

## **ANNEX C TO CONTRACT AMENDMENT No: 00010**

Replace Schedule (21) with:

### **LIVERPOOL CITY COUNCIL**

#### **SCHEDULE 21**

#### **TERMINATION PAYMENTS**

**Version 5 – 20th December 2006**

#### **PART 1 – AUTHORITY TERMINATION PAYMENT (The sum payable by the Authority to the Contractor under clauses 40.1, 40.4 and 40.5.)**

- 1.1 In the event that the Authority exercises its right to terminate under Clause 39 of the Contract the Authority shall pay the Authority Termination Payment detailed in paragraph 1.2 and 1.3 of this Schedule 21 on 31<sup>st</sup> March 2012.
- 1.2 The Authority Termination Payment payable by the Authority to the Contractor for termination of the entire Contract under Clause 39 shall be the quantum calculated in accordance with paragraph 1.3 below.
- 1.3 The Authority Termination Payment quantum shall be calculated in accordance with the following:
  - 1.3.1 the sum of any cash discount received by the Authority plus interest at the rate of two percent above the HSBC bank base rate from the date of payment until the 31<sup>st</sup> March 2012, plus;
  - 1.3.2 the total of any financing offsets charged and paid by the Contractor relating to any additional investments or commitments, recorded in Schedule 24, which the Contractor makes in addition to the level of investment or commitment that the Contractor would have made (as had been recorded in Schedule 24) if the Contract had expired or terminated at the original contract expiration date of 31<sup>st</sup> March 2012 plus;
  - 1.3.3 the total of any other additional investment or third party contractual costs incurred by and paid by the Contractor up to 31<sup>st</sup> March 2012 with the agreement of the Authority (such agreement not to be unreasonably withheld).
- 1.4 In the event that either Party does not agree to the Authority Termination Payment quantum, the Parties shall instruct an independent financial advisor, the cost of such instruction shall be borne by the Parties equally, to calculate the Authority Termination Payment quantum in accordance with paragraph 1.3 above.
- 1.5 In the event that either Party does not agree the Authority Termination Payment quantum following the instruction of an independent financial advisor as set out in paragraph 1.3 above, the matter shall be referred to Dispute Resolution in accordance with clause 49 of the Contract.]
- 1.6 The Authority Termination Payment excludes any outstanding Charges which shall remain due from the Authority in accordance with this Contract.

- 1.7 Termination activities shall be in accordance with clause 42 and Schedule 12 Exit.

**PART 2 – CONTRACTOR TERMINATION PAYMENT (The sum payable by the Contractor to the Authority under clauses 40.2)**

- 2.1 For the avoidance of doubt clause 43.3 and 43.5 shall apply in respect of direct and demonstrable re-procurement costs and these costs do not form part of the sum payable under this Schedule 21. In addition, the costs of Exit (on an equivalent basis to that described in paragraph 7 of Schedule 12) shall be met in full by the Contractor and not re-charged to the Authority.
- 2.2 The Contractor shall pay the Contractor Termination Payment which shall be calculated as follows:
- 2.2.1 During the 18 months after the Termination Date, the Authority shall gather information relating to new support arrangements identifying the charges incurred and the equivalence of such arrangements with the Services previously provided under this Contract.
- 2.2.2 At the point 18 months after the Termination Date the parties shall meet and establish increased costs (if any) incurred during the period of 18 months following the Termination Date and any increased costs now likely to be incurred by the Authority for the following 42 months or the Expiry Date (whichever is less). Such assessment of costs incurred shall give consideration and make allowance in respect of the equivalence of supply arrangements with the Services previously provided under this contract.
- 2.2.3 The parties acting reasonably shall determine a payment to cover:
- (a) increased costs (if any) incurred by the Authority during the 18 month period immediately following the Termination Date; and
  - (b) increased costs (if any) now likely to be incurred by the Authority during the further subsequent period of 42 months up until 60 months after the Termination Date (or the Expiry Date, whichever is less);
- such lump sum not to exceed £1,200,000 for each consecutive period of 12 months during the 60 months immediately following the Termination Date (or the Expiry Date, whichever is less).
- 2.2.4 Such payment shall be payable by the Contractor within 30 days following agreement of the amount due.
- 2.3 The provisions of paragraph 2.2 above shall apply for both Partial Termination in respect of one or more Service Elements and full termination in respect of the entire Contract save that the aggregate liability of the Contractor for Contractor Termination Payments under this Contract shall not exceed £6,000,000.
- 2.4 For the avoidance of doubt, the increased costs incurred in accordance with this paragraph 2 shall exclude consideration of the impact of any future Best Value Review proposed for the 60 month period following the Termination Date.
- 2.5 Termination activities shall be in accordance with clause 42 and Schedule 12 Exit.
- 2.6 Calculation of the Contractor Termination Payment shall also be subject to clause 40.9 of this Contract