

THE LORD CHANCELLOR

AND

SUPPLIER

FACILITIES MANAGEMENT SERVICES FRAMEWORK AGREEMENT

AGREEMENT REF: RM3830 (HMCTS SECURITY)

JOINT SCHEDULE 7

FINANCIAL DISTRESS

1. DEFINITIONS

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

"Financial Distress Event" the occurrence or one or more of the following events:

- a) the credit rating of the Supplier, the Framework Guarantor and Call-Off Guarantor or any Key Subcontractor dropping below the applicable Credit Rating Threshold;
- b) the Supplier, the Framework Guarantor and Call-Off Guarantor or any Key Subcontractor issuing a profits warning to a stock exchange or making any other public announcement 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 Framework Guarantor and Call-Off Guarantor] or any Key Subcontractor;
- d) the Supplier, the Framework Guarantor and Call-Off Guarantor or any Key Subcontractor committing a material breach of covenant to its lenders;
- e) a Key Subcontractor (where applicable) notifying CCS that the Supplier has not satisfied any 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 Framework Guarantor and Call-Off Guarantor or any Key Subcontractor with respect to financial indebtedness or obligations under a contract;
 - ii) non-payment by the Supplier, the Framework Guarantor and Call-Off Guarantor or any Key Subcontractor of any financial indebtedness;
 - iii) any financial indebtedness of the Supplier, the Framework Guarantor and Call-Off

Guarantor or any Key Subcontractor 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 Framework Guarantor, and Call-Off Guarantor or any Key Subcontractor,

in each case which CCS reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Deliverables in accordance with any Call-Off Contract;

"Credit Rating Threshold" the minimum credit rating level for the Supplier and the Framework Guarantor and Call-Off Guarantor as set out in Annex 2 and for each Key Subcontractor (if applicable); and

"Financial Distress Service Continuity Plan" a plan setting out how the Supplier will ensure the continued performance and delivery of the Deliverables in accordance with each Call-Off Contract in the event that a Financial Distress Event occurs;

"Rating Agencies" the rating agencies listed in Annex 1.

2. INTRODUCTION

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

3. CREDIT RATING AND DUTY TO NOTIFY

- 3.1 The Supplier warrants and represents to CCS that as at the Start Date the long term credit ratings issued for the Supplier and Framework Guarantor and Call-Off Guarantor by each of the Rating Agencies are as set out in Annex 2.
- 3.2 The Supplier shall promptly (and in any event within five (5) Working Days) notify CCS and the Buyer in writing if there is any downgrade in the credit rating issued by any Rating Agency for either the Supplier or the Framework Guarantor and Call-Off Guarantor.
- 3.3 If there is any downgrade credit rating issued by any Rating Agency for either the Supplier or the Framework Guarantor and Call-Off Guarantor, the Supplier shall ensure that the Supplier's auditors or Framework Guarantor's, and Call-Off Guarantor's auditors (as the case may be) thereafter provide CCS and the Buyer within 10 Working Days of the end of each Contract Year and within 10 Working Days of written request by CCS and/or the Buyer (such requests not to exceed 4 in any Contract Year) with written calculations of the quick ratio for the Supplier or the Framework Guarantor, and Call-Off Guarantor as the case may be as at the end of each Contract Year or such other date as may be requested by CCS and/or the Buyer. 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 Framework Guarantor and Call-Off Guarantor (as the case may be);
- B is the value of all marketable securities held by the Supplier or the Framework Guarantor, and Call-Off 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 Framework Guarantor, and Call-Off Guarantor (as the case may be); and
- D is the value at the relevant date of the current liabilities of the Supplier or the Framework Guarantor and Call-Off Guarantor (as the case may be).

3.4 The Supplier shall:

- 3.4.1 regularly monitor the credit ratings of the Supplier, Framework Guarantor, and Call-Off Guarantor and each Key Subcontractor with the Rating Agencies; and
- 3.4.2 promptly notify (or shall procure that its auditors promptly notify) CCS and the Buyer in writing following the occurrence of a Financial Distress Event or Key Subcontractor Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event or a Key Subcontractor 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 Subcontractor Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event or a Key Subcontractor Financial Distress Event).

- 3.5 For the purposes of determining whether a Financial Distress Event the credit rating of the Supplier, the Framework Guarantor, and Call-Off Guarantor or relevant Key Subcontractor (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 Framework Guarantor, and Call-Off Guarantor or relevant Key Subcontractor (as the case may be) at or below the applicable Credit Rating Threshold.

4. CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

- 4.1 In the event of a Financial Distress Event then, immediately upon notification of the Financial Distress Event (or if CCS and/or the Buyer 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 CCS and the Buyer shall have the rights and remedies as set out in Paragraphs 4.3 to 4.6.
- 4.2 In the event that a Financial Distress Event arises due to a Key Subcontractor notifying CCS and the Buyer that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute then, CCS and the Buyer shall not exercise any

- of their rights or remedies under Paragraph 4.3 without first giving the Supplier ten (10) Working Days to:
- 4.2.1 rectify such late or non-payment; or
 - 4.2.2 demonstrate to CCS's and the Buyer's reasonable satisfaction that there is a valid reason for late or non-payment.
- 4.3 The Supplier shall (and shall procure that the Framework Guarantor, and Call-Off Guarantor and/or any relevant Key Subcontractor shall):
- 4.3.1 at the request of CCS and/or the Buyer meet CCS and/or the Buyer 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 and delivery of the Deliverables in accordance each Call-Off Contract; and
 - 4.3.2 where CCS and/or the Buyer reasonably believes (taking into account the discussions and any representations made under Paragraph 4.3.1) that the Financial Distress Event could impact on the continued performance and delivery of the Deliverables in accordance with each Call-Off Contract:
 - (a) submit to CCS and the Buyer 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
 - (b) provide such financial information relating to the Supplier or the Framework Guarantor and Call-Off Guarantor as CCS and/or the Buyer may reasonably require.
- 4.4 If CCS and/or the Buyer does not (acting reasonably) 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 CCS and the Buyer within five (5) Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is Approved by CCS and the Buyer or referred to the Dispute Resolution Procedure.
- 4.5 If CCS and/or the Buyer 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.
- 4.6 Following Approval of the Financial Distress Service Continuity Plan by CCS and the Buyer, the Supplier shall:
- 4.6.1 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 Deliverables in accordance with each Call-Off Contract;
 - 4.6.2 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 4.6.1, submit an updated Financial Distress Service Continuity Plan to CCS and the Buyer for their Approval, and the provisions of

Paragraphs 4.5 and 4.6 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and

- 4.6.3 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
- 4.7 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 CCS and the Buyer and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under Paragraph 4.6.
- 4.8 CCS and the Buyer shall be able to share any information it receives from the Buyer in accordance with this Paragraph with any Buyer who has entered into a Call-Off Contract with the Supplier.

5. TERMINATION RIGHTS

- 5.1 CCS shall be entitled to terminate this Contract and Buyers shall be entitled to terminate their Call-Off Contracts for material Default if:
 - 5.1.1 the Supplier fails to notify CCS and (in the case of the Call-Off Contract) the Buyer of a Financial Distress Event in accordance with Paragraph 3.4;
 - 5.1.2 CCS and (in the case of the Call-Off Contract) the Buyer and the Supplier fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 4.3 to 4.5; and/or
 - 5.1.3 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 4.6.3.

6. PRIMACY OF CREDIT RATINGS

- 6.1 Without prejudice to the Supplier's obligations and CCS' and (in the case of the Call-Off Contract) the Buyer's rights and remedies under Paragraph 4, if, following the occurrence of a Financial Distress Event, the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:
 - 6.1.1 the Supplier shall be relieved automatically of its obligations under Paragraphs 4.3 to 4.6; and
 - 6.1.2 CCS and the Buyer shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 4.3.2(b).

ANNEX 1: RATING AGENCIES

Dun and Bradstreet "To be completed by the Parties within 10 working days"

ANNEX 2: CREDIT RATINGS & CREDIT RATING THRESHOLDS

Part 1: Current Rating

Entity	Credit rating (long term)
Supplier	[D&B Threshold]
[Framework Guarantor/ [and Call-Off Guarantor]	

Part 2: Lot Specific Credit Rating Threshold

Lot 1A

Entity	Credit Rating Threshold
Supplier	45
[Framework Guarantor/ [and Call-Off Guarantor]	

Lot 1B

Entity	Credit Rating Threshold
Supplier	55
[Framework Guarantor/ [and Call-Off Guarantor]	

Lot 1C

Entity	Credit Rating Threshold
Supplier	75
[Framework Guarantor/ [and Call-Off Guarantor]	

Lot 2

Entity	Credit Rating Threshold
Supplier	75
[Framework Guarantor/ [and Call-Off Guarantor]	