



Hosting

Schedule 7.4: Financial Distress

TABLE OF CONTENTS

1. BACKGROUND	3
2. CREDIT RATING AND DUTY TO NOTIFY	3
3. LEVEL 1 - CONSEQUENCES OF A FINANCIAL DISTRESS EVENT	4
4. LEVEL 2 - CONSEQUENCES OF A FINANCIAL DISTRESS EVENT	5
5. LEVEL 3 - CONSEQUENCES OF A FINANCIAL DISTRESS EVENT	7
6. TERMINATION RIGHTS	8
7. PRIMACY OF CREDIT RATINGS	9
8. CONSEQUENCES OF AN IMPROVEMENT IN FINANCIAL DISTRESS	10
9. SUB-CONTRACTOR FINANCIAL DISTRESS	10
10. BOARD CONFIRMATION	12

1. BACKGROUND

This schedule 7.4 (Financial Distress) provides for the assessment of the financial standing of the Hosting Supplier and Key Sub-contractors and the establishment of trigger events relating to changes in such financial standing which if breached will have specified consequences.

2. CREDIT RATING AND DUTY TO NOTIFY

- 2.1. The Hosting Supplier warrants and represents to the Authority for the benefit of the Authority that as at the Effective Date the long term credit ratings issued for the Hosting Supplier and Key Sub-contractors by the Rating Agencies are as set out in Appendix 2 of this schedule 7.4 (Financial Distress).
- 2.2. The Hosting Supplier shall (and shall procure that the Key Sub-contractors shall) maintain the credit ratings as set out in this schedule 7.4 (Financial Distress).
- 2.3. The Hosting Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing if it or a Key Sub-contractor ceases to have either of its credit ratings (and in any event within ten (10) Working Days of ceasing to have such credit rating), whereupon the Hosting Supplier shall ensure that its or the relevant Key Sub-contractor's auditors calculate the credit worthiness of the Hosting Supplier or relevant Key Sub-contractor either at the end of each Contract Year or for the last Contract Year in which a credit rating was available
- 2.4. The Hosting Supplier shall:
 - 2.4.1. regularly monitor the Hosting Supplier's and the Key Sub-contractors' credit ratings with the Rating Agencies; and
 - 2.4.2. subject to paragraph 2.6, promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event, a Sub-contractor Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event or a Sub-contractor Financial Distress Event (and in any event, ensure that such notification is made within ten (10) Working Days of the date on which the Hosting Supplier first becomes aware of the Financial Distress Event, the Sub-contractor Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event or a Sub-contractor Financial Distress Event).
- 2.5. Where the Hosting Supplier's and/or a Key Sub-contractor's credit ratings provided by the Rating Agencies listed in Appendix 1 to this schedule 7.4 (Financial Distress) differ, for the purposes of the Financial Distress Events or the Sub-Contractor Financial Distress Events, the relevant Credit Rating Threshold shall be determined by reference to the lower credit rating.
- 2.6. If the supply of information required pursuant to clause 2.4.2 would amount to a breach of any rules or regulations of any exchange on which the shares of the Hosting

Supplier or Key Sub-contractor are admitted for listing and/or trading, or any other rules or regulations with which the Hosting Supplier or Key Sub-contractor is obliged to comply as a result of that listing, the Hosting Supplier shall provide the Authority with the relevant information to the fullest extent permitted by those rules and regulations.

3. LEVEL 1 - CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

3.1. If the Financial Distress Event consists of:

- 3.1.1. the Hosting Supplier's credit ratings dropping below the Level 1 Credit Rating Threshold set out in Appendix 2 of this schedule 7.4 (Financial Distress);
- 3.1.2. the Hosting Supplier issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;
- 3.1.3. there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Hosting Supplier; or
- 3.1.4. the Hosting Supplier committing a material breach of covenants to its lenders,

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 Hosting Supplier), the Hosting Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in paragraphs 3.2 to 3.5.

3.2. The Hosting Supplier shall:

- 3.2.1. at the request of the Authority, meet with the Authority as soon as reasonably practicable (and in any event within three (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 Hosting Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Hosting Services in accordance with this Agreement; and
- 3.2.2. where the Authority reasonably believes (taking into account the discussions and any representations made under paragraph 3.2.1) that the Financial Distress Event could impact on the continued performance and delivery of the Hosting Services in accordance with this Agreement, submit to the Authority for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (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 Hosting Supplier in writing).

- 3.3. 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 Hosting Supplier of its reasons and the Hosting 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 five (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 Escalation Process under paragraph 3.4.
- 3.4. 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 Escalation Process.
- 3.5. Following approval of the Financial Distress Service Continuity Plan by the Authority, the Hosting Supplier shall:
- 3.5.1. 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 Hosting Services in accordance with this Agreement;
 - 3.5.2. where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with paragraph 3.5.1, submit an updated Financial Distress Service Continuity Plan to the Authority for its approval, and the provisions of paragraphs 3.3 and 3.4 shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and
 - 3.5.3. comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
- 3.6. Where the Hosting 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 Hosting Supplier shall be relieved of its obligations under paragraph 3.5 on the provision of the appropriate evidence as agreed by the Authority.

4. LEVEL 2 - CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

- 4.1. If the Financial Distress Event consists of:
- 4.1.1. the Hosting Supplier's credit rating dropping below the Level 2 Credit Rating Threshold set out in Appendix 2 of this schedule 7.4 (Financial Distress);
 - 4.1.2. a Key Sub-contractor notifying the Authority that the Hosting Supplier has not satisfied any material sums properly due under a specified invoice

and not subject to a genuine dispute; or

- 4.1.3. the Hosting Supplier failing to notify the Authority of a Financial Distress Event that falls within paragraph 3,

then, subject to paragraph 4.2, 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 Hosting Supplier), the provisions of paragraphs 3.2 – 3.6 shall have effect (so that such provisions shall be applicable to a Financial Distress Event under this paragraph 4.1 and shall be interpreted as such), and the Hosting Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in paragraphs 4.3 – 4.6.

- 4.2. In the event of a late or non-payment of a Key Sub-contractor pursuant to paragraph 4.1.2, the Authority shall not exercise any of its rights or remedies under paragraph 4.3 without first giving the Hosting Supplier ten (10) Working Days to:

- 4.2.1. rectify such late or non-payment; or
- 4.2.2. demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.

- 4.3. The Authority may:

- 4.3.1. require the Hosting Supplier to establish a Financial Distress Escrow Account, whereupon the Hosting Supplier shall (without cost to the Authority):

4.3.1.1. establish a Financial Distress Escrow Account on such terms as the Authority may reasonably require; and

4.3.1.2. consent to such actions as may be required to give effect to the provisions of this paragraph 4;

- 4.3.2. pay any undisputed Charges (less any deductions made in accordance with this Agreement) which are due to the Hosting Supplier in respect of each month during which Hosting Services have been received after notification (or awareness) of the relevant Financial Distress Event into the Financial Distress Escrow Account;

- 4.3.3. require the Hosting Supplier to provide such financial information relating to the Hosting Supplier as the Authority may reasonably require, whereupon the Hosting Supplier shall provide (and shall procure the provision of) such financial information; and

- 4.3.4. require any sums properly due to the Key Sub-contractors to be paid (without set-off or deduction) directly from the Financial Distress Escrow Account to the relevant Key Sub-contractors in accordance with paragraph 4.4, whereupon the Hosting Supplier shall provide its consent to, and carry out such other actions as may be necessary to enable such payments.

- 4.4. Monies paid into the Financial Distress Escrow Account by the Authority shall be held on trust by the approved bank and shall be paid out on the joint instructions of the parties in the following order:
 - 4.4.1. the payment in full of any Key Sub-contractors;
 - 4.4.2. the payment in full of any other Sub-contractors;
 - 4.4.3. the payment of any other liabilities of the Hosting Supplier that have a direct impact on the performance of this Agreement; and
 - 4.4.4. subject to paragraphs 4.5 and 4.6, repayment of the balance to the Hosting Supplier.
- 4.5. The Hosting Supplier shall demonstrate its compliance with paragraphs 4.4.1, 4.4.2, and 4.4.3:
 - 4.5.1. by the production of valid invoices against which payments from the Financial Distress Escrow Account have been made to the relevant Key Sub-contractors; or
 - 4.5.2. at the Authority's sole discretion and notified in writing to the Hosting Supplier, by the certification by the Hosting Supplier Representative that the Key Sub-contractors have been paid from the Hosting Supplier's general account.
- 4.6. The parties shall instruct the bank to withhold an amount in the Financial Distress Escrow Account in respect of:
 - 4.6.1. any amount invoiced by a Key Sub-contractor under its Key Sub-contract that is subject to a dispute between the Key Sub-contractor and the Hosting Supplier until the resolution of that dispute; and
 - 4.6.2. which the Authority requires further details of the satisfaction of any relevant Key Sub-contractor's invoice and/or any other liability.

5. LEVEL 3 - CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

- 5.1. If the Financial Distress Event consists of:
 - 5.1.1. the Hosting Supplier's credit rating dropping below the Level 3 Credit Rating Threshold set out in Appendix 2 of this schedule 7.4 (Financial Distress);
 - 5.1.2. any of the following:
 - 5.1.2.1. commencement of any litigation against the Hosting Supplier with respect to financial indebtedness or obligation under a service contract; or
 - 5.1.2.2. non-payment by the Hosting Supplier of any financial indebtedness; or

5.1.2.3. any financial indebtedness of the Hosting Supplier becoming due as a result of an event of default; or

5.1.2.4. the cancellation or suspension of any financial indebtedness in respect of the Hosting Supplier,

which the Authority reasonably believes could directly impact on the continued performance and delivery of the Hosting Services in accordance with this Agreement; or

5.1.3. the Hosting Supplier failing to notify the Authority of a Financial Distress Event that falls within paragraph 4,

then, subject to paragraph 5.3, 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 Hosting Supplier), the provisions of paragraphs 3.2 – 3.6 and 4.3 – 4.6 shall have effect (so that such provisions shall be applicable to a Financial Distress Event under this paragraph 5.1 and shall be interpreted as such), and the Hosting Supplier shall have the obligations and the Authority shall also have the rights and remedies as set out in paragraph 5.2.

5.2. The Authority may:

5.2.1. require the Hosting Supplier to update the Authority as to the Hosting Supplier's financial standing, whereupon the Hosting Supplier shall procure such information as the Authority may reasonably require and ensure that its chief financial officer provides an update on a monthly basis; and

5.2.2. retain such part of the Charges as the Authority shall determine for up to six (6) consecutive months after notification (or awareness) of the relevant Financial Distress Event, which the Hosting Supplier acknowledges shall:

5.2.2.1. be a substantial part of the Charges after allowing for payment and other liabilities to Key Sub-contractors; and

5.2.2.2. not constitute a breach of this Agreement under clause 57.6.

5.3. The Authority shall not exercise its right under paragraph 5.2.2 without first:

5.3.1. notifying the Hosting Supplier in writing of its intention to do so; and

5.3.2. where requested by the Hosting Supplier within three (3) Working Days of the date of the Authority's notification under paragraph 5.3.1, meeting with and considering any representations made by the Hosting Supplier.

6. TERMINATION RIGHTS

6.1. The Authority shall be entitled to terminate this Agreement under clause 57.1.3.8 (Termination for Cause by the Authority) if:

6.1.1. the Hosting Supplier fails to notify the Authority of a Financial Distress

Event under paragraphs 4 and/or 5 in accordance with paragraph 2.4; and/or

- 6.1.2. the parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraphs 3.2 to 3.4 and/or 9.2.2;
- 6.1.3. the Hosting 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 paragraphs 3.5.3 and/or 9.2.4; and/or
- 6.1.4. the Hosting Supplier fails to establish the Financial Distress Escrow Account and/or otherwise comply with its obligations in accordance with paragraph 4 or 5.

7. PRIMACY OF CREDIT RATINGS

- 7.1. Without prejudice to the Hosting Supplier's obligations and the Authority's rights and remedies under paragraphs 3, 4, 5 or 9, if, following the occurrence of a Financial Distress Event pursuant to paragraphs 3.1.2 to 3.1.4, 4.1.2, 4.1.3, 5.1.2 or 5.1.3 (or a Sub-Contractor Financial Distress Event pursuant to paragraphs 9.1.2 to 9.1.5), the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then as applicable:
 - 7.1.1. the Hosting Supplier shall be relieved automatically of its obligations under paragraphs 3.2 to 3.5 and/or 9.2;
 - 7.1.2. the Hosting Supplier may:
 - 7.1.2.1. request that the Authority pay the Charges direct to the Hosting Supplier and give its consent to the closure of the Financial Distress Escrow Account; and
 - 7.1.2.2. withdraw any sums standing to the credit of that account;
 - 7.1.3. the Authority shall not be entitled to require the Hosting Supplier to provide financial information in accordance with paragraphs 4.3.3, 5.2.1 or 9.2.5;
 - 7.1.4. the Authority shall not be entitled to require the payment of Key Sub-contractors in accordance with paragraphs 4.3.4 and 4.4; and/or
 - 7.1.5. the Hosting Supplier may request that the Authority pay the Charges direct to the Hosting Supplier and release any monies retained under paragraph 5.2.2 to the Hosting Supplier.

8. CONSEQUENCES OF AN IMPROVEMENT IN FINANCIAL DISTRESS

8.1. Following the occurrence of a Financial Distress Event pursuant to paragraph 4.1.1 or 4.1.2, then as applicable:

8.1.1. if the Hosting Supplier's credit rating subsequently rises to the Level 2 Credit Rating Threshold set out in Appendix 2 of this schedule 7.4 (Financial Distress); or

8.1.2. the relevant Key Sub-contractor withdraws its claim that the Hosting Supplier has not satisfied any material sums properly due and invoiced, or the Hosting Supplier demonstrates to the Authority's reasonable satisfaction that there is a valid reason for non-payment,

then, subject to any subsequent Financial Distress Event, the Hosting Supplier may:

8.1.2.1. request that the Authority pay the Charges direct to the Hosting Supplier and give its consent to the closure of the Financial Distress Escrow Account; and

8.1.2.2. withdraw any sums standing to the credit of that account.

9. SUB-CONTRACTOR FINANCIAL DISTRESS

9.1. In the event of:

9.1.1. a Key Sub-contractor's credit ratings dropping one or more levels below the Sub-contractor Credit Rating Threshold;

9.1.2. a 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;

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

9.1.4. a Key Sub-contractor committing a material breach of covenants to its lenders; or

9.1.5. any of the following:

9.1.5.1. commencement of any litigation against the Key Sub-contractor with respect to financial indebtedness or obligation under a service contract;

9.1.5.2. non-payment by the Key Sub-contractor of any financial indebtedness;

9.1.5.3. any financial indebtedness of the Key Subcontractor becoming due as a result of an event of default; or

- 9.1.5.4. the cancellation or suspension of any financial indebtedness in respect of the Key Sub-contractor,

which the Authority reasonably believes could directly impact on the continued performance and delivery of the Hosting Services in accordance with this Agreement then, immediately upon notification of the Sub-contractor Financial Distress Event (or if the Authority becomes aware of the Sub-contractor Financial Distress Event without notification and brings the event to the attention of the Hosting Supplier), the Hosting Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in paragraph 9.2.

- 9.2. The Hosting Supplier shall (and shall procure that the relevant Key Sub-contractor shall):

- 9.2.1. at the request of the Authority, meet with the Authority as soon as reasonably practicable (and in any event, within three (3) Working Days of the initial notification (or awareness) of the Sub-contractor Financial Distress Event or such other period as the Authority may permit and notify to the Hosting Supplier in writing) to review the effect of the Sub-contractor Financial Distress Event on the continued performance and delivery of the Hosting Services in accordance with this Agreement;

- 9.2.2. where the Authority reasonably believes (taking into account the discussions and any Hosting Supplier and Key Sub-contractor representations made under paragraph 9.2.1) that the Sub-contractor Financial Distress Event could impact on the continued performance and delivery of the Hosting Services in accordance with this Agreement, submit to the Authority for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Sub-contractor Financial Distress Event or such other period as the Authority may permit and notify to the Hosting Supplier in writing), which shall be reviewed and approved in accordance with the provisions of paragraphs 3.3 and 3.4;

- 9.2.3. review and update with the Financial Distress Service Continuity Plan in accordance with paragraphs 3.5.1 and 3.5.2;

- 9.2.4. comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan); and

- 9.2.5. provide such financial information relating to the Key Sub-contractor as the Authority may reasonably require.

- 9.3. Where the Hosting Supplier reasonably believes that the relevant Sub-contractor Financial Distress Event (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 Hosting Supplier shall be relieved of its obligations under paragraphs

9.2.3 and 9.2.4.

10. BOARD CONFIRMATION

- 10.1. Subject to paragraph 10.4, the Hosting Supplier shall within one hundred and twenty (120) days after each Accounting Reference Date or within fifteen (15) months of the previous Board Confirmation (whichever is the earlier) provide a Board Confirmation to the Authority in the form set out at Appendix 3 of this schedule 7.4 (Financial Distress), confirming that to the best of the Supplier Board's knowledge and belief, it is not aware of and has no knowledge:
- 10.1.1. that a Financial Distress Event has occurred since the later of the Effective Date or the previous Board Confirmation or is subsisting; or
 - 10.1.2. of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event.
- 10.2. The Hosting Supplier shall ensure that in its preparation of the Board Confirmation it exercises due care and diligence and has made reasonable enquiry of all relevant Hosting Supplier Personnel and other persons as is reasonably necessary to understand and confirm the position.
- 10.3. In respect of the first Board Confirmation to be provided under this Agreement, the Hosting Supplier shall provide the Board Confirmation within fifteen (15) months of the Effective Date if earlier than the timescale for submission set out in paragraph 10.1.
- 10.4. Where the Hosting Supplier is unable to provide a Board Confirmation in accordance with paragraphs 10.1 to 10.3 due to the occurrence of a Financial Distress Event or knowledge of subsisting matters which could reasonably be expected to cause a Financial Distress Event, it will be sufficient for the Hosting Supplier to submit in place of the Board Confirmation, a statement from the Supplier Board of Directors to the Authority (and where the Supplier is a Strategic Supplier, the Supplier shall send a copy of the statement to the Cabinet Office Markets and Suppliers Team) setting out full details of any Financial Distress Events that have occurred and/or the matters which could reasonably be expected to cause a Financial Distress Event.

APPENDIX 1

Rating Agency

- Rating Agency 1: Dun & Bradstreet

APPENDIX 2

Credit Rating Thresholds

- Level 1 Credit Rating Threshold
Hosting Supplier
 - Dun & Bradstreet financial strength indicator of REDACTED
- Level 2 Credit Rating Threshold
Hosting Supplier
 - Dun & Bradstreet financial strength indicator of REDACTED
- Level 3 Credit Rating Threshold
Hosting Supplier
 - Dun & Bradstreet financial strength indicator of REDACTED

Key Sub-Contractor Credit Rating Threshold

- Dun & Bradstreet financial strength indicator of REDACTED

Credit ratings as at the Effective Date

Hosting Supplier

- Dun & Bradstreet financial strength indicator of REDACTED

Key Sub-Contractor

- Dun & Bradstreet financial strength indicator REDACTED

APPENDIX 3

Board Confirmation

Hosting Supplier Name:**Contract Reference Number:**

The Supplier Board acknowledge the requirements set out at paragraph 10 of schedule 7.4 (Financial Distress) and confirm that the Hosting Supplier has exercised due care and diligence and made reasonable enquiry of all relevant Hosting Supplier Personnel and other persons as is reasonably necessary to enable the Supplier Board to prepare this statement.

The Supplier Board confirms, to the best of its knowledge and belief, that as at the date of this Board Confirmation it is not aware of and has no knowledge:

- a) that a Financial Distress Event has occurred since the later of the previous Board Confirmation and the Effective Date or is subsisting; or
- b) of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event.

On behalf of the Board of Directors:

Chair
Signed
Date

Director
Signed
Date

End of schedule