Schedule 7.4 – Financial Distress

1 Definitions and Interpretation

1.1 In this Schedule, the following definitions shall apply:

Rating Agency	means Dun & Bradstreet or such other credit rating agency generally recognised in the United Kingdom business sector as publishing ratings of the ability of a debtor to pay interest and the likelihood of debt default.

1.2 Where this Schedule makes reference to the Guarantor, such reference shall only apply where the Guarantor has entered into a Guarantee in accordance with Clause 49.

2 Credit Rating, Duty To Notify and Quick Ratio

2.1 The Supplier shall promptly, and in any event within 5 Working Days, notify the Authority (or shall procure that its auditors notify the Authority promptly or within 5 Working Days) in respect of the Supplier, the Guarantor and any Key Sub-contractor:

2.1.1 of any material change to the relevant organisation's financial standing, including but not limited to the events set out at Paragraph 3.1;

2.1.2 of any material change to the organisation that might impact on its on-going financial viability including details of the revenue replacement strategy and impact awareness on the organisation's profitability and stability where significant contracts are due to end;

2.1.3 of any proposed changes to the organisational control or group structure, proposed mergers or acquisitions or proposed changes to the relevant organisation's financial viability; and/or

2.1.4 the occurrence of the downgrade in the credit rating of the relevant organisation issued by any Rating Agency.

2.2 The Authority may at any time request (not more than twice in any 12 Month period) the quick ratio of the Supplier, the Key Sub-contractor and/or the Guarantor. Upon receipt of such a request, the Supplier shall ensure that the Supplier's auditors, the Key Sub-contractors' auditors and/or the Guarantor's auditors (as the case may be) provide the Authority, within 10 Working Days , with written calculations of the quick ratio for the Supplier, the Key Sub-contractor and/or the Guarantor (as the case may be) as at the date specified by the Authority in the request. Notwithstanding the obligation to provide the relevant quick ratios on request, the Supplier shall also ensure that that the Supplier's auditors, the Key Sub-contractors' auditors and the Guarantor's auditors provide the Authority, within 10 Working Days of the end of each Contract Year, with written calculations of the quick ratio for the Supplier, the Key Sub-contractor and the Guarantor. For these purposes the "quick ratio" on any date means:

$$\frac{A + B + C}{D}$$

Where:

A = the value at the relevant date of all cash in hand and at the bank of the Supplier or the Key Sub-contractor or the Guarantor (as the case may be);

B = the value of all marketable securities held by the Supplier or the Key Sub-contractor or the Guarantor (as the case may be) determined using closing prices on the Working Day preceding the relevant date;

C = the value at the relevant date of all account receivables of the Supplier or the Key Sub-contractor or the Guarantor (as the case may be); and

D = the value at the relevant date of the current liabilities of the Supplier or the Key Sub-contractor or the Guarantor (as the case may be).

2.3 The Supplier shall regularly monitor the credit ratings of the Supplier, the Guarantor and each Key Sub-contractor.

3 Financial Distress Event

3.1 The following are the events specifically required to be notified under Paragraph 2.1 (without prejudice to the Supplier's general notification duty under that Paragraph):

3.1.1 the Supplier, the Guarantor or any Key Sub-contractor issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;

3.1.2 there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Supplier, the Guarantor or any Key Sub-contractor;

3.1.3 the Supplier, the Guarantor or any Key Sub-contractor committing a material breach of covenant to its lenders;

3.1.4 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

3.1.5 any of the following:

(a) commencement of any litigation against the Supplier, the Guarantor or any Key Sub-contractor with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m;

(b) non-payment by the Supplier, the Guarantor or any Key Sub-contractor of any financial indebtedness;

(c) any financial indebtedness of the Supplier, the Guarantor or any Key Sub-contractor becoming due as a result of an event of default; or

(d) the cancellation or suspension of any financial indebtedness in respect of the Supplier, the Guarantor or any Key Sub-contractor,

and (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.

3.2 Upon notification of an event under Paragraph 2.1 (or if the Authority becomes aware of the event without notification and brings the event to the attention of the Supplier), the Authority may in its absolute discretion inform the Supplier that it considers the event to be a **Financial Distress Event**, in which case the Supplier shall have the obligations, and the Authority shall have the rights and remedies, as set out in Paragraphs 3.4 to 3.7 of this Schedule.

3.3 In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1.5, the Authority shall not exercise any of its rights or remedies under Paragraph 3.4 without first giving the Supplier 10 Working Days to:

3.3.1 rectify such late or non-payment; or

3.3.2 demonstrate, to the Authority's reasonable satisfaction, that there is a valid reason for late or non-payment.

3.4 The Supplier shall (and shall procure that the Guarantor and/or any relevant Key Sub-contractor shall):

3.4.1 at the request of the Authority, meet the Authority as soon as reasonably practicable after (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) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Agreement; and

3.4.2 where the Authority reasonably believes (taking into account the discussions and any representations made under Paragraph 3.4.1) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Agreement:

(a) submit to the Authority for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable after (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

(b) provide such financial information relating to the Supplier or the Guarantor as the Authority may reasonably require.

3.5 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 3.6.

3.6 If the Authority considers that the draft Financial Distress Service Continuity Plan:

3.6.1 is insufficiently detailed to be properly evaluated;

3.6.2 will take too long to complete; or

3.6.3 will not ensure the continued performance of the Supplier’s obligations in accordance with the Agreement,

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.

3.7 Following approval of the Financial Distress Service Continuity Plan by the Authority, the Supplier shall:

3.7.1 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 to ensure the continued performance and delivery of the Services in accordance with this Agreement;

3.7.2 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 3.7.1, submit an updated Financial Distress Service Continuity Plan to the Authority for its approval, and the provisions of

Paragraphs 3.5 and 3.6 shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and

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

3.8 Where the Supplier reasonably believes that the relevant Financial Distress Event under Paragraph 3.2 (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 3.7.

4 Termination Rights

4.1 The Authority shall be entitled to terminate this Agreement under Clause 35.1.2 (Termination by the Authority) if:

4.1.1 the Supplier is aware, or should reasonably have been aware, of an event of the kind contemplated by Paragraph 2.1 and the Supplier fails to notify the Authority of such event;

4.1.2 the Parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 3.4 to 3.6; and/or

4.1.3 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 3.7.3.