HM Revenue & Customs

HMRC Tier 3 Model ICT Contract
Version 2.0 (April 2019)

SCHEDULE 7.2 | Payments on Termination

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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

(iii) have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and

(iv) the Supplier can demonstrate to the satisfaction of the Authority:

(A) are surplus to the Supplier's requirements after the Termination Date notwithstanding its obligation to provide services to its other customers;

(B) are genuinely being dismissed for reasons of redundancy; and

(C) 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 0;
"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;
"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: (a) any statutory redundancy payment; and (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;

"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 that would be payable if the Authority exercised its right under Clause 33.1(a) (*Termination by the Authority*) to terminate this Agreement for convenience on a specified Termination Date;
"Termination Estimate"	has the meaning given in Paragraph 10.2;
"Termination Payment"	means a payment made by the Authority to the Supplier upon termination of the Agreement equal to the sum of the Breakage Costs Payment, Redundancy Costs, Contract Breakage Costs, Unrecovered Costs;
"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 and 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 Payment"	an amount equal to the lower of: (a) the sum of the Unrecovered Costs and the Unrecovered Profit; and (b) the amount specified in Paragraph 4; and
"Unrecovered Profit"	(Total Costs Incurred x Anticipated Contract Life Profit Margin) - Profit Already Paid + Milestone Retentions

remaining unpaid at the Termination Date.

2 TERMINATION PAYMENT OVERVIEW

Upon termination of this Agreement pursuant to one of the events set out in Clause 33 (*Termination Rights*), the Authority may be required to pay to the Supplier in each named event of termination a Termination Payment as set out in the table below:

	Breakage Costs Payment	Redundancy Costs	Contract Breakage Costs	Unrecovered Costs	Unpaid Charges for Services	Payments for Assets and Apportionments pursuant to Schedule 8.5 (Exit Management)
Termination by the Authority for convenience by the Authority pursuant to Clause 33.1(a)	X	X	X	X	X	X
Termination by the Authority if a Supplier Termination Event occurs pursuant to Clause 33.1(b)					X	X
Termination by the Authority if Force Majeure Event endures for a continuous period of more than 90 days pursuant to Clause 33.1(c)					X	X
Partial Termination by the Authority upon the occurrence of a Supplier Termination Event or Authority if Force Majeure Event endures for a continuous period of more than 90 days pursuant to Clause 33.2(b)					X	X
Termination by the Supplier for the Authority's failure to pay pursuant to Clause 33.6(a)	X	X	X	X	X	X
Termination by the Supplier of any Services that are materially impacted					X	X

	Breakage Costs Payment	Redundancy Costs	Contract Breakage Costs	Unrecovered Costs	Unpaid Charges for Services	Payments for Assets and Apportionments pursuant to Schedule 8.5 (Exit Management)
by a Force Majeure Event that endures for a continuous period of more than 90 days pursuant to Clause 33.6(b)						
Partial Termination by the Authority pursuant to Clause 33.2(b)					X	X

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 Contract Breakage 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 not exceed the lower of:

(a) the relevant limit set out in Annex 1; and

(b) one hundred and twenty per cent (120%) 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 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 thirty thousand pounds Sterling (£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 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 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;

(b) one hundred and twenty per cent (120%) 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, 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:

(a) the appropriation of Assets, employees and resources for other purposes;

(b) in relation to Supplier Personnel, seeking to redeploy Supplier Personnel within the Supplier organisation;

(c) 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

(d) 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, 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 to an Expert for determination in accordance with the procedure detailed in Schedule 8.4 (*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 the Authority pursuant to Clause 33.1(a) (*Termination by the Authority*) or termination by the Supplier pursuant to Clause 33.6(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.

7 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*).

8 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.

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 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.

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 shall be calculated in accordance with the provisions of the Exit Plan.

10 ESTIMATE OF TERMINATION PAYMENT

10.1 The Authority may issue a Request for Estimate at any time during the Term provided that no more than two (2) Requests for Estimate may be issued in any six (6) month period.

10.2 The Supplier shall within twenty (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 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 appropriate supporting documentation; and

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

(c) state the period for which that Termination Estimate remains valid, which shall be not less than twenty (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 the Authority to terminate this Agreement.

10.4 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.

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 the Authority shall be liable to pay to the Supplier pursuant to this Agreement:

Termination Date	Maximum Unrecovered Payment	Maximum Breakage Costs Payment
Anytime in the first Contract Year	100%	100%
Anytime in the second Contract Year	100%	100%
Anytime in Contract Years 3 – possible extension period	100%	100%