

TRADER SUPPORT SERVICES


SCHEDULE 7.2

PAYMENTS ON TERMINATION

Payments on Termination

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Anticipated Life Mark Up”	Contract	
“Compensation Payment”		the payment calculated in accordance with Paragraph 6;
“Contract Costs”	Breakage	the amounts payable by the Supplier to its Sub-contractors or other third parties (as applicable) in connection with the termination of all relevant Key Sub-contracts or Third Party Contracts as a direct result of the early termination of this Agreement;
“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;
“Supplier Profit”		means the Service Charges multiplied by the Supplier Gross Margin, paid or payable by the Authority to the Supplier under this Agreement for the period from the Effective Date up to (and including) the Termination Date;
“Request for Estimate”		a written request sent by the Authority to the Supplier, requiring that the Supplier provide it with an accurate Termination Estimate;
“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 (<i>Third Party Contracts</i>);
“Total Costs Incurred”		the Costs properly incurred by the Supplier up to and including the Termination Date in the performance of this Agreement (but excluding Contract Breakage 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;

“Deductions”

all Service Credits, Compensation for Unacceptable KPI Failure, Delay Payments or any other deductions which have accrued in accordance with this Agreement and are, at the Termination Date, due to the Authority and have not otherwise been accounted for (including as a result of credits or adjustments to invoices);

“Unrecovered Costs”

the Costs properly incurred by the Supplier in the performance of this Agreement 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*);

“Unrecovered Payment”

an amount equal to the lower of:

- (a) the sum of the Unrecovered Costs and (unless the Unrecovered Profit is a negative number) the Unrecovered Profit; and
- (b) the amount specified in Paragraph 4; and

“Unrecovered Profit”

(Total Costs Incurred x Anticipated Contract Life Mark Up (%) – Profit Already Paid + Milestone Retentions remaining unpaid at the Termination Date.

2 TERMINATION PAYMENT

- 2.1 The Termination Payment payable pursuant to Clause 34.3(a) (*Payments by the Authority*) shall be an amount equal to the aggregate of the Contract Breakage Costs and the Unrecovered Payment.

3 CONTRACT BREAKAGE COSTS

- 3.1 The Supplier may recover through the Contract Breakage Costs only those costs incurred by the Supplier directly as a result of the termination (including partial 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; and
- (d) are not Contract Breakage Costs relating to contracts or Sub-contracts with Affiliates of the Supplier.

Limitation on Contract Breakage Costs

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

- (a) the relevant limit set out in Annex 1 (any such limit to apply as described Annex 1); and
- (b) ■% of the estimate for the Contract Breakage Costs set out in any relevant Termination Estimate.

3.3 Not used.

3.4 Not used.

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 (which, for the avoidance of doubt, shall not involve the Supplier prejudicing its own commercial interests) 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

The Unrecovered Payment shall not exceed the lowest of:

- (a) the relevant limit set out in Annex 1 (any such limit to apply as described Annex 1);
- (b) ■% 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.

5 MITIGATION OF CONTRACT BREAKAGE COSTS UNRECOVERED COSTS

5.1 The Supplier agrees to use all reasonable endeavours (which, for the avoidance of doubt, shall not involve the Supplier prejudicing its own commercial interests) to minimise and mitigate Contract Breakage 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 but, subject to clause 15.5 (Supply Chain Rights and Protections, only to the extent that the Supplier is obliged to do so pursuant to this Agreement (including in accordance with Schedule 8.5 (Exit Management) and has a right to procure such assignment); and
- (c) in relation Third Party Contracts and Sub-contract 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 35.3(b) (*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 Declared Margin Position.

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

- (a) where the Authority terminates this Agreement pursuant to Clause 34.1(a) (*Termination by the Authority*), a number of days equal to the number of days by which the notice given falls short of three hundred and sixty-five (365) days; or
- (b) where the Supplier terminates this Agreement pursuant to Clause 34.3(a) (*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:

- (a) the relevant limit set out in Annex 1 (any such limit to apply as described Annex 1); and
- (b) ■% of the estimate for the Compensation Payment set out in the relevant Termination Estimate.

7 FULL AND FINAL SETTLEMENT

7.1 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 of this Agreement pursuant to Clause 33.1(a) (*Termination by the Authority*) or termination by the Supplier pursuant to Clause 33.3(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 that termination. For the avoidance of doubt, nothing in this Paragraph 7.1 shall exclude or limit the Supplier from claiming any unpaid Charges for Services received up until the Termination Date to the extent the same are not covered by the provisions of this Schedule 7.2, subject to paragraph 10 below.

8 INVOICING FOR THE PAYMENTS ON TERMINATION

8.1 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 7.1 (*Charges and Invoicing*).

9 SET OFF

9.1 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.

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 to the extent necessary to ensure that the Supplier is not compensated twice for the same loss.

10.3 Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with paragraph 7 of Schedule 8.5 (Exit Management).

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 acting reasonably (and for these purposes, acting reasonably shall include giving due consideration to any input including information required from the Sub-contractors in order for the Supplier to produce the Termination Estimate), 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:

- (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 Sub-contract or Third Party Contract and Supporting Documentation; and
 - (iii) such information as the Authority may reasonably require in respect of the preparation of the Termination Estimate; and
- (c) subject always to Paragraph 11.5, 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 (subject always and in accordance with Paragraph 11.5), 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.

- 11.5 To the extent that any Change becomes effective, is implemented or agreed between the Parties on or after the date on which the Supplier provides a Termination Estimate to the Authority, the relevant Termination Estimate shall be deemed no longer valid as from that date.

ANNEX 1

Annex 1 to Schedule 7.2 has been withdrawn for Freedom of Information Act purposes