HM Revenue & Customs

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

# SCHEDULE 1 | Definitions

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Unless otherwise provided or the context otherwise requires the following expressions shall have the meanings set out below.

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| **"Achieve"** | (a) in respect of a Test, to successfully pass a Test without any Test Issues; and<br>(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 6.2 (*Testing Procedures*),<br>and **"Achieved"** and **"Achievement"** shall be construed accordingly; |
| **"Acquired Rights Directive"** | the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time; |
| **"Admission Agreement"** | has the meaning given in Schedule 9.1 (*Staff Transfer*); |
| **"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; |
| **"Agreement"** | means the clauses of this agreement together with the Schedules and annexes to it; |
| **"Annual Contract Report"** | has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights*); |
| **"Anticipated Contract Life Profit Margin"** | has the meaning given in Schedule 7.1 (*Charges and Invoicing*); |
| **"Assets"** | all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding the Authority Assets; |
| **"ATP Milestone"** | the Milestone linked to Authority to Proceed for the relevant Operational Services set out in the Implementation Plan or a Project Plan; |

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| **"Audit"** | any exercise by the Authority of its Audit Rights pursuant to Clause **Error! Reference source not found.** (*Records, Reports, Audit and Open Book Data*) and Schedule 7.5 (*Financial Reports and Audit Rights)*; |
| **"Audit Agents"** | (a) the Authority's internal and external auditors;<br>(b) the Authority's statutory or regulatory auditors;<br>(c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;<br>(d) HM Treasury or the Cabinet Office;<br>(e) any party formally appointed by the Authority to carry out audit or similar review functions; and<br>(f) successors or assigns of any of the above; |
| **"Audit Rights"** | the audit and access rights referred to in Schedule 7.5 (*Financial Reports and Audit Rights*); |
| **"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;<br>(b) IPRs created by the Authority independently of this Agreement; and/or<br>(c) Crown Copyright which is not available to the Supplier otherwise than under this Agreement;<br>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 Agreement;

(b) any Personal Data; or

(c) any Sanitised Personal Data;

**"Authority IT Strategy"**

the Authority's IT policy in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Change Control Procedure;

**"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

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| | which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them); |
| **"Authority Representative"** | the representative appointed by the Authority pursuant to Clause **Error! Reference source not found.** (*Representatives*); |
| **"Authority Requirements"** | the requirements of the Authority set out in Schedules 2.1 (*Services Description*), 2.2 (*Performance Levels),* 2.3 (*Standards),* 2.4 (*Security Management), 2.5 (Insurance Requirements),* 6.1 (Implementation), 8.2 (*Reports and Records*), 8.5 (*Exit Management*) and 8.6 (*Business Continuity and Disaster Capability)*; |
| **"Authority Responsibilities"** | the responsibilities of the Authority specified in Schedule 3 (*Authority Responsibilities*); |
| **"Authority Software"** | software which is owned by or licensed to the Authority (other than under or pursuant to this Agreement) 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 Agreement 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; |
| **"Baseline Security Requirements"** | the Authority's baseline security requirements, the current copy of which is contained in Annex 1 of Schedule 2.4 (*Security Management*), as updated from time to time by the Authority and notified to the Supplier; |
| **"BCDC Plan"** | any plan prepared pursuant to Paragraph 2 of Schedule 8.6 (*Business Continuity and Disaster Capability)*, as may be amended from time to time; |

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| **"BCDC Services"** | the business continuity and disaster recovery services set out in Schedule 8.6 (*Business Continuity and Disaster Capability)*; |
| **"Breakage Costs Payment"** | has the meaning given in Schedule 7.2 (*Payments on Termination*); |
| **"Central Government Body"** | 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:<br>(a) Government Department;<br>(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);<br>(c) Non-Ministerial Department; or<br>(d) Executive Agency; |
| **"Certificate of Costs"** | has the meaning given in Schedule 7.1 (*Charges and Invoicing*); |
| **"Change"** | any change to this Agreement; |
| **"Change Authorisation Note"** | a form setting out an agreed Contract Change which shall be substantially in the form of Annex 2 of Schedule 8.3 (*Change Control Procedure*); |
| **"Change Control Procedure"** | the procedure for changing this Agreement set out in Schedule 8.3 (*Change Control Procedure*); |
| **"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"** | a written request for a Contract Change substantially in the form of Annex 1 of Schedule 8.3 (*Change Control Procedure);* |
| **"Charges"** | the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 7.1 (*Charges and Invoicing)*, including any Milestone Payment or Service Charge; |
| **"Commercially Sensitive Information"** | the information listed in Schedule 4.2 (*Commercially Sensitive Information*) comprising the information of a commercially sensitive nature relating to; |

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| | (a) the pricing of the Services;<br>(b) the details of the Supplier's IPRs; and<br>(c) the Supplier's business and investment plans;<br>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 Performance Failure"** | has the meaning given in Clause **Error! Reference source not found.** (*Unacceptable Performance Failure*); |

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| **"Concealed IPR"** | means IPR of the Suppler (or licensed to the Supplier) which is or will be used before or during the Term for providing the Services which IPR is not set out in Schedule 5 (*IPR*); |

**"Confidential Information"**

a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:

(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 Agreement 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 Agreement;

(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 Agreement 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 Agreement 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 Agreement; or
2. failure to pay any Sub-contractor as required pursuant to Clause 15.9 (*Supply Chain Protection*);

**"Connected Company"** means, in relation to a company, entity or other person, the Affiliates of that company, entity or other person or any other person associated with such company, entity or other person;

**"Contract Change"** any change to this Agreement other than an Operational Change;

**"Contracts Finder"** the Government's publishing portal for public sector procurement opportunities

**"Contract Inception Report"** the initial financial model in a form agreed by the Supplier and the Authority in writing on or before the Effective Date;

**"Contract Year"**

(a) a period of twelve (12) months commencing on the Effective Date; or

(b) thereafter a period of twelve (12) months commencing on each anniversary of the Effective Date;

provided that the final Contract Year shall end on the expiry or termination of the Term;

**"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 Relevant Data Protection Laws;

**"Costs"** has the meaning given in Schedule 7.1 (*Charges and Invoicing*);

"**Counter Notice**" has the meaning given in Schedule 8.4 (*Dispute Resolution Procedure*);

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| **“CPP Milestone”** | a contract performance point as set out in the Implementation Plan or a Project 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 6.2 (*Testing Procedures*); |
| **"Critical Failure Performance Threshold"** | means the relevant level of performance designated as such for a Performance Indicator and set out in the relevant table in Part I of Annex 1 of Schedule 2.2 (*Performance Levels*); |
| **“Critical KPI Failure”** | shall have the meaning given, in relation to the relevant Key Performance Indicator, in Paragraph 1.7 of Part A of Schedule 2.2 (*Performance Levels*); |
| **“Critical SPI Failure”** | shall have the meaning given, in relation to the relevant Subsidiary Performance Indicator, in Paragraph 1.7 of Part A of Schedule 2.2 (*Performance Levels*) |
| **“CRTPA”** | the Contracts (Rights of Third Parties) Act 1999; |
| **“Data Protection Impact Assessment”** | means an assessment by the Controller of the impact of the processing on the protection of Personal Data; |
| **“Data Protection Officer”** | has the meaning given in the Relevant Data Protection Laws; |
| **“Data Subject”** | has the meaning given in the Relevant Data Protection Laws; |
| **“Data Subject Access Request”** | a request made by a Data Subject in accordance with rights granted pursuant to the Relevant Data Protection Laws to access his or her Personal Data; |
| **“Deductions”** | all Service Credits, Compensation for Unacceptable Performance Failure, Delay Payments or any other deduction which is paid or payable to the Authority under this Agreement; |
| **“Default”** | any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement: |

(a) in the case of the Authority, of its employees, servants, agents; or

(b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel,

in connection with or in relation to the subject-matter of this Agreement and in respect of which such Party is liable to the other;

**"Defect"**

(a) any error, damage or defect in the manufacturing of a Deliverable; or

(b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or

(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

(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;

**"Delay"**

(a) a delay in the Achievement of a Milestone by its Milestone Date; or

(b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan or a Project Plan;

**"Delay Deduction Period"**

the period of one hundred (100) 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 7.1 (*Charges and Invoicing*);

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| **"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 Agreement; |
| **"Delivery Group"** | has the meaning given in Schedule 2.2 (*Performance Levels*); |
| **"Detailed Implementation Plan"** | means the plan prepared in accordance with paragraph Paragraphs 3 and 4 of Schedule 6.1 (*Implementation*); |
| **"Disclosing Party"** | has the meaning given in Clause **Error! Reference source not found.** (*Confidentiality*); |
| **"Disclosing Party Group"** | (a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and<br>(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 Agreement; |
| **"Dispute"** | any dispute, difference or question of interpretation arising out of or in connection with this Agreement, 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 Agreement 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 8.4 (*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 Agreement;

(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 or those who use them to tell HMRC of any 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 and in Schedule 11A to the Value Added Tax Act 1994 (as amended by Schedule 1 to the Finance (no. 2) Act 2005;

**"Due Diligence Information"** any information supplied to the Supplier by or on behalf of the Authority prior to the Effective Date;

**"Effective Date"** the date on which this Agreement is signed by both Parties

**"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

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| | amended or replaced or any other Regulations implementing the Acquired Rights Directive; |
| **"Escalation Meeting"** | shall have the meaning at Clause 29.1 |
| **"Escalation Notice"** | shall have the meaning at Clause 29.1 |
| **"Escalation Process Failure"** | shall have the meaning at Clause 29.6; |
| **"Escalation Process Trigger Event"** | shall mean:<br>(A) an Intervention Trigger Event; and/ or<br>(B) Rectification Plan Failure; |
| **"Estimated Year 1 Charges"** | the estimated Charges payable by the Authority during the first Contract Year, as set out in the Financial Model; |
| **"Euro Compliant"** | means that: (i) the introduction of the euro within any part(s) of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Authority's business; (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):<br>(a) be able to perform all such functions in any number of currencies and/or in euros;<br>(b) during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) of the UK, dual denominations;<br>(c) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro;<br>(d) incorporate protocols for dealing with rounding and currency conversion; |

(e) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and

(f) permit the input of data in euro and display an outcome in euro where such data, supporting the Authority's normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK;

**"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 8.5 (*Exit Management*);

**"Exit Plan"** the plan produced and updated by the Supplier during the Term in accordance with Paragraph 5 of Schedule 8.5 (*Exit Management*);

**"Expedited Dispute Timetable"** the reduced timetable for the resolution of Disputes set out in Paragraph 3 of Schedule 8.4 (*Dispute Resolution Procedure*);

**"Expert"** has the meaning given in Schedule 8.4 (*Dispute Resolution Procedure*);

**"Expert Determination"** the process described in Paragraph 5 of Schedule 8.4 (*Dispute Resolution Procedure*);

**"Extension Period"** has the meaning given in Clause 4.2;

**"Final Termination Warning Notice"** has the meaning given to it in Clause **Error! Reference source not found.**;

**"Financial Distress Event"** means the occurrence of one or more of the following events:

(a) If there is any downgrade credit rating issued by any Rating Agency for either the Supplier, the Guarantor or any Key Sub-contractor;

(b) the Supplier, the Guarantor or any Key Sub-contractor issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;

(c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Supplier, the Guarantor or any Key Sub-contractor;

(e) the Supplier, the Guarantor or any Key Sub-contractor committing a material breach of covenant to its lenders;

(f) a Key Sub contractor notifying the Authority that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute; or

(g) any of the following:

(i) commencement of any litigation against the Supplier, the Guarantor or any Key Sub-contractor with respect to financial indebtedness greater than five million pounds Sterling £5,000,000 or obligations under a service contract with a total contract value greater than five million pounds Sterling £5,000,000;

(iii) non-payment by the Supplier, the Guarantor or any Key Sub-contractor of any financial indebtedness;

(iv) any financial indebtedness of the Supplier, the Guarantor or any Key Sub-contractor becoming due as a result of an event of default; or

(v) the cancellation or suspension of any financial indebtedness in respect of the Supplier, the Guarantor or any Key Sub-contractor,

in each case which the Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Agreement;

**"Financial Distress Service Continuity Plan"** a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Agreement in the event that a Financial Distress Event occurs;

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| **"Financial Model"** | has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights)*; |
| **"Financial Reports"** | has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights)*; |
| **"Financial Transparency Objectives"** | has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights)*; |
| **"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; |
| **"Force Majeure Event"** | any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement 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 acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or 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"** | has the meaning given in Schedule 9.1 (*Staff Transfer*); |
| **"GDPR"** | means the Regulation of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data being enforced in the EU from 25 May 2018 (repealing Directive 95/46/EC and the Data Protection Act 1998), along with the codes of practice, codes of conduct, regulatory guidance and standard clauses and other related or equivalent domestic legislation, as updated from time to time; |

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| **"General Anti-Abuse Rule"** | means<br>(a) the legislation in Part 5 of the Finance Act 2013;<br>(b) the legislation in sections 10 and 11 of the National Insurance Contributions Act 2014; and<br>(c) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid any Tax; |
| **"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 **Error! Reference source not found.** (*Supply of Goods*); |
| **"Government Controlled Company"** | means RCDTS or any body governed by public law, including as created pursuant to Regulation 12 of the Public Contracts Regulations 2015 or such other body created through or derived through public law and controlled by the Customer. |
| **"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; |
| **"HMRC"** | HM Revenue & Customs; |
| **"Impact Assessment"** | has the meaning given in Schedule 8.3 (*Change Control Procedure);* |
| **"Implementation"** | has the meaning given in Schedule 6.1 *(Implementation);* |

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| **"Implementation Plan"** | the Outline Implementation Plan and the Detailed Implementation Plan as described in Schedule 6.1 (*Implementation*); |
| **"Implementation Services"** | means, in relation to each service, the service to be provided during Implementation; |
| **Implementation Services Commencement Date** | means the date given in Schedule 6.1 (Implementation); |
| **"Incumbent Supplier"** | means the supplier to the Authority of services similar to the Services prior to the Services Commencement 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 Agreement; |
| **"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 Term"** | the period of two (2) years from and including the first Operational Service Date; |
| **"Insolvency Event"** | (a) the other Party 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:<br>(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*<br>(ii) *(being a partnership) is deemed unable to pay its debts within the meaning of Section 222 of the Insolvency Act 1986;*<br>(b) the other Party 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 other Party with one or more other companies or the solvent reconstruction of that other Party;

(c) a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;

(d) a creditor or encumbrancer of the other Party 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 the other Party's assets and such attachment or process is not discharged within fourteen (14) days;

(e) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

(f) where the other Party 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 other Party other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;*

(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 the other Party;*

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

(g) any event occurs, or proceeding is taken, with respect to the other Party 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, trade marks, 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 Trigger Event"**

(a) any event falling within limb (a), (c), (d), (e), (g) or (h) of the definition of a Supplier Termination Event;

(b) any event falling within limb (b) or (e) of the definition of Step-In Trigger Event;

(c) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;

(d) the Supplier committing a Major KPI Failure or a Critical KPI Failure; and/or

(e) the Supplier not Achieving a Key Milestone within seventy five (75) days of its relevant Milestone Date;

**"IPRs Claim"**

any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged

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| | 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 Agreement or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Agreement; |
| **"IT"** | information and communications technology; |
| **"IT Environment"** | the Authority System and the Supplier System; |
| **"Key Milestone"** | the Milestones identified in the Implementation Plan or any Project Plan as key milestones and in respect of which Delay Payments may be payable in accordance with Paragraph 1 of Part C of Schedule 7.1 (*Charges and Invoicing*) if the Supplier fails to Achieve the Milestone Date in respect of such Milestone; |
| **"Key Performance Indicator" or "KPI"** | the key performance indicators set out in Table 1 of Part I of Annex 1 of Schedule 2.2 (*Performance Levels*); |
| **"Key Personnel"** | those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 9.2 (*Key Personnel*) against each Key Role as at the Effective Date or as amended from time to time in accordance with Clauses **Error! Reference source not found.** and **Error! Reference source not found.** (*Key Personnel*); |
| **"Key Roles"** | a role described as a Key Role in Schedule 9.2 (*Key Personnel*) and any additional roles added from time to time in accordance with Clause **Error! Reference source not found.** (*Key Personnel*); |
| **"Key Sub-contract"** | each Sub-contract with a Key Sub-contractor; |
| **"Key Sub-contractor"** | any Sub-contractor:<br>(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<br>(b) with a Sub-contract with a contract value which at the time of appointment exceeds (or |

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| | would exceed if appointed) ten per cent (10%) of the aggregate Charges forecast to be payable under this Agreement (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 Agreement; |
| **"KPI Failure"** | a failure to meet the Target Performance Level in respect of a Key Performance Indicator; |
| **"Law"** | any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, 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; |
| **"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 Agreement, 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 **Error! Reference source not found.** (*Maintenance*); |
| **"Major Failure Performance Threshold"** | means the relevant level of performance designated as such for a Performance Indicator and set out in the relevant table in Part I of Annex 1 of Schedule 2.2 (Performance Levels); |
| **"Major KPI Failure"** | shall have the meaning given, in relation to the relevant Key Performance Indicator, in paragraph 1.7(b) of Part A of Schedule 2.2 (*Performance Levels*); |

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| **"Major SPI Failure"** | shall have the meaning given, in relation to the relevant Subsidiary Performance Indicator, in paragraph 1.7(b) of Part A of Schedule 2.2 (Performance Levels); |
| **"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; |
| **"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 twelve (12) month period if measured annually), as is specified for each Key Performance Indicator and Subsidiary Performance Indicator in the relevant table set out at Annex 1 to Schedule 2.2 (*Performance Levels*); |
| **"Milestone"** | an event or task described in the Implementation Plan or a Project 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 6.2 (*Test and Assurance*); |
| **"Milestone Adjustment Payment Amount"** | has the meaning given in Clause 34.7 (*Payments by the* Supplier); |
| **"Milestone Adjustment Payment Notice"** | has the meaning given in Clause **Error! Reference source not found.** (*Payments by the Supplier*); |
| **"Milestone Date"** | the target date set out against the relevant Milestone in the Implementation Plan or a Project Plan by which the Milestone must be Achieved; |
| **"Milestone Payment"** | a payment identified in Schedule 7.1 (*Charges and Invoicing*) to be made following the issue of a Milestone Achievement Certificate; |
| **"Milestone Retention"** | has the meaning given in Schedule 7.1 (*Charges and Invoicing);* |

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| **"Minor KPI Failure"** | shall have the meaning given, in relation to the relevant Key Performance Indicator, in Paragraph 1.7(a) of Part A of Schedule 2.2 (*Performance Levels*); |
| **"Minor SPI Failure"** | shall have the meaning given, in relation to the relevant Subsidiary Performance Indicator, in Paragraph 1.7(a) of Part A of Schedule 2.2 (*Performance Levels*); |
| **"Month"** | a calendar month and **"monthly"** shall be interpreted accordingly; |
| **"New Releases"** | 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; |
| **"Non-Party IPRs"** | any Intellectual Property Right owned or claimed to be owned by any third party which is found, or alleged to be found, in the Specially Written Software and the Project Specific IPRs; |
| **"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; |
| **"Notifiable Default"** | shall have the meaning given in Clause 27.2 (*Rectification Plan Process*); |
| **"Object Code"** | software and/or data in machine-readable, compiled object code form; |
| **"Occasion of Tax Non-Compliance"** | (a) any Tax return of the Supplier and/or its Subcontractor and/or any non-submission of a Tax return (whether deliberate or by omission) by the Supplier and/or its Subcontractor to the Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:<br>(i) a Relevant Tax Authority successfully challenging the Supplier or relevant Sub-contractor under the General Anti Abuse Rule or the Halifax Abuse Principle or TAAR |

or under any Tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti Abuse Rule or the Halifax Abuse Principle or TAAR;

(ii) the failure of an avoidance scheme which the Supplier or relevant Sub-contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or

(b) the Tax affairs of the Supplier or any of its Sub-contractors have given rise to a criminal conviction in any jurisdiction for Tax related offences within the last five (5) years which is not spent at the Effective Date or to a civil penalty for fraud or evasion within the last three (3) years;

(c) For these purposes:

(i) a return is "submitted" when it is first submitted to the Relevant Tax Authority and any subsequent amendments or re-submissions are to be ignored; and

(ii) a Relevant Tax Authority will not be deemed to have "successfully challenged" the Supplier or a Sub-contractor until an appeal against such challenge is no longer possible.

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| **"Off-shore Location"** | any place outside of the United Kingdom; |
| **"Open Book Data"** | has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights*) |
| **"Open Source"** | 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; |
| **"Open Source Publication Material"** | has the meaning given in Clause **Error! Reference source not found.**A.2(f); |
| **"Operating Environment"** | the Authority System and the Sites; |
| **"Operational Board"** | has the meaning given in Schedule 8.1 (*Governance*) |

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| **"Operational Change"** | any change in the Supplier's operational procedures which in all respects, when implemented:<br>(a) will not affect the Charges and will not result in any other costs to the Authority;<br>(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;<br>(c) will not adversely affect the interfaces or interoperability of the Services with any of the Authority's IT infrastructure; and<br>(d) will not require a change to this Agreement; |
| **"Operational Service Date"** | in relation to an Operational Service, the later of:<br>(a) the date identified in the Implementation Plan or a Project Plan for the Operational Services upon which the Operational Service is to commence; and<br>(b) where the Implementation Plan or a Project 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; |
| **"Operational Services"** | the operational services described as such in the Services Description; |
| **"Optional Services"** | the services described as such in Schedule 2.1 (*Services Description*) which are to be provided by the Supplier if required by the Authority in accordance with Clause 5.10 (*Optional Services*); |
| **"Other Supplier"** | any other third party which supplies services to the Authority but excluding the Incumbent Suppliers; |
| **"Partial Termination"** | the partial termination of this Agreement to the extent that it relates to the provision of any part of the Services as further provided for in Clause **Error! Reference source not found.** (*Termination by the Authority*) or **Error! Reference source not found.** (*Termination by the Supplier*); |
| **"Parties"** and **"Party"** | have the meanings respectively given on page 1 of this Agreement; |

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| **"Performance Failure"** | a KPI Failure or an SPI Failure; |
| **"Performance Indicators"** | the Key Performance Indicators and the Subsidiary Performance Indicators; |
| **"Performance Monitoring Report"** | has the meaning given in Schedule 2.2 (*Performance Levels*); |
| **"Permitted Maintenance"** | has the meaning given in Clause **Error! Reference source not found.** (*Maintenance*); |
| **"Persistent Breach"** | means a Default which continued or recurred on more than one occasion within a six (6) month period following the date of a Final Termination Warning Notice; |
| **"Personal Data"** | personal data (as defined in the Relevant Data Protection Laws) which is Processed by the Supplier or any Sub-contractor pursuant to or in connection with this Agreement; |
| **"Personal Data Breach"** | means:<br>(a) a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise Processed;<br>(b) a discovery or reasonable suspicion that there is a vulnerability in any technological measure used to protect any Personal Data that has previously been subject to a breach within the scope of paragraph (a), which may result in exploitation or exposure of that Personal Data; or<br>(c) any defect or vulnerability with the potential to impact the ongoing resilience, security and/or integrity of systems Processing Personal Data; |
| **"Preceding Services"** | has the meaning given in Clause **Error! Reference source not found.** (*Standard of Services)*; |
| **"Process"** | has the meaning given to it under the Relevant Data Protection Laws and "**Processed**" and "**Processing**" shall be construed accordingly; |
| **"Processor"** | has the meaning given in the Relevant Data Protection Laws; |

**"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 Agreement;

(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; 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;

**"Prohibited Transaction"**

has the meaning given in Clause **Error! Reference source not found.** (*Use of Off-shore Tax Structures*);

**"Project"**

any programme of work which has been agreed by the Authority and the Supplier in accordance with the procedures set out in Schedule 6.3 (*Projects and Ordering*) (or equivalent). Such programme of work may involve the participation of an Other Supplier and require project management and project office activity;

**"Project Plan"**

the agreed project plan for a Project set out in, attached to or included by reference in the relevant Project Work Order;

**"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 Agreement 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 Agreement;

but shall not include the Supplier Background IPRs or the Specially Written Software;

**"Project Work Order"** has the meaning given in Schedule 6.3 (*Projects and Ordering*);

**"Quality Plans"** has the meaning given in Clause **Error! Reference source not found.** (*Quality Plans*);

**"Quarter"** the first three Service Periods and each subsequent three (3) Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Agreement);

**"RCDTS"** means Revenue and Customs Digital Technology Services Limited

**"Rectification Plan"** a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;

**"Rectification Plan Failure"**

(a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clauses 27.5 (*Submission of the draft Rectification Plan*) or 27.8 (*Agreement of the Rectification Plan*);

(b) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 27.8 (*Agreement of the Rectification Plan*);

(c) the Supplier failing to rectify a material Default within the later of:

(i) thirty (30) Working Days of a notification made pursuant to Clause 27.3 (*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) where a Rectification Plan has been implemented a Performance Failure re-occurring in respect of the same Key Performance Indicator and for the same (or substantially the same) root cause (in relation to which a Rectification Plan was implemented) on two or more occasions in the period ending on the date falling 6 months (or, where the relevant KPI has a Measurement Period longer than 6 months, at the end of the next complete Measurement Period) following the date set for the completion of the Rectification Plan (or, if later, the date that the Supplier indicates that the Rectification Plan is complete);

(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 six (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 27.5 (*Submission of the draft Rectification Plan*) to Clause 27.9 (*Agreement of the Rectification Plan*);

**"Registers"** has the meaning given in Schedule 8.5 (*Exit Management*);

**"Reimbursable Expenses"** has the meaning given in Schedule 7.1 (*Charges and Invoicing*);

**"Related Third Party Dispute Initiation Notice"** has the meaning given in Paragraph 8.2 of Schedule 8.4 (*Dispute Resolution Procedure*);

**"Related Third Party Dispute Resolution Procedure"** has the meaning given in Paragraph 8.1 of Schedule 8.4 (*Dispute Resolution Procedure*);

**"Relevant Data Protection Laws"** means: (i) the Data Protection Act 2018; (ii) the GDPR, the Law Enforcement Directive (Directive EU 2016/680) and any applicable national implementing Laws as amended from time to time; (iii) any other applicable Laws relating to the

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| | processing of personal data and privacy; and (iv) all applicable guidance, standard terms, codes of practice and codes of conduct issued by the Information Commissioner and other relevant regulatory, supervisory and legislative bodies in relation to such Laws; |
| **"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 Agreement 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 Preceding Services"** | has the meaning given in Clause **Error! Reference source not found.** (*Standard of Services*); |
| **"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, resident or liable to any Tax; |
| **"Relevant Transfer"** | a transfer of employment to which the Employment Regulations applies; |
| **"Relief Notice"** | has the meaning given in Clause **Error! Reference source not found.** (*Authority Cause*; |
| **"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 Agreement, whether those services are provided by the Authority internally and/or by any third party; |

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| **"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 **Error! Reference source not found.** (*Step-In Rights*); |
| **"Risk Register"** | the register of risks and contingencies that have been factored into any Costs due under this Agreement, a copy of which is set out in Annex 4 of Schedule 7.1 (*Charges and Invoicing*); |
| **"Sanitised Personal Data"** | data derived from Personal Data which has had any designatory data identifiers removed so that an individual cannot be identified; |
| **"Security Management Plan"** | the Supplier's security plan as attached as Annex 2 of Schedule 2.4 (*Security Management*) and as subsequently developed and revised pursuant to Paragraphs 4 and 5 of Schedule 2.4 (*Security Management*); |
| **"Service Beneficiary"** | means an entity, other than the Authority, that may receive the benefit of some aspect of the Services and whom the Authority shall notify to the Supplier from time to time (an indicative and non-exhaustive list of Services Beneficiaries is set out in Schedule 2.7 (Services Recipients and Services Beneficiaries); |
| **"Service Charges"** | the periodic payments made in accordance with Schedule 7.1 (*Charges and Invoicing*) in respect of the supply of the Operational Services; |
| **"Service Credit Cap"** | NOT USED |
| **"Service Credits"** | NOT USED |
| **"Service Period"** | a calendar month, save that:<br>(a) the first service period shall begin on the first Operational Service Date and shall expire at the end of the calendar month in which the first Operational Service Date 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 Annex 1 of Schedule 2.2 (Performance *Levels*);

**"Service Recipient"** means those listed as such in Schedule 2.7 (Service Recipients) (as such Schedule is amended from time to time by the Authority), being Other Government Departments and any other third party other than the Authority to which the Supplier shall provide all or part of the Services;

**"Services"** any and all of the services to be provided by the Supplier under this Agreement, including those set out in Schedule 2.1 (*Services Description*);

**"Services Description"** the services description set out in Schedule 2.1 (*Services Description*);

**"Service Transfer Date"** has the meaning given in Schedule 9.1 (*Staff Transfer*);

**"Sites"** any premises (including the Authority Premises, the Supplier's premises or third party premises):

(a) from, to or at which:

(i) *the Services are (or are to be) provided; or*

(ii) *the Supplier manages, organises or otherwise directs the provision or the use of the Services; or*

(b) where:

(i) *any part of the Supplier System is situated; or*

(ii) *any physical interface with the Authority System takes place;*

**"SME"** means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the European Commission Recommendation of 6th May 2003 concerning the definition of micro, small and medium-sized enterprises.

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| **"Software"** | Specially Written Software, Supplier Software and Third Party Software; |
| **"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 Agreement, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Agreement; |
| **"SPI Failure"** | a failure to meet the Target Performance Level in respect of a Subsidiary Performance Indicator; |
| **"Staffing Information"** | has the meaning given in Schedule 9.1 (*Staff Transfer*); |
| **"Standard Contractual Clauses"** | means the standard contractual clauses for the transfer of personal data to processors established in third countries, as approved by the European Commission in Decision 2010/87/EU, or any set of clauses approved by the European Commission or a supervisory authority (as such term is defined by the GDPR) which subsequently amends, replaces or supersedes these; |
| **"Standards"** | the standards, polices and/or procedures identified in Schedule 2.3 (*Standards*) and as updated from time to time by the Authority and notified to the Supplier; |
| **"Step-In Notice"** | has the meaning given in Clause **Error! Reference source not found.** *(Step-In Rights)*; |
| **"Step-In Trigger Event"** | (a) any event falling within the definition of a Supplier Termination Event;<br>(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 Agreement;

(d) the Authority being advised by a regulatory body that the exercise by the Authority of its rights under Clause **Error! Reference source not found.** (Step-In Rights) 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 **Error! Reference source not found.** (*Step-In Rights*);

**"Step-Out Notice"** has the meaning given in Clause **Error! Reference source not found.** (*Step-In Rights*);

**"Step-Out Plan"** has the meaning given in Clause **Error! Reference source not found.** (*Step-In Rights*);

**"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"** has the meaning given at Clause 23.5;

**"Subsidiary Performance Indicator" or "SPI"** the performance indicators set out in Table 2 of Part I of Annex 1 of Schedule 2.2 (*Performance*

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| | *Levels*); |
| **"Successor Body"** | has the meaning given in Clause **Error! Reference source not found.** (*Assignment and Novation*); |
| **"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<br>(b) Intellectual Property Rights created by the Supplier independently of this Agreement,<br>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:<br>(a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and<br>(b) has a Non-trivial Customer Base; |
| **"Supplier COTS Software"** | Supplier Software (including open source software) that:<br>(a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and<br>(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 Executive"** | means the Authority's Relationship Manager (REDACTED), who will represent the Supplier with fulfilling Clause 29; |

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| **"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 **Error! Reference source not found.** (*Authority Cause*); |
| **"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 Agreement; |
| **"Supplier Profit"** | has the meaning given in Schedule 7.1 (*Charges and Invoicing*); |
| **"Supplier Profit Margin"** | has the meaning given in Schedule 7.1 (*Charges and Invoicing*); |
| **"Supplier Representative"** | the representative appointed by the Supplier pursuant to Clause **Error! Reference source not found.** (*Representatives);* |
| **"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 as specified as such in Schedule 5 (IPR) or as agreed in accordance with Clause 17.9**;** |
| **"Supplier Solution"** | the Supplier's solution for the Services set out in Schedule 4.1 (*Supplier Solution*) 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 an Unacceptable Performance Failure or a Critical KPI Failure;<br>(b) the Supplier's level of performance constitutes a Persistent Breach;<br>(c) the Supplier committing a material Default which is irremediable; |

(d) as a result of the Supplier's Default, the Authority incurring Losses in any Contract Year which exceed eighty per cent (80)% of the value of the aggregate annual liability cap for that Contract Year as set out in Clause **Error! Reference source not found.** (Financial Limits);

(e) a Rectification Plan Failure;

(f) an Escalation Process Failure;

(g) where a right of termination is expressly reserved in this Agreement, including pursuant to:

(i) 19 (IPRs Indemnity);

(ii) Clause **Error! Reference source not found.** (Prevention of Fraud and Bribery); and/or

(iii) Paragraph 4 of Schedule 7.4 (Financial Distress);

(h) the representation and warranty given by the Supplier pursuant to Clause **Error! Reference source not found.** (Warranties) being materially untrue or misleading;

(i) the Supplier committing a material Default or failing to provide details of steps being taken and mitigating factors pursuant to Clauses 10.9 to **Error! Reference source not found.** (Promoting Tax Compliance) which in the reasonable opinion of the Authority are acceptable;

(j) the Supplier committing a material Default under any of the following:

(i) Clause **Error! Reference source not found.** (Services);

(ii) Clauses 10.9 to **Error! Reference source not found.** (inclusive) (Promoting Tax Compliance);

(iii) Clauses **Error! Reference source not found.** and **Error! Reference source not found.** (Use of Off-shore Tax Structures);

(iv) Clause **Error! Reference source not found.** (Income Tax and National Insurance Contributions);

(v) Clause **Error! Reference source not found.** (Protection of Personal Data);

(vi) Clause 22 (Transparency and Freedom of Information);

(vii) Clause **Error! Reference source not found.** (Confidentiality);

(viii) Clause **Error! Reference source not found.** (Compliance);

(vi) in respect of any security requirements set out in Schedule 2.1 (Services Description), Schedule 2.4 (Security Management) or the Baseline Security Requirements; and/or

(vi) in respect of any requirements set out in Schedule 9.1 (Staff Transfer);

(k) the Supplier commits a breach of any of the requirements set out at Clause 35.5 (Modern Slavery Act);

(l) any failure by the Supplier to implement the changes set out in a Benchmark Report as referred to in Paragraph 5.8 of Schedule 7.3 (Value for Money);

(m) an Insolvency Event occurring in respect of the Supplier or the Guarantor;

(n) 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);

(o) 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 six (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;

(p) a change of Control of a Key Sub-contractor unless, within six (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 15.1 (Appointment of Key Sub-contractors);

(q) 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 9.1 (Staff Transfer);

(r) 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 Agreement;

(s) the Supplier:

(i) commits an irremediable breach of the Admission Agreement; or

(ii) commits a breach of the Admission Agreement which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice giving particulars of the breach and requiring the Supplier to remedy it; or

(t) 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;

(u) the Supplier commits a breach of any of the requirements set out at Clause 35.5 (Modern Slavery Act);

**"TAAR" or "Targeted Anti-Avoidance Rule"** means provision(s) in any legislation which seeks to prevent avoidance of any Tax;

**"Target Performance Level"** the minimum level of performance for a Performance Indicator which is required by the Authority, as set out in respect of the relevant Performance Indicator in the tables in Annex 1 of Schedule 2.2 (Performance Levels);

**"Tax"** means:

(a) all forms of tax whether direct or indirect;

(b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction;

(c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and

(d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above,

in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction;

**"Tax Revenue"** means any Tax, levy or duty due to be collected by the Authority and/or any reimbursement of Tax, levy or duty, correctly paid to the Authority, as a result of a Default by the Supplier;

**"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 Agreement;

**"Termination Assistance Notice"** has the meaning given in Paragraph 6.1 of Schedule 8.5 (Exit Management);

**"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 6.3 of Schedule 8.5 (Exit Management);

**"Termination Date"** the date set out in a Termination Notice on which this Agreement (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 Agreement on a specified date and setting out the grounds for termination;

**"Termination Payment"** the payment determined in accordance with Schedule 7.2 (Payments on Termination);

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| **"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 8.5 (Exit Management), and any other services required pursuant to the Termination Assistance Notice; |
| **"Termination Warning Notice"** | has the meaning given to it in Clause **Error! Reference source not found.**; |
| **"Test Issues"** | has the meaning given in Schedule 6.2 (Test and Assurance); |
| **"Tests" and "Testing"** | any tests required to be carried out under this Agreement, as further described in Schedule 6.2 (Test and Assurance) and "Tested" shall be construed accordingly; |
| **"Third Party Beneficiary"** | has the meaning given in Clause **Error! Reference source not found.** (Third Party Rights); |
| **"Third Party COTS IPRs"** | Third Party IPRs that:<br>(a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and<br>(b) has a Non-trivial Customer Base; |
| **"Third Party COTS Software"** | Third Party Software (including open source software) that:<br>(a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and<br>(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 as specified as such in Schedule 5 (IPR) or as agreed in accordance with Clause 17.10; |
| **"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; |

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| **"Third Party Provisions"** | has the meaning given in Clause **Error! Reference source not found.** (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, as specified as such in Schedule 5 (IPR) or as agreed in accordance with Clause 17.10**;** |
| **"Transferring Assets"** | has the meaning given in Paragraph 8.2(a) of Schedule 8.5 (Exit Management); |
| **"Transferring Authority Employees"** | has the meaning given in Schedule 9.1 (Staff Transfer); |
| **"Transferring Former Supplier Employees"** | has the meaning given in Schedule 9.1 (Staff Transfer); |
| **"Transferring Supplier Employees"** | has the meaning given in Schedule 9.1 (Staff Transfer); |
| **Transparency Information** | has the meaning given in Clause 22.1 (*Transparency and Freedom of Information*); |
| **Transparency Reports** | has the meaning given to it in Paragraph 1.1 of Schedule 8.2 (Reports and Records); |
| **"UK"** | the United Kingdom; |
| **"UK GAAP"** | means the Generally Accepted Accounting Practice in the UK which is the body of accounting standards and other guidance published from time to time by the UK's Financial Reporting Council; |
| **"Unacceptable Performance Failure"** | the Supplier committing a Performance Failure in respect of 75% or more of the Performance Indicators that are measured in a Service Period; |
| **"Unrecovered Payment"** | has the meaning given in Schedule 7.2 (Payments on Termination); |
| **"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; |
| **"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 |

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| | software supplier (or any Affiliate of the Supplier or any third party) releases during the Term; |
| **"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; and |
| **"Working Day"** | means any day other than a Saturday, Sunday or public holiday in England and Wales. |