HM Revenue & Customs

HMRC Tier 3 Model ICT Contract
Version 2.0 (April 2019)

SCHEDULE 8.4 | Dispute Resolution Procedure

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1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"CEDR"	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
"**Counter Notice**"	has the meaning given in Paragraph 6.2;
"Expert"	in relation to a Dispute, a person appointed in accordance with Paragraph 5.2 to act as an expert in relation to that Dispute;
"Expert Determination"	determination by an Expert in accordance with Paragraph 5;
"Related Third Party Dispute"	a Dispute which involves the Parties and one or more Related Third Parties;
"**Related Third Party Dispute Representatives**"	has the meaning given in Paragraph 8.6;
"**Related Third Party Dispute Resolution Board**"	has the meaning given in Paragraph 8.6;
"Related Third Party"	a party to: (a) another contract with the Authority or the Supplier which is relevant to this Agreement (provided that it is not an Ecosystem Agreement); or (b) a Sub-contract; and
"Supplier Request"	a notice served by the Supplier requesting that the Dispute be treated as a Related Third Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.

2 DISPUTE NOTICES

2.1 If a Dispute arises then:

(a) the Authority Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and

(b) if such attempts are not successful within a reasonable period, not being longer than twenty (20) Working Days, either Party may issue to the other a Dispute Notice.

2.2 A Dispute Notice:

(a) shall set out:

(i) the material particulars of the Dispute;

(ii) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and

(iii) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and

(b) may specify in accordance with the requirements of Paragraphs 8.2 and 8.3 that the Party issuing the Dispute Notice has determined (in the case of the Authority) or considers (in the case of the Supplier) that the Dispute is a Related Third Party Dispute, in which case Paragraph 2.3 shall apply.

2.3 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Related Third Party Dispute pursuant to Paragraph 2.2(b), then:

(a) if it is served by the Authority it shall be treated as a Related Third Party Dispute Initiation Notice; and

(b) if it is served by the Supplier it shall be treated as a Supplier Request,

and in each case the provisions of Paragraph 8 shall apply.

2.4 Subject to Paragraphs 2.5 and 3.2 and so long as the Authority has not served a Related Third Party Dispute Initiation Notice in respect of the relevant Dispute, following the issue of a Dispute Notice the Parties shall seek to resolve the Dispute:

(a) first by commercial negotiation (as prescribed in Paragraph 4); and

(b) lastly by recourse to arbitration (as prescribed in Paragraph 6) or litigation (in accordance with Clause 47 (*Governing Law and Jurisdiction*)).

2.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 5)

where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 5.1.

2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Agreement regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Related Third Party Dispute Initiation Notice or proceedings under Paragraph 7 (*Urgent Relief*).

3 EXPEDITED DISPUTE TIMETABLE

3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within five (5) Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.

3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 3.1 or is otherwise specified under the provisions of this Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:

(a) in Paragraph 4.2, ten (10) Working Days;

(b) in Paragraph **Error! Reference source not found.**, five (5) Working Days; and

(c) in Paragraph 6.2, ten (10) Working Days.

3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

4 COMMERCIAL NEGOTIATION

4.1 Following the service of a Dispute Notice, then, so long as the Authority has not served a Related Third Party Dispute Initiation Notice in respect of the relevant Dispute, the Parties shall refer the Dispute to the Operational Board for consideration and resolution. If the Parties are unable to resolve the Dispute within fifteen (15) Working Days of escalation to the Operational Board, then the Authority may, at its sole discretion, escalate any Dispute to the Executive Board for resolution. If the Parties are unable to resolve the Dispute within five (5) Working Days of escalation to the Executive Board then the provision of paragraph 4.2 shall apply.

4.2 If the Parties have not settled the Dispute in accordance with Paragraph 4.1 within twenty (20) Working Days of service of the Dispute Notice, and where the Dispute is of a kind referred to in Paragraph 5.1, either Party may serve a written notice to

proceed to Expert Determination in accordance with Paragraph **Error! Reference source not found.**. For Disputes which are not of a kind referred to in Paragraph 5.1, the Parties have a right to refer the Dispute to arbitration in accordance with Paragraph 6.

5 EXPERT DETERMINATION

5.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a matter of an IT technical, financial technical or other technical nature and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 4 then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an expert for determination.

5.2 The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days of the relevant request made pursuant to Paragraph 5.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed:

(a) if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);

(b) if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or

(c) if the Dispute relates to a matter of a technical nature not falling within Paragraphs 5.2(a)) or 5.2(b), on the instructions of the president (or equivalent) of:

(i) an appropriate body agreed between the Parties; or

(ii) if the Parties do not reach agreement on the relevant body within fifteen (15) Working Days of the relevant request made pursuant to Paragraph 5.1, such body as may be specified by the President of the Law Society on application by either Party.

5.3 The Expert shall act on the following basis:

(a) he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;

(b) the Expert's determination shall (in the absence of fraud or manifest error) be final and binding on the Parties, unless within twenty (20) Working Days of that decision a Party serves notice on the other Party referring the Dispute to either arbitration or court proceedings pursuant to Paragraph 7;

(c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;

(d) any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;

(e) the process shall be conducted in private and shall be confidential; and

(f) the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

6 ARBITRATION

6.1 Subject to compliance with its obligations under Paragraph 4.1 and to the provisions of Paragraph 5, the Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 6.55.

6.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 6.55 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.

6.3 If the Authority serves a Counter Notice, then:

(a) if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 6.5 shall apply; or

(b) if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.

6.4 If the Authority does not serve a Counter Notice within the fifteen (15) Working Day period referred to in Paragraph 6.2, the Supplier may either commence arbitration proceedings in accordance with Paragraph 6.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.

6.5 The Parties hereby confirm that if any arbitration proceedings are commenced

pursuant to Paragraphs 6.1 to 6.4:

(a) the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("**LCIA**") (subject to Paragraphs 6.5(e), (f) and (g));

(b) the arbitration shall be administered by the LCIA;

(c) the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

(d) if the Parties fail to agree the appointment of the arbitrator within ten (10) Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

(e) the Authority shall decide in its discretion whether the Dispute shall be determined by a single arbitrator or a panel of three arbitrators. The single arbitrator or chair of the arbitral tribunal shall be a senior English-qualified lawyer who shall be a QC of at least ten years standing or a retired judge;

(f) the arbitration proceedings shall take place in London and in the English language; and

(g) the seat of the arbitration shall be London.

7 URGENT RELIEF

Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

(a) for interim or interlocutory remedies in relation to this Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and/or

(b) where compliance with Paragraph 2.1 may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

8 MULTI-PARTY DISPUTES

8.1 All Related Third Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 8 (the "**Related Third Party Dispute Resolution Procedure**").

8.2 If at any time following the issue of a Dispute Notice, the Authority reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Authority shall be entitled to determine that the Dispute is a Related

Third Party Dispute and to serve a notice on the Supplier which sets out the Authority's determination that the Dispute is a Related Third Party Dispute and specifies the Related Third Parties which are to be involved in the Related Third Party Dispute Resolution Procedure, such notice a "**Related Third Party Dispute Initiation Notice**".

8.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination in accordance with Paragraph 5 or to arbitration in accordance with Paragraph 6, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on the Authority.

8.4 The Authority shall (acting reasonably) consider each Supplier Request and shall determine within five (5) Working Days whether the Dispute is:

(a) a Related Third Party Dispute, in which case the Authority shall serve a Related Third Party Dispute Initiation Notice on the Supplier; or

(b) not a Related Third Party Dispute, in which case the Authority shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with Paragraphs 3 to 7.

8.5 If the Authority has determined, following a Supplier Request, that a Dispute is not a Related Third Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.

8.6 Following service of a Related Third Party Dispute Initiation Notice a Related Third Party Dispute shall be dealt with by a board (in relation to such Related Third Party Dispute, the "**Related Third Party Dispute Resolution Board**") comprising representatives from the following parties to the Related Third Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Related Third Party Dispute:

(a) the Authority;

(b) the Supplier;

(c) each Related Third Party involved in the Related Third Party Dispute; and

(d) any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary,

(together "**Related Third Party Dispute Representatives**").

8.7 The Parties agree that the Related Third Party Dispute Resolution Board shall seek to resolve the relevant Related Third Party Dispute in accordance with the following principles and procedures:

(a) the Parties shall procure that their Related Third Party Dispute Representatives

attend, and shall use their best endeavours to procure that the Related Third Party Dispute Representatives of each Related Third Party attend, all meetings of the Related Third Party Dispute Resolution Board in respect of the Related Third Party Dispute;

(b) the Related Third Party Dispute Resolution Board shall first meet within ten (10) Working Days of service of the relevant Related Third Party Dispute Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within five (5) Working Days of service of the relevant Related Third Party Dispute Initiation Notice, at the time and place specified by the Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00 am and 5.00 pm on a Working Day; and

(c) in seeking to resolve or settle any Related Third Party Dispute, the members of the Related Third Party Dispute Resolution Board shall have regard to the principle that a Related Third Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Related Third Party Dispute.

8.8 If a Related Third Party Dispute is not resolved between the Parties and all Related Third Parties within twenty five (25) Working Days of the issue of the Related Third Party Dispute Initiation Notice (or such longer period as the Parties may agree in writing), then:

(a) either Party may request that the Related Third Party Dispute is referred to an expert in which case Paragraph 5 shall apply; and/or

(b) subject to Paragraph 8.9, Paragraph 6 shall apply to the Related Third Party Dispute,

and in each case references to the “Supplier” or the “Parties” in such provisions shall include a reference to all Related Third Parties.

8.9 If a Related Third Party Dispute is referred to arbitration in accordance with Paragraph 6 or a Dispute becomes a Related Third Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Authority or the Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub-Contractor, by the Supplier.