

Primary Care Support Services Framework
Agreement

Schedule 4.1

Financial Distress

PCSS Framework Agreement
Schedule 4.1 (Financial Distress)

Definitions

1.1 Unless defined within this Schedule, or in the Call-Off Order Form applicable to this Call-Off Agreement, the definitions in Schedule 1 of the Framework Agreement shall apply.

2. Financial Ratios and Duty to Notify

2.1 The Supplier warrants and represents to the Framework Authority for the benefit of the Framework Authority that as at the Framework Effective Date the Financial Ratios for the Guarantor are as set out in Annex 1 to this Schedule 4.1.

2.2 The Supplier shall monitor the Guarantor's Financial Ratios on an ongoing basis and shall calculate each Financial Ratio as at the end of each Ratio Period (on the basis of audited accounts where available) and confirm in writing to the Customer in the form of a compliance certificate signed by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Customer in advance of issue of such confirmation) within one hundred and eighty (180) days of the end of such period, the applicable current Financial Ratios. The Supplier shall include details of the Guarantor's then current Financial Ratios in each Finance Report, and will additionally provide the Customer with up to date Financial Ratios on request.

2.3 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Framework 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).

3. Consequences of a Financial Distress Event

3.1 In the event of:

3.1.1 the Guarantor 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;

3.1.2 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;

3.1.3 any of the Guarantor's Financial Ratios falling below the Financial Ratio Thresholds;

3.1.4 the Supplier or the Guarantor committing a material breach of covenant to its lenders;

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

3.1.6 any of the following:

3.1.6.1 commencement of any litigation against the Supplier, the Guarantor or any Key Sub-contractor with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £50m;

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- 3.1.6.2 non-payment by the Supplier, the Guarantor or any Key Sub-contractor of any financial indebtedness;
- 3.1.6.3 any financial indebtedness of the Supplier, the Guarantor or any Key Sub-contractor becoming due as a result of an event of default; or
- 3.1.6.4 the cancellation or suspension of any financial indebtedness in respect of the Supplier, the Guarantor or any Key Sub-contractor,

in each case which the Framework 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 Framework Agreement (each such event being a "**Financial Distress Event**");

then, immediately upon notification of the Financial Distress Event (or if the Framework 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 Framework Authority shall have the rights and remedies as set out in Paragraphs 3.2 to 3.6.

- 3.2 In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1.4, the Framework Authority shall not exercise any of its rights or remedies under Paragraph 3.3 without first giving the Supplier ten (10) Working Days to:

- 3.2.1 rectify such late or non-payment; or
- 3.2.2 demonstrate to the Framework 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):

- 3.3.1 at the request of the Framework Authority, meet the Framework 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 Framework 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 Framework Agreement; and

- 3.3.2 where the Framework Authority reasonably believes (taking into account the discussions and any representations made under Paragraph 3.3.1) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Framework Agreement:

- 3.3.2.1 submit to the Framework 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 Framework Authority may permit and notify to the Supplier in writing); and
- 3.3.2.2 provide such financial information relating to the Supplier or the Guarantor as the Framework Authority may reasonably require.

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- 3.4 The Framework Authority shall not withhold its approval of a draft Financial Distress Service Continuity Plan unreasonably. If the Framework 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 Framework 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 Framework Authority or referred to the Dispute Resolution Procedure under Paragraph 3.5.
- 3.5 If the Framework 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 Framework 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 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 Framework Authority, the Supplier shall:
- 3.6.1 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 the Framework Agreement;
- 3.6.2 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 3.6.1, submit an updated Financial Distress Service Continuity Plan to the Framework 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
- 3.6.3 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 Framework Authority and the Parties may agree that the Supplier shall be relieved of its obligations under Paragraph 3.6.

4. Termination Rights

- 4.1 The Framework Authority shall be entitled to terminate this Framework Agreement under Clause 26.1.6 (Termination by the Framework Authority) of this Framework Agreement if:
- 4.1.1 the Supplier fails to notify the Framework Authority of a Financial Distress Event in accordance with Paragraph 2.3;
- 4.1.2 the Parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 3.3 to 3.5; and/or
- 4.1.3 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 3.6.3

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ANNEX 1 Financial Ratios and Financial Ratio Thresholds

Entity	Current Debt to EBITDA Ratio as at Framework Effective Date	Debt to EBITDA Ratio Threshold	Current EBITA to Interest Charges Ratio	EBITA to Interest Charges Ratio Threshold
Guarantor	2.4:1	Debt to EBITDA Ratio of 4:1 (ie where debt is greater than 4 in a ratio where EBITDA is equal to 1, this will constitute a Financial Distress Event)	14:1	EBITA: to Interest Charges Ratio of 3:1. (i.e. where EBITA is less than 3 in a ratio where net interest is equal to 1, this will constitute a Financial Distress Event)