

COMMERCIAL IN CONFIDENCE

SCHEDULE 7.4

FINANCIAL DISTRESS

Financial Distress

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Credit Rating Level”	a credit rating level as specified in Annex 2;
“Credit Rating Threshold”	the minimum Credit Rating Level for the IBM Corporation, the Guarantor and each Key Sub-contractor as set out in Annex 3;
“Current Ratio”	Current ratio is calculated by dividing the current assets by current liabilities from the statement of financial position of the Suppliers accounts;
“Free Cash Flow Debt Service Ratio”	The free cash flow debt service ratio is the net cash flow from operating activities from the statement of cash flows divided by the other finance costs in the Income statement of the Supplier’s accounts.
“Financial Ratios”	the set of financial ratios as specified in Annex 2;
“Financial Ratio Threshold”	the minimum financial ratio level for the Supplier as specified in Annex 2;
“Financial Distress Event”	the occurrence of one or more of the events listed in Paragraph 3.1 of this Schedule 7.4 (Financial Distress);
“IBM Corporation”	means International Business Machines Corporation, a company registered under the United States Securities and Exchange Commission under File Number 1-2360;
“Interest Cover Ratio”	Calculated by dividing the operating profit by other finance costs from the Supplier’s income statement;
“Net Debt to EBITDA”	Net Debt to EBITDA is calculated as Net Debt divided by EBITDA. Net Debt is calculated as the debt in the statement of financial position less the cash & cash equivalents. A figure less than zero indicates zero Net Debt. EBITDA is calculated as the operating profit from the Supplier’s income statement plus the depreciation and amortisation from the Supplier’s

accounts; and

“Rating Agencies” the rating agencies listed in Annex 1.

2 CREDIT RATING, OTHER FINANCIAL INFORMATION AND DUTY TO NOTIFY

- 2.1 The Supplier warrants and represents to the Authority for the benefit of the Authority that as at the Effective Date:
- (a) the long term Financial Ratios calculated annually based on publicly available information, following the publication of the Supplier's financial accounts are as set out in Annex 3;
 - (b) the long term credit ratings issued for the IBM Corporation, Key Sub-contractors and the Guarantor by the Rating Agencies are as set out in Annex 3;
 - (c) none of the risk levels 1-3 set out in the attached Annex 2 apply in respect of the Supplier, the IBM Corporation, the Supplier's Key Sub-contractors and the Guarantor.
- 2.2 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing if there is any downgrade in any of the Financial Ratios for the Supplier or in the credit rating issued by any Rating Agency for either the IBM Corporation or the Guarantor (and in any event within 5 Working Days of the occurrence of the downgrade).
- 2.3 If there is any downgrade in any of the Financial Ratios for the Supplier or the credit rating issued by any Rating Agency for either the IBM Corporation or the Guarantor, the Supplier shall ensure that the Supplier's auditors, the IBM Corporation's auditors or Guarantor's auditors (as the case may be) thereafter provide the Authority within 10 Working Days of the end of each Contract Year and within 10 Working Days of 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;
- B is the value of all marketable securities held by the Supplier 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; and
- D is the value at the relevant date of the current liabilities of the Supplier.

2.4 The Supplier shall:

- (a) regularly monitor the Financial Ratios of the Supplier and the credit ratings of the Guarantor, the IBM Corporation and each Key Sub-contractor with the Rating Agencies; and
- (b) promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event or Key Sub-contractor Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event or a Key Sub-contractor 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 Sub-contractor Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event or a Key Sub-contractor Financial Distress Event).

2.5 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Paragraph 3.1(a), the Financial Ratios of the Supplier and the Credit Ratings of the Guarantor, the IBM Corporation or relevant Key Sub-contractor (as the case may be) shall be deemed to have dropped below the applicable Financial Ratio Threshold or Credit Rating Threshold, if any of the Financial Ratios have dropped below the Financial Ratio Threshold or the Rating Agencies have rated, the Guarantor, the IBM Corporation or relevant Key Sub-contractor (as the case may be) at or below the applicable Credit Rating Level.

2.6 Where the Guarantor, IBM Corporation or Key Sub-contractor does not have or ceases to have a credit rating from a Credit Rating Agency as specified in the Annex, the Authority and the Supplier shall determine a measure of financial capacity and risk and levels of decline in substitution for a credit rating or for that rating previously given by the Credit Rating Agency.

2.7 If the Authority and the Supplier are unable to reach agreement on an equivalent measure under paragraph 2.6, within thirty (30) days of the IBM Corporation, the Guarantor, Supplier or Key Sub-contractor ceasing to have a rating by a Credit

Rating Agency as specified in the Annex the matter shall be referred for determination in accordance with the Dispute Resolution Procedure.

- 2.8 The Supplier shall, consider its, the IBM Corporation, its Key Sub-contractors and the Guarantor's risk levels against the events set out in the attached Annex 2. If any event occurs at any time during the Term which will or is reasonably likely to trigger an adverse change in the risk level arising for either the Supplier, the IBM Corporation, Key Sub-contractor or the Guarantor including those set out in Annex 2 ("Adverse Financial Event"), the Supplier shall Notify the Authority promptly (and in any event within five (5) Working Days) of the occurrence of such event, except that where the Supplier is unable to disclose any detail(s) because of the listing rules of the exchange in the country of the Guarantor, the IBM Corporation or Key-subcontractor, the Supplier shall be under an obligation to notify the Authority of such detail as soon as is reasonably practicable once and to the extent that these restrictions no longer apply. This Notice shall include full details of the circumstances giving rise to the event and adverse change of the risk level including:
- (a) the cause;
 - (b) the impact or estimated impact on the Supplier, the IBM Corporation, Key Sub-contractor, or Guarantor (as relevant); and
 - (c) the steps that the Supplier, the IBM Corporation, Key Sub-contractor, or Guarantor (as relevant) are either taking or are intending to take to either rectify or mitigate the effects of the event and adverse change of risk level.

3 CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

- 3.1 In the event of:
- (a) any of the Financial Ratios dropping below or where applicable exceeding the applicable Financial Ratio Threshold;
 - (b) the credit rating of the IBM Corporation the Guarantor or any Key Sub-contractor dropping below the applicable Credit Rating Threshold;
 - (c) the Supplier, the IBM Corporation, the Guarantor or any Key Sub-contractor issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;
 - (d) there being a new public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Supplier, the IBM Corporation, the Guarantor or any Key Sub-contractor arising after the Effective Date;
 - (e) the Supplier, the IBM Corporation, the Guarantor or any Key Sub-contractor committing a material breach of covenant to its lenders;
 - (f) a Key Sub-contractor notifying the Authority that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute; or

- (g) any of the following:
- (i) commencement of any litigation against the Supplier, the IBM Corporation, the Guarantor or any Key Sub-contractor with respect to financial indebtedness or obligations under a service contract;
 - (ii) non-payment by the Supplier, the IBM Corporation, the Guarantor or any Key Sub-contractor of any financial indebtedness;
 - (iii) any financial indebtedness of the Supplier, the IBM Corporation, the Guarantor or any Key Sub-contractor 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 IBM Corporation, the Guarantor or any Key Sub-contractor,

in each case which the Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Agreement;

then, 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 3.3 to 3.6.

3.2 In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1(e), the Authority shall not exercise any of its rights or remedies under Paragraph 3.3 without first giving the Supplier 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.

3.3 The Supplier shall (and shall procure that the IBM Corporation, 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 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 3.3(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 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, the IBM Corporation or the Guarantor as the Authority may reasonably require.

3.4 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 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 under Paragraph 3.5.

3.5 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 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 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 (a), submit an updated Financial Distress Service Continuity Plan to the Authority 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
- (c) comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

3.7 Where the Supplier 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 Authority and the Parties may agree that the Supplier shall be relieved of its obligations under Paragraph 3.6.

4 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 2.4;

- (b) 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; 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 3.6(c).

5 PRIMACY OF FINANCIAL RATIOS AND CREDIT RATINGS

- 5.1 Without prejudice to the Supplier's obligations and the Authority's rights and remedies under Paragraph 3, if, following the occurrence of a Financial Distress Event pursuant to Paragraphs 3.1(b) to 3.1(f), the Supplier's Financial Ratios or the Rating Agencies review and report subsequently that the Financial Ratios for the Supplier or the credit rating for the IBM Corporation or the Guarantor do not drop below the relevant Financial Ratio Threshold or Credit Rating Threshold, then:
- (a) the Supplier shall be relieved automatically of its obligations under Paragraphs 3.3 to 3.6; and
 - (b) the Authority shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 3.3(b)(ii).

ANNEX 1
RATING AGENCIES

The Rating Agencies will be:

- Dun and Bradstreet
- Standard and Poor's

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ANNEX 2

CREDIT RATING AND ADVERSE FINANCIAL EVENTS RISK LEVELS

Information redacted under section 43 of the FOIA

ANNEX 3

CREDIT RATINGS & CREDIT RATING THRESHOLDS

Entity	Financial Ratio (long term)	Financial Ratio Threshold
Supplier	Net total interest cover ratio	<i>Information redacted under section 43 of the FOIA</i>
Supplier	Net debt to EBITDA ratio	<i>Information redacted under section 43 of the FOIA</i>
Supplier	Free cash flow service debt ratio	<i>Information redacted under section 43 of the FOIA</i>
Supplier	Current ratio	<i>Information redacted under section 43 of the FOIA</i>
IBM Corporation	AA	<i>Information redacted under section 43 of the FOIA</i>
Entity	Credit rating (long term)	Credit Rating Threshold
NTT Europe Limited	1A1	<i>Information redacted under section 43 of the FOIA</i>
British Telecommunications plc	5A1	<i>Information redacted under section 43 of the FOIA</i>
Oracle Corporation UK Limited	N1	<i>Information redacted under section 43 of the FOIA</i>
Opus Trust Marketing Limited	A2	<i>Information redacted under section 43 of the FOIA</i>