



Future eGates Services

SCHEDULE 1

DEFINITIONS

Schedule 1 (*Definitions*)

1 DEFINITIONS

- 1.1 In the Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in this Schedule or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In the Contract, unless the context otherwise requires:
- 1.3.1 the singular includes the plural and vice versa;
 - 1.3.2 reference to a gender includes the other gender and the neuter;
 - 1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
 - 1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - 1.3.5 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
 - 1.3.6 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - 1.3.7 references to "**representations**" shall be construed as references to present facts, to "**warranties**" as references to present and future facts and to "**undertakings**" as references to obligations under the Contract;
 - 1.3.8 references to "**Clauses**" and "**Schedules**" are, unless otherwise provided, references to the clauses and schedules of the Core Terms and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear;
 - 1.3.9 references to "**Paragraphs**" are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided; and

- 1.3.10 references to a series of Clauses or Paragraphs shall be inclusive of the clause numbers specified.
- 1.3.11 the headings in the Contract are for ease of reference only and shall not affect the interpretation or construction of the Contract; and
- 1.3.12 where the Buyer is a Crown Body it shall be treated as contracting with the Crown as a whole.
- 1.3.13 Any reference in this Contract which immediately before IP Completion Day (or such later date when relevant EU law ceases to have effect pursuant to Section 1A of the European Union (Withdrawal) Act 2018) is a reference to (as it has effect from time to time):
- (a) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of Section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of Section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
 - (b) any EU institution or EU authority or other such EU body shall be read on and after IP Completion Day as a reference to the UK institution, authority or body to which its functions were transferred.
- 1.4 Where a standard, policy or document is referred to in this Contract by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall update this Contract with a reference to the replacement hyperlink.

“Accounting Reference Date”	means in each year the date to which the Supplier prepares its annual audited financial statements;
“Achieve”	<p>(a) in respect of a Test, to successfully pass a Test without any Test Issues; and</p> <p>(b) in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions of Schedule 14 (<i>Testing Procedures</i>),</p> <p>and “Achieved” and “Achievement” shall be construed accordingly;</p>
“Achieved Profit Margin”	has the meaning given in Schedule 15 (<i>Charges and Invoicing</i>);
“Action Plan”	has the meaning given in Clause 15.18 (<i>Supply Chain Rights and Protections</i>);
“Affected Party”	the Party seeking to claim relief in respect of a Force Majeure Event;
“Affiliate”	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
“Allowable Assumptions”	the assumptions set out in Annex 5 of Schedule 15 (<i>Charges and Invoicing</i>);
“Allowable Price”	<p>in relation to the Retained Deliverables relating to a CPP Milestone, if any, an amount determined in accordance with the formula:</p> $A - B$ <p>where:</p> <p>(c) A is an amount equal to the Costs incurred by the Supplier in providing or developing the relevant Retained Deliverables as reflected in the Financial Model together with an amount equal to the Anticipated Contract Life Profit Margin thereon; and</p>

- (d) B is an amount equal to the Allowable Price Adjustment relating to the relevant Retained Deliverables, if any, or if there is no such Allowable Price Adjustment, zero,

provided that the Allowable Price for any Retained Deliverables shall in no circumstances exceed the aggregate amount of the Milestone Payments paid to the Supplier in respect of the Milestones (or in the case of Partial Termination, the Milestones for the parts of the Services terminated) relating to that CPP Milestone;

“Allowable Price Adjustment”

has the meaning given in Clause 32.8(c) (*Payments by the Supplier*);

“Annual Contract Report”

has the meaning given in Schedule 19 (*Financial Reports and Audit Rights*);

“Annual Revenue”

means, for the purposes of determining whether an entity is a Public Sector Dependent Supplier, the audited consolidated aggregate revenue (including share of revenue of joint ventures and Associates) reported by the Supplier or, as appropriate, the Supplier Group in its most recent published accounts, subject to the following methodology:

- (a) figures for accounting periods of other than 12 months should be scaled pro rata to produce a proforma figure for a 12-month period; and
- (b) where the Supplier, the Supplier Group and/or their joint ventures and Associates report in a foreign currency, revenue should be converted to British Pound Sterling at the closing exchange rate on the Accounting Reference Date;

“Anticipated Contract Life Profit Margin”

has the meaning given in Schedule 15 (*Charges and Invoicing*);

“Approved Sub-Licensee”

any of the following:

- (a) a Central Government Body;

- (b) any third-party providing services to a Central Government Body; and/or
- (c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority;

“Assets”

all assets and rights used by the Supplier to provide the Services in accordance with this Contract but excluding the Authority Assets;

“Associated Person”

has the meaning given to it in Section 44(4) of the Criminal Finances Act 2017;

“Associates”

means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles;

“Assurance”

means written confirmation from a Relevant Authority to the Supplier that the CRP Information is approved by the Relevant Authority;

“ATP Milestone”

the Milestone linked to Authority to Proceed for the relevant Operational Services set out in the Implementation Plan;

“Audit”

any exercise by the Authority of its Audit Rights pursuant to Clause 12 (*Records, Reports, Audit and Open Book Data*) and Schedule 19 (*Financial Reports and Audit Rights*);

“Audit Agents”

- (a) the Authority’s internal and external auditors;
- (b) the Authority’s statutory or regulatory auditors;
- (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;

- (d) HM Treasury or the Cabinet Office;
- (e) any party formally appointed by the Authority to carry out audit or similar review functions; and
- (f) successors or assigns of any of the above;

“Audit Rights”

the audit and access rights referred to in Schedule 19 (*Financial Reports and Audit Rights*);

“Authority”

has the meaning respectively given on page 1 of this Contract;

“Authority Assets”

the Authority Materials, the Authority infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision or receipt of the Services;

“Authority Background IPRs”

- (a) IPRs owned by the Authority before the Effective Date, including IPRs contained in any of the Authority's Know-How, documentation, processes and procedures;
- (b) IPRs created by the Authority independently of this Contract; and/or
- (c) Crown Copyright which is not available to the Supplier otherwise than under this Contract;

but excluding IPRs owned by the Authority subsisting in the Authority Software;

“Authority Cause”

any material breach by the Authority of any of the Authority Responsibilities, except to the extent that such breach is:

- (a) the result of any act or omission by the Authority to which the Supplier has given its prior consent; or
- (b) caused by the Supplier, any Sub-contractor or any Supplier Personnel;

“Authority Data”

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
 - (i) supplied to the Supplier by or on behalf of the Authority; and/or
 - (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Contract; or
- (b) any Personal Data for which the Authority is the Controller;

“Authority Materials”

the Authority Data together with any materials, documentation, information, programs and codes supplied by the Authority to the Supplier, the IPRs in which:

- (a) are owned or used by or on behalf of the Authority; and
- (b) are or may be used in connection with the provision or receipt of the Services,

but excluding any Project Specific IPRs, Specially Written Software, Supplier Software, Third Party Software and Documentation relating to Supplier Software or Third-Party Software;

“Authority Premises”

premises owned, controlled or occupied by the Authority and/or any Central Government Body which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them);

“Authority’s Programme Lead”

the Authority's programme manager who has overall responsibility for delivery against the Implementation Plan;

“Authority’s Project Lead”	the Authority's project manager who has overall responsibility for delivery against the Site Specific Implementation Plan;
“Authority Representative”	the representative appointed by the Authority pursuant to Clause 11.4 (<i>Representatives</i>);
“Authority Requirements”	the requirements of the Authority set out in Schedule 2 (<i>Services Description</i>), Schedule 3 (<i>Performance Levels</i>), Schedule 4 (<i>Standards</i>), Schedule 5 (<i>Security Management</i>), Schedule 6 (<i>Insurance Requirements</i>), Schedule 13 (<i>Implementation</i>), Schedule 24 (<i>Reports and Records Provisions</i>), Schedule 25 (<i>Exit Management</i>) and Schedule 26 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Authority Responsibilities”	the responsibilities of the Authority specified in Schedule 7 (<i>Authority Responsibilities</i>);
“Authority Software”	software which is owned by or licensed to the Authority (other than under or pursuant to this Contract) and which is or will be used by the Supplier for the purposes of providing the Services;
“Authority System”	the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Supplier in connection with this Contract which is owned by the Authority or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for the Authority to receive the Services;
“Authority to Proceed” or “ATP”	the authorisation to the Supplier to commence the provision of the relevant Operational Services to the Authority, provided by the Authority in the form of a Milestone Achievement Certificate in respect of the ATP Milestone;
“Balanced Scorecard Report”	has the meaning given in Paragraph 1.1(b) of Part B of Schedule 3 (<i>Performance Levels</i>);

“Baseline Security Requirements”	the Authority's baseline security requirements, the current copy of which is contained in Schedule 5 (<i>Security Management</i>) Annex 1 (Security Requirements), as updated from time to time by the Authority and notified to the Supplier;
“Board”	means the Supplier's board of directors;
“Board Confirmation”	means the written confirmation from the Board in accordance with Paragraph 8 of Schedule 18 (<i>Financial Distress</i>);
“Breakage Costs Payment”	has the meaning given in Schedule 16 (<i>Payments on Termination</i>);
“Cabinet Office Markets and Suppliers Team”	means the UK Government's team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function;
“Capacity Plan”	defines how the IT infrastructure is able to meet agreed capacity and performance related requirements in a cost-effective and timely manner; considers all resources required to deliver the IT service and ability to meet both current and future capacity and performance needs of the Authority;
“Central Government Body”	<p>a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none">(a) Government Department;(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);(c) Non-Ministerial Department; or(d) Executive Agency;

“Certificate of Costs”	has the meaning given in Schedule 15 (<i>Charges and Invoicing</i>);
“Change”	any change to this Contract;
“Change Authorisation Note”	a form setting out an agreed Contract Change which shall be substantially in the form of Schedule 22 (<i>Change Control Procedure</i>) Annex 2: Change Authorisation Note;
“Change Control Procedure”	the procedure for changing this Contract set out in Schedule 22 (<i>Change Control Procedure</i>);
“Change in Law”	any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;
“Change Request”	has the meaning given in Schedule 22 (<i>Change Control Procedure</i>);
“Charges”	the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 15 (<i>Charges and Invoicing</i>), including any Milestone Payment or Service Charge;
“Checkpoint Call”	an Authority led Implementation planning and management meeting, held to discuss and manage lower-level detail in relation to Implementation activities for a specific Phase at a given Port which the Supplier shall attend as further described in Schedule 2 (<i>Services Description</i>). The Checkpoint Call shall commence fortnightly, 16 weeks prior to the start of each Phase of the Supplier's onsite Implementation activity, switching to weekly 12 weeks prior to the start of the Supplier's onsite Implementation activity;
“Class 1 Transaction”	has the meaning set out in the listing rules issued by the UK Listing Authority;
“CNI”	means Critical National Infrastructure;
“Commercially Sensitive Information”	the information listed in Schedule 9 (<i>Commercially Sensitive Information</i>)

comprising the information of a commercially sensitive nature relating to:

- (a) the pricing of the Services;
- (b) details of the Supplier's IPRs; and
- (c) the Supplier's business and investment plans;

which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;

"Comparable Supply"	the supply of services to another customer of the Supplier that are the same or similar to any of the Services;
"Compensation for Unacceptable KPI Failure"	has the meaning given in Clause 7.4(a) (<i>Unacceptable KPI Failure</i>);
"Compensation Payment"	has the meaning given in Schedule 16 (<i>Payments on Termination</i>);
"Condition Precedent"	has the meaning given in Clause 4.2 (<i>Condition Precedent</i>);
"Confidential Information"	<ul style="list-style-type: none"> (a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Contract that relates to: <ul style="list-style-type: none"> (i) the Disclosing Party Group; or (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group; (b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Contract that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's

attention or into the Recipient's possession in connection with this Contract;

- (c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Contract and all matters arising therefrom; and
- (d) Information derived from any of the above,

but not including any Information which:

- (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
- (ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
- (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Contract or breach of a duty of confidentiality;
- (iv) was independently developed without access to the Confidential Information; or
- (v) relates to the Supplier's:
 - (1) performance under this Contract; or
 - (2) failure to pay any Sub-contractor as required pursuant to Clause

15.15(d) (*Supply Chain Protection*);

“Conflict of Interest”	a conflict between the financial or personal duties of the Supplier or the Supplier Personnel and the duties owed to the Authority under the Contract, in the reasonable opinion of the Authority;
“Contract Change”	any change to this Contract other than an Operational Change;
“Contracts Finder”	the online government portal which allows suppliers to search for information about contracts as prescribed by Part 4 of the Public Contracts Regulations 2015;
“Contract Year”	<p>(a) a period of 12 months commencing on the Effective Date; or</p> <p>(b) thereafter a period of 12 months commencing on each anniversary of the Effective Date;</p> <p>provided that the final Contract Year shall end on the expiry or termination of the Term;</p>
“Control”	the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly;
“Controller”	has the meaning given in the UK GDPR or the EU GDPR as the context requires;
“Core Training Hours”	means 06:00 to 22:00 Monday to Sunday (7 days per week) but excluding Bank Holidays in England and Wales;
“Corporate Change Event”	<p>means:</p> <p>(a) any change of Control of the Supplier or a Parent Undertaking of the Supplier;</p>

- (b) any change of Control of any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;
- (c) any change to the business of the Supplier or any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;
- (d) a Class 1 Transaction taking place in relation to the shares of the Supplier or any Parent Undertaking of the Supplier whose shares are listed on the main market of the London Stock Exchange plc;
- (e) an event that could reasonably be regarded as being equivalent to a Class 1 Transaction taking place in respect of the Supplier or any Parent Undertaking of the Supplier;
- (f) payment of dividends by the Supplier or the ultimate Parent Undertaking of the Supplier Group exceeding 25% of the Net Asset Value of the Supplier or the ultimate Parent Undertaking of the Supplier Group respectively in any 12 month period;
- (g) an order is made or an effective resolution is passed for the winding up of any member of the Supplier Group;
- (h) any member of the Supplier Group stopping payment of its debts generally or becoming unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Supplier Group ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made with creditors of any member of the Supplier Group;
- (i) the appointment of a receiver, administrative receiver or administrator

	in respect of or over all or a material part of the undertaking or assets of any member of the Supplier Group; and/or
	(j) any process or events with an effect analogous to those in Paragraphs (e) to (g) inclusive above occurring to a member of the Supplier Group in a jurisdiction outside England and Wales;
“Corporate Change Event Grace Period”	means a grace period agreed to by the Relevant Authority for providing CRP Information and/or updates to the Service Continuity Plan after a Corporate Change Event;
“Corporate Resolvability Assessment (Structural Review)”	means part of the CRP Information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 2 and Annex 2: Corporate Resolvability Assessment (Structural Review) of Part B to Schedule 26 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Costs”	has the meaning given in Schedule 15 (<i>Charges and Invoicing</i>);
“CPP Milestone”	means a contract performance point as set out in the Implementation Plan, being the Milestone at which the Supplier has demonstrated that the Supplier Solution or relevant Service is working satisfactorily in its operating environment in accordance with Schedule 14 (<i>Testing Procedures</i>);
“Critical National Infrastructure”	means those critical elements of UK national infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in: <ul style="list-style-type: none"> (a) major detrimental impact on the availability, integrity or delivery of essential services – including those services whose integrity, if compromised, could result in significant loss of life or casualties – taking into

	account significant economic or social impacts; and/or
	(b) significant impact on the national security, national defence, or the functioning of the UK;
“Critical Performance Failure”	<p>(a) the Supplier accruing in aggregate 300 or more Service Points (in terms of the number of points allocated) in any period of 6 months; or</p> <p>(b) the Supplier accruing Service Credits or Compensation for Unacceptable KPI Failure which meet or exceed the Service Credit Cap;</p>
“Critical Service Contract”	means the overall status of the Services provided under this Contract as determined by the Authority and specified in Paragraph 1.1 of Part B to Schedule 26 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Crown Body”	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
“Crown Copyright”	has the meaning given in the Copyright, Designs and Patents Act 1988;
“CRP Information”	<p>means the Corporate Resolution Planning Information, together, the:</p> <p>(a) Exposure Information (Contracts List);</p> <p>(b) Corporate Resolvability Assessment (Structural Review); and</p> <p>(c) Financial Information and Commentary;</p>
“CRTPA”	the Contracts (Rights of Third Parties) Act 1999;

“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
“Data Protection Impact Assessment”	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
“Data Protection Legislation”	<ul style="list-style-type: none">(a) the UK GDPR;(b) the DPA 2018 to the extent that it relates to processing of personal data and privacy;(c) all applicable Law about the processing of personal data and privacy; and(d) (to the extent that it applies) the EU GDPR;
“Data Subject”	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
“Data Subject Request”	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to their Personal Data;
“Day Rate”	has the meaning given in Schedule 15 (<i>Charges and Invoicing</i>);
“Deductions”	all Service Credits, Compensation for Unacceptable KPI Failure, Delay Payments or any other deduction which is paid or payable to the Authority under this Contract;
“Default”	<p>any breach of the obligations of the relevant Party (including abandonment of this Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:</p> <ul style="list-style-type: none">(a) in the case of the Authority, of its employees, servants, agents; or

	<p>(b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel,</p> <p>in connection with or in relation to the subject-matter of this Contract and in respect of which such Party is liable to the other;</p>
“Defect”	<p>(a) any error, damage or defect in the manufacturing of a Deliverable; or</p> <p>(b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or</p> <p>(c) any failure of any Deliverable to provide the performance, features and functionality specified in the Authority Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria; or</p> <p>(d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the Authority Requirements or the Documentation (including any adverse effect on response times); regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria;</p>
“Delay”	<p>(a) a delay in the Achievement of a Milestone by its Milestone Date; or</p> <p>(b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;</p>
“Delay Deduction Period”	the period of eighty (80) days commencing on the relevant Milestone Date;
“Delay Payments”	the amounts payable by the Supplier to the Authority in respect of a Delay in Achieving a

Key Milestone as specified in Schedule 15
(*Charges and Invoicing*);

“Deliverable”

an item or feature delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Contract;

“Dependent Parent Undertaking”

means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Contract, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Contract;

“Disclosing Party”

has the meaning given in Clause 19.1
(*Confidentiality*);

“Disclosing Party Group”

- (a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and
- (b) where the Disclosing Party is the Authority, the Authority and any Central Government Body with which the Authority or the Supplier interacts in connection with this Contract;

“Dispute”

any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;

“Dispute Notice”

a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;

“Dispute Resolution Procedure”

the dispute resolution procedure set out in Schedule 23 (*Dispute Resolution Procedure*);

“Documentation”

descriptions of the Services and Performance Indicators, details of the Supplier System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:

- (a) is required to be supplied by the Supplier to the Authority under this Contract;
- (b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services;
- (c) is required by the Supplier in order to provide the Services; and/or
- (d) has been or shall be generated for the purpose of providing the Services;

“DOTAS”

the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance

Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;

“DPA 2018”

the Data Protection Act 2018;

“Due Diligence Information”

any information supplied to the Supplier by or on behalf of the Authority prior to the Effective Date;

“Early Adopter Sites”

the Early Adopter Sites shall be those named by the Authority in the Initial Implementation Plan or as updated subsequently in the Implementation Plan;

“Early Life Support”

means the enhanced support Services (those described in the Authority's Early Life Support requirements set out in Schedule 2 (*Services Description*) over and above the Operational Services provided by the Supplier during the period between the Supplier's Achievement of the ATP Milestone and the Supplier's Achievement of the CPP Milestone for a given Phase and Port. This includes but is not limited to the provision of dedicated onsite resource to support end users (Border Force Officers and eGate Hosts) and to resolve issues rapidly as well as additional reporting and review meetings;

“Early Life Support Exit Criteria”

the criteria that the Supplier must meet to Achieve the CPP Milestone for a given Phase at a Port and as set out at Annex 5 of Schedule 13 (*Implementation*);

“Early Life Support Period”

a period of 5 days where the Supplier provides Early Life Support in addition to the Operational Services which concludes if the Supplier Achieves the Early Life Support Exit Criteria;

“Effective Date”

the later of:

- (a) the date on which this Contract is signed by both Parties; and

- (b) the date on which the Condition Precedent has been satisfied or waived in accordance with Clause 4.2 (*Condition Precedent*);

“eGate”

an automated self-service passenger touchpoint that utilises electronic passport technology to enhance border security and expedite border control processes and provide:

- a physical barrier that prevents unauthorised access to the country;
- the ability to ingest travel document details, including the machine-readable zone (MRZ) and integrated circuit (IC) chip, for authenticity checks against the document's physical and electronic features;
- the capture of multi-modal biometric data from the passenger's face and fingerprints to ensure accurate identity verification;
- transmission of all passenger data, including the biometric and travel document information, to Authority Systems in real-time to ensure efficient monitoring and control;
- real-time non-sensitive passenger transaction data and video stream, which can be captured and stored for retrospective viewing in case of any irregularities;
- the ability to reduce identity fraud and enhance the security of the border, while at the same time speeding up border control processes.

The Port Operator personnel acting in a floor walker like capacity to support passengers interaction with and movement through the eGate;

“eGate Hosts”

“eGate Secure Zone”

the area between the eGate entry and exit barriers which securely hold the passenger

	until the required Authority checks are completed;
“Electronic Machine Readable Travel Document” or “eMRTD”	a machine readable travel document (Passport) that has a contactless integrated circuit (IC) embedded in it and the capability of being used for biometric identification of the eMRTD holder in accordance with the standards specified in the relevant Part of ICAO Doc 9303;
“ELS Resolution Plan”	following the invocation of the escalation process relating to the Supplier’s failure to meet the Early Life Support Exit Criteria for a given Phase at a Port, the plan prepared by the Supplier and approved by the Authority which sets out the activity (and timescales) to be achieved by the Supplier in order to meet the Early Life Support Exit Criteria;
“EIRs”	the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations;
“Emergency Maintenance”	ad hoc and unplanned maintenance provided by the Supplier where: (a) the Authority reasonably suspects that the IT Environment or the Services, or any part of the IT Environment or the Services, has or may have developed a fault, and notifies the Supplier of the same; or (b) the Supplier reasonably suspects that the IT Environment or the Services, or any part the IT Environment or the Services, has or may have developed a fault;
“Employee Liabilities”	all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs,

expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

“Employment Regulations”

the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;

“Enhanced Service Support Provision”

the meaning as defined in Annex 1, Part A: Section 4 – Enhanced Service Support Provision of Schedule 3 (*Performance Levels*);

“Estimated Year 1 Charges”	the estimated Charges payable by the Authority during the first Contract Year, as set out in the Financial Model;
“Estimated Initial Service Charges”	the estimated Service Charges payable by the Authority during the period of 12 months from the first Operational Service Commencement Date, as set out in the Financial Model;
“EEA”	European Economic Area;
“EU GDPR”	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law;
“EU”	European Union;
“Extended Early Life Support Period”	the additional period of time up to 5 days over and above the Early Life Support Period whereby the Supplier is required to continue providing Early Life Support as a result of one or more failed Early Life Support Criteria;
“Exit Management”	services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Authority and/or a Replacement Supplier, as set out or referred to in Schedule 25 (<i>Exit Management</i>);
“Exit Plan”	the plan produced and updated by the Supplier during the Term in accordance with Paragraph 5 of Schedule 25 (<i>Exit Management</i>);
“Expedited Dispute Timetable”	the reduced timetable for the resolution of Disputes set out in Paragraph 3 of Schedule 23 (<i>Dispute Resolution Procedure</i>);
“Expert”	has the meaning given in Schedule 23 (<i>Dispute Resolution Procedure</i>);
“Expert Determination”	the process described in Paragraph 6 of Schedule 23 (<i>Dispute Resolution Procedure</i>);

“Exposure Information (Contracts List)”	means part of the CRP Information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 2 and Annex 1 of Part B of Schedule 26 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Extension Period”	means a period of one (1) year extension from the end of the Initial Term, capable of further consecutive one-year extensions up to a total Maximum Extension Period of five (5) years from the end of the Initial Term;
“Financial Distress Event”	the occurrence of one or more of the events listed in Paragraph 3.1 of Schedule 18 (<i>Financial Distress</i>);
“Financial Information and Commentary”	means part of the CRP Information requirements set out in accordance with Paragraphs 2 and Annex 3 of Part B of Schedule 26 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Financial Distress Remediation Plan”	a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Contract in the event that a Financial Distress Event occurs. This plan should include what the Authority would need to put in place to ensure performance and delivery of the Services in accordance with this Contract up to and including any Insolvency Event in respect of the relevant FDE Group entity and may refer to the Insolvency Continuity Plan in this regard;
“Financial Model”	has the meaning given in Schedule 19 (<i>Financial Reports and Audit Rights</i>);
“Financial Reports”	has the meaning given in Schedule 19 (<i>Financial Reports and Audit Rights</i>);
“Financial Transparency Objectives”	has the meaning given in Schedule 19 (<i>Financial Reports and Audit Rights</i>);
“FOIA”	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the

	Information Commissioner or any relevant Central Government Body in relation to such Act;
“Forecast Profit Margin”	the cumulative Supplier Profit Margin calculated from (and including) the Effective Date to (and including) the final day of the Term;
“Force Majeure Event”	any event outside the reasonable control of either Party affecting its performance of its obligations under this Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or other natural disaster, but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier’s or a Sub-contractor’s supply chain;
“Force Majeure Notice”	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
“Former Supplier”	(i) the Supplier supplying Legacy eGate services to the Authority which are substantially similar to the Services; or (ii) in the context of Schedule 28 (<i>Staff Transfer</i>) a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
“General Anti-Abuse Rule”	(a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into Parliament to counteract tax advantages

arising from abusive arrangements to avoid national insurance contributions;

“General Change in Law”	a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
“Go Live”	in relation to the Implementation of eGates in a given Phase at a Port, the point at which Operational Services commence in relation to those eGates;
“Good Industry Practice”	at any time, the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Authority, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;
“Goods”	has the meaning given in Clause 9.7 (<i>Supply of Goods</i>);
“Guarantee”	the deed of guarantee in favour of the Authority entered into by the Guarantor on or about the date of this Contract (which is in the form set out in Schedule 29 (<i>Key Personnel</i>)), or any guarantee acceptable to the Authority that replaces it from time to time;
“Guarantor”	Thales UK Ltd, a company registered in England and Wales with company number 00868273 and whose registered office is at 350 Longwater Avenue, Green Park, Reading, Berkshire, RG2 6GF;
“Halifax Abuse Principle”	the principle explained in the CJEU Case C-255/02 Halifax and others;
“Health and Safety Policy”	the health and safety policy of the Authority and/or other relevant Central Government Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time

	except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;
“Health and Safety Spot Clean”	cleaning carried out by a Port Operator or their subcontracted personnel to initially deal with an immediate incident to safely remove solid or liquid substances (including biofluids) spilt, deposited or dropped on an eGate or eGates by any passenger or person;
“HMRC”	HM Revenue & Customs;
“Impact Assessment”	has the meaning given in Schedule 22 (<i>Change Control Procedure</i>);
“Implementation Plan”	has the meaning given in Schedule 13 (<i>Implementation</i>);
“Implementation Services” (and “Implementation”, “Implementing” and “Implemented” shall be construed the same)	the implementation services described as such in Schedule 2 (<i>Services Description</i>) and covering Mobilisation activity, Early Adopter Site activity and National Estates Rollout activity as the context applies;
“Implementation Services Commencement Date”	the date on which the Supplier is to commence provision of the first of the Services, being the Effective Date;
“Indemnified Person”	the Authority and each and every person to whom the Authority (or any direct or indirect sub-licensee of the Authority) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Contract;
“Independent Controller”	a party which is Controller of the same Personal Data as the other Party and there is no element of joint control with regards to that Personal Data;
“Information”	all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable

medium (including CD-ROM, magnetic and digital form);

“Initial eGate Order”

The first order of eGates placed by the Authority post the Effective Date following the Supplier's Achievement of MOB 1a;

“Initial Site Survey”

the visit to the relevant Port (or Model Port as applicable) to observe the immigration hall, eGate configurations and Border Force Monitoring Officer desk configurations (where present), perform the server room survey (including HVAC requirements, confirm cabling requirements, power and rack space availability) and any other related activities (including but not limited to hoarding and lighting requirements) required ahead of the Supplier's onsite implementation activity. Attendees at the Site Survey shall include the Supplier, the Authority (Project team, DDaT, Border Force etc), Port Operator and as required other parties including the Port Operator contractor;

“Initial Term”

the period of five (5) years from and including the Effective Date;

“Initial Upload Date”

means the occurrence of an event detailed in Schedule 24 (*Reports and Records Provisions*) Annex 3: (*Records To Upload To Virtual Library*) which requires the Supplier to provide its initial upload of the relevant information to the Virtual Library;

“Insolvency Event”

with respect to any person, means:

- (a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:
 - (i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or
 - (ii) (being a partnership) is deemed unable to pay its debts within the

meaning of section 222 of the
Insolvency Act 1986;

- (b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;
- (c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;
- (d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within fourteen (14) days;
- (e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (f) where that person is a company, a LLP or a partnership:
 - (i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that

person with one or more other companies or the solvent reconstruction of that person;

(ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;

(iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or

(iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or

(g) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;

“Intellectual Property Rights” or “IPRs”

(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trademarks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;

(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and

	(c) all other rights having equivalent or similar effect in any country or jurisdiction;
“Intervention Cause”	has the meaning given in Clause 27.1 (<i>Remedial Adviser</i>);
“Intervention Notice”	has the meaning given in Clause 27.1 (<i>Remedial Adviser</i>);
“Intervention Period”	has the meaning given in Clause 27.2(c) (<i>Remedial Adviser</i>);
“Intervention Trigger Event”	<p>(a) any event falling within limb (a), (b), (c), (e), (f) or (g) of the definition of a Supplier Termination Event;</p> <p>(b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;</p> <p>(c) the Supplier accruing in aggregate 300 or more Service Points (in terms of the number of points allocated) in any period of 6 months;</p> <p>(d) the Supplier accruing Service Credits which meet or exceed 75% of the Service Credit Cap; and/or</p> <p>(e) the Supplier not Achieving a Key Milestone within seventy-five (75) days of its relevant Milestone Date;</p>
“IP Completion Day”	has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020;
“IPRs Claim”	any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Authority Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the

	Supplier pursuant to this Contract or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Contract;
“ISFT Tender Submission”	All or any part of the Supplier’s tender response (including the Financial Model), as the context applies, submitted in response to the Authority’s Invitation to Submit Final Tender as part of the procurement of the Services;
“IT”	information and communications technology;
“IT Change”	a change that includes the addition and/or modification (including removal) that could have a direct or indirect effect on services. This could also include non-service impacting changes. All IT Changes must be updated in the Authority’s ServiceNow instance;
“IT Environment”	the Authority System and the Supplier System;
“Joint Controllers”	where two or more Controllers jointly determine the purposes and means of processing;
“Key Information Pack (“KIP”)	the installation manual as created and maintained by the Supplier and approved by the Authority. The KIP shall be substantially in the form set out in Annex 3 of Schedule 13 (<i>Implementation</i>);
“Key Milestone”	the CPP Milestones identified in the Implementation Plan associated with each Phase at each Port (including the Model Port and Early Adopter Sites) and in respect of which Delay Payments may be payable in accordance with Paragraph 1 of Part C of Schedule 15 (<i>Charges and Invoicing</i>) if the Supplier fails to Achieve the Milestone Date in respect of such Milestone;
“Key Performance Indicator”	the key performance indicators set out in Part A of Annex 1 of Schedule 3 (<i>Performance Levels</i>);
“Key Personnel”	those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in

Schedule 29 (*Key Personnel*) against each Key Role as at the Effective Date or as amended from time to time in accordance with Clauses 14.5 and 14.6 (*Key Personnel*);

“Key Roles”

a role described as a Key Role in Schedule 29 (*Key Personnel*) and any additional roles added from time to time in accordance with Clause 14.4 (*Key Personnel*);

“Key Sub-contract”

each Sub-contract with a Key Sub-contractor;

“Key Sub-contractor”

any Sub-contractor:

- (a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or
- (b) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under this Contract (as set out in the Financial Model);

“Know-How”

all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party’s possession before this Contract;

“KPI Failure”

a failure to meet the Target Performance Level in respect of a Key Performance Indicator;

“KPI Service Threshold”

shall be as set out against the relevant Key Performance Indicator in Part A of Annex 1 of Schedule 3 (*Performance Levels*);

“Law”

any law, statute, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, byelaw, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any

	regulatory body with which the Supplier is bound to comply;
“LED”	Law Enforcement Directive (Directive (EU) 2016/680);
“Legacy eGates”	the eGates (sometimes referred to as e-Passport Gates) provided and maintained by the Former Supplier;
“Licensed Software”	all and any Software licensed by or through the Supplier, its Sub-contractors or any third party to the Authority for the purposes of or pursuant to this Contract, including any Supplier Software, Third Party Software and/or any Specially Written Software;
“Losses”	losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
“Maintenance Schedule”	shall have the meaning set out in Clause 9.4 (<i>Maintenance</i>);
“Malicious Software”	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
“Management Information”	the management information specified in Schedule 2 (<i>Services Description</i>), Schedule 3 (<i>Performance Levels</i>), Schedule 15 (<i>Charges and Invoicing</i>) and Schedule 21 (<i>Governance</i>) to be provided by the Supplier to the Authority;
“Material KPI Failure”	(a) a Serious KPI Failure; (b) a Severe KPI Failure; or

	(c) a failure by the Supplier to meet a KPI Service Threshold;
“Material PI Failure”	<p>(a) a failure by the Supplier to meet the PI Service Threshold in respect of 25% or more of the Subsidiary Performance Indicators that are measured in that Service Period; and/or</p> <p>(b) a failure by the Supplier to meet the Target Performance Level in respect of 50% or more of the Subsidiary Performance Indicators that are measured in that Service Period;</p>
“Measurement Period”	in relation to a Key Performance Indicator or Subsidiary Performance Indicator, the period over which the Supplier’s performance is measured (for example, a Service Period if measured monthly or a 12-month period if measured annually);
“Milestone”	an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date;
“Milestone Achievement Certificate”	the certificate to be granted by the Authority when the Supplier has Achieved a Milestone, which shall be in substantially the same form as that set out in Annex 3 of Schedule 14 (<i>Testing Procedures</i>);
“Milestone Adjustment Payment Amount”	in respect of each CPP Milestone the subject of a Milestone Adjustment Payment Notice, an amount determined in accordance with the formula:

$$A - B$$

where:

- (a) A is an amount equal to the aggregate sum of all Milestone Payments paid to the Supplier in respect of the Milestones (or in the case of Partial Termination, the Milestones for the parts of the Services terminated) relating to that CPP Milestone; and

- (b) B is an amount equal to the aggregate Allowable Price for the Retained Deliverables relating to that CPP Milestone or, if there are no such Retained Deliverables, zero;

“Milestone Adjustment Payment Notice”	has the meaning given in Clause 32.7 (<i>Payments by the Supplier</i>);
“Milestone Date”	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
“Milestone Payment”	a payment identified in Schedule 15 (<i>Charges and Invoicing</i>) to be made following the issue of a Milestone Achievement Certificate;
“Milestone Retention”	has the meaning given in Schedule 15 (<i>Charges and Invoicing</i>);
“Minor KPI Failure”	shall be as set out against the relevant Key Performance Indicator in Part A of Annex 1 of Schedule 3 (<i>Performance Levels</i>);
“Mobilisation” and Mobilisation Phase shall be construed accordingly	an Implementation phase, during which the efficacy of the Supplier Solution is confirmed through Model Port testing and the Early Adopter Sites. Mobilisation ends on the Supplier's Achievement of Early Life Support Exit Criteria at the final Early Adopter Site and is the predecessor of the National Estate Rollout Phase;
“Mobilisation Maintenance Schedule”	the first iteration of the Maintenance Schedule issued in accordance with Clause 9.4 (<i>Maintenance</i>), twenty (20) Working Days prior to the commencement of any activity at the Early Adopter Sites;
“Model Port” (and “Model eGate Test Port (METP) shall be construed the same)	the Authority's Pre-production testing environment at [REDACTED];
“Model Port Exit Criteria”	the criteria in relation to the Implementation of the Authority's Model Port that the Supplier

	must Achieve prior to commencing the Implementation of the Early Adopter Sites and as set out in Annex 1 of Schedule 13 (<i>Implementation</i>);
“Modern Slavery Assessment Tool”	means the modern slavery risk identification and management tool which can be found online at: https://supplierregistration.cabinetoffice.gov.uk/msat ;
“Month”	a calendar month and “ monthly ” shall be interpreted accordingly;
“Multi-Party Dispute Resolution Procedure”	has the meaning given in Paragraph 9.1 of Schedule 23 (<i>Dispute Resolution Procedure</i>);
“Multi-Party Procedure Initiation Notice”	has the meaning given in Paragraph 9.2 of Schedule 23 (<i>Dispute Resolution Procedure</i>);
“National Estate Rollout (“NER”)” and National Estate Rollout Phase shall be construed accordingly	a period of time (indicatively anticipated to be around 2 to 4 years), commencing on the completion of the Mobilisation Phase, whereby Legacy eGates are replaced by eGates and any additional eGates required by the Authority and notified to the Supplier are Implemented in a joint programme of work (as further described in Schedule 13 (<i>Implementation</i>)) between the Parties. The National Estate Rollout Phase shall conclude once the Authority has confirmed that any Programme closure activities are concluded following the replacement of the final Legacy eGate with the Supplier’s eGates;
“NCSC”	the National Cyber Security Centre or any replacement or successor body carrying out the same function;
“New Release”	an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;

“New Sites”	Authority Sites that do not have any Legacy eGates, or sites where additional eGates will be installed over and above the existing number of Legacy eGates;
“Non-trivial Customer Base”	a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor;
“Non-retained Deliverables”	in relation to a CPP Milestone Payment Notice and each CPP Milestone the subject of that CPP Milestone Payment Notice, Deliverables provided to the Authority which relate to the relevant CPP Milestone(s) and which are not Retained Deliverables;
“Notifiable Default”	shall have the meaning given in Clause 25.1 (<i>Rectification Plan Process</i>);
“Normal Business Hours”	Monday to Friday (excluding Bank Holidays in England & Wales) between the hours of 08:00 to 18:00. Conversely, outside of Normal Business hours shall be Weekends, Bank Holidays in England and Wales and any other time during weekdays which does not fall during Normal Business Hours;
“Object Code”	software and/or data in machine-readable, compiled object code form;
“Occasion of Tax Non-Compliance”	<p>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <p>(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</p> <p>(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or</p>

should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or

- (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;

“Open Book Data”

has the meaning given in Schedule 19 (*Financial Reports and Audit Rights*);

“Open Source”

computer Software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source;

“Operating Environment”

the Authority System and the Sites;

“Operational Change”

any change in the Supplier's operational procedures which in all respects, when implemented:

- (a) will not affect the Charges and will not result in any other costs to the Authority;
- (b) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services;
- (c) will not adversely affect the interfaces or interoperability of the Services with any of the Authority's IT infrastructure; and
- (d) will not require a change to this Contract;

“Operational Service Commencement Date”

in relation to an Operational Service, the later of:

- (a) the date identified in the Implementation Plan upon which the Operational Service is to commence; and

- (b) where the Implementation Plan states that the Supplier must have Achieved the relevant ATP Milestone before it can commence the provision of that Operational Service, the date upon which the Supplier Achieves the relevant ATP Milestone;

being also the date where Operational Services commence but not Service Charges which are triggered as set out in Schedule 15 (*Charges and Invoicing*);

“Operational Services”	the operational services as described in Schedule 2 (<i>Services Description</i>), such services to be triggered on a phased basis by the Implementation of eGates as further described in Schedule 13 (<i>Implementation</i>) and Schedule 14 (<i>Testing Procedures</i>);
“Optional Services”	the services described as such in Schedule 2 (<i>Services Description</i>) which are to be provided by the Supplier if required by the Authority in accordance with Clause 5.10 (<i>Optional Services</i>);
“Optional Services Implementation Plan”	the implementation plan to effect the Optional Services agreed between the Parties prior to the Effective Date and, if not agreed prior to the Effective Date, to be developed by the Supplier and approved by the Authority;
“Other Supplier”	any supplier to the Authority (other than the Supplier) which is notified to the Supplier from time to time;
“Parent Undertaking”	has the meaning set out in section 1162 of the Companies Act 2006;
“Partial Termination”	the partial termination of this Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 31.2(b) (<i>Termination by the Authority</i>) or 31.3(b) (<i>Termination by the Supplier</i>) or otherwise by mutual agreement by the Parties;

“Parties” and “Party”	have the meanings respectively given on page 1 of this Contract;
“Performance Failure”	a KPI Failure or a PI Failure;
“Performance Indicators”	has the meaning given in Schedule 3 (<i>Performance levels</i>);
“Permitted Maintenance”	has the meaning given in Clause 9.4 (<i>Maintenance</i>);
“Performance Monitoring Report”	has the meaning given in Schedule 3 (<i>Performance Levels</i>);
“Personal Data”	has the meaning given in the UK GDPR or the EU GDPR as the context requires;
“Personal Data Breach”	has the meaning given in the UK GDPR or the EU GDPR as the context requires;
Phase	the particular phase of eGates that the Supplier is implementing at a given Port. Where operational Legacy eGates remain to be replaced after the Supplier's initial implementation of 5 eGates (or number of eGates initially Implemented as otherwise agreed in the Site Specific Implementation Plan) the Supplier will be required to implement a further phase or phases of eGates before completing the full rollout of eGates for that Port. As such an Implementation of eGates at a Port may be a single Phase or multiple Phase implementation depending upon the number of Legacy eGates and their layout configuration;
“PI Failure”	a failure to meet the Target Performance Level in respect of a Subsidiary Performance Indicator;
“Port”	An air, rail or sea port within the UK or juxtaposed port within Europe where the Authority may require the Supplier to Implement eGates and which may be either specifically identified or unidentified at the Effective Date. The list of Ports is included and

is to be maintained as a Controlled Document in Schedule 34 (*Controlled Documents*);

“Port Operator”

A third-party organisation on whose premises a Border Force presence is located and where the eGates are, or will be deployed as part of Implementation;

“Port Operating Hours”

Has the meaning given in Schedule 3 (*Performance Levels*)

“Prescribed Person”

a legal adviser, an MP, or an appropriate body which a whistle-blower may make a disclosure to as detailed in ‘Whistleblowing: list of prescribed people and bodies’, available online at:

<https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies>, as updated from time to time;

“Processor”

has the meaning given to it under the UK GDPR or the EU GDPR as the context requires;

“Processor Personnel”

means all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Sub-processor engaged in the performance of its obligations under this Contract;

“Programme Delivery Meeting”

the Board as further described in Annex 1, section 1.1.1 of Schedule 21 (Governance);

“Prohibited Act”

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;

- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
- (c) an offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (ii) under legislation or common law concerning fraudulent acts; or
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Authority (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); or
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

“Protective Measures”

appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;

“Project Specific IPRs”

- (a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/or
- (b) Intellectual Property Rights arising as a result of the performance of the

	Supplier's obligations under this Contract;
	but shall not include the Supplier Background IPRs or the Specially Written Software;
“Public Sector Dependent Supplier”	means a supplier where that supplier, or that supplier's group has Annual Revenue of £50 million or more of which over 50% is generated from UK Public Sector Business;
“Publishable Performance Information”	means any of the information in the Performance Monitoring Report as it relates to a Performance Indicator where it is expressed as publishable in the table in Part A of Annex 1 of Schedule 3 (<i>Performance Levels</i>) which shall not constitute Commercially Sensitive Information;
“Quality Plans”	has the meaning given in Clause 6.1 (<i>Quality Plans</i>);
“Quarter”	the first three Service Periods and each subsequent three Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Contract);
“Rate Card”	has the meaning given in Schedule 15 (<i>Charges and Invoicing</i>);
“Recipient”	has the meaning given in Clause 19.1 (<i>Confidentiality</i>);
“Records”	has the meaning given in Schedule 24 (<i>Reports and Records Provisions</i>);
“Rectification Plan”	a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;
“Rectification Plan Failure”	<p>(a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clauses 25.4 (<i>Submission of the draft Rectification Plan</i>) or 25.8 (<i>Agreement of the Rectification Plan</i>);</p> <p>(b) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the</p>

Supplier pursuant to Clause 25.7
(*Agreement of the Rectification Plan*);

- (c) the Supplier failing to rectify a material Default within the later of:
 - (i) 30 Working Days of a notification made pursuant to Clause 25.2 (*Notification*); and
 - (ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default;
- (d) a Material KPI Failure re-occurring in respect of the same Key Performance Indicator for the same (or substantially the same) root cause in any of the 3 Measurement Periods subsequent to the Measurement Period in which the initial Material KPI Failure occurred;
- (e) the Supplier not Achieving a Key Milestone by the expiry of the Delay Deduction Period; and/or
- (f) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of 6 months for the same (or substantially the same) root cause as that of the original Notifiable Default;

“Rectification Plan Process”

the process set out in Clauses 25.4
(*Submission of the Draft Rectification Plan*) to 25.9 (*Agreement of the Rectification Plan*);

“Registers”

has the meaning given in Schedule 25 (*Exit Management*);

“Reimbursable Expenses”

has the meaning given in Schedule 15
(*Charges and Invoicing*);

“Relevant Authority” or “Relevant Authorities”	means the Authority and the Cabinet Office Markets and Suppliers Team or, where the Supplier is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team;
“Relevant IPRs”	IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority or a third party in the fulfilment of the Supplier’s obligations under this Contract including IPRs in the Specially Written Software, the Supplier Non-COTS Software, the Supplier Non-COTS Background IPRs, the Third Party Non-COTS Software and the Third Party Non-COTS IPRs but excluding any IPRs in the Authority Software, the Authority Background IPRs, the Supplier COTS Software, the Supplier COTS Background IPRs, the Third Party COTS Software and/or the Third Party COTS IPRs;
“Relevant Requirements”	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
“Relevant Tax Authority”	HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;
“Relief Notice”	has the meaning given in Clause 29.2 (<i>Authority Cause</i>);
“Remedial Adviser”	the person appointed pursuant to Clause 27.2 (<i>Remedial Adviser</i>);
“Remedial Adviser Failure”	has the meaning given in Clause 27.6 (<i>Remedial Adviser</i>);
“Replacement Services”	any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Contract, whether those services are provided

by the Authority internally and/or by any third party;

“Replacement Supplier”	any third-party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority);
“Request For Information”	a Request for Information under the FOIA or the EIRs;
“Required Action”	has the meaning given in Clause 28.1(a) (<i>Step-In Rights</i>);
“Retained Deliverables”	has the meaning given in Clause 32.8(b) (<i>Payments by the Supplier</i>);
“Risk Register”	the register of risks and contingencies that have been factored into any Costs due under this Contract, a copy of which is set out in Annex 4 of Schedule 15 (<i>Charges and Invoicing</i>);
“Security Management Plan”	has the meaning given in Schedule 5 (<i>Security Management</i>);
“Serious KPI Failure”	shall be as set out against the relevant Key Performance Indicator in Part A of Annex 1 of Schedule 3 (<i>Performance Levels</i>);
“ServiceNow”	is the Authority’s instance of ServiceNow to manage operational support and management processes;
“Service Charges”	the periodic payments made in accordance with Schedule 15 (<i>Charges and Invoicing</i>) in respect of the supply of the Operational Services;
“Service Continuity Plan”	has the meaning given in Schedule 26 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Service Continuity Services”	the business continuity, disaster recovery and insolvency continuity services set out in

Schedule 26 (Service Continuity Plan and Corporate Resolution Planning);

“Service Credit Cap”

- (a) in the period of 12 months from the first Operational Service Commencement Date to occur after the Effective Date, [REDACTED] of the Estimated Initial Service Charges; and
- (b) during the remainder of the Term, [REDACTED] of the Service Charges paid and/or due to be paid to the Supplier under this Contract in the period of 12 months immediately preceding the Service Period in respect of which Service Credits are accrued;

Service Credits

credits payable by the Supplier due to the occurrence of 1 or more KPI Failures, calculated in accordance with Paragraph 3 of Part C of Schedule 15 (*Charges and Invoicing*);

“Service Period”

Notwithstanding requirement IS-ELS-3.9.7 as set out in Schedule 2 (*Services Description*), a calendar month, save that:

- (a) the first service period shall begin on the Achievement of the final CPP Milestone associated with the Implementation of the Model Port and shall expire at the end of the calendar month in which the Achievement of the final CPP Milestone associated with the Implementation of the Model Port falls; and
- (b) the final service period shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term;

“Service Points”

in relation to a KPI Failure, the points that are set out against the relevant Key Performance Indicator in the table in Part A of Annex 1 of Schedule 3 (*Performance Levels*);

“Services”

any and all of the services to be provided by the Supplier under this Contract, including

	those set out in Schedule 2 (<i>Services Description</i>);
“Service Transfer Date”	has the meaning given in Schedule 28 (<i>Staff Transfer</i>);
“Service Transition” and “Transition” shall be construed accordingly	the process used by the Authority Transition Manager to ensure successful transition of service to the Authority in accordance with the transition services described in Schedule 2 (<i>Services Description</i>);
“Service Transition Checkpoint Calls”	Authority led Service Transition planning and management meetings with focus on Service Transition specific matters.
“Services Description”	the services description set out in Schedule 2 (<i>Services Description</i>);
“Severe KPI Failure”	shall be as set out against the relevant Key Performance Indicator in Part A of Annex 1 of Schedule 3 (<i>Performance Levels</i>);
“Sites”	<p>any premises (including the Authority Premises, the Supplier’s premises or third-party premises):</p> <p>(a) from, to or at which:</p> <p>(i) the Services are (or are to be) provided; or</p> <p>(ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or</p> <p>(b) where:</p> <p>(i) any part of the Supplier System is situated; or</p> <p>(ii) any physical interface with the Authority System takes place;</p>
“Site Specific Implementation Plan”	details, tasks and activities, Milestones, Deliverables and dependencies pertinent to each location where eGates are to be installed

and specifically in relation to the Phase of eGates being Implemented at the Port;

“SME”

an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;

“Social Value”

the additional social benefits that can be achieved in the delivery of the Contract, set out in Schedule 33 (*Social Value*);

“Software”

Specially Written Software, Supplier Software and Third-Party Software;

“Software Supporting Materials”

has the meaning given in Paragraph 2.1(b) of Schedule 32 (*Intellectual Property Rights*) (Specially Written Software and Project Specific IPRs);

“Source Code”

computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;

“Specially Written Software”

any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to Supplier Software or Third-Party Software created specifically for the purposes of this Contract;

“Specific Change in Law”

a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;

“Staffing Information”

has the meaning given in Schedule 28 (*Staff Transfer*);

“Standards”	the standards, policies and/or procedures identified in Schedule 4 (<i>Standards</i>);
“Step-In Notice”	has the meaning given in Clause 28.1 (<i>Step-In Rights</i>);
“Step-In Trigger Event”	<ul style="list-style-type: none">(a) any event falling within the definition of a Supplier Termination Event;(b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;(c) the Authority considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Contract;(d) the Authority being advised by a regulatory body that the exercise by the Authority of its rights under Clause 28 (<i>Step-In Rights</i>) is necessary;(e) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or(f) a need by the Authority to take action to discharge a statutory duty;
“Step-Out Date”	has the meaning given in Clause 28.5(b) (<i>Step-In Rights</i>);
“Step-Out Notice”	has the meaning given in Clause 28.5 (<i>Step-In Rights</i>);
“Step-Out Plan”	has the meaning given in Clause 28.6 (<i>Step-In Rights</i>);
“Strategic Supplier”	means those suppliers to government listed at https://www.gov.uk/government/publications/strategic-suppliers ;
“Sub-contract”	any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party

whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;

“Sub-contractor”

any third party with whom:

- (a) the Supplier enters into a Sub-contract;
or
- (b) a third party under (a) above enters into a Sub-contract,

or the servants or agents of that third party;

“Sub-processor”

any third party appointed to process Personal Data on behalf of the Supplier related to this Contract;

“Subsidiary Undertaking”

has the meaning set out in section 1162 of the Companies Act 2006;

“Successor Body”

has the meaning given in Clause 34.4 (*Assignment and Novation*);

“Superuser”

means a Border Force Officer at a Port who has additional responsibility and knowledge of eGates and their operation. They will support frontline officers with training, address questions about eGate features, and troubleshoot common issues. Where a ‘train the trainer’ approach is used, the Superuser will train other Border Force Officers on how to use eGates outside of the Supplier led training sessions;

“Supplier”

has the meaning respectively given on page 1 of this Contract;

“Supplier Background IPRs”

- (a) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing

the Supplier's Know-How or generic business methodologies; and/or

- (b) Intellectual Property Rights created by the Supplier independently of this Contract,

which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;

“Supplier COTS Background IPRs”

Any embodiments of Supplier Background IPRs that:

- (a) the Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and
- (b) has a Non-trivial Customer Base;

“Supplier COTS Software”

Supplier Software (including open-source software) that:

- (a) the Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and
- (b) has a Non-trivial Customer Base;

“Supplier Equipment”

the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub-contractors (but not hired, leased or loaned from the Authority) for the provision of the Services;

“Supplier Group”

means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;

“Supplier Non-COTS Background IPRs”	Any embodiments of Supplier Background IPRs that have been delivered by the Supplier to the Authority and that are not Supplier COTS Background IPRs;
“Supplier Non-COTS Software”	Supplier Software that is not Supplier COTS Software;
“Supplier Non-Performance”	has the meaning given in Clause 29.1 (<i>Authority Cause</i>);
“Supplier Personnel”	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier’s obligations under this Contract;
“Supplier Profit”	has the meaning given in Schedule 15 (<i>Charges and Invoicing</i>);
“Supplier Profit Margin”	has the meaning given in Schedule 15 (<i>Charges and Invoicing</i>);
“Supplier Representative”	the representative appointed by the Supplier pursuant to Clause 11.3 (<i>Representatives</i>);
“Supplier Software”	software which is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 12 (<i>Software</i>);
“Supplier Solution”	the Supplier's solution for the Services set out in Schedule 8 (<i>Supplier Solution</i>) including any Annexes of that Schedule;
“Supplier System”	the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System);

“Supplier Termination Event”

- (a) the Supplier's level of performance constituting a Critical Performance Failure;
- (b) the Supplier committing a material Default which is irremediable;
- (c) as a result of the Supplier's Default, the Authority incurring Losses in any Contract Year which exceed 80% of the value of the aggregate annual liability cap for that Contract Year as set out in Clause 23.6(a) (*Financial and other Limits*);
- (d) a Remedial Adviser Failure;
- (e) a Rectification Plan Failure;
- (f) where a right of termination is expressly reserved in this Contract, including pursuant to:
 - (i) Clause 17 (*IPRs Indemnity*);
 - (ii) Clause 33 (*Compliance*);
 - (iii) Clause 37.6(b) (*Prevention of Fraud and Bribery*); and/or
 - (iv) Paragraph 7 of Schedule 18 (*Financial Distress*);
 - (v) Paragraph 3 of Part B to Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*);
- (g) the representation and warranty given by the Supplier pursuant to Clause 3.2(i) (*Warranties*) being materially untrue or misleading;
- (h) the Supplier committing a material Default under Clause 10.10 (*Promoting Tax Compliance*) or failing to provide details of steps being taken and mitigating factors pursuant to Clause 10.10 (*Promoting Tax Compliance*) which in the reasonable opinion of the Authority are acceptable;

- (i) the Supplier committing a material Default under any of the following Clauses:
 - (i) Clause 5.5 (j) (*Services*);
 - (ii) Clause 21 (*Protection of Personal Data*);
 - (iii) Clause 20 (*Transparency and Freedom of Information*);
 - (iv) Clause 19 (*Confidentiality*); and
 - (v) Clause 33 (*Compliance*); and/orin respect of any security requirements set out in Schedule 2 (*Services Description*), Schedule 5 (*Security Management*) or the Baseline Security Requirements; and/or
- in respect of any requirements set out in Schedule 28 (*Staff Transfer*);
- (j) any failure by the Supplier to implement the changes set out in a Benchmark Report as referred to in Paragraph 5.9 of Schedule 17 (*Benchmarking*);
- (k) an Insolvency Event occurring in respect of the Supplier or the Guarantor;
- (l) the Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Authority with the Guarantor or with another guarantor which is acceptable to the Authority);
- (m) a change of Control of the Supplier or a Guarantor unless:
 - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within 6 months of the later of the date on

which the Change of Control took place or the date on which the Authority was given notice of the Change of Control;

- (n) a change of Control of a Key Sub-contractor unless, within 6 months of being notified by the Authority that it objects to such change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by the Authority pursuant to Clause 15.10 (*Appointment of Key Sub-contractors*);
- (o) any failure by the Supplier to enter into or to comply with an Admission Agreement under the Annex to either Part A or Part B of Schedule 28 (*Staff Transfer*);
- (p) the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;
- (q) a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law; or
- (r) in relation to Schedule 5 (*Security Management*):
 - (i) the Authority has issued two rejection notices in respect of the Security Management Plan under Paragraph 4.5(b) (Part A);
 - (ii) the Supplier fails to implement a change required by the Required Changes Register in accordance with the timescales set out in the Required Changes Register;
 - (iii) Supplier COTS Software and Third-Party COTS Software is not within mainstream support unless

the Authority has agreed in writing;

- (iv) the Supplier fails to patch vulnerabilities in accordance with the Security Requirements; and/or,
- (v) the Supplier fails to comply with the Incident Management Process.

“Supply Chain Map”

means details of (i) the Supplier, (ii) all Subcontractors and (iii) any other entity that the Supplier is aware is in its supply chain that is not a Subcontractor, setting out at least:

- (a) the name, registered office and company registration number of each entity in the supply chain;
- (b) the function of each entity in the supply chain; and

the location of any premises at which an entity in the supply chain carries out a function in the supply chain;

“Supply Chain Transparency Report”

means the report provided by the Supplier to the Authority in the form set out in Annex 4 of Schedule 24 (*Reports and Records Provisions*);

“Target Performance Level”

the minimum level of performance for a Performance Indicator which is required by the Authority, as set out against the relevant Performance Indicator in the tables in Part A of Annex 1 of Schedule 3 (*Performance Levels*);

“Technical Implementation Plan (TIP)”

the Supplier produced plan detailing the lower level technical aspects of the Implementation of the Supplier Solution and produced using the template provided to the Supplier by the Authority;

“Term”

the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Contract;

“Termination Assistance Notice”	has the meaning given in Paragraph 6.1 of Schedule 25 (<i>Exit Management</i>);
“Termination Assistance Period”	in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Services as such period may be extended pursuant to Paragraph 6.2 of Schedule 25 (<i>Exit Management</i>);
“Termination Date”	the date set out in a Termination Notice on which this Contract (or a part of it as the case may be) is to terminate;
“Termination Notice”	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract (or any part thereof) on a specified date and setting out the grounds for termination;
“Termination Payment”	the payment determined in accordance with Schedule 16 (<i>Payments on Termination</i>);
“Termination Services”	the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Annex 1 of Schedule 25 (<i>Exit Management</i>), and any other services required pursuant to the Termination Assistance Notice;
“Test Exit Review”	a review meeting chaired by the Authority to determine if a phase of testing can be closed in accordance with the Test Plan request for change;
“Tests” and “Testing”	any tests required to be carried out under this Contract, as further described in Schedule 14 (<i>Testing Procedures</i>) and “Tested” shall be construed accordingly;
“Test Success Criteria”	has the meaning given in Schedule 14 (<i>Testing Procedures</i>);

“Test Readiness Review”	a review meeting chaired by the Authority to determine if Testing can commence to the next phase of Testing in accordance with the Test Plan;
“The Request Recipient”	has the meaning given in Clause 21.24 (<i>Where the Parties are Independent Controllers of Personal Data</i>);
“Third Party Auditor”	an independent third-party auditor as appointed by the Authority from time to time to confirm the completeness and accuracy of information uploaded to the Virtual Library in accordance with the requirements outlined in Schedule 24 (<i>Reports and Records Provisions</i>);
“Third Party Beneficiary”	has the meaning given in Clause 41.1 (<i>Third Party Rights</i>);
“Third Party COTS IPRs”	<p>Third Party IPRs that:</p> <ul style="list-style-type: none"> (a) the supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and (b) has a Non-trivial Customer Base;
“Third Party COTS Software”	<p>Third Party Software (including open-source software) that:</p> <ul style="list-style-type: none"> (a) the supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and (b) has a Non-trivial Customer base;
“Third Party IPRs”	Intellectual Property Rights owned by a third party, but excluding Intellectual Property Rights owned by the third party subsisting in any Third-Party Software, which in any case is, will

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be or is proposed to be used by the Supplier for the purposes of providing the Services;

“Third Party Non-COTS IPRs”

Third Party IPRs that are not Third-Party COTS IPRs;

“Third Party Non-COTS Software”

Third Party Software that is not Third-Party COTS Software;

“Third Party Provisions”

has the meaning given in Clause 41.1 (*Third Party Rights*);

“Third Party Software”

software which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open-Source Software which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 12 (*Software*);

“Transferring Assets”

has the meaning given in Paragraph 7.2(a) of Schedule 25 (*Exit Management*);

“Transferring Authority Employees”

has the meaning given in Schedule 28 (*Staff Transfer*);

“Transferring Former Supplier Employees”

has the meaning given in Schedule 28 (*Staff Transfer*);

“Transferring Supplier Employees”

has the meaning given in Schedule 28 (*Staff Transfer*);

“Transition Planning Meeting”

Authority led Service Transition planning meetings with focus on Service Transition planning specific matters.

“Transition To Enterprise Services Handover Call”

A one-off call which takes place at the end of the Early Life Support period (or Extended Early Life Support period as the case may be) to confirm that the Early Life Support Exit Criteria have been met in relation to a Phase of eGates being Implemented and for the purposes of the Authority's project team to hand over to the Authority's DDaT Enterprise Services Service Management team. Attendees to include the Authority's project team, the Authority's Enterprise Services

	Service Management team, the Supplier and where required the Port Operator.
“Transparency Information”	has the meaning given in Clause 20.1 (<i>Transparency and Freedom of Information</i>);
“Transparency Reports”	has the meaning given in Schedule 24 (<i>Reports and Records Provisions</i>);
“UK”	the United Kingdom;
“UK Adequacy Decision”	Has the meaning given in Clause 21.29 (<i>Standard Contractual Clauses</i>);
“UK GDPR”	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (United Kingdom General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, together with the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019;
“UK Public Sector Business”	means any goods, service or works provision to UK public sector bodies, including Central Government Departments and their arm's length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police, fire and rescue, education bodies and devolved administrations;
“Unacceptable KPI Failure”	the Supplier failing to achieve the KPI Service Threshold in respect of more than 50% of the Key Performance Indicators that are measured in that Service Period;
“Unconnected Sub-contract”	any contract or agreement which is not a Sub-contract and is between the Supplier and a third party (which is not an Affiliate of the Supplier) and is a qualifying contract under regulation 6 of The Reporting on Payment Practices and Performance Regulations 2017;

“Unconnected Sub-contractor”	any third party with whom the Supplier enters into an Unconnected Sub-contract;
“Unrecovered Payment”	has the meaning given in Schedule 16 (<i>Payments on Termination</i>);
“Updates”	in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;
“Update Requirement”	means the occurrence of an event detailed in Schedule 24 (<i>Reports and Records Provisions</i>) (Annex 3: <i>Records To Upload To Virtual Library</i>) which requires the Supplier to update the relevant information hosted on the Virtual Library;
“Upgrades”	any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third-party software supplier (or any Affiliate of the Supplier or any third party) releases during the Term;
“Valid”	in respect of an Assurance, has the meaning given to it in Paragraph 2.7 of Part B to Schedule 26 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“VAT”	value added tax as provided for in the Value Added Tax Act 1994;
“VCSE”	means a non-governmental organisation that is value-driven, and which principally reinvests its surpluses to further social, environmental or cultural objectives;
“Virtual Library”	means the data repository hosted by the Supplier containing the information about this Contract and the Services provided under it in accordance with Schedule 24 (<i>Reports and Records Provisions</i>); and

SCHEDULE 1 (DEFINITIONS)

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“Working Day”

any day other than a Saturday, Sunday or public holiday in England and Wales;