

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 One Kemble Street London WC2B 4AN and includes ORR's successors and assignees

CONTRACTOR SNC – Lavalin Transport Advisory Limited (a company registered in England with company number 7577610) whose registered office is at SNC Lavalin House, 2 Roundhouse Road, Derby, DE24 8JE

Date 07/02/2018

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 CONTRACTOR undertake to observe in the performance of this CONTRACT.

Contract Title Assessment of Network Rail's delivery of Network Availability in CP6

Contract Reference ORR/CT/17-73

Key Terms

TERM	<i>Commencement Date 05/02/2018</i> <i>Expiry Date 08/06/2018</i> The ORR may extend the Agreement for a period of up to 6 months by giving not less than 5 Working Days' notice in writing to the Contractor prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period
DELIVERABLES and DELIVERABLE DATES	The Contactor shall deliver a final report by 31/05/2018 as further set out in Schedule 2
CONTRACT PRICE	The sum(s) to be paid by the ORR to the CONTRACTOR. The CONTRACT PRICE and payment schedule are set out in Schedule 3
ASSIGNED AND NON ASSIGNED DELIVERABLES	The NON-ASSIGNED DELIVERABLES are: • A project plan that is to be kept live throughout the project • A presentation of the findings and recommendations to the ORR (so that ORR has the opportunity to provide comments before the report is finalised) – 31st March 2018

Protect – Contracts

	The ASSIGNED DELIVERABLES are: • Draft report for comment that details the findings, conclusions and recommendations – 30th April. • Final report which incorporates the amendments from the ORR – 31st May 2018
ORR REPRESENTATIVE	Matt Durbin
CONTRACTOR REPRESENTATIVE	Rufus Boyd

SCHEDULES

Schedule 1	Conditions of Contract for Professional Services
Schedule 2	Specification of Services
Schedule 3	Contract Price
Schedule 4	Change Control Procedure
Schedule 5	Confidential Information
Schedule 6	Contractor Key Personnel
Schedule 7	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

Name: MAYANK VAS Signature: [Signature]

Position: PROCUREMENT EXECUTIVE

SIGNED by the duly authorised representative of the Contractor

Name: MARIANNE KILPATRICK Signature: [Signature]

Position: DIRECTOR

SCHEDULE 1



OFFICE OF RAIL AND ROAD
CONDITIONS OF CONTRACT
FOR PROFESSIONAL SERVICES

Protect – Contracts



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

In these Conditions:

"Approval" and "Approved" means the written consent of the Contract Manager.

Assigned deliverables are those products and services identified in the Form of Agreement

"ORR" means the Office of Rail and Road and includes, but is not limited to, the Contract Manager.

"ORR Property" means any property, other than real property, issued or made available to the Contractor by ORR in connection with the 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 Contractor to ORR in confidence for the period set out in that Schedule; and/or
- (b) that constitutes a trade secret.

"Condition" means a condition within the Contract.

"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 Contractor 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 or such person as may be nominated by the Contract Manager to act on its behalf. The Initial Contract Manager is as indicated in the Form of Agreement

"Contract Period" means the period of duration of the Contract in accordance with Condition A2.

"Contract Price" means the price exclusive of any applicable Tax, payable to the Contractor 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 Contractor of its part of the Contract as determined under the Conditions of the Contract but before taking into account the effect of any adjustment of price in accordance with Condition C4.

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

"Contractor" means the person, firm or company with whom ORR enters into this Contract.

"Contractor's Representative" means the individual authorised to act on behalf of the Contractor for the purposes of the Contract. The initial Contractor's representative is as indicated in the Form of Agreement.

"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.

"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 Contractor) 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.

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

"Invitation to Tender" means an invitation for Contractors 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, and guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body.

"Month" means calendar month.

"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 Contractor'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 Contractor" 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, Assigned Deliverables and non-assigned 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 Contractor to perform the Contract together with the Contractor's servants, agents and sub-contractors used in the performance of the Contract.

"Tender" means the Contractor's response to the Invitation to Tender or the Contractor's quote for the Services.

"Tax" means Value Added Tax.

A1.2

Interpretation

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

The terms and expressions set out in A1.1 shall have the meanings ascribed therein;

Words importing the singular meaning include where the context so admits the plural meaning and vice versa;

Words importing the masculine include the feminine and the neuter;

Reference to a Condition is a reference to the whole of that Condition unless stated otherwise;

Reference to a Clause is a reference to a paragraph within a Condition unless stated otherwise;

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;

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;

The words "include", "includes" and "including" are to be construed as if they were

immediately followed by the words "without limitation";

Headings are 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 these Conditions, or otherwise lawfully terminated.

A3 Contractor's Status (Principal)

A3.1 In carrying out the Services the Contractor shall be acting as principal and not as the agent of ORR.

A3.2 Accordingly:

- (a) the Contractor shall not (and shall procure that the Staff do not) say or do anything that might lead any other person to believe that the Contractor 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 Contractor to any other person but this shall not be taken to exclude or limit any liability of ORR to the Contractor 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 Contractor.

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.

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 For the purposes of Clause A7.2, the address of each Party shall be:
- (a) For ORR:
The ORR Representative as set out in the Form of Agreement
The Office of Rail and Road
Address: One Kemble Street, London, WC2B 4AN
 - (b) For the Contractor:
The Contractor's Representative as set out in the Form of Agreement
Contractor's registered office
- A7.4 Either Party may change its address for service by serving a notice in accordance with this Condition.
- A8 Mistakes in Information**
- A8.1 The Contractor shall use [reasonable] [best] 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 Contractor shall be responsible for the accuracy and completeness of all drawings, documentation and information supplied to ORR by the Contractor 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 Contractor will disclose to ORR full particulars of any conflict of interest which may arise. The Contractor shall in addition take the necessary steps to ensure that neither the Contractor 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 Contractor or such persons and the duties owed to ORR under the provisions of the Contract.
- A9.2 The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its termination.
- A10 Fraud**
- A10.1 The Contractor shall safeguard ORR's funding of the Contract against fraud generally and, in particular, fraud on the part of the Staff, or the Contractor's directors and suppliers. The Contractor 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 Contractor 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 Contractor, at any other premises where any part of the Services is being performed.
- B1.2 In providing the Services, the Contractor 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 Contractor 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 Contractor 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 Contractor shall reimburse ORR for all reasonable costs incurred by ORR which have arisen as a direct consequence of the Contractor's delay in the performance of the Contract which the Contractor has failed to remedy after being given reasonable notice by ORR.

B2 Standard of Work

B2.1 The Contractor 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 Contractor shall use the best 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 Contractor 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 Contractor 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 Contractor 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 Contractor's obligations under the Contract by the Contractor, ORR shall pay the Contract Price.
- C1.2 ORR shall pay the Contractor, in addition to the Contract Price, a sum equal to the Tax chargeable on the value of the Services provided in accordance with the Contract.

C2 Payment and Tax

- C2.1 Where the Contractor submits an invoice to the ORR, the 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 The ORR shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the ORR has determined that the invoice is valid and undisputed.
- C2.4 Where the ORR fails to comply with 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 paragraph C2.3 after a reasonable time has passed.
- C2.5 Where the Contractor enters into a Sub-Contract, the Contractor 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 the 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 Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- C2.7 ORR may reduce payment in respect of any Services, which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of ORR.
- C2.8 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under Clause H2.3 for failure to pay undisputed charges.
- C2.9 If ORR fails to pay any amount payable by it under this Contract by the due date for payment the Contractor shall be entitled but not obliged to charge ORR interest on the overdue amount at a rate of 2% (two per cent) above the base Rate of the Bank of England per annum and such interest shall accrue 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 Contractor (including any sum which the Contractor 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 Contractor under the Contract or under any other agreement or contract with ORR.
- C3.2 Any overpayment by ORR to the Contractor, whether of the Contract Price or of Tax, shall be a sum of money recoverable by ORR from the Contractor.
- C3.3 The Contractor shall make any payments due to ORR without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by ORR to the Contractor.

C4 Alteration to Assigned Deliverables, non-assigned deliverables or Contract Period

- C4.1 The Contract Price shall be firm for the initial Contract Period and for the delivery of the Assigned Deliverables and non-assigned deliverables to the satisfaction of ORR. In the event of an amendment, removal or addition to an Assigned Deliverable, non-assigned 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 Prevention of Corruption**

- D1.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of ORR any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Contract or any other contract with ORR, or for showing or refraining from showing favour or disfavour to any person in relation to this Contract or any such contract. The attention of the Contractor is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.
- D1.2 The Contractor shall not enter into this Contract if in connection with it commission has been paid or is agreed to be paid to any employee or representative of ORR by the Contractor or on the Contractor's behalf, unless before this Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to ORR.
- D1.3 Where the Contractor or Contractor's employees, servants, sub-contractors, suppliers or agents or anyone acting on the Contractor's behalf, engages in conduct prohibited by Clauses D1.1 or D1.2 in relation to this or any other contract with ORR, ORR has the right to:
- (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by ORR resulting from the termination; or
 - (b) recover in full from the Contractor any other loss sustained by ORR in consequence of any breach of this Condition, whether or not the Contract has been terminated.
- D1.4 In exercising its rights or remedies under this Condition, ORR shall:

- (a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act;
- (b) give all due consideration, where appropriate, to action other than termination of the Contract.

D2 Discrimination

- D2.1 The Contractor 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 Contractor shall take all reasonable steps to secure the observance of Clause D2.1 by all servants, employees or agents of the Contractor 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 Contractor) 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 Condition 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 Contractor 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.

E PROTECTION OF INFORMATION

E1 Data Protection Act

- E1.1 The Contractor shall (and shall procure that any of its Staff involved in the provision of this Contract) be registered under the Data Protection Act 1998 ("DPA") and both Parties will duly observe all their obligations under the Act, which arise in connection with the Contract.
- E1.2 Notwithstanding the general obligation in Clause E1.1, where the Contractor is processing personal data (as defined by the DPA) as a data processor for ORR (as defined by the DPA) the Contractor shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and
 - (a) provide ORR with such information as ORR may reasonably require to satisfy itself that the Contractor is complying with its obligations under the DPA;
 - (b) promptly notify ORR of any breach of the security measures required to be put in place pursuant to Clause E1.2; and
 - (c) ensure that it does nothing knowingly or negligently which places ORR in breach of ORR's obligations under the DPA.

- E1.3 The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its expiry or termination.
- E2 Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989**
- E2.1 The Contractor 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 Contractor and its Staff fail to comply with this Condition, ORR reserves the right to terminate the Contract by giving notice in writing to the Contractor.
- E2.3 The provisions of Clause E2.1 shall apply during the continuance of the Contract and indefinitely after its expiry or termination.
- 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 Contractor 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 Contractor shall ensure that Staff or its professional advisors or consultants are aware of the Contractor's confidentiality obligations under this Contract. Where it is considered necessary in the opinion of ORR, the Contractor 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 Contractor 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 Condition);

- (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 Condition E4.

E3.6 Nothing in this Condition 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 Contractor:
 - (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 sub-paragraph (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 Condition 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 Contractor fails to comply with this Condition E3, ORR reserves the right to terminate the Contract by notice in writing with immediate effect.

E3.9 The provisions under this Condition E3 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

E4 Freedom of Information

E4.1 The Contractor 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 Contractor's expense) to enable ORR to comply with these Information disclosure requirements.

- E4.2 The Contractor 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 two [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 [five] 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 Contractor respond directly to a Request for Information unless expressly authorised to do so by ORR.
- E4.4 The Contractor 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 Contractor, or
 - (b) following consultation with the Contractor and having taken its views into account.
- E4.5 The Contractor 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 Contractor 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 Contractor undertakes to maintain security systems approved by ORR.
- E5.2 The Contractor 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 Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor's obligations under Condition E3. The Contractor 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 Contractor to alter any security systems at any time during the Contract Period at the Contractor's expense.

E6 Publicity, Media and Official Enquiries

- E6.1 The Contractor 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 Contractor 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 Contractor 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 Condition shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

E7 Security

- E7.1 ORR shall be responsible for maintaining the security of ORR's premises in accordance with its standard security requirements. The Contractor 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 and Assigned Deliverables

- E8.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
- (a) furnished to or made available to the Contractor by ORR shall remain the property of ORR;
 - (b) prepared by or for the Contractor for use, or intended use, in relation to the performance of this Contract shall belong to ORR and the Contractor shall not, and shall procure that the Contractor's employees, servants, agents, suppliers and sub-contractors shall not, (except when necessary for the implementation of the Contract) without prior Approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to this Contract) which the Contractor may obtain in performing the Contract except information which is in the public domain.
- E8.2 The Contractor hereby assigns to ORR with full title guarantee, where appropriate by way of present assignment of future rights, all right, title and interest in the Intellectual Property Rights in the Assigned Deliverables. ORR reserves the right to publish in whole or in part any Assigned Deliverables (including any Contractor logo and/or marks) and, if so, on what conditions; and the Contractor shall ensure where necessary that it secures the right to effect such vesting.
- E8.3 The Contractor 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 Contractor 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 Contractor or to any other third party providing services to ORR, and shall be granted at no cost to ORR.
- E8.4 It is a condition of the Contract that the Services will not infringe any Intellectual Property Rights of any third party and the Contractor 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 Condition, 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 Contractor under any provision of the Contract.
- E8.5 ORR shall notify the Contractor 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 Contractor. The Contractor 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 Contractor, provided always that the Contractor:
 - (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).
- E8.6 ORR shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against ORR or the Contractor 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.
- E8.7 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 Contractor in connection with the performance of the Contract.
- E8.8 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 Contractor is likely to be made, the Contractor 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.
- E8.9 At the termination of the Contract the Contractor shall immediately return to ORR all materials, work or records held, including any back-up media.
- E8.10 The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

E9 Audit and the National Audit Office

- E9.1 The Contractor shall keep and maintain until six [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, and all payments made by ORR. The Contractor shall on request afford ORR or ORR's representatives such access to those records as may be required by ORR in connection with the Contract.
- E9.2 The Contractor (and any person acting on the Contractor's behalf) shall 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 Contractor shall furnish such explanations as are reasonably required for these purposes. This clause does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor by the Comptroller and Auditor General under Section 6(3)(d) of the National Audit Act of 1983.

F. CONTROL OF THE CONTRACT**F1 Assignment and Sub-Contracting**

- F1.1 The Contractor 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 Contractor of any obligation or duty attributable to the Contractor under the Contract.
- F1.2 The Contractor 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 Contractor to ORR within two [2] working days of issue.
- F1.4 The Contractor 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 Condition 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 Condition 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 Contract Manager and Contractor to signify their approval to the

change. The change control procedure may be expedited at any time by agreement between the parties.

- F3.3 Until such time as a change request has been formally agreed to by ORR and the Contractor, 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 Contractor 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:
- F3.6 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
- F3.7 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.
- F.3.8 If a change request is originated by the parties jointly, the Contractor shall provide to ORR a completed Change Request Form for signature.
- F3.9 ORR reserves the right to withhold its agreement to a change request for any reason whatsoever. The Contractor 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 Contractor, or the Contractor's performance of its duties under the Contract has failed to meet the requirements, then ORR may, without prejudice to its rights under Condition H2 of the Contract, do any of the following:
- (a) make such deduction from the payment to be made to the Contractor 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 Contractor 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 Contractor shall have demonstrated to the reasonable satisfaction of ORR that the Contractor will once more be able to perform such part of the Services in accordance with the Contract;

- (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 Condition H2, the whole of the Contract.
- F5.2 ORR may charge to the Contractor 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 Contractor for such part of the Services.
- F5.3 If the Contractor 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 Contractor to perform the work and the Contractor 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 Contractor fails to comply with Clause F5.3. above; or
 - (b) the Contractor 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 Condition may be exercised successively in respect of any one or more failures by the Contractor.
- 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 Contractor'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 Contractor which relates to the performance of the Contract by the Contractor. 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**G1 Indemnity and Insurance**

- G1.1 Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
- G1.2 The Contractor 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 Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor. This Condition shall not apply to the extent that the Contractor 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.
- G1.3 Subject always to Clause G1.1, the liability of either Party for Defaults shall be subject to the financial limits set out in this Clause G1.3.
- (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 the greater of £60,000 or 100% of the value of the contract.
 - (b) The annual aggregate liability under the Contract of either Party for all Defaults (other than a Default governed by Clause E8.3 or Clause G1.3(a)) shall in no event exceed the greater of one hundred thousand pounds (£100,000) or two hundred per cent (200%) of the amount paid and payable by ORR for the Services (as determined at the date on which the liability arises).
- G1.4 Subject always to Clause G1.1 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.
- G1.5 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.
- G1.6 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement for the time being in force.
- G1.7 The Contractor shall produce to the Contract Manager, on request, copies of all insurance policies referred to in this Condition or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- G1.8 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by this Contract ORR may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- G1.9 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the

amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause G1.2.

G2 Professional Indemnity

G2.1 The Contractor shall hold and maintain professional indemnity insurance cover and shall ensure that all professional consultants involved in the provision of the Services hold and maintain appropriate cover. Such insurance to be held by the Contractor or by any agent, sub-contractor or consultant involved in the provision of Services with a limit of indemnity of not less than £500,000 for any occurrences arising out of each and every event. Such insurance shall be maintained for a minimum of 12 (twelve) months following the expiration or earlier termination of this Contract.

G3 Warranties and Representations

G3.1 The Contractor warrants and represents that:

- (a) the Contractor 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 Contractor;
- (b) the Contractor 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 Condition) in accordance with its own established internal procedures;
- (c) all obligations of the Contractor 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 Contractor 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 Contractor 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; or
- (b) the Contractor is an individual or a firm and a petition is presented for the Contractor's bankruptcy, or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor 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 Contractor's or firm's affairs; or
- (c) the Contractor 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; or

- (d) where the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (e) or any similar event occurs under the law of any other jurisdiction within the United Kingdom.

H1.2 If the Contractor, 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 Contractor or the Contractor's 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 Contractor or the Contractor's Representative with immediate effect if the Contractor commits a Default and if:

- (a) the Contractor 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; or
- (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 Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor 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 Contractor 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 Contractor'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 Contractor. 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 Condition H2, or terminates the provision of any part of the Contract under that Condition, and then makes other arrangements for the provision of Services, ORR shall be entitled to recover from the Contractor 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 Condition H2, no further payments shall be payable by ORR to the Contractor until ORR has established the final cost of making those other arrangements.

H4.2 Where ORR terminates the Contract under Condition H3, ORR shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise

represent an unavoidable loss by the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor 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 Contractor, and the Contractor 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 Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the initial Contract Period.

H5 Disruption

H5.1 The Contractor 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 contractor employed by ORR.

H5.2 The Contractor 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 Contractor's suppliers the Contractor shall seek ORR's Approval to its proposals to perform its obligations under the Contract.

H5.4 If the Contractor'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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 ORR may recover possession thereof and the Contractor grants licence to ORR or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor 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 Contractor shall co-operate free of charge with ORR and any new contractor 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 shall survive the continuance of this Contract and indefinitely after its termination.
- H7 Force Majeure**
- H7.1 For the purpose of this Condition, "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 Contractor'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 Contractor 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 Contractor.
- H7.4 Condition 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 condition 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 Contractor does not agree to mediation.

- 12.4 The performance of the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Contract at all times.
- 12.5 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 12.6
- 12.6 Subject to Clause 12.2, the Parties shall not institute court proceedings until the procedures set out in Clauses 12.3 and 12.5 have been completed save that:
- (a) ORR may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of Clause 12.7.
 - (b) if the Contractor 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 Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of Clause 12.7.
 - (c) the Contractor may request by notice in writing to ORR that any dispute be referred and resolved by arbitration in accordance with the provisions of Clause 12.7, to which ORR may in its discretion consent as it sees fit.
- 12.7 In the event that any arbitration proceedings are commenced pursuant to Clause 12.6, 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 Contractor ("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 12.7(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 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

Document Precedence

Part A takes precedence over Part B.

Part A: ORR's Statement of Requirements set out in its Invitation to Tender reference ORR/CT/17-73 ("SoR")

Part B: CONTRACTOR'S proposal

SCHEDULE 3

Contract Price

Contract Price £34,419.50 inclusive of expenses exclusive of VAT.

Payment Schedule

25% (£8,605) payable on delivery of presentation of interim findings

25% (£8,605) payable on delivery of draft report

50% (£17,209.50) payable on delivery and acceptance by the ORR of the final report.

SCHEDULE 4
CHANGE CONTROL

Change Control Form

Date of Change Request	Issued By:	Party:
Details of Changes		
Cost Implications		
Implementation Issues		
Any Other Issues		
Response Date		
Agreed ?	YES	NO
Signed (by the authorised representative of each party)	Contractor	ORR
	Date	Date

SCHEDULE 5

Confidential Information

Names and CVs of CONTRACTOR's Consultants undertaking the project

CONTRACTOR's pricing model set out under Section 4.1 of its proposal

SCHEDULE 6

Contractor Key Personnel

**Rufus Boyd
Nigel Harris
Keith Foley
Mrk Fielding
Andrew Woodcock
Luke Ripley
James Binfield**

SCHEDULE 7

Special Terms

N/A