

OFFICIAL - SENSITIVE - COMMERCIAL

PCSS Call-Off Terms
Schedule 4.2 (Payments on Termination)

Primary Care Support Services Call-Off Terms

Schedule 4.2

Payments on Termination

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1. Definitions

Unless defined within this Schedule, or in the Call-Off Order Form applicable to this Call-Off Agreement, the definitions in Schedule 1 of the Framework Agreement shall apply.

2. Termination Payment

- 2.1 The Termination Payment payable pursuant to Clause 49 (Payments Made on Termination) shall be an amount equal to the aggregate of the Breakage Costs Payment and the Unrecovered Payment.

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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 Call-Off Agreement which:

3.1.1 would not have been incurred had this Call-Off Agreement continued until expiry of the Initial Term, or in the event that the Term has been extended, the expiry of the Extension Period;

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 Call-Off Agreement;

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

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 relevant limit set out in Annex 1; and

3.2.2 120% of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

- 3.3 The Customer 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.

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- 3.4 Where the Supplier can demonstrate that a member of Supplier Personnel will be made redundant following termination of this Call-Off Agreement, but redeployment of such person is possible and would offer value for money to the Customer when compared with redundancy, then the Customer 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.
- 3.5 The Supplier shall be entitled to Contract Breakage Costs only in respect of third party contracts and/or Sub-contracts which:
- 3.5.1 are not assigned or novated to a Replacement Supplier at the request of the Customer in accordance with Schedule 5.3 (Exit Management); and
- 3.5.2 the Supplier can demonstrate:
- 3.5.2.1 are surplus to the Supplier's requirements after the Call-Off Termination Date, whether in relation to use internally within its business or in providing services to any of its other customers; and
- 3.5.2.2 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 Customer, the Customer 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 Call-Off Agreement; and/or
- 3.7.2 Assets not yet installed at the Call-Off Termination Date.

4. Unrecovered Payment

Without prejudice to the obligation in respect of [REDACTED], pursuant to Paragraph 2.2, the Unrecovered Payment shall not exceed the lowest of:

- 4.1 the relevant limit set out in Annex 1;
- 4.2 120% of the estimate for the Unrecovered Payment set out in any relevant Termination Estimate; and
- 4.3 the Charges that but for the termination of this Call-Off Agreement would have been payable by the Customer after the Call-Off Termination Date in accordance with Schedule 4.1 (Charges and Invoicing) as forecast in the Financial Reports.

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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 Customer's request, assigning any third party contracts and Sub-contracts to the Customer or a third party acting on behalf of the Customer; and
- 5.1.3 in relation third party contracts and Sub-contracts that are not to be assigned to the Customer 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 Customer 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 5.4 (Dispute Resolution Procedure).

6. Compensation Payment

6.1 The Compensation Payment payable pursuant to Clause 49 (Payments Made on Termination) shall be an amount equal to the total forecast Charges over the Shortfall Period (as stated in the Financial Reports) multiplied by the Anticipated Contract Life Profit Margin.

6.2 For the purposes of Paragraph 6.1, the "Shortfall Period" means where the Customer terminates this Call-Off Agreement pursuant to Clause 47.1.1 (Termination by the Customer), a number of days equal to the number of days by which the notice given falls short of 365 days.

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

- 6.3.1 the relevant limit set out in Annex 1; and
- 6.3.2 120% 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 termination by the Customer pursuant to Clause 47.1.1 (Termination by the Customer) 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.

All sums due under this Schedule shall be payable by the Customer to the Supplier in accordance with the payment terms set out in Schedule 4.1 (Charges and Invoicing).

[illegible]

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 Customer makes any payments pursuant to Schedule 5.3 (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 Call-Off 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 Plan.

11.1 The Customer 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, the Compensation Payment that would be payable by the Customer based on a postulated Call-Off Termination Date specified in the Request for Estimate (such estimate being the "**Termination Estimate**"). The Termination Estimate shall:

11.2.2 include:

11.2.2.1 details of the mechanism by which the Termination Payment is calculated:

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- 11.2.2.2 full particulars of the estimated Contract Breakage Costs in respect of each Sub-contract or Third Party Contract and appropriate supporting documentation; and
 - 11.2.2.3 such information as the Customer may reasonably require; and
 - 11.2.3 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 Customer to terminate this Call-Off Agreement.
- 11.4 If the Customer 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 Customer.

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ANNEX I

Maximum Payments on Termination

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

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