

## ICT SERVICES AGREEMENT SCHEDULES

### SCHEDULE 7.2

#### PAYMENTS ON TERMINATION

#### CONTENTS

<b>Section A:</b>	<b>Product Description</b>
<b>Section B:</b>	<b>Guidance</b>
<b>Section C</b>	<b>Pro-forma / Example schedule</b>

## **Section A**

### **Product Description**

#### **1. PRODUCT TITLE**

ICT Services Agreement - Schedule 7.2 (Payments on Termination)

#### **2. PURPOSE OF SCHEDULE**

The schedule should state the figure or formula for calculating the compensation payment in the event that the Authority terminates for convenience or where the Contractor terminates in the event of Authority default (ie. persistent non-payment of service charges).

#### **3. COMPOSITION**

- Purpose of Schedule
- Termination Payment
- Compensation Payment
- Full and Final Settlement
- Mitigation for Breakage and Unrecovered Costs
- Invoicing for the Payments on Termination
- Set-off
- No Double Recovery

#### **4. DERIVATION**

Authority requirements

#### **5. RELATED CLAUSES AND SCHEDULES**

Clauses: 55.2 (Termination for Convenience by the Authority)

55.5 (Termination by the Contractor)

### 58.3 (Payment on Termination)

Schedules: 8.5 (Exit Management)

#### **6. ALLOCATION**

Standard schedule for the Authority to submit to bidders for agreement.

#### **7. QUALITY/REVIEW**

Authority expertise: legal, commercial/procurement, financial.

## **Section B**

### **Guidance**

#### **1. INTRODUCTION**

The schedule shall specify under what circumstances the Contractor is entitled to a payment on termination where caused by Authority default or voluntary termination by the Authority and to what extent the compensation payment covers the Contractor's costs and/or profits.

#### **2. TERMINATION FOR AUTHORITY DEFAULT OR FOR AUTHORITY CONVENIENCE**

The schedule shall set out the Authority's obligations to make a payment on termination to compensate for the Contractor's loss of profit and any breakage costs in the event of termination by the Contractor for Authority default or if the Authority exercises its right to terminate for convenience.

#### **3. TERMINATION FOR CONTRACTOR DEFAULT**

No compensation shall be payable by the Authority for termination in the event of Contractor default. This schedule does not deal with any claim by the Authority in the event of such termination.

#### **4. REDUNDANCY COSTS**

The Authority should ensure that all redundancy costs (whether incurred by the Contractor or its Sub contractors) are fully disclosed to the Authority on a "line by line" basis, and can be justified by the Contractor. Any supporting information should be capable of verification by the Authority and its external auditors and such information may need to be warranted by an officer of the Contractor.

Where appropriate, redundancy payments may be apportioned to take account of the length of time spent on the Authority agreement when compared with the total length of employed service of the Contractor's or Sub-contractor's employee.

## Section C

### Pro-forma/Example schedule

*[Guidance: subject to the agreement of this schedule, the following definition(s) will need to be added to schedule 1]*

- "Breakage Costs"** any costs (such as the Contractor's own redundancy costs, and costs payable for early termination of contracts entered into by the Contractor prior to receipt of the termination notice) incurred by the Contractor directly as a result of the termination of this Agreement which:
- (a) would not have been incurred had this Agreement continued until its natural expiry; and
  - (b) relate directly to the termination of the Services; and
  - (c) are unavoidable, proven, reasonable, and not capable of recovery; and
  - (d) are incurred under arrangements or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and
  - (e) do not relate to contracts or subcontracts with Affiliates of the Contractor;
- "Forecast Expenses"** the expenses incurred by the Contractor as stated in the Financial Model, cells [ ] to [..];
- "Forecast Profits"** the profit earned by the Contractor as stated in the Financial Model, cells [ ] to [..];
- "Forecast Revenue"** the revenue earned by the Contractor as stated in the Financial Model, cells [ ] to [..];

**"Transferring Assets"** such assets as transfer to the Authority on Termination and as specified in the Exit Plan;

**"Unrecovered Costs"** the costs incurred by the Contractor in the performance of this Agreement and detailed in Financial Model from time to time, to the extent that the same remain to be recovered through the Charges at the rate at which they fall to be amortised as detailed in the Financial Model. Such costs will exclude internal costs of financing, working capital or overheads associated with these costs but include profit earned but not received accruing to these costs.

## **5. PURPOSE OF SCHEDULE**

5.1 This schedule sets out the calculation of the Termination Payment and the Compensation Payment that may be paid by the Authority to the Contractor pursuant to clause 58 (Payments Made on Termination).

5.2 If the Agreement is terminated for any reason other than pursuant to clause 55.2 (Termination for Convenience by the Authority) or clause 55.5 (Termination by the Contractor) such as, without limit, any termination by the Authority pursuant to clauses 55.1 (Termination for Cause by the Authority), 55.3 (Termination for Change of Control), 55.4 (Partial Termination) or by either party pursuant to clause 55.6 (Termination for Continuing Force Majeure Event), no compensation shall be due to the Contractor and the remainder of this schedule shall not be applicable.

## **6. TERMINATION PAYMENT**

The Termination Payment payable pursuant to clause 58.2 (Payments made on Termination) shall be calculated as the sum of:

6.1 the Unrecovered Costs; and

6.2 Breakage Costs,

but subject to the limit set out in clause 54.3.2 (Limitations of Liability).

## **7. COMPENSATION PAYMENT**

7.1 The Compensation Payment payable pursuant to clause 58.3 shall be calculated on the basis of compensation for Forecast Profits for the difference either:

7.1.1 where the Authority terminates the Agreement pursuant to clause 55.2 (Termination for Convenience by the Authority) the period of 12 months and the actual number of months notice given; or

7.1.2 where the Contractor terminates the Agreement pursuant to clause 55.5 (Termination by the Contractor) the difference between the date of the material breach by the Authority and the date on which termination occurs,

("Shortfall Period") but in each case subject to the limit set out in clause 54.3.2 (Limitations of Liability).

7.2 Forecast Profits shall be calculated as the difference between the Forecast Revenue for the Shortfall Period and the Forecast Expenses for the Shortfall Period, as shown in the Financial Model.

## **8. FULL AND FINAL SETTLEMENT**

[Any Termination Payment and/or Compensation Payment paid in accordance with this schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Contractor in relation to any termination by the Authority pursuant to clause 55.2 (Termination for Convenience by the Authority) or termination by the Contractor pursuant to clause 55.5 (Termination by the Contractor), and the Contractor shall be excluded from all other rights and remedies it would otherwise have been in respect of any such termination.]

## **9. MITIGATION OF BREAKAGE AND UNRECOVERED COSTS**

The Contractor agrees to take all reasonable steps to minimise and mitigate Breakage Costs and Unrecovered Costs by:

9.1 the appropriation of Assets, employees and resources for other purposes. If such Assets, employees and resources can be used for other purposes then there shall be an equitable reduction in the Breakage Costs and Unrecovered Costs payable by the Authority or a third party to the Contractor; and

9.2 in relation to contracts entered into with third parties, termination by the Contractor of those contracts at the earliest possible date without breach or where contractually permitted, and, where required by the Authority, assigning such contracts to the Authority or a third party acting on behalf of the Authority.

## **10. INVOICING FOR THE PAYMENTS ON TERMINATION**

All sums due under this schedule shall be payable by the Authority to the Contractor in accordance with the terms set out in schedule 7.1 (Charges and Invoicing).

## **11. SET OFF**

For the avoidance of doubt, the Authority shall be entitled to set off any outstanding liabilities of the Contractor against any amount it pays in compensation pursuant to this schedule and in accordance with its rights set out in this Agreement.

## **12. NO DOUBLE RECOVERY**

12.1 If any payment pursuant to this schedule relates to or arises in relation from (in whole or in part) any Transferring Asset then to the extent that the Authority makes any payments pursuant to schedule 8.5 (Exit Management) in respect of such Transferring Assets then such amounts shall be deducted from the amount of compensation payable pursuant to this schedule.

12.2 [The value of the Termination Payment and/or the Compensation Payment shall be reduced or extinguished to the extent that the Contractor has already received the Charges or the financial benefit of any other remedy given under this Agreement so that there is no double counting in calculating the relevant payment.]

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