

CONTRACT REFERENCE NUMBER: 17/01/54

SERVICES CONTRACT

-between-

**(1) THE REGISTRAR GENERAL OF BIRTHS, DEATHS AND MARRIAGES FOR SCOTLAND
(THE "AUTHORITY")**



-and-

(2) CACI LIMITED (THE "SERVICE PROVIDER")



-relating to the supply of-

SERVICES FOR

THE PROVISION OF AN ONLINE COLLECTION INSTRUMENT FOR SCOTLAND'S CENSUS 2021



SCHEDULE 1

DEFINED TERMS

This and the nineteen (19) following pages comprise Schedule 1 referred to in the foregoing Services Contract between the Registrar General of Births Deaths and Marriages for Scotland and CACI Limited

In this Contract, unless the context requires otherwise, the following terms have the meanings given to them below:

"Achieve" means

- (a) in respect of a Test, to successfully pass a Test without any Test Issues; and
- (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 4 (*Testing Procedures*),

and "Achieved" and "Achievement" shall be construed accordingly.

"Affiliate" means 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.

"Annual Contract Report" means the annual contract report to be provided by the Service Provider to the Authority pursuant to paragraph 1 of Part B of Schedule 3 (*Financial Reports and Model*).

"Approval" means the written consent of the Authority (which consent shall not be unreasonably withheld or delayed).

"Approved Sub Licensee" means any of the following:

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

"Asset Report" has the meaning given in clause 30.1 (*Transferred Assets*).

"Assignee" has the meaning given in clause 42.2 (*Assignment*).

"ATP Milestone" means the Milestone linked to Authority to Proceed for the relevant Operational Services set out in the Implementation Plan.

"Availability" means the measurement process described in Annex 1 of Schedule 5 (*Service Levels and Performance Monitoring*) and **"Available"** shall be construed accordingly.

"Audit Agents" means

- (a) the Authority's internal and external auditors;
- (b) the Authority's statutory or regulatory auditors;
- (c) Audit Scotland or the Auditor General, their staff and/or any of their appointed representatives;
- (d) any party formally appointed by the Authority to carry out audit or similar review functions; and
- (e) successors or assigns of any of the above.

"Authority" means the Registrar General of Births, Deaths and Marriages for Scotland of General Register House, 2 Princes Street, Edinburgh, EH1 3YY.

"Authority Assets" has the meaning set out in clause 30.1 (*Transferred Assets*).

"Authority's Authorised Representative" means the individual Procurement Specialist with the appropriate level of delegated purchasing authority;

"Authority Background IPR" means:

- (a) IPRs owned by the Authority before the Commencement Date, including IPRs contained in any of the Authority's Know-How, documentation, processes and procedures;

(b) IPRs created by the Authority independently of this Contract; and/or

(c) Crown Copyright which is not available to the Service Provider otherwise than under this Contract;

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

“Authority Cause” means any material breach by the Authority of the Authority's Responsibilities, except to the extent that such breach is:

- (a) the result of any act or omission by the Authority to which the Service Provider has given its prior consent; or
- (b) caused by the Service Provider, and/or any Service Provider Representative.

“Authority's Change Manager” means the person appointed to that position by the Authority from time to time and notified in writing to the Service Provider or, if no person is notified, the Authority's Contract Manager.

“Authority's Contract Manager” means the person appointed to that position by the Authority from time to time and notified in writing to the Service Provider.

“Authority Data” means

- (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 Service Provider by or on behalf of the Authority; and/or
 - (ii) which the Service Provider is required to generate, process, store or transmit pursuant to this Contract; or
 - (i) any Personal Data for which the Authority is the Data Controller.

“Authority Property” means any corporeal moveable property issued or made available to the Service Provider by the Authority in connection with this Contract.

“Authority Protected Information” means any information (including all Personal Data and Census Data), provided by the Authority, however it is conveyed, to the Service Provider which:

- (a) carries a protective marking such as “Official”, “Secret” or “Top Secret”; or
- (b) is exempt information as set out in Part 2 of FOISA (disregarding for that purpose whether a provision of Part 2 does not confer absolute exemption within the meaning of section 2(2) of FOISA); or
- (c) is excepted information as set out in section 10 of the Environmental Information Regulations.

(d) that relates to the Authority or the Authority's business affairs, developments, trade secrets, know-how, personnel (including those of any other Crown Body with whom the Authority or the Service Provider, in pursuance of the Service Provider's duties to the Authority, interact), organisation, programmes and projects (including the Census project), services, policies or products of Third Parties or potential suppliers to the Authority or the Service Recipients, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked confidential or with similar protective marking) or which ought reasonably be considered to be confidential, which comes (or has come) to the Service Provider's or a Subcontractor's attention or into the Service Provider's or a Subcontractor's possession;

“Authority Representative” means all persons appointed by the Authority from time to time in relation to this Contract;

"Authority's Responsibilities" means the responsibilities of the Authority specified in the Implementation Plan (*Authority's Responsibilities*).

"Authority Software" means software which is owned by or licensed to the Authority (other than under or pursuant to this Contract) and which is or will be used by the Authority for the purposes of providing the Services.

"Authority's System" means the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Service Provider in connection with this Contract which is owned by the Authority or licensed to it by a third party and which interfaces with the Service Provider's System or which is necessary for the Authority to receive the Services.

"Authority to Proceed" or **"ATP"** means the authorisation to the Service Provider 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 Personnel Security Standard" means the pre-employment controls for all civil servants, members of the Armed Forces, temporary staff and government contractors generally.

"BCDR Plan" means any plan prepared pursuant to paragraph 1 of Schedule 6 (*Testing Procedures & Business Continuity and Disaster Recovery*) Section B, as may be amended from time to time.

"BCDR Services" means the business continuity and disaster recovery services set out in Schedule 6 (*Testing Procedures & Business Continuity and Disaster Recovery*) Section B.

"Breach of Security" means the occurrence of:

(a) any unauthorised access to or use of the Services, the Authority's premises, the sites used by the Service Provider to provide the Services, the Service Provider's System, the Service Provider Solution, the Authority's System (to the extent that it is under the control of the Service Provider) and/or any IT, information or data (including the Confidential Information and the Data) used by the Authority and/or the Service Provider in connection with this Contract; and/or

(b) the loss, corruption and/or unauthorised disclosure of any information or data (including the Confidential Information and the Data), including any copies of such information or data, used by the Authority and/or the Service Provider in connection with this Contract, in either case as more particularly set out in the security requirements in Schedule 1A (*Specification*);

"Business Continuity Plan" has the meaning given in paragraph 1.2(a)(ii) of Schedule 6 (*Testing Procedures & Business Continuity and Disaster Recovery*) Section B.

"Business Continuity Services" has the meaning given in paragraph 3.2(b) of Schedule 6 (*Testing Procedures & Business Continuity and Disaster Recovery*) Section B.

"Census" means Scotland's official count of the population and housing and of associated data;

"Census Data" means any information gathered as a consequence of the Census that relates to an individual or a household and data derived from such information;

"Census Personal Confidentiality Undertaking" means the individual Census Confidentiality declaration document set out in Annex 1 of Schedule 8 (*Census Confidentiality Declaration*) which is signed by the Authority Representatives and Service Provider Representatives.

"Certificate of Costs" a certificate of costs signed by the Service Provider's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant certificate) and substantially in the format set out in Schedule 3 (*Pricing and Financial*) Annex 3;

"Change" means any change to this Contract.

"Change Communication" any Change Request, Impact Assessment, Change Control Note or other communication sent or required to be sent pursuant to Schedule 11 (*Change Control Procedure*).

"Change Control Note" means the form used by the Parties to set out the agreed Contract Change and which shall be substantially in the form of Appendix 3 to Schedule 11 (*Change Control Procedure*).

"Change Control Procedure" means the procedure for changing this Contract set out in Schedule 11 (*Change Control Procedure*).

"Change in Law" means any change in Law which impacts on the performance of the Services which comes into force after the Commencement Date.

"Change Request" means a written request for a Contract Change which shall be substantially in the form of Annex 1 to Schedule 11 (*Change Control Procedure*).

"Charges" means any charges payable in accordance with the Pricing Schedule 3 (*Pricing and Financial*) in respect of the supply of the Services.

"CHECK Scheme" means the scheme for penetration testing of data processing systems operated by the Communications-Electronics Security Group;

"Commencement Date" means the date on which this Contract is signed by both Parties.

"Comparable Supply" means the supply of services to another customer of the Service Provider that are the same or similar to any of the Services.

"Component" means any constituent parts of the infrastructure for a Service, hardware or Software.

"Confidential Information" means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all Personal Data.

"Contract" means this Contract between the Parties consisting of clauses and 13 Schedules.

"Contract Amendment Report" the contract amendment report to be provided by the Service Provider to the Authority pursuant to Schedule 3 (*Pricing and Financial*) Paragraph 1 of Part B;

"Contract Change" means any change to this Contract other than an Operational Change.

"Contract Phase" is one the 3 distinct phases of the contract with a specific pricing mechanism for each of these phases:

Phase 1 Discovery and Design

Phase 2 Rehearsal, Build and Test

Phase 3 Operational Readiness, Scotland's 2021 Census and Decommissioning;

"Contract Year" means: (a) a period of 12 months commencing on the Commencement Date; or (b) thereafter a period of 12 months commencing on each anniversary of the Commencement Date; provided that the final Contract Year shall end on the expiry or termination of the Term.

"Contracting Authority" has the meaning given in regulation 2 of the Public Contracts (Scotland) Regulations 2015.

"Control" means 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.

“**Costs**” the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Service Provider in providing the Services:

- (a) the cost to the Service Provider, calculated per Service Day, of engaging the Service Provider Representatives, including:
 - (i) base salary paid to the Service Provider Representatives;
 - (ii) employer's national insurance contributions;
 - (iii) pension contributions;
 - (iv) car allowances;
 - (v) any other contractual employment benefits;
 - (vi) staff training;
 - (vii) work place accommodation;
 - (viii) work place IT equipment and tools reasonably necessary to perform the Services (but not including items included within limb (b) below); and
 - (ix) reasonable recruitment costs, as agreed with the Authority;
 - (b) operational costs which are not included within (a) above, to the extent that such costs are necessary and properly incurred by the Service Provider in the delivery of the Services;
 - (c) Forecast Contingency Costs;
 - (d) expenses incurred in accordance with the Pricing Schedule 3 (*Pricing and Financial*);
- but excluding:
- (i) Overhead;
 - (ii) financing or similar costs;
 - (iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term;
 - (iv) taxation;
 - (v) fines and penalties;
 - (vi) non-cash items (including depreciation, amortisation, impairments and movements in provisions).

“**CPP Milestone**” means a contract performance point as set out in the Implementation Plan, being the Milestone at which the Service Provider has demonstrated that the Service Provider's Solution or relevant Service is working satisfactorily in its operating environment in accordance with Schedule 4 (*Management Arrangements, Implementation Plan, Key Individuals and Approved Subcontractors*).

“**Data**” means

- (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:
- (i) which are supplied to the Service Provider by or on behalf of the Authority; and/or
 - (ii) which the Service Provider is required to generate, process, store or transmit pursuant to this Contract,

and includes Authority Data.

"Data Controller" has the meaning given in the Data Protection Laws.

"Data Controller – Processing Agreement" means the Data Processing Agreement that the Service Provider is to enter with any relevant Customers in order to ensure that all relevant parties comply with the data protection related terms of this Contract, the DPA and the principles of Article 17 of EU Directive 95/46/EC.

"Data Processor" has the meaning given in the Data Protection Laws.

"Data Protection Laws" means any law, statute, subordinate legislation regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 1998 or Data Protection Act 2017 (as applicable) and the GDPR.

"Data Subject" has the meaning given in section 1(1) of the DPA.

"Deductions" means all Service Credits, liquidated damages or any other deduction which is paid or payable to the Authority under this Contract.

"Default" means any breach of the obligations of a Party (including material breach and wilful default) or any negligent act, omission or statement of a Party in connection with or in relation to this Contract.

"Delay" means

- (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
- (c) the Service Provider commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default); or
- (d) any Material Service Level Failure.

"Delay Payment Rate" has the meaning given in Schedule 3 (*Pricing and Financial*) Paragraph 1.1(a) of Section C

"Deliverable" means an item, feature or service associated with the provision of the Services or a change in the provision of the Services which is required to be delivered by the Service Provider at a Milestone Date or at any other stage during the performance of this Contract.

"Detailed Implementation Plan" means the plan developed and revised from time to time in accordance with paragraph 4 of Schedule 4 (*Management Arrangements, Implementation Plan, Key individuals and Subcontractors*).

"Disaster" means the occurrence of one or more events which, either separately or cumulatively, mean, in the opinion of the Authority, that the Services, or a material part of the Services will not be available and significant effort is required to restore the Services.

"Disclosing Party" has the meaning set out in clause 16.1.1. (*Confidential Information*).

“Disaster Recovery Plan” has the meaning given in paragraph 1.2(a)(iii) of Schedule 6 (*Testing Procedures & Business Continuity and Disaster Recovery*).

“Disaster Recovery Services” means the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster.

“Disaster Recovery System” means the system used by the Service for the purpose of delivering the Disaster Recovery Services.

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

“DPA” means the Data Protection Act 1998 and any other applicable Laws relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or a relevant Government Body in relation to such Laws.

“Due Diligence Information” means any information supplied to the Service Provider by or on behalf of the Authority prior to the Commencement Date.

“Emergency Exit” means any termination of this Contract which is a:

(a) termination of the whole or part of this Contract in accordance with clause 66 (*Termination Rights*), or clause 67 (*Termination on Insolvency or Change of Control*);

(b) wrongful termination or repudiation of this Contract by either Party.

“Environmental Information Regulations” means the Environmental Information (Scotland) Regulations 2004 (and any subordinate regulations made under them from time to time or any superseding or amending regulations) together with any guidance and/or codes or practice issued by the Information Commissioner, the Scottish Information Commissioner and/or any relevant government department in relation to such regulations.

“Escrowed Material” has the meaning given in clause 41.1 (Escrow).

“ESPD” means the European Single Procurement Document completed by the Service Provider and sent to the Authority on 2 May 2017.

“Equipment” means equipment, plant, tackle, materials and other items supplied and used by the Service Provider's Representatives in the performance of the Service Provider's obligations under this Contract.

“Exit Information” has the meaning given in paragraph 2.1 of Schedule 10 (*Exit Management*).

“Exit Management” means the obligations and rights of the Parties to ensure a smooth transition of the Services (whether in whole or in part) from the Service Provider to any Replacement Service Provider as set out in clause 69 (*Exit Management*) and Schedule 10 (*Exit Management*).

“Exit Management Date” means each of the following:

- (a) the date of a Termination Notice; and
- (b) if no Termination Notice has been served in relation to this Contract, the expiry of the later of the Initial Term, or any Extension Period.

“Exit Manager” means the person appointed by each Party pursuant to paragraph 1.2 of Schedule 10 (*Exit Management*) for managing the Parties' respective obligations in respect of Exit Management.

“Exit Management Service Charges” means the charges to be paid in accordance with the Pricing Schedule in respect of the supply of the Exit Management Services.

“Exit Management Services” the services and activities to be performed by the Service Provider: pursuant to (i) Schedule 10 (*Exit Management*); and (ii) the Specification contained in Schedules 2 (*The Services (Specification and Service Provider Solution)*); and any other services required pursuant to the Termination Assistance Notice.

“Exit Plan” means the exit plan to be developed and updated by the Service Provider and approved by the Authority in accordance with paragraph 3 of Schedule 10 (*Exit Management*).

“Extension Period” and **“Extension Periods”** have the meanings set out in clause 5.2 (*Period*).

“Final Reconciliation Report” means the final reconciliation report to be provided by the Service Provider to the Authority pursuant to paragraph 1 of Part B of Schedule 3 (*Financial Reports and Model*).

“Financial Model” the latest Annual Contract Report or the latest Contract Amendment Report, whichever has been most recently approved by the Authority in accordance with Schedule 3 (*Pricing and Financial*) Paragraph 2 of Part B;

“Financial Reports” the reports listed in the table in Schedule 3 (*Pricing and Financial*) Paragraph 1.1 of Part B

“Financial Representative” means a reasonably skilled and experienced member of the Service Provider's staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data and Financial Reports.

Financial Transparency Objectives” has the meaning given in Schedule 3 (*Pricing and Financial*) Paragraph 1 of Part A;

“FOISA” means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under this Act from time to time or any superseding or amending enactments or regulations, together with any guidance and/or codes of practice issued by the Information Commissioner, the Scottish Information Commissioner and/or any relevant government department in relation to such legislation.

“Forecast Contingency Costs” the costs which the Service Provider forecasts may be incurred in relation to the risks and contingencies that are identified in their Pricing Schedule at Annex 4 of Schedule 3 (*Pricing and Financial*).

“Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including industrial action, fire, flood, violent storm, pestilence, explosion, malicious damage, armed conflict, acts of terrorism, nuclear, biological or chemical warfare, or any other disaster, natural or man-made.

“GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

“General Change in Law” means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Service Provider) or which affects or relates to a Comparable Supply.

“Good Commercial Practice” means **Good Industry Practice**

“Good Industry Practice” means standards, practices, methods and procedures conforming to legal and regulatory requirements and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking as the Service Provider under the same or similar circumstances.

“Government Body” means a body listed in one of the following sub-categories of the Scottish Government's National Public Bodies Directory, as published and amended from time to time:

- (a) Scottish Government Department;
- (b) Non-Departmental Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department;
- (d) Other government funded organisation;
- (e) Any Contracting Authority; or
- (d) Executive Agency.

“Guaranteed Maximum Price” in relation to a Milestone, is the Target Cost plus 10% of the Target Cost for the relevant Milestone;

“Impact Analysis Report” means a report prepared by the Service Provider considering the impact of a Mandatory Change on the Services which shall contain the information described in the Change Control Procedure.

“Impact Assessment” means an assessment of a Change Request substantially in the form of Appendix 2 of Schedule 11 (*Change Control Procedure*).

“Implementation Period” is the time from the Commencement Date to the Operational Services Commencement Date.

“Implementation Plan” means the Outline Implementation Plan and (if and when approved by the Authority pursuant to paragraph 4 of Schedule 4 (*Management Arrangements, Implementation Plan, Key individuals and Subcontractors*)) the Detailed Implementation Plan as updated in accordance with Paragraph 5 of Schedule 4 (*Management Arrangements, Implementation Plan, Key Individuals and Subcontractors*) from time to time.

“Implementation Service Charges” means the charges to be paid in accordance with the Pricing Schedule 3 (*Pricing and Financial*) in respect of the supply of the Implementation Services.

“Implementation Services” means the implementation services described as such in Schedule 2 (*The Services (Specification and Service Provider Solution)*).

“Implementation Services Commencement Date” means the date on which the Service Provider is to commence provision of the first of the Implementation Services as set out in the Implementation Plan.

“Incident” means any event which is not part of the standard operation of the Services and which causes, or may cause an interruption to or reduction in the quality of the Services.

"Incoming Employees" means individuals whose employment transfers to the Service Provider on the commencement of the provision of the Services by operation of TUPE.

"Incurred Costs" in relation to a Milestone, the sum of:

(a) the fixed day costs set out in Table 3 of Annex 1 multiplied by the number of Personnel Days that have been expended by the Service Provider Personnel in Achieving the relevant Milestone; and

(b) any amount that would fall within limbs (b) or (c) of the definition of "Costs" (but subject to exceptions (i) to (vii) in that definition), to the extent that such amount has been incurred in Achieving the relevant Milestone;

"Indemnified Person" means the Authority and each and every person to whom the Authority (or any direct or indirect sub licensee of the Authority) sub licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Contract.

"Indexation" and "Index" the adjustment of an amount or sum in accordance with Schedule 3 (*Pricing and Financial*) Paragraph 4 of Section C;

"Initial Term" the period of four (4) years from the Operational Services Commencement Date.

"Intellectual Property Rights" means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

"IPRs Claim" means any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Authority Software by or on behalf of the Service Provider, in either case in combination with any item not supplied or recommended by the Service Provider pursuant to this Contract or for a purpose not reasonably to be inferred from the Specification or the provisions of this Contract.

"ITT" means the Authority's invitation to tender dated 18 July 2017.

"Judicial Order" means an ineffectiveness order or an order shortening the duration of the contract made in relation to this Contract under Chapter 6 of the Public Contracts (Scotland) Regulations 2015.

Key Individuals means the Service Provider Representatives identified as being key individuals for the provision of the Services as set out in Schedule 4 (*Management Arrangement, Implementation Plan, Key Individuals and Subcontractors*).

"Key Sub-contract" means each Sub-contract with a Key Sub-contractor.

"Key Sub-contractor" means any Sub-contractor:

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

"Law" means 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 Service Provider is bound to comply.

“Losses” means 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, delict, tort (including negligence), breach of statutory duty or otherwise.

“Malicious Software” means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.

“Management Arrangements” means the arrangements for the strategic management of the relationship between the Parties, including arrangements for monitoring of the Service Provider's compliance with the Specification, the Service Levels and the terms of this Contract, set out in Schedule 4 (*Management Arrangements, Implementation Plan, Key individuals and Subcontractors*).

“Material Change” a Change which materially changes the profile of the charges;

“Material Service Level Failure” has the meaning given in Annex 2 of Schedule 5 (*Service Levels and Performance Monitoring*).

“Material Test Issue” means a Test Issue of Severity Level 1 or Severity Level 2.

“Milestone” means an event or task described in the Implementation Plan which, if applicable, must be completed by the relevant Milestone Date, including a milestones in respect of Authority to Proceed (ATP) and any Contract Performance Point (CPP).

“Milestone Achievement Certificate” means the certificate to be granted by the Authority when the Service Provider has Achieved a Milestone, which shall be in substantially the same form as that set out in Annex 3 of Schedule 6 (*Testing Procedures & Business Continuity and Disaster Recovery*).

“Milestone Date” means the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved.

“Milestone Group” is the group of Milestones in the Contract Phase;

“Milestone Payment” a payment to be made following the issue of a Milestone Achievement Certificate.

“Named Individuals” means the named individuals within the Authority that are tasked with reporting Service delivery issues, including Incidents to the Service Provider.

“Non-conformance Report” means a report including detail of the reasons why any Test has failed or of any non-conformities in respect of any Milestone.

“Non-trivial Customer Base” means 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.

“Object Code” means software and/or data in machine-readable, compiled object code form.

“Open Book Data” means complete and accurate financial and nonfinancial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to:

(a) the Service Provider's Costs broken down against each Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;

(b) operating expenditure relating to the provision of the Services including an analysis showing:

(i) the unit costs and quantity of consumables and bought-in services;

(ii) manpower resources broken down into the number and grade/role of all Service Provider Representatives (free of any contingency) together with a list of agreed rates against each manpower grade;

(iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Service Provider's Profit Margin; and

(c) Overheads;

(d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;

(e) the Service Provider profit achieved over the Term and on an annual basis;

(f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Service Provider;

(g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and

(h) the actual Costs profile for each Service Period.

"Open Source Software" means computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other Intellectual Property Rights in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge.

"Operational Change" means any change in the Service Provider's operational procedures which in all respects, when implemented:

- (a) will not affect the Charges or the Service Provider's costs of performing the Services and will not result in any other costs to the Authority; and
- (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; and
- (c) will not adversely affect the interfaces or interoperability of the Services with any of the Authority's IT infrastructure; and/or
- (d) will not require a change to this Contract.

"Operational Service Charges" means the charges to be paid in accordance with the Pricing Schedule 3 (*Pricing and Financial*) in respect of the supply of the Operational Services.

"Operational Service Commencement Date" means in relation to an Operational Service, the later of:

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

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

“Operational Services” means the operational services described as such in Schedule 2 (*Specification and Service Provider Solution*).

“Ordinary Exit” means any termination of this Contract which occurs pursuant to clause 68 (*Break*), or as a result of the expiry of the Initial Term, or any Extension Period.

“Outgoing Employees” means individuals whose employment transfers from the Service Provider on the ceasing of the provision of the Services by the Service Provider by operation of TUPE.

“Outline Implementation Plan” means the outline plan referred to at paragraph 3 of Schedule 4 (*Management Arrangements, Implementation Plan, Key individuals and subcontractors*).

“Overhead” means those amounts which are intended to recover a proportion of the Service Provider's indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Service Provider Representatives and accordingly included within limb (a) of the definition of “Costs” or the day cost set out in Schedule 3 (*Pricing and Financial*) Table 3 of Annex 1;

“Party” means either the Authority or the Service Provider.

“PECR” means the Privacy and Electronic Communications (EC Directive) Regulations 2003 as amended by the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011 (PECR) and any other applicable Laws relating to direct marketing, including where applicable the guidance and codes of practice issued by the Information Commissioner or a relevant Government Body in relation to such Laws.

“Personal Data” has the meaning given in Data Protection Laws.

“Personnel Day” 7.5 Personnel Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;

“Personnel Hours” the hours spent by the Service Provider Personnel properly working on the Services including time spent travelling (other than to and from the Service Provider's offices, or to and from the Sites) but excluding lunch breaks;

“Pricing Schedule” means the details of the pricing of the Services, including provision for Service Credits, set out in Schedule 3 (*Pricing & Financial*).

“Processing” has the meaning given in the Data Protection Laws and cognate expressions shall be construed accordingly

“Project Specific IPRs” means:

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

but shall not include the Service Provider Background IPRs.

"Receiving Party" for the purposes of Schedule 11 (*Change Control Procedure*) means the Party which receives a proposed Contract Change.

"Registers" means the register and configuration database referred to in paragraphs 1.1(a) and 1.1(b) of Schedule 10 (*Exit Management*).

"Related Service Provider" means any person who provides services to the Authority in relation to this Contract from time to time which persons include as at the Commencement Date.

"Relevant IPRs" means IPRs used to provide the Services or as otherwise provided and/or licensed by the Service Provider (or to which the Service Provider has provided access) to the Authority, or other third party in the fulfilment of the Service Provider's obligations under this Contract including IPRs in the Specially Written Software, the Service Provider Non COTS Software, and the Third Party Non COTS Software but excluding any IPRs in the Purchase Software, the Authority Background IPRs, the Service Provider COTS Software, and/or the Third Party COTS Software.

"Relevant Requirements" means 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 Transfer" has the meaning given in regulation 2(1) of TUPE.

"Replacement Services" means any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or partial termination of this Contract, whether those services are provided by the Authority internally and/or by any third party.

"Replacement Service Provider" means 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).

"Replacement Sub-contractor" means any third party with whom:

- (a) the Replacement Service Provider 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.

"Request for Information" means a request for information within the meaning of section 8 of FOISA or the Environmental Information Regulations and any attempted or apparent such request.

"Requesting Party" for the purposes of Schedule 11 (*Change Control Procedure*) the party which requests a Contract Change.

"Schedule(s)" means the schedules annexed to, and forming part of, this Contract.

"Security Plan" means the security management system, plan and processes to be developed by the Service Provider (including areas such as policy, staff management, supply chain management, asset management, technical controls and software life cycle management to ISO 27001 or equivalent) in accordance with Paragraph 3 of Schedule 12 (*Security Management*) as updated from time to time in accordance with this Contract.

"Security Plan" means the information security management system and processes developed by the Service Provider;

"Security Policy Framework" means the Security Policy Framework published by the Cabinet Office as updated from time to time including any details notified by the Authority to the Service Provider.

"Security Tests" means tests carried out to validate the Security Plan and security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security including:

- Formal IT Health Checks accordance with the CHECK Scheme,
- regular and ad-hoc Security Vulnerability Assessment,
- the "Red Team" test following the Census Rehearsal.

"Services" means any and all of the services (including the Implementation Services, the Operational Services, the Exit Management Services, and the Future Services (if applicable)) to be provided by the Service Provider under this Contract including those set out in Schedule 2 (*The Services (Specification and Service Provider Solution)*).

"Service Credits" means the service credits payable to the Authority by the Service Provider in accordance with the Pricing Schedule in the event that the Service Levels are not met in accordance with Schedule 5 (*Service Levels and Performance Monitoring*).

"Service Day" means a day other than a Saturday, Sunday, or the 25-Dec or 26-Dec or 1-Jan or 2-Jan (or the equivalent weekday if these days fall on a weekend).

"Service Hour" means an hour between 0800 hours and 1800 hours on a Service Day.

"Service Infrastructure" means the mechanisms used to deliver the Services (including all software, hardware, data centres, etc.).

"Service Levels" means the service levels and key performance indicators outlined in Schedule 5 (*Service Levels and Performance Monitoring*).

"Service Period" means a calendar month, save that:

- (a) the first service period shall begin on the first Operational Service Commencement Date and shall expire at the end of the calendar month in which the first Operational Service Commencement 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 Provider" means CACI Limited which is a company registered in the United Kingdom under company number 1649776 and whose registered office is at CACI House, Kensington Village, Avonmore Road, London, W14 8TS

"Service Provider's Authorised Representative" means the individual within the Service Provider's company with the appropriate level of authority.

"Service Provider Background IPRs" means

- (a) Intellectual Property Rights owned by the Service Provider before the Commencement Date, for example those subsisting in the Service Provider's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Service Provider's Know-How or generic business methodologies; and/or
- (b) Intellectual Property Rights created by the Service Provider independently of this Contract,

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

"Service Provider's Change Manager" means the person appointed to that position by the Service Provider from time to time and notified in writing to the Authority or, if no person is notified, the Service Provider's Account Manager.

“Service Provider’s Account Manager” means the person appointed to that position by the Service Provider from time to time and notified in writing to the Authority.

Service Provider COTS Software means Service Provider Software (including open source software) that:

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

“Service Provider Non COTS Software” means Service Provider Software that is not Supplier COTS Software.

“Service Provider Non-Performance” has the meaning set out in clause 28.1 (*Authority Cause*).

“Service Provider’s Provisional Personnel List” means a list prepared and updated by the Service Provider of all personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Service Provider.

“Service Provider Representative” means all persons engaged by the Service Provider in the performance of its obligations under this Contract including:

- (a) its employees and workers (including persons employed by a third party but working for and under the control of the Service Provider);
- (b) its agents, service providers and carriers; and
- (c) any Sub-contractors of the Service Provider including employees, workers, agents, service providers and carriers of the same (whether approved under clause 44 (*Sub-contracting*) or otherwise).

“Service Provider Sensitive Information” means any information provided by the Service Provider to the Authority (disregarding any protective marking or assertion of confidentiality) which is specified as Service Provider Sensitive Information in Schedule 7 (*Service Provider Sensitive Information*) and has not lost its sensitivity according to the justifications and durations set out in that Schedule .

“Service Provider Software” means software which is proprietary to the Service Provider (or an Affiliate of the Supplier) and which is or will be used by the Service Provider for the purposes of providing the Services.

“Service Provider Solution” means the Service Provider’s solution for the Services set out in Schedule 2 (*The Services (Specification and Service Provider Solution)*) Section 3 including any Annexes of that Schedule.

“Service Provider’s Final Personnel List” means a list provided by the Service Provider of all personnel who will transfer by operation of TUPE.

“Service Provider’s System” means the information and communications technology system used by the Service Provider in implementing and performing the Services including the Software, the Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority’s System).

“Service Transfer” means any transfer of the Services (or any part of the Services), for whatever reason, from the Service Provider or any Sub-contractor to a Replacement Service Provider.

“Severity Level” means the level of severity of a Test Issue, the criteria for which are described in Annex 1 of Schedule 6 (Testing Procedures & Business Continuity and Disaster Recovery).

“Software” means Specially Written Software, Service Provider Software and Third Party Software.

“Source Code” means 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” means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Service Provider (or by a Sub-contractor or other third party on behalf of the Service Provider) specifically for the purposes of this Contract.

“Specification” means the Statement of Requirements specification set out in Schedule 2 (*The Services (Specification & Service Provider's Solution)*) Section 1 and Section 2.

“Specific Change in Law” a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply.

“Staffing Information” means in relation to all Outgoing Employees, such information as the Authority may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other “employee liability information” as such term is defined in regulation 11 of TUPE.

“Sub-contract” means any contract or agreement (or proposed contract or agreement) between the Service Provider (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Service Provider (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” means any third party with whom:

- (a) the Service Provider 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.

“Supporting Documentation” sufficient information in writing to enable the Authority reasonably to assess whether the Charges, and other sums due from the Authority detailed in the information are properly payable, including copies of any applicable Milestone Achievement Certificates or receipts;

“Target Cost” has the meaning given in Schedule 3 (*Pricing and Financial*) Paragraph 3.1 of Part A;

“Tender” means the tender submitted by the Service Provider in response to the ITT.

“Term” means the period commencing on the Commencement Date and ending on the expiry of the Initial Term, or any Extension Period, or on earlier termination of this Contract.

“Termination Assistance Notice” has the meaning given in paragraph 4.1 of Schedule 10 (*Exit Management*).

“Termination Assistance Period” means in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Service Provider is required to provide the Termination Services as such period may be extended pursuant to paragraph 4.2 of Schedule 10 (*Exit Management*).

“Termination Notice” a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract (in whole or in part) on a specified date and setting out the grounds for termination.

“Test Certificate” means a certificate materially in the form of the document contained in Annex 2 of Schedule 6 (*Testing Procedures & Business Continuity and Disaster Recovery*) Section A issued by the Authority when a Deliverable has satisfied its relevant Test Success Criteria.

“Test Issue” means any variance or non-conformity of a Deliverable from its requirements (such requirements being set out in the relevant Test Success Criteria).

“Test Issue Management Log” means a log for the recording of Test Issues as described further in paragraph 9.2 of Schedule 6 (*Testing Procedures & Business Continuity and Disaster Recovery*).

“Test Plan” means a plan:

- (a) for the Testing of Deliverables; and
- (b) setting out other agreed criteria related to the achievement of Milestones,

as described further in paragraph 5 of Schedule 6 (*Testing Procedures & Business Continuity and Disaster Recovery*).

“Test Reports” means the reports to be produced by the Service Provider setting out the results of Tests.

“Test Specification” means the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in paragraph 7 of Schedule 6 (*Testing Procedures & Business Continuity and Disaster Recovery*) Section A.

“Test Strategy” means a strategy for the conduct of Testing as described further in paragraph 4 of Schedule 6 (*Testing Procedure & Business Continuity and Disaster Recovery*) Section A.

“Testing Procedures” means the applicable testing procedures and Test Success Criteria set out in Schedule 6 (*Testing Procedure & Business Continuity and Disaster Recovery*) Section A.

“Tests” and **“Testing”** means any tests required to be carried out under this Contract, as further described in Schedule 6 (*Testing Procedure & Business Continuity and Disaster Recovery*) Section A and **“Tested”** shall be construed accordingly.

“Test Success Criteria” in relation to a Test, the test success criteria for that Test as referred to in paragraph 6 of Schedule 6 (*Testing Procedure & Business Continuity and Disaster Recovery*) Section A.

“Test Witness” means any person appointed by the Authority pursuant to paragraph 10.1 of Schedule 6 (*Testing Procedure & Business Continuity and Disaster Recovery*) Section A.

“Third Party COTS Software” means Third Party Software (including open source software) that:

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

“Third Party IPRs” means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software.

“Third Party Non COTS Software” means Third Party Software that is not Third Party COTS Software.

“Third Party Software” means software which is proprietary to any third party (other than an Affiliate of the Service Provider) or any Open Source Software which in any case is, will be or is proposed to be used by the Service Provider for the purposes of providing the Services[, including the software specified as such in Schedule 13 (Software).

“Transferable Contracts” means the Sub-contracts, licences for Service Provider's Software, licences for Third Party Software or other agreements which are necessary to enable any Replacement Service Provider to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation.

“Transferring Contracts” has the meaning given in paragraph 5.2 of Schedule 10 (*Exit Management*).

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

“Working Day” means any day other than a Saturday, Sunday or public holiday in Scotland.

“Working Hour” means an hour between 0900 hours and 1700 hours on any Working Day.

Signature

Signature