

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

ORR Office of Rail and Road a Non Ministerial Government Department established pursuant to Section 15 of the Railways and Transport Safety Act 2003, of 25 Cabot Square, London, E14 4QZ and includes ORR's successors and assignees

SUPPLIER Steer Davies & Gleave Limited (a company registered in England with company number 1883830) whose registered office is at 14-21 Rushworth Street, London, SE1 0RB.

Date 06 January 2025

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 CP7 Recalibration of the Network Rail Passenger Schedule 8 Regime

Contract Reference ORR/CT/24-44

Purchase Order Number

Key Terms

TERM	<p><i>Commencement Date</i> 30 December 2024</p> <p><i>Expiry Date</i> 31 December 2025</p>
DELIVERABLES AND DELIVERABLE DATES	The Contactor shall provide services as set out in Schedule 2.
CONTRACT PRICE	<p>The sum(s) to be paid by ORR to the SUPPLIER.</p> <p>The CONTRACT PRICE and payment schedule are set out in Schedule 3</p>
ORR REPRESENTATIVE / CONTRACT MANAGER	[REDACTED], Head of Incentives and Reform, ORR
SUPPLIER REPRESENTATIVE	[REDACTED] Steer Davies & Gleave Limited

SCHEDULES

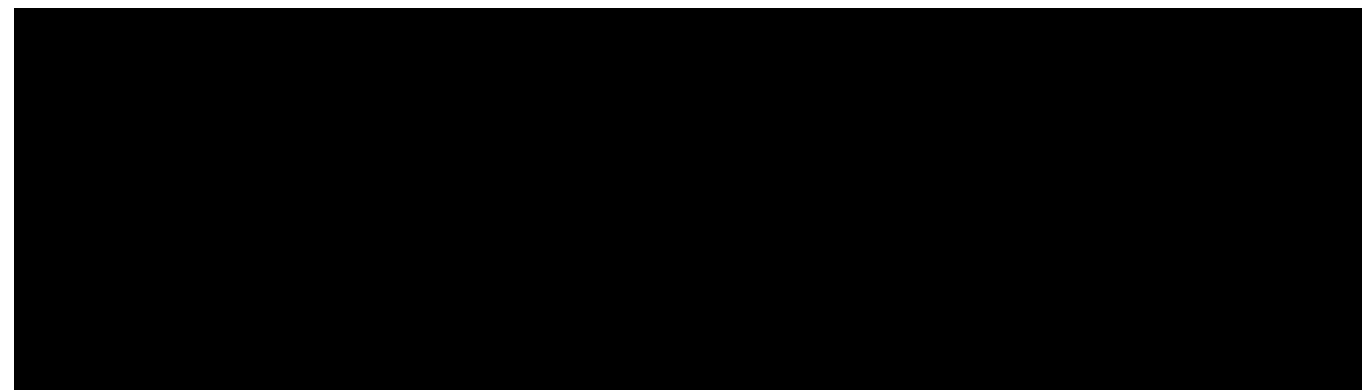
Schedule 1	Conditions of Contract for Professional Services
Schedule 2	Specification of Services
Schedule 3	Contract Price

Schedule 4	Change Control Form
Schedule 5	Confidential Information
Schedule 6	Supplier Key Personnel
Schedule 7	Processing, Personal Data and Data Subjects
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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



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] 14-21 Rushworth Street, London, SE1 0RB

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 (including the purchase order number) 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 Generic Standard UK GDPR Clauses

E1.1 **Customer:** Office of Rail and Road

Contractor: Steer Davies & Gleave Limited

Party: a Party to this Agreement

Agreement: this contract;

Law: means any law, subordinate legislation within the meaning of Section 21(1) of the

Interpretation Act 1978, bye-law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgement of a relevant court of law, or directives or requirements with which the Processor is bound to comply;

Processor Personnel: means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement

E1.2

GDPR CLAUSE DEFINITIONS:

Data Protection Legislation: (i) all applicable UK law relating to the processing of personal data and privacy, including but not limited to the UK GDPR, and the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (ii) (to the extent that it may be applicable) the EU GDPR). The UK GDPR and EU GDPR are defined in section 3 of the Data Protection Act 2018.

Data Protection Impact Assessment: an assessment by the Controller carried out in accordance with Section 3 of the UK GDPR and sections 64 and 65 of the DPA 2018.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the UK GDPR.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Processor 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.

Data Subject Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to Data Protection Legislation to access their Personal Data.

DPA 2018: Data Protection Act 2018

UK GDPR: the UK General Data Protection Regulation

Joint Controllers: takes the meaning given in Article 26 of the UK GDPR

Law Enforcement Processing: processing under Part 3 of the DPA 2018.

Protective Measures: appropriate technical and organisational measures designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation and this Agreement, 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 including those outlined in Schedule [x] (Security).

Sub-processor: any third Party appointed to process Personal Data on behalf of that Processor related to this Agreement

E1.3

DATA PROTECTION

(a) The Parties acknowledge that for the purposes of Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor. The only processing that the Processor is authorised to do is listed in Schedule 7 by the Controller and may not be determined by the Processor. The term “processing” and any associated terms are to be read in accordance with Article 4 of the UK GDPR.

(b) The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe Data Protection Legislation.

(c) The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

- i. a systematic description of the envisaged processing operations and the purpose of the processing;
- ii. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- iii. an assessment of the risks to the rights and freedoms of Data Subjects; and
- iv. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

E1.4

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

(a) process that Personal Data only in accordance with Schedule 7, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;

(b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject. In the event of the Controller reasonably rejecting Protective Measures put in place by the Processor, the Processor must propose alternative Protective Measures to the satisfaction of the Controller. Failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures. Protective Measures must take 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 Processor 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 Processor Personnel who have access to the Personal Data and ensure that they:

(A) are aware of and comply with the Processor's duties under this clause;
 (B) are subject to appropriate confidentiality undertakings with the Processor 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 Controller 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 UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

- i. the destination country has been recognised as adequate by the UK government in accordance with Article 45 UK GDPR or section 74 of the DPA 2018;
- ii. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 DPA 2018) as determined by the Controller;
- iii. the Data Subject has enforceable rights and effective legal remedies;
- iv. the Processor complies with its obligations under Data Protection Legislation by providing an appropriate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
- v. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

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

E1.5 Subject to clause E1.6, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under 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.

E1.6 The Processor's obligation to notify under clause E1.5 shall include the provision of further information to the Controller, as details become available.

E1.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause E1.5 (and insofar as possible within the timescales reasonably required by the Controller) including but not limited to promptly providing:

- (a) the Controller with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Controller to enable the Controller

to comply with a Data Subject Request within the relevant timescales set out in Data Protection Legislation;

(c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;

(d) assistance as requested by the Controller following any Data Loss Event;

(e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

E1.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

(a) the Controller determines that the processing is not occasional;

(b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or

(c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

E1.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

E1.10 Each Party shall designate its own data protection officer if required by Data Protection Legislation.

E1.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

(a) notify the Controller in writing of the intended Sub-processor and processing;

(b) obtain the written consent of the Controller;

(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 Controller with such information regarding the Sub-processor as the Controller may reasonably require.

E1.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

E1.13 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may upon giving the Processor not less than 30 working days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

E2	Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989
E2.1	<p>The Supplier undertakes to abide by, and ensure that its Staff abide by the provisions of:</p> <p>(a) the Official Secrets Acts 1911 to 1989; and</p> <p>(b) Section 182 of the Finance Act 1989.</p>
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	<p>Each Party:</p> <p>(a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and</p> <p>(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.</p>
E3.2	<p>The Supplier shall take all necessary precautions to ensure that all Confidential Information obtained from ORR under or in connection with the Contract:</p> <p>(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;</p> <p>(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.</p>
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	<p>The provisions of Clauses E3.1 to E3.4 shall not apply to any Confidential Information received by one Party from the other:</p> <p>(a) which is or becomes public knowledge (otherwise than by breach of this Clause E3);</p> <p>(b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;</p>

- (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	<p>The Supplier shall and shall procure that its sub-contractors shall:</p> <ul style="list-style-type: none"> (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	<p>ORR shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:</p> <ul style="list-style-type: none"> (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	<p>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:</p> <ul style="list-style-type: none"> (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.

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-licence, 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).
- 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.
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: <ul style="list-style-type: none"> (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;
- (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	<p>In the event that:</p> <ul style="list-style-type: none"> (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; <p>ORR reserves the right to terminate the Contract by notice in writing with immediate effect.</p>
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.	<u>LIABILITIES, WARRANTIES AND REPRESENTATIONS</u>
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;

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- (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	<p>ORR shall not be liable under Clause H4.2 to pay any sum which:</p> <p>(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</p> <p>(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.</p>
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.
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 I2.7(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

The Specification of Services is an abstract from the Invitation to Tender (ITT) and Statement of Requirement document dated 24 October 2024.

Statement of Requirement

2.1 Background of the project

Schedule 8

Schedule 8 is the rail industry's train performance regime. It is designed to incentivise Network Rail and train operators to improve train performance, and it provides financial protection to operators against unplanned disruption. Through the Schedule 8 regime, train operators are held financially neutral to the long-term revenue impact of fluctuations in performance for which they are not directly responsible.

Schedule 8 is a benchmarked regime, with payments being made for performance above or below the benchmark. For Network Rail performance worse than the benchmark, compensation is provided to train operators representing long run revenue impacts. The mechanism is symmetric, so for better-than-benchmark performance by Network Rail, train operators make payments to Network Rail, reflecting the increase in future revenue that they expect to make as a result of the better-than-expected performance. Schedule 8 also covers performance of train operators, providing compensation or bonus payments for performance that is worse or better than benchmarks.

In order for the Schedule 8 regime to provide appropriate compensation, it is important that the regime is calibrated so as to be representative of industry conditions. The regime should be calibrated to provide a realistic reflection of the impact of performance on revenue (through payment rates) and the relative performance that should be expected from different parts of the industry (through performance benchmarks).

CP7 year 3 recalibration of Schedule 8

In ORR's 2023 periodic review of Network Rail ('PR23'), we recalibrated the passenger Schedule 8 regime in full. We also committed to recalibrate the passenger Schedule 8 regime again ahead of year 3 of CP7. This recalibration (the 'CP7 year 3 recalibration'), against a backdrop of recovery from the COVID-19 pandemic, will allow regime parameters to adjust to better reflect industry conditions. A well-calibrated regime will

reduce the extent of any ‘windfall’ payments that are the result of exogenous factors. For further background to ORR’s PR23 review of Schedule 8, see ORR’s final determination [policy position on Schedules 4 and 8](#), particularly paragraphs 3.22 to 3.26 regarding the CP7 year 3 recalibration.

The CP7 year 3 recalibration will update all Schedule 8 passenger regime parameters to reflect new evidence. The recalibration will be based on the policy framework determined through PR23. We have stressed to the industry that it will not provide an opportunity to make policy changes or alter the wider terms in contracts.

This ITT is for consultants to carry out this CP7 year 3 recalibration of the passenger Schedule 8 regime – in this ITT the winning bidder is referred to as ‘the recalibration consultants’.

Note on rail reform

The UK government intends to create a new body, Great British Railways (GBR), which will combine infrastructure management and many passenger train services in one body. This may change the framework of charges and financial incentives in the medium term, but it does not change the need to have a well-functioning Schedule 8 regime for the remainder of CP7, including for operators that will remain independent of GBR.

2.2 Project Approach and Methodology

Methodology

The [methodology for the PR23 recalibration](#) forms the starting point for the methodology for the CP7 year 3 recalibration, with some changes specified below. Bidders can propose potential process improvements in their bids which allow the work to be carried out more effectively.

ORR will make the final decisions about the data-sets to be used by the consultants, and any adjustments to be made to reflect current and predicted performance levels. The consultants may be asked to input to these decisions, but moreover to recalibrate the parameters of the Schedule 8 regime within the bounds of ORR’s decisions. The recalibration consultants will be expected to make reasonable adjustments to the data and models to reflect ORR’s decisions. This is also true in the limited circumstances where operators and Network Rail agree that a deviation from the national methodology or base data is appropriate, and ORR agrees to it.

The 'project scope' section below describes each of the parameters that require recalibration. The recalibration of these parameters will apply to all of the operators in the relevant table in the annex to this ITT.

ORR required in the PR23 recalibration that the models be constructed by the PR23 recalibration consultants in such a way as to be readily updatable during the control period. This included production of a model user guide which, along with the models, will be made available to the recalibration consultants. We expect this to allow for efficiencies compared to the PR23 recalibration. We require that the year 3 recalibration consultants follow this principle of producing readily updateable models, to economise on the resources needed for any further updates that occur in the future.

The price base of financial parameters (such as payment rates) should be the 2023-24 rail year, and the recalibration consultants will be required to carry out re-indexation of parameters to this price base. This is consistent with the PR23 recalibration. (As background information: clauses in the contractual terms of Schedule 8 adjust financial parameters for changes in the consumer price index subsequent to 2023-24.)

Re-mapping

The recalibration consultants will be expected to recalibrate the regime such that it reflects any known changes in service group composition that will have occurred before the start of CP7 year 3. This would include service group remapping for transfer of services between operators, such as the planned transfers of services from Transpennine Express to Northern. Train operators and Network Rail will be expected to propose to ORR whether any further changes are required to the underlying data due to such changes. With ORR, the recalibration consultants should consider any such proposals, with ORR making final decisions. The expectation is that consultants do not remap historic data for timetable changes.

2.3 Project Scope

The scope of work comprises the recalibration of the Network Rail and Train Operator Payment Rates, Network Rail and Train Operator Benchmarks and Sustained Poor Performance (SPP) thresholds in the passenger Schedule 8 regime. Each of these parameters (except SPP thresholds, which are defined at the train operator level) is defined at a service group level, of which there are around 150, and must be recalibrated for each of these service groups. Monitoring Points, Monitoring Point Weightings and

Cancellation Minutes are out of scope, as explained in this section under ‘Exclusions from scope’.

As already noted, the recalibration consultants will be expected to make any reasonable adjustments to the data and models to reflect ORR decisions.

Network Rail Payment Rates

Network Rail Payment Rates determine the level of payments to train operators as a result of disruption that they have experienced but have not directly caused to themselves. The level of the Network Rail Payment Rate is calibrated such that it reflects train operators’ expected long-term revenue losses due to unplanned disruption. This is based on industry evidence which shows that passengers who have experienced disruption on the railway are less likely to use the railway in the future, hence train operators’ future farebox revenues are affected.

Network Rail Payment Rates are set out in column C of Appendix 1 to Schedule 8 of each train operator’s track access agreement with Network Rail. We require the recalibration consultants to recalibrate the Network Rail Payment Rate for all service groups except those subject to a bespoke recalibration. The PR23 approach to recalibration of Network Rail Payment Rates, on which we would expect the CP7 year 3 recalibration to be based, is summarised in Section 3 of the [PR23 methodology document](#).

The Network Rail Payment Rate for each service group should be based on the evidence determined by ORR regarding how passengers react to unplanned disruption on the railway, and therefore the consequential impact on train operators’ revenues. We expect to maintain the ‘semi-elasticity’ approach used for all service groups in the PR23 recalibration, albeit that the semi-elasticity estimates may change. Underlying revenue data will need to be fully updated in calculations, and business factors will need to be reviewed and checked for anomalies.

The use of ‘split tickets’ by some passengers is likely to be distorting the allocation of revenues to flow types, resulting in somewhat inaccurate Network Rail Payment Rates. ORR is exploring data sources that may enable a more accurate allocation, and we expect to work with the recalibration consultants to determine whether these should be used.

Train Operator Payment Rates

Train Operator Payment Rates determine the level of the payment that train operators make to Network Rail as a result of disruption that they cause to themselves (i.e. TOC-on-Self disruption). Train Operator Payment Rates are modelled to reflect the expected

payments that Network Rail makes to other train operators affected by this disruption, through what is often referred to as the ‘star model’. The level of Train Operator Payment Rates is calibrated so as for Network Rail to be overall financially neutral to the Schedule 8 payments required as a result of disruption caused by a train operator. The levels of the Train Operator Payment Rates are therefore dependent on Network Rail Payment Rates.

Train Operator Payment Rates are set out in column E of Appendix 1 to Schedule 8 of each train operator’s track access agreement with Network Rail. We require the recalibration consultants to recalibrate the Train Operator Payment Rates for all service groups in the national recalibration. The recalibration consultants will also be expected to provide ‘payment rate cost’ intermediate output information for use in the bespoke recalibration of Train Operator Payment Rates (see ‘Interactions with bespoke recalibration’ below). The PR23 approach to the recalibration of Train Operator Payment Rates, on which we would expect the CP7 year 3 recalibration to be based, is summarised in Section 6 of the [PR23 methodology document](#).

Network Rail Benchmarks

Network Rail Benchmarks define the level of performance, in terms of Average Minutes Lateness (AML) against which Network Rail makes payments to (in the case of underperformance) or receives payments from (in the case of outperformance) train operators at the Network Rail Payment Rate. Network Rail Benchmarks are aligned to the regulatory performance trajectories set by ORR against which it holds Network Rail to account.

Network Rail Benchmarks are set out in column B of Appendix 1 to Schedule 8 of each train operator’s track access agreement with Network Rail (contractualised as ‘performance points’). We require the recalibration consultants to recalibrate the Network Rail Benchmark for all service groups in the national recalibration. The PR23 approach to recalibration of Network Rail Benchmarks is the starting point for the CP7 year 3 recalibration and is summarised in Section 5 of the [PR23 methodology document](#). The alignment of Network Rail Benchmarks with regulatory performance trajectories will necessitate an adapted version of the regression set out in the PR23 methodology document (section 5.2.4.5). The starting point for this will be the output of Network Rail’s work to convert regional performance trajectories (as per the following paragraph).

The recalibration consultants will also be expected to review and assure the work carried out by Network Rail to convert regional performance trajectories to Network Rail delay per 100 train kilometres and Network Rail cancellations at the TOC level. This review should

ensure that Network Rail's conversion process follows the principles set down by ORR to Network Rail and is free of errors.

As background to this conversion process, in the PR23 recalibration the Network Rail Benchmarks were aligned to Network Rail's regulatory performance trajectories which were set in terms of the whole-industry measures 'On Time' and 'Cancellations'. For the CP7 year 3 recalibration, the metrics of Network Rail's performance trajectories may change, and [ORR proposed in August 2024](#) (chapter 2, particularly paragraphs 2.6 to 2.10 of linked consultation) to elevate 'Network Rail-attributed delay minutes per 1000 miles train travel' to a success measure. Using this metric as the starting point may somewhat simplify the process for conversion towards benchmarks. We will confirm which performance metric(s) will be used by the end of 2024.

Train Operator Benchmarks

Train Operator Benchmarks define the level of performance, again in terms of AML, against which train operators make payments to (for underperformance) / receive payments from (for outperformance) Network Rail at the Train Operator Payment Rate. Train Operator Benchmarks are set based on average TOC-on-Self performance over the recalibration period.

Train Operator Benchmarks are set out in column D of Appendix 1 to Schedule 8 of each train operator's track access agreement with Network Rail. We require the recalibration consultants to recalibrate the Train Operator Benchmark for all service groups (with the exception of those subject to a bespoke recalibration). The PR23 approach to recalibration of Train Operator Benchmarks, on which we would expect the CP7 year 3 recalibration to be based, is summarised in Section 4 of the [PR23 methodology document](#).

Sustained Poor Performance thresholds

The Sustained Poor Performance (SPP) provisions of Schedule 8 allow train operators to claim for relevant losses over and above those provided through the formulaic Schedule 8 payments, if Network Rail's performance is significantly worse than benchmarks for a sustained period. SPP is triggered if Network Rail's performance is on average worse than the SPP threshold (equivalent to performing 20% worse than benchmark) for 13 consecutive periods.

SPP thresholds are set out in Appendix 3 to Schedule 8 of each train operator's track access agreement with Network Rail. We require the recalibration consultants to recalculate the SPP threshold for each train operator. The PR23 approach to recalculation

of SPP thresholds, on which we would expect the CP7 year 3 calculation to be based, is summarised in Section 5 of the [PR23 methodology document](#).

We do not expect to change the 20% threshold in the year 3 recalibration, but the recalibration consultants are required to recalibrate the absolute level of thresholds to reflect changes in Network Rail benchmarks and payment rates.

The PR23 recalibration of SPP thresholds used a simple ‘tapering’ approach to phase in new thresholds (see section 7.2 of the PR23 methodology document), due to a step-change in Network Rail Payment Rates at the start of CP7. ORR will decide whether a similar approach is needed for the CP7 year 3 recalibration, and the recalibration consultants will be expected to accommodate this decision.

Interactions with bespoke recalibration

We expect there to be a bespoke recalibration required for a new Chiltern service group containing East West Rail services. This bespoke recalibration is outside the scope of the national recalibration. The timings and arrangements for that bespoke recalibration are to be confirmed, but we expect that the recalibration consultants (i.e. for the ORR-led national recalibration) will need to coordinate with the parties carrying out the bespoke recalibration in order to:

- receive output data from the bespoke recalibration to use them as inputs to the national recalibration (e.g. for calculation of TOC Payment Rates in the national recalibration); and
- provide intermediate output data from the national recalibration in order to use them as inputs to the bespoke recalibration – in particular, ‘payment rate cost’ for use in calculating TOC Payment Rates in the bespoke recalibration.

Working with ORR, we expect the recalibration consultants to establish and maintain a clear plan for exchange of data between the recalibrations. We expect the recalibration consultants to communicate directly with the parties carrying out the bespoke recalibration to ensure the timely exchange of outputs, keeping ORR informed.

Models to enable minor in-period recalibrations

The recalibration consultants will be required to provide additional models to enable Network Rail (or another party) to carry out minor in-period recalibrations during the remainder of the control period. These models would be used where there are changes, additions or removals of Monitoring Points, or changes to Monitoring Point Weightings or Cancellation Minutes. Models should allow these parameters to be varied, resulting in

calculations of updated Network Rail Benchmarks and Train Operator Benchmarks. The models would include data from the CP7 year 3 recalibration: Monitoring Points, recorded stops, minutes lateness, unweighted and weighted AML and DML for NR and operator, and the delay split. A model should be created for each operator in the recalibration. Such models were created in the PR23 recalibration and can be provided to the recalibration consultants as a guide.

Exclusions from scope

We do not require the recalibration consultants to carry out a review of Monitoring Points, Monitoring Point Weightings and Cancellation Minutes. Instead, we are providing an opportunity for train operators and Network Rail to bilaterally discuss and propose changes to these parameters. These will be completed in an ORR-set template to optimise the efficiency of the process. Following agreement by ORR, these changes will be provided to the recalibration consultants, and the consultants should include these in models and in summary outputs (such as each operator's completed Appendix 1).

There are limited recalibrations of Schedule 4 and the freight and charter Schedule 8 regimes running in parallel to the Schedule 8 passenger regime recalibration. These recalibrations will be expected to provide summary outputs from the passenger Schedule 8 recalibration (principally Network Rail Payment Rates and Benchmarks) to facilitate these other recalibrations.

Assurance of the recalibration work

Quality assurance is crucial to the successful completion of the recalibration work.

Internal quality assurance must be provided by the recalibration consultants, checking all calculations and outputs to confirm they are robust and free of errors.

In addition, there will be an independent audit of the work of the recalibration consultants that will be procured separately (supplier not yet known). This will inform industry review and ORR sign-off of the recalibrated parameters. Given time constraints, this independent audit will happen in parallel with the recalibration consultants' work. The recalibration consultants should work with the appointed auditors to ensure the audit of models takes place in advance of each draft and near-final parameter release, so that the auditor's findings can be presented alongside each release. Throughout the process, the recalibration consultants would be expected to respond to audit findings to correct errors, omissions or to reflect modelling best practice.

At each key milestone – production of draft and final parameters – we expect the recalibration consultants to provide to ORR an analytical assurance statement describing the steps undertaken to assure the robustness of the analysis.

Note regarding unexpected increases in scope

If the scope of the project unexpectedly increases beyond that specified in this ITT, we would expect the recalibration consultants to quote a fixed fee for any additional deliverables, based on the day rates specified in section 3.2 (this would be dealt with in accordance with the Change Control Procedure, which will be contained in clause F3 of the contract).

2.4 Project Engagement, Outputs, Deliverables and Contract Management

Engagement with the industry

Good engagement with industry is vital in the passenger Schedule 8 recalibration, and we expect the recalibration consultants to participate in conversations with the industry throughout the recalibration. This should be with the view to ensuring that the recalibration takes on board any significant special circumstances, and should enable train operators and Network Rail Regions to understand and review the recalibrated parameters. The consultants will not be responsible for ensuring sign-off of the recalibrated parameters, as this will ultimately be a decision for ORR.

A passenger recalibration working group has been established to inform methodology issues. This working group includes Network Rail and a wide range of passenger operators, and meets roughly every five weeks. We expect the consultants to participate in this working group throughout the recalibration process. ORR will bring agenda items to the group and will ultimately be the decision-maker on points of methodology. The role of the recalibration consultants in the group will be to contribute technical expertise to inform and explain the recalibration methodology and help to answer stakeholder queries and address concerns.

Further to this, we would expect the recalibration consultants to support ORR in its engagement, for example to provide indicative or industry-level information from the recalibration models for use in options papers or to facilitate group discussions. This may be to show the indicative impacts of a methodology proposal before full results are

produced, facilitating industry input at an early stage and therefore a more efficient process overall.

We are not requesting that the recalibration consultants systematically meet with each Network Rail region and train operator, but we expect the consultants to be available to discuss, for example, limited local exceptions to the national methodology.

We expect all engagement to be remotely via Teams.

Expected inputs

We expect the recalibration consultants to require the following inputs – these inputs will either be provided by ORR to the consultants or, where more efficient, can be requested by the recalibration consultants directly from the providers:

Information and guidance

- The PR23 passenger Schedule 8 recalibration models for all parameters; the PR23 recalibration consultants' accompanying 'user guide' containing notes on the input datasets, explanations of how the models work and the outputs to expect; and the publicly available [PR23 methodology document](#).
- To aid in the planning and production of parameter releases, examples of PR23 parameter release documents can be provided, along with up-to-date contact lists for Network Rail and all operators.
- Confirmation by ORR of the Schedule 8 recalibration period (the timeframe from which data is taken to underpin the recalibration of parameters) – this will be a one or two year period, to be specified by ORR. This is likely to be a period that spans different rail years (rather than using period 1 to period 13 of the same rail year), in order to capture the most recent data available at the time of obtaining the data. If the recalibration period includes periods from both CP6 and CP7, this may add some complexity to the calculations. This is because there were changes in service groups and monitoring points that went live from the start of CP7, and there will be some work to adjust the raw data in CP6 periods to be on the same basis as the CP7 periods.

Data and inputs

- PEARS reference data, which will set out the current TOC / service group / service code hierarchy, Monitoring Points and their weightings and current Cancellation Minutes.
- Any updated Monitoring Points, Monitoring Point Weightings and Cancellation Minutes, as bilaterally agreed between train operators and Network Rail and provided by ORR to the recalibration consultants.
- Demand and train operator revenue data from LENNON, to be provided through liaison with RDG.
- Confirmed semi-elasticity estimates for use in Network Rail Payment Rates.
- If deemed suitable, data-sets on split ticketing that may help with allocation of revenues to flow-types.
- PEARS performance data by each current Monitoring Point and service group – PEARS data should be used wherever possible, with PSS data as a back-up.
- PSS data by train, location and delay event.
- Signal berth offset changes provided by Network Rail. We expect Network Rail to prepare a batch of such changes to be applied by the recalibration consultants in benchmark calculations before the release of draft results.
- Relevant data from bespoke recalibrations for input to the national recalibration.
- Inputs, calculations and outputs from the conversion of Network Rail's regulatory performance targets, for years 3 to 5 of CP7.
- Any bespoke data inputs as agreed between train operators and Network Rail, and approved by ORR for use in the recalibration.
- Other data-sets as required.

Data provided for the purpose of this project should be treated as confidential.

It may be possible for the recalibration consultants to propose alternative or additional data sources for this work, if the work can be carried out more effectively by doing so. If

consultants do wish to propose alternative data sources, we would require appropriate assurances that the data is fit for purpose, and would result in appropriate Schedule 8 parameters.

Outputs and Deliverables

We require the recalibration consultants to produce the key outputs and deliverables set out in this section.

Outputs and deliverables:

- We require the recalibration consultants to lead on the collation and despatch of results and supporting information to the parties in each release of draft and near-final results. This is an important set of processes to carry out in an accurate and efficient manner.
- In relation to the review and assurance of the work carried out by Network Rail to convert regulatory performance trajectories (see 'project scope' under 'Network Rail Benchmarks'), a report summarising the review, setting out recommendations and conclusions.
- Outputs for each operator, comprising finalised parameters for each operator's service groups (with the exception of any bespoke parameters stated above). These should include results in the format of contractual appendices as they appear in Schedule 8; a macro will be provided that was used to create these formatted results in the PR23 recalibration.
- Clear supporting information, such as tables and waterfall diagrams, that allow parties to understand the impact of individual drivers of change for each variable (e.g. for Network Rail Payment Rates a breakdown between changes in revenue, elasticities and other assumptions).
- Results pre and post remapping for service group changes, if relevant, so that the impact of the remapping on the recalibration is clear.
- At each draft and near-final release, a simple summary spreadsheet showing the current and proposed parameters for all service groups, to enable review and comparison by Network Rail and ORR.

-
- Any data-sets and models used in the calculations of the finalised parameters, to allow for external audit and for use in future recalibration exercises. The models should be readily updateable, and should be accompanied by a user guide to aid future recalibrations (this can be an updated version of the PR23 user guide). Any code used to carry out the analysis should also be provided, with annotation.
 - Models to enable Network Rail to carry out in-period recalibrations – see ‘Models to enable minor in-period recalibrations’ in ‘project scope’ above. Versions of these models from the PR23 recalibration can be provided to the recalibration consultants.
 - A report documenting the methodology employed and detailing the calculations for all elements of the Schedule 8 recalibration, for use by the industry. This will ultimately be published by ORR.
 - Analytical assurance statement – at each key milestone at releases of draft and final parameters, a concise analytical assurance statement for ORR’s use, describing the steps undertaken to assure the robustness of the analysis.

Contract Management Requirements

The recalibration consultants’ key point of contact will be the assigned ORR project manager.

The recalibration consultants must provide weekly report emails, and hold fortnightly update meetings with ORR (or more frequently as required) including members of the core project team, followed up with action points. These updates and meetings should set out progress of the deliverables and highlight any risks or issues.

Accessibility Guidelines

As a public body we are legally required to comply with accessibility guidelines. Please ensure any commissioned report is in a format that meets web accessibility regulations: [Guidelines for writing accessible reports for ORR - Guidance for external suppliers | Office of Rail and Road](#).

2.5 Project Timescales

The provisional project timetable is set out in the table below.

The term 'near-final' is used to describe outputs that ORR would intend to implement (subject to the correction of any errors). They will become final at the point of implementation by ORR in early 2026.

Recalibration tasks	Dates
Network Rail Payment Rates	
Finalise methodology; request, receive and process data; engage with NR regions & train operators as required.	January 2025 to April 2025
Agree draft results and draft section of methodology report with ORR, and share with NR regions and operators.	May 2025
Agree near-final results and finalised section of methodology report with ORR, and share with NR regions and operators. Following any error corrections, submit results and report section to ORR.	July 2025
Train Operator Payment Rates, TOC Benchmarks, Network Rail Benchmarks and SPP thresholds (described as 'other parameters' in budget and payment schedule below)	
Finalise methodology; request, receive and process data; engage with NR regions and train operators as required.	January to July 2025
Agree draft results and full draft version of methodology report with ORR, and share with NR regions and operators.	July 2025
Agree near-final results and full finalised version of methodology report with ORR, and share with NR regions and operators. Following any error corrections, submit results and report to ORR.	November 2025
Cross-cutting deliverables	
Submit final models with final methodology report and model user guide	December 2025

An independent audit of the recalibration consultants' work will happen in parallel with the above work, with audits completed and acted upon in advance of each parameter release.

SCHEDULE 3

Contract Price

The total fee is **£205,704.00** (two hundred and five thousand, seven hundred and four pounds and zero pence), inc.of expensises, exc. VAT.

Payment Schedule

[REDACTED]	
[REDACTED]	
[REDACTED]	
[REDACTED]	
[REDACTED]	

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 Scheule 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.

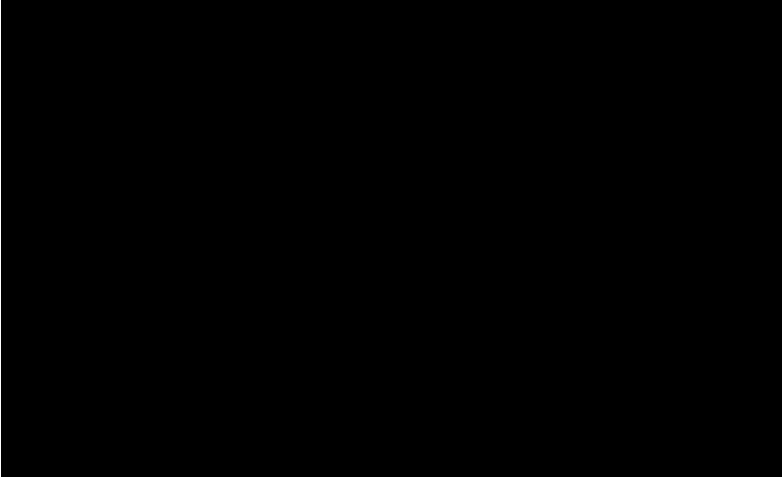
SCHEDULE 5

Confidential Information

N/A

SCHEDULE 6

Supplier Key Personnel



SCHEDULE 7
Processing, Personal Data and Data Subjects

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	The consultants will be provided with basic contact details (name and email address) for external stakeholders with whom they are expected to engage.
Duration of the processing	December 2024 to December 2025
Nature and purposes of the processing	The consultants will obtain and store contact details for external stakeholders, for the purpose of engaging with them to ensure their interests are taken into account in recalibration the Schedule 8 passenger regime.
Type of Personal Data	Name, email address, potentially telephone numbers
Categories of Data Subject	Staff of Network Rail and train operators
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	Destruction of the data when the project completes in December 2025

SCHEDULE 8

Special Terms

N/A

