

## **Schedule 7 – Financial Distress**

## Schedule 7 (Financial Distress)

### 1 When this Schedule applies

- 1.1 The Parties shall comply with the provisions of this Schedule in relation to the assessment of the financial standing of the Monitored Companies and the consequences of a change to that financial standing.
- 1.2 The terms of this Schedule shall survive termination or expiry of this Contract.

### 2 What happens when your credit rating changes

- 2.1 The Supplier warrants and represents to the Authority that as at the Effective Date the credit rating issued for the Monitored Companies by the Rating Agency is as set out in Annex 2.
- 2.2 The Supplier shall promptly (and in any event within ten (10) Working Days) notify the Authority in writing if there is any downgrade in the credit rating issued by the Rating Agency for a Monitored Company which means that the credit rating for the Monitored Company falls below the Credit Rating Threshold.
- 2.3 If there is any such downgrade credit rating issued by the Rating Agency for a Monitored Company the Supplier shall at the Authority's request ensure that the Monitored Company's auditors thereafter provide the Authority within ten (10) Working Days of the end of each Contract Year and within ten (10) Working Days of written request by the Authority (such requests not to exceed four (4) in any Contract Year) with written calculations of the quick ratio for the Monitored Company as at the end of each Contract Year or such other date as may be requested by the Authority. For these purposes the "quick ratio" on any date means:

$$\frac{A + B + C}{D}$$

where:

- A is the value at the relevant date of all cash in hand and at the bank of the Monitored Company;
  - B is the value of all marketable securities held by the Monitored Company determined using closing prices on the Working Day preceding the relevant date;
  - C is the value at the relevant date of all account receivables of the Monitored Company; and
  - D is the value at the relevant date of the current liabilities of the Monitored Company.
- 2.4 The Supplier shall:
    - (a) regularly monitor the credit ratings of each Monitored Company with the Rating Agency; and

- (b) 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.

2.5 For the purposes of determining whether a Financial Distress Event has occurred the credit rating of the Monitored Company shall be deemed to have dropped below the applicable Credit Rating Threshold if the Rating Agency has rated the Monitored Company at or below the applicable Credit Rating Threshold.

### **3 What happens if there is a Financial Distress Event**

3.1 In the event of a Financial Distress Event 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 3.3 to 3.6 and 4.1 (Request for a Guarantee and financial information).

3.2 In the event that a Financial Distress Event arises due to a Key Subcontractor notifying the Authority that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute then, the Authority shall not exercise any of its rights or remedies under Paragraph 3.3 without first giving the Supplier ten (10) Working Days to:

- (a) rectify such late or non-payment; or
- (b) demonstrate to the Authority's satisfaction that there is a valid reason for late or non-payment.

3.3 The Supplier shall and shall procure that the other Monitored Companies shall:

- (a) at the request of the Authority meet 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) to review the effect of the Financial Distress Event on the continued performance of the Contract and the delivery of the Outputs and performance of the Works in accordance with the Contract; and
- (b) where the Authority believes (taking into account the discussions and any representations made under Paragraph 3.3(a)) that the Financial Distress Event could impact on the continued performance of the Contract and the delivery of the Outputs and performance of the Works in accordance with the Contract:
  - (i) 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); and

- (ii) provide such financial information relating to the Monitored Company as the Authority may require.

- 3.4 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 (1<sup>st</sup>) or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is approved by the Authority or referred to the Dispute Resolution Procedure.
- 3.5 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 Dispute Resolution Procedure.
- 3.6 Following approval of the Financial Distress Service Continuity Plan by the Authority, the Supplier shall:
- (a) 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 of the Contract and provision of the Outputs and carrying out of the Works in accordance with the Contract;
  - (b) where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 3.6(a), submit an updated Financial Distress Service Continuity Plan to the Authority for its approval, and the provisions of Paragraphs 3.5 and 3.6 shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and
  - (c) comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
- 3.7 Where the Supplier reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under Paragraph 3.6.

#### **4 Request for a Guarantee and financial information**

- 4.1 Without affecting the Supplier's obligations and the Authority's rights and remedies set out in Paragraphs 3.3 to 3.6 (What happens if there is a Financial Distress Event), if a Financial Distress Event occurs, the Supplier shall, if the Authority requires (in its absolute discretion) and so notifies the Supplier in writing:
- (a) deliver to the Authority:

- (i) an executed Guarantee from a Guarantor acceptable to the Authority; and
  - (ii) a certified copy extract of the board minutes and/or resolution of the Guarantor approving the execution of the Guarantee; and/or
- (b) deliver to the Authority:
  - (i) an up-to-date forecast of the Supplier's financial contribution amounts required to Achieve the Stage One (Network Detailed Design and Due Diligence) Complete Milestone and Stage Two (Build) Complete Milestone for any Authorised Drawdown; and
  - (ii) evidence to the satisfaction of the Authority that the Supplier is able to, for any Authorised Drawdown:
    - (A) continue to pay its financial contribution amounts required to Achieve the Stage One (Network Detailed Design and Due Diligence) Complete Milestone and Stage Two (Build) Complete Milestone; and
    - (B) ensure the continued provision of the Outputs and carrying out of the Works in accordance with the Contract.

Such evidence must be in a form acceptable to the Authority and/or from a third party acceptable to the Authority (as applicable). Examples of such evidence may include:

- (C) a letter of credit;
- (D) a committed loan facility;
- (E) a cash collateral account; or
- (F) an equity support agreement between the Supplier and a third party acceptable to the Authority.

The examples provided in this Paragraph (b)(ii) are not exhaustive and are for illustrative purposes only.

- 4.2 For the purposes of this Schedule, where the Authority exercises its right to request a Guarantee in accordance with Paragraphs 4.1 or 5.1(d) (When the Authority can terminate for financial distress) the Guarantor shall be deemed a Monitored Company.

## 5 **When the Authority can terminate for financial distress**

- 5.1 The Authority shall be entitled to terminate this Contract for material Default if:
  - (a) the Supplier fails to notify the Authority of a Financial Distress Event in accordance with Paragraph 2.4 (What happens when your credit rating changes);

- (b) the Authority and the Supplier fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 3.3 to 3.5 (What happens if there is a Financial Distress Event);
- (c) 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 3.6(c) (What happens if there is a Financial Distress Event);
- (d) if :
  - (i) the Supplier fails to provide the documentation required by Paragraph 4.1(a) (Request for a Guarantee and financial information) by the date so specified by the Authority;
  - (ii) the Guarantor withdraws the Guarantee for any reason whatsoever;
  - (iii) the Guarantor is in breach or anticipatory breach of the Guarantee;
  - (iv) an Insolvency Event occurs in respect of the Guarantor;
  - (v) a Financial Distress Event occurs in respect of the Guarantor; or
  - (vi) the Guarantee becomes invalid or unenforceable for any reason whatsoever;

and in each case the Guarantee is not replaced by an alternative guarantee agreement in the form set out in Annex 1 (Form of Guarantee) of Schedule 12 (Guarantee) from a replacement guarantor acceptable to the Authority at the Authority's request; and/or
- (e) where the Supplier fails to provide the financial information required by Paragraph 4.1(b) (Request for a Guarantee and financial information) by the date so specified by the Authority.

## 6 What happens if your credit rating is still good

- 6.1 Without affecting the Supplier's obligations and the Authority's rights and remedies under Paragraph 5 (When the Authority can terminate for financial distress) if, following the occurrence of a Financial Distress Event, the Rating Agency reviews and reports subsequently that the credit rating does not drop below the relevant Credit Rating Threshold, then, except where the Authority requires the Supplier to deliver to the Authority the documentation and/or financial information in accordance with Paragraph 4.1 (Request for a Guarantee and financial information):
- (a) the Supplier shall be relieved automatically of its obligations under Paragraphs 3.3 to 3.6 (What happens if there is a Financial Distress Event); and
  - (b) the Authority shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 3.3(b)(ii) (What happens if there is a Financial Distress Event).

## **Annex 1 – Rating Agency**

**REDACTED UNDER FOIA SECTION 43: COMMERCIALLY SENSITIVE**

## **Annex 2: Credit ratings & Credit Rating Thresholds**

**REDACTED UNDER FOIA SECTION 43: COMMERCIALLY SENSITIVE**