

SCHEDULE 14 – FINANCIAL DISTRESS

1. DEFINITIONS

1.1. In this Schedule, the following definitions shall apply:

“Applicable Financial Indicators” means the financial indicators set out in paragraph 5.1 of this Schedule which are to apply to the Monitored Service Providers as set out in paragraph 5.2 of this Schedule;

“Board” means the Service Provider’s board of directors;

“Board Confirmation” means written confirmation from the Board in accordance with Paragraph 8 of this Schedule;

“Financial Distress Event Group” or “FDE Group” means the Service Provider, Key Sub-contractors, the Guarantor and the Monitored Service Providers;

“Financial Indicators” in respect of the Service Provider, Key Sub-contractors and the Guarantor, means each of the financial indicators set out at paragraph 5.1 of this Schedule; and in respect of each Monitored Service Provider, means those Applicable Financial Indicators;

“Financial Target Thresholds” means the target thresholds for each of the Financial Indicators set out at paragraph 5.1 of this Schedule;

“Monitored Service Providers” means those entities specified at paragraph 5.2 of this Schedule;

2. WARRANTIES AND DUTY TO NOTIFY

2.1. The Service Provider warrants and represents to the Authority for the benefit of the Authority that as at the Commencement Date the financial position or, as appropriate, the financial performance of each of the Service Provider, Guarantor and Key Sub-contractors satisfies the Financial Target Thresholds.

2.2. The Service Provider shall:

- (a) monitor and report on the Financial Indicators for each entity in the FDE Group against the Financial Target Thresholds on a regular basis and in any event, no less than once a year within 120 calendar days after the Accounting Reference Date; and
- (b) 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 Service Provider first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event).

2.3. Each report submitted by the Service Provider pursuant to paragraph 2.2(b) 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;
- (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 Service Provider in graph form to enable the Authority to easily analyse and assess the trends in financial performance.

3. FINANCIAL DISTRESS EVENTS

3.1. The following shall be Financial Distress Events:

- (a) 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;
- (b) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of an FDE Group entity;
- (c) an FDE Group entity committing a material breach of covenant to its lenders;
- (d) a Key Sub-contractor notifying the Authority that the Service Provider has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;
- (e) any of the following:
 - (i) commencement of any litigation against an FDE Group entity with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m;
 - (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
 - (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 Contract; and
- (f) any one of the Financial Indicators set out at Paragraph 5 for any of the FDE Group entities failing to meet the required Financial Target Threshold.
- (g) failure by the Service Provider to transfer all trading activities from Marston Group Limited, Swift Credit Services Limited and Collectica Limited to Marston Holdings Limited (04305487) by the Service Commencement Date

3.2. The Authority reserves the right to undertake checks by credit rating services to assure itself of the financial viability of any FDE Group entity. Should a credit rating assessment identify concerns in relation to any FDE Group entity, the Authority may consider this to constitute a Financial Distress Event and shall inform the Service Provider of the occurrence of such a Financial Distress Event.

4. CONSEQUENCES OF FINANCIAL DISTRESS EVENTS

4.1. Immediately upon notification by the Service Provider 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 Service Provider, immediately upon bringing such event to the attention of the Service

Provider), the Service Provider shall have the obligations and the Authority shall have the rights and remedies as set out in Paragraphs 4.3 to 4.6.

4.2. In the event of a late or non-payment of a Key Sub-contractor of the type referred to in Paragraph 3.1(d), the Authority shall not exercise any of its rights or remedies under Paragraph 4.3 without first giving the Service Provider 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 Service Provider shall (and shall procure that any Monitored Service Provider, the Guarantor and/or any relevant Key Sub-contractor shall):

- (a) at the request of the Authority, meet the Authority as soon as reasonably practicable (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 Service Provider in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Contract; 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 Contract:
 - (i) submit to the Authority for its approval, a draft Financial Distress Remediation Plan as soon as reasonably practicable (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 Service Provider in writing); and
 - (ii) to the extent that it is legally permitted to do so and subject to Paragraph 4.8, provide such information relating to the Service Provider, any Monitored Service Provider, Key Sub-contractors and/or the Guarantor 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 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 Service Provider of its reasons and the Service Provider shall take those reasons into account in the preparation of a further draft Financial Distress Remediation 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 Remediation Plan is approved by the Authority or referred to the dispute resolution procedure under Paragraph 4.5.

4.5. If the Authority considers that the draft Financial Distress Remediation Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the Service Provider's obligations in accordance with the Contract, then it may either agree a further time period for the development and agreement of the Financial Distress Remediation Plan or escalate any issues with the draft Financial Distress Remediation Plan using the dispute resolution procedure under clause I1.

4.6. Following Approval of the Financial Distress Remediation Plan by the Authority, the Service Provider shall:

- (a) on a regular basis (which shall not be less than fortnightly):
 - (i) review and make any updates to the Financial Distress Remediation Plan as the Service Provider may deem reasonably necessary and/or as may be reasonably requested by the Authority, so that the plan remains adequate, up to date and ensures the continued performance and delivery of the Services in accordance with this Contract; 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 Service Provider and/or the reasons why the Service Provider may have decided not to make any changes;
 - (b) where updates are made to the Financial Distress Remediation Plan in accordance with Paragraph 4.6(a), submit an updated Financial Distress Remediation Plan to the Authority for its Approval, and the provisions of Paragraphs 4.4 and 4.5 shall apply to the review and approval process for the updated Financial Distress Remediation Plan; 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.
- 4.7. Where the Service Provider reasonably believes that the relevant Financial Distress Event under Paragraph 4.1 (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 Service Provider shall be relieved of its obligations under Paragraph 4.6.
- 4.8. The Service Provider 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 Key Sub-contractors, the Monitored Service Providers and/or the Guarantor authorising the disclosure of the information to the Authority and/or entering into confidentiality agreements which permit disclosure;
 - (b) agreeing in advance with the Authority, Key Sub-contractors, the Monitored Service Providers and/or the Guarantor 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, anonymization and any other techniques to permit disclosure of the information without breaching a duty of confidentiality.

5. FINANCIAL INDICATORS

- 5.1. Subject to the calculation methodology set out at Annex 4 of this Schedule, the Financial Indicators and the corresponding calculations and thresholds used to determine whether a Financial Distress Event has occurred in respect of those Financial Indicators, shall be as follows:

Financial Indicator	Calculation ¹	Financial Target Threshold:
1 Return on capital ratio (%)	Earnings before interest, tax, depreciation and amortization (EBITDA) / Capital employed * 100	>6.35
2 Return on assets ratio (%)	EBITDA / total assets *100	>1.60
3 Pre-tax profit (%) or EBITDA ratio	EBITDA / Sales * 100	>4.20
4 Working capital as a	Working Capital / Sales * 100	>2.85

percentage of sales Ratio (%)		
5 Profitability	EBITDA	Profit (a loss would indicate a Financial Distress Event)
6 Solvency	Total assets less total liabilities	Positive net assets (negative net assets represent a Financial Distress Event)
7 Gearing	(Long term + short term borrowings) / Shareholder equity * 100	<=30
8 Liquidity	(Current assets – Inventory or stock) / Current Liabilities	>1.0
9 Working capital trade receivables (days)	Average trade debtors / Turnover * 365 days	<33.05
10 Working capital trade payables (days)	Average trade creditors / Cost of sales * 365 days	>6.05
11 Not Used		
12 Pre-tax profit per employee	EBITDA / Number of employees	>2.29
13 Not Used		
Qualified/ Unqualified accounts	Assessment on whether the Authority can place reliance on the provider's financial statements.	Unqualified opinion (qualified opinion, adverse opinion or disclaimer of opinion represents a Financial Distress Event)
Senior personnel involved with insolvency proceedings	Assessment of whether the provider's senior personnel are by law in a position to run the company and whether there is a risk of the company could be wound up.	Senior personnel must not be involved with insolvency proceeding (involvement represents a Financial Distress Event)

Key: ¹ – See Annex 4 of this Schedule which sets out the calculation methodology to be used in the calculation of each Financial Indicator.

5.2. Monitored Service Providers

Monitored Service Provider	Applicable Financial Indicators [these are the Financial Indicators from the table at 5.1 which are to apply to the Monitored Service Providers]
Lead Provider: Marston Holdings Ltd	All
Parent Company: Magenta Bidco Limited	All

6. TERMINATION RIGHTS

6.1. The Authority shall be entitled to terminate this Agreement under Clause H4 (Other Termination Grounds) if:

- (a) the Provider fails to notify the Authority of a Financial Distress Event in accordance with Paragraph 2.2(b);
- (b) the Parties fail to agree a Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraphs 4.3 to 4.5; and/or

- (c) the Service Provider fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraph 4.6(c).

7. NOT USED

8. BOARD CONFIRMATION

- 8.1. If this Contract has been specified as a Critical Service Contract under Paragraph 10.1 of Part 2 to Schedule 15 (Service Continuity Plan and Corporate Resolution Planning) then, subject to Paragraph 8.4 of this Schedule, the Service Provider shall within 120 calendar days after each Accounting Reference Date or within 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 5 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 Commencement Date 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 Service Provider shall ensure that in its preparation of the Board Confirmation it exercises due care and diligence and has made reasonable enquiry of all relevant Staff 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 Contract, the Service Provider shall provide the Board Confirmation within 15 months of the Commencement Date if earlier than the timescale for submission set out in Paragraph 8.1 of this Schedule.
- 8.4. Where the Service Provider 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 Service Provider to submit in place of the Board Confirmation, a statement from the Board of Directors to the Authority (and where the Service Provider is a Strategic Supplier, the Service Provider 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.

ANNEX 1: NOT USED

ANNEX 4: CALCULATION METHODOLOGY FOR FINANCIAL INDICATORS

The Service Provider shall ensure that it uses the following general and specific methodologies for calculating the Financial Indicators against the Financial Target Thresholds:

General methodology

1. Terminology: The terms referred to in this Annex 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).
2. Groups: Where the entity is the holding company of a group and prepares consolidated financial statements, the consolidated figures should be used.
3. Foreign currency conversion: Figures denominated in foreign currencies should be converted at the exchange rate in force at the relevant balance sheet date.
4. Treatment of non-underlying items: Financial Indicators should be based on the figures in the financial statements before adjusting for non-underlying items.

Specific Methodology

Financial Indicator	Specific Methodology Or Description
Return on capital (%)	Assessment of provider's profitability and the efficiency with which its capital is employed. EBITDA = Earnings before interest, Tax, Depreciation and Amortisation (EBITDA)
Return on assets (%)	Evaluation of how well management is employing the company's total assets to make a profit. EBITDA = Earnings before interest, Tax, Depreciation and Amortisation (EBITDA)
Pre-tax profit (%)	Assessment of how profitable the provider is. EBITDA = Earnings before interest, Tax, Depreciation and Amortisation (EBITDA)
Working capital as % of sales	Calculation of how much provider spends on operational expenses and short-term debt obligations for every £1 of sales. Working capital = current assets / current liabilities or, Working capital = (cash + short-term investments + inventory + accounts receivables) / (short-term notes + accounts payables) Working Capital/Sales*100
Return on capital employed (%)	Assessment of provider's profitability and the efficiency with which its capital is employed. EBITDA = Earnings before interest, Tax, Depreciation and Amortisation Capital Employed = Total Assets – Current liabilities
Profitability (£000)	Assessment of overall profitability. EBITDA = Earnings before interest, Tax, Depreciation and Amortisation
Solvency (£000)	Assessment of available financial resources to deal with adverse trading conditions or legal claims. Solvency = Total Assets – Total Liabilities
Gearing	Assessment on debt used for funding. Long term (over 12 months) + Short term borrowing (repayable within 12 months) / Shareholders equity *100
Liquidity	Assessment of ability to meet short term debts. Where provider has a higher than expected gearing ratio, we will consider other ratios like gearing and profitability to assess Provider's ability to fund its business through existing operations.

	Current Assets + Inventory or Stock/ Current Liability
Pre-tax profit per employee (£000)	Measure of provider's employees' contribution to organization's profit. Pre-tax profit= = Earnings before interest, Tax, Depreciation and Amortisation
Qualified/ Unqualified accounts	Assessment on whether the Authority can place reliance on the provider's financial statements.
Senior personnel involved with insolvency proceedings	Assessment of whether the provider's senior personnel are by law in a position to run the company and whether there is a risk of the company could be wound up.

ANNEX 5: BOARD CONFIRMATION

Service Provider Name:

Contract Reference Number:

The Board of Directors acknowledge the requirements set out at paragraph 8 of Schedule 14 (Financial Distress) and confirm that the Service Provider has exercised due care and diligence and made reasonable enquiry of all relevant Staff 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 Commencement 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