HM Revenue & Customs

HMRC Tier 3 Model ICT Contract
Version 2.0 (April 2019)

SCHEDULE 7.4 | Financial Distress

OFFICIAL – SENSITIVE - COMMERCIAL

Schedule 7.4 | Financial Distress

1 CREDIT RATING AND DUTY TO NOTIFY

1.1 The Supplier shall:

(a) regularly monitor its credit ratings and those of the Guarantor and each Key Sub-contractor with a number of industry recognised credit rating agencies; and

(b) promptly notify (or shall procure that its auditors promptly notify) the Authority in writing 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:

(i) any downgrading in the credit rating issued by any credit rating agency for either the Supplier or the Guarantor; and / or

(ii) the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event in relation to the Supplier, its Guarantor and / or a Key Sub-contractor.

1.2 If there is any downgrade credit rating issued by any credit 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 ten (10) Working Days of the end of each Contract Year and within ten (10) Working Days of a 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. 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 CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

2.1 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 2.3 to 2.6.

2.2 In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph **Error! Reference source not found.**, the Authority shall not exercise any of its rights or remedies under Paragraph 2.3 without first giving the Supplier ten (10) Working Days to:

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

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

2.3 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 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

(b) where the Authority reasonably believes (taking into account the discussions and any representations made under Paragraph 2.3(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 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); and

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

2.4 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 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 Dispute Resolution Procedure.

2.5 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 with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.

2.6 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 2.6(a), submit an updated Financial Distress Service Continuity Plan to the Authority for its approval, and the provisions of Paragraphs 2.4 and 2.5 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).

2.7 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 the Parties may agree that the Supplier shall be relieved of its obligations under Paragraph 2.6.

3 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 1.1(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 2.3 to 2.5; 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 2.6(c).