## Schedule 7.2 - Payments on Termination

1 **Definitions**

1.1 In this Schedule, the following definitions shall apply:

| | |
|---|---|
| **Applicable Supplier Personnel** | any Supplier Personnel who:<br>(a) at the Termination Date:<br>(i) are employees of the Supplier;<br>(ii) are Dedicated Supplier Personnel; and<br>(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<br>(b) are dismissed or given notice of dismissal by the Supplier within:<br>(i) 40 Working Days of the Termination Date; or<br>(ii) such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and<br>(c) have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and<br>(d) the Supplier can demonstrate to the satisfaction of the Authority:<br>(i) are surplus to the Supplier's requirements after the Termination Date notwithstanding its obligation to provide services to its other customers;<br>(ii) are genuinely being dismissed for reasons of redundancy; and<br>(iii) have been selected for redundancy by the Supplier on objective grounds other than the fact that the Supplier 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; |
| **Compensation Payment** | the payment calculated in accordance with Paragraph 6; |
| **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 Agreement; |

| | |
|---|---|
| **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; |
| **Maximum Breakage Costs Payment** | the maximum amount of Breakage Costs Payment that the Authority shall be liable to pay to the Supplier as set out in Annex 1 of this Schedule 7.2; |
| **Maximum Compensation Payment** | the maximum amount of Compensation Payment that the Authority shall be liable to pay to the Supplier as set out in Annex 1 of this Schedule 7.2; |
| **Maximum Unrecovered Costs Payment** | the maximum amount of Unrecovered Costs Payment that the Authority shall be liable to pay to the Supplier as set out in Annex 1 of this Schedule 7.2; |
| **Profit Already Paid** | the Supplier Profit paid or payable to the Supplier under this Agreement for the period from the Effective Date up to (and including) the Termination Date; |
| **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:<br>(a) any statutory redundancy payment;<br>(b) 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; and<br>(c) any payment made in satisfaction of any Early Retirement Right to which the relevant employee was entitled under his or her terms and conditions of employment on the Reference Date; |
| **Request for Estimate** | a written request sent by the Authority to the Supplier, requiring that the Supplier provide it with an accurate estimate of the Termination Payment and Compensation Payment that would be payable if the Authority exercised its right under Clause 35.1 (Termination by the Authority) to terminate this |

| | |
|---|---|
| | Agreement for convenience on a specified Termination Date; |
| **Shortfall Period** | has the meaning given in Paragraph 6.2; |
| **Termination Estimate** | has the meaning given in Paragraph 11.2; |
| **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 Schedule 4.4 (Third Party Contracts); |
| **Total Costs Incurred** | the Costs incurred by the Supplier up to the Termination Date in the performance of this Agreement as detailed in the Financial Model (but excluding Contract Breakage Costs, Redundancy Costs and any costs the Supplier would not otherwise be able to recover through the Charges) less any Deductions up to (and including) the Termination Date; |
| **Unrecovered Costs** | the Costs incurred by the Supplier in the performance of this Agreement (as summarised in the Financial Model) 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 the Authority after the Termination Date in accordance with Schedule 7.1 (Charges and Invoicing) as such Costs and Charges are forecast in the Financial Model; |
| **Unrecovered Costs Payment** | an amount equal to the lower of:<br>(a) the sum of the Unrecovered Costs and the Unrecovered Profit; and<br>(b) the amount specified in Paragraph 4; and |
| **Unrecovered Profit** | = (Total Costs Incurred x Anticipated Contract Life Profit Margin) - Profit Already Paid remaining unpaid at the Termination Date. |

2 **Termination Payment**

The Termination Payment payable pursuant to Clause 36.3 (Payments by the Authority) shall be an amount equal to the aggregate of the Breakage Costs Payment and the Unrecovered 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 Agreement which:

3.1.1 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 First Extension Period or Second Extension Period as applicable;

3.1.2 are unavoidable, proven, reasonable, and not capable of recovery;

3.1.3 are incurred under arrangements or agreements that are directly associated with this Agreement;

3.1.4 are not Contract Breakage Costs relating to contracts or Sub-contracts with Affiliates of the Supplier; and

3.1.5 relate directly to the termination of the Services.

**Limitation on Breakage Costs Payment**

3.2 The Breakage Costs Payment shall not exceed the lower of:

3.2.1 the Maximum Breakage Costs Payment; and

3.2.2 [REDACTED] 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 (for the avoidance of doubt, the Parties agree that redeployment of the employee would not be possible where the Supplier does not have a contractual right to redeploy the employee and, despite reasonable efforts by the Supplier to obtain consent to the redeployment, the employee does not provide such consent) 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 REDACTED 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:

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

3.5.2 the Supplier can demonstrate:

(a) 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

(b) 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:

3.7.1 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

3.7.2 Assets not yet installed at the Termination Date.

## 4 Unrecovered Costs Payment

4.1 The Unrecovered Costs Payment shall not exceed the lowest of:

4.1.1 the Maximum Unrecovered Costs Payment;

4.1.2 [REDACTED] of the estimate for the Unrecovered Costs Payment set out in any relevant Termination Estimate; and

4.1.3 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.

## 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:

5.1.1 the appropriation of Assets, employees and resources for other purposes;

5.1.2 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

5.1.3 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 Sub-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, Redundancy 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 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 36.3.2 (Payments by the Authority) shall be an amount equal to the total forecast Charges over the Shortfall Period (as stated in the Financial Model) multiplied by the Anticipated Contract Life Profit Margin.

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

6.2.1 where the Authority terminates this Agreement pursuant to Clause 35.1 (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 2.3 of Part D of Schedule 7.1 (Charges and Invoicing)) falls short of 365 days; or

6.2.2 where the Supplier terminates this Agreement pursuant to Clause 35.3 (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 365 days,

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

6.3 The Compensation Payment shall be no greater than the lower of:

6.3.1 the Maximum Compensation Payment; and

6.3.2 [REDACTED] 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 35.1 (Termination by the Authority) or termination by the Supplier pursuant to Clause 35.3 (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 Detailed Solution.

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 2 Requests for Estimate may be issued in any 6 month period.

11.2 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 and the Compensation Payment that would be payable by the Authority based on a postulated Termination Date specified in the Request for Estimate (such estimate being the **Termination Estimate**). The Termination Estimate shall:

11.2.1 be based on the relevant amounts set out in the Financial Model, and include:

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

(b) full particulars of the estimated Contract Breakage Costs in respect of each Sub-contract or Third Party Contract and appropriate supporting documentation; and

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

11.2.2 state the period for which that Termination Estimate remains valid, which shall be not less than 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.

12 **Confirming the Maximum Breakage Costs Payment, Maximum Compensation Payment and Maximum Unrecovered Costs Payment following the Effective Date**

12.1 The maximum breakage costs payment, maximum compensation payment and maximum unrecovered costs payment figures submitted by the Supplier as part of the Supplier's Final Bid Submission (**Maximum Termination Payment Bid Figures**) shall be subject to Approval by the Authority in accordance with Schedule 12 (Approval).

12.2 Within 1 week of the Effective Date, the Supplier shall provide to the Authority a Proposal under Schedule 12 (Approval) setting out the Maximum Termination Payment Bid Figures.

12.3 The Authority shall within 4 weeks of receipt of the Supplier's Proposal under Paragraph 12.2 of this Schedule 7.2, Approve or reject in whole or in part the Proposal pursuant to Schedule 12 (Approval).

12.4 To the extent that the Authority gives Approval to the Proposal, Annex 1 shall be populated to incorporate the Maximum Termination Payment Bid Figures which shall then become the Maximum Breakage Costs Payment, Maximum Compensation Payment and Maximum Unrecovered Costs Payment (as applicable).

12.5 To the extent that the Authority rejects the Proposal, the Authority shall be entitled to propose alternative maximum breakage costs payment, maximum compensation payment and/or maximum unrecovered costs payment figures for agreement by the Supplier.

12.6 If the Maximum Breakage Costs Payment, Maximum Compensation Payment and/or Maximum Unrecovered Costs Payment cannot be confirmed in accordance with this Paragraph 12 within 8 weeks of the Effective Date, the Dispute in respect of the Maximum Breakage Costs Payment, Maximum Compensation Payment and/or Maximum Unrecovered Costs Payment shall be settled in accordance with the Dispute Resolution Procedure.

**Annex 1 - Maximum Payments of Termination**

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

| **Termination Date** | **Maximum Unrecovered Costs Payment** | **Maximum Breakage Costs Payment** | **Maximum Compensation Payment** |
|---|---|---|---|
| Anytime in the first Contract Year | [REDACTED] | | |
| Anytime in the second Contract Year | | | |
| Anytime in Contract Years 3 onwards | | | |