



THE NATIONAL  
FOREST

DATED [ ]

## SERVICES AGREEMENT

National Forest Company

-and-

[SUPPLIER]

CONTRACT FOR SERVICES

[DEFINE SERVICES]

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This agreement is dated [DATE]

## Parties

- (1) **NATIONAL FOREST COMPANY** of Enterprise Glade, Bath Yard, Moira, Swadlincote, Derbyshire, DE12 6BA (**Customer**)
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Supplier**)

## BACKGROUND

- (A) The Supplier is in the business of providing [DESCRIBE SERVICES].
- (B) The Customer agrees to obtain and the Supplier agrees to provide such services on the terms set out in this agreement.

## Agreed terms

### 1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

#### 1.1 Definitions.

**Affiliate:** in relation to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party from time to time.

**Applicable Data Protection Laws:** means:

- a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.

**Applicable Laws:** all applicable laws, statutes, regulations and codes 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.

**Change Order:** has the meaning given in clause 6.1.

**Charges:** the sums payable for the Services, as set out in Schedule 2.

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

**Customer's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services including any such items specified in Schedule 1.

**Customer's Manager:** the individual identified as such in Schedule 3, being the person responsible for managing the Services on behalf of the Customer.

**Customer Materials:** all documents, information, items and materials in any form (whether owned by the Customer or a third party), which are provided by the Customer to the Supplier in connection with the Services, including the items provided pursuant to clause 4(d).

**Customer Personal Data:** any personal data which the Supplier processes in connection with this agreement, in the capacity of a processor on behalf of the Customer.

**Deliverables:** any outputs of the Services and any other documents, products and materials provided by the Supplier to the Customer as specified in Schedule 1 and any other documents, products and materials provided by the Supplier to the Customer in relation to the Services (excluding the Supplier's Equipment).

**EU GDPR:** means the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, 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.

**Key Personnel:** the Supplier's Manager and the individuals identified as key personnel in Schedule 3, or any replacement individuals appointed by the Supplier pursuant to clause 3.3(d) and clause 3.3(e).

**Mandatory Policies:** the business policies and codes listed in Schedule 4, as amended by notification to the Supplier from time to time.

**Milestones:** a date by which a part of the Services is to be completed, as set out in Schedule 1.

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

**Supplier's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Supplier, its agents, subcontractors or consultants to the Customer and used directly or indirectly in the supply of the Services, including any such items specified in Schedule 1.

**Supplier's Manager:** the individual identified in Schedule 3, or any replacement individual appointed by the Supplier pursuant to clause 3.3(d) and clause 3.3(e), being the person responsible for managing the Services on behalf of the Supplier.

**Supplier Personal Data:** any personal data which the Supplier processes in connection with this agreement, in the capacity of a controller.

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

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.9 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.11 A reference to **writing** or **written** includes email.
- 1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13 A reference to **this agreement** or to any other agreement or document is a reference to this agreement or such other agreement or document, in each case as varied from time to time.

- 1.14 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.15 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.

## **2. Commencement and duration**

- 2.1 This agreement shall commence on [DATE] and shall continue, unless terminated earlier in accordance with clause 15 (Termination), until [DATE] when it shall terminate automatically without notice.
- 2.2 The Supplier shall provide the Services to the Customer in accordance with this agreement from [DATE].

## **3. Supplier's responsibilities**

- 3.1 The Supplier shall:
- (a) provide the Services and the Deliverables in accordance with Schedule 1;
  - (b) ensure that the Services and Deliverables will conform in all respects with Schedule 1 and that the Deliverables shall be fit for any purpose expressly or implicitly made known to the Supplier by the Customer;
  - (c) 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;
  - (d) 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;
  - (e) co-operate with the Customer in all matters relating to the Services, and comply with the Customer's instructions;
  - (f) before the date on which the Services are to start, obtain and at all times, maintain during the term of this agreement, all necessary licences and consents and comply with all Applicable Laws in relation to:
    - (i) the Services; and
    - (ii) the installation and use of the Supplier's Equipment;
  - (g) observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises from time to time and that have been communicated to it under clause 4(f). The Customer reserves the right to refuse any of the Supplier's personnel involved in the provision of the Services access to the

Customer's premises, which shall only be given to the extent necessary for the performance of the Services;

- (h) hold all Customer Materials in safe custody at its own risk and maintain the Customer Materials in good condition until returned to the Customer, and not dispose of or use the Customer Materials other than in accordance with the Customer's written instructions or authorisations;
- (i) take good care of any of the Customer's Equipment provided by the Customer pursuant to clause 4(e);
- (j) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business;
- (k) notify the Customer in writing immediately upon the occurrence of a change of Control of the Supplier; and

3.2 Time is of the essence in relation to Milestones for the Supplier. If the Supplier fails to meet the relevant deadlines, then (without prejudice to the Customer's right to terminate this agreement and any other rights it may have), the Customer may:

- (a) refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- (b) purchase substitute services from elsewhere and reclaim from the Supplier any additional costs incurred as a result of procuring such services from a third party instead of the Supplier;
- (c) hold the Supplier accountable for any loss and additional costs incurred; and
- (d) have any sums previously paid by the Customer to the Supplier in respect of the affected Services refunded by the Supplier.

3.3 In relation to the Supplier's personnel, the Supplier shall:

- (a) use the Key Personnel in the provision of the Services and procure that the Key Personnel spend all of their working hours in the provision of the Services;
- (b) ensure that all personnel involved in the provision of the Services have suitable skills and experience to enable them to perform the tasks assigned to them, and that such personnel are in sufficient number to enable the Supplier to fulfil its obligations under this agreement;
- (c) ensure that the Supplier's Manager has authority to bind the Supplier on all matters relating to the Services (including by signing Change Orders);
- (d) promptly inform the Customer of the absence (or the anticipated absence) of any of the Key Personnel, and if so required by the Customer, provide a suitably qualified replacement for such individual; and



- (e) use its best endeavours not to make any changes to the Key Personnel throughout the term of this agreement and obtain the prior written approval of the Customer (such approval not to be unreasonably withheld or delayed) to any replacements for such individuals.

#### **4. Customer's obligations**

The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) ensure that the Customer's Manager has authority to bind the Customer on all matters relating to the Services (including by signing Change Orders);
- (c) provide access to the Customer's premises and data, and such office accommodation and other facilities as may reasonably be requested by the Supplier and agreed with the Customer in writing in advance, for the purposes of the Services;
- (d) provide to the Supplier all documents, information, items and materials required under Schedule 1;
- (e) provide the Customer's Equipment to the Supplier by the dates specified and in the manner prescribed in Schedule 1;
- (f) inform the Supplier of all health and safety and security requirements that apply at any of the Customer's premises which the Supplier will require access to.

#### **5. Default by the Customer**

A failure by the Customer 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 Customer in writing and in reasonable detail of the Customer's failure and its effect or anticipated effect on the Services.

#### **6. Change control**

- 6.1 Either party may propose changes to the scope or execution of the Services, but no proposed changes shall come into effect until a relevant Change Order has been signed by both parties. A **Change Order** shall be a document setting out the proposed changes and the effect those changes will have on:

- (a) the Services;
- (b) the Charges;
- (c) the timetable for the Services; and
- (d) any terms of this agreement.

- 6.2 If the Customer wishes to make a change to the Services:
- (a) it shall notify the Supplier, providing as much detail as is reasonably necessary to enable the Supplier to prepare the draft Change Order; and
  - (b) the Supplier shall, within 5 Business Days of receiving the Customer's request at clause 6.2(a), provide a draft Change Order to the Customer.
- 6.3 If the Supplier wishes to make a change to the Services, it shall provide a draft Change Order to the Customer.
- 6.4 If the Supplier submits a draft Change Order in order to comply with any applicable safety or regulatory requirements and such changes do not affect the nature, scope of, or charges for the Services, the Customer shall not unreasonably withhold or delay consent to it.
- 6.5 If the parties:
- (a) agree to a Change Order, they shall sign it and that Change Order shall amend this agreement; or
  - (b) are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with clause 30 (Multi-tiered dispute resolution procedure).

## **7. Charges and payment**

- 7.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the Charges.
- 7.2 Where the Charges are calculated on a time and materials basis:
- (a) the Supplier's daily fee rates for each individual person as set out in Schedule 2 are calculated on the basis on an eight-hour day, worked during Business Hours;
  - (b) the Supplier shall not be entitled to charge on a pro rata basis for part days worked by the Supplier's team during Business Hours, unless it has the Customer's prior written consent to do so;
  - (c) the Supplier shall ensure that every individual whom it engages on the Services completes time sheets to record time spent on the Services, and the Supplier shall indicate the time spent per individual in its invoices.
- 7.3 The Charges shall exclude the following costs which shall be payable by the Customer monthly in arrears, subject to submission of an appropriate invoice:
- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services provided always that the Supplier shall obtain the Customer's written approval before incurring any such expense which exceeds £[AMOUNT] in any month; and

- (b) the cost to the Supplier of any materials or services procured by the Supplier from third parties for the provision of the Services as such items and their cost are specified in Schedule 1 or approved by the Customer in advance from time to time.
- 7.4 The Supplier shall invoice the Customer for the Charges at the intervals specified, or on the achievement of the Milestones indicated in Schedule 1. If no intervals are specified, the Supplier shall invoice the Customer at the end of each month for Services performed during that month.
- 7.5 The Customer 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.
- 7.6 If the Customer receives an invoice which it reasonably believes includes a sum which is not valid and properly due:
  - (a) the Customer shall notify the Supplier in writing as soon as reasonably practicable;
  - (b) the Customer's failure to pay the disputed Charges shall not be deemed to be a breach of this agreement;
  - (c) the Customer shall pay the balance of the invoice which is not in dispute by the due date for payment of the invoice;
  - (d) to the extent that the Customer is obliged, following resolution of the dispute, to pay an amount, then the Supplier may charge interest in accordance with clause 7.7 (Interest on late payments) from the original due date until the date of payment;
  - (e) to the extent that the Supplier is obliged to refund an amount to the Customer, interest shall be added to that amount in accordance with clause 7.7 (Interest on late payments); and
  - (f) once the dispute has been resolved, where either party is required to make a balancing payment, it shall do so within 5 Business Days and, where the Supplier is required to issue a credit note, it shall do so within 5 Business Days.
- 7.7 If the Customer 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 15 (Termination), the Customer 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 7.7 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%.
- 7.8 The Customer may, at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability of the Customer 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 Customer may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the

Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.

## **8. Audit**

- 8.1 The Supplier shall allow the Customer (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 Customer under this agreement are accurate.
- 8.2 Subject to the Supplier's confidentiality obligations, the Supplier shall provide the Customer (and its professional advisers) with all reasonable co-operation, access and assistance in relation to each audit.
- 8.3 The Customer shall provide at least 5 Business Days' notice of its intention to conduct an audit and any audit shall be conducted during Business Hours.
- 8.4 The Customer and its professional advisers shall have the right to take copies of any records which they reasonably require and remove such copies and the Supplier shall provide the necessary facilities to assist in copying free of charge.

## **9. Intellectual Property Rights**

- 9.1 In relation to the Customer Materials:
  - (a) the Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and
  - (b) the Customer grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this agreement for the purpose of providing the Services to the Customer.
- 9.2 In relation to the Deliverables:
  - (a) the Supplier assigns to the Customer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the Deliverables;
  - (b) 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
  - (c) the Supplier shall, promptly at the Customer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer all right, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with clause 9.2(a).

### 9.3 The Supplier:

- (a) warrants that the receipt, use and onward supply of the Services and the Deliverables (excluding the Customer Materials) by the Customer and its permitted sub-licensee shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- (b) shall indemnify the Customer in full against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables (excluding the Customer Materials).

### 9.4 If the Supplier is required to indemnify the Customer under this clause 9, the Customer shall:

- (a) notify the Supplier in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 9.3(b) (**IPRs Claim**);
- (b) allow the Supplier, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Supplier shall obtain the Customer's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- (c) provide the Supplier with such reasonable assistance regarding the IPRs Claim as is required by the Supplier, subject to reimbursement by the Supplier of the Customer's costs so incurred; and
- (d) not, without prior consultation with the Supplier, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Supplier considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute.

## 10. Insurance

During the term of this agreement the Supplier shall maintain in force, with a reputable insurance company, [professional indemnity insurance at an amount not less than £AMOUNT] and [public liability insurance at an amount not less than £AMOUNT] to cover the liabilities that may arise under or in connection with this agreement and shall produce to the Customer on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

## 11. Compliance with laws and policies

### 11.1 In performing its obligations under this agreement, the Supplier shall comply with:

- (a) the Applicable Laws; and
- (b) its Mandatory Policies.

- 11.2 The Supplier will inform the Customer as soon as it becomes aware of any changes in the Applicable Laws.

## 12. Data protection

- 12.1 For the purposes of this clause 12, 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, and **supervisory authority** shall have the meaning given to it in the EU GDPR.
- 12.2 Both parties will comply with all applicable requirements of the Applicable Data Protection Laws. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 12.3 The parties have determined that, for the purposes of Applicable Data Protection Laws:
- (a) the Supplier shall process the personal data set out in paragraph 1.1 of 0 (Processing, Personal Data and Data Subjects) as processor on behalf of the Customer; and
  - (b) the Supplier shall act as controller of the personal data set out in paragraph 1.2 of 0 (Processing, Personal Data and Data Subjects).
- 12.4 If the determination in clause 12.3 change, the parties shall use all reasonable endeavours to make any changes that are necessary to this clause 12 and 0.
- 12.5 This clause 12.5 applies where the Supplier acts as controller pursuant to clause 12.3(b)
- (a) Without prejudice to clause 12.2, the Supplier:
    - (i) shall process all Supplier Personal Data strictly in accordance with its privacy policy in the form it appears at paragraph 4 of 0 (**Supplier Privacy Policy**);
    - (ii) shall not amend the Supplier Privacy Policy without the Customer's prior written consent;
    - (iii) shall promptly comply with all reasonable instructions of the Customer in connection with the Supplier Privacy Policy, and any amendments, shall promptly provide copies of the same to the Customer on request in a commonly available electronic format, and hereby consents to the Customer making the Supplier Privacy Policy available to any applicable data subjects;
    - (iv) undertakes, warrants and represents that the Supplier Privacy Policy, and any amendments, will at all times comply with Applicable Data Protection Laws and that it will not make any amendments to the Supplier Privacy Policy where this would be in contravention of Applicable Data Protection Laws;
    - (v) as between the parties, is solely responsible for ensuring that the processing of Supplier Personal Data complies with Applicable Laws, including Applicable Data

Protection Laws, and in particular, that all required fair processing information is provided to the relevant data subjects; and

- (vi) promptly comply with any reasonable instructions received from the Customer to display or otherwise make available the Customer's then-current version of its privacy policy via the goods or services provided by the Supplier. Such instructions may include implementing a reasonable process to certify that the data subject has acknowledged its terms.
  - (b) If there are any inconsistencies or conflict between the terms of the Supplier Privacy Policy and this agreement, this agreement shall take precedence.
- 12.6 In relation to the Customer Personal Data, paragraph 1.2 of 0 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.
- 12.7 Without prejudice to clause 12.2, the Supplier shall, in relation to Customer Personal Data:
- (a) process that personal data only on the documented written instructions of the Customer which are set out in paragraph 1.1 of 0 unless the Supplier is required by Applicable Laws to otherwise process that Customer Personal Data. Where the Supplier is relying on Applicable Laws as the basis for processing Customer Processor Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer on important grounds of public interest. The Supplier shall immediately inform the Customer if, in the opinion of the Supplier, the instructions of the Customer infringe Applicable Data Protection Laws;
  - (b) implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against its accidental loss, damage or destruction, including inter alia as appropriate:
    - (i) the pseudonymisation and encryption of Customer Personal Data;
    - (ii) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
    - (iii) the ability to restore the availability and access to Customer Personal Data in a timely manner in the event of a physical or technical incident; and
    - (iv) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
  - (c) ensure and procure that that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
  - (d) promptly assist the Customer, at the Supplier's expense, in responding to any request from a data subject and in ensuring compliance with the Customer'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 and, in particular, the Supplier shall promptly notify the Customer 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 Customer Personal Data;

- (e) notify the Customer without undue delay (and no later than 48 hours) after becoming aware of a personal data breach and on suspecting the same, the Supplier shall promptly conduct an initial assessment to determine, with a reasonable degree of certainty, whether the event or incident qualifies for notification to the Customer under this clause 12.7(e) and shall provide a copy of this initial assessment along with such notification;
- (f) at the written direction of the Customer, delete or return to the Customer all Customer Personal Data on termination or expiry of the agreement, and certify to the Customer in writing it has done so, unless the Supplier is required by Applicable Law to continue to process that Customer Personal Data, in which case the Supplier shall promptly notify the Customer, in writing, of what that Applicable Law is and shall only be permitted to process that Customer Personal Data for the specific purpose so-notified, and all other requirements set out in this clause 12 shall continue to apply to such Customer Personal Data notwithstanding the termination or expiry of this agreement for as long as such Customer Personal Data is processed by the Supplier. For the purposes of this clause 12.7(f) the obligation to "delete" data includes the obligation to delete data from back-up systems as well as live systems; and
- (g) maintain adequate records, and, on the Customer's request, make available such information as the Customer may reasonably request, and allow for and submit its premises and operations to audits, including inspections, by the Customer or the Customer's designated auditor, to demonstrate its compliance with Applicable Data Protection Laws and this clause 12.

12.8 The Supplier shall not, without the prior written consent of the Customer (and in any event subject to the Supplier providing the Customer with reasonable evidence that such activity is being undertaking in full compliance with Applicable Data Protection Laws):

- (a) appoint or replace (or change the terms of the appointment of) any other processor in relation to Customer Personal Data or transfer any Customer Personal Data to the same; or
- (b) carry out, via itself or via any other processor, any processing of Customer Personal Data, or transfer any Customer Personal Data, outside of the UK, including processing Customer Personal Data on equipment situated outside of the UK.

12.9 Either party may, at any time on not less than 30 days' notice, revise clause 13 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).



12.10 With regard indemnity and liability:

- (a) the Supplier shall, subject to clause 14.7(b) indemnify and keep the Customer indemnified from and against any and all costs, damages and expenses of any kind arising from any claim or demand brought by any person, data subject, Commissioner or supervisory authority as a result of any breach or alleged breach by Supplier of any Applicable Data Protection Law or its obligations under liability for losses arising from breaches of this clause 12; and
- (b) the Supplier's liability for losses arising from breaches of this clause 12 is set out in clause 14.7(b).

### **13. Confidentiality**

13.1 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 13.2.

13.2 Each party may disclose the other party's confidential information:

- (a) 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 13; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3 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.

### **14. Limitation of liability**

14.1 The Supplier has obtained insurance cover in respect of certain aspects of its own legal liability for individual claims as set out in clause 10 (Insurance) per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess liability.

14.2 References to liability in this clause 14 (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.

- 14.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 14.4 Nothing in this clause 14 shall limit the Customer's payment obligations under this agreement.
- 14.5 Nothing in this agreement shall limit the Supplier's liability under clause 9.3(b) (IPR indemnity).
- 14.6 Nothing in this agreement limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation; or
  - (c) 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.
- 14.7 Subject to clause 14.3 (no limitations in respect of deliberate default), clause 14.5 (liability under identified clauses) and clause 14.6 (liabilities which cannot legally be limited), the Supplier's total liability to the Customer:
- (a) for damage to property caused by the negligence of its employees and agents in connection with this agreement shall not exceed £[AMOUNT LINKED TO RELEVANT INSURANCE POLICY] for any one event or series of connected events;
  - (b) for loss arising from the Supplier's failure to comply with its data processing obligations under clause 12 (Data protection) shall not exceed £[AMOUNT]; and
  - (c) for all other loss or damage which does not fall within sub-clause (a) or (b) shall not exceed £[AMOUNT].
- 14.8 Subject to clause 14.3 (no limitations in respect of deliberate default) and clause 14.6 (liabilities which cannot legally be limited), the Customer's total liability to the Supplier:
- (a) for damage to property caused by the negligence of its employees and agents in connection with this agreement shall not exceed £[AMOUNT LINKED TO RELEVANT INSURANCE POLICY] for any one event or series of connected events;
  - (b) for loss arising from the Customer's failure to comply with its data processing obligations under clause 12 (Data protection) shall not exceed £[AMOUNT]; and
  - (c) for all other loss or damage which does not fall within sub-clause (a) or (b) shall not exceed £[AMOUNT].
- 14.9 The caps on the Supplier's liabilities shall not be reduced by:
- (a) amounts awarded or agreed to be paid under clause 9.3(b) (IPR indemnity); and

- (b) amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.

14.10 Subject to clause 14.3 (No limitations in respect of deliberate default), clause 14.4 (No limitation of the customer's payment obligations), clause 14.5 (Liability under identified clauses) and clause 14.6 (Liabilities which cannot legally be limited), clause 14.10(b) identifies the kinds of loss that are not excluded. Subject to that, clause 14.10(a) excludes specified types of loss.

- (a) Types of loss wholly excluded:

- (i) Loss of profits.
- (ii) Loss of sale or business.
- (iii) Loss of agreements or contracts.
- (iv) Loss of anticipated savings.
- (v) Loss of use or corruption of software, data or information.
- (vi) Loss of or damage to goodwill.
- (vii) Indirect or consequential loss.

- (b) Types of loss and specific losses not excluded:

- (i) Sums paid by the Customer to the Supplier pursuant to this agreement, in respect of any Goods or Services not provided in accordance with this agreement.
- (ii) Wasted expenditure.
- (iii) Additional costs of procuring and implementing replacements for, or alternatives to, Goods or Services not provided in accordance with this agreement. These include but are not limited to consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials.
- (iv) Losses incurred by the Customer arising out of or in connection with any third party claim against the Customer which has been caused by the act or omission of the Supplier. For these purposes, third party claims shall include but not be limited to demands, fines, penalties, actions, investigations or proceedings, including but not limited to those made or commenced by subcontractors, the Supplier's personnel, regulators and customers of the Customer.
- (v) Anticipated savings in respect of [INDICATE SOURCE OF SAVINGS].
- (vi) Other specific losses.

## 15. Termination

15.1 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:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (c) 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;
- (d) 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;
- (e) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (f) 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;
- (g) 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);
- (h) 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;
- (i) 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;
- (j) 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;
- (k) 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 15.1(d) to clause 15.1(j) (inclusive);

- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

15.2 For the purposes of clause 15.1(b), **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:

- (a) a substantial portion of this agreement; or
- (b) any of the obligations set out in clauses 4 (Supplier's responsibilities), 10 (Intellectual Property Rights), 11 (Insurance), 12 (Compliance with laws and policies), 13 (Data Protection) and 14 (Confidentiality);

over the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

15.3 Without affecting any other right or remedy available to it, the Customer may terminate this agreement:

- (a) with immediate effect by giving written notice to the Supplier if:
  - (i) the Supplier commits a breach of: clause 11 (Compliance with laws and policies) or clause 12 (Data protection); and
  - (ii) there is a change of control of the Supplier.
- (b) for convenience by giving not less than **[3]** months' written notice to the Supplier.

## 16. Obligations on termination and survival

### 16.1 Obligations on termination or expiry

On termination or expiry of this agreement:

- (a) the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all of the Customer Materials and the Customer's Equipment. If the Supplier fails to do so, then the Customer 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, Customer Materials and Customer's Equipment in its possession and will not use them for any purpose not connected with this agreement; and
- (b) the Supplier shall, if so requested by the Customer, provide all assistance reasonably required by the Customer to facilitate the smooth transition of the Services to the Customer or any replacement supplier appointed by it.

### 16.2 Survival

- (a) On termination or expiry of this agreement, the following clauses shall continue in force: clause 1 (Interpretation), clause 8 (Audit), clause 9 (Intellectual Property Rights), clause 13 (Confidentiality), clause 14 (Limitation of liability), clause 16 (Consequences of termination and survival), clause 17 (Inadequacy of damages), clause 21 (Waiver), clause 23 (Severance), clause 25 (Conflict), clause 30 (Multi-tiered dispute resolution procedure), clause 31 (Governing law) and clause 32 (Jurisdiction).
- (b) 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.

## **17. Inadequacy of damages**

Without prejudice to any other rights or remedies that the Customer may have, the Supplier acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this agreement by the Supplier. Accordingly, the Customer shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this agreement.

## **18. Force majeure**

**18.1 Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
- (h) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
- (i) interruption or failure of utility service.

- 18.2 Provided it has complied with clause 18.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 18.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 18.4 The Affected Party shall:
- (a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than 7 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
  - (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 18.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than [4] weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving [1] weeks' written notice to the Affected Party.

## 19. **Assignment and other dealings**

- 19.1 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.
- 19.2 The Customer 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.

## 20. **Variation**

Subject to clause 6 (Change control), no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## 21. **Waiver**

- 21.1 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.
- 21.2 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.

## **22. 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.

## **23. Severance**

23.1 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.

23.2 If any provision or part-provision of this agreement is deemed deleted under clause 23.1 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.

## **24. Entire agreement**

24.1 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.

24.2 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.

24.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

## **25. Conflict**

If there is an inconsistency between any of the provisions of this agreement and the provisions of the schedules, the provisions of this agreement shall prevail.

## **26. No partnership or agency**

26.1 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.

26.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.



## **27. Third party rights**

- 27.1 Unless it expressly states otherwise, 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.
- 27.2 The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.

## **28. Notices**

- 28.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:
- (a) 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
  - (b) sent by email to the address specified in Schedule 3.
- 28.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
  - (b) 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
  - (c) 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 28.2(c), 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.
- 28.3 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.

## **29. Counterparts**

- 29.1 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.
- 29.2 No counterpart shall be effective until each party has provided to the other at least one executed counterpart.

## **30. Multi-tiered dispute resolution procedure**

- 30.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the [EMPLOYEE TITLE] of the Customer and [EMPLOYEE TITLE] of the Supplier shall attempt in good faith to resolve the Dispute;
- (b) if the [EMPLOYEE TITLE] of the Customer and [EMPLOYEE TITLE] of the Supplier are for any reason unable to resolve the Dispute within [30] days of service of the Dispute Notice, the Dispute shall be referred to the [SENIOR OFFICER TITLE] of the Customer and [SENIOR OFFICER TITLE] of the Supplier who shall attempt in good faith to resolve it; and
- (c) if the [SENIOR OFFICER TITLE] of the Customer and [SENIOR OFFICER TITLE] of the Supplier are for any reason unable to resolve the Dispute within [30] days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than [NUMBER] days after the date of the ADR notice.

30.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 32 (Jurisdiction) which clause shall apply at all times.

30.3 If the Dispute is not resolved within [NUMBER] days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of [NUMBER] days, or the mediation terminates before the expiration of the said period of [NUMBER] days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 32 (Jurisdiction).

### 31. **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.

### 32. **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.

## Schedule 1 Services Details

- Services: [LIST SERVICES PROVIDED UNDER THIS AGREEMENT]
- [Service Levels:]
- Customer Materials: [SPECIFY]
- Customer's Equipment: [SPECIFY]
- Supplier's Equipment: [SPECIFY]
- Milestones: [Milestones can be set out here, or in Schedule 2 with the payment terms if payment is related to Milestones.]
- Timetable: [TIMETABLE FOR PERFORMANCE OF SERVICES]
- Deliverables: [DELIVERABLES FOR SERVICES]
- Acceptance criteria: [ACCEPTANCE CRITERIA]

## Schedule 2 Charges, costs and payment

**Charges:** [SPECIFY]

- **Fixed price:**
  - The total charges for the Services are £[AMOUNT].
  - The fixed price is calculated as follows: [CALCULATION METHOD]
- **Time and materials:**
  - The daily rate for the Supplier: [SPECIFY]
  - The weekend and overtime rate for the Supplier: [SPECIFY]

**Payment terms:** [SPECIFY]

**Costs of third party materials and services charged in addition to the Charges:**

The following materials and services procured from third parties shall be invoiced to the Customer in addition to the Charges: [INSERT DETAILS]

### Schedule 3 Supplier's Key Personnel and Customer's Manager

**Supplier's Key Personnel:**

- Supplier's Manager: [NAME] [EMAIL] [TELEPHONE NUMBER]
- Other Key Personnel: [NAMES AND TITLES OF RELEVANT EMPLOYEES]

**Customer's Manager:** [NAME] [EMAIL] [TELEPHONE NUMBER]

## Schedule 4 Mandatory Policies

Policies the supplier is required to have in place are:

- Data and Privacy Policy
- Anti-bribery and anti-corruption Policy

Plus chose from the below as appropriate for the size and context of the contract:

- [Modern Slavery and Human Trafficking Policy].
- [Corporate and Social Responsibility Policy].
- [Ethics Policy].

## **Schedule 5    Processing, Personal Data and Data Subjects**

- 1.     Role of the parties**
  - 1.1    Where the Supplier acts as a processor
  - 1.2    [Where the Supplier acts as a controller]
- 2.     Particulars of the processing**
  - 2.1    Scope
  - 2.2    Nature
  - 2.3    Purpose of processing
  - 2.4    Duration of the processing
  - 2.5    Types of personal data
  - 2.6    Categories of data subject
- 3.     Technical and organisational measures**
- 4.     [Supplier Privacy Policy]**

Signed by [NAME OF DIRECTOR]  
for and on behalf of [NAME OF  
SUPPLIER]

.....  
Director

Signed by [NAME OF DIRECTOR]  
for and on behalf of **THE  
NATIONAL FOREST**

.....  
Director