

OFFICE OF RAIL AND ROAD**CONTRACT FOR PROFESSIONAL SERVICES****FORM OF AGREEMENT**

ORR **Office of Rail and Road** a Non Ministerial Government Department whose registered office is at 25 Cabot Square London E14 4QZ and includes ORR's successors and assignees

SUPPLIER **The Nichols Group Ltd** (a company registered in England with company number 02930116) whose registered office is at 7-8 Stratford Place, London, W1C 1AY.

Date 14 August 2023

This CONTRACT is made on the date set out above subject to the terms set out in the SCHEDULES listed below (the "SCHEDULES") which both ORR and the SUPPLIER undertake to observe in the performance of this CONTRACT.

Contract Title The provision of expert knowledge in rolling stock delivery programmes

Contract Reference ORR/ST/23-24

Purchase Order Number P1002816

Key Terms

TERM	<i>Commencement Date:</i> 01 September 2023 (a maximum of 8 days work within the month of September) <i>Expiry Date:</i> 30 September 2023
DELIVERABLES AND DELIVERABLE DATES	The Contactor shall provide services as further set out in Schedule 2
CONTRACT PRICE	The sum(s) to be paid by ORR to the SUPPLIER. The CONTRACT PRICE and payment schedule are set out in Schedule 3
ORR REPRESENTATIVE / CONTRACT MANAGER	██
SUPPLIER REPRESENTATIVE	██

SCHEDULES

Schedule 1	Conditions of Contract for Professional Services
Schedule 2	Specification of Services
Schedule 3	Contract Price
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Schedule 5	Confidential Information
Schedule 6	Supplier Key Personnel
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Schedule 8	Special Terms

Terms defined in this FORM OF AGREEMENT shall have the same meanings in the SCHEDULES. In the event of any conflict between the terms of this FORM OF AGREEMENT and the terms set out in the SCHEDULES, the terms set out in the FORM OF AGREEMENT shall prevail.

IN WITNESS whereof the parties or their duly authorised representatives have entered into this CONTRACT on the date set out above

SIGNED by the duly authorised representative of ORR

Position:...Procurement Officer

SIGNED by the duly authorised representative of the Supplier

Name:... _____ Signature:.... _____

Position:...Commercial Lead.....

SCHEDULE 1



OFFICE OF RAIL AND ROAD

**CONDITIONS OF CONTRACT
FOR PROFESSIONAL SERVICES**

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A. GENERAL PROVISIONS
A1 Definitions and Interpretations**A1.1 Definitions**

In these Clauses:

“Approval” and “Approved” means the written consent of the Contract Manager.

“Clause” means a clause within this Contract.

“Commencement Date” means the date set out in the Form of Agreement

“Commercially Sensitive Information” means the subset of Confidential Information listed in the Commercially Sensitive Information Schedule, comprised of information:

- (a) which is provided by the Supplier to ORR in confidence for the period set out in that Schedule; and/or
- (b) that constitutes a trade secret.

“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, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 and the Commercially Sensitive Information.

“Contract” means the agreement between ORR and the Supplier consisting of the Form of Agreement and all the attached Schedules

“Contract Manager” means the person for the time being appointed by ORR as being authorised to administer the Contract on behalf of ORR, as indicated in the Form of Agreement or as otherwise notified by ORR to the Supplier from time to time.

“Contract Period” means the period of duration of the Contract in accordance with Clause A2.

“Contract Price” means the price exclusive of any applicable VAT, payable to the Supplier by ORR under the Contract, as set out in the Pricing Schedule (Schedule 3) and/or the Form of Agreement, for the full and proper performance by the Supplier of its part of the Contract as determined under the Clauses of the Contract but before taking into account the effect of any adjustment of price in accordance with Clause C4.

“Contracting Authority” means any contracting authority as defined in Regulation 2 of The Public Contracts Regulations 2015 other than ORR.

“Default” means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.

“Deliverables” means those products and services identified in the Form of Agreement.

“Environmental Information Regulations” means the Environmental Information Regulations 2004.

“Expiry Date” means the date set out in the Form of Agreement.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

“General Change in Law” means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which would affect or relate to a comparable supply of services of the same or a similar nature to the supply of the Services.

“Good Industry Practice” means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected to be exercised by a skilled and experienced operator engaged in the same or a similar type of undertaking under the same or similar circumstances and conditions.

“Information” has the meaning given under section 84 of the Freedom of Information Act 2000.

“Invitation to Tender” means an invitation for Suppliers to bid for the Services required by ORR or a request for a quote for Services required by ORR.

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

“Key Personnel” means those persons named in Schedule 6 as being key personnel.

“Law” means any applicable law, statute, byelaw, regulation, order, regulatory policy (including any requirement or notice of any Regulatory Body), guidance or industry code of practice, rule of court or directives, delegated or subordinate legislation in force from time to time.

“Month” means calendar month.

“ORR” means the Office of Rail and Road.

“ORR Property” means any property, other than real property, issued or made available to the Supplier by ORR in connection with the Contract.

“Party” means a party to this Contract and “Parties” shall be construed accordingly.

“Pricing Schedule” means the Schedule 3 containing details of the Contract Price.

“Quality Standards” means the quality standards published by the British Standards Institute, the International Organisation for Standardisation or other reputable body, that a leading company within the Supplier’s relevant industry or business sector would be expected to comply with, and as may be further detailed in the Specification Schedule.

“Regulatory Bodies” means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes

of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of ORR and “Regulatory Body” shall be construed accordingly.

“Replacement Supplier” means any third party service provider appointed by ORR from time to time, to provide any services which are substantially similar to any of the Services, and which ORR receives in substitution for any of the Services following the termination or partial termination of this Contract, whether those services are provided by ORR internally and/or by any third party.

“Requests for Information” shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations.

“Schedule” means a schedule attached to the Form of Agreement.

“Services” means the services and Deliverables to be provided as specified in the Specification and/or Form of Agreement.

“Specification” means the description of the Services to be provided under the Contract as set out in the Specification Schedule.

“Specification Schedule” means Schedule 2, which contains details of the Specification.

“Specific Change in Law” means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of ORR, and which would not affect a comparable supply of services of the same or a similar nature to the supply of the Services.

“Staff” means all persons employed by the Supplier to perform the Contract together with the Supplier’s servants, agents and sub-contractors used in the performance of the Contract.

“Supplier” means the person, firm or company with whom ORR enters into this Contract.

“Supplier Representative” means the individual authorised to act on behalf of the Supplier for the purposes of the Contract, as indicated in the Form of Agreement or as otherwise notified by the Supplier to ORR from time to time.

“Tender” means the Supplier’s response to the Invitation to Tender or the Supplier’s quote for the Services.

“VAT” means Value Added Tax.

A1.2

Interpretation

The interpretation and construction of this Contract shall be subject to the following provisions:

- (a) the terms and expressions set out in Clause A1.1 shall have the meanings ascribed therein;
- (b) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (c) words importing the masculine include the feminine and the neuter;

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- (d) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
 - (e) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted;
 - (f) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
 - (g) headings included in this Schedule are for ease of reference only and shall not affect the interpretation or construction of this Contract.

A2 Contract Period

- A2.1 The Contract shall take effect on the Commencement Date and shall expire automatically on the Expiry Date or shall expire by reference to the methodology set out in Form of Agreement, unless it is otherwise terminated in accordance with this Contract, or otherwise lawfully terminated.

A3 Supplier’s Status (Principal)

- A3.1 In carrying out the Services the Supplier shall be acting as principal and not as the agent of ORR.
- A3.2 Accordingly:
- (a) the Supplier shall not (and shall procure that the Staff do not) say or do anything that might lead any other person to believe that the Supplier is acting as the agent of ORR; and
 - (b) nothing in this Contract shall impose any liability on ORR in respect of any liability incurred by the Supplier to any other person but this shall not be taken to exclude or limit any liability of ORR to the Supplier that may arise by virtue of either a breach of the Contract or by negligence on the part of ORR, ORR’s employees, servants or agents.

A4 Deleted

A5 Entire Agreement

- A5.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Clause shall not exclude liability in respect of any fraudulent misrepresentation.

A6 Scope of Contract

- A6.1 Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between ORR and the Supplier.

A7 Notices

- A7.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned in accordance with this Clause A7.
- A7.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in Clause A7.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 working days after the day on which the letter was posted, or four hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
- A7.3 Unless otherwise agreed in writing between the parties, any notice or communication sent pursuant to this Clause A7 shall be addressed as such:

For ORR	To: [REDACTED] The Office of Rail and Road 25 Cabot Square London E14 4QZ
For the Supplier	To: [REDACTED] 7-8 Stratford Place, London, W1C 1AY.

A8 Mistakes in Information

- A8.1 The Supplier shall use reasonable endeavours to ensure the accuracy and completeness of information provided to it by third parties in relation to the subject matter of the Contract. In addition, the Supplier shall be responsible for the accuracy and completeness of all drawings, documentation and information supplied to ORR by the Supplier in connection with the provision of the Services and shall pay ORR any extra costs occasioned by any discrepancies, errors or omissions therein.

A9 Conflicts of Interest

- A9.1 The Supplier will disclose to ORR full particulars of any conflict of interest which may arise. The Supplier shall in addition take the necessary steps to ensure that neither the Supplier nor any employee, servant, agent, supplier or sub-contractor is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or such persons and the duties owed to ORR under the provisions of the Contract.
- A9.2 The provisions of this Clause A9 shall survive the expiry or termination of this Contract.

A10 Fraud

- A10.1 The Supplier shall safeguard ORR's funding of the Contract against fraud generally and, in particular, fraud on the part of the Staff, or the Supplier's directors and suppliers. The Supplier shall notify ORR immediately if it has reason to suspect that any fraud has occurred, is occurring, or is likely to occur.

B. PROVISION OF THE SERVICES

B1 The Services

- B1.1 The Supplier shall provide the Services during the Contract Period in accordance with ORR's requirements as set out in the Specification Schedule and the terms of this Contract. ORR

shall have the power to inspect and examine the performance of the Services at ORR's Premises at any reasonable time or, provided that ORR gives reasonable notice to the Supplier, at any other premises where any part of the Services is being performed.

- B1.2 In providing the Services, the Supplier shall comply with and take into account all applicable laws, enactments, orders, regulations and other similar instruments, the requirements of any court with relevant jurisdiction and any local, national or supranational agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union.
- B1.3 If ORR informs the Supplier that ORR considers that any part of the Services do not meet the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of default or negligence on the part of ORR, the Supplier shall at its own expense re-schedule and perform the work correctly within such reasonable time as may be specified by ORR.
- B1.4 Without prejudice to any other rights and remedies ORR may have pursuant to the Contract, the Supplier shall reimburse ORR for all reasonable costs incurred by ORR which have arisen as a direct consequence of the Supplier's delay in the performance of the Contract which the Supplier has failed to remedy after being given reasonable notice by ORR.
- B1.5 Unless stated in the Invitation to Tender or otherwise agreed in writing between the Supplier and ORR, nothing in the Deliverables shall contain any mark or be presented in any manner that, in ORR's opinion, may allow the Supplier to be identified.

B2 Standard of Work

- B2.1 The Supplier shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of work has not been specified in the Contract, the Supplier shall use the industry accepted applicable techniques and standards and execute the Contract with all reasonable care, skill and diligence, and in accordance with Good Industry Practice.
- B2.2 The Supplier warrants and represents that all Staff assigned to the performance of the Service shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services.
- B2.3 The introduction of new methods or systems, which impinge on the provision of the Services, shall be subject to prior Approval.

B3 Key Personnel

- B3.1 Key Personnel shall not be released from providing the Services without the agreement of ORR, except by reason of long-term sickness, termination of employment and other extenuating circumstances.
- B3.2 Any replacements to the Key Personnel shall be subject to the agreement of ORR. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- B3.3 ORR shall not unreasonably withhold its agreement under Clause B3.1 or Clause B3.2. Such agreement shall be conditional on appropriate arrangements being made by the Supplier to minimise any adverse impact on this Contract, which could be caused by a change in Key Personnel.

B4 Offers of Employment

- B4.1 For the duration of the Contract and for a period of 12 months thereafter the Supplier shall not employ or offer employment to any of ORR's staff who have been associated with the work without ORR's prior Approval.

C. PAYMENT AND CONTRACT PRICE
C1 Contract Price

- C1.1 In consideration of the performance of the Supplier's obligations under the Contract by the Supplier, ORR shall pay the Contract Price.
- C1.2 ORR shall pay the Supplier, in addition to the Contract Price, a sum equal to the VAT (if any) chargeable on the value of the Services provided in accordance with the Contract.

C2 Payment and VAT

- C2.1 Where the Supplier submits an invoice to ORR (accounts.payable@orr.gov.uk), ORR will consider and verify that invoice in a timely fashion.
- C2.2 Each invoice shall contain all appropriate references and a detailed breakdown of the Services and shall be supported by any other documentation required by the Contract Manager to substantiate the invoice.
- C2.3 ORR shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which ORR has determined that the invoice is valid and undisputed. Should ORR wish to dispute any invoice, it shall raise such a dispute within 7 days of receipt of an invoice. In the event that the dispute is raised within this period, ORR shall be entitled to withhold payment of the disputed invoice. Should the dispute subsequently be agreed as valid then a credit note will be issued against the original invoice as applicable. Should the disputed charges subsequently be agreed as valid then the invoice shall be paid within 30 days thereafter.
- C2.4 Where ORR fails to comply with Clause C2.3 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Clause C2.3 after a reasonable time has passed.
- C2.5 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
- (a) provisions having the same effect as Clauses C2.1, C2.3 and C2.4 of this Contract; and
 - (b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as Clauses C2.1, C2.3 and C2.4 of this Contract
- In this Clause C2.5, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from ORR in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.
- C2.6 VAT

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- (a) All consideration under this Contract shall be exclusive of VAT (if any). Where the Supplier makes or is deemed to make a supply to ORR for the purposes of VAT, ORR shall, at the time the consideration becomes due, pay VAT in addition to the consideration (together with any penalty or interest chargeable on the Supplier to the extent attributable to any act or omission by ORR). The Supplier shall provide ORR with an appropriate VAT invoice.
 - (b) If any VAT is found to have been overpaid the Supplier shall repay such VAT and issue to ORR a VAT credit note (where by law it is required so to do).
 - (c) If, for any reason, VAT is demanded after the time the related consideration becomes due, or if VAT is repaid, it shall be paid or repaid within 5 business days following the date of a written demand. Such a demand may be made at any time on or after the time of supply but not later than the expiry of the time limit referred to in section 77(1)(a), Value Added Tax Act 1994 (Assessments: time limits and supplementary assessments).

C2.7 Without prejudice to any other rights or remedies of ORR, and notwithstanding any provision to the contrary, ORR is only liable to make payment in respect of any Services when ORR, acting reasonably, deems that such Services are performed in accordance with Clause B2.

C2.8 The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Contract under Clause H2.3 for failure to pay undisputed charges.

C2.9 If ORR fails to pay any undisputed amount payable under this Contract by the due date for payment the Supplier shall be entitled but not obliged to charge ORR interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the day after the due date up to the date of actual payment. The parties agree that this Clause C2.9 is a substantial remedy for late payment of any sum payable under this Contract in accordance with Section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.

C3 Recovery of Sums Due

C3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to ORR in respect of any breach of this Contract), ORR may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Contract or under any other agreement or contract with ORR.

C3.2 Any overpayment by ORR to the Supplier, whether of the Contract Price or of VAT, shall be a sum of money recoverable by ORR from the Supplier.

C3.3 The Supplier shall make any payments due to ORR without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by ORR to the Supplier.

C4 Alteration to Deliverables or Contract Period

C4.1 The Contract Price shall be fixed for the initial Contract Period and for the delivery of all Deliverables to the satisfaction of ORR. In the event of an amendment, removal or addition to a Deliverable or extension to the Contract Period both parties will enter into negotiation in good faith for the agreement of a revised Contract Price. No revision to the Specification or Form of Agreement will be binding until agreed in writing by both parties in the manner set out

in Schedule 4.

D. STATUTORY OBLIGATIONS AND REGULATIONS

D1 Anti-Bribery

D1.1 The Supplier acknowledges and agrees that ORR will not tolerate bribery in any form in connection with the conduct of its business.

D1.2 The Supplier shall:

- (a) comply with all applicable laws, statutes, regulations, codes and guidance relating to anti-bribery and anti-corruption ("Anti-bribery Laws"), including without limitation the Bribery Act 2010;
- (b) not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
- (c) not do, or omit to do, any act that will cause ORR to be in breach of the Anti-bribery Laws;
- (d) promptly report to ORR any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Contract;
- (e) maintain throughout the term of this Contract its own anti-bribery policies and procedures including without limitation adequate procedures under the Bribery Act 2010 to ensure compliance with the Anti-Bribery Laws and this Clause D1, shall provide a copy of such policies and procedures to ORR on request, and shall enforce such policies and procedures where appropriate. For the purpose of this Clause D1, the meaning of adequate procedures shall be determined in accordance with section 7(2) and any guidance issued under section 9, Bribery Act 2010; and
- (f) within 2 business days of receipt of a request from ORR, certify to ORR in writing its compliance with this Clause D1.

D1.3 In the event that the Supplier sub-contracts the provision of any element of this Contract to any person, or receives any services in connection with its performance of this Contract from any person (each such person being an "Associated Person"), it shall impose upon such Associated Person anti-bribery obligations that are no less onerous than those imposed upon the Supplier in this Clause D1.

D1.4 The Supplier warrants and represents that neither the Supplier nor any of its officers, employees or, so far as it is aware, any Associated Person has been convicted of any offence involving bribery, corruption, fraud or dishonesty or, to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Anti-Bribery Laws.

D1.5 The Supplier shall promptly notify ORR if, at any time during the term of this Contract, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in Clause D1.4.

D1.6 Breach of this Clause D1 shall be deemed a material breach of this Contract.

D1.7 The Supplier shall indemnify ORR against any losses, liabilities, damages, costs and expenses incurred by, or awarded against, ORR as a result of any breach of this Clause D1 by the Supplier (including any liability that the Supplier has to ORR by virtue of the acts or omissions of any Associated Person under Clause D1.3).

D2 Discrimination

D2.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) in employment.

D2.2 The Supplier shall take all reasonable steps to secure the observance of Clause D2.1 by all servants, employees or agents of the Supplier and all suppliers and sub-contractors employed in the execution of the Contract.

D3 The Contracts (Rights of Third Parties) Act 1999

D3.1 No person who is not a Party to the Contract (including without limitation any employee, officer, agent, representative, or sub-contractor of either ORR or the Supplier) shall have any right to enforce any term of the Contract, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties, which agreement should specifically refer to this Clause D3. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act, and does not apply to the Crown.

D4 Health and Safety

D4.1 The Supplier shall take all necessary measures to comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on ORR's premises in the performance of the Contract.

D5 Modern Slavery Act 2015

D5.1 The Supplier shall take reasonable steps to ensure that slavery and human trafficking (as such phrase is defined in section 54(12), Modern Slavery Act 2015) is not taking place in any of its supply chains or in any part of its own business. The Supplier shall, at ORR's request, provide ORR with a statement of such steps it has taken, together with such other information as ORR may reasonably require in order to enable it to prepare a slavery and human trafficking statement in accordance with section 54, Modern Slavery Act 2015.

E. PROTECTION OF INFORMATION

E1 Data Protection

E1.1 For the purposes of this Clause E1:

(a) Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] 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;

(b) Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

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- (c) Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR.
 - (d) Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
 - (e) 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.
 - (f) DPA 2018: Data Protection Act 2018
 - (g) GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679)
 - (h) LED: Law Enforcement Directive (Directive (EU) 2016/680)
 - (i) 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.
 - (j) Sub-processor: any third Party appointed to process Personal Data on behalf of the Supplier related to this Agreement

- E1.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in Schedule 7 by the Customer and may not be determined by the Supplier.
- E1.3 The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- E1.4 The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
 - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- E1.5 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

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- (a) process that Personal Data only in accordance with Schedule 7, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that :
 - (i) the Supplier Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 7);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Supplier's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - (C) 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 Customer or as otherwise permitted by this Agreement; and
 - (D) 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 Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier 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 Customer in meeting its obligations); and
 - (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - (e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data.

E1.6

Subject to clause E1.7, the Supplier shall notify the Customer immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;

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- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.

E1.7 The Supplier's obligation to notify under clause E1.6 shall include the provision of further information to the Customer in phases, as details become available.

E1.8 Taking into account the nature of the processing, the Supplier shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause E1.6 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:

- (a) the Customer with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Customer following any Data Loss Event;
- (e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.

E1.9 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:

- (a) the Customer determines that the processing is not occasional;
- (b) the Customer 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
- (c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

E1.10 The Supplier shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.

E1.11 The Supplier shall designate a data protection officer if required by the Data Protection Legislation.

E1.12 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:

- (a) notify the Customer in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Customer;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause E1 such that they apply to the Sub-processor; and (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.

E1.13 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.

E1.14 The Customer 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).

E1.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Supplier amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

E2 Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989

E2.1 The Supplier undertakes to abide by, and ensure that its Staff abide by the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) Section 182 of the Finance Act 1989.

E2.2 In the event that the Supplier and its Staff fail to comply with this Clause E2, ORR reserves the right to terminate the Contract by giving notice in writing to the Supplier.

E2.3 The provisions of this Clause E2 shall survive the expiry or termination of this Contract.

E3 Confidentiality

E3.1 Each Party:

- (a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- (b) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.

E3.2 The Supplier shall take all necessary precautions to ensure that all Confidential Information obtained from ORR under or in connection with the Contract:

- (a) is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the

performance of the Contract and only to the extent necessary for the performance of the Contract;

- (b) is treated as confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisors or consultants otherwise than for the purposes of the Contract.

E3.3 The Supplier shall ensure that Staff or its professional advisors or consultants are aware of the Supplier's confidentiality obligations under this Contract. Where it is considered necessary in the opinion of ORR, the Supplier shall ensure that Staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the Contract.

E3.4 The Supplier shall not use any Confidential Information it receives from ORR otherwise than for the purposes of the Contract.

E3.5 The provisions of Clauses E3.1 to E3.4 shall not apply to any Confidential Information received by one Party from the other:

- (a) which is or becomes public knowledge (otherwise than by breach of this Clause E3);
- (b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- (d) is independently developed without access to the Confidential Information; or
- (e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause E4.

E3.6 Nothing in this Clause E3 shall prevent ORR:

- (a) disclosing any Confidential Information for the purpose of:
 - (i) the examination and certification of ORR's accounts; or
 - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which ORR has used its resources; or
- (b) disclosing any Confidential Information obtained from the Supplier:
 - (i) to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or

- (ii) to any person engaged in providing any services to ORR for any purpose relating to or ancillary to the Contract;

provided that in disclosing information under Clause E3.6(b) ORR discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

- E3.7 Nothing in this Clause E3 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- E3.8 In the event that the Supplier fails to comply with this Clause E3, ORR reserves the right to terminate the Contract by notice in writing with immediate effect.
- E3.9 The provisions under this Clause E3 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.
- E3.10 The provisions of this Clause E3 shall survive for 5 years after the expiry or termination of this Contract.

E4 Freedom of Information

- E4.1 The Supplier acknowledges that ORR is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with ORR (at the Supplier's expense) to enable ORR to comply with these Information disclosure requirements.
- E4.2 The Supplier shall and shall procure that its sub-contractors shall:
- (a) transfer the Request for Information to ORR as soon as practicable after receipt and in any event within 2 working days of receiving a Request for Information;
 - (b) provide ORR with a copy of all Information in its possession or power in the form that ORR requires within 5 working days (or such other period as ORR may specify) of ORR requesting that Information; and
 - (c) provide all necessary assistance as reasonably requested by ORR to enable ORR to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA.
- E4.3 ORR shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;
 - (b) is to be disclosed in response to a Request for Information, and in no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by ORR.
- E4.4 The Supplier acknowledges that ORR may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

- (a) without consulting with the Supplier, or
- (b) following consultation with the Supplier and having taken its views into account.

E4.5 The Supplier shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit ORR to inspect such records as requested from time to time.

E4.6 The Supplier acknowledges that any lists or Schedules provided by it outlining Confidential Information, or any information contained in Schedule 5, are of indicative value only and that ORR may nevertheless be obliged to disclose Confidential Information in accordance with Clause E4.4.

E5 Security of Confidential Information

E5.1 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Contract, the Supplier undertakes to maintain security systems approved by ORR.

E5.2 The Supplier will immediately notify ORR of any breach of security in relation to Confidential Information and all data obtained in the performance of the Contract and will keep a record of such breaches. The Supplier will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Supplier's obligations under Clause E3. The Supplier will co-operate with ORR in any investigation that ORR considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

E5.3 ORR may require the Supplier to alter any security systems at any time during the Contract Period at the Supplier's expense.

E6 Publicity, Media and Official Enquiries

E6.1 The Supplier shall not make any press announcements or publicise the Contract or any part thereof in any way, except with the written consent of ORR.

E6.2 The Supplier shall take all reasonable steps to ensure the observance of the provisions of Clause E6.1 by all their servants, employees, agents, professional advisors and consultants. The Supplier shall take all reasonable steps to ensure the observance of the provisions of Clause E6.1 by its sub-contractors.

E6.3 The provisions of this Clause E6 shall survive the expiry or termination of this Contract.

E7 Security

E7.1 ORR shall be responsible for maintaining the security of ORR's premises in accordance with its standard security requirements. The Supplier shall comply with all reasonable security requirements of ORR while on the Premises, and shall procure that all of its employees, agents, servants and sub-contractors shall likewise comply with such requirements.

E8 Intellectual Property Rights

E8.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material furnished to or made available to the Supplier by ORR shall remain the property of ORR.

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- E8.2 The parties acknowledge that it is their intention that ORR shall own the Intellectual Property Rights vesting in any materials created by or on behalf of ORR as a result of the provision of the Services ("Project IP").
- (a) To that end, the Supplier hereby unconditionally and irrevocably assigns to ORR, by way of present assignment of present and future rights, as legal and beneficial owner and with full title guarantee, all rights, title and interest in all Intellectual Property Rights throughout the world for the full duration of such rights and any renewals or extensions thereof in or arising out of all Project IP together with the right to sue for damages for past infringement of such Intellectual Property Rights.
- (b) All Project IP shall be designated as Confidential Information belonging to ORR.
- E8.3 Where the Supplier uses any material in relation to the performance of the Contract which is subject to the Supplier's Intellectual Property Rights, the Supplier shall grant to ORR a non-exclusive licence to use, reproduce, and maintain the material. Such licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Supplier or to any other third party providing services to ORR, and shall be granted at no cost to ORR.
- E8.4 The Supplier shall obtain Approval before using any material, in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights. The Supplier shall procure that the owner of the rights grants to ORR a non-exclusive licence, or if itself a licensee of those rights, shall grant to ORR an authorised sub-licence, to use, reproduce, and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Supplier or to any other third party providing services to ORR, and shall be granted at no cost to ORR.
- E8.5 It is a condition of the Contract that the Services will not infringe any Intellectual Property Rights of any third party and the Supplier shall during and after the Contract Period on written demand indemnify and keep indemnified ORR and the Crown against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which ORR or the Crown may suffer or incur as a result of or in connection with any breach of this Clause E8, except where any such claim relates to:
- (a) designs furnished by ORR;
- (b) the use of data supplied by ORR which is not required to be verified by the Supplier under any provision of the Contract.
- E8.6 ORR shall notify the Supplier in writing of any claim or demand brought against ORR for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Supplier. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Supplier, provided always that the Supplier:
- (a) shall consult ORR on all substantive issues which arise during the conduct of such litigation and negotiations;
- (b) shall take due and proper account of the interests of ORR; and
- (c) shall not settle or compromise any claim without ORR's prior written consent (not to be unreasonably withheld or delayed).

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- E8.7 ORR shall at the request of the Supplier afford to the Supplier all reasonable assistance for the purpose of contesting any claim or demand made or action brought against ORR or the Supplier for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Contract and shall be repaid all costs and expenses (including, but not limited to, legal costs and disbursements on a solicitor and ORR basis) incurred in doing so.
- E8.8 ORR shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by ORR or the Supplier in connection with the performance of the Contract.
- E8.9 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier may at its own expense and subject to the consent of ORR (not to be unreasonably withheld or delayed) either:
- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply with any necessary changes to such modified Services or to the substitute Services; or
 - (b) procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to ORR.
- E8.10 At the termination of the Contract the Supplier shall immediately return to ORR all materials, work or records held, including any back-up media.
- E8.11 The provisions of this Clause E8 shall survive the expiry or termination of this Contract.
- E9 Audit and Information Rights**
- E9.1 The Supplier shall, at its own expense, keep and maintain until 6 years after the Contract has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Contract (including the Services provided under it, all expenditure reimbursed by ORR, all payments made by ORR, as well as all other payments made and received by the Supplier in connection with this Contract). At ORR's request, the Supplier shall (at no cost to ORR) provide ORR with copies of any information kept in accordance with this Clause E9.1, and shall do so within 5 business days of receiving such request or as otherwise agreed between the Parties.
- E9.2 The Supplier (and any person acting on the Supplier's behalf) shall, at its own expense:
- (a) in general, permit ORR and its third party representatives, on reasonable notice during normal business hours, but without notice in the event of any reasonably suspected breach of Clause D1 and/or Clause D5, to access and take copies of the Supplier's records, books of account and any other information held by or on behalf of the Supplier and to meet with the Supplier's personnel in order to audit the Supplier's compliance with its obligations under this Contract; and
 - (b) in relation to the National Audit Office, and without prejudice to the generality of Clause E9.2(a), permit the Comptroller and Auditor General or appointed representatives free access at all reasonable times to all such documents (including computerized documents and data) and other information as the Comptroller and

Auditor General may reasonably require for the purposes of the Comptroller and Auditor General's financial audit of ORR and for carrying out examinations into the economy, efficiency and effectiveness with which ORR has used its resources. The Supplier shall furnish such explanations as are reasonably required for these purposes. This Clause E9.2(b) does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier by the Comptroller and Auditor General under Section 6(3)(d) of the National Audit Act of 1983.

E9.3 The Supplier shall, at its own expense, provide all assistance and co-operation reasonably requested by ORR in relation to this Clause E9.

E9.4 The provisions of this Clause E9 shall survive for 6 years after the expiry or termination of this Contract.

F. CONTROL OF THE CONTRACT

F1 Assignment and Sub-Contracting

F1.1 The Supplier shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Contract.

F1.2 The Supplier shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

F1.3 Where ORR has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Supplier to ORR within 2 working days of issue.

F1.4 The Supplier shall not use the services of self-employed individuals without prior Approval.

F2 Waiver

F2.1 The failure of either Party to insist upon strict performance of any provision of the Contract or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.

F2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause A7.

F2.3 A waiver of any right or remedy arising from a breach of Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

F3 Change Control Procedure

F3.1 Any request to change or add to this Contract or any other document attached to or referred to in this Contract, other than a change or addition or deletion of the Services as set out in Schedule 2 shall be dealt with in accordance with the change control procedure in this Clause F3.

F3.2 No change request shall be binding on the parties unless the requirements of the change control procedure have been satisfied and a change request form in the form set out in Schedule 4 is signed by the ORR procurement team and Supplier to signify their approval to the change. The change control procedure may be expedited at any time by agreement between the parties.

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- F3.3 Until such time as a change request has been formally agreed to by ORR and the Supplier, the parties shall continue to perform their respective obligations without taking account of the change request.
- F3.4 Change requests may be originated either by ORR or the Supplier or may be originated by the parties jointly.
- F3.5 In the case of any unilateral change request, the party which originates it (the “Originating Party”) shall within 7 days supply to the other party either:
- (a) to the greatest extent reasonably practicable, full details of all consequential changes which will be required to the Services, the Contract or the Contract Price and all other effects of the proposed change; or
 - (b) written confirmation that to the best of its knowledge, there will be no such consequential changes or effects.
- The receiving party shall notify the Originating Party that the report is accepted or rejected within 10 days of receipt.
- F3.6 If a change request is originated by the parties jointly, the Supplier shall provide to ORR a completed Change Request Form for signature.
- F3.7 ORR reserves the right to withhold its agreement to a change request for any reason whatsoever. The Supplier shall not unreasonably withhold or delay its agreement to any change request.
- F4 Severability**
- F4.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.
- F4.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.
- F5 Remedies in the event of inadequate performance**
- F5.1 In the event that ORR is of the opinion that there has been a material breach of this Contract by the Supplier, or the Supplier's performance of its duties under the Contract has failed to meet the requirements, then ORR may, without prejudice to its rights under Clause H2 of the Contract, do any of the following:
- (a) make such deduction from the payment to be made to the Supplier as ORR shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Services as the Supplier shall have failed to provide;
 - (b) without terminating the Contract, itself provide or procure the provision of part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of ORR that the Supplier will once more be able to perform such part of the Services in accordance with the Contract;

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- (c) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself provide or procure a third party to provide such part of the Services; and/or
 - (d) terminate, in accordance with Clause H2, the whole of the Contract.

F5.2 ORR may charge to the Supplier any cost reasonably incurred by ORR and any reasonable administration costs in respect of the provision of any part of the Services by ORR or by a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services.

F5.3 If the Supplier fails to perform any of the Services to the reasonable satisfaction of ORR and such failure is capable of remedy, then ORR shall instruct the Supplier to perform the work and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 14 days or such other period of time as ORR may direct.

F5.4 In the event that:

- (a) the Supplier fails to comply with Clause F5.3. above; or
- (b) the Supplier persistently fails to comply with Clause F5.3 above, and such failures, taken as a whole, are materially adverse to the commercial interests of ORR;

ORR reserves the right to terminate the Contract by notice in writing with immediate effect.

F5.5 The remedies of ORR under this Clause F5 may be exercised successively in respect of any one or more failures by the Supplier.

F6 Remedies Cumulative

F6.1 Except as otherwise expressly provided by the 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 any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

F7 Novation

F7.1 ORR shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to any Contracting Authority, public body or to a private sector body which substantially performs the functions of ORR, provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under this Contract;

F7.2 Any change in the legal status of ORR such that it ceases to be a Contracting Authority shall not affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to ORR.

F7.3 ORR shall be entitled to disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Contract by the Supplier. In such circumstances ORR shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee accepts an obligation of confidence.

G. LIABILITIES, WARRANTIES AND REPRESENTATIONS
G1 Indemnity

- G1.1 The Supplier shall indemnify and keep indemnified ORR fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Contract including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly or indirectly by any act, omission, default, delay, negligence or breach of statutory duty by or on the part of the Supplier.
- G1.2 This Clause G1 shall not apply to the extent that the Supplier is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its staff or sub-contractors, or by any circumstances within its or their control.

G2 Limitation on Liability

- G2.1 Nothing in this Contract shall limit or exclude either Party's liability for:
- (a) death or personal injury caused by its negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982; and
 - (d) anything else for which it cannot by law limit or exclude its liability.
- G2.2 Subject to Clause G2.1, the liability of either Party for Defaults shall be subject to the financial limits set out in this Clause G2.2.
- (a) The aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with this Contract shall in no event exceed 125% of the value of the contract.
 - (b) The annual aggregate liability under the Contract of either Party for all Defaults (other than a Default in relation to Clauses D1.17, E8, G2.2(a) or G3.4) shall in no event exceed the greater of five hundred thousand pounds (£500,000) or One hundred and twenty five per cent (125%) of the amount paid and payable by ORR for the Services (as determined at the date on which the liability arises).
- G2.3 Subject to Clause G2.1 and unless otherwise agreed in writing between the Parties, in no event shall either Party be liable to the other for:
- (a) loss of profits, business, revenue, goodwill or anticipated savings; and/ or
 - (b) indirect or consequential loss or damage.

G3 Insurance

- G3.1 The Supplier shall take out and maintain in force with reputable insurance companies sufficient insurance to cover its liabilities arising under or in connection with this Contract, taking into account its liability to third parties if any, including as a minimum:
- (a) a public liability insurance policy with a sum insured of not less than £5 million per event or a series of connected events;
 - (b) a professional indemnity insurance policy with a sum insured of not less than £5 million per event or a series of connected events; and
 - (c) employer's liability insurance with a sum insured of not less than £5 million for claims arising from a single event or series of related events.
- G3.2 The Supplier shall, at the inception of this Contract, within 30 days of the expiry of each insurance policy and as and when otherwise requested by ORR, provide ORR with such evidence as ORR may reasonably require of the terms of the Insurance Policies together with evidence of payment of the last premium (ORR agreeing that such may be evidenced by the provision of a brokers' letter confirming the insurance cover in place and the payment of the relevant premium).
- G3.3 If the Supplier fails to obtain and maintain insurance in accordance with this Clause G3, ORR may, in its sole discretion either:
- (a) obtain the appropriate insurance itself; or
 - (b) terminate this Contract in accordance with Clause H2.
- G3.4 Where ORR obtains insurance in accordance with Clause G3.3(a), the Supplier shall indemnify ORR in full against the cost of obtaining the insurance.
- G3.5 The Supplier shall procure that any agent, sub-contractor or consultant involved in the provision of Services likewise comply fully with the terms of this Clause G3.

G4 Warranties and Representations

- G4.1 The Supplier warrants and represents that:
- (a) the Supplier has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform this Contract and that this Contract is executed by a duly authorised representative of the Supplier;
 - (b) the Supplier shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to Good Industry Practice and (without limiting the generality of this Clause G4) in accordance with its own established internal procedures;
 - (c) all obligations of the Supplier pursuant to the Contract shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
 - (d) the Supplier is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory

obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Contract.

H. DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on Change of Control and Insolvency

H1.1 ORR may terminate the Contract by notice in writing with immediate effect where:

- (a) the Supplier undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Contract;
- (b) the Supplier is an individual or a firm and a petition is presented for the Supplier's bankruptcy, or a criminal bankruptcy order is made against the Supplier or any partner in the firm, or the Supplier or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Supplier's or firm's affairs;
- (c) the Supplier is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge;
- (d) where the Supplier is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (e) any similar event occurs under the law of any other jurisdiction within the United Kingdom.

H1.2 If the Supplier, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983, ORR shall be entitled to terminate this Contract by notice to the Supplier or the Supplier Representative with immediate effect.

H2 Termination on Default

H2.1 ORR may terminate the Contract, or terminate the provision of any part of the Contract by written notice to the Supplier or the Supplier Representative with immediate effect if the Supplier commits a Default and if:

- (a) the Supplier has not remedied the Default to the satisfaction of ORR within 10 days, or such other period as may be specified by ORR, after issue of a written notice specifying the Default and requesting it to be remedied;
- (b) the Default is not capable of remedy; or

(c) the Default is a fundamental breach of the Contract.

H2.2 In the event that through any Default of the Supplier, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any charge levied for its transmission.

H2.3 The Supplier may terminate this Contract if ORR is in material breach of its obligations to pay undisputed charges by giving ORR 60 days notice specifying the breach and requiring its remedy. The Supplier's right of termination under this Clause H2.3 shall not apply to non payment of the charges where such non payment is due to ORR exercising its rights under Clause C3.1.

H3 Break

H3.1 ORR shall have the right to terminate the Contract, or to terminate the provision of any part of the Contract at any time by giving one Month's written notice to the Supplier. ORR may extend the period of notice at any time before it expires.

H4 Consequences of Termination

H4.1 Where ORR terminates the Contract under Clause H2, or terminates the provision of any part of the Contract under Clause H2, and then makes other arrangements for the provision of Services, ORR shall be entitled to recover from the Supplier the cost of making those other arrangements and any additional expenditure incurred by ORR throughout the remainder of the Contract Period. Where the Contract is terminated under Clause H2, no further payments shall be payable by ORR to the Supplier until ORR has established the final cost of making those other arrangements.

H4.2 Where ORR terminates the Contract under Clause H3, ORR shall indemnify the Supplier against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of the Contract, provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance, the Supplier shall reduce its unavoidable costs by any insurance sums available. The Supplier shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Supplier as a result of termination under H3.

H4.3 ORR shall not be liable under Clause H4.2 to pay any sum which:

- (a) was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- (b) when added to any sums paid or due to the Supplier under the Contract, exceeds the total sum that would have been payable to the Supplier if the Contract had not been terminated prior to the expiry of the initial Contract Period.

H5 Disruption

H5.1 The Supplier shall take reasonable care to ensure that in the execution of the Contract it does not disrupt the operations of ORR, its employees or any other Supplier employed by ORR.

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- H5.2 The Supplier shall immediately inform ORR of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- H5.3 In the event of industrial action by the Staff or the Supplier's suppliers the Supplier shall seek ORR's Approval to its proposals to perform its obligations under the Contract.
- H5.4 If the Supplier's proposals referred to in Clause H5.3 are considered insufficient or unacceptable by ORR, then the Contract may be terminated by ORR by notice in writing with immediate effect.
- H5.5 If the Supplier is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of ORR, an appropriate allowance by way of extension of time will be approved by ORR. In addition, ORR will reimburse any additional expense incurred by the Supplier in fulfilling the provisions of the Contract as a result of such disruption.
- H6 Recovery upon Termination**
- H6.1 Termination or expiry of the Contract shall be without prejudice to any rights and remedies of the Supplier and ORR accrued before such termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.
- H6.2 At the end of the Contract Period (and howsoever arising) the Supplier shall forthwith deliver to ORR upon request all ORR's Property (including but not limited to materials, documents, information) relating to the Contract in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors and in default of compliance with this Clause H6 ORR may recover possession thereof and the Supplier grants licence to ORR or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted suppliers or sub-contractors where any such items may be held.
- H6.3 At the end of the Contract Period (howsoever arising) and/ or after the Contract Period the Supplier shall co-operate free of charge with ORR and any new Supplier appointed by ORR to continue or take over the performance of the Contract in order to ensure an effective handover of all work then in progress.
- H6.4 The provisions of this Clause H6 shall survive the expiry or termination of this Contract.
- H7 Force Majeure**
- H7.1 For the purpose of this Clause H7, "Force Majeure" means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster. It does not include any industrial action occurring within the Supplier's organisation or within any sub-contractor's organisation.
- H7.2 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Contract (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Contract for a period in excess of 1 month, either Party may terminate the Contract by notice in writing with immediate effect.

- H7.3 Any failure or delay by the Supplier in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Supplier.
- H7.4 Clause H7 does not affect ORR's rights under Clause H6.4.
- H7.5 If either of the Parties becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in Clause H7.3 it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- H7.6 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of the Contract shall be any event qualifying for Force Majeure hereunder.

I. DISPUTES AND LAW

I1 Governing Law

- I1.1 This Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

I2 Dispute Resolution

- I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 30 days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the Head of Finance (or equivalent) of each Party.
- I2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- I2.3 If the dispute cannot be resolved by the Parties pursuant to Clause I2.1, the dispute shall be referred to mediation pursuant to the procedure set out in Clause I2.5 unless (a) ORR considers that the dispute is not suitable for resolution by mediation; or (b) the Supplier does not agree to mediation.
- I2.4 The performance of the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Supplier (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Contract at all times.
- I2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 14 days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator.
 - (b) The Parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the

structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.

- (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- (e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
- (f) If the Parties fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in Clause I2.6

I2.6 Subject to Clause I2.2, the Parties shall not institute court proceedings until the procedures set out in Clauses I2.3 and I2.5 have been completed save that:

- (a) ORR may at any time before court proceedings are commenced, serve a notice on the Supplier requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of Clause I2.7.
- (b) if the Supplier intends to commence court proceedings, it shall serve written notice on ORR of its intentions and ORR shall have 21 days following receipt of such notice to serve a reply on the Supplier requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of Clause I2.7.
- (c) the Supplier may request by notice in writing to ORR that any dispute be referred and resolved by arbitration in accordance with the provisions of Clause I2.7, to which ORR may in its discretion consent as it sees fit.

I2.7 In the event that any arbitration proceedings are commenced pursuant to Clause I2.6, the following provisions shall apply:

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;
- (b) ORR shall give a written notice of arbitration to the Supplier ("the Arbitration Notice") stating:
 - (i) that the dispute is referred to arbitration; and
 - (ii) providing details of the issues to be resolved;
- (c) the London Court of International Arbitration ("LCIA") procedural rules in force at the date that the dispute was referred to arbitration in accordance with I2.7(b) shall be applied and are deemed to be incorporated by reference to this Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any

material failure to comply with such rules;

- (d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (e) if the Parties fail to agree the appointment of the arbitrator within 10 (ten) days of the Arbitration Notice being issued by ORR under Clause 12.7(b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (f) the arbitration proceedings shall take place in London and in the English language;
and
- (g) the arbitration proceedings shall be governed by, and interpretations made in accordance with, English law.

SCHEDULE 2

Specification of Services

Statement of requirements

Background

DfT has asked ORR to provide independent assurance on a funding request from TfL for part of its capital expenditure in 2024/25. This work was not planned and the nature of it falls outside of ORR's normal business activity. ORR has some existing capability to do this work but lacks expert knowledge in rolling stock delivery. The timescales are extremely constrained and dictated by external factors. TfL is expected to submit its funding request at the end of August 2023 and the ORR's analysis completed by the end of September 2023. These timings have been scheduled to align with TfL's wider business planning process for 2024-25, which completes in December 2023.

The ORR has mobilised a team from existing staff to undertake this analysis. The expertise of this team is principally in fixed infrastructure projects delivered by Network Rail and National Highways. We need to supplement the analysis with expertise of rolling stock delivery programmes, as TfL's funding request will be for both fixed infrastructure and rolling stock delivery.

Description of services required

The provision of expert knowledge in rolling stock delivery programmes for a maximum of eight days in mid-September 2023 for one FTE. The work will entail a review of ORR's analysis and provide a critique in the form of a written advice note.

SCHEDULE 3

Contract Price

Price

A fixed day rate inclusive of expenses of [REDACTED] (ex VAT), up to a maximum liability of [REDACTED] (8 days max)

Payment

Payment shall be made upon completion and acceptance of the services as described in Schedule 2.
Payment shall monthly in arrears based on actuals.

SCHEDULE 4

CHANGE CONTROL FORM

DETAIL OF CHANGE REQUEST		
Change Request No.:	Click or tap here to enter text.	
Issued By:	Click or tap here to enter text.	
Party:	Choose an item.	
Date:	Click or tap to enter a date.	
Details of Changes: (inc. impact on Schedule 2)	Click or tap here to enter text.	
Price Implications: (inc. impact on Schedule 3)	Click or tap here to enter text.	
How will the change be implemented?:	Click or tap here to enter text.	
Any Other Issues/Information:	Click or tap here to enter text.	
Required Response Date:	Click or tap to enter a date.	
CHANGE CONTROL AGREEMENT		
Agreed (Delete as appropriate):	YES	NO
Signed (by the authorised representative)		
Supplier		
Name/Position	Click or tap here to enter text.	
Signature		
Date	Click or tap to enter a date.	
ORR		
Name/Position	Click or tap here to enter text.	
Signature		

Date	Click or tap to enter a date.

SCHEDULE 5

Confidential Information

The following information used in this work will be deemed Confidential Information.

- [REDACTED]

SCHEDULE 6

Supplier Key Personnel

[REDACTED]

SCHEDULE 7
Processing, Personal Data and Data Subjects

N/A

1. The Supplier shall comply with any further written instructions with respect to processing by the Customer.
2. Any such further instructions shall be incorporated in this schedule.

Description	Details
Subject matter of the processing	[This should be a high level, short description of what the processing is about, i.e. its subject matter]
Duration of the processing	[Clearly set out the duration of the processing including dates]
Nature and purposes of the processing	[Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]
Type of Personal Data	[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]
Categories of Data Subject	[Examples include: Staff (including volunteers, agents and temporary workers), customers / clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc.]
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	[Describe how long the data will be retained for, how it will be returned or destroyed]

SCHEDULE 8

Special Terms

N/A