

This and the following 3 pages comprise Schedule 17 referred to in the foregoing Contract between the Scottish Ministers and Serco Ltd.

SCHEDULE 17 – FINANCIAL DISTRESS

1. Background

1.1. This Schedule provides for the assessment of the financial standing of the Operator and the Guarantor and the establishment of trigger events relating to changes in such financial standing which if breached will have specified consequences.

2. Financial Distress Event

2.1. NOT USED.

2.2. NOT USED.

2.3. NOT USED.

2.4. The Operator shall:

(1) NOT USED.

(2) promptly notify (or shall procure that its auditors promptly notify) the Scottish Ministers 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) Business Days of the date on which the Operator 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:

(1) NOT USED.

(2) the Operator or the Guarantor issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;

(3) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Operator or the Guarantor; or

(4) the Operator or the Guarantor committing a material breach of covenants to its lenders;

(5) a subcontractor notifying the Scottish Ministers that the Operator has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute; or

(6) any of the following:

(a) commencement of any litigation against the Operator or the Guarantor with respect to financial indebtedness or obligation under a service contract;

(b) non-payment by the Operator or the Guarantor of any financial indebtedness;

(c) any financial indebtedness of the Operator or the Guarantor becoming due as a result of an event of default; or

(d) the cancellation or suspension of any financial indebtedness in respect of the Operator or the Guarantor;

which the Scottish Ministers reasonably believes could impact on the continued performance and delivery of the Services in accordance with this Contract;

then, immediately upon notification of the Financial Distress Event (or if the Scottish Ministers becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Operator), the Operator shall have the obligations and the Scottish Ministers shall have the rights and remedies as set out in paragraphs 3.2 to 3.6 of this Schedule 17.

3.2. In the event of a late or non-payment of a subcontractor pursuant to paragraph 3.1.(5), the Scottish Ministers shall not exercise any of its rights or remedies under paragraph 3.3 without first giving the Operator ten (10) Business Days to:

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

(2) demonstrate to the Scottish Ministers' reasonable satisfaction that there is a valid reason for late or non-payment.

3.3. The Operator shall (and shall procure that the Guarantor shall):

(1) at the request of the Scottish Ministers meet with the Scottish Ministers as soon as reasonably practicable (and in any event within three (3) Business Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Scottish Ministers may permit and notify to the Operator in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Contract; and

(2) where the Scottish Ministers 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 Contract;

submit to the Scottish Ministers for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Business Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Scottish Ministers may permit and notify to the Operator in writing); and

provide such financial information relating to the Operator or the Guarantor as the Scottish Ministers may reasonably require.

3.4. The Scottish Ministers shall not withhold its approval of a draft Financial Distress Service Continuity Plan unreasonably. If the Scottish Ministers does not approve the draft Financial Distress Service Continuity Plan it shall inform the Operator of its reasons and the Operator shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Scottish Ministers within five (5) Business Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Service Continuity Plan is approved by the Scottish Ministers or referred to the Dispute Resolution Procedure under paragraph 3.5.

3.5. If the Scottish Ministers 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 Scottish Ministers, the Operator shall:

(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 this Contract;

(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 Scottish Ministers 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) comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

3.7. Where the Operator 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 Scottish Ministers and the parties may agree that the Operator shall be relieved of its obligations under paragraph 3.6.

4. Termination Rights

4.1. The Scottish Ministers shall be entitled to terminate this Contract under Clause 52 (Termination) if:

(1) the Operator fails to notify the Scottish Ministers of a Financial Distress Event in accordance with paragraph 2.4 and/or Clause 49A;

(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 of this Schedule 17;

(3) the Operator 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) of this Schedule 17.