

Schedule 18

Financial Distress

Schedule 18: Financial Distress

1. Introduction

- 1.1. This Schedule provides (amongst other matters) for the assessment of the financial standing of the FDE Group and the establishment of trigger events relating to changes in such financial standing which, if they occur, will have specified consequences.
- 1.2. For the purposes of this Schedule, the following terms and phrases shall bear the following meanings:

“FDE Group”	means the Supplier, Key Sub-contractors and the Guarantor;
“Financial Ratio Level”	means, in respect of each FDE Group member, the levels set out Table 1 at Paragraph 2.1 (and “Financial Ratio” shall be construed accordingly);
“Financial Ratios Calculation Period”	means the standard annual accounting period from time to time of each FDE Group member; and
“Profit Warning Event”	shall mean the issue by a FDE Group member of a profit warning to a stock exchange (or making any other public announcement about a material deterioration in the Guarantor’s financial position or prospects).

2. Financial Ratios

- 2.1. The Supplier shall monitor the Financial Ratios on an ongoing basis and calculate the following Financial Ratios (on the basis of published accounts) as at the end of each Financial Ratios Calculation Period. The Supplier shall confirm to the Authority in writing on the earlier of:

- 2.1.1 one (1) month following publication in the public domain of the financial accounts for the Financial Ratios Calculation Period; or
- 2.1.2 one hundred and twenty (120) days after the end of each such Financial Ratios Calculation Period,

that the Financial Ratios for each FDE Group member fall within the “Acceptable” Financial Ratio Level as set out in the following table. The Supplier will make the calculations referred to in the following table in accordance with Paragraph 7. The Supplier shall also provide Quarterly reports based on latest management accounts in respect of

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each FDE Group member with the calculations referred to in the following table in accordance with Paragraph 7. In the event that the Financial Ratios for each FDE Group member do not at any point fall within the "Acceptable" Financial Ratio Level, for any reason(s) other than solely due to a change in GAAP ("**Generally Accepted Accounting Principles**"), the provisions of Paragraphs 3 or 4 of this Schedule shall apply (as applicable).

Table 1 - [Table redacted Under FOIA Section 43, Commercial Interests]

- 2.2. Unless otherwise agreed with the Authority in writing, the Supplier warrants and represents to the Authority for the benefit of the Authority that as at the Effective Date the Financial Ratios for each FDE Group member (in accordance with Table 1 in Paragraph 2.1) falls within the "Acceptable" Financial Ratio Level.
- 2.3. The Supplier shall regularly monitor relevant indicators of risk, including without limitation the Financial Ratios relating to the FDE Group, in accordance with this Schedule throughout the Term and shall promptly notify, or shall procure that its auditors promptly notify, the Authority in writing following the occurrence of a Financial Distress Event, any such notification to be made in any event within no more than ten (10) Working Days from the date on which the Supplier first becomes aware of any fact, circumstance or matter which has caused or constitutes a Financial Distress Event. For the avoidance of doubt, whilst the methodology for calculating the Net Debt to EBITDA Ratio shall be determined by reference to a methodology used in preparing a particular set of published accounts in respect of the FDE Group, nothing in this Schedule shall be treated as requiring the Supplier only to monitor and calculate Financial Ratios after the end of a particular Financial Ratios Calculation Period and/or by reference to particular published accounts, and instead the Supplier shall be required in accordance with this Paragraph 2.3 to monitor and calculate Financial Ratios for the FDE Group on a regular basis throughout the Term (based on then current management accounts or other relevant financial information in respect of the FDE Group) and to notify the Authority if at any point in time during the Term any Financial Ratios for a FDE Group member cease to fall within the "Acceptable" level (as set out in Table 1 of Paragraph 2.1).

3. Risk Level 1 Financial Distress Event

- 3.1. Any of the following events shall constitute a Financial Distress Event which is categorised for the purposes of this Schedule as a "Risk Level 1" Financial Distress Event:
 - 3.1.1 any member of the FDE Group having an adverse decline in one or more of the Financial Ratios specified in Table 1 of Paragraph 2.1 of this Schedule such that the Financial Ratios fall within Financial Ratio "Risk Level 1";

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- 3.1.2 a Key Sub-contractor, pursuant to the obligation included within its Key Sub-contract under Paragraph 6.1, providing a report to the Authority that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;
- 3.1.3 a FDE Group member failing (or being unable) within ten (10) Working Days of a Profit Warning Event) to demonstrate to the Authority's reasonable satisfaction, that (notwithstanding such Profit Warning Event), (i) the Financial Ratios for that FDE Group member remain within the "Acceptable" Financial Ratio Level (as set out in Table 1 of Paragraph 2.1 above); and (ii) there are no other implications of such Profit Warning Event that would impact on the Financial Ratio Level of that FDE Group member in the future, or would otherwise impact on the ability of the Supplier to provide the Services, or ability of that FDE Group member to meet its obligations under the this Contract, the Guarantee, Key Sub-contract, or other agreement relevant to the supply of Services under this Contract, as appropriate;
- 3.1.4 there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of a FDE Group member; and/or
- 3.1.5 a FDE Group member committing a material breach of covenants to its lenders,

and if any such Financial Distress Event or any Profit Warning Event occurs then, immediately upon notification of the Financial Distress Event or Profit Warning Event (or if the Authority becomes aware of the Financial Distress Event or Profit Warning Event without notification and brings the Financial Distress Event or Profit Warning Event to the attention of the Supplier), the Authority shall, have the rights set out in Paragraph 3.2 of this Schedule.

3.2. At the request of the Authority, the Supplier shall:

- 3.2.1 meet with the Authority (and, if the Financial Distress Event relates to the another member of the FDE Group, use all reasonable endeavours to procure that member of the FDE Group shall meet with the Authority) as soon as is reasonably practicable and in any event within three (3) Working Days to review the effect of the Financial Distress Event upon the continued performance of the Services or of the Guarantee (as the case may be);
- 3.2.2 provide such information as the Authority may reasonably require relating to the Financial Distress Event in advance of, at, or within five (5) Working Days of the meeting referred to at Paragraph 3.2.1 above; and/or

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- 3.2.3 submit to the Authority for its approval, a draft Financial Distress Remediation Plan as soon as possible and in any event not later than ten (10) Working Days (or such other period as the Authority may permit and notify to the Supplier in writing) after the initial notification under Paragraph 2.3 of this Schedule (or if the Authority becomes aware of the Financial Distress Event without notification and brings the Financial Distress Event to the attention of the Supplier, as soon as possible and in any event not later than ten (10) Working Days after the Financial Distress Event has been brought to the attention of the Supplier).
- 3.3. The Authority shall not withhold its approval of a draft Financial Distress Remediation Plan unreasonably. If the Authority does not approve the draft Financial Distress Remediation Plan it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further Financial Distress Remediation Plan, which shall be resubmitted to the Authority within five (5) Working Days of the rejection of the first draft.
- 3.4. If the Authority reasonably considers that the draft Financial Distress Remediation Plan is insufficiently detailed to be properly evaluated, or will take too long to complete or will not remedy the Financial Distress Event complained of, then it may either agree a further time period for the development and agreement of the Financial Remediation Plan or rely on Paragraph 3.6.2.
- 3.5. The Supplier shall comply with any Financial Distress Remediation following its approval by the Authority.
- 3.6. If:
 - 3.6.1 the Supplier does not provide the information required in accordance with Paragraph 3.2.2 above; and/or
 - 3.6.2 the Parties fail to reach agreement on the Financial Distress Remediation Plan prepared in accordance with Paragraph 3.2.3 above; and/or
 - 3.6.3 the Supplier fails to fully and promptly implement any Financial Distress Remediation Plan in accordance with its terms,
then the Authority shall be entitled to treat such event as being a Risk Level 2 Financial Distress Event and Paragraph 4 shall apply.
- 3.7. If and to the extent that:
 - 3.7.1 a Risk Level 1 Financial Distress Event arises due to one more of the Financial Ratios of a FDE Group member and that FDE Group member's Financial Ratios then improve to an "Acceptable" level;
or

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- 3.7.2 a Risk Level 1 Financial Distress Event arises due to factors other than the Financial Ratios a FDE Group member and the Authority reasonably determines that the factors no longer constitute any type of financial, performance or reputation risk to the Authority or to the provision of any Services (such decision being revocable where it considers new or varied information gives rise to such risk to the Authority and/or the provision of the any Services);

and in each case, no new factors have arisen which would give rise to a Risk Level 1 Financial Distress Event, then the Authority shall notify the Supplier that the Risk Level 1 Financial Distress Event no longer applies, but the Supplier shall nonetheless complete delivery of any Financial Distress Remediation Plan (unless otherwise agreed between the Parties).

- 3.8. Where the Financial Distress Event relates to the non-payment of Key Sub-contractors pursuant to Paragraph 3.1.2, the Authority shall, prior to exercising its rights under Paragraph 3.2 of this Schedule, give the Supplier a period of not more than ten (10) Working Days in which to rectify that non-payment or to demonstrate to the Authority's reasonable satisfaction that there is a valid reason for non-payment.

4. Risk Level 2 Financial Distress Event

- 4.1. Any of the following events shall constitute a Financial Distress Event which is categorised for the purposes of this Schedule as a "Risk Level 2" Financial Distress Event:

- 4.1.1 a FDE Group member having an adverse decline in one or more of the Financial Ratios specified in table 1 of Paragraph 2.1 of this Schedule such that the Financial Ratios fall within Financial Ratio Risk Level 2;
- 4.1.2 a FDE Group member failing to pay any financial indebtedness (regardless of litigation in respect of that failure to pay);
- 4.1.3 a cancellation or suspension of financial indebtedness;
- 4.1.4 the external auditor of a FDE Group member expressing a qualified opinion on, or including an emphasis of matter in its opinion on the statutory accounts of that FDE Group member;
- 4.1.5 any of the circumstances outlined in Paragraph 3.6 of this Schedule arise;
- 4.1.6 commencement of any litigation against a FDE Group member with respect to financial indebtedness greater than £5m or any obligation under a service contract with a total value greater than £5m, non- payment of any financial indebtedness, any financial indebtedness becoming due as a result of an event of default, the cancellation or suspension of any financial indebtedness, which

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will directly impact upon the Supplier's ability to deliver the Services; and/or

4.1.7 an Insolvency Event in respect of any FDE Group member,

and if any such Financial Distress Event occurs 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 Financial Distress Event to the attention of the Supplier), the provisions of Paragraph 3.2 of this Schedule shall apply to the extent applicable and the Authority shall also have the rights set out in Paragraph 4.2 of this Schedule.

4.2. The Authority may:

4.2.1 require the Supplier's chief financial officer to update the Authority as to the relevant FDE Group member's financial standing on a monthly basis and, if applicable, require the Supplier to use all reasonable endeavours to procure that the FDE Group member directly provides monthly updates to the Authority; and/or

4.2.2 require the Supplier to provide the Authority with a draft Financial Distress Remediation Plan setting out how the Supplier will ensure the continuity of provision of the Services in the event that the relevant FDE Group member becomes subject to the occurrence of an Insolvency Event, in which case: (i) the provisions of Paragraph 3.2.3 and 3.3 shall apply mutatis mutandis as regards the process (including timescales) for the relevant Financial Distress Remediation Plan to be submitted to, and approved by, the Authority; and (ii) the Supplier shall comply with the relevant Financial Distress Remediation Plan following its approval by the Authority.

4.3. If and to the extent that:

4.3.1 a Risk Level 2 Financial Distress Event arises due to one or more of the Financial Ratios of a FDE Group member and that FDE Group member's Financial Ratios then improve to an "Acceptable" level; or

4.3.2 a Risk Level 2 Financial Distress Event arises due to factors other than the Financial Ratios of a FDE Group member and the Authority reasonably determines that the factors no longer constitute any type of financial, performance or reputation risk to the Authority or to the provision of any Services (such decision being revocable where it considers new or varied information gives rise to such risk to the Authority and/or the provision of the any Services);

and in each case, no new factors have arisen which would give rise to

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a Risk Level 2 Financial Distress Event, then the Authority shall notify the Supplier that the Risk Level 2 Financial Distress Event no longer applies, but the Supplier shall nonetheless complete delivery of any Financial Distress Remediation Plan (unless otherwise agreed between the Parties).

5. Termination Rights

5.1. The Authority shall be entitled to terminate this Contract under Clause 31.1.2 (*Termination by the Authority*) if:

5.1.1 the Supplier fails to notify the Authority in accordance with Paragraph 2.3 of a Financial Distress Event;

5.1.2 the Supplier fails, in any material respect, to comply with Paragraphs 3.2.3, 3.3 and/or 4.2.2 and does not remedy that failure to the reasonable satisfaction of the Authority within five (5) Working days of the Authority notifying the Supplier of the failure and requiring that it be remedied; and/or

5.1.3 the Supplier materially fails to comply with the terms of any Financial Distress Remediation Plan in accordance with Paragraphs 3.5 or 4.2.2 of this Schedule.

6. Sub-contractor Payment

6.1. The Supplier shall ensure that all Key Sub-contracts include an obligation on the Key Sub-contractor to report to the Authority, within ten (10) Working Days of the due date for payment, any material non-payment or late payment of any sums due to it from the Supplier under the provision of the Key Sub-contract.

7. Calculation Methodology

7.1. The Supplier shall ensure that it uses the general and specific methodologies set out in Paragraphs 7.2 and 7.3 for calculating the Financial Ratio Levels.

7.2. General methodology

Terminology: The terms referred to in Paragraph 7 are those used by UK companies in their financial statements. Where the entity is not a UK company, the corresponding items should be used even if the terminology is slightly different (for example a charity would refer to a surplus or deficit rather than a profit or loss).

Groups: Where the entity is the holding company of a group and prepares consolidated financial statements, the consolidated figures should be used.

Foreign currency conversion: Figures denominated in foreign currencies should be converted at the exchange rate in force at the relevant date for which the Financial Ratio Level is being calculated.

Treatment of non-underlying items: Financial Ratio Levels should be based on the figures in the financial statements before adjusting for non-underlying items.

7.3. **Specific Methodology**

Financial Ratio	Specific Methodology
Turnover Ratio	<p>The elements used to calculate the Turnover should be shown on the face of the Income Statement in a standard set of financial statements.</p> <p>Turnover is sometimes called revenue.</p> <p>The Total Contract Value is the Estimated Total Contract Value provided by the Authority in the contract notice issued in respect of the procurement exercise leading to the award of this Contract.</p>
Operating Margin	<p>The elements used to calculate the Operating Margin should be shown on the face of the Income Statement in a standard set of financial statements.</p> <p>Figures for Operating Profit and Revenue should exclude the entity's share of the results of any joint ventures or Associates.</p> <p>Where an entity has an operating loss (i.e. where the Operating Profit is negative), Operating Profit should be taken to be zero.</p>
Free Cash Flow to Net Debt Ratio	<p>"Free Cash Flow" = Net Cash Flow from Operating Activities – Capital Expenditure.</p> <p>"Capital Expenditure" = Purchase of property, plant & equipment + purchase of intangible assets.</p> <p>"Net Debt" = Bank overdrafts + Loans and borrowings + Finance Leases + Deferred consideration payable – Cash and cash equivalents.</p> <p>The majority of the elements used to calculate the Free Cash Flow to Net Debt Ratio should be shown on the face of the Statement of Cash Flows and the Balance Sheet in a standard set of financial statements.</p>

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Financial Ratio	Specific Methodology
	<p><u>Net Cash Flow from Operating Activities</u></p> <p>This should be stated after deduction of interest and tax paid.</p> <p><u>Capital expenditure</u></p> <p>The elements of capital expenditure may be described slightly differently but will be found under 'Cash flows from investing activities' in the Statement of Cash Flows; they should be limited to the purchase of fixed assets (including intangible assets) for the business and exclude acquisitions. The figure should be shown gross without any deduction for any proceeds of sale of fixed assets.</p> <p><u>Net Debt</u></p> <p>The elements of Net Debt may also be described slightly differently and should be found either on the face of the Balance Sheet or in the relevant note to the financial statements. All interest bearing liabilities (other than retirement benefit obligations) should be treated as borrowings as should, where disclosed, any liabilities (less any assets) in respect of any hedges designated as linked to borrowings (but not non-designated hedges). Borrowings should also include balances owed to other group members.</p> <p>Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing.</p> <p>Cash and cash equivalents should include short-term financial investments shown in current assets.</p>
<p>Net Debt to EBITDA Ratio</p>	<p>"EBITDA" = Operating Profit + Depreciation charge + Amortisation charge.</p> <p>The majority of the elements used to calculate the Net Debt to EBITDA Ratio should be shown on the face of the Balance Sheet, Income Statement and Statement of Cash Flows in a standard set of financial statements but will otherwise be found in the notes to the financial statements.</p> <p><u>Net Debt</u></p> <p>Refer to the notes for Free Cash Flow to Net Debt Ratio.</p>

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Financial Ratio	Specific Methodology
	<p><u>EBITDA</u></p> <p>Operating Profit should be shown on the face of the Income Statement and, for the purposes of calculating this Financial Ratio, should include the entity's share of the results of any joint ventures or Associates. The depreciation and amortisation charges for the period may be found on the face of the Statement of Cash Flows or in a note to the accounts. The depreciation and amortisation charges for the period may be found on the face of the Statement of Cash Flows or in a Note to the Accounts.</p>
Net Pension Deficit to Net Assets Ratio	<p>"Net Pension Deficit" = Retirement Benefit Obligations – Retirement Benefit Assets.</p> <p>The majority of the elements used to calculate the Net Pension Deficit to Net Assets Ratio should be shown on the face of the Balance Sheet, Income Statement and Statement of Cash Flows in a standard set of financial statements but will otherwise be found in the notes to the financial statements.</p> <p><u>Net Pension Deficit</u></p> <p>Retirement Benefit Obligations and Retirement Benefit Assets may be shown on the face of the Balance Sheet or in the notes to the financial statements. They may also be described as pension benefits / obligations, post-employment obligations or other similar terms.</p>
Net Interest Paid Cover	<p>"EBIT" = Operating Profit.</p> <p>"Net Interest Paid" = Interest paid – Interest received.</p> <p>Operating Profit should be shown on the face of the Income Statement in a standard set of financial statements and, for the purposes of calculating this Financial Ratio, should include the entity's share of the results of any joint ventures or Associates.</p> <p>Interest received and interest paid should be shown on the face of the Cash Flow Statement.</p>
Acid Ratio	<p>All elements that are used to calculate the Acid Ratio are available on the face of the Balance Sheet in a standard set of financial statements.</p>
Net Asset	<p>Net Assets are shown (but sometimes not labelled) on</p>

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Financial Ratio	Specific Methodology
value	<p>the face of the Balance Sheet of a standard set of financial statements. Net Assets are sometimes called net worth or 'Shareholders' Funds'. They represent the net assets available to the shareholders. Where an entity has a majority interest in another entity in which there are also minority or non-controlling interests (i.e. where it has a subsidiary partially owned by outside investors), Net Assets should be taken inclusive of minority or non-controlling interests (as if the entity owned 100% of such entity).</p>
Group Exposure Ratio	<p>"Group Exposure" = Balances owed by Group Undertakings + Contingent liabilities assumed in support of Group Undertakings.</p> <p>"Gross Assets" = Fixed Assets + Current Assets.</p> <p><u>Group Exposure</u></p> <p>Balances owed by (i.e. receivable from) Group Undertakings are shown within Fixed Assets or Current Assets either on the face of the Balance Sheet or in the relevant notes to the financial statements. In many cases there may be no such balances, in particular where an entity is not a member of a group or is itself the ultimate holding company of the group.</p> <p>Contingent liabilities assumed in support of Group Undertakings are shown in the 'Contingent Liabilities' note in a standard set of financial statements. They include guarantees and security given in support of the borrowings of other group companies, often as part of group borrowing arrangements. Where the contingent liabilities are capped, the capped figure should be taken as their value.</p> <p>In many cases an entity may not have assumed any contingent liabilities in support of Group Undertakings, in particular where an entity is not a member of a group or is itself the ultimate holding company of the group.</p> <p><u>Gross Assets</u></p> <p>Both Fixed Assets and Current Assets are shown on the face of the Balance Sheet.</p>