



**CALL OFF CONTRACT**

**between**

**THE OFFICE FOR NUCLEAR REGULATION**

**REDGRAVE COURT**

**MERTON ROAD**

**BOOTLE**

**MERSEYSIDE, L20 7HS**

**and**

**FRAZER-NASH CONSULTANCY LTD**

**DEVONPORT ROYAL DOCKYARD**

**DEVONPORT**

**PLYMOUTH**

**PL1 4SG**

**ONR TECHNICAL SUPPORT FRAMEWORK**

This Contract is made between:

**THE** **OFFICE FOR NUCLEAR REGULATION**, a body corporate created by statute, with its principal office at Redgrave Court, Merton Road, Bootle, Merseyside, L20 7HS (hereinafter called ‘ONR’ of the one part) and

**FRAZER-NASH CONSULTANCY LTD**, company registration number 2562870 and whose registered office is at Devonport Royal Dockyard, Devonport, Plymouth, PL1 4SG (hereinafter ‘the Contractor’ of the other part), in accordance with the details, terms and conditions stated herein.

**WHEREAS**

1 This Contract is made subject to the terms set out in the schedules listed below which both ONR and the Contractor undertake to observe in the performance of this Contract. The Schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract. Any reference to this Contract includes the following Schedules.

|  |  |
| --- | --- |
| **Schedule 1** | Special Terms |
| **Schedule 2** | Service Requirements |
| **Schedule 3** | Charges & Invoicing |
| **Schedule 4** | Standard Terms for the Provision of Services |

2 The Contractor shall supply to ONR, and ONR shall acquire and pay for, the services described in Schedule 2 on the terms of this Contract.

3 In the event of any conflict between the terms set out in the various Schedules, the Schedules shall prevail in the order in which they appear in the Contract.

4 Any term defined in a Schedule shall have the meaning given in that Schedule when used throughout this Contract (unless the context requires otherwise).

5 For the purposes of the provision of the Services, the terms of this Contract shall prevail over any other terms and conditions issued by either party (whether on a purchase order or otherwise).

6 This Contract shall only become binding on ONR upon its signature by an authorised signatory of ONR subsequent to signature by or on behalf of the Contractor.

**SIGNATORIES**

In Witness Whereof this Contract has been agreed :

|  |  |
| --- | --- |
| Signature |  |
| Name in Capitals |  |
| Position |  |
| Date |  |

Duly authorised to sign on behalf of **FRAZER-NASH CONSULTANCY LTD**

Devonport Royal Dockyard, Devonport, Plymouth, PL1 4SG

|  |  |
| --- | --- |
| Signature |  |
| Name in Capitals |  |
| Position |  |
| Date |  |

Duly authorised to sign on behalf of the **OFFICE FOR NUCLEAR REGULATION**

Redgrave Court, Merton Road, Bootle, Merseyside L20 7HS

Schedule 1

SPECIAL TERMS

1. Commencement Date and Term
   1. This Contract shall come into force on **01 November 2018** (the “**Commencement Date**”) and, unless terminated earlier in accordance with its terms, shall continue in full force and effect until **31 October 2022** (the “**Term**”).
   2. Notwithstanding anything to the contrary elsewhere in this Contract, either Party shall be entitled to terminate this Contract by serving not less than 30 days’ written notice on the Contractor.
   3. If ONR terminates this Contract under clause 1.2 above, they shall reimburse the Contractor for all reasonable costs which the Contractor can demonstrate to ONR’s satisfaction (acting reasonably) are necessarily and properly incurred by the Contractor in relation to the orderly cessation of the Services, including any commitments, liabilities or expenditure which are reasonably incurred, and would represent an unavoidable loss by the Contractor by reason of the termination of this Contract. For the avoidance of doubt:
      1. ONR shall not indemnify the Contractor against, or otherwise be liable to the Contractor for, loss of profit or any indirect or consequential loss arising out of such termination; and
      2. ONR shall not in any case be liable to pay any sum under this clause 1.3 which, when taken together with any sums paid or due or becoming due to the Contractor under this Contract, exceed the total Charges paid or payable under this Contract.
2. Specified Timetable
   1. The Contractor shall deliver the Services in accordance with the following timetable:

Not applicable

1. Key Personnel

Not applicable

1. Locations
   1. The Contractor shall be entitled to use such parts of ONR’s premises (where applicable) on a non-exclusive basis as ONR may from time to time designate as are necessary for the performance of the Services provided that use of such premises is strictly in accordance with ONR’s reasonable instructions and is to be solely for the purposes of providing the Services.

4.2 It shall be the Contractor’s responsibility to ensure that, where access to ONR premises or ONR confidential information is necessary, personnel engaged in the performance of this Contract shall have undergone pre-employment checks covering identity, the last three years employment history, nationality and immigration status and criminal record for unspent convictions. Such checks shall meet the requirements of HMG Baseline Security Standard.

4.3 ONR reserves the right, at its sole discretion, to carry out audits and spot checks at any time during the Contract Period to satisfy itself that the checks have been carried out. Guidance on pre-employment checks may be found at <http://www.cabinetoffice.gov.uk/sites/default/files/resources/hmg-personnel-security-controls.pdf>

1. ONR Equipment

[Not applicable]

1. Insurance
   1. The Contractor shall take out and maintain during the Term with a reputable insurance company the following cover types with the following indemnity limits:

|  |  |
| --- | --- |
| **Type of Cover** | **Indemnity Limit** |
| Employer’s Liability Insurance | £10,000,000 per claim |
| Public Liability Insurance | £5,000,000 per claim |
| Professional Indemnity Insurance | £5,000,000 per claim |

or such other insurance cover types and indemnity limits as may be agreed between the parties in writing from time to time.

1. Intellectual Property Rights

The provisions of Schedule 4 (Standard Terms) apply in respect of Intellectual Property Rights in the Deliverables and/or otherwise arising out of the Services.

1. TUPE

**[*Note: TUPE stands for the Transfer of Undertakings (Protection of Employment) Regulations 2006. The basic aim of this legislation is to protect employees when the work they perform on behalf of one employer is transferred to another. The essence of TUPE is the “automatic transfer principle”. This principle means that, in certain circumstances, employees’ contracts of employment, rights and liabilities, are preserved and transferred automatically to a new service provider.*** ***If TUPE IS likely to apply, the following provisions must be included*.]**

* 1. In this Contract, the following words have the meanings shown below unless the context requires otherwise:
     1. [“**Incumbent Contractor**” means the supplier or suppliers who before the Transfer Date supplied to ONR services which are the same as or materially similar to the Services;]
     2. “**Measures**” any measures proposed by the Contractor within the meaning of regulation 13(2)(d) of the Transfer Regulations;
     3. “**Subsequent Transfer**” means the relevant transfer taking effect on the Subsequent Transfer Date;
     4. “**Subsequent Transfer Date**” means the point in time, if any, at which services of the same or a similar nature to the Services are first provided by a Successor giving rise to a relevant transfer under the Transfer Regulations;
     5. “**Subsequent Transferring Employee**” means any of the Contractor’s Staff who, immediately prior to the Subsequent Transfer Date, is wholly or mainly engaged in the provision of the Services, or part thereof, which are to be undertaken by the Successor;
     6. “**Successor**” means any person, company, firm or other business entity who provides the Services or services of the same or a similar nature to the Services in immediate or subsequent succession to Contractor upon the expiry or earlier termination of this Contract (whether that person is a replacement supplier or ONR);
     7. “**Contractor’s Staff**” means any individual engaged in providing the Services on behalf of the Contractor and includes the Transferring Employees;
     8. “**Transfer Date**” means [insert time] am/pm on [insert date];
     9. “**Transfer Regulations**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended; and
     10. “**Transferring Employees**” means those employees listed in Appendix 1 to this Schedule 1 (Special Terms). **[*Note: An appendix listing the Transferring Employees will have to be added to Schedule 1*]**
  2. The parties agree that the commencement of the Services under this Contract shall give rise to a relevant transfer as defined in the Transfer Regulations. Accordingly the contracts of employment of the Transferring Employees will transfer on the Transfer Date from the Incumbent Contractor **OR** ONR to the Contractor pursuant to the Transfer Regulations.
  3. The Contractor agrees to accept the Transferring Employees into its employment on the Transfer Date upon the same terms and conditions of employment as they are currently employed by the Incumbent Contractor **OR** ONR (except for terms and conditions relating to any occupational pension scheme) and with full continuity of employment.
  4. The Contractor’s agreement in 8.3 is subject to the right of any employee identified as a Transferring Employee to object to being transferred to the Contractor.
  5. The Contractor will:
     1. not later than 14 days after issue of a written notice to it from the Incumbent Contractor **OR** ONR, provide the Incumbent Contractor **OR** ONR with the information required under regulation 13(4) of the Transfer Regulations, and the Contractor shall indemnify ONR in full against any breach of this obligation (including any legal expenses on an indemnity basis);
     2. provide such assistance and information to ONR as it may reasonably request to facilitate a smooth and efficient handover of the Transferring Employees to the Contractor (including attendance at any meetings with Transferring Employees, trade unions and employee representatives);
     3. comply with its obligations to inform and, if necessary, consult with the appropriate representatives of any of its employees who are affected by the relevant transfer in accordance with regulation 13 of the Transfer Regulations; and
     4. immediately following the Transfer Date comply with its obligation to consult with the appropriate representatives of the Transferring Employees about any Measures in accordance with regulation 13(6) of the Transfer Regulations.
  6. The Contractor acknowledges that the Incumbent Contractor **OR** ONR has notified the Contractor of the employee liability information in accordance with regulation 11 of the Transfer Regulations, and, to the best of its knowledge, knows of no circumstances which would entitle it to make a claim for compensation under regulation 12 of the Transfer Regulations.
  7. For the avoidance of doubt, the parties agree that, during the subsistence of this Contract or if there is no Subsequent Transfer Date, until the date on which this Contract terminates, in relation to the Contractor’s Staff, the Contractor shall be responsible for:
     1. issuing appropriate contracts of employment;
     2. paying all wages, salary and benefits and arranging for the deduction of tax and national insurance contributions;
     3. handling all and any necessary disciplinary action or grievances;
     4. dealing with requests for holiday;
     5. ensuring appropriate standards of dress are adhered to; and
     6. carrying out any necessary performance reviews.
  8. Nothing in this Contract shall be construed or interpreted as, or have the effect of, the Contractor’s Staff being employed by ONR prior to any Subsequent Transfer Date or if there is no Subsequent Transfer Date.
  9. The Contractor and ONR agree that where a Successor provides services of the same or similar nature to the Services in immediate or proximate succession to the Contractor, this may constitute a relevant transfer for the purposes of the Transfer Regulations. In such circumstances each party shall comply fully, and provide all reasonable assistance to enable the other party and any potential Successor to comply fully, with all its obligations under the Transfer Regulations.
  10. The Contractor will on or before the Subsequent Transfer Date (or, in the case of the payments referred to in clauses 8.10.4 and 8.10.5, within 7 days of the Subsequent Transfer Date):
      1. pay all wages, salaries and other benefits of the Subsequent Transferring Employees (including any contributions to retirement benefit schemes) and discharge all other financial obligations (including reimbursement of any expenses) owing to the Subsequent Transferring Employees in respect of the period before the Subsequent Transfer Date;
      2. procure that any loans or advances made to the Subsequent Transferring Employees before the Subsequent Transfer Date are repaid to it;
      3. account to the proper authority for all PAYE tax deductions and national insurance contributions payable in respect of the Subsequent Transferring Employees in the period before the Subsequent Transfer Date;
      4. pay the Successor the amount which would be payable to each of the Subsequent Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Subsequent Transfer Date; and
      5. pay the Successor an amount which fairly reflects the progress of each of the Subsequent Transferring Employees as at the Subsequent Transfer Date towards achieving any commission, bonus, profit share or other incentive payment payable after the Subsequent Transfer Date wholly or partly in respect of a period before the Subsequent Transfer Date.
  11. The Contractor shall indemnify ONR and/or the Successor and shall keep ONR and/or the Successor indemnified from and against all claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs, expenses and all other liabilities whatsoever arising out of or connected with any claim or other legal recourse by:
      1. any of the Contractor’s Staff (whether on their own behalf or in their capacity as employee representatives) which relates to any act or omission of the Contractor during the term of this Contract or which relates to their employment by the Contractor or to any allegation that a member of the Contractor’s Staff is employed by ONR;
      2. any of the Contractor’s Staff who is not a Subsequent Transferring Employee but who alleges that his employment has transferred to the Successor;
      3. any of the Subsequent Transferring Employees (whether on their own behalf or in their capacity as employee representatives) which relates to any act or omission of the Contractor prior to the Subsequent Transfer Date or any other event or occurrence save for where such act or omission results from complying with the instructions of the Successor or from the Successor failing to comply with its obligations under regulation 10(3) of the Transfer Regulations;
      4. any trade union, staff association or staff body recognised by the Contractor in respect of any of the Subsequent Transferring Employees or any employee representatives acting on behalf of any of the Subsequent Transferring Employees which relates to any act or omission of the Contractor prior to the Subsequent Transfer Date save for where such act or omission results from complying with the instructions of the Successor or from the Successor failing to comply with its obligations under regulation 10(3) of the Transfer Regulations; and
      5. any of the Subsequent Transferring Employees on the grounds that the Successor has failed to continue a benefit provided by the Contractor as a term of such Employee’s contract as at the Subsequent Transfer Date where it was not reasonably practicable for the Successor to provide an identical benefit but where the Successor has provided (or offered to provide where such benefit is not accepted by the Employee) an alternative benefit which, taken as a whole, is no less favourable to such Employee.
  12. Notwithstanding anything else to the contrary elsewhere in this Contract, the Successor shall be able to enforce the indemnity in clause 8.11 under The Contracts (Rights of Third Parties) Act 1999.
  13. If either party gives notice to the other to terminate this Contract under the terms of this Contract, then during the notice period the Contractor shall not dismiss, increase the pay or benefits of, or in any other way alter terms of the Contractor’s Staff contracts of employment without ONR’s consent, such consent not to be unreasonably withheld. On request, the Contractor shall immediately provide the ONR with full, accurate and up-to-date information of details relating to the Subsequent Transferring Employees including but not limited to their written terms and conditions of employment.
  14. In the event of a service provision change to which the Transfer Regulations do not apply, the following provisions shall apply:
      1. the Successor, at its discretion, may make to any of the employees who would have been Subsequent Transferring Employees an offer, in writing, to employ that employee under a new contract of employment to take effect at the earliest reasonable opportunity;
      2. when the offer has been made by the Successor and accepted by any employee or worker, the Contractor shall permit the employee or worker to leave his or her employment, as soon as practicable depending on the business needs of the Contractor which could be without the employee or worker having worked his full notice period, if the employee so requests and where operational obligations allow;
      3. if the employee does not accept an offer of employment made by the Successor, the employee shall remain employed by the Contractor and all claims in relation to the employee shall remain with the Contractor; and
      4. if the Successor does not make an offer to any employee who would have been one of the Subsequent Transferring Employees had the Transfer Regulations applied, then that employee and all claims in relation to that employee remains with the Contractor.

Schedule 2

**Service REQUIREMENTS**

The Contractor shall undertake the following service requirements, titled XXX, dated XXX and referenced XXX.

* List the use of Progress Reports if applicable
* List Deliverables were appropriate.

Schedule 3

**Charges & INVOICING**

1 **Charges [DN: ONR will determine whether fixed price mechanism or reimbursable mechanism shall apply]**

[Fixed price mechanism **OR**

1.1 The total cost for providing the service will be £**XXX** exclusive of VAT.

1.2 Any additional costs will be agreed in advance with the ONR Contract Manager and subject to clause 8 of Schedule 4 (Standard Terms).

1.3 In consideration for the provision of the Services, the Contractor shall be entitled to issue invoices for the following sums payable by ONR (the “**Charges**”) in the following amounts and on the following dates:

|  |  |
| --- | --- |
| **Sum due** | **Date due** |
| £[insert amount] | [insert date or relevant milestone]  **[*Note: If the payment is linked to the successful completion of a milestone, include here the relevant milestone rather than the date on which you expect the milestone to be achieved. Ensure there is a clear and comprehensive written description of what the Contractor is required to do to achieve that milestone.*]** |
| £[insert amount] | [insert date or relevant milestone] |

1.4 The Charges set out above are an all inclusive fee except for those additional expenses specifically approved by ONR in writing before they are incurred, and covers all preparation, report writing and all other work, which is carried out under this Contract. It is expected that the Contractor will meet all costs and expenses necessary to provide the Services under this Contract, including, but not restricted to: the costs of salaries, bonuses, superannuation medical and travel insurance, insurance for personal possessions or of any fees payable to personnel employed, or engaged by the Contractor.

1.5 Subject to clause 8 of Schedule 4 (Standard Terms), the Charges are fixed for the duration of the Contract.

[Reimbursable mechanism

* 1. The day rates set out in Table 1 of Annex 2 below shall be used to calculate the Charges, provided that the Contractor (or its Sub-contractor) shall:
     1. not be entitled to include any uplift for risks or contingencies within its day rates;
     2. not be paid any Charges to the extent that they would otherwise exceed the overall cap of £[insert] (the **Overall** **Cap**) or, in respect of the relevant milestone set out in Table 2 of Annex 2, the relevant cap (each **Milestone Cap**) set out at Table 2 in Annex 2 unless the Contractor has obtained the ONR’s prior written consent. The Contractor shall monitor the amount of each Charge incurred in relation to the Cap and notify ONR immediately:
        1. when 80% of the relevant Milestone Cap has been expended;
        2. when 80% of the Overall Cap has been expended; or
        3. in the event of any risk that the Overall Cap may be exceeded;

and ONR shall instruct the Contractor on how to proceed.

* + 1. only be entitled to be paid Charges that have been properly and reasonably incurred, taking into account the Contractor’s obligation to deliver the Services in a proportionate and efficient manner.
  1. The Contractor shall keep records of hours properly worked by Contractor Staff (in the form of timesheets) and expenses incurred and submit a summary of the relevant records with each invoice. If ONR requests copies of such records, the Contractor shall make them available to ONR within 10 Working Days of ONR’s request.

2 **Invoicing and Payments**

2.1 All invoices raised must include a relevant Purchase Order number. Failure to include the Purchase Order Number may delay payment. An electronicinvoice, should be submitted by e-mail to: [onr.invoices@onr.gov.uk](mailto:onr.invoices@onr.gov.uk).

2.2 Invoices should also include details of work satisfactorily carried out and any VAT properly chargeable.

2.3 Payment of agreed costs will be made within 30days of the acceptance of the invoice.

2.4 The Contractor shall send a copy invoice along with details of any work satisfactory carried out to the ONR Contract Manager identified in Schedule 3, Annex 1.

**Schedule 3**

**Annex 1**

**CONTACT LIST**

|  |  |
| --- | --- |
| **Contract Managers / Technical Queries** | |
| XXX  Office for Nuclear Regulation  XXXXXX  Building XX  Redgrave Court  Merton Road  Bootle  Merseyside  L20 7HS    Tel : 0203 028 XXXX  e-mail : [xxxx@onr.gov.uk](mailto:xxxx@onr.gov.uk) |  |
| **Contractual Queries** | |
| XXX  Health & Safety Executive, (acting on behalf of ONR)  Procurement Unit  Building 2.3  Redgrave Court  Merton Road  Bootle  Merseyside  L20 7HS    Tel : 0203 028 XXX  e-mail : [xxxx@hse.gov.uk](mailto:xxxx@hse.gov.uk) |  |

**Schedule 3**

**Annex 2 [DN: delete if fixed charge mechanism being used]**

**Table 1 -** **Contractor’s Staff rate card for calculation of time and materials charges**

|  |  |
| --- | --- |
| Staff grade | Day rate (£) |
|  |  |
|  |  |

**Table 2 -**

|  |  |
| --- | --- |
| Milestone | Cap (£) |
|  |  |
|  |  |

Schedule 4

**Standard Terms FOR THE PROVISION OF SERVICES TO**

**THE OFFICE FOR NUCLEAR REGULATION**

**Table of Contents**

1 Definitions and Interpretation

2 Contractor’s Responsibilities

3 Quality and Performance

4 Contractor’s Team

5 Status

6 Price and Payment

7 Audit

8 Change Control and Variation

9 Intellectual Property Rights

10 Limitation of Liability

11 Confidentiality and Freedom of Information

12 Data Protection

13 Force Majeure

14 Termination

15 Health and Safety

16 Prevention of Fraud, Corruption and Bribery

17 Conflicts of Interest

18 Responsible Business

19 Welsh Language Scheme

20 Publicity

21 Assignment and Sub-Contracting

22 Third Party Rights

23 Entire Agreement

24 Waiver

25 Severability

26 Governing Law

27 Dispute Resolution Procedure

28 Notices

29 Warranties

30 Transparency

31 Counterparts

**Schedule 4**

1. Definitions and Interpretation
   1. In this Contract, unless the context otherwise requires the following words and phrases shall have the following meanings:
      1. “**Charges**” means [the charges properly paid or payable to the Contractor under this Contract];
      2. “**Code**” means the Department of Constitutional Affairs’ Code of Practice on the discharge of public authorities’ functions under Part 1 of the Freedom of Information Act 2000 (issued under section 45 of that Act) (November 2004) as may be updated or re-issued from time to time and any other relevant codes of practice published by the Department of Constitutional Affairs or its successor bodies;
      3. “**Confidential Information**” means any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, finances, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, and customers of ONR or the Contractor (as the case may be) and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998;
      4. “**Contractor’s Equipment**” means any equipment, including tools, systems (including laptops), cabling or facilities provided by the Contractor or its sub-contractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to ONR;
      5. “**Contractor’s Team**” means all employees, consultants, agents and sub-contractors which the Contractor engages in any way in relation to the supply of the Services;
      6. “**Control**” means the ability to direct the affairs of another party whether by virtue of the ownership of shares, contract or otherwise (and “**Controlled**” shall be construed accordingly);
      7. “**Default**” means any default, act, omission, event or circumstance in connection with this Contract in respect of which Liability arises;
      8. “**Deliverables**” means the documents, data, information, devices, processes or other material to be provided by the Contractor to ONR as part of the Services;
      9. “**Equality Legislation**” means any and all legislation, applicable guidance and statutory codes of practice relating to diversity, equality, non discrimination and human rights as may be in force from time to time in England and Wales or in any other territory in which, or in respect of which, the Contractor provides the Services;
      10. “**Framework Agreement**” means the framework agreement dated 01 November 2018 entered into between ONR and the Contractor;
      11. “**Framework Year**” means each 12 (twelve) month period commencing either on the date set out in clause 9.1 of the Framework Agreement or on the anniversary of such date provided that “Framework Year” shall also mean, in the event of expiry or termination of the Framework Agreement, a period of less than 12 (twelve) months ending on the date of such expiry or termination;
      12. “**Information Disclosure Requirements**” means the requirements to disclose information under:

(a) the Code;

(b) the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the UK Information Commissioner in relation to such legislation; and/or

(c) the Environmental Information Regulations 2004;

* + 1. “**Intellectual Property Rights**” means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database, rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
    2. “**Liability**” means liability arising out of or in connection with this Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability arising from a breach of, or a failure to perform or delay in performance of, any of the party's obligations under this Contract, in each case howsoever caused including (without limitation) if caused by negligence;
    3. “**ONR Requirements**” means the instructions, requirements, policies, codes of conduct, guidelines, forms and other documents of ONR notified to the Contractor in writing;
    4. “**Personnel Vetting Procedures**” means:

(a) obtaining satisfactory employment references in respect of the relevant individual, covering the individual’s employment for the two year period up to the date of reference;

(b) ensuring the individual has passed suitable checks to confirm that he or she is fit for work; and

(c) ensuring the individual is lawfully entitled to work in the United Kingdom and that the Contractor has seen original documentation confirming such entitlement;

(d) Such checks shall meet the requirements of HMG Baseline Personnel Security Standard.

* + 1. “**Relevant Conviction**” means any previous or pending prosecution, conviction, caution or binding-over order (excluding any spent conviction as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order), other than any minor road traffic offence, that is relevant to the nature of the Services;
    2. “**Request for Information**” means a request for information (as defined in the Freedom of Information Act 2000) relating to or connected with this Contract or ONR more generally or any apparent request for such information under the Information Disclosure Requirements;
    3. “**Services**” means the services to be provided by the Contractor under this Contract as set out in Schedule 2 (Services); and
    4. “**Working Day**” means a day (other than a Saturday or Sunday) on which banks are generally open for business in London.

1.1.21 “**Data Protection Legislation**” (i) the GDPR, the LED and any applicable nation implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

1.1.22 **“Data Protection Impact Assessment**” an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

1.1.23 **“Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer”** take the meaning given in the GDPR;

1.1.24 **“Data Loss Event”** any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data;

1.1.25 **“Data Subject Access Request”** a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

1.1.26 **“DPA 2018”** Data Protection Act 2018;

1.1.27 **“GDPR”** the General Data Protection Regulation (Regulation (EU) 2016/679);

1.1.28 **“LED”** Law Enforcement Directive (Directive (EU) 2016/680);

1.1.29 **“Protective Measures”** appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

1.1.30 **“Sub-processor”** any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement.

* 1. In this Contract, unless otherwise indicated:
     1. a reference to a Schedule is a reference to a Schedule to this Contract; and
     2. a reference in a Schedule to a clause is a reference to a clause in that Schedule.
  2. Where the words “**include(s)**” or “**including**”, or words of a similar nature, are used in this Contract, they are deemed to have the words “without limitation” following them, and are illustrative and shall not limit the sense of the words preceding them.
  3. A reference in this Contract to a statute or statutory provision is a reference to the relevant UK statute or statutory provision as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1. Contractor’s Responsibilities
   1. The Contractor shall provide the Services, and deliver the Deliverables to ONR, with reasonable skill, care and ability in accordance with the terms of this Contract (and, in particular, Schedule 1 (Special Terms) and Schedule 2 (Services), and shall allocate sufficient resources to the Services to enable it to comply with this obligation.
   2. The Contractor shall comply with, and complete and return any forms or reports from time to time required by, ONR Requirements.
   3. The Contractor shall:
      1. observe, and ensure that, where applicable, the Contractor’s Team observes, any applicable security policy or health and safety policy notified to the Contractor and any reasonable verbal or written instructions or policies issued to the Contractor at any time and shall comply with the legal requirements of any country in which the Services are being provided and, if the Contractor fails to do so, ONR reserves the right to refuse the Contractor's Team access to the ONR’s premises and/or to suspend the provision of the Services until such time as the Contractor (and, where applicable, the Contractor’s Team) is compliant with such policies, instructions or requirements and ONR shall not be required to pay the Charges in respect of the period of such suspension; and
      2. before the date on which the Services are to start, obtain and at all times maintain and comply with all licences and consents required to enable the Contractor to provide the Services in accordance with this Contract.
   4. The Contractor shall not at any time during the Term do or say anything which damages or which could reasonably be expected to damage the interests or reputation of ONR or its officers, employees, agents or contractors.
   5. The Contractor shall use all reasonable endeavours to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of ONR, its employees or any other contractor engaged by ONR.
   6. The Contractor shall use all reasonable endeavours to ensure that it is available at all times on reasonable notice to provide such assistance or information as ONR may require.
   7. The Contractor may use another person, firm, company or organisation to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services provided that ONR will not be liable to bear the cost of such functions.
   8. The Contractor warrants that the Contractor’s Equipment shall be of satisfactory quality and fit for the purpose of providing the Services in accordance with this Contract.
   9. The Contractor acknowledges that it:
      1. has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of ONR and has entered into this Contract in reliance on its own due diligence alone; and
      2. has received sufficient information required by it in order to determine whether it is able to provide the Goods or Services in accordance with the terms of this Contract.
   10. Nothing in clause 2.9 shall operate to exclude fraud or fraudulent misrepresentation.
2. Quality and Performance
   1. The Contractor shall comply with any quality assurance procedure and provide any feedback or other form of reporting in connection with the Services that is reasonably requested by ONR from time to time.
   2. The Contractor shall meet with representatives of ONR upon request to discuss matters relating to the Services and to review the quality of the Services and Deliverables provided.
   3. ONR reserves the right to reject or require re-performance (at no additional cost to the ONR) of any Services which are defective or which are otherwise not in accordance with the requirements of this Contract.
   4. If at any time within 12 months following the date of provision of any aspect of the Services, any such Services (or any part thereof) is found to be defective or otherwise not in accordance with the requirements of this Contract, the Contractor shall promptly on request and without charge, remedy the deficiency by re-performing, or (where applicable) repairing, or supplying replacements for, the relevant Services.
3. Contractor’s Team
   1. The Contractor hereby warrants that all personnel employed or engaged by, or on behalf of, the Contractor in the provision of the Services at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Personnel Vetting Procedures and throughout the Term the Contractor shall comply with the Personnel Vetting Procedures in respect of all personnel employed or engaged in the provision of the Services.
   2. The Contractor shall ensure that no person who discloses that he has a Relevant Conviction, or who is found by the Contractor to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service procedures or otherwise), is employed or engaged in the provision of any part of the Services without ONR's prior and express written consent.
   3. If requested by ONR, the Contractor shall provide documentary evidence of their (and/or the Contractor’s Team members’) eligibility to work in the UK. ONR shall not be held responsible for securing work permits for potential members of the Contractor’s Team who come from overseas.
   4. Without relieving the Contractor of its duty to deliver the Services, ONR reserves the right to refuse any employee, consultant, agent or subcontractor of the Contractor access to ONR's premises where, in ONR’s absolute discretion, such person’s behaviour is unacceptable or they have not satisfied or been subject to the relevant checks referred to in this clause 4.
   5. If required by ONR, the Contractor shall replace any person that has not satisfied the requirements set out in this clause 4 with another suitably qualified person and ensure that the provision of the Services continues without interruption in accordance with the terms of this Contract.
4. Status
   1. The relationship of the Contractor to ONR will be that of independent contractor and nothing in this Contract shall render the Contractor or any of the Contractor’s Team an employee, worker, agent or partner of ONR and the Contractor shall not hold itself out as such.
   2. The Contractor shall be fully responsible for and shall indemnify ONR for and in respect of any liability for any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Contractor (or, where applicable, any member of the Contractor’s Team) against ONR arising out of or in connection with the provision of the Services, except where such claim is as a result of any act or omission of ONR.
   3. ONR may at its option satisfy the indemnity set out in clause 5.2 above (in whole or in part) by way of deduction from any outstanding Charges or other payments due to the Contractor.
   4. Where applicable (and subject to anything to the contrary in Schedule 1 (Special Terms)), the Contractor:
      1. acknowledges and agrees that it is intended that all employees of the Contractor (if any) shall remain employees of the Contractor and that termination of this Contract (or any part of it) shall not operate to transfer the contracts of employment of any employees to ONR or any third party; and
      2. shall use all reasonable endeavours to ensure that no member of its staff is deployed in the delivery of the Services to such an extent that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (or any applicable equivalent legislation in any relevant jurisdiction, including in the European Union the Acquired Rights Directive (Council Directive 77/187 as amended) and any national legislation enacting to such Directive) may operate to transfer the employment of such member of staff to the ONR or any successor service provider upon termination of this Contract.
5. Price and Payment
   1. Unless stated otherwise, the Charges are exclusive of value added tax (VAT) or any equivalent sales tax in any applicable jurisdiction, which, if properly chargeable, ONR shall pay at the prevailing rate subject to receipt from the Contractor of a valid and accurate tax invoice. In the event that ONR is required by the laws or regulations of any applicable jurisdiction to deduct any withholding tax or similar taxes from the Charges, ONR shall deduct and account for such taxes before paying the remainder of the Charges to the Contractor and shall notify the Contractor in writing of all such sums properly deducted.
   2. Unless stated otherwise in Schedule 3 (Charges), the Contractor shall invoice for the Charges monthly in arrears and all such invoices shall be accompanied by a statement setting out the Services supplied in the relevant month in sufficient detail to justify the Charges charged (including any timesheets or other information required by, and to be provided in the format set out in, ONR Requirements).
   3. Subject to clauses 6.4 to 6.6 below, ONR shall, unless agreed otherwise by the parties in writing, pay each of the Contractor’s valid and accurate invoices by automated transfer into the Contractor’s nominated bank account no later than 30 days after the invoice is received.
   4. Provided that it notifies the Contractor in writing in advance, and works in good faith to resolve any issues or disputes within 30 days, ONR shall be entitled to withhold payment of any sums in respect of any Services or Deliverables which have not been provided by the Contractor to ONR’s satisfaction and in accordance with the terms of this Contract.
   5. In the event that ONR makes any overpayment in connection with this Contract (or any other agreement between the parties), ONR may, upon written notice to the Contractor, deduct the amount of such overpayment from any future invoice or require repayment of such sum within 30 days after the date on which it serves written notice on the Contractor.
   6. Without prejudice to the other rights and remedies available to ONR under this Contract, ONR shall be entitled (but not obliged) at any time or times without notice to the Contractor to set off any liability of the Contractor to ONR against any liability of ONR to the Contractor (in any case howsoever arising and whether any such liability is present or future) and may for such purpose convert or exchange any currency.
   7. The Contractor shall be solely responsible for all taxes, national insurance or other withholdings or contributions which may be payable out of, or as a result of the receipt of, any Charges or other monies paid or payable in respect of the Services. The Contractor shall indemnify ONR against all costs, claims, expenses (including legal expenses) and/or proceedings arising out of or in connection with the Contractor’s non-payment (or underpayment) of such taxes, national insurance or other withholdings or contributions.
   8. Any requirement under applicable law to account for the Services in Euro (€) (or to prepare such accounting), instead of and/or in addition to Sterling (£), shall be implemented by the Contractor at no additional cost to ONR.
6. Audit
   1. The Contractor will fully co-operate with and assist ONR in meeting its audit and regulatory requirements by providing access for ONR, its internal auditors (which shall include for the purposes of this Contract ONR’s internal audit, security and operational risk functions), its external auditors or any agents appointed by ONR to conduct appropriate reviews and inspections of the activities and records of the Contractor (and to take copies of records and documents and interview members of the Contractor’s Team) relating to the performance of the Services and to the accuracy of the Charges. The Contractor shall maintain all records relating to this Contract (including the provision of the Services and the payment of all Charges and expenses) for a period of six (6) years following the year in which the provision of the Services under this Contract is completed or such longer period as ONR may notify to the Contractor in writing from time to time.
   2. If the results of an audit demonstrate that the Contractor has claimed any sums in respect of Charges or reimbursable expenditure in excess of their entitlement under the terms of the Contract, the Contractor shall within 28 days after a written demand by ONR make reimbursement in full in respect of any such overpayment.
   3. The Contractor shall bear its own cost in relation to any reasonable number of audits carried out by ONR. Where any audit reveals any breach or non-compliance by the Contractor, the Contractor shall also bear the costs of ONR carrying out such audit.
7. Change Control and Variation
   1. If either party wishes to change the scope or provision of the Services, it shall submit details of the requested change to the other in writing and such change shall only be implemented if agreed in accordance with the remainder of this clause.
   2. If ONR requests a change to the scope or provision of the Services:
      1. the Contractor shall, within a reasonable time (and in any event not more than 10 Working Days after receipt of ONR’s request), provide a written estimate to ONR of:
         1. the likely time required to implement the change;
         2. any reasonable variations to the Charges arising directly as a result of the proposed change; and
         3. any other impact of the change on the terms of this Contract;
      2. if, following receipt of the Contractor’s written estimate submitted in accordance with clause 8.2.1, ONR does not wish to proceed, there shall be no change to this Contract; and
      3. if ONR wishes the Contractor to proceed with the change, the Contractor shall do so after agreement on the necessary variations to the Charges, the Services and any other relevant terms of this Contract to take account of the change following which this Contract shall be varied by the parties setting out in writing, and signing, the agreed changes.
   3. If the Contractor requests a change to the scope or provision of the Services, it shall send such request to ONR in writing, accompanied by a written statement of the matters referred to in clause 8.2.1, and ONR shall withhold or give its consent to such change in its sole discretion. If ONR wishes the Contractor to proceed with the change, the Contractor shall do so, following a variation of this Contract in writing signed by (or on behalf of) each of the parties.
8. Intellectual Property Rights
   1. Where any Intellectual Property Rights owned by or licensed to ONR are required to be used in connection with the provision of the Services, the Contractor acknowledges that the Contractor shall have no right to use the same except to the extent necessary for the provision of the Services and subject to such consents and restrictions as may be specified by ONR.
   2. The Contractor hereby assigns to ONR with full title guarantee by way of present and future assignment any and all Intellectual Property Rights in the Deliverables, and any other Intellectual Property Rights the Contractor creates during its performance of the Services.
   3. The Contractor shall procure the waiver in favour of ONR of all moral rights arising under the Copyright, Designs and Patents Act 1988 and, so far as is legally possible, any broadly equivalent rights such authors may have in any territory of the world, relating to the Deliverables.
   4. The Contractor shall execute all deeds and documents which may reasonably be required to give effect to this clause 9.
   5. The Contractor warrants to ONR that:
      1. the performance of the Services by the Contractor will not result in the infringement of any Intellectual Property Rights of any third party; and
      2. any documents or other materials created by the Contractor in the provision of the Services for use by ONR will be original and created specifically for ONR.
   6. The Contractor agrees to indemnify ONR, and to keep ONR indemnified, together with its officers, directors, employees and agents, against all actions, claims, proceedings and all damages, losses, costs and expenses arising out of or in connection any infringement of the Intellectual Property Rights of any third party occurring as a result of or in the course of or in connection with the performance of the Services, except to the extent that such claims arise directly from the use in accordance with ONR’s instructions of any data, information or other resources provided by ONR to the Contractor.
   7. Nothing in this Contract shall prevent the Contractor from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business, to the extent that it does not result in a disclosure of ONR’s Confidential Information or an infringement of Intellectual Property Rights.
9. Limitation of Liability
   1. Nothing in this Contract shall exclude or restrict the Liability of either party to the other for death or personal injury resulting from negligence or for fraudulent misrepresentation or in any other circumstances where Liability may not be limited under any applicable law.
   2. Nothing in this Contract or in the Framework Agreement shall exclude or restrict the Liability of the Contractor to ONR for:

any breach by the Contractor of:

special terms 8.5 and 8.11 (TUPE)

clause 5.2 (Status),

clause 6.7 (Price and Payment),

clause 11 (Confidentiality and Freedom of Information),

clause 12 (Data Protection)

clause 9.6 (Intellectual Property Rights); or

any wilful or deliberate breach by the Contractor or Contractor Staff.

* 1. Subject to clauses 10.1, 10.2 and 10.4:
     1. neither party shall be liable to the other for any indirect loss or damage, costs or expenses whatsoever or howsoever arising out of or in connection with this Contract;
     2. the maximum aggregate Liability of ONR to the Contractor in relation to any and all Defaults, claims or series of linked Defaults or claims under or in connection with this Contract shall be limited to the sum equal to the Charges during the period of 12 months immediately preceding the relevant Default; and
     3. the maximum aggregate Liability of the Contractor to ONR in relation to any and all Defaults in connection with this Contract, shall be limited in accordance with clause [8.2] of the Framework Agreement.
  2. The provisions of clause 10.3.1 shall not limit ONR’s right to recover from the Contractor, amongst other things, any of the following from the Contractor:
     + - 1. any additional operational and/or administrative costs and expenses incurred by ONR, including costs relating to time spent by or on behalf of ONR in dealing with the consequences of the default;
         2. any wasted expenditure or charges;
         3. the additional cost of procuring replacement services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such replacement services and/or replacement Deliverables above those which would have been payable under this Contract;
         4. any compensation or interest paid to a third party by ONR; and
         5. any fine or penalty incurred by ONR pursuant to law and any costs incurred by ONR in defending any proceedings which result in such fine or penalty.
  3. Except where otherwise expressly stated in this Contract, all remedies available to either party for breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
  4. The provisions of this clause 10 shall survive the termination of this Contract, however arising.

1. Confidentiality and Freedom of Information
   1. For the purposes of this clause 11:
      * + 1. the “**Disclosing Party**” is the party which discloses Confidential Information to, or in respect of which Confidential Information comes to the knowledge of, the other party; and
          2. the “**Receiving Party**” is the party which receives Confidential Information relating to the other party.
   2. The Receiving Party shall take all necessary precautions to ensure that all Confidential Information it receives under or in connection with this Contract:
      * + 1. is given only to such of its staff (or, in the case of the Contractor, the Contractor’s Team) and professional advisors or consultants engaged to advise it in connection with this Contract as is strictly necessary for the performance of this Contract and only to the extent necessary for the performance of this Contract; and
          2. is treated as confidential and not disclosed (without the prior written consent of the Disclosing Party) or used by the Receiving Party or any member of its staff (or, in the case of the Contractor, the Contractor’s Team) or its professional advisors or consultants otherwise than for the purposes of this Contract.
   3. Notwithstanding the provisions of clause 11.2 above, ONR may disclose the Confidential Information of the Contractor:

(a) on a confidential basis to any Central Government Body for any proper purpose of ONR or of the relevant Central Government Body;

(b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

(c) to the extent that ONR (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public Functions;

(d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in clause 11.3 (a) (including any benchmarking organisation) for any purpose related to or connected with this Contract;

(e) on a confidential basis for the purpose of the exercise of its rights under this Contract; or

(f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on ONR under this clause 11.

* 1. The Contractor shall ensure that all members of the Contractor’s Team or professional advisors or consultants are aware of the Contractor’s confidentiality obligations under this Contract and shall immediately notify ONR if the Contractor becomes aware of any unauthorised disclosure of any Confidential Information. The Contractor shall co-operate with ONR in any investigation that ONR considers necessary to undertake as a result of any such unauthorised disclosure of Confidential Information.
  2. The provisions of clauses 11.2 and 11.4 shall not apply to any Confidential Information which:
     + - 1. is or becomes public knowledge (otherwise than by breach of this clause 11);
         2. was in the possession of the Receiving Party, without restriction as to its disclosure, before receiving it from the Disclosing Party;
         3. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
         4. is independently developed without access to the Confidential Information; or
         5. is required to be disclosed by any applicable law or regulation, or any court, or governmental or administrative or regulatory authority competent to require such disclosure, provided that the Receiving Party has given the Disclosing Party reasonable notice (where legally permissible to do so) in writing of such required disclosure so that the Disclosing Party has had an opportunity to defend or apply to limit or protect such Confidential Information from disclosure and the provisions of this clause 11 shall not apply to that Confidential Information to the extent only that it is so required to be produced or disclosed.
  3. The provisions under this clause 11 are without prejudice to the application of the Official Secrets Act 1911 to 1989 to any Confidential Information. To the extent such legislation is applicable to the Contractor, the Contractor shall comply with, and shall ensure that each member of the Contractor’s Team complies with, the provisions of the Official Secrets Act 1911 to 1989.
  4. The Contractor acknowledges that ONR is subject to the Information Disclosure Requirements and shall assist and co-operate with ONR to enable ONR to comply with those requirements.
  5. Where ONR receives a Request for Information in relation to information that the Contractor or any of its sub-contractors is holding on behalf of ONR and which ONR does not hold itself, ONR shall as soon as reasonably practicable after receipt and in any event within five Working Days of receipt, forward the Request for Information to the Contractor and the Contractor shall:

11.8.1 provide ONR with a copy of all such information in the form that ONR requires as soon as practicable and in any event within 10 Working Days (or such other period as ONR acting reasonably may specify) of ONR’s request; and

* + 1. provide all necessary assistance as reasonably requested by ONR to enable ONR to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations, as applicable.
  1. The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that ONR may nevertheless be obliged to disclose the Contractor’s Confidential Information in accordance with the Information Disclosure Requirements:
     1. in certain circumstances without consulting the Contractor; or

11.9.2 following consultation with the Contractor and having taken its views into account,

provided always that where clause 11.9.1 above applies, ONR shall, in accordance with the recommendations of the Code, draw this to the attention of the Contractor prior to any of the Contractor’s Confidential Information.

11.10 This clause 11 shall remain in full force and effect in the event of any termination of this Contract.

1. Data Protection
   1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor unless otherwise specified
   2. The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
   3. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
2. a systematic description of the envisaged processing operations and the purpose of the processing;
3. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
4. an assessment of the risks to the rights and freedoms of Data Subjects; and
5. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

12.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

1. process that Personal Data only in accordance with Schedule 5, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
2. ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonable reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken into account of the:
3. nature of the data to be protected;
4. harm that might result from Data Loss Event;
5. state of technological development; and
6. cost of implementing any measures;

c) ensure that :

1. the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 5);
2. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
3. are aware of and comply with the Processor’s duties under this clause;
4. are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
5. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
6. have undergone adequate training in the use, care, protection and handling of Personal Data; and

d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

1. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
2. the Data Subject has enforceable rights and effective legal remedies;
3. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
4. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

12.5 Subject to clause 12.6, the Processor shall notify the Controller immediately if it:

1. receives a Data Subject Access Request (or purported Data Subject Access Request);
2. receives a request to rectify, block or erase any Personal Data;
3. receives any other request, complaint or communication relating to either Party’s obligations under the Data Protection Legislation;
4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
5. receives a request from any third Party for disclosure or Personal Data where compliance with such request is required or purported to be required by Law; or
6. becomes aware of a Data Loss Event.

12.6 The Processor’s obligation to notify under clause 12.5 shall include the provision of further information to the Controller in phases, as details become available.

12.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party’s obligations under Data Protection Legislation and any complaint, communication or request made under clause 12.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

1. the Controller with full details and copies of the complaint, communication or request;
2. such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
3. the Controller, at its request with any Personal Data it holds in relation to a Data Subject;
4. assistance as requested by the Controller following any Data Loss Event;
5. assistance as requested by the Controller with respect to any request from the Information Commissioner’s Office, or any consultation by the Controller with the Information Commissioner’s Office.

12.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

1. the Controller determines that the processing is not occasional;
2. the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
3. the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

12.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller’s designated auditor.

12.10 The Processor shall designate a data protection officer if required by the Data Protection Legislation.

12.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

1. notify the Controller in writing of the intended Sub-processor and processing;
2. obtain the written consent of the Controller;
3. enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause 12.11 such that they apply to the Sub-processor; and
4. provide the Controller with such information regarding the Sub-processor as the Controller may reasonable require.

12.12 The Processor shall remain fully liable for all acts or omissions of any Sub-processor.

12.13 The Controller may, at any time on not less than 30 Working Days’ notice, revise this clause 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 incorporated by attachment to this Agreement).

12.14 The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Controller may on not less than 30 Working Days’ notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

12.15 Where the Parties include two or more Joint Controllers in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule 4 in replacement of Clauses 1.1 – 1.14 for the Personal Data under Joint Control.

1. Force Majeure

13.1 Neither party shall be in breach of this Contract if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control (“**force majeure**”) including (insofar as beyond such control but without prejudice to the generality of the foregoing expression) strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, volcanic ash, earthquake, explosion, terrorist act, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of consultants or sub-contractors (save that the Contractor shall be liable for, and shall not be excused non-performance of this Contract due to, any breach by its sub-contractors).

1. Termination

14.1 Without prejudice to any other rights or remedies which ONR may have, ONR may terminate this Contract without liability to the Contractor immediately on giving notice to the Contractor if:

14.1.1 the performance of the Services is delayed, hindered or prevented by circumstances of force majeure (as described in clause 13) for a period in excess of 28 days; or

* + 1. where the Contractor is a company, there is a change of Control of the Contractor.
  1. Either party may give notice to the other terminating this Contract with immediate effect if:

14.2.1 the other party commits any material breach of any of the terms of this Contract and that breach (if capable of remedy) is not remedied within 30 days after notice being given requiring it to be remedied (and where such breach is not capable of remedy, the terminating party shall be entitled to terminate the Contract with immediate effect);

* + 1. an order is made or a resolution is passed for the winding-up of the other party or an administrator is appointed by order of the court or by other means to manage the affairs, business and property of the other party or a receiver and/or manager or administrative receiver is validly appointed in respect of all or any of the other party’s assets or undertaking or circumstances arise which entitle the Court or a creditor to appoint a receiver and/ or manage or administrative receiver or which entitle the Court to make a winding-up or bankruptcy order or the other party takes or suffers any similar or analogous action (in any jurisdiction) in consequence of debt; or
    2. the other party ceases, or threatens to cease, to carry on business.
  1. ONR may at any time by notice terminate this Contract with immediate effect if the Contractor is in persistent breach of any of its obligations under this Contract, whether or not such breach is capable of remedy. For the purposes of this clause 14.3, three or more non-material breaches of the terms of this Contract may together constitute a persistent breach.
  2. In any circumstances where ONR has the right to terminate this Contract it may instead, by serving notice on the Contractor, opt to suspend the provision of the Services for a reasonable period and ONR shall not be required to pay any Charges in respect of such period of suspension.
  3. On termination of this Contract for any reason the Contractor shall immediately return to ONR, at ONR’s request, all documents, materials, information and other resources provided by ONR to the Contractor for the purposes of or in connection with this Contract (except that, where expressly agreed in writing by ONR, the Contractor shall be entitled to retain one copy of such documents, materials, information and other resources for audit purposes only, subject to the confidentiality obligations in clause 11).
  4. If the Contractor fails to fulfil its obligations under clause 14.5, ONR may enter the Contractor's premises and take possession of any items which should have been returned under it. Until they have been returned or repossessed, the Contractor shall be solely responsible for their safe keeping.
  5. During the period between service of a notice of termination and the effective date of termination, the Contractor shall provide ONR with all reasonable assistance and information to enable an efficient handover to a new service provider (or to ONR).
  6. Termination of this Contract, however it arises, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.
  7. Upon the termination of this Contract, ONR shall pay the Charges (or such percentage of the Charges) properly incurred but previously unpaid up to the effective date of termination.

1. Health and Safety
   1. The Contractor shall promptly notify ONR of any health and safety hazards which may arise in connection with the performance of this Contract, take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by the performance of the Services and notify the Contractor of any incident occurring on ONR’s premises or otherwise in connection with the provision of the Services of which the Contractor becomes aware and which causes or could give rise to significant personal injury.
   2. The Contractor shall take all necessary measures to comply with the requirements of the Health & Safety at Work Etc Act 1974 (or any equivalent legislation in any applicable jurisdiction) and any other acts, orders, regulations and codes of practice (including any approved codes of practice) relating to health and safety, which may apply to the performance of this Contract.
2. Prevention of Fraud, Corruption and Bribery
   1. The Contractor undertakes and warrants that neither it nor the Contractor’s staff, employees or sub-contractors have offered, given or agreed to give, nor shall offer or give or agree to give to any person, company or firm any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do anything in relation to the obtaining of this Contract or the execution of the Contractor’s obligations under this Contract or for showing or forbearing to show favour or disfavour to any person, company or firm in relation to this Contract.
   2. The Contractor warrants that it has in place, and undertakes that it will comply with, policies and procedures to avoid the risk of bribery (as set out in the Bribery Act 2010) and fraud within its organisation and in connection with its dealings with third parties.
   3. The Contractor warrants that it has not colluded, and undertakes that it will not at any time collude, with any third party relating to its pricing under this Contract and further warrants and undertakes that it has complied, and will at all times comply, with the provisions of the Competition Act 1998 (or equivalent anti-trust legislation or regulations applicable in the countries in which the Contractor operates or is to provide the Services) in connection with this Contract and the provision of the Services. Nothing under this clause 16.3 is intended to prevent the Contractor from discussing the terms of this Contract and the Contractor’s pricing with the Contractor’s professional advisors.
3. Conflicts of Interest
   1. ONR understands and accepts that the Contractor is entitled to seek, apply for, accept and perform contracts to supply goods and services to third parties. However, the Contractor undertakes not to accept contracts to supply goods or services to third parties where this could result in:
      1. the Contractor providing goods or services to competitors of ONR where this could (in ONR’s reasonable opinion) have a commercially harmful effect on ONR; or
      2. a breach of the terms of this Contract, including the Contractor’s obligations under clause 11 (Confidentiality and Freedom of Information).
4. Responsible Business
   1. The Contractor shall:
      1. ensure that it respects and promotes the rights set out in the International Labour Organisation’s International Labour Standards and the provisions of the United Nations’ Universal Declaration of Human Rights in respect of both its personnel and its suppliers;
      2. demonstrate a commitment to equality and diversity, have an appropriate diversity policy approved by its board of directors and ensure that it does not, whether as employer or provider of the Services engage in any act or omission that would contravene the Equality Legislation and comply with all its obligations as an employer or provider of Services as set out in the Equality Legislation and take all reasonable endeavours to ensure its personnel do not unlawfully discriminate within the meaning of the Equality Legislation;
      3. demonstrate environmental responsibility and comply in all material respects with applicable environmental laws and regulations in force from time to time in relation to the provision of the Services. Where the provisions of any such legislation are implemented by the use of voluntary agreements or codes of practice, the Contractor shall comply with such agreements or codes of practice as if they were incorporated into English law;
      4. maintain a document (or documents) setting out its policy on corporate social responsibility (“**CSR Policy**”) and on the request of ONR disclose a copy of the CSR Policy to ONR and demonstrate to ONR the impact and effectiveness of the CSR Policy; and
      5. impose on all its sub-contractors and suppliers, obligations substantially similar to those imposed on the Contractor by this clause 18.
   2. The Contractor shall meet all reasonable requests by ONR for information evidencing the Contractor’s compliance with the provisions of clause 18.1
5. Welsh Language Scheme
   1. Where the Services are to be provided to Wales, the Contractor shall adhere to ONR’s Welsh Language Scheme and the Welsh and English Languages shall be treated on a basis of equality in accordance with the Welsh Language Act 1993.
6. Publicity
   1. The Contractor shall not publicise the terms of this Contract or use the name of ONR or any trade name or trade mark used by ONR or refer to ONR in any other way in any press release, promotional literature, publications or advertising material, including without limitation any website, “blogs”, social media or other online services, without the prior written consent of ONR.
7. Assignment and Sub-Contracting

20.1 The Contractor shall not, without the prior written consent of ONR, assign, transfer, charge, create a trust in, or deal in any other manner with all or any of its rights or obligations under this Contract.

* 1. ONR may assign or novate this Contract to: (i) any separate entity Controlled by ONR; (ii) any body or department which succeeds to those functions of ONR to which this Contract relates; or (iii) any provider of outsourcing or third party services that is employed under a service contract to provide services to ONR. The Contractor warrants and represents that it will (at ONR’s reasonable expense) execute all such documents and carry out all such acts, as reasonably required to give effect to this clause 20.2.
  2. The Contractor may not sub-contract the provision of any material part of the Services without the prior written consent of ONR, such consent not to be unreasonably withheld or delayed.
  3. Notwithstanding any sub-contracting permitted under clause 20.3, the Contractor shall remain wholly liable and responsible for all acts and omissions (howsoever arising) of its sub-contractors in the performance of the Services.
  4. The Contractor shall pay any valid invoice received from any of its sub-contractors within 30 days following receipt of the invoice.
  5. ONR reserves the right to request the replacement of any approved sub-contractor on reasonable grounds.

1. Third Party Rights
   1. This Contract does not create any rights or benefits enforceable by any person not a party to it (within the meaning of The Contracts (Rights of Third Parties) Act 1999) except that a person who under clause 20 is a permitted successor or assignee of the rights or benefits of a party may enforce such rights or benefits.
   2. The parties agree that no consent from any such permitted successor or assignee is required for the parties to vary or rescind this Contract (whether or not in a way that varies or extinguishes rights or benefits in favour of such third parties).
2. Entire Agreement
   1. This Contract contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing, provided that nothing in this clause 22.1 shall operate to limit or exclude either party’s liability for fraudulent misrepresentation.
3. Waiver
   1. A waiver of any right under this Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
4. Severability
   1. If any provision (or part of a provision) of this Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
   2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
5. Governing Law
   1. This Contract and any dispute or claim (including any non-contractual dispute or claim) arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the laws of England and Wales.
6. Dispute Resolution Procedure
   1. If any dispute or claim (including any non-contractual dispute or claim) arises out of or in connection with this Contract, the parties shall, following service of written notice by one party on the other, attempt to resolve amicably by way of good faith negotiations and discussions any such dispute or claim as soon as reasonably practicable (and in any event within 10 Working Days after such notice or by such later date as the parties may otherwise agree in writing).
   2. If the parties are unable to resolve the dispute or claim in accordance with clause 267.1, the parties shall seek settlement of that dispute or claim by mediation in accordance with the LCIA Mediation Rules (as at the date of such mediation), and those Rules are deemed to be incorporated by reference into this clause 26.
   3. If the dispute or claim is not settled by mediation within 30 days of the commencement of the mediation, or such further period as the parties shall agree in writing, the dispute or claim shall be referred to and finally resolved by arbitration under the LCIA Rules, and those Rules are deemed to be incorporated by reference into this clause 26.
   4. The language to be used in the mediation and in the arbitration shall be English.
   5. In any arbitration commenced pursuant to this clause 26:
      1. the number of arbitrators shall be three; and
      2. the seat, or legal place, of arbitration shall be London, England.
   6. Nothing in this clause 26 shall prevent either party from applying at any time to the court for injunctive relief on the grounds of infringement, or threatened infringement, of the other party's obligations of confidentiality contained in this Contract or infringement, or threatened infringement, of the applicant's Intellectual Property Rights.
7. Notices
   1. Notice given under this Contract shall be in writing, sent for the attention of the person, and to the address, given on the front page of this Contract (or such other address or person as the relevant party may notify to the other party) and shall be delivered either personally, by courier, or by recorded delivery. Subject to clause 27.1, a notice is deemed to have been received on signature of a delivery receipt by an individual at the correct address for notices, or at the time the notice is left at such correct address.
   2. If deemed receipt under clause 27.1 is not within the hours of 09:00 to 17:00 on a Working Day the notice will be deemed to be received at 09:00 on the first subsequent Working Day.
8. Warranties
   1. Each party warrants to the other party that it has full power and authority to carry out the actions contemplated under this Contract, and that its entry into and performance under the terms of this Contract will not infringe the rights of any third party or cause it to be in breach of any obligations to a third party.
9. Transparency
   1. Notwithstanding any other term of this Contract, the Contractor consents to the publication of this Contract in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the Information Disclosure Requirements.
10. Counterparts
    1. This Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

**Annex 2**

**ONR Travel and Subsistence Rates**

**ONR Business Expenses Policy**

ONR business expenses are reimbursed based on actual expenditure incurred in the course of official duties; therefore it is essential that you retain all of your receipts to support your claim for reimbursement. To meet HMRC requirements, all receipts must be kept for three complete tax years after the end of the tax year to which the expenditure relates.

You can choose to retain your receipts in either hard copy or electronic format, noting that electronic versions of receipts must be clearly legible with all required details shown, e.g. date of expenditure, claim amount etc. Receipts must be stored in a way that they can be easily retrieved and presented if and when requested by ONR.

You must ensure any claim for reimbursement of subsistence expenses is made in accordance with the Business Expenses Policy.

You should claim only for meals that are additional to your normal daily expenditure. You must obtain and keep receipts for all items claimed (unless it is impossible to do so).

You may claim subsistence in line with the £35 upper subsistence limit. The £35 limit is intended to cover the cost of tea, coffee, soft drinks, snacks, lunch and dinner purchased as necessary in the course of your business journey. Staff should only spend what is necessary in the circumstances to provide adequate food and drink whilst away from their office, and should not seek to maximise expenditure up to the £35 limit if this is not warranted.

**Eligibility**

You may claim the actual costs of a meal purchased and consumed when travelling on official duty if all of the following conditions are met:

a. you obtain an original itemised receipt for all items claimed.

b. the costs incurred are necessary and additional to your normal daily expenditure.

c. the expenditure relates to a meal or snack and beverages whilst undertaking official travel.

d. a meal may include a hot meal, light snack, soft beverages or any other refreshments. You may not claim for alcoholic drinks or discretionary tips; however, you can claim for a non-discretionary service charge if one is added by the restaurant to the bill.

e. the purchases must be made during your time on official duty away from your permanent station. If a purchase is made before or after the business the expense is private and becomes taxable and will not be reimbursed.

**Subsistence Limit**

You can claim the reimbursement of necessary costs up to £35 per rolling 24 hour period.

There are no set time periods or expenditure limits within this period. However, you are expected to apply your judgement about what is reasonable within the above eligibility guidance. You are required to determine and where appropriate justify your claim. This is part of the trust-based approach adopted in ONR where you are personally accountable for your actions.

If during this period you are provided with a meal(s) at no cost to you, then you should not claim subsistence for a meal(s) appropriate to that time of day.

**Rates and Limits**

|  |  |
| --- | --- |
| **Day subsistence limits (you must retain your receipts to support your claim)** | |
| **Each rolling 24 hour period - Actual costs up to £35.00**  There are no set time periods or specific meal expenditure limits within this period. However, you are expected to apply your judgement about what is reasonable within the guidance on UK subsistence policy eligibility. | |
| 1. **Night subsistence limits (you must retain your receipts to support your claim)** | |
| 1. (For each 24 hour period) 2. **Commercial hotel / Bed and Breakfast arrangements** 3. Actual cost of bed and breakfast subject to a limit of: 4. £220.00 per night in London, or 5. £150.00 per night outside London. 6. Rolling 24 hour period - Actual costs up to £35.00 | |
| 1. **Mileage rates** | |
| 1. **Your private car** | 1. **All engine types and sizes** |
| 1. Up to 10,000 miles per financial year | 1. 45p per mile |
| 1. Over 10,000 miles per financial year | 1. 25p per mile |
| 1. **Motor cycle rate** | |
| 1. All motorcycles | 1. 24p per mile |