

Transport for London

Revenue Collection Services

Schedule 13 – Financial Distress

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1 Background

- 1.1 This Schedule 13 (Financial Distress) provides for the assessment of the financial standing of the Contractor and the establishment of trigger events relating to changes in such financial standing which if breached will have specified consequences.

2 Duty to notify

- 2.1 The Contractor shall (and shall procure that the Guarantor and/or all Category 1A Core Sub-Contractors shall) promptly notify (or shall procure that its auditors promptly notify) TTL 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 Contractor first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event.
- 2.2 TTL shall be entitled to issue a Major Warning Notice if the Contractor fails to notify TTL of a Financial Distress Event within ten (10) Business Days of the Contractor becoming aware of such event.

3 Consequences of a Financial Distress Event

- 3.1 Each of the following shall be a "**Financial Distress Event**":
- 3.1.1 the Contractor, the Guarantor and/or a Category 1A Core Sub-Contractor issues a profit warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects;
 - 3.1.2 the Contractor, the Guarantor and/or a Category 1A Core Sub-Contractor or any officer or director of the Contractor, the Guarantor and/or a Category 1A Core Sub-Contractor is indicted for fraud or other financial irregularity;
 - 3.1.3 there is a public investigation into improper financial accounting and reporting, suspected fraud or any other financial impropriety of the Contractor, the Guarantor and/or a Category 1A Core Sub-Contractor;
 - 3.1.4 the Contractor, the Guarantor and/or a Category 1A Core Sub-Contractor commits a material breach of any covenant to any of its lenders; or
 - 3.1.5 any of the following occur:
 - (a) commencement of any litigation against the Contractor, the Guarantor and/or a Category 1A Core Sub-Contractor with respect to financial indebtedness or financial obligation under a service contract;
 - (b) non-payment by the Contractor, the Guarantor and/or a Category 1A Core Sub-Contractor of any material financial indebtedness that is not subject to a genuine dispute;
 - (c) any financial indebtedness of the Contractor, the Guarantor and/or a Category 1A Core Sub-Contractor becoming due as a result of an event of default under any loan agreement; or
 - (d) the cancellation or suspension of any financial indebtedness in respect of the Contractor, the Guarantor and/or a Category 1A Core Sub-Contractor under any loan agreement,

that TTL reasonably believes could have an adverse impact on the continued performance and delivery of the Services in accordance with the Contract.

- 3.2 If a Financial Distress Event occurs, then, immediately upon notification of the Financial Distress Event (or if TTL becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Contractor), the Contractor shall (and shall procure that the Guarantor and/or all Category 1A Core Sub-Contractors shall) have the obligations and TTL shall have the rights and remedies as set out in paragraphs 3.3 to 3.7.
- 3.3 The Contractor shall (and shall procure that the Guarantor and/or all Category 1A Core Sub-Contractors shall):
- 3.3.1 at the request of TTL, meet with TTL 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 longer period as TTL may permit and notify to the Contractor in writing) to review the effect of the Financial Distress

- Event on the continued performance and delivery of the Services in accordance with the Contract; and
- 3.3.2 where TTL reasonably believes (taking into account the discussions and any representations made under paragraph 3.3.1) that the Financial Distress Event could have an adverse impact on the continued performance and delivery of the Services in accordance with the Contract:
- (a) submit to TTL for its approval, a draft Financial Distress Mitigation 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 TTL may permit and notify to the Contractor in writing); and
 - (b) provide such financial information relating to the Contractor, the Guarantor and/or a Category 1A Core Sub-Contractor as TTL may reasonably require.
- 3.4 TTL's approval of the draft Financial Distress Mitigation Plan shall be required. If TTL does not approve the draft Financial Distress Mitigation Plan, it shall inform the Contractor of its reasons and the Contractor shall take those reasons into account in the preparation of a further draft Financial Distress Mitigation Plan, which shall be resubmitted to TTL within five (5) Business Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Mitigation Plan is approved by TTL or the matter is escalated pursuant to paragraph 3.5.
- 3.5 If TTL considers that the draft Financial Distress Mitigation 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 Mitigation Plan or escalate any issues with the draft Financial Distress Mitigation Plan in accordance with the Dispute Resolution Procedure.
- 3.6 Following approval of the Financial Distress Mitigation Plan by TTL, the Contractor shall:
- 3.6.1 on a regular basis (which shall not be less than monthly), review the Financial Distress Mitigation 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 Contract;
 - 3.6.2 where the Financial Distress Mitigation Plan is not adequate or up to date in accordance with paragraph 3.6, submit an updated Financial Distress Mitigation Plan to TTL 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 Mitigation Plan; and
 - 3.6.3 comply with the Financial Distress Mitigation Plan (including any updated Financial Distress Mitigation Plan).
- 3.7 Where the Contractor 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 TTL, and the Parties, acting reasonably and in good faith, may agree that the Contractor shall be relieved of its obligations under paragraph 3.6.

4 Payments to Sub-Contractors

4.1 Notwithstanding other provisions of this Schedule and without prejudice to TTL's other rights and remedies under the Contract, if a Sub-Contractor notifies TTL or TTL otherwise becomes aware that the Contractor has not satisfied any sums properly due and payable under any invoices from the relevant Sub-Contractor to the Contractor in connection with services relating to this Contract and:

4.1.1 such invoice is not subject to a genuine dispute under the relevant Sub-Contract; and

4.1.2 in TTL's reasonable opinion, the Contractor's failure to pay results or is likely to result in an impact on the Services or this Contract,

then TTL will have the right, at its discretion, to pay the relevant undisputed amounts directly to the relevant Sub-Contractor and deduct such amounts from payments due and payable to the Contractor under the Contract.

5 Termination Rights

- 5.1 TTL shall be entitled to terminate the Contract under Clause 78 (TTL's Termination Rights) if the Contractor fails to comply in any material respect with the terms of the Financial Distress Mitigation Plan (or any updated Financial Distress Mitigation Plan) in accordance with paragraph 3.6.3.