Home Office

AUTHORITY: The Secretary of State for the Home Department

Schedule P – Financial Distress

Escorting Services

THE CONTRACT

Document	Title
Main Terms	Services Agreement
Schedules	
A	Insurances
B	Mobilisation & Permit to Operate
	Part 1 - Requirements
	Part 2 - Response
C	Testing Procedures
D	Service Requirements
	Part 1 – Service Specification
D1	Management Services
D2	Core Services
D3	In-Country Escorting
D4	Overseas Escorting
D5	Holding Rooms
D6	Residential Short Term Holding Facilities
D7	Juxtaposed Controls
D8	Glossary
	Part 2 – Service Response
E	Guarantee
F	Payment Mechanism
G	Performance Evaluation and Service Unavailability
H	Innovation and Partnership Agreement
I	Commercially Sensitive Information
J	Dispute Resolution Procedure
K	Notified Key Sub-contractors
L	Change Control Procedures

Document	Title
M	Key Personnel
N	Exit Management
	Part 1 - Requirements
	Part 2 - Response
O	Service Improvement
P	**Financial Distress**
Q	Financial Reports and Audit Rights
R	IT Systems Requirements
	Part 1 – IT Systems Requirements
	Part 2 – IT Systems Solution
S	Governance
	Part 1 - Requirements
	Part 2 - Response
T	Standards
U	Security Management
V	Business Continuity and Disaster Recovery
W	Payments on Termination
X	Reports and Records Provisions
Y	Third Party Contracts
Z	Staff Transfer
Appendix 1	Evaluators' Clarification Questions
Appendix 2	Supplier's Allowable Assumptions
Appendix 3	Supplier's Clarification Questions

Financial Distress

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Credit Rating"	A credit rating is an evaluation of the credit risk of a prospective debtor, predicting their ability to pay back the debt, and an implicit forecast of the likelihood of the debtor defaulting. The credit rating represents an evaluation of a credit rating agency of the qualitative and quantitative information for the prospective debtor, including information provided by the prospective debtor and other non-public information obtained by the credit rating agency's analysts;
"Credit Rating Level"	a credit rating level, as specified in Annex 2;
"Credit Rating Threshold"	the minimum Credit Rating Level for the Supplier, the Guarantor and for each Key Sub-contractor as set out in Annex 3;
"Downgrade in Credit Rating"	a loss of 20 points or more or a drop in credit ratings band; and
"Rating Agencies"	the rating agencies listed in Annex 1.

2 CREDIT RATING AND DUTY TO NOTIFY

2.1 The Supplier warrants and represents to the Authority for the benefit of the Authority that, as at the Effective Date, the long term credit ratings issued for the Supplier, the Guarantor and any Key Sub-contractor by each of the Rating Agencies are as set out in Annex 3, and are accurate and a true reflection of the Supplier's financial position.

2.2 If:

(a) there is any Downgrade in Credit Rating issued by any Rating Agency for the Supplier, the Guarantor or any Key Sub-contractor; or

(b) the Supplier, the Guarantor or any Key Sub-contractor ceases to have any credit rating,

the Supplier shall promptly (and in any event within 10 Working Days of the occurrence of the downgrade or ceasing) notify the Authority in writing, and shall ensure its auditors provide the Authority with the credit rating or an equivalent recognised assurance of financial stability.

2.3 If there is any Downgrade in Credit Rating issued by any Rating Agency for either the Supplier or the Guarantor, the Supplier shall ensure that the Supplier's auditors or Guarantor's auditors (as the case may be) thereafter provide the Authority within 10 Working Days of the end of each Contract Year and within 10 Working Days of written request by the Authority (such requests not to exceed 4 in any Contract Year) with written calculations of the quick ratio for the Supplier or the Guarantor as the case may be as at the end of each Contract Year or such other date as may be requested by the Authority.

2.4 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 Supplier or the Guarantor (as the case may be);

B is the value of all marketable securities held by the Supplier or the Guarantor (as the case may be) 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 Supplier or the Guarantor (as the case may be); and

D the value at the relevant date of the current liabilities of the Supplier or the Guarantor (as the case may be).

2.5 The Supplier shall:

(a) regularly monitor the credit ratings of the Supplier, the Guarantor and each Key Sub-contractor with the Rating Agencies; 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 Key Sub-contractor Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event or a Key Sub-contractor Financial Distress Event (and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event, the Key Sub-contractor Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event or a Key Sub-contractor Financial Distress Event).

2.6 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Paragraph 3.1(a), the credit rating of the Supplier, the Guarantor or relevant Key Sub-contractor (as the case may be) shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the Supplier, the Guarantor or relevant Key Sub-contractor (as the case may be) below the applicable Credit Rating Level.

3 CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

3.1 In the event of:

(a) the credit rating of the Supplier, the Guarantor or any Key Sub-contractor dropping below the applicable Credit Rating Threshold;

(b) the Supplier, the Guarantor or any Key Sub-contractor issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;

(c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Supplier, the Guarantor or any Key Sub-contractor;

(d) the Supplier, the Guarantor or any Key Sub-contractor committing a material breach of covenant to its lenders;

(e) a Key Sub-contractor notifying the Authority that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute; or

(f) any of the following:

(i) commencement of any litigation against the Supplier, the Guarantor or any Key Sub-contractor with respect to financial indebtedness or obligations under a service contract;

(ii) non-payment by the Supplier, the Guarantor or any Sub-contractor of any financial indebtedness;

(iii) any financial indebtedness of the Supplier, the Guarantor or any Sub-contractor becoming due as a result of an event of default; or

(iv) the cancellation or suspension of any financial indebtedness in respect of the Supplier, the Guarantor or any Sub-contractor,

in each case which the Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Agreement;

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.

3.2 In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1(e), the Authority shall not exercise any of its rights or remedies under Paragraph 3.3 without first giving the Supplier 10 Working Days to:

(a) rectify such late or non-payment; or

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

3.3 The Supplier shall (and shall procure that the Guarantor and/or any relevant Key Sub-contractor shall):

(a) at the request of the Authority, meet the Authority as soon as reasonably practicable (and in any event within 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

(b) where the Authority reasonably 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 and delivery of the Services in accordance with this Agreement:

(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 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); and

(ii) provide such financial information relating to the Supplier or the Guarantor as the Authority may reasonably require.

3.4 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 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 Dispute Resolution Procedure under Paragraph 3.5.

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 ensure the continued performance of the Supplier's obligations in accordance with the Agreement, 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 to the Strategic Contract Review and Delivery Group described in Schedule S (Governance).

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 and delivery of the Services in accordance with this Agreement;

(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 3.4 and 3.5 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 under Paragraph 3.1 (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 3.6.

4 TERMINATION RIGHTS

The Authority shall be entitled to terminate this Agreement under Clause 33.1(b) (Termination by the Authority) if:

(a) the Supplier fails to notify the Authority of a Financial Distress Event in accordance with Paragraph 2.5(b);

(b) the Parties 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; and/or

(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).

5 PRIMACY OF CREDIT RATINGS

5.1 Without prejudice to the Supplier's obligations and the Authority's rights and remedies under Paragraph 2, if, following the occurrence of a Financial Distress Event pursuant to any of Paragraphs 3.1(b) to 3.1(f), the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:

(a) the Supplier shall be relieved automatically of its obligations under Paragraphs 3.3 to 3.6; and

(b) the Authority shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 3.3(b)(ii).

ANNEX 1: RATING AGENCIES

- **Dun & Bradstreet UK (D&B)**

[redacted]

- **Experian UK Limited**

[redacted]

ANNEX 2: CREDIT RATINGS

REDACTED

ANNEX 3: CREDIT RATING THRESHOLDS

REDACTED