

## **5.7 FINANCIAL DISTRESS**

## 1 CREDIT RATING AND DUTY TO NOTIFY

1.1 NBPco warrants and represents that, with respect to any replacement for a Monitored Entity, on the date of the replacement instrument coming into legal effect (unless agreed otherwise by the Minister when approving the replacement):

1.1.1 If the replacement is a Rated Monitored Entity, the long term credit ratings issued for such Rated Monitored Entity by the Rating Agencies are the same as or better than those set out in Appendix 2 (Credit Ratings and Credit Rating Thresholds) as at the Commencement Date for the Rated Monitored Entity being replaced; or

1.1.2 If the replacement is an Unrated Monitored Entity, the Financial Ratios for such Unrated Monitored Entity are the same as or better than those set out in Appendix 3 (Financial Ratio Thresholds) as at the Commencement Date for the Unrated Monitored Entity being replaced.

1.2 NBPco shall:

1.2.1 where NBPco, is an Unrated Monitored Entity:

(A) procure that:

- (1) the finance director in NBPco shall calculate the Financial Ratios for NBPco at the frequency set out for each Financial Ratio in Appendix 3 (Financial Ratio Thresholds); and
- (2) the Board of NBPco sign a statement acknowledging their responsibilities for the proper preparation of the Financial Ratios in such regard; and

provide the resulting statement (including the final Financial Ratios) and signed statement from the Board of NBPco in such regard to the Minister within sixty (60) Working Days of each such relevant mid-point and each such relevant end of Financial Year; and

(B) procure that NBPco's Auditor shall, at the end of each such relevant Financial Year, calculate the Financial Ratios for NBPco and provide the resulting statement (including the final Financial Ratios) to the Minister within sixty (60) Working Days of the Auditor's final opinion (or, if the Auditor refuses to sign off on NBPco's financial statements, notify the Minister of such within five (5) Working Days of NBPco being notified of such by the Auditor);

1.2.2 regularly (and, at a minimum, at the frequency set out for each Financial Ratio in Appendix 3 (Financial Ratio Thresholds)) during the Contract Period monitor:

(A) the Financial Ratios of each Unrated Monitored Entity during the period for which it is an Unrated Monitored Entity; and

- 1.2.3 regularly (and, at a minimum, at the mid-point and end of each Financial Year) during the Contract Period monitor:
- (A) the credit ratings of each Rated Monitored Entity with the Rating Agencies during the period for which it is a Rated Monitored Entity;
- 1.2.4 promptly notify (or shall procure that its Auditors promptly notify) the Minister in writing following the occurrence during the Contract Period of:
- (A) a Level 1 Financial Distress Event; and/or
- (B) a Level 2 Financial Distress Event (even if it has previously notified the Minister of a Level 1 Financial Distress Event),

in respect of a Monitored Entity (and in any event, ensure that such notification is made within no more than ten (10) Working Days of the date on which NBPco first becomes aware of the relevant Financial Distress Event).

- 1.3 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Paragraph 2 (Consequences of a Financial Distress Event):

1.3.1 the credit rating of a Rated Monitored Entity shall not be deemed to have dropped below the applicable Financial Distress Credit Rating Threshold unless all of the Rating Agencies that have published, for the period concerned, a credit rating in respect of the Rated Monitored Entity concerned have rated it, for the period concerned, at or below the applicable Financial Distress Credit Rating Threshold (or any individual component of it); and

1.3.2 the Financial Ratios of an Unrated Monitored Entity shall not be deemed to have dropped below the applicable Financial Ratio Threshold unless all of the Financial Ratios in respect of the Unrated Monitored Entity concerned are, for the period concerned, at or below the applicable Financial Ratio Threshold.

## **2 CONSEQUENCES OF A FINANCIAL DISTRESS EVENT**

2.1 In the event of the occurrence of a Level 1 Financial Distress Event or a Level 2 Financial Distress Event, then, immediately upon notification of the Financial Distress Event (or if the Minister becomes aware of the Financial Distress Event without notification, upon the Minister bringing it to the attention of NBPco), NBPco shall have the obligations and the Minister shall have the rights and remedies as set out in Paragraphs 2.2 (Consequences of a Financial Distress Event) to 2.8 (Consequences of a Financial Distress Event) (inclusive).

2.2 NBPco shall:

2.2.1 at the request of the Minister, meet the Minister and/or the Minister's Representative as soon as reasonably practicable (and in any event within seven (7) Working Days of the initial notification of the Financial Distress Event (or such other period as the Minister may permit and notify to NBPco in writing) to review the effect of the Financial Distress Event (whether it occurred in respect of NBPco or any other Monitored Entity) on the continued provision of the Services, Wholesale Products and Network in accordance with this Agreement

and/or the security of public subsidy already granted (or to be granted) pursuant to this Agreement (including in the event of Termination) or any Deferred Equity Guarantee or Performance Bond; and

2.2.2 where the Minister reasonably believes (taking into account the discussions and any representations made under Paragraph 2.2.1 (Consequences of a Financial Distress Event)) that the Financial Distress Event could impact on the continued provision of the Services, Wholesale Products or Network in accordance with this Agreement and/or the security of public subsidy already granted (or to be granted) pursuant to this Agreement (including in the event of Termination) or any Deferred Equity Guarantee or Performance Bond:

(A) submit to the Minister a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within fifteen (15) Working Days of the initial notification of the Financial Distress Event or such other period as the Minister may permit and notify to NBPco in writing) explaining how the potential adverse impact of the Financial Distress Event on the continued performance of this Agreement and/or the security of public subsidy already granted (or to be granted) pursuant to this Agreement or any Deferred Equity Guarantee or Performance Bond will be remedied; and

(B) provide such relevant financial information relating to NBPco or Monitored Entity as the Minister may reasonably require.

2.3 NBPco shall consider any reasonable comments provided by the Minister on the draft Financial Distress Service Continuity Plan and, at NBPco's cost, incorporate and amend the draft Financial Distress Service Continuity Plan and provide to the Minister an updated draft Financial Distress Service Continuity Plan that addresses such reasonable comments.

2.4 The Minister shall not object to a draft Financial Distress Service Continuity Plan unless, having reasonable regard to the steps that NBPco can take in respect of such event, it does not, in any material respect:

2.4.1 provide for the proper monitoring of the relevant circumstance; or

2.4.2 properly address how NBPco will mitigate or overcome the potential adverse impact of the Financial Distress Event on the continued provision of the Services, Wholesale Products and Network in accordance with this Agreement and/or the security of public subsidy already granted (or to be granted) pursuant to this Agreement or any Deferred Equity Guarantee or Performance Bond.

2.5 If the Minister, acting reasonably, objects to a draft Financial Distress Service Continuity Plan, then it may either agree a further time period for the development 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 For the avoidance of doubt, but subject to and without limiting or affecting the Minister's rights under this Agreement including the provisions of Clause 76 (Termination by Minister for NBPco Termination Event) and NBPco's obligations under this Agreement:

2.6.1 the Agreement shall continue in full force and effect notwithstanding the pending conclusion of the Dispute Resolution Procedure; and

2.6.2 to the extent that a Financial Distress Service Continuity Plan is required as a result of a Financial Distress Event occurring in respect of a Key Subcontractor, NBPco shall at its own risk and without limiting or affecting its obligations and/or liability and/or any rights or remedies of the Minister under any provisions of this Agreement, be entitled to choose to continue to rely on such Key Subcontractor.

2.7 NBPco shall:

2.7.1 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 in all material respects to ensure the continued provision of the Services, Wholesale Products and Network in accordance with this Agreement and the security of public subsidy already granted (or to be granted) pursuant to this Agreement (including in the event of Termination) and any Deferred Equity Guarantee and Performance Bond;

2.7.2 where the Financial Distress Service Continuity Plan is not, in any material respect, adequate or up to date in accordance with Paragraph 2.7.1 (Consequences of a Financial Distress Event) submit an updated Financial Distress Service Continuity Plan to the Minister, and the provisions of Paragraphs 2.3 (Consequences of a Financial Distress Event) to 2.8 (Consequences of a Financial Distress Event) (inclusive) shall apply to the review process for the updated Financial Distress Service Continuity Plan; and

2.7.3 comply (and, as applicable, procure compliance) with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

2.8 Where NBPco reasonably believes that the relevant Financial Distress Event (whether a Level 1 Financial Distress Event or Level 2 Financial Distress Event) (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Minister and the Parties (acting reasonably and in good faith) may agree that:

2.8.1 as applicable, a Level 1 Financial Distress Event or Level 2 Financial Distress Event is no longer continuing; and

2.8.2 if the Parties agree that neither a Level 1 Financial Distress Event nor a Level 2 Financial Distress Event is continuing, NBPco shall be relieved of its obligations under the provisions of this Paragraph 2 (Consequences of a Financial Distress Event).

### **3 PRIMACY OF CREDIT RATINGS AND FINANCIAL RATIOS**

3.1 Without limiting or affecting NBPco's obligations and the Minister's rights and remedies under Paragraph 2 (Consequences of a Financial Distress Event), if, following the occurrence of a Financial Distress Event, the Minister is satisfied that the potential adverse impact of the Financial Distress Event has been remedied and, as applicable:

3.1.1 where a Rating Agency has published a credit rating in respect of the Rated Monitored Entity concerned, any of the Rating Agencies review and report subsequently that the credit ratings (and all individual components of them) are not below the relevant Level 1 Financial Distress Credit Rating Threshold; or

3.1.2 where no Rating Agency has published a credit rating in respect of the Unrated Monitored Entity concerned, any of the Financial Ratios for the Unrated Monitored Entity concerned are at or above the Level 1 Financial Distress Financial Ratio Threshold,

then:

3.1.3 NBPco shall be relieved automatically of its obligations under Paragraphs 2.2 (Consequences of a Financial Distress Event) to 2.7 (Consequences of a Financial Distress Event) (inclusive); and

3.1.4 the Minister shall not be entitled to require NBPco to provide financial information in accordance with Paragraph 2.2.2(B) (Consequences of a Financial Distress Event).

#### **4 EXPIRATION OF REPORTING OBLIGATIONS**

4.1 In this Schedule, reference to a Deferred Equity Guarantor does not include a Deferred Equity Guarantor from the point when, in accordance with the provisions of the Deferred Equity Guarantee concerned, the relevant Deferred Equity Guarantee to which it is a party has expired and is no longer in force and the Deferred Equity Guarantor has no liability or obligations or contingent obligations or liability under the relevant Deferred Equity Guarantee.

## **APPENDIX 1 (RATING AGENCIES)**

**[REDACTED]**

**APPENDIX 2 (CREDIT RATINGS AND CREDIT RATING THRESHOLDS)**

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]



### APPENDIX 3 (FINANCIAL RATIO THRESHOLDS)

#### 1.1 [REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

**ANNEX 1 [REDACTED]**

**[REDACTED]**

**1 [REDACTED]**

**1.1 [REDACTED]**

**1.2 [REDACTED]**

**1.3 [REDACTED]**

**1.4 [REDACTED]**

**2 [REDACTED]**

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]