



Home Office

AUTHORITY: The Secretary of State for the Home Department

SCHEDULE 19
FINANCIAL DISTRESS

NEXT GENERATION OUTSOURCED VISA SERVICES

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SCHEDULE 19 – FINANCIAL DISTRESS

1. INTERPRETATIONS

The following is a list of the key definitions and abbreviations used throughout this document.

"Risk Indicator Thresholds"	the Risk Indicator threshold as set out in Annex 19-2 to this Schedule 19 (Financial Distress);
"Financial Distress Escrow Account"	an escrow account established in accordance with this Schedule 19 (Financial Distress) in the joint names of the Supplier and the Authority with a bank approved by the Authority;
"Financial Distress Event"	the occurrence of one or more of the events listed in paragraphs 4.1, 5.1 and/or 6.1 of this Schedule 19 (Financial Distress);
"Financial Distress Service Continuity Plan"	a plan setting out how the Supplier (together with the Guarantor, where appropriate) will ensure the continued performance and delivery of the Services in accordance with this Agreement in the event that the Supplier and/or the Guarantor suffers a Financial Distress Event;
"Level 1 Risk Indicator Threshold"	the Risk Indicator Threshold as set out in Annex 19-2 to this Schedule 19 (Financial Distress);
"Level 2 Risk Indicator Threshold"	the Risk Indicator Threshold as set out in Annex 19-2 to this Schedule 19 (Financial Distress);
"Level 3 Risk Indicator Threshold"	the Risk Indicator Threshold as set out in Annex 19-2 to this Schedule 19 (Financial Distress);
"Rating Agency"	the rating agency listed in Annex 19-1 to this Schedule 19 (Financial Distress);

2. BACKGROUND

- 2.1 This Schedule 19 (**Financial Distress**) provides for the assessment of the financial standing of the Supplier and the Guarantor and the establishment of trigger events relating to changes in such financial standing which, if breached, will have specified consequences.

3. RISK INDICATOR AND DUTY TO NOTIFY

- 3.1 The Supplier warrants and represents to the Authority for the benefit of the Authority that, as at the Effective Date, the Risk Indicators issued for the Supplier and the Guarantor by the Rating Agency are at Level 0 as detailed in Annex 19-2.
- 3.2 The Supplier shall (and shall procure that the Guarantor shall) maintain the Risk Indicators so that they are no higher than as set out in this Schedule 19 (**Financial Distress**).
- 3.3 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing if its, or the Guarantor's, Risk Indicator rises (and in any event within ten (10) Working Days of such Risk Indicator rising).

3.4 The Supplier shall:

- 3.4.1 regularly monitor the Supplier's and the Guarantor's Risk Indicators with the Rating Agency; and
- 3.4.2 promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within ten (10) Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event).

4. LEVEL 1 - CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

4.1 If the Financial Distress Event consists of:

- 4.1.1 the Supplier's or the Guarantor's Risk Indicator changes to the Level 1 Risk Indicator Threshold;
- 4.1.2 the Supplier or the Guarantor issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;
- 4.1.3 there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Supplier or the Guarantor; and/or
- 4.1.4 the Supplier or the Guarantor committing a material breach of covenants to its lenders,

then, immediately upon notification of the Financial Distress Event (or if the Authority becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in paragraphs 4.2 – 4.5.

4.2 The Supplier shall and shall procure that the Guarantor shall:

- 4.2.1 at the request of the Authority, meet with the Authority as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Agreement; and
- 4.2.2 where the Authority reasonably believes (taking into account the discussions and any representations made under paragraph 4.2.1) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Agreement, submit to the Authority for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing).

4.3 The Authority shall not withhold its approval of a draft Financial Distress Service Continuity Plan unreasonably. If the Authority does not approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Authority within five (5) Working Days of the rejection

of the first draft. This process shall be repeated until the Financial Distress Service Continuity Plan is approved by the Authority or referred to the escalation process under paragraph 4.4.

- 4.4 If the Authority considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the escalation process set out in section 18 of Schedule 8 (**Governance and Contract Management**).
- 4.5 Following approval of the Financial Distress Service Continuity Plan by the Authority, the Supplier shall:
- 4.5.1 on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Services in accordance with this Agreement;
 - 4.5.2 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with paragraph 4.5.1, submit an updated Financial Distress Service Continuity Plan to the Authority for its approval, and the provisions of paragraphs 4.3 and 4.4 shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and
 - 4.5.3 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
- 4.6 Where the Supplier reasonably believes that the relevant Financial Distress Event under paragraph 4.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and the parties may agree that the Supplier shall be relieved of its obligations under paragraph 4.5.

5. LEVEL 2 - CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

- 5.1 If the Financial Distress Event consists of:
- 5.1.1 the Supplier's or the Guarantor's Risk Indicator changes to the Level 2 Risk Indicator Threshold;
 - 5.1.2 non-payment of a Material Subcontractor by the Supplier without valid cause;
 - 5.1.3 the Supplier failing to notify the Authority of a Financial Distress Event that falls within paragraph 4,
- then, subject to paragraph 5.2, immediately upon notification of the Financial Distress Event (or if the Authority becomes aware of the Financial Distress Event without notification and brings the Financial Distress Event to the attention of the Supplier), the provisions of paragraphs 4.2 – 4.6 shall have effect (so that such provisions shall be applicable to a Financial Distress Event under this paragraph 5.1 and shall be interpreted as such), and the Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in paragraphs 5.2 – 5.4.
- 5.2 The Authority may:
- 5.2.1 require the Supplier to establish a Financial Distress Escrow Account, whereupon the Supplier shall (without cost to the Authority):

- a) establish a Financial Distress Escrow Account on such terms as the Authority may reasonably require; and
 - b) consent to such actions as may be required to give effect to the provisions of this paragraph 5;
- 5.2.2 require the Supplier to pay the Material Subcontractor the sums to which it is entitled;
- 5.2.3 pay any undisputed Service Charges (less any deductions made in accordance with this Agreement) which are due to the Supplier in respect of each month during which Services have been received after notification (or awareness) of the relevant Financial Distress Event into the Financial Distress Escrow Account;
- 5.2.4 require the Supplier to provide such financial information relating to the Supplier or the Guarantor as the Authority may reasonably require, whereupon the Supplier shall provide (and shall procure the provision of) such financial information; and
- 5.2.5 require any sums properly due to the Supplier Subcontractors to be paid (without set-off or deduction) directly from the Financial Distress Escrow Account to the relevant Supplier Subcontractors in accordance with paragraph 5.3, whereupon the Supplier shall provide its consent to, and carry out such other actions as may be necessary to enable such payments.
- 5.3 Monies paid into the Financial Distress Escrow Account by the Authority shall be held on trust by the approved bank and shall be paid out on the joint instructions of the parties in the following order:
 - 5.3.1 the payment in full of any Supplier Subcontractors;
 - 5.3.2 the payment of any other liabilities of the Supplier that have a direct impact on the performance of this Agreement; and
 - 5.3.3 subject to paragraphs 5.4, repayment of the balance to the Supplier.
- 5.4 The Supplier shall demonstrate its compliance with paragraphs 5.3.1 and 5.3.2:
 - 5.4.1 by the production of valid invoices against which payments from the Financial Distress Escrow Account have been made to the relevant Supplier Subcontractors; or
 - 5.4.2 at the Authority's sole discretion and notified in writing to the Supplier, by the certification by the Supplier's Named Representative that the Supplier Subcontractors have been paid from the Supplier's general account.

6. LEVEL 3 - CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

- 6.1 If the Financial Distress Event consists of:
 - 6.1.1 the Supplier's or the Guarantor's Risk Indicator remaining at the Level 3 Risk Indicator Threshold and;
 - 6.1.2 any of the following:
 - a) commencement of any litigation against the Supplier or the Guarantor with respect to financial indebtedness or obligation under a service contract; or
 - b) non-payment by the Supplier or the Guarantor of any financial indebtedness; or

- c) any financial indebtedness of the Supplier or the Guarantor becoming due as a result of an event of Default; or
- d) the cancellation or suspension of any financial indebtedness in respect of the Supplier or the Guarantor,

which the Authority reasonably believes could impact on the continued performance and delivery of the Services in accordance with this Agreement; or

- e) the Supplier failing to notify the Authority of a Financial Distress Event that falls within paragraph 5,

then, subject to paragraph 6.3, immediately upon notification of the Financial Distress Event (or if the Authority becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the provisions of paragraphs 4.2 – 4.6 and 5.2 – 5.4 shall have effect (so that such provisions shall be applicable to a Financial Distress Event under this paragraph 6.1 and shall be interpreted as such), and the Supplier shall have the obligations and the Authority shall also have the rights and remedies as set out in paragraph 6.2.

6.2 The Authority may:

- 6.2.1 require the Supplier to update the Authority as to the Supplier's or the Guarantor's financial standing, whereupon the Supplier shall procure such information as the Authority may reasonably require and ensure that its chief financial officer provides an update on a monthly basis; and
- 6.2.2 retain such part of each applicable Service Charges as the Authority shall determine for up to six (6) consecutive months after notification (or awareness) of the relevant Financial Distress Event, which the Supplier acknowledges shall:
 - a) be a substantial part of the Services Charges payable after allowing for payment and other liabilities to Supplier Subcontractors; and
 - b) not constitute a breach of this Agreement by the Authority.

6.3 The Authority shall not exercise its right under paragraph 6.2.2 without first:

- 6.3.1 notifying the Supplier in writing of its intention to do so; and
- 6.3.2 where requested by the Supplier within three (3) Working Days of the date of the Authority's notification under paragraph 6.3.1, meeting with and considering any representations made by the Supplier.

7. TERMINATION RIGHTS

7.1 The Authority shall be entitled to terminate this Agreement under Clause 45.1 (The Authority's Right to Terminate) if:

- 7.1.1 the Supplier fails to notify the Authority of a Financial Distress Event under paragraphs 5 and/or 6 in accordance with paragraph 3.4; and/or
- 7.1.2 the parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraphs 4.2 – 4.4;

- 7.1.3 the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraph 4.5.3; and/or
- 7.1.4 the Supplier fails to establish the Financial Distress Escrow Account and/or otherwise comply with its obligations in accordance with paragraph 5 or 6.

8. PRIMACY OF RISK INDICATORS

- 8.1 Without prejudice to the Supplier's obligations and the Authority's rights and remedies under paragraphs 4, 5 or 6, if, following the occurrence of a Financial Distress Event pursuant to paragraphs 4.1.2 - 4.1.4, 5.1.3 or 6.1.2, the Rating Agency reviews and reports subsequently that the Risk Indicator remains unchanged and/or does not increase above the relevant Risk Indicator Threshold, then as applicable:

- 8.1.1 the Supplier shall be relieved automatically of its obligations under paragraphs 4.2 - 4.5;
- 8.1.2 the Supplier may:
 - a) request that the Authority pay the Services Charges direct to the Supplier and give its consent to the closure of the Financial Distress Escrow Account; and
 - b) withdraw any sums standing to the credit of that account;
- 8.1.3 the Authority shall not be entitled to require the Supplier to provide financial information in accordance with paragraphs 5.2.4 or 6.2.1;
- 8.1.4 the Supplier may request that the Authority pay the Service Charges direct to the Supplier and release any monies retained under paragraph 6.2.2 to the Supplier.

9. CONSEQUENCES OF AN IMPROVEMENT IN FINANCIAL DISTRESS

- 9.1 Following the occurrence of a Financial Distress Event pursuant to paragraph 5.1.1, then if the Supplier's or the Guarantor's (as appropriate) Risk Indicator subsequently falls to the Level 0 Risk Indicator Threshold then, subject to any subsequent Financial Distress Event, the Supplier may:
 - 9.1.1 request that the Authority pay the Service Charges direct to the Supplier and give its consent to the closure of the Financial Distress Escrow Account; and
 - 9.1.2 withdraw any sums standing to the credit of that account.

ANNEX 19-1
RATING AGENCY

- Dun and Bradstreet or equivalent reports or rating system

ANNEX 19-2

RISK INDICATOR THRESHOLDS

Level 0 Risk Indicator Threshold

Dun and Bradstreet Risk Indicator 1 or 2

Level 1 Risk Indicator Threshold

Dun and Bradstreet Risk Indicator 3

Level 2 Risk Indicator Threshold

Dun and Bradstreet Risk Indicator 4

Level 3 Risk Indicator Threshold

Dun and Bradstreet Risk Indicator 4