

ESMCP TERMS AND CONDITIONS – USER SERVICES

SCHEDULE 16

PAYMENTS ON TERMINATION

CHANGE HISTORY

Version	Date	Description	Document Number
1.0	2022.08.01	Base Version – MSC 2.0 unamended	72942047.1
1.2	2023.07.27	Issued for release to bidders with ITPD	
1.3	2023.10.24	Issued for release to bidders prior to detailed dialogue	
2.0	2024.03.14	Updated version for ISFT for release	
3.0	2024.09.30	Issued for release to the Preferred Bidder prior to contract conformance	
4.0	2024.12.11	Issued for release to the Preferred Bidder for contract execution	

Schedule 16 (*Payments on Termination*)

1 Not Used

2 TERMINATION PAYMENT

2.1 [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]
[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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[REDACTED]
 [REDACTED]

[REDACTED]
 [REDACTED]
 [REDACTED]

[REDACTED] [REDACTED]

■

1	100%
2	100%
3	100%
4	100%

[REDACTED]
 [REDACTED]

[REDACTED]
 [REDACTED]
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[REDACTED]
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[REDACTED]
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[REDACTED]
 [REDACTED]

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

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 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, 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 23 (Dispute Resolution Procedure).

6 [REDACTED]

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

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 pursuant to Clause 31.1(a) (*Termination by the Authority*) or termination by the Supplier pursuant to Clause 31.3(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 any such termination.

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 15 (*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 25 (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 Contract 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 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.

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- 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 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 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 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 Contract.
- 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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