

Smart Meters Programme Schedule 7.2

(Payments on Termination) (Billing System version)

DCC Public

SCHEDULE 7.2 PAYMENTS ON TERMINATION

1. PURPOSE OF SCHEDULE

1.1 This Schedule 7.2 sets out:

- (a) the calculation of the Termination Payment and the Compensation Payment that may be paid by the DCC to the Contractor pursuant to Clause 43 (Payments Made on Termination); and
- (b) the circumstances in which they are payable.

1.2 Except for any payments due in accordance with Schedule 8.5 (Exit) and amounts properly due up to the Termination Date, the DCC shall not make any payment to the Contractor:

- (a) on the expiry of the Term;
- (b) on or in connection with any Termination Date or the end of any Service Period;
- (c) in relation to any termination by the DCC in accordance with (or in accordance with any termination right referred to in) Clauses 60.1 to 60.2 (inclusive) (Termination for cause by the DCC);
- (d) in relation to any termination regarding a Prohibited Change of Control in accordance with Clauses 40.8.1; or
- (e) on the exercise of any other termination rights except as expressly described in this Schedule,

2. GENERAL PRINCIPLES

2.1 If this Agreement expires or is terminated in whole or in part for any reason other than as expressly listed in the table in paragraph 2.2 below, no compensation shall be due to the Contractor and the remainder of this Schedule 7.2 shall not be applicable.

2.2 Subject to the remaining terms of this Schedule 7.2, the DCC shall pay Breakage Costs and /or a Compensation Payment (as applicable) if this Agreement is terminated (in whole or in part) on the grounds set out in the table below:

Clause under which termination right arose	Summary of termination event	Payment of Breakage Costs?	Compensation Payment?
40.3	Termination by DCC for convenience	Yes	Yes
40.12	Termination by Contractor under 40.12	Yes	Yes
Any termination right in (or referred to in) any of	Termination by DCC for cause (including Insolvency Event)	No	No

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Clause under which termination right arose	Summary of termination event	Payment of Breakage Costs?	Compensation Payment?
Clauses 40.1 to 40.2			
40.8.1	Prohibited Change of Control	No	No
40.8.2	Change of Control (other than Prohibited Change of Control) where DCC can demonstrate that the Change of Control would cause a material degradation in the Service provided or an inability to deliver the Service or	No	No
40.8.2	Change of Control (other than Prohibited Change of Control) where the Service is still capable of being delivered in accordance with the provisions of the Agreement	Yes	Yes
40.15	Force Majeure	No	No

3. TERMINATION PAYMENT

- 3.1 Any Termination Payment payable pursuant to paragraph 2.2 may, subject to the remainder of this paragraph 3 and paragraph 2.2, comprise Breakage Costs.
- 3.2 The DCC shall only pay the Contractor Breakage Costs if this Agreement is terminated in whole or in part in accordance with:
- (a) Clause 40.3 (Termination for Convenience by the DCC);
 - (b) Clause 40.11.2 (Termination by the Contractor) or
 - (c) Clause 40.8.2 (Change of Control) in circumstances where the Service is still capable of being delivered in accordance with the provisions of the Agreement and the Change of Control is not a Prohibited Change of Control.

For the avoidance of any doubt, the DCC shall not pay Breakage Costs if this Agreement is terminated (whether in whole or in part) pursuant to Clause 40.8.2 (where a Prohibited Change of Control has occurred) or in accordance with Clause 40.15 (Termination for continuing Force Majeure).

- 3.3 In the event of any Partial Termination, any payment of Breakage Costs shall be calculated by reference to the terminated Services only.
- 3.4 The DCC's total aggregate liability for any Breakage Costs under or in connection with this Agreement shall not exceed an amount of xxxxxx pounds sterling (£xxxxxxx).

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- 3.5 In circumstances in which the Contractor is entitled to payment of costs on early termination under this Schedule 7.2, such costs shall also include (to the extent not otherwise covered in any amounts payable under this Schedule 7.2) the costs reasonably incurred by the Contractor in connection with the Achievement of the next Milestone to which a Milestone Value attaches (in accordance with paragraph 3 of Part B of Schedule 7.1 (Charges and Payment)) that is due to be Achieved under the Project Plan (if any) provided always that such amounts do not exceed the relevant Milestone Value for that Milestone.

4. COMPENSATION PAYMENT

- 4.1 To the extent that the DCC exercises its right to terminate this Agreement prior to Go Live in whole or in part in circumstances in which a Compensation Payment is payable in accordance with paragraph 2 the DCC shall provide the contractor with two (2) months notice and the Compensation Payment will be xxx% of the remainder of the current Milestone Charge and 50% of any remaining Milestone Charges.
- 4.2 To the extent that the DCC exercises its right to terminate this Agreement after Go Live in whole or in part in circumstances in which a Compensation Payment is payable in accordance with paragraph 2 where the termination takes effect on fewer than three (3) months notice, the DCC shall pay the Contractor an amount in Compensation Payment for the terminating Services equal to the Monthly Charges of such Services for three (3) months less the actual number of months notice given to the Contractor for termination.

5. FULL AND FINAL SETTLEMENT

Without prejudice to amounts properly due up to the Termination Date, any Termination Payment and/or Compensation Payment paid in accordance with this Schedule 7.2 shall be in full and final settlement of any claim, demand and/or proceedings of the Contractor in relation to any termination by the DCC or the Contractor pursuant to any provision of this Agreement, and the Contractor shall be excluded from all other rights and remedies it would otherwise have in respect of any such termination in respect of such part of this Agreement as has been terminated.

6. MITIGATION OF BREAKAGE COSTS

- 6.1 The Contractor shall only be entitled to recover Breakage Costs to the extent that they are costs of the Contractor which are proven, reasonable and not capable of recovery or otherwise incurred with the approval of the DCC and the Contractor agrees to take all reasonable steps to minimise and mitigate Breakage Costs by:
- (a) 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 payable by the DCC or a third party to the Contractor; and
 - (b) 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 DCC, assigning such contracts to the DCC or a third party acting on behalf of the DCC

7. INVOICING FOR THE PAYMENTS ON TERMINATION

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Any Termination Payment and/or Compensation Payment payable under this Schedule 7.2 shall be due no earlier than the Termination Date (but otherwise subject to and payable in accordance with the terms and usual invoicing procedures for Charges set out in Clause 14 and Schedule 7.1 (Charges and Payment)).

8. SET OFF

For the avoidance of doubt, the DCC shall be entitled to set off any outstanding liabilities of the Contractor under this Agreement against any amount it pays in compensation pursuant to this Schedule 7.2.

9. NO DOUBLE RECOVERY

- 9.1 The consideration for Transferable Assets is addressed in Part G of Schedule 8.5 (Exit).
- 9.2 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 to the extent necessary in order to ensure that the Contractor is not compensated twice for the same loss.
- 9.3 The calculation of compensation on termination set out in this Schedule 7.2 represents the amount payable only where the Agreement is terminated in full. Where this Agreement is only partially terminated then the amount of compensation payable shall be calculated by the Contractor in accordance with the principles and assumptions set out in this Schedule 7.2, but only in respect of such part of this Agreement as has been terminated and subject to paragraphs 3.3 and 4. If the parties fail to agree the reduction then the matter shall be referred to the Dispute Resolution Procedure.
- 9.4 The DCC may, at any time, but not more than twice every year, request the Contractor to provide a calculation of the payment the DCC would be liable to make pursuant to paragraphs 2 to 4 (inclusive) if the DCC were to terminate the Agreement under Clause 40.3 (Termination for Convenience by the DCC). The Contractor shall then provide such calculation within fourteen (14) days of such request. The Contractor shall include with such calculation detailed supporting information relating to the figures in the calculation, including a detailed analysis of all assets used in the performance of this Agreement. Such request shall not be deemed to constitute any notice of termination pursuant to this Agreement and shall not affect in any way the performance of the Services or the continuation of this Agreement. The DCC shall be entitled to monitor and audit the preparation of such calculation and the Contractor shall take account of the DCC's input and reasonable suggestions in relation to the preparation of the calculation.
- 9.5 On the receipt of notice of a termination for which the Contractor is entitled to compensation, the Contractor shall deliver to the DCC a calculation of the amount payable by the DCC pursuant to paragraphs 2 to 4 (inclusive) (as the case may be). The DCC shall have 30 days following the date of such delivery within which to audit the calculation and, for such purposes, the DCC shall have all rights of audit set out in this Agreement. If the DCC disputes the calculation and the parties fail to resolve such dispute, the dispute shall be referred to the Dispute Resolution Procedure. No compensation payments shall be made by the DCC until such dispute is resolved. On such resolution, the amount of compensation payable shall be paid by the DCC in accordance with Schedule 7.1 (Charges and Payment).