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**TRADER SUPPORT SERVICE**

**SCHEDULE 7.4**

**FINANCIAL DISTRESS**

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## 1 **DEFINITIONS**

1.1 In this Schedule, the following definitions shall apply:

<b>“Accounting Reference Dates”</b>	means the dates to which the Supplier or the relevant FDE Group entity (as relevant) prepares its audited financial statements;
<b>“Board”</b>	means the Supplier’s board of directors;
<b>“Board Confirmation”</b>	means written confirmation from the Board in accordance with Paragraph 8 of this Schedule;
<b>“Financial Distress Remediation Plan”</b>	has the meaning given in Paragraph 4.3(b)(i) of this Schedule;
<b>“Financial Rating Distress Event Criteria”</b>	means, in respect of each FDE Group entity, the distress criteria relating to that FDE Group entity’s credit rating, as set out in Annex 1 of this Schedule;
<b>“FDE Group”</b>	means the Supplier and Key Sub-contractors;
<b>“Financial Indicators”</b>	in respect of each of the FDE Group entity, means each of the financial indicators set out at Paragraph 5.1 of this Schedule;
<b>“Probability of Failure Percentage”</b>	means the percentage figure specified as the “Probability of failure over the next 12 months” within Dunn and Bradstreet’s reports on the relevant FDE Group entity. This was previously known as the “Incidence of Failure” percentage; and
<b>“Rating Agencies”</b>	means the rating agencies listed in Annex 1 of this Schedule.

## 2 **WARRANTIES AND DUTY TO NOTIFY**

2.1 The Supplier warrants and represents to the Authority for the benefit of the Authority that, as at the signature date of this Agreement, the applicable credit ratings issued for the FDE Group by each of the Rating Agencies do not meet the Financial Rating Distress Event Criteria.

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- 2.2 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing if the applicable credit rating issued by any Rating Agency for meets the applicable Financial Rating Distress Event Criteria (and in any event within five (5) Working Days of the occurrence of the Financial Rating Distress Event Criteria being met).
- 2.3 The Supplier shall:
- (a) regularly monitor the credit ratings of each entity the FDE Group with the Rating Agencies;
  - (b) monitor and report on the Financial Indicators for each entity in the FDE Group against the Financial Target Thresholds at least at the frequency set out at Paragraph 5.1; and
  - (c) promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within ten (10) Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event).
- 2.4 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Paragraph 3.1(a) below, and for the purposes of determining relief under Paragraph 7.1 below, the credit rating of an FDE Group entity shall be deemed to have met the applicable Financial Rating Distress Event Criteria if:
- (a) the credit rating given to a member of any FDE Group by a Rating Agency meets the Financial Rating Distress Event Criteria; or
  - (b) a Rating Agency that is specified as holding a credit rating for any member of the FDE Group ceases to hold a credit rating for such member (except where that Rating Agency decides not to hold a credit rating for such member for a reason other than financial difficulties of such member (for example, were the Rating Agency ceases business or stops providing ratings for businesses within the relevant member's industry), provided that in such circumstances, the Parties shall agree a new Rating Agency as a replacement).
- 2.5 Each report submitted by the Supplier pursuant to Paragraph 2.3(b) above shall:
- (a) be a single report with separate sections for each of the FDE Group entities;
  - (b) contain a sufficient level of information to enable the Authority to verify the calculations that have been made in respect of the Financial Indicators;
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- (c) include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes;
  - (d) be based on the audited accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date, on unaudited management accounts prepared in accordance with their normal timetable; and
  - (e) include a history of the Financial Indicators reported by the Supplier in graph form to enable the Authority to easily analyse and assess the trends in financial performance.

### **3 FINANCIAL DISTRESS EVENTS**

3.1 The “**Financial Distress Events**” relating to [REDACTED] are as set out at Annex 3 of this Schedule. The following shall be “**Financial Distress Events**” in respect of the Supplier and each other entity in the FDE Group,:

- (a) the credit rating of an FDE Group entity meets the applicable Financial Rating Distress Event Criteria;
  - (b) an FDE Group entity 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;
  - (c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of an FDE Group entity;
  - (d) an FDE Group entity committing a material breach of covenant to its lenders;
  - (e) a 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; and
  - (f) any of the following:
    - (i) commencement of any litigation against an FDE Group entity with which, if successful, would have a material adverse effect on its financial standing and/or ability to perform the Services;
    - (ii) non-payment by an FDE Group entity of any financial indebtedness;
    - (iii) any financial indebtedness of an FDE Group entity becoming due as a result of an event of default;
    - (iv) the cancellation or suspension of any financial indebtedness in respect of an FDE Group entity; or
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- (v) the external auditor of an FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE entity;

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.

#### **4 CONSEQUENCES OF FINANCIAL DISTRESS EVENTS**

- 4.1 Immediately upon notification by the Supplier of a Financial Distress Event (or if the Authority becomes aware of a 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 4.3 to 4.5 below.
- 4.2 In the event of a late or non-payment to a Sub-contractor pursuant to Paragraph 3.1(e), the Authority shall not exercise any of its rights or remedies under Paragraph 4.3 below without first giving the Supplier ten (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.
- 4.3 The Supplier shall (and shall procure that the relevant FDE Group entity in respect of which the Financial Distress Event has arisen shall):
  - (a) at the request of the Authority, meet 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 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 4.3(a)) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Agreement:
    - (i) subject to Paragraph 4.4 below, prepare and submit to the Authority, a plan as to how it will address the Financial Distress Event and mitigate the effects of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Agreement (a "**Financial Distress Remediation 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

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Event or such other period as the Authority may permit and notify to the Supplier in writing); and

- (ii) to the extent that it is legally permitted to do so and subject to Paragraph 4.8 below, provide such information relating to the Supplier and/or the relevant FDE Group entity in respect of which the Financial Distress Event has arisen as the Authority may reasonably require in order to understand the risk to the Services, which may include forecasts in relation to cash flow, orders and profits and details of financial measures being considered to mitigate the impact of the Financial Distress Event.

4.4 The Authority shall review the Financial Distress Remediation Plan and may provide comments on such plan to the Supplier. The Parties shall meet to discuss any comments that the Authority has and the Supplier shall use reasonable efforts to take such comments (provided they are commercially reasonable) into account and to update the Financial Distress Remediation Plan. Without prejudice to Paragraph 6 of this Schedule, the Authority acknowledges that Financial Distress Events will have an effect on the wider corporate entity that the Supplier is part of and that the Supplier will have responsibilities to (without limitation) its corporate owners, officers and its other authorities and third party relationships (including financial relationships) when responding to a Financial Distress Event; in light of this, the actions of the Supplier following a Financial Distress Event (including creating the Financial Distress Remediation Plan and the actions thereunder) shall be at the Supplier's sole discretion.

4.5 In the event that a Financial Distress Remediation Plan is developed by the Supplier pursuant to this Schedule 7.4 (*Financial Distress*), the Supplier shall, in respect of that Financial Distress Remediation Plan:

- (a) on a regular basis (which shall not be less than fortnightly or every three weeks in respect of any Financial Distress Remediation Plan relating to [REDACTED]):
  - (i) review and make any updates to the Financial Distress Remediation Plan as the Supplier may deem reasonably necessary so that the plan remains adequate, up to date and ensures the continued performance and delivery of the Services in accordance with this Agreement; and
  - (ii) provide a written report to the Authority setting out its progress against the Financial Distress Remediation Plan, the reasons for any changes made to the Financial Distress Remediation Plan by the Supplier and/or the reasons why the Supplier may have decided not to make any changes;

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- (b) where updates are made to the Financial Distress Remediation Plan in accordance with Paragraph 4.5(a) above, submit an updated Financial Distress Remediation Plan to the Authority; and
  - (c) comply with the Financial Distress Remediation Plan (including any updated Financial Distress Remediation Plan) and ensure that it achieves the financial and performance requirements set out in the Financial Distress Remediation Plan.
- 4.6 Where the Supplier reasonably believes that the relevant 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 Supplier and any relevant FDE Group entity (where applicable) shall be relieved of its obligations under Paragraphs 4.3 to 4.5 above (as applicable).
- 4.7 The Supplier shall use reasonable endeavours to put in place the necessary measures to ensure that the information specified at Paragraph 4.3(b)(ii) is available when required and on request from the Authority and within reasonable timescales. Such measures may include:
- (a) obtaining in advance written authority from the FDE Group authorising the disclosure of the information to the Authority and/or entering into confidentiality agreements which permit disclosure;
  - (b) where applicable, agreeing in advance with the Authority and the FDE Group a form of confidentiality agreement to be entered by the relevant parties to enable the disclosure of the information to the Authority;
  - (c) putting in place any other reasonable arrangements to enable the information to be lawfully disclosed to the Authority (which may include making price sensitive information available to Authority nominated personnel through confidential arrangements, subject to their consent); and
  - (d) disclosing the information to the fullest extent that it is lawfully entitled to do so, including through the use of redaction, anonymisation and any other techniques to permit disclosure of the information without breaching a duty of confidentiality.

## **5 FINANCIAL INDICATORS**

- 5.1 The Supplier will provide the Authority with a copy of its (and each FDE Group entity's except [REDACTED]) statutory annual accounts within five (5) Working Days of the statutory annual accounts being filed with Companies House (the statutory annual accounts relating to [REDACTED] shall be made available to the Authority within 10 Working Days after the Supplier receives these from [REDACTED]), together with written calculations and commentary on the Financial Indicators including how and why they have changed since the previous year.
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<b>FINANCIAL INDICATOR</b>	<b>DESCRIPTION</b>
<b>Turnover</b>	Turnover is the net sales generated by a business.
<b>Net Profit Before Tax</b>	Net Profit Before Tax is the amount by which revenue from sales exceeds costs in a business before the company has to pay corporation tax.
<b>Shareholders' Funds</b>	Shareholders' Funds is the balance sheet value of the shareholders' interest in a company. For company (as opposed to group) accounts it is simply all assets less all liabilities. For consolidated group accounts the value of minority interests should also be excluded.
<b>Gearing</b>	Gearing is a ratio used to measure the financial leverage employed by a firm. Gearing represents the proportion of funding by lenders as compared to the funding by shareholders. It denotes the level of a firm's debt as a percentage of its equity capital. It is a fundamental analysis ratio of a firm's level of long-term debt as compared to its equity capital.
<b>Current Ratio</b>	The Current Ratio is a liquidity ratio that measures whether a firm has sufficient resources to meet its short-term obligations. It compares a firm's current assets to its current liabilities, and is expressed as follows: <b>Current Ratio = Current Assets/Current Liabilities</b>

- 5.2 If the statutory accounts have not been filed at Companies House within nine (9) months of the relevant Accounting Reference Date the Supplier shall notify the Authority and provide an explanation as to why such statutory annual accounts have not been filed.

## **6 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 2.3(c);
- (b) the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) provided by the Supplier is unacceptable to the Authority (acting reasonably) and the Parties have been unable to agree a mutually acceptable Financial Distress Remediation Plan; and/or



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- (c) the Supplier fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraph 4.5(c) above,

in each case which would have a material impact on the continued performance and delivery of the Services in accordance with this Agreement.

## **7 PRIMACY OF CREDIT RATINGS**

7.1 Without prejudice to the Supplier's obligations and the Authority's rights and remedies under Paragraph 2 above, if, following the occurrence of a Financial Distress Event, the Rating Agencies review and report subsequently that the credit ratings for the FDE Group entities do not meet the relevant Financial Rating Distress Event Criteria, then:

- (a) the Supplier and each relevant FDE Group entity shall be relieved automatically of its obligations under Paragraphs 4.3 to 4.5 above; and
- (b) the Authority shall not be entitled to require the Supplier or any relevant FDE Group entity to provide financial information in accordance with Paragraph 4.3(b)(ii) above.

## **8 BOARD CONFIRMATION**

8.1 Subject to Paragraph 8.4 of this Schedule, the 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 Annex 2 of this Schedule, confirming that to the best of the Board's knowledge and belief, it is not aware of and has no knowledge:

- (a) that a Financial Distress Event has occurred since the later of the signature date of this Agreement or the previous Board Confirmation 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.

8.2 The 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 Supplier Personnel and other persons as is reasonably necessary to understand and confirm the position.

8.3 In respect of the first Board Confirmation to be provided under this Agreement, the Supplier shall provide the Board Confirmation within fifteen (15) months of the signature date of this Agreement if earlier than the timescale for submission set out in Paragraph 8.1 of this Schedule.

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- 8.4 Where the Supplier is unable to provide a Board Confirmation in accordance with Paragraphs 8.1 to 8.3 of this Schedule 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 Supplier to submit in place of the Board Confirmation, a statement from the Board of Directors to the Authority (and where the Supplier is deemed to be a strategic supplier of the Authority, 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.

**9 Provision of Information relating to [REDACTED]**

- 9.1 Notwithstanding any other provision of this Agreement (other than clauses 21 (Confidentiality) and 22 (Transparency and Freedom of Information) to which this paragraph shall be without prejudice), the Authority agrees and shall ensure that any information provided in connection with this Schedule 7.4 (*Financial Distress*) and that relates to [REDACTED] shall not be subject to any disclosure to any third party.

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## **ANNEX 1**

Annex 1 to Schedule 7.4 has been withdrawn for Freedom of Information Act purposes

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**ANNEX 2**  
**BOARD CONFIRMATION**

**Supplier Name:**

**Contract Reference Number:**

The Board of Directors acknowledge the requirements set out at Paragraph 8 of Schedule 7.4 (Financial Distress) and confirm that the Supplier has exercised due care and diligence and made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to enable the Board to prepare this statement.

The Board of Directors 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 signature date of this Agreement 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 .....

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### **Annex 3**

Annex 3 to Schedule 7.4 has been withdrawn for Freedom of Information Act purposes