 7.5 (Financial Model), to be recovered through the Charges prior to the date of termination specified in the Termination Notice.

4.3 Without limitation to paragraph 7.4 of schedule 8.5 (Exit Management), the Authority shall not be liable for any Termination Payments for Non-Exclusive Assets.

4.4 For the avoidance of doubt, the Termination Payment as it relate to Assets shall not include overheads or profit components.

4.5 Notwithstanding anything to the contrary in this paragraph 4, the Termination Payment as it relates to Assets that were Transferring In Assets shall be £0.01.

5. FULL AND FINAL SETTLEMENT

5.1 Subject to paragraph 5.2, any Termination Payment paid in accordance with this schedule 7.2 (Payments on Termination) shall be in full and final settlement of any claim, demand and/or proceedings of the Hosting Supplier in relation to any termination by the Authority pursuant to clause 57.4 or termination by the Hosting Supplier pursuant to clause 57.6, and the Hosting Supplier shall be excluded from all other rights and remedies it would otherwise have been in respect of any such termination.

5.2 Termination of this Agreement shall not affect or prejudice any claim or demand that either party may have against the other under or in connection with the Agreement arising before the

date of termination that is not in respect of any such termination, including claims for recovery of Charges properly due for payment.

6. MITIGATION OF BREAKAGE COSTS

6.1 The Hosting Supplier agrees to take all reasonable steps to minimise and mitigate Breakage Costs by:

6.1.1 the appropriation of Assets, employees and resources for other purposes. If such Assets, employees and resources can be used for other purposes then there shall be an equitable reduction in the Breakage Costs payable by the Authority or a third party to the Hosting Supplier; and

6.1.2 in relation to contracts entered into with third parties, termination by the Hosting Supplier of those contracts at the earliest possible date without breach or where contractually permitted, and, where required by the Authority, assigning such contracts to the Authority or a third party acting on behalf of the Authority.

7. INVOICING FOR THE PAYMENTS ON TERMINATION

All sums due under this schedule 7.2 (Payments on Termination) shall be payable by the Authority to the Hosting Supplier in accordance with the terms set out in schedule 7.1 (Charging and Invoicing).

8. SET OFF

For the avoidance of doubt, the Authority shall be entitled to set off any outstanding liabilities of the Hosting Supplier against any amount it pays in Termination Payments pursuant to this schedule 7.2 (Payments on Termination) and in accordance with its rights set out in this Agreement.

9. NO DOUBLE RECOVERY

9.1 If any payment pursuant to this schedule 7.2 (Payments on Termination) relates to or arises in relation from (in whole or in part) any Transferring Out Asset then to the extent that the Authority makes any payments pursuant to schedule 8.5 (Exit Management) in respect of such Transferring Out Assets then such amounts shall be deducted from the amount of compensation payable pursuant to this schedule 7.2 (Payments on Termination).

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

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

End of schedule