

OFFICIAL - COMMERCIAL

SCHEDULE 7.4

FINANCIAL DISTRESS

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1 **NOT USED**

2 **DUTY TO NOTIFY**

- 2.1 The Supplier warrants and represents to the Authority for the benefit of the Authority that beginning on the Effective Date, and during the term of the Contract, that Guarantor shall maintain at the end of each of Guarantor's fiscal quarter a (i) Leverage Ratio of not more than 3.25 to 1; and a Fixed Charge Coverage Ratio of not less than 1.25 to 1. Failure to meet the foregoing ratios shall constitute a "Notification Event" and shall be included in the definition of a "Financial Distress Event."
- 2.2 "Leverage Ratio" shall mean, as of any date, the ratio of (i) total debt of Guarantor as of such date to (ii) EBITDA for the four consecutive fiscal quarters ending on or immediately prior to such date.
- 2.3 "Fixed Charge Coverage Ratio" shall mean, as of any date, the ratio of (a) EBITDA less the actual amount of capital expenditures by the Guarantor and its subsidiaries and the actual amount of federal, state and local income taxes paid by the Guarantor and its subsidiaries to (b) Consolidated Fixed Charges, in each case measured for the four consecutive fiscal quarters ending on or immediately prior to such date.
- 2.4 "EBITDA" shall mean earnings of Guarantor before interest charges, taxes, depreciation, non-cash stock compensation expenses and amortization.
- 2.5 "Consolidated Fixed Charges" shall mean, for the Guarantor and its subsidiaries for any period, the sum (without duplication) of (i) interest expenses during such period, (ii) scheduled principal payments required to be made on debt during such period, and (iii) cash dividends paid during such period. Consolidated Fixed Charges shall include the pro forma Consolidated Fixed Charges of any business or entity acquired by Guarantor, annualized from the date of acquisition for a period not to exceed four fiscal quarters so long as the calculation thereof is done in a manner reasonably calculated to comply with US GAAP.
- 2.6 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing within ten (10) Working Days of a Notification Event.
- 2.7 The Supplier shall regularly monitor each of its Key Sub-contractors' credit ratings or (where used as proxies for credit ratings) Dun & Bradstreet rating. In the event that the Supplier reasonably believes on the basis of such rating that there could be an adverse impact to the performance of this Agreement the Supplier shall use its best endeavours to mitigate such impact.
- 2.8 The Supplier shall 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 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).

- 2.9 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Paragraph 3.1(a), the credit rating of the Key Sub-contractor shall be deemed to have dropped below the applicable Credit Rating Threshold if any rating agency has rated the Key Sub-contractor at or below the applicable Credit Rating Level.

3 CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

3.1 In the event of:

- (a) a Notification Event;
- (b) the Supplier or the Guarantor 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 the Supplier or the Guarantor;
- (d) the Supplier or the Guarantor committing a material breach of covenant to its lenders;
- (e) Not used; or
- (f) any of the following:
 - (i) commencement of any litigation against the Supplier or the Guarantor with respect to financial indebtedness greater than ten million pounds sterling (£10 million) or obligations under a service contract with a total contract value greater than ten million pounds sterling (£10 million);
 - (ii) non-payment by the Supplier or the Guarantor of any financial indebtedness;
 - (iii) any financial indebtedness of the Supplier or the Guarantor 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 or the Guarantor,

in each case which the Authority reasonably believes 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 Not used
- 3.3 The Supplier shall (and shall procure that the Guarantor shall):
- (a) at the request of the Authority, meet the Authority as soon as reasonably practicable (and in any event within five (5) 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 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 Supplier in writing); and
 - (ii) provide such financial information relating to the Supplier 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 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 provided that if the Financial Service Continuity Plan is not approved by the Authority within one (1) Month of it first being submitted to the Authority for approval it shall be 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 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.
- 3.6 Following approval of the Financial Distress Service Continuity Plan by the Authority, the Supplier shall comply with the Financial Distress Service Continuity Plan and report on a Monthly basis to the Authority regarding its compliance with the 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) if:

- (a) 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
- (b) the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan in accordance with Paragraph 3.6,

provided that in the Authority's reasonable opinion such failure will have a material adverse affect on the Supplier's ability to perform its obligations under this Agreement.

5 PRIMACY OF RATIOS

5.1 Without prejudice to the Supplier's obligations and the Authority's rights and remedies under Paragraph 2, if, following the occurrence of a Financial Distress Event pursuant to any of Paragraphs 3.1(b) to 3.1(f), if Guarantor maintains at the end of each of Guarantor's fiscal quarter a (i) Leverage Ratio of not more that 3.25 to 1; and a Fixed Charge Coverage Ratio of not less than 1.25 to 1, 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).