**Schedule 24 (Financial Difficulties)**

***[Guidance: This template Schedule provides the user with the option of using Credit Ratings and/or Credit Scores and/or Financial Indicators for the purposes of the Financial Distress Provisions. Please consult the Playbook guidance about*** [***Assessing and Monitoring the Economic and Financial Standing of Bidders and Suppliers***](about:blank)***. Users may use any combination of these indicators to suit their own requirements and may delete or amend as required. Users should ensure that the drafting of any Financial Indicators aligns with the financial standing criteria used during the selection stage of the procurement]***

1. **Definitions**
   1. In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

|  |  |
| --- | --- |
| **"Applicable Financial Indicators"** | means the financial indicators from Part C of Annex 2 which are to apply to the Monitored Suppliers as set out in Part B of Annex 3; |
| **"Credit Rating Threshold"** | the minimum credit rating level for each entity in the FDE Group as set out in Part A of Annex 2; |
| **"Credit Reference Agencies"** | the credit reference agencies listed in Part B of Annex 1; |
| **"Credit Score Notification Trigger"** | the minimum size of any downgrade in a credit score, set out in Part B of Annex 2, which triggers a Credit Score Notification Trigger Event; |
| **"Credit Score Notification Trigger Event"** | any downgrade of a credit score which is equal to or greater than the Credit Score Notification Trigger; |
| **"Credit Score Threshold"** | the minimum credit score level for each entity in the FDE Group as set out in Part B of Annex 2; |
| **"Financial Distress Service Continuity Plan"** | a plan setting out how the Supplier will ensure the continued performance and delivery of the Deliverables in accordance with this Contract in the event that a Financial Distress Event occurs. This plan should include what the Buyer would need to put in place to ensure performance and delivery of the Deliverables in accordance with this Contract up to and including any Insolvency Event in respect of the relevant FDE Group entity; |
| **"Financial Indicators"** | in respect of the Supplier, Key Sub-contractors and the Guarantor, means each of the financial indicators set out at Part C of Annex 2; and in respect of each Monitored Supplier, means those Applicable Financial Indicators; |
| **"Financial Target Thresholds"** | means the target thresholds for each of the Financial Indicators set out at Part C of Annex 2; |
| **"Primary Metric"** | [credit rating pursuant to Paragraph 3.3]/[credit score pursuant to Paragraph 4.3]/[financial indicators pursuant to Paragraph 5.4]  ***[Guidance: The Primary Metric is used in Paragraph 8 as the means of measuring whether the Supplier has resolved the Financial Distress Event. If the Financial Distress Event is resolved by reference to the selected Primary Metric then the Supplier is entitled to relief under Paragraph 8 whether or not the other metrics still show continuing Financial Distress Events.]*** |
| **"Monitored Supplier"** | those entities specified in Part B of Annex 3; and |
| **"Rating Agencies"** | the rating agencies listed in Part A of Annex 1. |

1. **When this Schedule applies**
   1. The Parties shall comply with the provisions of this Schedule in relation to the assessment of the financial standing of the FDE Group and the consequences of a change to that financial standing.
   2. The terms of this Schedule shall survive under this Contract until the termination or expiry of this Contract.
2. **Credit Ratings**
   1. The Supplier warrants and represents to the Buyer that as at the Effective Date the long term credit ratings issued for each entity in the FDE Group by each of the Rating Agencies are as set out in Part A of Annex 2.
   2. The Supplier shall:
      1. regularly monitor the credit ratings of each entity in the FDE Group with the Rating Agencies; and
      2. promptly (and in any event within five (5) Working Days) notify the Buyer in writing if there is any downgrade in the credit rating issued by any Rating Agency for any entity in the FDE Group.
   3. For the purposes of determining whether a Financial Distress Event has occurred, and for the purposes of determining relief under Paragraph 8 if credit rating is the Primary Metric, the credit rating of an FDE Group entity shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have given a credit rating level for that FDE Group entity which is below the applicable Credit Rating Threshold.
3. **Credit Scores**
   1. The Supplier warrants and represents to the Buyer that as at the Effective Date the credit scores issued for each entity in the FDE Group by each of the Credit Reference Agencies are as set out in Part B of Annex 2.
   2. The Supplier shall:
      1. regularly monitor the credit scores of each entity in the FDE Group with the Credit Reference Agencies; and
      2. promptly notify (or shall procure that its auditors promptly notify) the Buyer in writing if there is any Credit Score Notification Trigger Event for any entity in the FDE Group (and in any event within five (5) Working Days).
   3. For the purposes of determining whether a Financial Distress Event has occurred, and for the purposes of determining relief under Paragraph 8 if credit score is the Primary Metric, the credit score of an FDE Group entity shall be deemed to have dropped below the applicable Credit Score Threshold if any of the Credit Reference Agencies have given a credit score for that FDE Group entity which is below the applicable Credit Score Threshold.
4. **Financial Indicators**

***[Guidance: The Financial Indicators set out in the table at Part* C *of Annex* 2 *are examples of the types of Financial Indicators that you may wish to use in respect of the Supplier’s financial standing. These should be aligned with any financial standing criteria used at the selection stage of the procurement and you may wish to delete or insert different indicators as appropriate. Financial Indicators may be restricted to specific key indicators rather than including all of the criteria used at the selection stage]***

* 1. The Supplier shall 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 for each at Part C of Annex 2(where specified) and in any event, on a regular basis and no less than once a year within one hundred and twenty (120) days after the accounting reference date
  2. 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 set out in Appendix I: Standard Financial Ratios of *Assessing and Monitoring the Economic and Financial Standing of Bidders and Suppliers – May 2021* (as amended, supplemented or replaced from time to time) which as at the Effective Date can be found at:

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/987132/Assessing_and_monitoring_the_economic_and_financial_standing_of_suppliers_guidance_note_May_2021.pdf>

* 1. Each report submitted by the Supplier pursuant to Paragraph 5.1 shall:
     1. be a single report with separate sections for each of the FDE Group entities;
     2. contain a sufficient level of information to enable the Buyer to verify the calculations that have been made in respect of the Financial Indicators;
     3. include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes; [and]
     4. 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
     5. include a history of the Financial Indicators reported by the Supplier in graph form to enable the Buyer to easily analyse and assess the trends in financial performance.]
  2. For the purposes of determining whether a Financial Distress Event has occurred, and for the purposes of determining relief under Paragraph 8 if financial indicators are the Primary Metric, the Financial Indicator of an FDE Group entity shall be deemed to have dropped below the applicable Financial Target Threshold if:
     1. a report submitted by the Supplier pursuant to Paragraph 5.1 shows that any FDE Group entity has failed to meet or exceed the Financial Target Threshold for any [one] of the Financial Indicators set out in Part C of Annex 2of this Schedule;
     2. a report submitted by the Supplier pursuant to Paragraph 5.1 does not comply with the requirements set out in Paragraph 5.3; or
     3. the Supplier does not deliver a report pursuant to Paragraph 5.3 in accordance with the applicable monitoring and reporting frequency.

1. **What happens if there is a financial distress event**
   1. The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Buyer 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. In the event of a Financial Distress Event then, immediately upon notification of the Financial Distress Event (or if the Buyer 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 Buyer shall have the rights and remedies as set out in Paragraphs 6.4 to 6.6.

**[*Guidance: replace Paragraph 6.3 with "NOT USED" if there are no Key Subcontractors or the Key Subcontractors are not*** ***Monitored Suppliers***]

* 1. [In the event that a Financial Distress Event arises due to a Key Subcontractor notifying the Buyer that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute then, the Buyer shall not exercise any of its rights or remedies under Paragraph 6.4 without first giving the Supplier ten (10) Working Days to:
     1. rectify such late or non-payment; or
     2. demonstrate to the Buyer's reasonable satisfaction that there is a valid reason for late or non-payment.]
  2. The Supplier shall (and shall procure that each Additional FDE Group Member shall):
     1. at the request of the Buyer meet the Buyer 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) to review the effect of the Financial Distress Event on the continued performance of this Contract and delivery of the Deliverables in accordance this Contract; and
     2. where the Buyer reasonably believes (taking into account the discussions and any representations made under Paragraph 6.4.1) that the Financial Distress Event could impact on the continued performance of this Contract and delivery of the Deliverables in accordance with this Contract:
        1. submit to the Buyer 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);
        2. use reasonable endeavours to put in place the necessary measures with each Additional FDE Group Member to ensure that it is able to provide financial information relating to that Additional FDE Group Member to the Buyer; and
        3. provide such financial information relating to FDE Group entity as the Buyer may reasonably require.
  3. If the Buyer does not (acting reasonably) 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 Buyer within five (5) Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is either:
     1. Approved;
     2. referred, by notice sent by either Party to the other Party explaining why it thinks the Financial Distress Service Continuity Plan has not been Approved, to commercial negotiation led by senior representatives who have authority to agree the Financial Distress Service Continuity Plan (to be held within 28 days of the date of the notice); or
     3. finally rejected by the Buyer.
  4. Following Approval of the Financial Distress Service Continuity Plan by the Buyer, the Supplier shall:
     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 this Contract and delivery of the Deliverables in accordance with this Contract;
     2. provide a written report of the results of each review and assessment carried out under Paragraph 6.6.1 to the Buyer;
     3. where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 6.6.1, submit an updated Financial Distress Service Continuity Plan to the Buyer for its Approval, and the provisions of Paragraphs 6.5 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and
     4. comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
  5. 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 Buyer and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under Paragraph 6.6.

1. **When the Buyer can terminate for financial distress** 
   1. The Buyer shall be entitled to terminate this Contract for Material Default if:
      1. the Supplier fails to notify the Buyer of a Financial Distress Event in accordance with Paragraph 6.1;
      2. the Supplier fails to comply with any part of Paragraph 6.4;
      3. subject to Paragraph 7.2, the Buyer finally rejects a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 6.5.3;
      4. the senior representatives who have authority to agree the Financial Distress Service Continuity Plan (acting reasonably) do not meet within 28 days of the date of the notice of referral pursuant to Paragraph 6.5.2;
      5. the senior representatives who have authority to agree the Financial Distress Service Continuity Plan (acting reasonably) do not agree the Financial Distress Service Continuity Plan after it has been referred pursuant to Paragraph 6.5.2; and/or
      6. the 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 Paragraph 6.6.4,

and the consequences of termination in Clause 14.5.1 shall apply.

* 1. A Material Default may only occur under Paragraph 7.1.3 after the expiry of the first five (5) Working Days period for the Supplier to submit a revised draft of the first draft of the Financial Distress Service Continuity Plan starting on and from the date on which the Buyer first notified the Supplier that Supplier must submit a revised draft of the first draft Financial Distress Service Continuity Plan.

1. **What happens If your Primary Metric is still good**

Without prejudice to the Supplier’s obligations and the Buyer’s rights and remedies under Paragraph ‎6, if, following the occurrence of a Financial Distress Event, the Supplier evidences to the Buyer’s satisfaction that the Primary Metric shows that the Financial Distress Event no longer exists, then:

* 1. the Supplier shall be relieved automatically of its obligations under Paragraphs 6.4 to 6.6; and
  2. the Buyer shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 6.4.2(c)).

**ANNEX** **1: RATING AGENCIES AND CREDIT REFERENCE AGENCIES**

**Part** **A: Rating Agencies**

[Rating Agency 1]

[Rating Agency 2]

**Part** **B: Credit Reference Agencies**

[Credit Reference Agency 1]

[Credit Reference Agency 2]

**ANNEX** **2: CREDIT RATINGS, CREDIT SCORES AND FINANCIAL INDICATORS**

**Part** **A: Credit Rating**

***[Guidance: Subsidiary entities are unlikely to have a credit rating. The credit rating is most likely to be awarded to the ultimate parent company of a group. For the credit rating provisions to apply, the entity in the supplier’s group which has a credit rating should be included as a Monitored Supplier if it is not the Guarantor.]***

|  |  |  |
| --- | --- | --- |
| **Entity** | **Credit rating (long term)** | **Credit Rating Threshold** |
| Supplier |  |  |
| Guarantor |  |  |
| [Key Subcontractor] |  |  |
| [Monitored Supplier] |  |  |

**Part** **B: Credit Score**

|  |  |  |  |
| --- | --- | --- | --- |
| **Entity** | **Credit score** | **Credit Score Notification Trigger** | **Credit Score Threshold** |
| Supplier |  |  |  |
| Guarantor |  |  |  |
| [Key Subcontractor] |  |  |  |
| [Monitored Supplier] |  |  |  |

**Part** **C: Financial Indicators**

| **Financial Indicator** | **Calculation1** | **Financial Target Threshold:** | **Monitoring and Reporting Frequency [if different from the default position set out in Paragraph 5.1]** |
| --- | --- | --- | --- |
| **1**  **[Operating Margin]**  **OR**  **[The higher of (a) the Operating Margin for the most recent 12 month period and (b) the average Operating Margin for the last two 12 month periods]** | *[Operating Margin = Operating Profit / Revenue]* | *[> [X%]]* | *Tested and reported [yearly / half yearly] in arrears within [120 / 90] days of each [accounting reference date / half year end] based upon figures for the 12 months ending on the relevant [accounting reference date / half year end]* |
| **2**  **[Free Cash Flow to Net Debt Ratio]**  **OR**  **[Net Debt to EBITDA Ratio]** | *[Free Cash Flow to Net Debt Ratio = Free Cash Flow / Net Debt]*  *OR*  *[Net Debt to EBITDA ratio = Net Debt / EBITDA]* | *[> [X%]]*  *OR*  *[< [X]] times* | *Tested and reported [yearly / half yearly] in arrears within [120 / 90] days of each [accounting reference date / half year end] based upon [Free Cash Flow / EBITDA] for the 12 months ending on, and Net Debt at, the relevant [accounting reference date / half year end]* |
| **3**  **[Net Debt + Net Pension Deficit to EBITDA ratio]** | *[Net Debt + Net Pension Deficit to EBITDA Ratio = (Net Debt + Net Pension Deficit) / EBITDA]* | *[< [X]] times* | *Tested and reported yearly in arrears within 120 days of each accounting reference date based upon EBITDA for the 12 months ending on, and the Net Debt and Net Pension Deficit at, the relevant accounting reference date* |
| **4**  **[Net Interest Paid Cover]** | *[Net Interest Paid Cover = Earnings Before Interest and Tax / Net Interest Paid]* | *[> [X]] times* | *Tested and reported [yearly / half yearly] in arrears within [120 / 90] days of each [accounting reference date / half year end] based upon figures for the 12 months ending on the relevant [accounting reference date / half year end]* |
| **5**  **[Acid Ratio]** | *[Acid Ratio = (Current Assets – Inventories) / Current Liabilities]* | *[> [X]] times* | *Tested and reported [yearly / half yearly] in arrears within [120 /90] days of each [accounting reference date / half year end] based upon figures at the relevant [accounting reference date / half year end]* |
| **6**  **[Net Asset value]** | *[Net Asset Value = Net Assets]* | *[> £0]* | *Tested and reported [yearly / half yearly] in arrears within [120 /90] days of each [accounting reference date / half year end] based upon figures at the relevant [accounting reference date / half year end]* |
| **7**  **[Group Exposure Ratio]** | *[Group Exposure / Gross Assets]* | *[< [X]]%* | *Tested and reported yearly in arrears within 120 days of each accounting reference date based upon figures at the relevant accounting reference date* |
| **Financial Target 8**  **[etc.]** | *[etc.]* | *[etc.]* | *[etc.]* |

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

**ANNEX** **3 – ADDITIONAL FDE GROUP MEMBERS AND MONITORED SUPPLIERS**

**Part** **A: Additional FDE Group Members**

[***Guidance: List the entities that the Buyer wants to include in the FDE Group]***

1. [[Guarantor]
2. [Key-Subcontractors]; and
3. [Monitored Suppliers]];

**Part** **B: Monitored Suppliers**

***[Guidance: Insert details of any other entities which the Supplier is required to monitor against the Financial Indicators. These are in addition to the Supplier’s monitoring of itself, the Guarantor and the Key Subcontractors. Not all the Financial Indicators may be applicable to a Monitored Supplier, so indicate which of those are to apply in the table below]***

|  |  |  |
| --- | --- | --- |
| **Entity Name** | **Company Number** | **Applicable Financial Indicators**  **(these are the Financial Indicators from the table in Part C of Annex 2 which are to apply to the Monitored Suppliers)** |
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