

SCHEDULE 7.2

PAYMENTS ON TERMINATION

1 Not Used

2 Termination Payment

2.1 The Termination Payment payable by the Authority in accordance with Clause 34.3 shall comprise:

- (a) **the Breakage Costs Payment; and**
- (b) **the Compensation Payment, if either of the following periods is less than three hundred and sixty-five (365) days:**
 - (i) the period from (but excluding) the date that the Termination Notice is given by the Authority pursuant to Clause 33.1(a)) to (and including) the Termination Date; or
 - (ii) the period from (and including) the date of the non-payment by the Authority referred to in Clause 33.3(a) to (and including) the Termination Date; and
 - (iii) the Compensation Payment for Supplier Premises Agreements as further described in Paragraph 6A.

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) subject to Paragraph 3.7(b), are not Contract Breakage Costs relating to leases, contracts or Sub-contracts with Affiliates of the Supplier; and
- (e) relate directly to the termination of the Services.

3.2 Not Used

Redundancy Costs

3.3 The Authority shall not be liable under this Schedule (including for the avoidance of doubt Paragraph 3.1) 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 £[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, Premises Agreements or Sub-contracts which:
- (a) are not assigned or novated to the Authority or 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, Premises Agreements 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 other than in respect of the Premises Agreements subject to and in accordance with this Schedule; and/or
 - (b) Assets not yet installed at the Termination Date.
- 3.8 In respect of any Premises Agreements which have been entered into by an Affiliate of the Supplier, then provided:
- (a) the Supplier has notified the Authority of the Affiliate contracting party in accordance with Paragraph 9.1 of Schedule 15.1 (Estates); and
 - (b) such Affiliate has minimised and mitigated its costs in the same way as the Supplier is required to do so under this Schedule,
- then the Supplier may recover the actual costs properly incurred by such Affiliate directly as a result of the termination of this Agreement as part of the Contract Breakage Costs subject to and in accordance with this Schedule and Paragraphs 3.9 and 3.10.
- 3.9 In respect of Contract Breakage Costs for each relevant Premises Agreement, this shall be one of the following, whichever is the lesser:
- (a) Costs that the Supplier has negotiated with the landlord, lessor or licensor for early termination; and
 - (b) Costs per site that will be incurred if the leases or licences continue to the end of the relevant Premises Agreement,
- subject to Paragraph 3.10.
- 3.10 The Contract Breakage Costs for Premises Agreements (whether entered into by the Supplier or an Affiliate) shall be based on actual costs incurred by the Supplier and shall not exceed an aggregate sum not exceeding the aggregated forecast Monthly costs for the remainder of the Term, as set out in the Supplier Premises Outturn Report agreed by the Parties in the Month immediately preceding the date of the Termination Notice plus the Agreed Tolerance. For these purposes:

- (a) the **"Agreed Tolerance"** shall be 5% of the aggregated forecast Monthly cost for the remainder of the Term, as set out in the aforementioned Supplier Estates Outturn Report ; and
- (b) the costs for decommissioning (including required repairs (dilapidations) and reinstatement shall be excluded. The Parties agree and acknowledge shall be treated and dealt with in accordance with Paragraph 14.9 or 15.3.1(c) of Schedule 7.1 (Charges) (as applicable).

4 Not Used

5 Mitigation of Contract Breakage Costs and Redundancy Costs

- 5.1 The Supplier agrees to use all reasonable endeavours to minimise and mitigate Contract Breakage Costs and Redundancy Costs by:
 - (a) the appropriation of Assets, employees and resources for other purposes;
 - (b) at the Authority's request, assigning any Premises Agreements (where freely transferable without landlord, lessor or licensor consent; or if not freely transferable, the Supplier shall use all reasonable endeavours to procure landlord, lessor or licensor consent to assign), Third Party Contracts and Sub-contracts to the Authority or a third party acting on behalf of the Authority; and
 - (c) in relation to Premises Agreements, Third Party Contracts and Sub-contracts that are not to be assigned to the Authority or to another third party, terminating those leases, licences and 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 Redundancy 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 For the purpose of Paragraph 2 the Compensation Payment shall be an amount equal to the total forecast Charges over the Shortfall Period (as stated in the Financial Model) multiplied by the Target Fee.

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

- (a) where the Authority terminates this Agreement pursuant to Clause 33.1(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 33.3(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 three hundred and sixty-five (365) days.

6A Compensation Payment for Supplier Premises Agreements

6A.1 For the purpose of Paragraph 2 and subject to Paragraph 6A.2 below, the Compensation Payment for Supplier Premises Agreements shall be calculated as follows:

- i) Where there is more than 12 months left in the Term, compensation shall be the sum of (1) the Dilapidations Mark Up (as defined in Paragraph 6A.2 below) and (2) the lesser of:
 - a) [REDACTED] of the Monthly costs which are forecast for the 12 Month (such 12 Month period commencing in the Month in which the Termination Notice is served, and the forecast being set out in the Supplier Premises Outturn Report agreed by the Parties in the Month immediately preceding the date of the Termination Notice); or
 - b) [REDACTED] x latest actual Monthly costs which are incurred in the Month immediately before the Termination Notice (such costs being set out in the Supplier Premises Outturn Report agreed by the Parties in the Month immediately preceding the date of the Termination Notice) x 12 Months
- ii) Where there is less than 12 months left in the Term, compensation shall be the sum of (1) the Dilapidations Mark Up (as defined in Paragraph 6A.2 below) and (2) the lesser of:

- a) [REDACTED] of the Monthly costs which are forecast for the remaining Months of the Term (such forecast being as set out in the Supplier Premises Outturn Report agreed by the Parties in the Month immediately preceding the date of the Termination Notice); or
- b) [REDACTED] x latest actual Monthly costs x remaining number of Months of the Term (such actual Monthly costs being set out in the Supplier Premises Outturn Report agreed by the Parties in the Month immediately preceding the date of the Termination Notice).

6A.2 For the purposes of Paragraph 6A.1:

- (i) the costs for decommissioning (including required repairs (dilapidations) and reinstatement shall be excluded from the Monthly cost calculations; and
- (ii) the "**Dilapidations Mark Up**" shall be [REDACTED] of the properly incurred actual costs for decommissioning (including required repairs (dilapidations)) and reinstating In Scope Supplier Premises during and/or after the Term shall be added to any compensation calculated pursuant to Paragraph 6A.1 (i) and/or 6A.1 (ii).

7 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) or termination by the Supplier pursuant to Clause 33.3(a) (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 other than its entitlement to recover unpaid Charges for Services received by the Authority up until the Termination Date.

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**

- a. 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.
- b. 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.
- c. Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.

11 **Estimate of Termination Payment**

- d. 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.
- e. 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:
 - i. be based on the relevant amounts set out in the Financial Model;
 - ii. include:
 1. details of the mechanism by which the Termination Payment is calculated;
 2. full particulars of the estimated Contract Breakage Costs in respect of each Sub-contract or Third Party Contract and appropriate supporting documentation; and

- 3. such information as the Authority may reasonably require; and
- iii. state the period for which that Termination Estimate remains valid, which shall be not less than twenty (20) Working Days.
- f. 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.

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.