

## Schedule 27

### Compensation on Termination

#### Part 1

#### Compensation following Termination on the Authority's Break Option or on Authority Default

##### Definitions

The definitions as set out in the main body of the Agreement shall apply to this Schedule and in addition, the following shall apply to this Schedule 27 (Compensation on Termination):

**Capital Contribution** shall have the meaning given to it in Schedule 4 (Payment and Performance Mechanism);

**Committed Costs** means, in the given context, the unavoidable and mitigated costs and expenses that arise and have been properly incurred by the Service Provider as a result of termination of the Agreement;

**Periodic Service Payment** shall have the meaning given to it in Schedule 4 (Payment and Performance Mechanism);

**Procurement Project** shall have the meaning given to it in Schedule 4 (Payment and Performance Mechanism);

**Service Credits** shall have the meaning given to it in Schedule 4 (Payment and Performance Mechanism);

1 On termination of this Agreement in accordance with clause 43.1 (Termination on the Authority's Break Option) or clause 44 (Termination on Authority Default), the Authority Default Termination Payment shall comprise an amount equal to the sum of the following (without double counting and subject always to paragraph 2 of Part 1 below):

- (a) all costs of the provision of the Services already incurred or committed and unavoidable after the Agreement Date which have been amortised over the Initial Term and calculated in accordance with cells I18 to R18 (inclusive) of tab BC of the Financial Model, which have not been recovered as part of the Periodic Service Payment and/or Capital Contribution or otherwise recovered by the Service Provider pursuant to the Agreement;
- (b) Unrecovered Gainshare which is owed to the Service Provider and such sum shall be calculated on the basis of the lesser of:
  - i twelve (12) months of the aggregate of the unrecovered amount of Gainshare for the completed element of the Procurement Project; or
  - ii where less than twelve (12) months remain outstanding of the relevant Procurement Project to which the unrecovered amount of Gainshare relates, the number of months that remain outstanding,

- (c) in relation to any Service Provider Exclusive Assets and/or Service Provided Traded Assets purchased by the Authority at their Net Book Value pursuant to clause 5.3.16 (Assets), the Net Book Value of such Service Provider Exclusive Assets and/or Service Provider Traded Assets calculated in accordance with the Write Down Policy;
- (d) in relation to Service Provider Lease Assets and Service Provider Shared Assets the sum agreed for a non-exclusive licence in accordance with clause 5.3.16(b) (Assets);
- (e) the lower of:
  - i all actual statutory and contractual redundancy payments and other related costs which the Service Provider is contractually obliged to pay to its employees who are wholly assigned to the provision of the Services which become payable by the Service Provider as a direct result of the termination of this Agreement; or
  - ii all statutory and contractual redundancy payments and other related costs which the Service Provider would have been obliged to pay its employees who are wholly assigned to the provision of the Services calculated on the same basis as applicable to the Transferring Employees at the Service Transfer Date;
- (f) the Committed Costs of terminating any Sub-Contract or Third Party Contract provided that for the purposes of this paragraph the Service Provider has complied with clause 47.3.3 (Assignment of Rights) and the costs of terminating any Sub-Contract or Third Party Contract shall be deemed to be those amounts described in paragraphs 1(a) and 1(g) of this Part 1 of Schedule 27 as if reference to the Service Provider therein were reference to the Sub-Contractor and/or Third Party Contractor calculated in accordance with the tabs in the Financial Model referred to in paragraphs 1(a) and 1(g) of this Part 1 of Schedule 27;
- (g) the Committed Costs of terminating any property or equipment lease, licence, rental, support maintenance agreement or other similar arrangements used in the provision of the Services and which are required to be terminated under the provisions of this Agreement and which were entered into in accordance with the terms of this Agreement or agreed as part of Change Protocol or Special Project calculated in accordance with cells I18 to R18 (inclusive) of tab BC of the Financial Model and which have not been transferred to the Authority in accordance with the Agreement and the Service Provider is unable (having used reasonable endeavours) to utilise the underlying equipment/property the subject of such arrangement for its other commercial purposes;
- (h) subject to the Service Provider using reasonable endeavours to utilise any financing arrangements for the Service Provider's other commercial purposes, any and all amounts due and payable in

respect of such financing arrangement entered into by the Service Provider for the purposes of the Services (subject to such arrangement being agreed in writing by the Authority prior to its execution) calculated in accordance with cells I20 to R20 (inclusive) of tab BC of the Financial Model and

- (i) an amount equal to the Service Provider's projected loss of profit:
  - i which shall be the aggregate figure for profit for the preceding twelve (12) month period from the point of termination as set out in cells I22 to R22 (inclusive) of tab BC of the Financial Model (subject to a cap of £1,809,990 (one million, eight hundred and nine thousand, nine hundred and ninety pounds)) where termination arises in the period between the Agreement Date and the end of the third Contract Year of the Initial Term;
  - ii which shall be the aggregate figure for profit for the preceding six (6) month period from the point of termination as set out in cells I22 to R22 (inclusive) of tab BC of the Financial Model (subject to a cap of £903,686 (nine hundred and three thousand, six hundred and eighty-six pounds)) where termination arises in the period between the commencement of the fourth Contract Year of the Initial Term and the end of the seventh Contract Year of the Initial Term;
  - iii which shall be the aggregate figure profit for the preceding three (3) month period from the point of termination as set out in cells I22 to R22 (inclusive) of tab BC of the Financial Model (subject to a cap of £552,397 (five hundred and fifty-two thousand, three hundred and ninety-seven pounds)) where termination arises in the period between the commencement of the eighth Contract Year of the Initial Term and the end of the ninth month of the tenth Contract Year of the Initial Term;
  - iv from the end of the ninth month of the tenth Contract Year of the Initial Term no loss of profit shall be recoverable from the Authority by the Service Provider,

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- i any Service Credits which the Authority is entitled to make in accordance with Schedule 4 (Payment and Performance Mechanism) or pursuant to any indemnity; and
- ii an amount representing any advance payments or Capital Contribution made by the Authority pursuant to Schedule 4 (Payment and Performance Mechanism) relating to any Services not performed by the Service Provider in accordance with this Agreement;
- iii an amount representing the Authority's outstanding share of any Gainshare arising prior to the Termination Date;

- iv any amounts owed to the Authority in accordance with the provisions of clause 21.5.1(b) (Step-In on Service Provider Breach);
  - v any other amounts owed to the Authority or which the Authority is entitled to withhold in accordance with the provisions of Schedule 4 (Payment and Performance Mechanism); and
  - vi any other amounts the Authority is entitled to set off in accordance with the provisions of clause 26.9 (Rights of Set Off).
- 2 The Authority shall not be liable for any additional costs incurred by the Service Provider after the date the Authority receives the Service Provider Termination Notice save as may be agreed by the parties pursuant to Schedule 18 (Exit).
- 3 Nothing in the provisions of this Part 1 of Schedule 27 shall prejudice or lessen either party's duty to use all reasonable endeavours to mitigate such costs, losses and redundancy payments.
- 4 The Service Provider shall upon request provide to the Authority full details in writing (in a format reasonably requested by the Authority) the amount for which the Authority or the Service Provider may be liable under this Part 1 of Schedule 27 and shall provide such evidence as the Authority may require for the purposes of calculating or verifying potential liabilities.
- 5 If the Authority Default Termination Payment is greater than zero, the Service Provider shall notify the Authority as soon as practicable of the amount of its claim (together with full supporting documentation detailing the calculation of the amounts) and the Authority (acting reasonably) shall be able to request any further documentation as is necessary to verify the claim which the Service Provider shall promptly provide. The Authority shall pay the Service Provider the amount of the Authority Default Termination Payment in twelve (12) equal monthly instalments commencing on the date falling thirty (30) Business Days after the later of:
  - i Service Provider's notification in accordance with this paragraph 5;
  - ii receipt of any additional supporting documentation requested by the Authority in accordance with this paragraph 5; or
  - iii as determined in accordance with the Dispute Resolution Procedure;
- 6 Any Dispute in the calculation of the Authority Default Termination Payment shall be referred to the Dispute Resolution Procedure.
- 7 Where the Authority Default Termination Payment is less than zero, the amount of the Authority Default Termination Payment shall be deemed to be a positive amount and the Service Provider shall pay the Authority such positive amount within thirty (30) Business Days of the agreement between the parties or determination of amounts payable pursuant to the Dispute Resolution Procedure.

## Part 2

### Compensation following Termination for Persistent Breach, Service Provider Default, Corrupt Gifts and Fraud and Key Sub-Contractor Insolvency Remedy

1 On termination of this Agreement pursuant to clause 42.1 (Termination on Service Provider Default Incapable of Remedy), clause 41.5 (Key Subcontractor Insolvency Remedy Notice), 41.2 (Persistent Breach) or clause 45 (Termination on Corrupt Gifts and Fraud), the Service Provider Default Termination Payment shall constitute the sum of the following (without double counting and subject always to paragraph 2 of Part 2 below):

- (a) all costs of the provision of the Services already incurred or committed and unavoidable after the Agreement Date which have been amortised over the Initial Term and calculated in accordance with cells I18 to R18 (inclusive) of tab BC of the Financial Model, which have not been recovered as part of the Periodic Service Payment and/or Capital Contribution or otherwise recovered by the Service Provider pursuant to the Agreement;
- (b) in relation to Service Provider Exclusive Assets and/or Service Provider Traded Services Assets purchased by the Authority at their Net Book Value pursuant to clause 5.3.16 (Assets), the Net Book Value of such Service Provider Exclusive Assets and/or Service Provider Traded Services Assets calculated in accordance with the Write Down Policy;
- (c) in relation to the Service Provider Lease Assets and Service Provider Shared Assets the sum agreed for a non-exclusive licence in accordance with clause 5.3.16(b) (Assets);

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- i subject to the caps specified in limbs (i)A, (i)B and (i)C and the exclusion in limb (i)(D) below, any costs incurred by the Authority in retendering the Services where termination commences in accordance with this Part 2 of Schedule 27 in the period:
  - A between the Agreement Date until the end of the ninth Contract Year of the Initial Term such retendering costs shall be deemed to constitute an amount equalling one million pounds (£1,000,000);
  - B between the start of the tenth Contract Year of the Initial Term until the end of month three of such Contract Year such retendering costs shall be deemed to constitute an amount equalling five hundred thousand pounds (£500,000);
  - C between the start of the fourth month of the tenth Contract Year of the Initial Term until the end of month six of such Contract Year such retendering costs shall be deemed to constitute an amount equalling two hundred and fifty thousand (£250,000);

- D after the end of month six (6) of the tenth Contract Year any costs incurred by the Authority in retendering the Services shall not be recoverable by the Authority from the Service Provider and shall therefore be excluded.
  - ii any Service Credits which the Authority is entitled to make in accordance with Schedule 4 (Payment and Performance Mechanism) or pursuant to any indemnity; and
  - iii an amount representing any advance payments or Capital Contribution made by the Authority pursuant to Schedule 4 (Payment and Performance Mechanism) relating to any Services not performed by the Service Provider in accordance with this Agreement;
  - iv an amount representing the Authority's outstanding share of any Gainshare arising prior to the Termination Date;
  - v any amounts owed to the Authority in accordance with the provisions of clause 21.5.1(b) (Step-In on Service Provider Breach);
  - vi any other amounts owed to the Authority or which the Authority is entitled to withhold in accordance with the provisions of Schedule 4 (Payment and Performance Mechanism); and
  - vii any other amounts the Authority or which the Authority is able to withhold is entitled to set off in accordance with the provisions of clause 26.9 (Rights of Set Off).
- 2 The Authority shall not be liable for any additional costs incurred by the Service Provider after the date of service of the Termination Notice save as may be agreed by the parties pursuant to Schedule 18 (Exit).
- 3 Nothing in the provisions of this Part 2 of Schedule 27 shall prejudice or lessen either party's duty to use all reasonable endeavours to mitigate such costs and losses.
- 4 The Service Provider shall upon request provide to the Authority full details in writing (in a form reasonably requested by the Authority) the amount for which the Authority or the Service Provider may be liable under this Part 2 of Schedule 27 and shall provide such evidence as the Authority may require for the purposes of calculating or verifying potential liabilities.
- 5 If the Service Provider Default Termination Payment is greater than zero, the Service Provider shall notify the Authority as soon as practicable of the amount of its claim (together with full supporting documentation detailing the calculation of the amounts) and the Authority (acting reasonably) shall be able to request any further documentation as is necessary to verify the claim which the Service Provider shall promptly provide. The Authority shall pay the Service Provider the amount of the Service Provider Default Termination Payment in twelve (12) equal monthly instalments commencing on the date falling thirty (30) Business Days after the later of:
  - i Service Provider's notification in accordance with this paragraph 5;

- ii Receipt of any additional supporting documentation requested by the Authority in accordance with this paragraph 5; or
- iii as determined in accordance with the Dispute Resolution Procedure.

6 Any Dispute in the calculation of the Service Provider Default Termination Payment shall be referred to the Dispute Resolution Procedure.

7 Where the Service Provider Default Termination Payment is less than zero, the amount of the Service Provider Default Termination Payment shall be deemed to be a positive amount and the Service Provider shall pay the Authority such positive amount within thirty (30) Business Days of the agreement between the parties or determination of amounts payable pursuant to the Dispute Resolution Procedure.

### **Part 3**

#### **Compensation following Expiry or following Force Majeure Termination or Relief Event Termination**

1 On expiry of this Agreement or on termination pursuant to clause 22 (Force Majeure) or clause 23 (Relief Events) the Expiry Payment shall constitute an amount comprising amount equal to the sum of the following (without double counting and subject always to paragraph 2 of Part 3 below):

- (a) all costs of the provision of the Services already incurred or committed and unavoidable after the Agreement Date which have been amortised over the Initial Term and calculated in accordance with cells I18 to R18 (inclusive) of tab BC of the Financial Model, which have not been recovered as part of the Periodic Service Payment and/or Capital Contribution or otherwise recovered by the Service Provider pursuant to the Agreement;
- (b) where termination occurs in accordance with clause 22.7 (Relief Events) any unrecovered Gainshare which is owed to the Service Provider and such sum shall be calculated on the basis of the lesser of:
  - i twelve (12) months of the aggregate of the unrecovered amount of Gainshare for the completed element of the Procurement Project; or
  - ii where less than twelve (12) months remain outstanding of the relevant Procurement Project to which the unrecovered amount of Gainshare relates, the number of months that remain outstanding;
- (c) in relation to Service Provider Exclusive Assets and/or Service Provider Traded Services Assets purchased by the Authority at their Net Book Value pursuant to clause 5.3.16 (Assets), the Net Book Value of such Service Provider Exclusive Assets and/or Service Provider Traded Services Assets calculated in accordance with the Write Down Policy;
- (d) in relation to the Service Provider Lease Assets and Service Provider Shared Assets the sum agreed for a non-exclusive licence in accordance with clause 5.3.16(b) (Assets);

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- i any Service Credits which the Authority is entitled to make in accordance with Schedule 4 (Payment and Performance Mechanism) or pursuant to any indemnity; and
- ii an amount representing any advance payments or Capital Contribution made by the Authority pursuant to Schedule 4 (Payment and Performance Mechanism) relating to any Services not performed by the Service Provider in accordance with this Agreement;

- iii an amount representing the Authority's outstanding share of any Gainshare arising prior to the Termination Date;
  - iv any amounts owed to the Authority in accordance with the provisions of clause 21.5.1(b) (Step-In on Service Provider Breach);
  - v any other amounts owed to the Authority or which the Authority is entitled to withhold in accordance with the provisions of Schedule 4 (Payment and Performance Mechanism); and
  - vi any other amounts the Authority is entitled to set off in accordance with the provisions of clause 26.9 (Rights of Set Off).
- 2 The Authority shall not be liable for any additional costs incurred by the Service Provider in respect of the termination of the Agreement after the date of service of the Termination Notice save as may be agreed by the parties pursuant to Schedule 18 (Exit).
- 3 Nothing in the provisions of this part shall prejudice or lessen either party's duty to use all reasonable endeavours to mitigate such costs and losses.
- 4 The Service Provider shall upon request provide to the Authority full details in writing (in a format reasonably requested by the Authority) the amount for which the Authority or the Service Provider may be liable under this Part 3 of Schedule 27 and shall provide such evidence as the Authority may require for the purposes of calculating or verifying potential liabilities.
- 5 If the Expiry Payment is greater than zero, the Service Provider shall notify the Authority as soon as practicable of the amount of its claim (together with full supporting documentation detailing the calculation of the amounts) and the Authority (acting reasonably) shall be able to request any further documentation as is necessary to verify the claim which the Service Provider shall promptly provide. The Authority shall pay the Service Provider the amount of the Expiry Payment in twelve (12) equal monthly instalments commencing on the date falling 30 (thirty) Business Days after the later of:
  - i Service Provider's notification in accordance with this paragraph 5;
  - ii Receipt of any additional supporting documentation requested by the Authority in accordance with this paragraph 5; or
  - iii as determined in accordance with the Dispute Resolution Procedure.
- 6 Any Dispute in the calculation of the Expiry Payment shall be referred to the Dispute Resolution Procedure.
- 7 Where the Expiry Payment is less than zero, the amount of the Expiry Payment shall be deemed to be a positive amount and the Service Provider shall pay the Authority such positive amount within thirty (30) Business Days of the agreement between the parties or determination of amounts payable pursuant to the Dispute Resolution Procedure.