

**SCHEDULE 7.4
TERMINATION PAYMENTS**

LOT 1

VERSION CONTROL

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SCHEDULE 7.4 – PAYMENTS ON TERMINATION

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

Breakage Costs Payment	an amount equal to 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 Agreement; as at the Termination Date as determined in accordance with and subject to Paragraph 3;
Request for Estimate	a written request sent by TfL to the Supplier, requiring that the Supplier provide it with an accurate estimate of the Termination Payment that would be payable if TfL exercised its right under Clause 32.2.2(b) or 32.1.3 to terminate this Agreement in part or in whole for convenience on a specified Termination Date;
Termination Estimate	has the meaning given in Paragraph 10.2;
Third Party Contract	a contract with a third party entered into by the Supplier exclusively for the purpose of delivering the Services, as listed in Annex 2 (<i>Third Party Contracts</i>);
Unrecovered Costs	the Costs incurred by the Supplier in the performance of this Agreement prior to the Termination Date to the extent that the same remain at the Termination Date to be recovered through Charges that but for the termination of this Agreement would have been payable by TfL after the Termination Date in accordance with Schedule 7.1 (<i>Charges and Invoicing</i>), but excluding Costs of the nature referred to in paragraph 3.5;
Unrecovered Payment	an amount equal to the lower of: (a) the sum of the Unrecovered Costs; and

(b) the amount specified in Paragraph 4.

2 TERMINATION PAYMENT

The Termination Payment payable pursuant to Clause 32.2.2(b) or 33.3.2 shall be an amount equal to the aggregate of the Breakage Costs Payment and the Unrecovered Payment. In no circumstances shall the Supplier be entitled to recover any loss of profit under the Termination 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 Initial Term, or in the event that the Term has been extended, the expiry of the Extension Period;
- (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 costs relating to contracts or Sub-contracts with Affiliates of the Supplier; and
- (e) relate directly to the termination of the Services.

Limitation on Breakage Costs Payment

3.2 The Breakage Costs Payment shall:

- (a) not exceed the lower of:
 - (i) the relevant limit set out in Annex 1; and
 - (ii) 110% of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate;

- (b) be subject to the following additional limitations:
 - (i) the Supplier shall be entitled to recover costs under the Breakage Cost Payment only in respect of Third Party Contracts or Sub-contracts which:
 - (A) are not assigned or novated to TfL or a Replacement Supplier at the request of TfL in accordance with Schedule 8.5 (Exit Management); and
 - (B) the Supplier can demonstrate:
 - 1) 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
 - 2) have been entered into by it in the ordinary course of business.

3.3 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.

3.4 Except with the prior written agreement of TfL, TfL 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) Supplier Assets not yet installed at the Termination Date.

No Staff/ Redundancy Costs

3.5 TfL shall not be liable under this Schedule for any costs associated with Supplier Personnel (whether relating to redundancy, redeployment or otherwise) and any costs relating to Supplier Personnel are excluded from the Termination Payment.

4 UNRECOVERED PAYMENT

The Unrecovered Payment shall not exceed the lowest of:

- (a) the relevant limit set out in Annex 1;
- (b) 110% 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 TfL after the Termination Date in accordance with Schedule 7.1 (Charges and Invoicing).

5 MITIGATION OF COSTS

5.1 The Supplier agrees to use all reasonable endeavours to minimise and mitigate costs which may be subject to any Breakage Costs Payment and Unrecovered Costs including by:

- (a) the appropriation of Supplier Assets (save as agreed otherwise by TfL pursuant to Schedule 8.5 (Exit Management)), employees and resources for other purposes;
- (b) at TfL's request, assigning any Third Party Contracts and Sub-contracts to TfL or a third party acting on behalf of TfL; and
- (c) in relation Third Party Contracts and Sub-contract that are not to be assigned to TfL or to another third party, terminating those contracts at the earliest possible date without breach or where contractually permitted.

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

6 FULL AND FINAL SETTLEMENT

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 TfL pursuant to Clause 32.2.2(b) or Clause 32.1.3, 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.

7 INVOICING FOR THE PAYMENTS ON TERMINATION

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

8 SET OFF

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

9 NO DOUBLE RECOVERY

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

9.2 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 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 Assets, Transferring Contracts or Transferring Asset Agreements shall be calculated in accordance with the provisions of Schedule 8.5 (*Exit Management*) and the Exit Plan.

10 ESTIMATE OF TERMINATION PAYMENT

10.1 TfL may issue a Request for Estimate at any time during the Term provided that no more than 2 Requests for Estimate may be issued in any 6 month period.

- 10.2 The Supplier shall within 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 that would be payable by TfL based on a postulated Termination Date specified in the Request for Estimate (such estimate being the "**Termination Estimate**"). The Termination Estimate shall:
- (a) 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 Sub-contract or Third Party Contract and appropriate supporting documentation; and
 - (iii) such information as TfL may reasonably require; and
 - (b) state the period for which that Termination Estimate remains valid, which shall be not less than 20 Working Days.
- 10.3 The Supplier acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by TfL to terminate this Agreement.
- 10.4 If TfL 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 TfL.

ANNEX 1 – MAXIMUM PAYMENTS ON TERMINATION

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

Termination Date	Maximum Unrecovered Payment				Maximum Breakage Costs Payment			
	AWS	Payment Gateway	Software licenses	Total	AWS	Payment Gateway	Software licenses	Total
Anytime in the first Contract Year	£ 482,733	£ -	£ 101,558	£ 584,291	£ 482,733	£ -	£ 101,558	£584,291
Anytime in the second Contract Year	£ 435,344	£ -	£ 91,958	£ 527,303	£ 435,344	£ -	£ 91,958	£527,303
Anytime in the third Contract Year	£ 197,157	£ -	£ 94,874	£ 292,031	£ 197,157	£ -	£ 94,874	£292,031
Anytime in the fourth Contract Year	£ 363,439	£ -	£ 94,957	£ 458,396	£ 363,439	£ -	£ 94,957	£458,396
Anytime in the fifth Contract Year	£ 212,957	£ -	£ 95,044	£ 308,001	£ 212,957	£ -	£ 95,044	£308,001
Anytime in the sixth Contract Year	£ 92,883	£ -	£ 95,133	£ 188,016	£ 92,883	£ -	£ 95,133	£188,016
Anytime in the seventh Contract Year	£ 363,221	£ -	£ 95,225	£ 458,446	£ 363,221	£ -	£ 95,225	£458,446
Anytime in the eighth Contract Year	£ 215,181	£ -	£ 95,320	£ 310,502	£ 215,181	£ -	£ 95,320	£310,502

Anytime in the ninth Contract Year	£ 92,796	£ -	£ 95,419	£ 188,215	£ 92,796	£ -	£ 95,419	£188,215
Anytime in the tenth Contract Year	£ 365,561	£ -	£ 95,521	£ 461,081	£ 365,561	£ -	£ 95,521	£461,081
Anytime in the eleventh Contract Year	£ 215,210	£ -	£ 95,626	£ 310,836	£ 215,210	£ -	£ 95,626	£310,836
Anytime in the twelfth Contract Year	£ 95,251	£ -	£ 95,735	£ 190,986	£ 95,251	£ -	£ 95,735	£190,986
Anytime in the thirteenth Contract Year	£ 365,703	£ -	£ 95,848	£ 461,550	£ 365,703	£ -	£ 95,848	£461,550
Anytime in the fourteenth Contract Year	£ 217,792	£ -	£ 95,964	£ 313,757	£ 217,792	£ -	£ 95,964	£313,757
Anytime in the fifteenth Contract Year	£ 95,551	£ -	£ 96,084	£ 191,635	£ 95,551	£ -	£ 96,084	£191,635

ANNEX 2 – THIRD PARTY CONTRACTS

- 1) Amazon Web Service - for IaaS, PaaS, and SaaS services
- 2) Global Payments – for payment gateway solution