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Schedule 7.2 – ESMCP Mobile Services Agreement

Payments on Termination

Version 1.0

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CHANGE HISTORY

Version No.	Effective Date of agreement / CAN	Version / Details of Changes included in Update	Author(s)
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1 Definitions

- 1.1 In construing this Schedule 7.2 (Payments on Termination), unless otherwise expressly specified in this Schedule terms defined and used in Schedule 1 (Definitions) will have the same meaning in this Schedule.

2 Termination Payment

- 2.1 The Termination Payment payable pursuant to Clause 33.3(a) (Payments by the Authority) shall be an amount equal to the aggregate of the Breakage Costs Payment and the Unrecovered 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:

- (a) would not have been incurred had this Agreement continued until expiry of the Term.
- (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 or any Group or Related Party Supply; 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) 

3.3

3.4

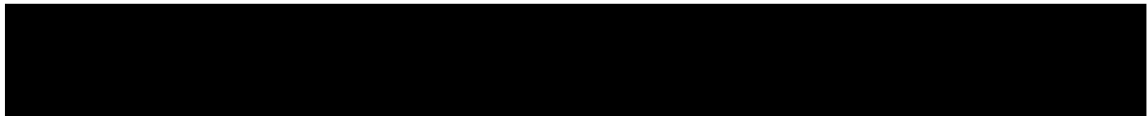
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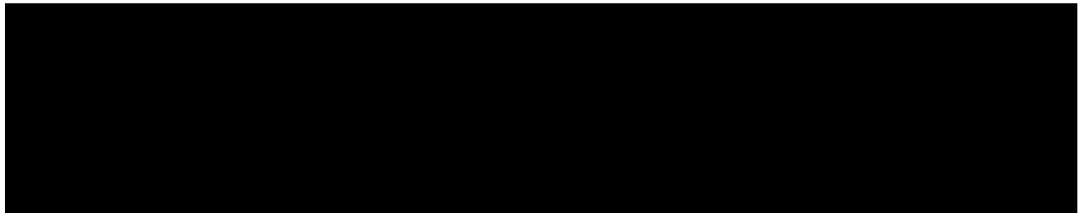
Contract Breakage Costs

- 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



(a)



(b)

4 Unrecovered Payment

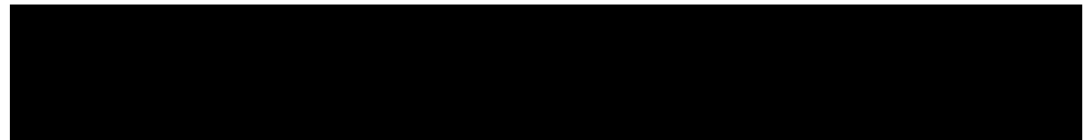
4.1 The Unrecovered Payment shall not exceed the lower of:

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

(b)



(c)



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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:

- (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; and
- (c) 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 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 Subject to Paragraph 6.3, the Compensation Payment payable pursuant to Clause 33.3(b) (Payments by the Authority) [REDACTED]

6.2 [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

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; and

(b) [REDACTED]

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6A. Minimum Revenue Guarantee Tariff Payment

6A.1 Without prejudice to Paragraph 6B.1 and 6B.2, if the Agreement is terminated by the Authority pursuant to Clause 32.1(a) (Termination by the Authority) or by the Supplier pursuant to Clause 32.3(a) (termination by the Supplier due to non-payment of undisputed invoices) the Authority shall [REDACTED]

6A.1.1 [REDACTED]

6A.1.2 [REDACTED]

6A.1.3 [REDACTED]

6A.2 [REDACTED]

6A.2.1 [REDACTED]

6A.2.2 [REDACTED]

6A.2.3 [REDACTED]

6A.3 [REDACTED]

6A.4 [REDACTED]

6B Catastrophic Tariff Payments

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6B.1

[Redacted]

6B1.1

[Redacted]

6B1.2

[Redacted]

6B1.2(a)

[Redacted]

6B1.2(b)

6B.1.2(c)

[Redacted]

6B1.3

[Redacted]

6B1.3(a)

[Redacted]

6B1.3(b)

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6B.2

6C

6D

7 Full And Final Settlement

Any [REDACTED] 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 32.1(a) (Termination by the Authority) or termination by the Supplier pursuant to Clause 32.3 (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 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 Part 4 of 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 [REDACTED] 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 by the Authority so that there is no double counting in calculating the relevant payment. The Parties agree that in applying this Paragraph 10.2, the Parties shall consider (without limit) all costs which have

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been modelled in such a way as to be front loaded including (without limit) Milestone Payments and all Charges already paid to the Supplier for Services not yet performed prior to the calculation and payment of Termination Payments and/or Compensation Payments.

- 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 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 [REDACTED] Requests for Estimate may be issued in any [REDACTED]

- 11.2 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 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 and Financial Reports
- (b) include:
 - (i) details of the mechanism by which the Termination Payment is calculated-
 - (ii) [REDACTED]
 - (iii) such information as the Authority may reasonably require;
- (c) state the period for which that Termination Estimate remains valid, which shall be not less than twenty (20) Working Days;
- (d) in no event exceed the lower of:
 - (i) the amount specified for the relevant Contract Year in the table at Annex 1; and
 - (ii) [REDACTED]

- 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.

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