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| **SHORT FORM**  **SERVICES AGREEMENT** |
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|  |
| **THE OFFICE OF RAIL AND ROAD** (1)  and |
| [***SUPPLIER***] (2) |
|  |
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**CONTRACT DETAILS**

**DATE:**

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|  |  | **ORR Guidance Notes** |
| **Contract No.** | [CONTRACT NUMBER] | Insert contract no. |
| **ORR** | Office of Rail and Road, whose principal place of business is at 25 Cabot Square, London, E14 4QZ: |  |
| **ORR’s email address:** | [EMAIL ADDRESS FOR NOTICES] | *This should be an email inbox that is regularly monitored and is accessible by multiple individuals.* |
| **Supplier:** | [COMPANY NAME] (No. [NUMBER]) whose registered office is at [INSERT REGISTERED OFFICE ADDRESS] | *It is important that the correct company name and number is used.*  *Please ensure that, if contracting with a company that is part of a* *group of companies, the* *agreement is entered into with the correct party.*  *The company name and company registration number can be checked on* *Companies House at* [*https://beta.companieshouse.gov.uk/*](https://beta.companieshouse.gov.uk/) |
| **Supplier’s email address:** | [EMAIL ADDRESS FOR NOTICES] | *This should be an email inbox that is regularly monitored and is accessible by multiple individuals.* |
| **Supplier's VAT number:** | [NUMBER] | *This should be confirmed by the Supplier.* |
| **Commencement Date** | The date the Agreement is entered into by the parties. | *The* *Commencement Date is the date on which the* *agreement will come into force.* |
| **Services:** | [DESCRIPTION]  As set out in detail in Schedule 1. | *Insert an overview of the services to be provided and include a detailed description and specification of Services in Schedule 1 .*  *Schedule 1 should include a description of* ***when*** *you want the Services (including particular deliverables) to be provided and where possible, insert specific dates.*  *Include a description of any* ***service standards*** *or KPIs.*  *The Supplier should help complete this section.* |
| **Deliverables:** | [DESCRIPTION]  As set out in detail in Schedule 1. | *Set out if you require any deliverables to be provided in a particular* ***format***, and include a detailed description of the deliverables in Schedule 1. |
| **Charges:** | [SUMS]  **OR**  [The charges for the Services set out in the Supplier's published price list in force at the date this Agreement is signed by both parties.] | *Insert details of the agreed fees or charges for the* *Services.* |
| **Expiry Date:** | [[**DATE**] **OR** [the [**first**] anniversary of the Commencement Date] |  |
| **Supplier’s Liability Cap:** | The greater of: £500,000 or 150% of the Charges paid or payable to the Supplier under this Agreement. |  |
| **Data Protection Liability Cap:** | £250,000 per claim. |  |
| **ORR’s Liability Cap:** | £500,000 in aggregate. |  |
| **Special terms:** | [In the Conditions:  [(a) Clause [**NUMBER**] deleted: The entire text of clause [**NUMBER**] is deleted and replaced with the words "Not used".]  [(b) Clause [**NUMBER**] added: This clause is inserted into the Conditions: [**NEW CLAUSE**].]  [c) Clause [**NUMBER**] amended: This clause is amended to read as follows: [**AMENDED CLAUSE IN FULL**].]] | This document envisages that the Conditions will remain unchanged. Any amendments can be set out in this section using the optional text as appropriate for when a clause is deleted, added or amended.  If there are no special terms then delete this row of the table and the reference to "Special terms". |
| **Schedules:** | Schedule 1: Service Details  Schedule 2: Data Protection |  |

1. This Agreement is made up of the following:
   * 1. The Contract Details.
     2. The Conditions.
     3. The Schedule(s) specified in the Contract Details.
2. If there is any conflict or ambiguity between the terms of the documents listed in paragraph 1, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

This Agreement has been entered into on the date stated at the beginning of it.

|  |  |
| --- | --- |
| Signed by:  [NAME OF SIGNATORY]  for and on behalf of:  **THE OFFICE OF RAIL AND ROAD** |  |
| Signed by:  [NAME OF DIRECTOR]  for and on behalf of:  [NAME OF SUPPLIER] | ...................................  Director |

**Agreed terms**

1. Interpretation

The following definitions and rules of interpretation apply in this Agreement:

* 1. Definitions.

**Agreement**: means this agreement between the ORR and the Supplier for the supply of Services, and any Schedule(s) attached (as may be varied from time to time in accordance with clause 15.4).

**Applicable Laws**: all applicable laws, statutes, regulations from time to time in force.

**Business Day**: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Business Hours**: the period from 9.00 am to 5.00 pm on any Business Day.

**Charges**: the sums payable for the Services, as set out in the Contract Details.

**Commencement Date:** shall have the meaning given to it in the Contract Details.

**Control**: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be construed accordingly.

**Data Protection Liability Cap**: has the meaning given to it in the Contract Details.

**Deliverables**: any outputs of the Services and any other documents, products and materials provided by the Supplier to the ORR as specified in the Contract Details and Schedule 1, and any other documents, products and materials provided by the Supplier to the ORR in relation to the Services.

**Expiry Date**: has the meaning given to it in the Contract Details.

**Intellectual Property Rights**: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Mandatory Policies**: the ORR's mandatory policies (available at <https://www.orr.gov.uk/about/procuring-goods-and-services>) as may be updated by the ORR from time to time.

**ORR Materials**: all documents, information, items and materials in any form (whether owned by the ORR or a third party), which are provided by the ORR to the Supplier in connection with the Services.

**ORR’s Liability Cap:** has the meaning given to it in the Contract Details.

**Services**: the services set out in Schedule 1, including services which are incidental or ancillary to such services.

**Supplier Background IPR**: means any and all Intellectual Property Rights owned or controlled by or licensed to the Supplier prior to the date of this Agreement and/or created independently from this Agreement.

**Supplier’s Liability Cap:** has the meaning given to it in the Contract Details.

* 1. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
  2. A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
  3. A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
  4. A reference to **writing** or **written** excludes fax but not email.
  5. Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1. Commencement and duration
   1. This Agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 13 (Termination), until the Expiry Date when it shall terminate automatically without notice.
   2. The Supplier shall provide the Services to the ORR in accordance with this Agreement from the Commencement Date.
2. Supplier's responsibilities
   1. The Supplier shall:
      1. provide the Services and the Deliverables in accordance with Schedule 1;
      2. ensure that the Services and Deliverables will conform in all respects with the descriptions set out in the Contract Details and Schedule 1, and that the Deliverables shall be fit for any purpose expressly or implicitly made known to the Supplier by the ORR;
      3. perform the Services with the highest level of care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
      4. only use personnel who are suitably skilled and experienced to perform the tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled;
      5. co-operate with the ORR in all matters relating to the Services, and comply with the ORR's instructions;
      6. ensure that it obtains, and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable it to comply with its obligations in the Agreement;
      7. provide all equipment, tools, vehicles and other items required to provide the Services;
      8. ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;
      9. comply with all health and safety rules and regulations and any other reasonable security requirements that apply at any of the ORR's premises from time to time and are notified to the Supplier. The ORR reserves the right to refuse any of the Supplier's personnel involved in the provision of the Services access to the ORR's premises, which shall only be given to the extent necessary for the performance of the Services;
      10. hold all ORR Materials in safe custody at its own risk and maintain the ORR Materials in good condition until returned to the ORR, and not dispose of or use the ORR Materials other than in accordance with the ORR's written instructions or authorisations;
      11. not do or omit to do anything which may cause the ORR to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business; and
      12. notify the ORR in writing immediately upon the occurrence of a change of Control of the Supplier.
   2. Time is of the essence in relation to any performance dates and/or Milestones for the Supplier.
3. ORR's obligations
   1. The ORR shall:
      1. co-operate with the Supplier in all matters relating to the Services;
      2. provide access to the ORR's premises and data and other facilities as may reasonably be requested by the Supplier and agreed with the ORR in writing in advance, for the purposes of providing the Services;
      3. inform the Supplier of all health and safety and security requirements that apply at the ORR's premises which the Supplier will require access to.
   2. A failure by the ORR to comply with the terms of this Agreement can only relieve the Supplier from complying with its obligations under this Agreement with effect from the date on which the Supplier notifies the ORR in writing and in reasonable detail of the ORR's failure and its effect or anticipated effect on the Services.
4. Charges and payment
   1. In consideration of the provision of the Services by the Supplier, the ORR shall pay the Charges.
   2. The Supplier shall invoice the ORR for the Charges at the end of each month for Services performed during that month.
   3. The ORR shall pay each undisputed invoice submitted to it by the Supplier within 30 days of receipt to a bank account nominated in writing by the Supplier.
   4. If the ORR receives an invoice which it reasonably believes includes a sum which is not valid and properly due:
      1. the ORR shall notify the Supplier in writing as soon as reasonably practicable;
      2. the ORR's failure to pay the disputed Charges shall not be deemed to be a breach of this Agreement;
      3. the ORR shall pay the balance of the invoice which is not in dispute by the due date for payment of the invoice;
      4. to the extent that the ORR is obliged, following resolution of the dispute, to pay an amount, then the Supplier may charge interest in accordance with clause 5.5 (Interest on latepayments) from the original due date until the date of payment;
      5. to the extent that the Supplier is obliged to refund an amount to the ORR, interest shall be added to that amount in accordance with clause 5.5 (Interest on late payments); and
      6. once the dispute has been resolved, where either party is required to make a balancing payment, it shall do so within 30 Business Days and, where the Supplier is required to issue a credit note, it shall do so within 30 Business Days.
   5. If the ORR fails to make a payment due to the Supplier under this Agreement by the due date, then, without limiting the Supplier's remedies under clause 13 (Termination), the ORR shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.5 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
   6. The ORR may, at any time set off any liability of the Supplier to the ORR against any liability of the ORR to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. If the liabilities to be set off are expressed in different currencies, the ORR may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the ORR of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.
5. AUDIT
   1. The Supplier shall allow the ORR (or its professional advisers) to access the Supplier’s premises, personnel, systems and relevant records to verify that the Charges and any other sums charged to the ORR under this Agreement are accurate.
   2. Subject to the Supplier’s confidentiality obligations, the Supplier shall provide the ORR (and its professional advisers) with all reasonable co operation, access and assistance in relation to each audit.
   3. The ORR shall provide at least 30 Business Days’ notice of its intention to conduct an audit and any audit shall be conducted during Business Hours.
6. Intellectual Property Rights
   1. In relation to the ORR Materials:
      1. the ORR and its licensors shall retain ownership of all Intellectual Property Rights in the ORR Materials; and
      2. the ORR grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the ORR Materials for the term of this Agreement for the purpose of providing the Services to the ORR.
   2. The Supplier and its licensors shall retain ownership of all Supplier Background IPR.
   3. In relation to the Deliverables:
      1. the Supplier assigns to the ORR, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the Deliverables;
      2. the Supplier shall obtain waivers of all moral rights in the Deliverables to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction; and
      3. the Supplier shall, promptly at the ORR's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the ORR may from time to time require for the purpose of securing for the ORR all right, title and interest in and to the Intellectual Property Rights assigned to the ORR in accordance with clause 7.3(a).
   4. The Supplier:
      1. warrants that the receipt, use and onward supply of the Services and the Deliverables (excluding the ORR Materials) by the ORR and its permitted sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
      2. shall indemnify the ORR in full against all liabilities, costs, expenses, damages and losses and all other reasonable professional costs and expenses) suffered or incurred by the ORR arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables (excluding the ORR Materials).
7. Insurance
   1. During the term of this Agreement and for a period of one year after the expiry or termination of this Agreement, the Supplier shall maintain in force, with a reputable insurance company:
      1. public liability insurance with a limit of at least £5,000,000 per claim;
      2. employer’s liability insurance with a limit of at least £5,000,000 for claims arising from a single event or series of related events in a single calendar year; and
      3. professional indemnity insurance with a limit of at least £1,000,000 for claims arising from a single event or series of related events in a single calendar year.
   2. The Supplier shall produce to the ORR on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each required insurance.
8. Compliance with laws and policies
   1. In performing its obligations under this Agreement, the Supplier shall comply with:
      1. the Applicable Laws; and
      2. the Mandatory Policies.
   2. The Supplier will inform the ORR as soon as it becomes aware of any changes in the Applicable Laws.
9. Data protection

The parties shall comply with their data protection obligations as set out in Schedule 2 (Data Protection).

1. Confidentiality
   1. Each party undertakes that it shall not at any time during this Agreement, and for a period of two years after termination or expiry of this Agreement, disclose to any person any confidential information concerning the business, affairs, customer, clients or suppliers or the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 11.2.
   2. Each party may disclose the other party's confidential information:
      1. to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
      2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
   3. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
2. Limitation of liability
   1. References to liability in this clause 12 (Limitation of liability) apply to every liability arising under or in connection with this Agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
   2. Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
   3. Nothing in this clause 12 shall limit the ORR's payment obligations under this Agreement.
   4. Nothing in this Agreement shall limit the Supplier's liability under clause 7.4(b) (IPR indemnity).
   5. Nothing in this Agreement limits any liability which cannot legally be limited, including liability for:
      1. death or personal injury caused by negligence;
      2. fraud or fraudulent misrepresentation; or
      3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) any other liability which cannot be limited or excluded by applicable law.
   6. Subject to clause 12.2 (no limitations in respect of deliberate default), clause 12.4 (liability under identified clauses) and clause 12.5 (liabilities which cannot legally be limited), the Supplier’s total liability to the ORR:
      1. for loss arising from the Supplier’s failure to comply with its data processing obligations under clause 10 (Data protection) shall not exceed the Data Protection Liability Cap; and
      2. for all other loss or damage shall not exceed the Supplier’s Liability Cap.
   7. Subject to clause 12.2 (no limitations in respect of deliberate default) and clause 12.5 (liabilities which cannot legally be limited), the ORR's total liability to the Supplier shall not exceed the ORR’s Liability Cap.
   8. Subject to clause 12.2 (no limitations in respect of deliberate default), clause 12.4 (liability under identified clauses) and clause 12.5 (liabilities which cannot legally be limited), clause 12.8(b) identifies the kinds of loss that are not excluded. Subject to that, clause 12.8(a) excludes specified types of loss.
      1. Types of loss wholly excluded:
         1. Loss of profits.
         2. Loss of sale or business.
         3. Loss of agreements or contracts.
         4. Loss of use or corruption of software, data or information.
         5. Loss of or damage to goodwill.
         6. Indirect or consequential loss.
      2. Types of loss and specific losses not excluded:
         1. Sums paid by the ORR to the Supplier pursuant to this Agreement, in respect of any Services not provided in accordance with this Agreement.
         2. Wasted expenditure.
         3. Additional costs of procuring and implementing replacements for, or alternatives to, Services not provided in accordance with this Agreement. These include consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials.
         4. Losses incurred by the ORR arising out of or in connection with any third party claim against the ORR which has been caused by the act or omission of the Supplier. For these purposes, third party claims shall include demands, fines, penalties, actions, investigations or proceedings, including those made or commenced by subcontractors, the Supplier's personnel, regulators and customers of the ORR.
3. Termination
   1. Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
      1. the other party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
      2. the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
      3. 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
      4. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) 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;
      5. the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
      6. a petition is filed, 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 (being a company) 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;
      7. an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
      8. the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
      9. a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
      10. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration 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 14 days;
      11. 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 in clause 13.1(d) to clause 13.1(j) (inclusive);
      12. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
      13. the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy.
   2. Without affecting any other right or remedy available to it, the ORR may terminate this Agreement:
      1. with immediate effect by giving written notice to the Supplier if:
         1. the Supplier commits a breach of: clause 9 (Compliance with laws and policies) or clause 10 (Data protection); or
         2. there is a change of control of the Supplier.
      2. for convenience by giving not less than one (1) month’s written notice to the Supplier.
4. Obligations on termination and survival
   1. On termination or expiry of this Agreement:
      1. the Supplier shall immediately deliver to the ORR all Deliverables whether or not then complete. If the Supplier fails to do so, then the ORR may enter the Supplier's premises and take possession of them. Until they have been delivered or returned, the Supplier shall be solely responsible for the safe keeping of all Deliverables and ORR Materials t in its possession and will not use them for any purpose not connected with this Agreement; and
      2. the Supplier shall, if so requested by the ORR, provide all assistance reasonably required by the ORR to facilitate the smooth transition of the Services to the ORR or any replacement supplier appointed by it.
      3. the following clauses shall continue in force: clause 1 (Interpretation), clause 6 (Audit), clause 7 (Intellectual Property Rights), clause 11 (Confidentiality), clause 12 (Limitation of liability), clause 14 (Consequences of termination and survival), clause 15.5 (Waiver), clause 15.7 (Severance), clause 15.9 (Conflict), clause 15.14 (Governing Law) and clause 15.15 (Jurisdiction).
   2. Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
5. general
   1. **Force majeure.** Neither party shall be in breach of this Agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 2 months, the party not affected may terminate the Contract by giving 7 days' written notice to the affected party.
   2. **Assignment.** The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of the ORR. The ORR may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights under this Agreement, provided that it gives prior written notice of such dealing to the Supplier.
   3. **Subcontracting.** The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of the ORR. If the ORR consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own
   4. **Variation.** No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
   5. **Waiver.** A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
   6. **Rights and remedies.** The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
   7. **Severance**. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Agreement is deemed deleted under clause 15.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
   8. **Entire agreement.** This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
   9. **Conflict.** If there is an inconsistency between any of the provisions of this Agreement and the provisions of the Schedule(s), the provisions of this Agreement shall prevail.
   10. **No partnership or agency.** Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
   11. **Third party rights.** This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. The rights of the parties to rescind or vary this Agreement are not subject to the consent of any other person.
   12. **Notices**
       1. Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:
          1. delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
          2. sent by email to the address specified in the Contract Details section of this Agreement.
       2. Any notice shall be deemed to have been received:
          1. if delivered by hand, at the time the notice is left at the proper address;
          2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
          3. if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 15.12(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
       3. This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
   13. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.
   14. **Governing Law.** This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
   15. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

This Agreement has been entered into on the date stated at the beginning of it.

1. – Services Details

* Services: [LIST SERVICES PROVIDED UNDER THIS AGREEMENT]
* Deliverables: [DELIVERABLES FOR SERVICES]

1. - Data Protection

***[Guidance note: this Schedule 2 includes controller-to-processor terms (where the supplier processes personal data on behalf of ORR). This is the most likely scenario in the context of IT services. We also set out below controller-to-controller terms (where the supplier is an independent data controller and also decides how the data will be processed. Please delete the version that you do not require.]***

[Data Processing Provisions ***[Guidance note: paras 1 – 3 includes data processing terms – please delete as appropriate if the relationship is controller-to-controller.]***

1. Interpretation

The following definitions and rules of interpretation apply in this Schedule 2 (Data Protection).

* 1. Definitions:

Applicable Data Protection Laws: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Information Commissioner or other relevant data protection or supervisory authority and applicable to a party.

ORR Personal Data: any personal data which the Supplier processes in connection with this Agreement in the capacity of a processor on behalf of ORR.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

* 1. For the purposes of this Schedule 2 (Data Protection), the terms **Commissioner, controller**, **data subject**, **personal data**, **personal data breach, processor** and **processing,** shall have the meaning given to them in the UK GDPR.

1. General compliance and roles
   1. Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This Schedule 2 is in addition to, and does not relieve, remove or replace a party's obligations or rights under Applicable Data Protection Laws.
   2. The parties have determined that, for the purposes of Applicable Data Protection Laws, the Supplier acts as a processor on behalf of ORR.
   3. Should the determination in paragraph 2.2 change, each party shall work together in good faith to make any changes that are necessary to this Schedule 2.
2. Data Processing Obligations
   1. In relation to the ORR Personal Data, Part 2 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.
   2. Without prejudice to the generality of paragraph 2.1, where the Supplier is processing ORR Personal Data as a processor on behalf of ORR, the Supplier shall:
      1. process that ORR Personal Data only on the documented instructions of ORR unless the Supplier is required by law to otherwise process that ORR Personal Data. Where the Supplier is relying on a legal requirement as the basis for processing ORR Processor Data, the Supplier shall promptly notify ORR of this before performing the processing required by law unless those laws prohibit the Supplier from so notifying ORR on important grounds of public interest. The Supplier shall immediately inform ORR if, in the opinion of the Supplier, the instructions of ORR infringe Applicable Data Protection Laws;
      2. implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of ORR Personal Data and against its accidental loss, damage or destruction, including but not limited to:
         1. the pseudonymisation and encryption of ORR Personal Data;
         2. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
         3. the ability to restore the availability and access to ORR Personal Data in a timely manner in the event of a physical or technical incident; and
         4. a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

In assessing the appropriate level of security, the Supplier shall take into account in particular of the risks that are presented by the processing, in particular from accidental or unlawful destruction, loss, alternation, unauthorised disclosure of, or access to ORR Personal Data transmitted, stored or otherwise processed.

* + 1. ensure, and procure, that any personnel engaged and authorised by the Supplier to process ORR Personal Data keep ORR Personal Data confidential;
    2. promptly assist ORR in responding to any request from a data subject and in ensuring compliance with ORR's obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with the Commissioner, supervisory authorities or other regulators;
    3. the Supplier shall promptly notify ORR if it receives any complaint, notice or communication (whether from the Commissioner, any data subject, supervisory authority or other third party) which relates to processing of ORR Personal Data;
    4. notify ORR without undue delay (and no later than 48 hours) after becoming aware of a personal data breach;
    5. at the written direction of ORR, delete or return to ORR all ORR Personal Data on termination or expiry of the Agreement, and certify to ORR in writing it has done so, unless the Supplier is required by law to continue to process that ORR Personal Data, in which case the Supplier shall promptly notify ORR, in writing, of what that applicable law is and shall only be permitted to process that ORR Personal Data for the specific purpose so-notified, and all other requirements set out in this Schedule 2 shall continue to apply to such ORR Personal Data notwithstanding the termination or expiry of this Agreement for as long as such ORR Personal Data is processed by the Supplier. For the purposes of this paragraph 3.2(g), the obligation to "delete" data includes the obligation to delete data from back-up systems as well as live systems; and
    6. maintain adequate records to demonstrate its compliance with this Schedule and make available such information as ORR may reasonably request. The Supplier shall provide ORR, on reasonable notice, with access to its premises, personnel and records as ORR may reasonably require in order to audit the Supplier’s compliance with Applicable Data Protection Laws and this Schedule 2 with respect to ORR Personal Data.
  1. The Supplier shall not, without the prior written consent of ORR (and in any event subject to the Supplier providing ORR with reasonable evidence that such activity is being undertaking in full compliance with Applicable Data Protection Laws):
     1. appoint or replace (or change the terms of the appointment of) any sub-processor in relation to ORR Personal Data or transfer any ORR Personal Data to the same; or
     2. carry out, via itself or via any other processor, any processing of ORR Personal Data, or transfer any ORR Personal Data, outside of the UK, including processing ORR Personal Data on equipment situated outside of the UK.
  2. Where ORR gives consent pursuant to paragraph 3.3(a), the Supplier shall ensure that each sub-processor enters into a written agreement undertaking to Supplier in equivalent terms to the undertakings given by Supplier to ORR under this Schedule. As between ORR and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any permitted sub-processor.]

[Controller-to-controller terms *[Guidance note: paras 1 – 2 includes controller-to-controller terms – please delete as appropriate if the relationship is controller-processor.]*

1. Interpretation
   1. Definitions:

Applicable Data Protection Laws: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Information Commissioner or other relevant data protection or supervisory authority and applicable to a party.

Shared Personal Data: any personal data which the parties share and process in connection with this Agreement in the capacity of independent controllers, as further described in paragraph 2.1.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

* 1. For the purposes of this Schedule 2 (Data Protection), the terms **Commissioner, controller**, **data subject**, **personal data**, **personal data breach, processor** and **processing,** shall have the meaning given to them in the UK GDPR.

1. Compliance with Applicable Data Protection Laws
   1. The parties acknowledge and agree that to enable each party to carry out its obligations under this Agreement, the parties will share [INSERT DESCRIPTION OF PERSONAL DATA SHARED] (“Shared Personal Data”) in connection with the delivery and receipt of the Services.
   2. Each party acknowledges and agrees that it is an independent controller in respect of the Shared Personal Data for the purposes of this Agreement.
   3. Each party agrees to comply, and to procure that its subcontractors comply, with:
      1. all Applicable Data Protection Laws in relation to the Shared Personal Data;
      2. any notification and registration requirements under Applicable Data Protection Laws; and
      3. to the extent applicable, duly observe all their obligations under the Applicable Data Protection Laws which arise in connection with this Agreement.
   4. Each party shall assist the other in complying with all requirements of the Applicable Data Protection Laws. In particular, each party shall:
      1. consult with the other party about any notices given to relevant data subjects in relation to the Shared Personal Data;
      2. promptly inform the other party about the receipt of any data subject access request to the extent it concerns the Shared Personal Data;
      3. provide the other party with reasonable assistance in complying with any data subject access request;
      4. assist the other party, at the cost of the other party, in responding to any request from a data subject to whom the Shared Personal Data relates, and in ensuring compliance with its obligations under the Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
      5. notify the other party without undue delay on becoming aware of any breach of the Applicable Data Protection Laws where such breach affects the Shared Personal Data of the other party;
      6. at the written direction of the other party, delete or return the Shared Personal Data of the other party on termination or expiry of this Agreement unless required to retain such data by applicable law;
      7. only use the Shared Personal Data as necessary for the purposes of performing its obligations under this Agreement; and
      8. not transfer any Shared Personal Data outside the UK or European Economic Area without the prior written consent of the other party.]
2. Liability *[Guidance note: this should be included whether or not controller-to-controller or controller-processor. Clause ref to be updated once relevant clauses have been deleted.]*
   1. The Supplier's liability for losses arising from breaches of this Schedule is as set out in clause 12.6.
3. Particulars of processing ***[Guidance note: complete this section with details on the processing of personal data on ORR’s behalf.]***
4. Scope of processing

[SCOPE OF THE PROCESSING]

1. Nature of processing

[DETAILS OF THE PROCESSING]

1. Duration of processing

[DETAILS OF THE DURATION OF THE PROCESSING ACTIVITY]

1. Types of personal data

[DETAILS OF PERSONAL DATA]

1. Categories of data subject

[DETAILS OF DATA SUBJECT]

1. Technical and organisational measures

[DETAILS OF TECHNICAL AND ORGANISATIONAL MEASURES]