

NETWORK RAIL (IT) 02

IT SOLUTIONS AND SYSTEM INTEGRATION SERVICES – FRAMEWORK AGREEMENT

- (1) NETWORK RAIL INFRASTRUCTURE LIMITED
 - (2) [THE SUPPLIER]
-

FRAMEWORK AGREEMENT

Relating to [additional details]

CONTENTS

- 1 INTERPRETATION6
- 2 STATEMENTS OF INTENT8
- 3 TERM OF FRAMEWORK AGREEMENT.....8
- 4 SCOPE OF FRAMEWORK AGREEMENT.....8
- 5 FRAMEWORK GOVERNANCE AND SUPPLIER PERSONNEL.....9
- 6 NON-EXCLUSIVITY AND MARKETING 11
- 7 ORDERING PROCEDURE 11
- 8 PRICES FOR SERVICES AND VALUE FOR MONEY..... 13
- 9 WARRANTIES AND REPRESENTATIONS 14
- 10 PREVENTION OF FRAUD AND BRIBERY 15
- 11 CONFLICTS OF INTEREST..... 17
- 12 LICENCES ETC, STANDARDS AND QUALITY 18
- 13 NON-DISCRIMINATION 18
- 14 PERFORMANCE MONITORING SYSTEM 18
- 15 RECORDS AND AUDIT ACCESS..... 19
- 16 CONFIDENTIALITY 20
- 17 TRANSPARENCY AND FREEDOM OF INFORMATION..... 22
- 18 PROTECTION OF PERSONAL DATA..... 23
- 19 PUBLICITY 31
- 20 TRIGGER EVENTS 31
- 21 SUSPENSION OR TERMINATION OF SUPPLIER'S APPOINTMENT 32
- 22 CONSEQUENCES OF SUSPENSION, TERMINATION AND EXPIRY 33
- 23 LIABILITY..... 34
- 24 INSURANCE 34
- 25 GUARANTEE 35
- 26 INTELLECTUAL PROPERTY RIGHTS AND INDEMNITY 35
- 27 TRANSFER AND SUB-CONTRACTING 36
- 28 FRAMEWORK VARIATIONS..... 36
- 29 RIGHTS OF THIRD PARTIES 37
- 30 SEVERABILITY..... 37
- 31 CUMULATIVE REMEDIES 38
- 32 WAIVER..... 38
- 33 ENTIRE AGREEMENT 38
- 34 NOTICES 38
- 35 FURTHER ASSURANCES 40
- 36 DISPUTE RESOLUTION..... 40
- 37 LAW AND JURISDICTION..... 40
- 38 INTERMEDIARIES LEGISLATION 40

Schedules

- 1 DEFINITIONS 44
- 2 SERVICE REQUIREMENTS AND SUPPLIER SERVICES DESCRIPTIONS..... 56
- 3 COMMERCIALY SENSITIVE INFORMATION..... 59

4 CHARGES 60

5 CALL-OFF FORM 63

6 FRAMEWORK AGREEMENT KEY PERSONNEL..... 92

7 GOVERNANCE 93

8 GUARANTEE 107

9 CONDUCT OF CLAIMS 108

10 FINANCIAL DISTRESS 110

11 DISPUTE RESOLUTION PROCEDURE 121

12 INSURANCE REQUIREMENTS 129

13 CALL-OFF TERMS..... 135

14 NOT USED 535

15 SERVICE AWARD CRITERIA 536

16 PROCESSING OF PERSONAL DATA 537

Framework Schedules

1. Definitions
2. Service Requirements and Supplier Service Descriptions
3. Commercially Sensitive Information
4. Charges
5. Call-Off Form
6. Framework Agreement Key Personnel
7. Governance
8. Guarantee
9. Conduct of Claims
10. Financial Distress
11. Dispute Resolution Procedure
12. Insurance Requirements
13. Call-Off Terms
14. Not Used
15. Service Award Criteria
16. Processing of Personal Data

This Framework Agreement is made on

[20]

BETWEEN:

- (1) NETWORK RAIL INFRASTRUCTURE LIMITED a company registered in England under company number 02904587 whose registered office is at Waterloo General Office, London, SE1 8SW (“**Network Rail**”); and
- (2) [SUPPLIER] (Company Number: [INSERT]) whose registered office is at [ADDRESS] (the “**Supplier**”).

BACKGROUND

- (A) Network Rail wishes to [INSERT OBJECTIVES OF PROJECT].
- (B) The Supplier is a leading provider of [INSERT BUSINESS OF SUPPLIER] and has experience in [INSERT SERVICES BEING PROCURED]
- (C) Network Rail selected the Supplier to provide the Services on a call-off basis under this Framework Agreement.
- (D) This Framework Agreement sets out the ordering procedure for the Services which may be required by Network Rail, the main terms and conditions for any Call-Off Contract which Network Rail may conclude with the Supplier and the obligations of the Supplier during and after the Term.

IT IS AGREED as follows:

1. INTERPRETATION

- 1.1 In this Framework Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears. If a capitalised term or phrase used in this Framework Agreement is not defined within Schedule 1 (Definitions) or any other Schedule it shall have the meaning set out in Schedule 1 (Definitions) of the Call-Off Terms.
- 1.2 The interpretation and construction of this Framework Agreement shall all be subject to the following provisions:
 - 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
 - 1.2.2 words importing the masculine include the feminine and the neuter;
 - 1.2.3 any phrase introduced by the words “**including**”, “**includes**”, “**in particular**”, “**for example**” or words having a similar effect, shall be construed as illustrative and without limitation to the generality of the related general words;
 - 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind or Central Government Body and however constituted and their successors and permitted assigns or transferees;
 - 1.2.5 references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;

- 1.2.6 any references to “re-enacted” in respect of any statute or statutory provision (including any subordinate legislation) include references to the preservation, continuation of effect, conversion or incorporation of any of them into the law of England and Wales, Scotland and Northern Ireland;
 - 1.2.7 headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
 - 1.2.8 references in this Framework Agreement to any clause or Schedule without further designation shall be construed as a reference to the clause or Schedule to this Framework Agreement so numbered;
 - 1.2.9 references in this Framework Agreement to any paragraph without further designation shall be construed as a reference to the paragraph of the relevant Schedule to this Framework Agreement so numbered; and
 - 1.2.10 references to a clause is a reference to the whole of that clause unless stated otherwise.
- 1.3 Prompt and expedited performance of this Framework Agreement by the Supplier is important to Network Rail. In all cases therefore where the Supplier is obliged to take action, provide notice or complete a task under this Framework Agreement then, where there is no specific statement as to timing, there shall be implied an obligation to do so promptly and as soon as reasonably possible. This is without prejudice to any specific time limits set out in this Framework Agreement.
- 1.4 The Supplier shall ensure that each of its Sub-contractors under any Call-Off Contract complies with the obligations of the Supplier in clause 1.3.
- 1.5 If there is any conflict between the clauses and the Schedules and/or any appendices to the Schedules and/or any other documents referred to in this Framework Agreement, the following order of precedence shall apply:
- 1.5.1 the clauses of this Framework Agreement and Schedule 1 (Definitions);
 - 1.5.2 Part A of Schedule 2 (Service Requirements and Supplier Service Descriptions);
 - 1.5.3 any other Schedules to this Framework Agreement and their appendices (except for Part B of Schedule 2 (Service Requirements and Supplier Service Descriptions));
 - 1.5.4 Part B of Schedule 2 (Service Requirements and Supplier Service Descriptions); and
 - 1.5.5 any other document referred to in any of the above.
- 1.6 Except where otherwise stated, any reference to any clause, paragraph number, Schedule, appendix or other document in the Call-Off Terms shall be interpreted to include the equivalent clause, paragraph number, Schedule, appendix or document in the applicable Call-Off Contract.
- 1.7 Wherever under this Agreement Network Rail's consent is required before the Supplier is permitted to do a particular act or thing, unless otherwise expressly provided, Network Rail is entitled to give or withhold consent or make consent subject to conditions at its sole discretion.

2. STATEMENTS OF INTENT

- 2.1 In delivering the Services, the Supplier shall at all times ensure that:
- 2.1.1 the Services are sustainable and contribute to Network Rail's policy objectives in relation to reduction of carbon emissions;
 - 2.1.2 the Services are provided in accordance with this Framework Agreement and each Call-Off Contract; and
 - 2.1.3 any accreditation to the extent required under this Framework Agreement and/or any Call-Off Contracts is maintained (at its cost and expense) to the required level;
 - 2.1.4 they efficiently and effectively implement the Services, sub-contracting where appropriate in accordance with clause 27 (Transfer and Sub-Contracting) to support Network Rail's business objectives;
 - 2.1.5 they work transparently with Network Rail with a focus on best value (including best price), innovation, collaboration and continuous improvement, including in accordance with clause 4.7 (Service Improvement); and
 - 2.1.6 they develop Network Rail's Information Management Function.
- 2.2 The Supplier has been appointed and Network Rail has entered into this Framework Agreement on the basis of the Tender and, in particular, the representations made by the Supplier to Network Rail in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner.

SECTION A: FRAMEWORK ARRANGEMENTS AND ORDERING PROCEDURE

3. TERM OF FRAMEWORK AGREEMENT

This Framework Agreement shall take effect on the Framework Effective Date and, unless terminated at an earlier date by operation of Law, it will expire at the end of the Term.

4. SCOPE OF FRAMEWORK AGREEMENT

General

- 4.1 Network Rail appoints the Supplier as a potential provider of the Services and (subject to clauses 4.2 and 21) the Supplier shall be eligible to be considered for the award of Call-Off Contracts for such Services by Network Rail. The Supplier accepts such appointment.
- 4.2 Network Rail may, at any time after the Framework Effective Date and during the Term, order Services from the Supplier in accordance with Ordering Procedure.
- 4.3 Subject to clause 22.3, the Supplier shall not be entitled to any payments from Network Rail under this Framework Agreement. Any entitlement to payment shall only arise under a Call-Off Contract.
- 4.4 The Supplier shall at all times during the Term maintain the organisational and technical ability and capacity to provide the Services in accordance with this Framework Agreement as the Services are required from time to time by Network Rail. Failure by the Supplier to maintain its ability and capacity in respect of the Services in accordance with this clause 4.4 shall be a Trigger Event.
- 4.5 The Supplier shall ensure that all Services are delivered to Network Rail in accordance with the terms of this Framework Agreement and any Call-Off Contract. Furthermore, where the

Service Requirements require the Supplier to comply with instructions from Network Rail, the Supplier shall ensure that it complies with such instructions. If Network Rail becomes aware that the Supplier is not delivering the Services in accordance with the terms of this Framework Agreement, any Call-Off Contract and/or Network Rail's instructions, Network Rail may investigate the matter further and the Supplier shall provide Network Rail with such assistance and cooperation as Network Rail reasonably requires during such investigation.

Service Levels

- 4.6 The Supplier shall provide the Services to Network Rail to meet or exceed the Service Levels. The Call-Off Contract sets out the rights and remedies available to Network Rail in the event that the Supplier fails to provide the Services in accordance with the Service Levels.

Service Improvement

- 4.7 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this clause 4.7. As part of this obligation the Supplier shall identify and report to Network Rail at least once every three (3) months on:

- 4.7.1 the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Services, and those technological advances potentially available to the Supplier and Network Rail which the Parties may wish to adopt;
- 4.7.2 new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
- 4.7.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or Network Rail which might result in efficiency or productivity gains or in reduction of operational risk;
- 4.7.4 delivered at lower cost and/or with greater benefits to Network Rail; and/or
- 4.7.5 changes to the IT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.

- 4.8 The Supplier shall ensure that the information that it provides to Network Rail pursuant to clause 4.7 shall be sufficient for Network Rail to decide whether any improvement should be implemented. The Supplier shall provide any further information that Network Rail requests.

- 4.9 If Network Rail wishes to incorporate any improvement identified by the Supplier pursuant to clause 4.7 Network Rail shall send the Supplier a Change request in accordance with clause 28 (Framework Variations).

5. FRAMEWORK GOVERNANCE AND SUPPLIER PERSONNEL

Governance

- 5.1 The Parties shall comply with the governance processes set out in Schedule 7 (Governance).

Supplier Personnel

- 5.2 The Supplier shall ensure that all Supplier Personnel:

- 5.2.1 are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
- 5.2.2 are vetted in accordance with the Supplier's staff vetting procedures as amended from time to time (which shall, in any event, be of a standard that is no less strict

than Good Industry Practice) and, where applicable, the security requirements set out in Schedule 4 (Security Management) of the Call-Off Terms; and

- 5.2.3 that were employed or engaged by the Supplier prior to the Framework Effective Date were vetted and recruited on the basis that is equivalent to and no less strict than the Supplier's staff vetting procedures in effect at the date upon which they were employed (which shall, in any event, be of a standard that is no less strict than Good Industry Practice).

Framework Agreement Key Personnel

- 5.3 The Supplier agrees to appoint the individuals identified in Schedule 6 (Framework Agreement Key Personnel) as Framework Agreement Key Personnel for the purposes of this Framework Agreement.
- 5.4 The Supplier shall obtain the Approval of Network Rail before removing or replacing any member of the Framework Agreement Key Personnel during the Term, and, where possible, at least three (3) months' written notice must be provided by the Supplier of its intention to replace any Framework Agreement Key Personnel. Where there is good reason for a Framework Agreement Key Personnel leaving during the Term, the Supplier or Sub-contractor does not need Network Rail's Approval, but the Supplier shall give as much notice as possible and shall still comply with clause 5.6. In this context "good reason" is where the individual concerned resigns, retires or dies, takes maternity or paternity or shared parental leave, is required for long term jury service, suffers a long term sickness or where the individual is suspended or their employment or contractual arrangement with the Supplier or Sub-contractor is terminated for material breach of contract by the individual in question.
- 5.5 The Supplier shall allow Network Rail to interview the candidates for Framework Agreement Key Personnel roles (including replacements) before the Supplier appoints a candidate.
- 5.6 The Supplier acknowledges that the Framework Agreement Key Personnel are essential to the proper performance of its obligations under this Framework Agreement. The Supplier shall ensure that there is appropriate cover for short term absences, such as vacations and sickness, and that no Framework Agreement Key Personnel role is vacant for any longer than ten (10) Working Days (or longer with Network Rail's Approval, not to be unreasonably withheld or delayed) and that any replacement shall be sufficiently qualified, experienced and competent to carry out such Framework Agreement Key Personnel's role.
- 5.7 The Supplier shall ensure that each of the Framework Agreement Key Personnel shall work for such period of time that is commensurate with and sufficient to perform the obligations of that person's role. To the extent that it can do so without disregarding its statutory obligations, the Supplier shall take all reasonable steps to ensure that it retains the services of all the Framework Agreement Key Personnel.
- 5.8 If required by Network Rail, the Supplier shall remove any member of the Framework Agreement Key Personnel that Network Rail reasonably considers in any respect unsatisfactory.
- 5.9 Network Rail shall not be liable for the cost of replacing any Framework Agreement Key Personnel and the Supplier shall indemnify Network Rail against all Employee Liabilities that may arise in this respect.
- 5.10 Network Rail may refuse admission to its premises and/or direct the Supplier to end the involvement of any of the Framework Agreement Key Personnel whom Network Rail believes represents a security risk or does not have the required levels of training and expertise or where Network Rail has other reasonable grounds for doing so. The decision of Network Rail shall be final and it shall not be obliged to provide any reasons.

6. NON-EXCLUSIVITY AND MARKETING

Non-Exclusivity

6.1 The Supplier acknowledges that, in entering this Framework Agreement:

6.1.1 no form of exclusivity or volume guarantee has been granted by Network Rail for Services from the Supplier; and

6.1.2 Network Rail does not have to purchase any services from the Supplier and is in any case at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Services.

7. ORDERING PROCEDURE

Ordering under this Framework Agreement

7.1 If Network Rail decides to source Services through this Framework Agreement then the only mechanism for awarding Services shall be via a Call-Off Contract. The Parties acknowledge and agree that in the absence of a properly executed Call-Off Contract to which Services and/or Deliverables relate the Supplier shall have no obligation to provide any services or to supply deliverables to Network Rail and Network Rail shall have no obligation to pay the Supplier for any services or deliverables. Network Rail may award a Call-Off Contract for its Services requirements:

7.1.1 by direct award where the terms laid down in this Framework Agreement are sufficiently precise to cover its Call-Off Requirement; or

7.1.2 following a further competition,

conducted in accordance with the provisions of this clause.

Direct Awards

7.2 If the terms laid down in this Framework Agreement are sufficiently precise to cover its Call-Off Requirement and Network Rail wishes to enter into a Call-Off Contract by way of direct award under this Framework Agreement, it shall:

7.2.1 complete the Call-Off Form to the fullest extent practicable and indicating where input from the Supplier will be required;

7.2.2 subject to clause 7.2.3, select and approach the Framework Supplier that provides the most economically advantageous solution based upon:

7.2.2.1 the scores that were awarded during the evaluation process pursuant to which this Framework Agreement was awarded as they relate to the Call-Off Requirement; and

7.2.2.2 the prices applicable to the Call-Off Requirement,

in accordance with weightings set out in Schedule 15 (Service Award Criteria).

7.2.3 if the Framework Supplier whose solution is determined to be the most economically advantageous in accordance with clause 7.2.2 declines to enter into a Call-off Contract when requested to do so by Network Rail, approach the Framework Supplier it selects as offering the next most economically advantageous solution by applying the same criteria; and

- 7.2.4 subject always to clause 7.10, award a Call-Off Contract for its Call-Off Requirement to the Framework Supplier by following the procedure in clause 7.6.

Further Competitions

- 7.3 If Network Rail wishes to enter into a Call-Off Contract for Services under this Framework Agreement other than pursuant to clause 7.2 it:

7.3.1 shall provide those Framework Suppliers who in the opinion of Network Rail are capable of performing the Call-Off Contract for the Service requirements with a draft Call-Off Form completed in respect of those parts which it is for Network Rail to complete. This includes completing all appendices to the extent possible and indicating where input from the Supplier will be required as part of its tender;

7.3.2 shall invite tenders by conducting a further competition for its Services requirements and in particular:

7.3.2.1 may, if it deems appropriate, consult in writing or (at its option) through a process of negotiation and/or dialogue, which may include one (1) or more down-selects, with the Framework Suppliers whom Network Rail consider are capable of performing the Call-Off Contract for the Services requirements and shall then invite them to submit a tender in writing for each specific contract to be awarded, which may involve requiring the Framework Suppliers capable of performing the Call-Off Contract to complete the Call-Off Form;

7.3.2.2 shall set a time limit for the receipt by it of the tenders which takes into account factors such as the complexity of the subject matter of the contract and the time needed to submit tenders;

7.3.3 shall apply the Service Award Criteria set out in Schedule 15 (Service Award Criteria); and

7.3.4 may (but shall not be obliged to) award a Call-Off Contract for its Services requirements to the Framework Supplier selected pursuant to clause 7.3.3 by following the procedure in clause 7.6.

- 7.4 The Supplier shall respond to invitations to tender submitted by Network Rail pursuant to clause 7.3 by completing (within the reasonable timescales specified by Network Rail) the relevant Call-Off Form with the information which Network Rail has indicated it requires from the Supplier. When responding to invitations to tender the Supplier shall:

7.4.1 not amend or attempt to amend the Call-Off Terms;

7.4.2 respond in good faith and in a timely fashion; and

7.4.3 ensure that its responses are full and compliant ("compliant" shall mean that the Ordering Procedure has been complied with).

- 7.5 The Supplier agrees that all tenders submitted by it in relation to a further competition held pursuant to this clause 7 shall remain open for acceptance by Network Rail for sixty (60) Working Days (or such other period specified in the invitation to tender issued by Network Rail in accordance with the Ordering Procedure. Such acceptance shall be deemed to have taken place on delivery or sending to the Supplier by Network Rail of a signed copy of the Call-Off Form as completed by Network Rail and the Supplier, on receipt of which the Supplier shall forthwith sign and date the said form and deliver a copy so signed and dated to Network Rail.

Call-Off Contract Award

7.6 Following selection of the successful Framework Supplier in accordance with clauses 7.2 or 7.3, Network Rail may, but shall not be required to:

7.6.1 to the extent not already done as part of a further competition, provide the draft Call-Off Form completed in respect of those parts which it is for Network Rail to complete to the Supplier, in which event clauses 7.7 and 7.8 shall apply;

7.6.2 following agreement of the Call-Off Form, require the Supplier to enter into a Call-Off Contract on the terms of the agreed Call-Off Form incorporating the Call-Off Terms, in which event the Contractor shall execute the Call-Off Contract by signing and returning to Network Rail the agreed Call-Off Form within five (5) Working Days of receipt of Network Rail's notice or such other period as Network Rail, acting reasonably, may agree.

7.7 The Supplier shall respond to Call-Off Forms submitted by Network Rail by completing (within the reasonable timescales specified by Network Rail) the Call-Off Forms with the information which Network Rail has indicated it requires from the Supplier. When responding to Call-Off Forms the Supplier shall:

7.7.1 not amend or attempt to amend the Call-Off Terms;

7.7.2 respond in good faith and in a timely fashion; and

7.7.3 ensure that its responses are full and compliant ("compliant" shall mean that the Ordering Procedure has been complied with).

7.8 The Supplier and Network Rail, acting reasonably and in good faith, shall agree the contents of the Call-Off Form as soon as reasonably practicable and in any event within 90 days of the date of receipt of the draft Call-Off Form by the Supplier (or such other reasonable period required by Network Rail).

Direct Awards and Further Competitions

7.9 Any failure by the Supplier to submit full and compliant responses in accordance with clauses 7.7 and/or 7.7, which is not promptly remedied by the Supplier following a request from Network Rail, shall be a Trigger Event.

7.10 Notwithstanding the fact that the Supplier has followed the procedure set out in this clause 7, Network Rail shall be entitled at all times to decline to make an award for its Services requirements.

7.11 The Supplier shall not be awarded any Call-Off Contracts if its appointment has been Suspended in accordance with clause 21.1 and not subsequently reinstated.

8. PRICES FOR SERVICES AND VALUE FOR MONEY

Prices for Services

8.1 The prices offered by the Supplier for Call-Off Contracts to Network Rail for Services shall be based on and calculated in accordance with the prices and principles set out in Schedule 4 (Charges).

Benchmarking

8.2 The Parties shall comply with their obligations set out in Schedule 19 (Benchmarking) of the Call-Off Terms.

Promoting Tax Compliance

- 8.3 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 8.3.1 notify Network Rail in writing of such fact within five (5) Working Days of its occurrence; and
 - 8.3.2 promptly provide to Network Rail:
 - 8.3.2.1 details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - 8.3.2.2 such other information in relation to the Occasion of Tax Non-Compliance as Network Rail may reasonably require.
- 8.4 Any breach of clause 8.3 or the Supplier failing to provide details of the steps being taken and mitigating factors which in the reasonable opinion of Network Rail are acceptable, shall be a Trigger Event.

SECTION B: SUPPLIER'S GENERAL FRAMEWORK OBLIGATIONS

9. WARRANTIES AND REPRESENTATIONS

- 9.1 The Supplier warrants and represents to Network Rail that:
- 9.1.1 it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Ultimate Holding Company) to enter into and to perform its obligations under this Framework Agreement;
 - 9.1.2 this Framework Agreement is executed by a duly authorised representative(s) of the Supplier;
 - 9.1.3 in entering into this Framework Agreement or any Call-Off Contract it has not committed and will not commit any Fraud, nor will it be in breach of any legal duty (including a contractual obligation to any third party) in any jurisdiction;
 - 9.1.4 all information, statements and representations contained in the Tender for the Services and any tender submitted as part of the Ordering Procedure are to the best of its knowledge, information and belief, true, accurate and not misleading and that the Supplier will advise Network Rail of any fact, matter or circumstance of which it may become aware which would render any such statement, information or representation to be false or misleading;
 - 9.1.5 it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of this Framework Agreement;
 - 9.1.6 if required by Network Rail in accordance with and pursuant to clause 7, it will enter into a contract with Network Rail on the terms and conditions of the Call-Off Terms without seeking any amendment to it save for the necessary information to complete the Call-Off Terms as specified in the Call-Off Form;
 - 9.1.7 it has not caused or induced any person to enter such agreement referred to in clause 9.1.5;
 - 9.1.8 it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done

or causing or having caused to be done any act or omission in relation to any other tender or proposed tender for Services under this Framework Agreement;

- 9.1.9 it has not committed any offence under the Bribery Act 2010 (the "**Bribery Act**");
- 9.1.10 it has notified Network Rail in writing of any claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its Affiliates or any of its assets which will or might affect its ability to perform its obligations under this Framework Agreement and/or any Call-Off Contract;
- 9.1.11 in the Supplier's last three (3) annual financial accounting periods before the Framework Effective Date:
- 9.1.11.1 it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
- 9.1.11.2 it has complied with all applicable securities laws and regulations in the jurisdiction(s) in which it is established; and
- 9.1.11.3 there has been no act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Supplier's position as an ongoing business concern or its ability to fulfil its obligations under this Framework Agreement and/or any Call-Off Contract;
- 9.1.12 it has notified Network Rail in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance; and
- 9.1.13 within the previous twelve (12) months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Framework Agreement had this Framework Agreement been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.
- 9.2 The Supplier warrants and represents to Network Rail that the statements in clauses 9.1.3 and 9.1.7 to 9.1.12 (inclusive) are true (mutatis mutandis) in respect of each of its Key Sub-contractors (including those which become Key Sub-contractors after the Framework Effective Date).
- 9.3 Except as expressly stated in this Framework Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including fitness for purpose) are hereby excluded to the extent permitted by Law.

10. **PREVENTION OF FRAUD AND BRIBERY**

- 10.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Framework Effective Date:
- 10.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- 10.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

- 10.2 The Supplier, and using best endeavours procure that the Supplier Personnel, shall not during the term of this Framework Agreement:
- 10.2.1 commit a Prohibited Act; and/or
 - 10.2.2 do or suffer anything to be done which would cause Network Rail or any of Network Rail's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 10.3 The Supplier shall during the term of this Framework Agreement:
- 10.3.1 establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
 - 10.3.2 have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under that Act;
 - 10.3.3 take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017;
 - 10.3.4 keep appropriate records of its compliance with its obligations under clause 10.3.1 and make such records available to Network Rail promptly on request;
 - 10.3.5 keep appropriate records of any gifts or hospitality, whether directly or indirectly given or received in connection with this Framework Agreement, and make such records available to Network Rail on request. The Supplier shall be responsible for notifying Network Rail of any gift or hospitality, whether directly or indirectly given or received in connection with this Framework Agreement, which has a value of more than £15;
 - 10.3.6 comply with Network Rail's code of business ethics and corporate hospitality, conflicts of interests and speak out (whistleblowing) policies and any updates thereof;
 - 10.3.7 conduct reasonable and proportionate due diligence on any person or Sub-contractor who is to perform services or provide goods in connection with this Framework Agreement, before engaging with such person, to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
 - 10.3.8 ensure that any person or sub-contractor associated with the Supplier who is performing services or providing goods in connection with this Framework Agreement does so only on the basis of a written contract which imposes on and secures from such persons terms at least equivalent to those imposed on the Supplier in this clause 10. The Supplier shall be responsible for the observance and performance, by such persons or Sub-contractors, of this clause 10, and shall be directly liable to Network Rail for any breach by such persons of this clause 10.
- 10.4 The Supplier shall immediately notify Network Rail in writing if it becomes aware of any breach of clause 10.1 and/or 10.2, or has reason to believe that it has or any of the Supplier Personnel have:
- 10.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

- 10.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- 10.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Framework Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Framework Agreement has committed or attempted to commit a Prohibited Act.
- 10.5 If the Supplier makes a notification to Network Rail pursuant to clause 10.4, the Supplier, and using best endeavours procure that the Supplier Personnel, shall respond promptly to Network Rail's enquiries, co-operate with any investigation, and allow Network Rail to audit any books, records and/or any other relevant documentation in accordance with clause 15 (Records and Audits Access) and clause 12 (Records, Reports, Audits and Open Book Data) of the Call-Off Terms.
- 10.6 If the Supplier, or the Supplier Personnel (whether acting in the Supplier's knowledge or otherwise), is in Default under clauses 10.1 and/or 10.2, and/or 10.3 Network Rail may, by notice, require the Supplier to remove from performance of this Framework Agreement any Supplier Personnel whose acts or omissions have caused the Default.
- 10.7 Any notice served by Network Rail under clause 10.6 shall specify the nature of the Prohibited Act, the identity of the Party who Network Rail believes has committed the Prohibited Act and the action that Network Rail has elected to take (including, where relevant, the date on which this Framework Agreement shall terminate).
- 10.8 The Supplier shall comply with all anti-slavery legislation, including the Modern Slavery Act 2015 and clause 30.9 of the Call-Off Terms.
- 10.9 The Supplier shall implement due diligence procedures for its own suppliers, sub-contractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chain.
- 10.10 The Supplier shall use reasonable endeavours not to purchase any raw materials, resources or products from any country that has been sourced from producers or manufacturers using forced labour in its operations or practice.
- 10.11 Any breach of this clause 10 shall be a Trigger Event.

11. **CONFLICTS OF INTEREST**

- 11.1 The Supplier:
 - 11.1.1 must take action to ensure that neither the Supplier nor the Supplier Personnel are placed in the position of an actual, potential or perceived Conflict of Interest; and
 - 11.1.2 must promptly notify and provide details to Network Rail if an actual, potential or perceived Conflict of Interest happens or is expected to happen.
- 11.2 Network Rail will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of Network Rail, such measures do not or will not resolve an actual or potential Conflict of Interest, Network Rail may Suspend this Framework Agreement immediately (or following such notice as it shall see fit) The action of Network Rail pursuant to this clause 11.2 shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue to Network Rail.
- 11.3 This clause 11 shall apply during the Term and for a period of four (4) Years after its termination (however arising) or expiry.

12. LICENCES ETC, STANDARDS AND QUALITY

12.1 The Supplier shall obtain and maintain all licences, authorisations, consents and permits required in relation to the performance of this Framework Agreement and any Call-Off Contract.

12.2 The Supplier shall comply with the Standards in providing the Services and performing its obligations under this Framework Agreement and any Call-Off Contract.

12.3 The Supplier shall discuss with Network Rail any conflict that the Supplier reasonably believes that there is or will be between:

12.3.1 any of the Standards; and/or

12.3.2 any of the Standards and any other obligation under this Framework Agreement and any Call-Off Contract,

and shall comply with Network Rail's decision on the resolution of that conflict.

13. NON-DISCRIMINATION

13.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any Law relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise).

13.2 The Supplier shall take all reasonable steps to secure the observance of clause 13.1 by the Supplier Personnel and any Sub-contractor.

14. Performance Monitoring System

14.1 Within twenty (20) Working Days (or such other period as the Parties agree in writing) of the date on which the first Call-Off Contract is executed, the Supplier shall propose and the Parties shall agree a Performance Monitoring System which shall comply with relevant provisions of the ITIL guidelines (or equivalent) and include details of the following:

14.1.1 notifications of Service Failures and other defects in the Supplier's performance and/or delivery of the Services;

14.1.2 Supplier self-monitoring in accordance with the Performance Monitoring System using an industry recognised help desk tool;

14.1.3 performance review of the Services;

14.1.4 Audit carried out by or on behalf of Network Rail;

14.1.5 the processes and systems the Supplier shall put in place to monitor effectively its performance of the Services as against the Service Levels including using an industry recognised service desk tool or the service desk tool specified in the Supplier Service Descriptions and how Incidents and other defects in the Supplier's performance and/or delivery of the Services will be notified to the Supplier's help desk;

14.1.6 the format and content of the Performance Monitoring Report (such content to include the information set out in paragraph 1.2 of Part B of Schedule 2 (Performance Levels) of the Call-Off Terms); and

14.1.7 how the Supplier shall comply with the obligations set out in this Framework Agreement and each Call-Off Contract,

and, thereafter, the parties shall comply with the Performance Monitoring System.

- 14.2 Network Rail may require, acting reasonably, and the Supplier must comply with requests for, routine changes to the Performance Monitoring System. Any such changes shall be implemented in accordance with clause 28 (Variations).

15. RECORDS AND AUDIT ACCESS

Records

- 15.1 The Supplier shall keep and maintain until the later of six (6) Years after the date of termination (however arising) or expiry of this Framework Agreement or six (6) Years after the date of termination (however arising) or expiry of the last Call-Off Contract, full and accurate records and accounts of:

- 15.1.1 the operation of this Framework Agreement including the Services provided under Call-Off Contracts;
- 15.1.2 its compliance with its obligations under this Framework Agreement;
- 15.1.3 its receipt, storage and use of Confidential Information including confidential information of End Users;
- 15.1.4 any records created during the design and development of the Supplier System and pre-operational environment such as information relating to testing;
- 15.1.5 any cost reduction and income generation initiatives carried out pursuant to the Supplier's service improvement obligations under clause 4.7,

together the "**Records**".

- 15.2 The Supplier shall further:

- 15.2.1 keep the Records in accordance with this Framework Agreement and good accountancy practice;
- 15.2.2 afford Network Rail and/or the Auditor such access to the Records as they may require from time to time; and
- 15.2.3 on request provide the Records (together with copies of the Supplier's published accounts) to Network Rail and the Auditor during the Term and until the later of six (6) Years after termination (however arising) or expiry of this Framework Agreement or six (6) Years after the date of termination (however arising) or expiry of the last Call-Off Contract.

Audit Access

- 15.3 Without prejudice to clause 15.2.2, except where an Audit is imposed on Network Rail by a Regulatory Body, Network Rail may, not more than once in a Contract Year, conduct an Audit to review the compliance by the Supplier of its obligations set out in this Framework Agreement. Network Rail shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Services pursuant to the Call-Off Contracts, save insofar as the Supplier accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of Network Rail. Network Rail shall use its best endeavours to ensure that any external Auditor used by it is bound by confidentiality provisions preventing unlawful disclosure of the Supplier's Confidential Information to the Supplier's Competitors.
- 15.4 Subject to Network Rail's obligations of confidentiality, the Supplier shall on demand provide Network Rail (and/or its agents, representatives or Auditor) with all reasonable cooperation and assistance in relation to each Audit, including:

- 15.4.1 all Records requested by Network Rail (and/or its agents, representatives or Auditor);
 - 15.4.2 reasonable access to sites controlled by the Supplier and to Assets, equipment and ICT used (whether exclusively or non-exclusively) in the provision of the Services; and
 - 15.4.3 access to the Supplier Personnel within a reasonable period of time of a request.
- 15.5 If an Audit reveals that any of the Supplier's obligations under this Framework Agreement are not being complied with, the Supplier shall (at its sole cost) do all things necessary to bring itself into compliance as soon as possible but in any event within twenty (20) Working Days (or such longer period as may be specified by Network Rail) of receiving notice to do so from Network Rail. Failure by the Supplier to comply with this clause 15.5 shall constitute a Trigger Event.
- 15.6 The Parties shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under clauses 15.3 to 15.5, unless the Audit reveals a material Default by the Supplier, in which case the Supplier shall reimburse Network Rail for all reasonable costs incurred by Network Rail in the course of the Audit.
- 15.7 Any audit to review the compliance by the Supplier of its obligations set out in a Call-Off Contract shall be subject to the provisions of the relevant Call-Off Contract and shall not be an Audit for the purposes of this clause 15.
16. **CONFIDENTIALITY**
- 16.1 For the purposes of this clause 16, the term "Disclosing Party" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "Recipient" shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 16.2 Except to the extent set out in this clause 16 or where disclosure is expressly permitted elsewhere in this Framework Agreement or any Call-Off Contract, the Recipient shall:
- 16.2.1 treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
 - 16.2.2 not disclose the Disclosing Party's Confidential Information to any other person without obtaining the owner's prior written consent;
 - 16.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Framework Agreement; and
 - 16.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 16.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- 16.3.1 the Recipient is required to disclose the Confidential Information by Law, provided that clause 17 (Transparency and Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
 - 16.3.2 the need for such disclosure arises out of or in connection with:
 - 16.3.2.1 any legal challenge or potential legal challenge against Network Rail arising out of or in connection with this Framework Agreement;

- 16.3.2.2 the examination and certification of Network Rail's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which Network Rail is making use of any Services provided under this Framework Agreement; or
- 16.3.2.3 the conduct of a Central Government Body review in respect of this Framework Agreement; or
- 16.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 16.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 16.5 The Supplier may disclose the Confidential Information of Network Rail on a confidential basis only to:
 - 16.5.1 Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Framework Agreement and the Call-Off Contracts;
 - 16.5.2 its auditors; and
 - 16.5.3 its professional advisers for the purposes of obtaining advice in relation to this Framework Agreement and/or any Call-Off Contract.
- 16.6 Where the Supplier discloses Confidential Information of Network Rail pursuant to this clause 16.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Framework Agreement and the Call-Off Contracts by the persons to whom disclosure has been made.
- 16.7 Network Rail may disclose the Confidential Information of the Supplier:
 - 16.7.1 on a confidential basis to any Central Government Body for any proper purpose of Network Rail or of the relevant Central Government Body;
 - 16.7.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 16.7.3 to the extent that Network Rail (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - 16.7.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in clause 16.7.1 (including any benchmarking organisation) for any purpose relating to or connected with this Framework Agreement or the Call-Off Contracts;
 - 16.7.5 on a confidential basis for the purpose of the exercise of its rights under this Framework Agreement or the Call-Off Contracts; or
 - 16.7.6 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Framework Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on Network Rail under this clause 16.

- 16.8 Nothing in this clause 16 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Framework Agreement or the Call-Off Contracts in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

17. TRANSPARENCY AND FREEDOM OF INFORMATION

- 17.1 The Supplier acknowledges that Network Rail is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

17.1.1 provide all necessary assistance and cooperation as reasonably requested by Network Rail to enable Network Rail to comply with its obligations under the FOIA and EIRs;

17.1.2 transfer to Network Rail all Requests for Information relating to this Framework Agreement and/or the Call-Off Contracts that it receives as soon as practicable and in any event within two (2) Working Days of receipt;

17.1.3 provide Network Rail with a copy of all Information held on behalf of Network Rail which is requested in a Request For Information which is in its possession or control in the form that Network Rail requires within five (5) Working Days (or such other period as Network Rail may reasonably specify) of Network Rail's request for such Information; and

17.1.4 not respond directly to a Request For Information addressed to Network Rail unless authorised in writing to do so by Network Rail.

- 17.2 The Supplier acknowledges that Network Rail may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. Network Rail shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Framework Agreement or the Call-Off Contracts) Network Rail shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and the EIRs.

- 17.3 The Parties acknowledge that

17.3.1 the Transparency Reports; and

17.3.2 the content of this Agreement, including any changes to this Agreement agreed from time to time, except for:

17.3.2.1 any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by Network Rail;

17.3.2.2 Commercially Sensitive Information; and

17.3.2.3 the Publishable Performance Information,

(together the "**Transparency Information**") are not Confidential Information.

- 17.4 Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for Network Rail to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). Network Rail shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 17.5 The Supplier shall assist and co-operate with Network Rail to enable Network Rail to publish the Transparency Information, including preparation of the Transparency Reports in accordance with Schedule 13 (Reports and Records Provisions) of the Call-Off Terms.
- 17.6 If Network Rail believes that publication of any element of the Transparency Information would be contrary to the public interest, Network Rail shall be entitled to exclude such information from publication. Network Rail acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, Network Rail acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.
- 17.7 Network Rail shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 17.8 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to Network Rail on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. Network Rail may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to clause 16) publish such Information. The Supplier shall provide to Network Rail within five (5) Working Days (or such other period as Network Rail may reasonably specify) any such Information requested by Network Rail.

18. PROTECTION OF PERSONAL DATA

Status of the Controller

- 18.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Agreement will determine the status of each Party under the Data Protection Legislation. A Party may act as:

18.1.1 “Controller” (where the other Party acts as the “Processor”);

18.1.2 “Processor” (where the other Party acts as the “Controller”);

18.1.3 “Joint Controller” (where both Parties are considered to jointly control the same Personal Data);

18.1.4 “Independent Controller” of the Personal Data where the other Party is also “Controller” of the same Personal Data in its own right (but there is no element of joint control);

and the Parties shall set out in Schedule 16 (Processing of Personal Data) of this Framework Agreement and Annex 14 of the applicable Call-Off Form which scenario or scenarios are intended to apply under this Agreement.

Where one Party is Controller and the other Party its Processor

- 18.2 Where a Party is a Processor, the only processing that it is authorised to do is listed in Schedule 16 (Processing of Personal Data) of this Framework Agreement and Annex 14 of the applicable Call-Off Form by the Controller.
- 18.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 18.4 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:
- 18.4.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 18.4.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 18.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 18.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 18.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- 18.5.1 process that Personal Data only in accordance with Schedule 16 (Processing of Personal Data) of this Framework Agreement and Annex 14 of the applicable Call-Off Form (as applicable to each Call-Off Contract), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify Network Rail before processing the Personal Data unless prohibited by Law;
 - 18.5.2 ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in clause 19 (Network Rail Data and Security Requirements) of the Call-Off Terms, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
 - 18.5.2.1 nature of the data to be protected;
 - 18.5.2.2 harm that might result from a Data Loss Event;
 - 18.5.2.3 state of technological development; and
 - 18.5.2.4 cost of implementing any measures;
 - 18.5.3 ensure that:
 - 18.5.3.1 the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 16 (Processing of Personal Data) of this Framework Agreement and Annex 14 of the applicable Call-Off Form (as applicable to each Call-Off Contract));
 - 18.5.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (a) are aware of and comply with the Processor's duties under this clauses 18 and 16 (Confidentiality) and clause 19 (Network Rail Data and Security Requirements) of the Call-Off Terms;

- (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;
- 18.5.4 where the Personal Data is subject to UK GDPR, not transfer such Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- 18.5.4.1 the transfer is in accordance with Article 45 of the UK GDPR (or section 73 of DPA 2018);
 - 18.5.4.2 the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75) as determined by the Controller which could include relevant parties entering into the International Data Transfer Agreement or International Data Transfer Agreement Addendum to the European Commission's SCCs as published by the Information Commissioner's Office, as well as any additional measures determined by the Controller;
 - 18.5.4.3 the Data Subject has enforceable rights and effective legal remedies;
 - 18.5.4.4 the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - 18.5.4.5 the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- 18.5.5 where the Personal Data is subject to EU GDPR, not transfer such Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- 18.5.5.1 the transfer is in accordance with Article 45 of the EU GDPR;
 - 18.5.5.2 the Controller or the Processor has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the Controller which could include relevant parties entering into Standard Contractual Clauses in the European Commission's decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time as well as any additional measures determined by the Controller;
 - 18.5.5.3 the Data Subject has enforceable rights and effective legal remedies;
 - 18.5.5.4 the Processor complies with its obligations under the EU GDPR by providing an adequate level of protection to any Personal Data that

- is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
- 18.5.5.5 the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and
 - 18.5.6 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
- 18.6 Subject to Clause 18.7, the Processor shall notify the Controller immediately if it:
- 18.6.1 receives a Data Subject Request (or purported Data Subject Request);
 - 18.6.2 receives a request to rectify, block or erase any Personal Data;
 - 18.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 18.6.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 18.6.5 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
 - 18.6.6 becomes aware of a Data Loss Event.
- 18.7 The Processor's obligation to notify under Clause 18.6 shall include the provision of further information to the Controller in phases, as details become available.
- 18.8 Taking into account the nature of the processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 18.6 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- 18.8.1 the Controller with full details and copies of the complaint, communication or request;
 - 18.8.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 18.8.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 18.8.4 assistance as requested by the Controller following any Data Loss Event; and/or
 - 18.8.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office or any other regulatory authority, or any consultation by the Controller with the Information Commissioner's Office or any other regulatory authority.
- 18.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 18. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- 18.9.1 the Controller determines that the processing is not occasional;

- 18.9.2 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
- 18.9.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 18.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 18.11 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 18.12 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
 - 18.12.1 notify the Controller in writing of the intended Sub-processor and processing;
 - 18.12.2 obtain the written consent of the Controller;
 - 18.12.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 18 such that they apply to the Sub-processor; and
 - 18.12.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 18.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 18.14 Network Rail may, at any time on not less than 30 Working Days' notice, revise this Clause 18 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 18.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. Network Rail may on not less than 30 Working Days' notice to the Supplier amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Where the Parties are Joint Controllers of Personal Data

- 18.16 In the event that the Parties are Joint Controllers in respect of Personal Data under this Agreement, the Parties shall implement Clauses that are necessary to comply with Article 26 of the UK GDPR based on the terms set out in Annex 1 to Schedule 16 (Processing of Personal Data) of this Framework Agreement.

Where the Parties are Independent Controllers of Personal Data

- 18.17 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.
- 18.18 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 18.19 Where a Party has provided Personal Data to the other Party in accordance with Clause 18.17, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.

- 18.20 The Parties shall be responsible for their own compliance with Articles 13 and 14 of the UK GDPR in respect of the processing of Personal Data for the purposes of this Agreement.
- 18.21 The Parties shall only provide Personal Data to each other:
- 18.21.1 to the extent necessary to perform the respective obligations under this Agreement;
 - 18.21.2 in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects);
 - 18.21.3 where the Personal Data is subject to UK GDPR and where the provision of Personal Data from one Party to another involves transfer of such data to outside the UK, if the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
 - 18.21.3.1 the transfer is in accordance with Article 45 of the UK GDPR or DPA 2018 Section 73;
 - 18.21.3.2 the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75) as determined by the non-transferring Party which could include the International Data Transfer Agreement or International Data Transfer Agreement Addendum to the European Commission's SCCs as published by the Information Commissioner's Office, as well as any additional measures determined by the non-transferring Party;
 - 18.21.3.3 the Data Subject has enforceable rights and effective legal remedies;
 - 18.21.3.4 the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
 - 18.21.3.5 the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data;
 - 18.21.4 where the Personal Data is subject to EU GDPR and where the provision of Personal Data from one Party to another involves transfer of such data to outside the EU, if the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
 - 18.21.4.1 the transfer is in accordance with Article 46 of the EU GDPR;
 - 18.21.4.2 the transferring Party has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the non-transferring Party which could include relevant parties entering into Standard Contractual Clauses in the European Commission's decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time as well as any additional measures determined by the non-transferring Party;
 - 18.21.4.3 the Data Subject has enforceable rights and effective legal remedies;

- 18.21.4.4 the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
 - 18.21.4.5 the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and
 - 18.21.5 where it has recorded it in Schedule 16 (Processing of Personal Data) of this Framework Agreement and Annex 14 of the applicable Call-Off Form (as applicable to each Call-Off Contract).
- 18.22 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.
- 18.23 A Party processing Personal Data for the purposes of this Agreement shall maintain a record of its processing activities in accordance with Article 30 of the UK GDPR and shall make the record available to the other Party upon reasonable request.
- 18.24 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Agreement (“**the Request Recipient**”):
- 18.24.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
 - 18.24.2 where the request or correspondence is directed to the other party and/or relates to the other party's Processing of the Personal Data, the Request Recipient will:
 - 18.24.2.1 promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other party that it has received the same and shall forward such request or correspondence to the other party; and
 - 18.24.2.2 provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 18.25 Each party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other party pursuant to this Agreement and shall:
- 18.25.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
 - 18.25.2 implement any measures necessary to restore the security of any compromised Personal Data;
 - 18.25.3 work with the other Party to make any required notifications to the Information Commissioner's Office or any other regulatory authority and affected Data Subjects

in accordance with the Data Protection Legislation (including the timeframes set out therein); and

- 18.25.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 18.26 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Agreement as specified in Schedule 16 (Processing of Personal Data) of this Framework Agreement and Annex 14 of the applicable Call-Off Form (as applicable to each Call-Off Contract).
- 18.27 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Agreement which is specified in Schedule 16 (Processing of Personal Data) of this Framework Agreement and Annex 14 of the applicable Call-Off Form (as applicable to each Call-Off Contract).
- 18.28 Notwithstanding the general application of Clauses 18.2 to 18.15 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Clause 18.16 to 18.27.

Standard Contractual Clauses

- 18.29 It is noted that on 28 June 2021 the European Commission made an implementing decision pursuant to Article 45 of the EU GDPR on the adequate protection of personal data by the United Kingdom which contains carve-outs for certain transfers outside of the EU to the UK of certain types of Personal Data (the "**UK Adequacy Decision**"). If any transfer of Personal Data which is subject to EU GDPR pursuant to this Agreement is not covered by the UK Adequacy Decision or at any time during the term of the Agreement the UK Adequacy Decision is:
- 18.29.1 withdrawn, invalidated, overruled or otherwise ceases to have effect, or
- 18.29.2 amended in such a way as to affect the transfers of Personal Data outside of the EU which are contemplated under this Agreement,
- Clauses 18.30 to 18.31 below shall apply.
- 18.30 The Parties agree:
- 18.30.1 that without any further action being required they have entered into the Standard Contractual Clauses in the European Commission's decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time in respect of data transfers by the Supplier outside of the EU to the UK;
- 18.30.2 that, where no other appropriate safeguard or exemption applies, that the Personal Data subject to this Agreement (and to which Chapter V of the EU GDPR applies) will be transferred in accordance with those Standard Contractual Clauses as of the date the Parties entered into those Standard Contractual Clauses;
- 18.30.3 to use best endeavours to complete the annexes to the Standard Contractual Clauses promptly and at their own cost for the purpose of giving full effect to them; and
- 18.30.4 that if there is any conflict between this Agreement and the Standard Contractual Clauses the terms of the Standard Contractual Clauses shall apply.
- 18.31 In the event that the European Commission updates, amends, substitutes, adopts or publishes new Standard Contractual Clauses from time to time, the Parties agree:

- 18.31.1 that the most up to date Standard Contractual Clauses from time to time shall apply;
- 18.31.2 that where no other appropriate safeguard or exemption applies, that the Personal Data subject to this Agreement (and to which Chapter V of the EU GDPR applies) will be transferred in accordance with the relevant form of the most up to date Standard Contractual Clauses as of the date the European Commission decision regarding such new Standard Contractual Clauses becomes effective;
- 18.31.3 to use best endeavours to complete any part of the most up to date Standard Contractual Clauses that a Party must complete promptly and at their own cost for the purpose of giving full effect to them; and
- 18.31.4 that if there is any conflict between this Agreement and the most up to date Standard Contractual Clauses the terms of the most up to date Standard Contractual Clauses shall apply.

19. **PUBLICITY**

19.1 The Supplier shall not:

- 19.1.1 make any press announcements or publicise this Framework Agreement, any Call-Off Contract and/or any part of and/or the contents of the Framework Agreement and/or any Call-Off Contract in any way;
- 19.1.2 use Network Rail's name, brand or logo in any promotion or marketing or announcement of orders; or
- 19.1.3 disclose that Network Rail is a customer or client of the Supplier,

without the prior written consent of Network Rail, which shall not be unreasonably withheld or delayed, and must use all reasonable endeavours to ensure that Supplier Personnel do not either.

19.2 The Supplier acknowledges to Network Rail that nothing in this Framework Agreement and/or any Call-Off Contract either expressly or by implication constitutes an endorsement by Network Rail of any goods and/or services of the Supplier (including the Services) and the Supplier agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

SECTION D: FRAMEWORK AGREEMENT TERMINATION AND SUSPENSION

20. **Trigger events**

Default

20.1 In addition to those events specifically identified in this Framework Agreement, the following events are Trigger Events relating to Default by the Supplier:

20.1.1 where the Supplier commits a material Default or is in material breach of the Supplier's obligations under any Call-Off Contract(s) and:

20.1.1.1 the Supplier has not remedied the relevant Default and/or breach of the relevant Call-Off Contract within twenty (20) Working Days, or such longer period as may be specified by Network Rail, after issue of a written notice specifying the material Default and requesting it to be remedied or, having so remedied, commits a similar (in nature) material Default within the subsequent forty (40) Working Days; or

20.1.1.2 the relevant Default and/or breach of the relevant Call-Off Contract is not capable of remedy;

20.1.2 where the Supplier commits a number of Defaults and/or breaches of the Supplier's obligations under any Call-Off Contract(s) each of which may be non-material in nature but when taken together are material.

Financial Standing

20.2 If a Financial Distress Event arises and any of the provisions of paragraph 6 (Termination Rights) of Schedule 10 (Financial Distress) arise this shall be a Trigger Event. The Parties shall comply with the provisions of Schedule 10 (Financial Distress) in relation to the assessment of the financial standing of the Supplier and other specified entities and the consequences of a change to that financial standing.

Insolvency and change of Control

20.3 If an Insolvency Event arises (in respect of the Supplier, the Guarantor and/or any Key Sub-contractor) this shall be a Trigger Event.

20.4 A change of Control (in respect of the Supplier, the Guarantor and/or any Key Sub-contractor) shall be a Trigger Event except where Network Rail:

20.4.1 has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or

20.4.2 has not served its notice within six (6) months of the later of the date the change of Control took place or the date on which Network Rail was given notice of the change of Control.

21. SUSPENSION OR TERMINATION OF SUPPLIER'S APPOINTMENT

21.1 If:

21.1.1 a Trigger Event occurs; or

21.1.2 Network Rail terminates or has a right to terminate any Call-Off Contract by reason of the default of the Supplier or any Sub-contractor,

Network Rail may, by notice in writing and in each case subject to clauses 21.3, 21.4 and 21.5:

21.1.2.1 Suspend the Supplier's appointment to be eligible to be awarded a Call-Off Contract through the Ordering Procedure and/or to supply Services (or any parts thereof) to Network Rail, in which case the Supplier's appointment shall be Suspended for the period set out in the notice (which may, at Network Rail's absolute discretion, be for the remainder of the Term or any other period) or such other period notified to the Supplier by Network Rail in writing from time to time); or

21.1.2.2 terminate this Framework Agreement with immediate effect.

21.2 If the Supplier becomes aware that any of the circumstances in clause 21.1.1 and/or 21.1.2 have occurred or are likely to occur it must notify Network Rail in writing within two (2) Working Days of becoming aware of the relevant circumstances.

21.3 Where the cause giving rise to Network Rail's right to Suspend the Supplier's appointment or terminate this Framework Agreement is remediable, Network Rail's notice shall specify the actions (and the deadlines for such actions) (such actions may include attending a meeting with Network Rail to enable the Parties to discuss the Suspension further) which the Supplier

must undertake to remedy the cause giving rise to the Suspension or termination (as applicable) and, in the case of a notice to terminate, the termination may not take effect before the expiry of thirty (30) Working Days from the date of Network Rail's notice.

21.4 Network Rail:

21.4.1 shall, where the Supplier has undertaken all of the remedial actions specified in any notice served pursuant to clause 21.3 by the relevant deadlines to Network Rail's reasonable satisfaction; and

21.4.2 may, at any other time, acting in its absolute discretion,

lift the Suspension and/or the abort the termination by notice in writing to the Supplier.

21.5 If a Trigger Event arises under clause 20.3 or 20.4, Network Rail shall give (via written notice) the Supplier an opportunity to explain the circumstances under which (as applicable) clause 20.3 or 20.4 has arisen so as to avoid Suspension and/or termination (as applicable) and the Supplier shall attend a meeting with Network Rail within three (3) Working Days of receipt of Network Rail's notice of such meeting. The decision as to whether to Suspend or terminate following such explanation and discussions between the Parties shall be determined by Network Rail and Network Rail's decision shall be final and conclusive. If Network Rail decides to Suspend or terminate (as applicable), the remainder of clause 21.1 and clause 21.3 shall apply.

22. CONSEQUENCES OF SUSPENSION, TERMINATION AND EXPIRY

22.1 Notwithstanding the service of a notice to Suspend the Supplier's appointment or terminate this Framework Agreement the Supplier shall continue to fulfil its obligations under this Framework Agreement until the date of expiry or termination (however arising) of this Framework Agreement or such other date as required under this clause 22.

22.2 Termination (however arising) or expiry of this Framework Agreement or the Suspension of the Supplier's appointment shall not cause any Call-Off Contracts to terminate. All Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

22.3 Except for any Records subject to clause 14, within thirty (30) Working Days of the date of termination (however arising) or expiry of this Framework Agreement, the Supplier shall return to Network Rail any data and Confidential Information belonging to Network Rail in the Supplier's and its Sub-contractors' possession, power or control, either in its then current format or in a format nominated by Network Rail (in which event Network Rail will reimburse the Supplier's reasonable and pre-agreed data conversion expenses).

22.4 Termination, expiry or Suspension of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement before such termination (however arising), expiry or Suspension.

22.5 The provisions of Schedules 1 (Definitions), 2 (Service Requirements and Supplier Service Descriptions), 4 (Charges), 7 (Governance), 10 (Financial Distress), 11 (Dispute Resolution Procedure), 12 (Insurance Requirements) and clauses 4.5, 4.7 to 4.9 (inclusive), 8 to 11 (inclusive), 12.1, 12.2, 15 to 19 (inclusive), 22, 23, 24, 25, 26, 27, 28, 36, 37 and 38 shall survive the termination (however arising), Suspension or expiry of this Framework Agreement, together with any other provision which is either expressed to or by implication (which includes provisions which need to survive to the extent that they apply to any Call-Off Contracts) is intended to survive termination (however arising), Suspension or expiry of this Framework Agreement.

SECTION E: LIABILITY AND INSURANCE

23. LIABILITY

23.1 Neither Party excludes or limits its liability for:

23.1.1 death or personal injury caused by its negligence or that of its employees, agents or Sub-contractors (as applicable);

23.1.2 Fraud or fraudulent misrepresentation by it or its employees;

23.1.3 breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

23.2 The Supplier's liability in respect of any breach of clause 18 shall be unlimited.

23.3 Subject to clauses 23.1 and 23.2, each party's aggregate liability under or in connection with this Framework Agreement as a result of its Defaults shall in no event exceed [£10 million].

23.4 Subject to clause 23.1 neither Party will be liable to the other Party for:

23.4.1 any indirect, special or consequential loss or damage; or

23.4.2 any loss of profits, turnover, business opportunities or damage to goodwill (whether direct or indirect).

23.5 This clause 23 shall not limit or exclude either Party's liability under any Call-Off Contract. All liability in relation to a Call-Off Contract shall be as set out in the Call-Off Contract and subject to the limitations and exclusions therein.

23.6 No Party (or third party with rights under this Framework Agreement) may recover a loss under this Framework Agreement where it has claimed (and is not precluded by any limitation on a Party's liability from recovering) that same loss under a Call-Off Contract.

23.7 If any limitation or provision contained or expressly referred to in this clause 23 is held to be invalid under any Law, it will be deemed omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this clause 23.

Conduct of indemnity claims

23.8 Where under this Framework Agreement one Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 9 (Conduct of Claims) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

Mitigation

23.9 Nothing in this clause 23 shall affect a Party's general duty to mitigate its loss.

24. INSURANCE

24.1 The Supplier shall ensure that throughout the Term and thereafter in respect of any existing Call-Off Contracts it is an insured party and it shall procure the maintenance of the Required Insurances in accordance with Schedule 12 (Insurance Requirements).

24.2 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising under this Framework Agreement or any Call-Off Contracts.

24.3 The Supplier acknowledges that additional insurances or increased levels of cover may be required under Call-Off Contracts.

25. **GUARANTEE**

- 25.1 On or before the Framework Effective Date the Supplier shall procure that the Guarantor shall:
- 25.1.1 execute and deliver to Network Rail a guarantee in the form set out in Schedule 8 (Guarantee) or any other form acceptable to Network Rail that replaces it from time to time; and
 - 25.1.2 deliver to Network Rail a certified copy extract of the board minutes of the Guarantor approving the execution of the Guarantee,
- save where the Supplier is not a Subsidiary Undertaking of another company it shall not have to comply with this clause 25
- 25.2 Any failure to comply with clause 25.1 shall be a Trigger Event.
- 25.3 The Supplier and Network Rail agree to comply with their respective obligations and may exercise their respective rights pursuant to Schedule 10 (Financial Distress).

SECTION F: OTHER PROVISIONS

26. **INTELLECTUAL PROPERTY RIGHTS AND INDEMNITY**

Intellectual Property Rights

- 26.1 Save as granted under this Framework Agreement or any Call-Off Contract, neither Network Rail nor the Supplier shall acquire any right, title or interest in the other's IPRs.
- 26.2 Network Rail hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable, revocable licence during the Term to use Network Rail's IPRs solely to the extent necessary for the performance of the Supplier's responsibilities under this Framework Agreement.
- 26.3 The Supplier hereby grants to Network Rail a royalty-free, non-exclusive, non-transferable, irrevocable licence to use the Supplier's IPRs for the purposes of enjoying the full benefit of its rights under this Framework Agreement.

Indemnity

- 26.4 The Supplier shall ensure and procure that the performance of the Supplier's responsibilities and obligations under this Framework Agreement and the possession or use of any materials provided by the Supplier to Network Rail shall not infringe any Intellectual Property Rights of any third party.
- 26.5 The Supplier shall indemnify Network Rail against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the:
- 26.5.1 possession or use (in accordance with this Framework Agreement) of any materials provided by the Supplier to Network Rail under this Framework Agreement (or any parts thereof); and/or
 - 26.5.2 performance of the Supplier's responsibilities and obligations under this Framework Agreement,
- (collectively an "IPR Claim").
- 26.6 Where there is an IPR Claim and the Supplier is unable to defend or settle such claim in such a way that Network Rail is able to continue to discharge its responsibilities or enjoy its rights

under this Framework Agreement without breaching a third party's Intellectual Property Rights, this shall be a Trigger Event.

27. **TRANSFER AND SUB-CONTRACTING**

Transfer

- 27.1 Network Rail may assign, novate, hold in trust or otherwise dispose of its rights and obligations under this Framework Agreement or any part thereof to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by Network Rail (any such body a "**Successor Body**"), provided that if such transfer increases the burden of the Supplier's obligations under this Framework Agreement the Supplier shall be entitled to any additional charges that are reasonable by way of compensation and which can be agreed through the Framework Agreement.
- 27.2 A change in the legal status of Network Rail shall not affect the validity of this Framework Agreement and this Framework Agreement shall be binding on any successor body to Network Rail.
- 27.3 This Framework Agreement is personal to the Supplier and the Supplier shall not assign, novate or otherwise dispose of, declare a trust over or otherwise pass on the benefit of this Framework Agreement or any part thereof without the Approval of Network Rail.

Sub-contracting

- 27.4 The Supplier shall comply with its obligations in relation to sub-contracting as set out in clause 15 (Supply Chain Rights and Protections) of the Call-Off Terms.
- 27.5 The Supplier shall remain responsible for all acts and omissions of its Sub-contractors as if they were its own.
- 27.6 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to ensure that its, its Sub-contractors and Affiliates also do, or refrain from doing, such act or thing.

28. **FRAMEWORK VARIATIONS**

- 28.1 Unless otherwise stated in this Framework Agreement, any variations to this Framework Agreement shall be made only in accordance with this clause 28.
- 28.2 Either Party may at any time request in writing any Change.
- 28.3 The Supplier shall (in good faith) submit to Network Rail in writing, within ten (10) Working Days (or such longer period as may be agreed) of receipt of a written Change request from Network Rail (or at the same time as any written Change request that the Supplier may submit):
- 28.3.1 a full written quotation including a detailed breakdown and such supporting evidence of its costs and resources as Network Rail shall reasonably require for such Change;
 - 28.3.2 particulars of any changes that would be needed to the Service Requirements in order to implement the Changes;
 - 28.3.3 particulars of the other changes (if any) which would be required to this Framework Agreement; and
 - 28.3.4 the full cost and risk implications for Network Rail that would result from the Change,

(together the “**Change Request Information**”).

- 28.4 The Supplier must demonstrate to the reasonable satisfaction of Network Rail (including providing such supporting evidence as Network Rail shall request) that any Change to this Framework Agreement proposed by the Supplier pursuant to clause 28.3 is reasonable, proportionate and justifiable in all the circumstances.
- 28.5 The Supplier shall not be entitled to any fees or expenses for investigating the effect of implementing a Change or preparing the Change Request Information.
- 28.6 Upon receipt of the Change Request Information Network Rail may elect (at its absolute discretion) either:
- 28.6.1 to require the Supplier to resubmit the Change Request Information in accordance with the requirements of clauses 28.3 and 28.4 where Network Rail reasonably considers that the Supplier has not complied with such requirements; or
 - 28.6.2 to accept such Change Request Information, in which case this Framework Agreement shall be amended accordingly and the Parties shall forthwith complete and sign a change control notice recording the Change that shall include the Change Request Information; or
 - 28.6.3 to withdraw or reject (as the case may be) the proposed Change, in which case the Framework Agreement shall continue in force unchanged.
- 28.7 Until such time as any Change is formally accepted by Network Rail in accordance with this clause 28 the Supplier shall, unless otherwise agreed in writing, continue to perform and be paid as if no Change had been requested.
- 28.8 Subject to clause 28.9 below and clause 11.9 (Rights and obligations under the Framework Agreement) of the Call-Off Terms, a Change to this Framework Agreement, including the Call-Off Terms and the Call-Off Form shall not affect any Call-Off Contract in force at the time the Change is made, except to the extent the Change is implemented as a change under the Change Control Procedure for that Call-Off Contract.
- 28.9 To the extent that a Change impacts Schedule 4 (Charges) such that the prices payable under any new contract ordered in accordance with the Ordering Procedure after that Change has been formally accepted by Network Rail in accordance with this clause 28 would be lower than they would have been prior to the Change, the Supplier shall ensure that the prices in any existing Call-Off Contract are automatically reduced to reflect the global change in pricing.

29. **RIGHTS OF THIRD PARTIES**

- 29.1 A person who is not party to this Framework Agreement has no right to enforce any term of this Framework Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 29.2 If the Parties Suspend or rescind this Framework Agreement or vary any of its terms, such Suspension, rescission or variation will not require notice to or the consent of any third party.

30. **SEVERABILITY**

- 30.1 If any provision of this Framework Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Framework Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Framework Agreement shall not be affected.

30.2 In the event that any deemed deletion under clause 30.1 is so fundamental as to prevent the accomplishment of the purpose of this Framework Agreement or materially alters the balance of risks and rewards in this Framework Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Framework Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Framework Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.

30.3 If the Parties are unable to agree on the revisions to this Framework Agreement within 5 Working Days of the date of the notice given pursuant to clause 30.2, the matter shall be dealt with in accordance with Paragraph 4 (Commercial Negotiation) of Schedule 11 (Dispute Resolution Procedure) except that if the representatives are unable to resolve the dispute within thirty (30) Working Days of the matter being referred to them, this Framework Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this clause 30.3.

30.4 Any breach of this clause 30 shall be a Trigger Event.

31. **CUMULATIVE REMEDIES**

31.1 Unless otherwise provided in this Framework Agreement, rights and remedies under this Framework Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

32. **WAIVER**

32.1 The rights and remedies under this Framework Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Framework Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

33. **ENTIRE AGREEMENT**

33.1 This Framework Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

33.2 Neither Party has been given, nor entered into this Framework Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Framework Agreement.

33.3 Nothing in this clause 33 shall exclude any liability in respect of misrepresentations made fraudulently.

34. **NOTICES**

34.1 Except as otherwise expressly provided within this Framework Agreement, no notice or other communication from one Party to the other shall have any validity under this Framework Agreement unless made in writing by or on behalf of the Party sending the communication and shall be served by:

34.1.1 sending it by pre-paid first class post, recorded delivery or airmail to; or

34.1.2 sending it by e-mail with a copy sent by pre-paid first class post, recorded delivery or airmail to; or

34.1.3 delivering it to or leaving it at,

the address and for the attention of the relevant party notified for such purpose or to such other address as that party may have stipulated in accordance with this clause.

34.2 Any notice which is to be given by either Party to the other shall be deemed to have been received:

34.2.1 if delivered or left at (but not, in either case, by post) the relevant address, at the time of delivery or, if delivered after 16:00 hours, on the next Working Day;

34.2.2 in the case of pre-paid first class post, recorded delivery or airmail, three (3) Working Days from the date of posting (or in the case of recorded delivery, the date the notice is signed for if this is earlier); and

34.2.3 in the case of e-mail, at the time of sending the e-mail or 09:00 hours if sent before 09:00 hours on a Working Day or 09:00 hours on the next Working Day if delivered on a non-Working Day or after 16:00 on any Working Day provided that:

34.2.3.1 no automatic electronic notification is received by the sender within twenty four (24) hours after sending the e-mail informing the sender that the e-mail has not been delivered to the recipient or that the recipient is out of the office; and

34.2.3.2 a copy has also been sent by pre-paid first class post, recorded delivery or airmail in accordance with clause 34.1.

34.3 In proving service, it shall be sufficient to prove that the envelope containing the notice was addressed to the relevant Party at its address previously notified for the receipt of notices (or as otherwise notified by that Party in writing) and either delivered to or left at that address or delivered into the custody of the postal authorities as pre-paid first class post, recorded delivery or airmail, or that the e-mail was sent by e-mail to the e-mail address of the relevant party at its e-mail address previously notified for the receipt of notices (or as otherwise notified by that party), provided in the case of e-mail that a copy of the notice was also delivered into the custody of the postal authorities as pre-paid first class post, recorded delivery or airmail.

34.4 For the purposes of clause 34.2, the address of each Party shall be:

34.4.1 For Network Rail:

Address: [INSERT]
For the attention of: [INSERT NAME]
Tel: [INSERT]
E-mail: notices@networkrail.co.uk

34.4.2 For the Supplier:

Address: [INSERT]
For the attention of: [INSERT NAME]
Tel: [INSERT]
E-mail: [INSERT]

- 34.5 Any changes to any service of notice details such as designated service address, number, or named person shall only be changed by service of a written notice setting out the changes, which must be agreed between the Parties acting reasonably.

35. FURTHER ASSURANCES

Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this Framework Agreement.

36. DISPUTE RESOLUTION

- 36.1 The Parties shall resolve Disputes arising out of or in connection with this Framework Agreement and/or any Call-Off Contract in accordance with the Dispute Resolution Procedure set out in Schedule 11 (Dispute Resolution Procedure).

- 36.2 The Supplier shall continue to provide the Services in accordance with the terms of this Framework Agreement and/or the relevant Call-Off Contract until a Dispute has been resolved.

37. LAW AND JURISDICTION

- 37.1 This Framework Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

- 37.2 Subject to clause 36 (Disputes) and Schedule 11 (Dispute Resolution Procedure), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Framework Agreement or its subject matter or formation

38. INTERMEDIARIES LEGISLATION

- 38.1 **[Guidance note: Select applicable option of the wording in square brackets and delete the other option (and the square brackets)]** Where the Intermediaries Legislation applies Network Rail deems that the Income Tax (Earnings and Pensions) Act 2003 Part 2 Chapter 10 section 61M sub section 1(d) **[Option 1]** [applies (“**Within IR35**”) and the CEST determination reference number is [INSERT] and the CEST is as annexed at the end of this Framework Agreement] **[OR]** **[Option 2]** [does not apply (“**Outside IR35**”) and the CEST determination reference number is [INSERT] and the CEST is as annexed at the end of this Framework Agreement];

- 38.2 If stated in the Call-Off Form, that the Services provided through this Agreement are assessed by Network Rail to fall under the Intermediaries Legislation then the following provisions shall apply whether this Framework Agreement is deemed Within IR35 or Outside IR35:

38.2.1 the Supplier shall comply with the Intermediaries Legislation and all reasonable instructions and requests for information from Network Rail in respect thereof;

38.2.2 the Supplier shall supply all the information required, and to any specified time, for Network Rail to report to the Department for Transport and HM Treasury as to compliance with the Intermediaries Legislation including the number of workers affected;

38.2.3 the Supplier shall be liable for and shall indemnify Network Rail against all and any loss, damage, cost, expense, liability, claims and proceedings whatsoever in respect of a failure of the Supplier to comply with this clause 38;

38.2.4 Network Rail shall provide all reasonably requested information within a reasonable timescale to support the Supplier in its compliance with the Intermediaries Legislation;

- 38.2.5 the Supplier shall advise Network Rail of any relevant changes in the status of Supplier Personnel; and
- 38.2.6 failure by the Supplier to comply with this clause 38 shall be a Trigger Event.

For agreements executed using the DocuSign electronic signature process, the digital certification for the signatures of both Parties can be found at the end of the contract documentation.

EXECUTED by or on behalf of the Parties on the date which first appears in this Framework Agreement.

EXECUTED AS A DEED by NETWORK RAIL INFRASTRUCTURE LIMITED

acting by its attorney.....

in exercise of a power of attorney dated in the presence of:

Signature of witness

Name of witness

Address of witness

I confirm that I was physically present when signed this deed

..... [signature
of witness]

OR

SIGNED for and on behalf of **NETWORK RAIL INFRASTRUCTURE LIMITED**

by:

Authorised signatory

Printed Name:.....

SIGNED as a DEED for and on behalf of
.....

By

Director

Printed Name.....

Director/Company Secretary

Printed Name.....

OR

SIGNED for and on behalf of

.....

By

Director

Printed Name.....

FRAMEWORK AGREEMENT

SCHEDULE 1

DEFINITIONS

Unless the context otherwise requires, the following words and expressions shall have the following meanings:

“Affiliate”	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of, that body corporate from time to time;
“Approval”	the prior written approval of Network Rail (and “Approve” and cognate terms shall be construed accordingly);
“Assets”	all assets and rights used by the Supplier to provide the Services, but excluding Network Rail Assets (as defined in Schedule 1 (Definitions) of the Call-Off Terms);
“Associated Person”	has the meaning given to it in Section 44(4) of the Criminal Finances Act 2017;
“Associates”	in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles;
“Audit”	an audit carried out pursuant to clause 14;
“Auditor”	the National Audit Office or an auditor appointed by the Audit Commission (and any body or bodies that replace them from time to time) as the context requires;
“Call-Off Contract”	any agreement made pursuant to this Framework Agreement for the provision of Services made between Network Rail and the Supplier, only as documented in a duly completed and authorised Call-Off Form in accordance with the Ordering Procedure;
“Call-Off Contract Charges”	the charges for the provision of the Services which are payable under any and all Call-Off Contracts and which are calculated in accordance with Schedule 4 (Charges);
“Call-Off Form”	Network Rail’s order for Services in the form set out in Schedule 5 (Call-Off Form);
“Call-Off Key Personnel”	has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;

“Call-Off Requirement”	the Software and/or Services that Network Rail requires to procure pursuant to the Ordering Procedure;
“Call-Off Terms”	the standard terms and conditions in Schedule 13 (Call-Off Terms), including the Schedules to those terms and conditions;
“Central Government Body”	<p>a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"> (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive or tribunal); (c) Non-Ministerial Department; or (d) Executive Agency;
“Change”	<ul style="list-style-type: none"> (a) any change to this Framework Agreement; and/or (b) any change to the Call-Off Contract, <p>as the context requires;</p>
“Change Control Procedure”	has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;
“Change Request Information”	has the meaning given to it in clause 28.3.4 (Framework Variations);
“Charges”	the charges for the provision of the Services as set out or referred to in Schedule 4 (Charges);
“Commercially Sensitive Information”	the information listed in Schedule 3 (Commercial Sensitive Information) comprising the information of a commercially sensitive nature relating to the Supplier, its IPRs or its business or which the Supplier has indicated to Network Rail that, if disclosed by Network Rail, would cause the Supplier significant commercial disadvantage or material financial loss;
“Confidential Information”	any information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential, however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel, Affiliates and suppliers (including Sub-contractors) of either Party, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as

	“confidential”) or which ought reasonably to be considered to be confidential;
“Conflict of Interest”	a conflict between the financial or personal duties of the Supplier or the Supplier Personnel and the duties owed to Network Rail under this Framework Agreement or any Call-Off Contract, in the reasonable opinion of Network Rail;
“Contract Year”	a period of twelve (12) months (or shorter period in the period immediately prior to the end of the Term) commencing on the Framework Effective Date or on an anniversary of the Framework Effective Date;
“Control”	the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly;
“Controller”	has the meaning given in the UK GDPR or the EU GDPR as the context requires;
“Data Loss Event”	means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Framework Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Framework Agreement, including any Personal Data Breach;
“Data Protection Impact Assessment”	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
“Data Protection Legislation”	<ul style="list-style-type: none"> (a) the UK GDPR; (b) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (c) all applicable Law about the processing of personal data and privacy; and (d) (to the extent that it applies) the EU GDPR;
“Data Subject”	has the meaning given in the UK GDPR or the EU GDPR as the context requires;
“Data Subject Request”	means 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;
“Default”	any breach of the obligations of the relevant Party (including persistent breach, fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or Sub-contractors in connection with or in relation to the subject matter of this Framework Agreement (but not

	under any Call-Off Contract) and in respect of which such Party is liable to the other;
“Delay”	has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;
“Delay Payments”	has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;
“Deliverable”	has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;
“Dependent Parent Undertaking”	any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Agreement, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Agreement;
“Disclosing Party”	has the meaning given in clause 16.1 (Confidentiality);
“Dispute Resolution Procedure”	the procedure set out in Schedule 11 (Dispute Resolution Procedure);
“Dispute”	any dispute, difference or question of interpretation arising out of or in connection with this Framework Agreement or any Call-Off Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree a Change in accordance with clause 28 (Framework Variations) or the Change Control Procedure under the applicable Call-Off Contract or any matter where this Framework Agreement or any Call-Off Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
“DPA 2018”	Data Protection Act 2018;
“EIRs”	the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any in relation to such regulations;
“Employee Liabilities”	all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, sexual orientation, religion or belief or age discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers or fixed term employees, and any claims (whether in tort, contract or statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation

(including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation), and any legal costs and expenses;

“End User”	an individual who uses any of the Services;
“EU GDPR”	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law;
“FDE Group”	has the meaning given in Schedule 10 (Financial Distress);
“Financial Distress Event”	has the meaning given to it in Schedule 10 (Financial Distress);
“Financial Distress Service Continuity Plan”	a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Agreement in the event that a Financial Distress Event occurs. This plan should include what Network Rail would need to put in place to ensure performance and delivery of the Services in accordance with this Agreement up to and including any Insolvency Event in respect of the relevant FDE Group entity and may refer to the Insolvency Continuity Plan in this regard;
“FOIA”	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Act;
“Force Majeure Event”	has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;
“Framework Agreement”	this agreement and all Schedules to this agreement (but excluding Call-Off Contracts) as may be amended from time to time by the Parties in accordance herewith;
“Framework Agreement Key Personnel”	those members of the Supplier Personnel described in Schedule 6 (Framework Agreement Key Personnel) as such is modified in writing by agreement by the Parties;
“Framework Effective Date”	the date on which this Framework Agreement is signed by both parties;
“Framework Suppliers”	the Supplier and the other providers appointed as Framework Suppliers under this Framework Agreement and “Framework Supplier” shall mean any one of the Framework Suppliers;
“Fraud”	any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of

fraudulent acts in relation to this Framework Agreement or defrauding or attempting to defraud or conspiring to defraud Network Rail;

“General Anti-Abuse Rule”	(a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
“Good Industry Practice”	at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like Network Rail, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;
“Guarantee”	the deed of guarantee in favour of Network Rail entered into by the Guarantor in accordance with clause 25 (Guarantee and Financial Distress) on or about the date of this Framework Agreement (which is in the form set out in Schedule 8 (Guarantee), or any guarantee acceptable to Network Rail that replaces it from time to time;];
“Guarantor”	[INSERT NAME], a company registered in [INSERT COUNTRY] with company number [INSERT COMPANY NUMBER] and whose registered office is at [INSERT REGISTERED ADDRESS];
“Halifax Abuse Principle”	the principle explained in the CJEU Case C-255/02 Halifax and others;
“ICT”	information and communications technology;
“Implementation Plan”	has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;
“Independent Controller”	a party which is Controller of the same Personal Data as the other Party and there is no element of joint control with regards to that Personal Data;
“Information”	all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);
“Information Assurance Standards”	the HMG Information Security Standards issued by the Cabinet Office as a supplement to the Security Policy Framework;
“Information Management Function”	the business unit within Network Rail responsible for the delivery of all IT services to Network Rail;
“Insolvency Event”	has the meaning given to it in the Call-Off terms;

“Intellectual Property Rights” or “IPRs”	<p>(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, know-how, trade secrets and rights in Confidential Information;</p> <p>(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>(c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
“Intermediaries Legislation”	the Income Tax (Earnings and Pensions) Act 2003 (ITEPA), Social Security Contributions and Benefits Act 1992 (SSCBA) and all other related statutes and regulations including the Finance Act 2017;
“IPR Claim”	has the meaning given to it in clause 26.5;
“ITIL guidelines”	the Office of Government Commerce’s IT Infrastructure Library version 3 or above;
“Joint Controllers”	where two or more Controllers jointly determine the purposes and means of processing;
“Key Sub-contractor”	has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;
“Law”	any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code that has the equivalent of legal effect, rule of court, or directives or requirements of any Regulatory Body delegated or subordinate legislation or notice of any Regulatory Body;
“Milestone”	has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;
“Milestone Date”	has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;
“NCSC”	the information assurance arm of GCHQ, the National Cyber Security Centre, which is responsible for establishing security requirements for communications infrastructure and advising on matters relating to compliance and accreditation to the necessary standards;
“Network Rail Data”	the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

	(a)	supplied to the Supplier by or on behalf of Network Rail; and/or
	(b)	which the Supplier is required to generate, process, store or transmit pursuant to this Framework Agreement and/or any Call-Off Contract; or
	(c)	any Personal Data for which Network Rail is the Data Controller;
“Network Rail Premises”		has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;
“Occasion of Tax Non-Compliance”	(a)	any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; or (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
	(b)	any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Framework Effective Date or to a civil penalty for fraud or evasion;
“Operational Phase”		has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;
“Operational Service Commencement Date”		has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;
“Ordering Procedure”		the procedure set out in clause 7 (Ordering Procedure);
“Party”		Network Rail and/or the Supplier and “Parties” shall be construed accordingly;
“Performance Monitoring Reports”		has the meaning given to it in Schedule 2 (Performance Levels) of the Call-Off Terms;

- “Performance Monitoring System”** the system for reviewing and monitoring the Supplier's provision of the Services to:

 - (a) ensure that the Supplier is complying with the Service Levels; and
 - (b) identify any other defects in the Supplier's performance and/or delivery of the Services,

and which is agreed by the Parties in accordance with clause 14;
- “Personal Data”** has the meaning given in the UK GDPR or the EU GDPR as the context requires;
- “Personal Data Breach”** has the meaning given in the UK GDPR or the EU GDPR as the context requires;
- “Process”** has the meaning as per the Data Protection Act 2018 and **“Processed”** and **“Processing”** shall be construed accordingly;
- “Processor”** has the meaning given in the UK GDPR or the EU GDPR as the context requires;
- “Processor Personnel”** all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Sub-processor engaged in the performance of its obligations under this Agreement;
- "Prohibited Act"**

 - (a) to directly or indirectly offer, promise or give any person working for or engaged by Network Rail a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
 - (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Framework Agreement;
 - (c) an offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (ii) under legislation or common law concerning fraudulent acts; or

	(iii)	defrauding, attempting to defraud or conspiring to defraud Network Rail; or
	(d)	any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;
“Protective Measures”		appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
“Quality Plan”		any and all plans in relation to quality management systems prepared by the Supplier pursuant to its obligations under any Call-Off Contract;
“Recipient”		has the meaning given in clause 16.1 (Confidentiality);
“Records”		has the meaning given to it in clause 15.1;
“Regulatory Body”		those government departments and regulatory, statutory and other entities, committees, ombudsmen 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 Framework Agreement or any other affairs of Network Rail and “Regulatory Bodies” shall be construed accordingly;
“Relevant Tax Authority”		HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
“Relevant Requirements”		all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
“Request For Information”		a Request for Information under the FOIA or the EIRs;
“Required Insurances”		all or any of the policies of insurance required to be maintained by the Supplier pursuant to this Framework Agreement, as set out in Schedule 12 (Insurance Requirements) and any Call-Off Contract;
“Security Policy”		Network Rail's security policies from time to time in force;
“Security Policy Framework”		the security policy framework contains the primary internal protective security policy and guidance on security and risk management for HM Government Departments and associated bodies. It is the source on which all localised security policies should be based. Whilst it is recognised that security policies will differ according to the range of business and risks faced by

	each organisation, the framework sets out the minimum security requirements which are mandatory for all Government Departments and Agencies. The framework also provides technical information, advice and guidance to support implementation of the policy requirements;
“Service Credits”	has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;
“Service Failure”	has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;
“Service Levels”	has the meaning given to Target Performance Levels in Schedule 1 (Definitions) of the Call-Off Terms;
“Service Period”	has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;
“Service Requirements”	the requirements of the Services set out in Part A of Schedule 2 (Service Requirements and Supplier Service Descriptions);
“Services”	any and all of the services to be provided by the Supplier pursuant to any Call-Off Contract, derived from those set out in Schedule 2 (Service Requirements and Supplier Service Descriptions);
“Sites”	has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;
“Standards”	the standards, codes, practices, processes, policies and referred to in the Service Requirements, Supplier Service Descriptions and any Call-Off Contracts together with any other applicable British or international standards and notified Network Rail internal policies from time to time in force;
“Successor Body”	has the meaning given in clause 27.1 (Transfer);
“Subsidiary”	has the meaning given to it in the Companies Act 2006;
“Subsidiary Undertaking”	has the meaning set out in section 1162 of the Companies Act 2006;
“Sub-contractor”	has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;
“Sub-processor”	any third Party appointed to process Personal Data on behalf of the Supplier;
“Supplier Group”	the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;
“Supplier Personnel”	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier’s obligations under this Framework Agreement or any Call-Off Contracts (including, in

	relation to the Supplier, Framework Agreement Key Personnel and Call-Off Key Personnel);
“Supplier Service Descriptions”	the descriptions of the Services set out in Part B of Schedule 2 (Service Requirements and Supplier Service Descriptions);
“Supplier System”	has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;
“Supplier’s Competitors”	any third party to which the receipt of the Supplier's Confidential Information, Intellectual Property Rights or access to premises would give them a significant commercial advantage;
“Suspension”	a suspension, pursuant to clause 21.1.2.1 (Suspension or Termination of Supplier’s appointment), of the Supplier’s rights and “Suspend” and “Suspended” shall be construed accordingly;
“Tender”	the Supplier’s tender submitted on [INSERT DATE] in response to Network Rail’s contract notice reference number [REFERENCE] in the Government’s Find a Tender service;;
“Term”	the period of [INSERT DURATION] from the Framework Effective Date;
“Testing” and “Tests”	has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;
“Transparency Reports”	has the meaning given in Schedule 13 (Reports and Records Provisions) of the Call-Off Terms;
“Transparency Information”	has the meaning given in clause 17.3.2(Transparency and Freedom of Information);
“Trigger Event”	an event identified as such in this Framework Agreement, including those identified in clauses 4.4, 7.9, 10.11, 11.2, 15.5, 20, 25.2, 26.6, 30 and 38.2.6;
“Ultimate Holding Company”	has the meaning given to it in the Companies Act 2006;
“VAT”	value added tax as provided for in the Value Added Tax Act 1994;
“Working Day”	any day other than a Saturday, Sunday or public holiday in England and Wales; and
“Year”	a calendar year.

FRAMEWORK AGREEMENT

SCHEDULE 2

SERVICE REQUIREMENTS AND SUPPLIER SERVICES DESCRIPTIONS

PART A
SERVICE REQUIREMENTS

1. Definitions

In this Schedule, the following definitions shall apply:

[insert definitions as required]

2. Introduction

2.1 *[Outline why Network Rail has identified that it needs the Supplier to provide the Services.]*

2.2 This Schedule sets out the intended scope of the Services to be provided by the Supplier and to provide a description of what each Service entails.

3. Services Description

3.1 *[Description of the Services to be provided by the Supplier under the Framework Agreement to be included]*

3.2 Interface requirements:

- *[Technical interfaces for Software;*
- *Interface requirements with Network Rail System (as defined in the Call-Off Terms); and*
- *Management obligations/responsibilities]*

3.3 **Social Value Requirements** – *[Description of the additional social, environmental and economic benefits to be delivered in line with the [Public Services \(Social Value\) Act 2012](#) , [PPN 06/20](#), and Network Rail policies and practices]*

3.4 Other Network Rail requirements

4. Goods

[Insert description, specification / requirements and prices of any equipment, hardware or other goods to be provided by the Supplier to Network Rail]

5. Security Requirements

[Insert any specific requirements (in addition to the generic requirements Schedule 4 (Security Management) of the Call-Off Terms), including, to the extent that Network Rail Data is held and/or processed by the Supplier, the format the Supplier is to supply that Network Rail Data (as defined in the Call-Off Terms) to Network Rail where requested by Network Rail and any vetting requirements]

PART B
SUPPLIER SERVICE DESCRIPTIONS

[TO BE INSERTED]

FRAMEWORK AGREEMENT**SCHEDULE 4****CHARGES****1. APPLICABLE PRICING MECHANISM**

- 1.1 Any Milestone Payment and/or Service Charge payable pursuant to any Call-Off Contract shall be calculated using the pricing mechanisms determined in accordance with paragraphs 1.2, 1.3 and 1.4 and on the basis of the rates and prices specified in Annex 1 of this Schedule or as otherwise agreed in accordance with paragraph 1.5.
- 1.2 The pricing mechanism that shall be used to calculate each Milestone Payment shall be one or more of the following:
- 1.2.1 “Time and Materials”, in which case the provisions of paragraph 2 of Schedule 9 (Charges and Invoicing) of the Call-Off Terms shall apply;
 - 1.2.2 “Fixed Price”, in which case the provisions of paragraph 3 of Schedule 9 (Charges and Invoicing) of the Call-Off Terms shall apply; or
 - 1.2.3 “Firm Price”, in which case the provisions of paragraph 4 of Schedule 9 (Charges and Invoicing) of the Call-Off Terms shall apply.
- 1.3 The pricing mechanism that shall be used to calculate each Service Charge shall be one or more of the following:
- 1.3.1 “Time and Materials”, in which case the provisions of paragraph 2 of Schedule 9 (Charges and Invoicing) of the Call-Off Terms shall apply;
 - 1.3.2 “Volume Based” pricing, in which case the provisions of paragraph 5 of Schedule 9 (Charges and Invoicing) of the Call-Off Terms shall apply; or
 - 1.3.3 “Fixed Price” in which case the provisions of paragraph 3 of Schedule 9 (Charges and Invoicing) of the Call-Off Terms shall apply.
- 1.4 The pricing mechanisms that shall be used for calculating any and all Milestone Payments and Service Charges shall be agreed by the Parties as part of the Ordering Procedure for the relevant Call-Off Contract and documented in the Call-Off Form.
- 1.5 The Parties may agree lower alternative rates and prices to those in Annex 1 of this Schedule as part of the Ordering Procedure for a particular Call-Off Contract, provided that any such alternative rates and prices are derived from and/or consistent with the principles upon which those rates and prices are based and shall in no event exceed the rates and prices in Annex 1.

ANNEX 1

Pricing Mechanism

[The Supplier must use BravoNR to populate rates and charges associated with the Tender. Following Contract Award, Annex 1 will be populated with the rates and charges.]

1. **TABLE 1: SUPPLIER PERSONNEL RATE CARD FOR CALCULATION OF TIME AND MATERIALS CHARGES**

CHARGES BASED ON SKILLS FRAMEWORK FOR THE INFORMATION AGE

Level / Category	Day Rate (£)					
	Strategy & Architecture	Business Change	Solution Development & Implementation	Service Management	Procurement & Management Support	Client Interface
7 Set strategy/ Inspire/ Motivate						
6 Initiate/ Influence						
5 Ensure/ Advise						
4 Enable						
3 Apply						
2 Assist						
1 Follow						

2. **TABLE 2: MAXIMUM TIME AND MATERIALS CHARGES**

Charge Number	Maximum Time and Materials Charge (£)

3. **TABLE 3: FIXED PRICES**

Charge	Fixed Charge (£)

	[]

4. **TABLE 4: FIRM PRICES**

Charge	Fixed Charge (£)

5. **TABLE 5: VOLUME CHARGES**

Charge Number	Unit	Number of units per Service Period	Charge per unit (£)

FRAMEWORK AGREEMENT

SCHEDULE 5

CALL-OFF FORM

[Subject to contract]

CALL-OFF FORM TO ENTER INTO A CALL-OFF CONTRACT UNDER THE FRAMEWORK AGREEMENT RELATING [] (the “Framework Agreement”):

Dated 20[], Reference number []

- (1) **NETWORK RAIL INFRASTRUCTURE LIMITED** a company registered in England under company number 02904587 whose registered office is at Waterloo General Office , London SE1 8SW (“**Network Rail**”);
- (2) **[NAMES OF SUPPLIER]** (Company Number: []) whose registered address is at **[ADDRESS]** (the “**Supplier**”).

Recitals

- (A) Network Rail wishes to enter into a Call-Off Contract for Services under the Framework Agreement. Accordingly, this Call-Off Form is issued pursuant to clause 7 (Ordering Procedure) of the Framework Agreement.
- (B) The Supplier is required to respond to the Call-Off Form in accordance with its obligations under clause 7.7 of the Framework Agreement.
- (C) Following the agreement of this Call-Off Form, Network Rail may require the Supplier to enter into a Call-Off Contract on the terms of the agreed form Call-Off Form, incorporating the Call-Off Terms.

1. DEFINITIONS AND INTERPRETATION

- 1.1 Unless otherwise stated, defined terms used in this Call-Off Form have the meanings given in Schedule 1 (Definitions) of the Call-Off Terms.
- 1.2 Network Rail wishes to avoid the situation where through completion of this Call-Off Form by Network Rail and the Supplier, a Call-Off Contract creates a conflict with the Framework Agreement. Therefore, if there is a conflict between a Call-Off Contract and the Framework Agreement, the Framework Agreement shall prevail to the extent of such conflict and the Supplier shall comply with the instructions of Network Rail (acting reasonably and in consultation with the Supplier) on how such conflict shall be resolved.

2. TERMS OF CALL-OFF CONTRACT

- 2.1 The Annexures to this Call-Off Form specify all of the variables necessary to complete a Call-Off Contract.
- 2.2 The Call-Off Contract shall be on the terms of this Call-Off Form incorporating the Call-Off Terms and shall be “this Agreement” for the purposes of the Call-Off Terms and the Annexures to this Call-Off Form.

- 2.3 Nothing in this Call-Off Form shall be binding on either Party unless and until it is signed by both Parties.

ANNEX 1

GENERAL INFORMATION

1. DEFINITIONS

1.1 The Call-Off Effective Date shall be date this Call-Off Form is signed by both Parties.

1.2 The Initial Term shall be [x] Contract Years.

1.3 The Implementation Services Commencement Date shall be [xx].

1.4 The Operational Services Commencement Date shall be [xx].

1.5 A Critical Performance Failure shall mean:

1.5.1 the Supplier accruing in aggregate [insert number] or more Service Points (in terms of the number of points allocated) in any period of [insert number] months; or

1.5.2 the Supplier accruing Service Credits or Compensation for Unacceptable KPI Failure which meet or exceed the Service Credit Cap;

1.6 For the purposes of part (c) of the definition of Intervention Trigger Event in Schedule 1 (Definitions) of the Call-Off Terms the aggregate number of Service Points shall be [insert number of points which is 75% of the points that would constitute a "Critical Performance Failure"] or more Service Points (in terms of the number of points allocated) in any period of [insert number of months taken from definition of "Critical Performance Failure"] months.

2. REPRESENTATIVES AND KEY CALL-OFF PERSONNEL

2.1 For the purposes of Clause 11.3 of the Call-Off Terms, the Supplier Representative shall be:

Name	Responsibilities/Authorities	Minimum Period during which they will be a Supplier Representative
[]	[]	[]

2.2 In accordance with Clause 14.3 of the Call-Off Terms, the Parties have agreed the appointment of the following Call-Off Key Personnel:

Name	Key Role	Responsibilities/Authorities	Key Role Minimum Period/Phase of the Project during which they will be Call-Off Key Personnel
[]	[]	[]	[]

3. KEY SUB-CONTRACTORS

3.1 For the purposes of clause 15.7 of the Call-Off Terms Network Rail consents to the appointment of the following Key Sub-contractors:

Key Sub-contractor name and address (if not the same as the registered office)	Registered office and company number	Related product/Service description	Key Sub-contract price expressed as a percentage of total projected Charges over the Term	Key role in delivery of the Services	Credit Rating Threshold
[]					[Level 1]

4. SERVICE CONTINUITY

4.1 For the purposes of paragraph 1 of Schedule 15 (Service Continuity Plan and Corporate Resolution Planning) of the Call-off Terms, and the definition of “Disaster”, the period of unavailability of the Services, or a material part of the Services, shall be **[insert time period]**.

5. LIMITATIONS ON LIABILITY

5.1 The table below sets out, by Contract Year, the maximum amount of the Unrecovered Payment, Breakage Costs Payment and Compensation Payment that Network Rail shall be liable to pay to the Supplier pursuant to this Schedule 10 (Payments on Termination) of the Call-Off Terms.

Termination Date	Maximum Unrecovered Payment	Maximum Breakage Costs Payment	Maximum Compensation Payment
Anytime in the first Contract Year			
Anytime in the second Contract Year			
Anytime in Contract Years 3 – [x]			

5.2 The relevant percentage for the purpose of the Service Credit Cap in Schedule 1 (Definitions) of the Call-Off Terms shall be **[x]**%.

6. **INSURANCES**

The following additional insurance requirements shall be included in the definition of “Required Insurances” in Schedule 1 (Definitions) of the Framework Agreement for the purposes of this Call-Off Contract:

[Insert details]

[DN: Network Rail to complete only if it has insurance requirements which are additional to those specified in Schedule 12 (Insurance Requirements) of the Framework Agreement.]

7. **[CHANGE CONTROL**

7.1 For the purpose of paragraph 3.1.2.1 of Schedule 18 (Change Control Procedure) of the Call-Off Terms, the threshold below which Network Rail shall not be required to pay the Supplier’s costs in respect of a Change Request shall be £**[X]**.

7.2 For the purpose of paragraph 8.2.21 of Schedule 18 (Change Control Procedure) of the Call-Off Terms, the threshold below which reduced timescales shall apply in respect of a Change Request shall be £**[X]**.

8. **TERMINATION**

8.1 For the purpose of clause 28.3.1 (Termination by the Supplier) of the Call-Off Terms, the relevant amount of undisputed sums in aggregate shall be £~~£~~50,000].

9. **NOTICES**

9.1 In accordance with Clause 39.3 (Notices) of the Call-Off Terms, the following addresses and other details for service of notices shall apply:

	Supplier	Network Rail
Contact	[INSERT]	[INSERT]
Address	[INSERT]	[INSERT]
Email	[INSERT]	[INSERT]

9.2 In accordance with Clause 40.4 of the Call-Off Terms, the following addresses and other details for provision of information or documentation shall apply:

	Supplier Representative	Network Rail Representative
Contact	[INSERT]	[INSERT]
Address	[INSERT]	[INSERT]
Email	[INSERT]	[INSERT]

10. **INFORMATION SECURITY REQUIREMENTS**

In accordance with clause 19.13 of the Call-Off Terms, the level of risk identified by Network Rail shall be:

[Insert]

11. STAFF TRANSFER

The following are Notified Sub-contractors for the purposes of Schedule 16 (Staff Transfer) of the Call-Off Terms:

[Insert list]

12. INTERMEDIARIES LEGISLATION

With reference to clause 38 of the Framework Agreement, the Intermediaries Legislation

[Applies/Does not apply].

13. CORPORATE RESOLUTION PLANNING

The Call-Off Contract ***[insert 'is' or 'is not']*** a Critical Service Contract.

[Guidance Note: A Critical Service Contract is an outsourced service contract which NR has categorised as a Gold contract using the Cabinet Office Contract Tiering Tool available on the Knowledge Hub or which NR otherwise considers should be classed as a Critical Service Contract.]

ANNEX 2**SERVICE REQUIREMENTS, SUPPLIER SERVICE DESCRIPTIONS GOODS**

[DN: Network Rail is to list in Part A of this Annex, which Service Requirements from Part A of Schedule 2 (Service Requirements and Supplier Service Descriptions) of the Framework Agreement it requires to be provided under a Call-Off Contract, including any Optional Services, any relevant quantities, Network Rail Premises, Network Rail Assets (including any requirements for on-site equipment). This can include any more granular detail and specifics for this Call-Off Contract, but these must be within the scope of Part A of Schedule 2 (Service Requirements and Supplier Service Descriptions) of the Framework Agreement. The relevant elements of the Supplier Service Descriptions from Part B of Schedule 2 (Service Requirements and Supplier Service Descriptions) must then be included within Part B of this Annex, together with the Supplier's detailed response to Network Rail's requirements. This Annex should not include any elements that are not referred to in the Service Requirements or Supplier Service Descriptions, but can include more granular detail and specifics for this Call-Off Contract. The Annex should identify in Parts A and B which are the "Implementation Services" and which are the "Operational Services" for the purposes of Schedule 1 (Definitions). The nature and prices of any relevant Goods should be included in Part C of this Annex.]

PART A: SERVICE REQUIREMENTS (SERVICES DESCRIPTION)

PART B: SUPPLIER SERVICE DESCRIPTIONS (SUPPLIER SOLUTION)

PART C: GOODS

ANNEX 3

NETWORK RAIL RESPONSIBILITIES

[DN: if there any responsibilities of Network Rail that relate to the subject matter of the particular Call-Off Contract which are not already listed in Schedule 5 (Network Rail Responsibilities) and which Network Rail agrees will be “Network Rail Responsibilities” for the purposes of the Call-Off Contract these should be set out in this Annex. Any such additional Network Rail Responsibilities should be well defined and precise.]

The table below details the responsibilities of Network Rail for the purposes of paragraph 3 of Schedule 5 (Network Rail Responsibilities) of the Call-Off Terms, which apply in addition to any responsibilities listed in the table in paragraph 3 of Schedule 5 (Network Rail Responsibilities) of the Call-Off Terms:

Document	Location (Paragraph)
<i>[Insert Schedule details here]</i>	<i>[Refer to specific Paragraphs here]</i>

ANNEX 4

PERFORMANCE LEVELS

[DN: Network Rail to specify here which Key Performance Indicators and Subsidiary Performance Indicators from Annex 1 of Schedule 2 (Performance Levels) of the Call-Off Terms apply to the Services that Network Rail wishes to procure and the applicable Severity Levels and Service Points. Where Network Rail has identified Optional Services in Annex 2, Tables 3 and 4 of this Annex should specify any KPIs and SPIs for those Optional Services. If the definitions of Target Performance Level, Minor KPI Failure, Serious KPI Failure, Severe KPI Failure, KPI Service Threshold and Service Threshold in Schedule 1 have retained the option to specify alternative thresholds for these Severity Levels on the Call-Off Form you will need to specify any alternative levels in the column headed "Severity Levels" in the relevant table below; otherwise the relevant detail from Schedule 2 of the Call-Off Terms can be replicated for ease of reference if you so wish.]

1. Key Performance Indicators

No.	Key Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Service Points
KPI[1]	[]	[]		Target Performance Level: [] Minor KPI Failure: [] Serious KPI Failure: [] Severe KPI Failure: [] KPI Service Threshold: []	0 [1] [2] [3] [4]

2. Subsidiary Performance Indicators

No.	Subsidiary Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels
PI[1]	[Sustainability/Efficiency indicators]	[See the Services Description]		Target Performance Level: [XX%] Service Threshold: [XX%]

OPTIONAL SERVICES

3. Key Performance Indicators

No.	Key Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Service Points
KPI[1]	[]	[]		Target Performance Level: [] Minor KPI Failure: [] Serious KPI Failure: [] Severe KPI Failure: [] KPI Service Threshold: []	0 [1] [2] [3] [4]

4. Subsidiary Performance Indicators

No.	Subsidiary Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels
P11	[]	[]		Target Performance Level: [] Service Threshold: []

ANNEX 5**OUTLINE IMPLEMENTATION PLAN****1. OUTLINE IMPLEMENTATION PLAN**

In accordance with Paragraph 2 of Schedule 7 (Implementation Plan) of the Call-Off Terms, the Outline Implementation Plan is set out below:

[DN: the implementation plan must include any Milestones and Milestone Dates and indicate which of those Milestones link to ATP or CPP for the purposes of the definitions of those terms in Schedule 1 (Definitions).]



Copy of Outline
Implementation Plan

ANNEX 6
CHARGING AND INVOICING

PART 1

CALL-OFF CONTRACT CHARGES

[DN: this should only be used where optional paragraph 1.5 of Schedule 4 (Charges) of the Framework Agreement has been retained; otherwise Part 1 of this Annex should be marked "not used". Any rates and prices specified in this Annex should be consistent with the principles in paragraph 1.5 of Schedule 4 (Charges) of the Framework Agreement.]

TABLE 1: SUPPLIER PERSONNEL RATE CARD FOR CALCULATION OF TIME AND MATERIALS CHARGES

[DN: any rates included in table 1 should be lower than any equivalent rates in Annex 1 of Schedule 4 (Charges) of the Framework Agreement (subject to the provisions in the Call-Off Terms regarding Indexation).]

STAFF GRADE	DAY RATE (£)

TABLE 2: MAXIMUM TIME AND MATERIALS CHARGES

[DN: any caps in this Table 2 should be lower than any generic caps specified in Table 2 of Annex 1 of Schedule 4 (Charges) of the Framework Agreement that relate to the same subject matter (eg daily caps on resource, charges for specific activities or projects). Any other caps should be consistent with the principles in paragraph 1.5 of Schedule 4 (Charges) of the Framework Agreement.]

Charge Number	Maximum Time and Materials Charge (£)
[e.g M1]	
[e.g OMS2]	

TABLE 3: FIXED PRICES

[DN: any prices included in Table 3 should be lower than any equivalent charges in Table 3 of Annex 1 of Schedule 4 (Charges) of the Framework Agreement (subject to the provisions in the Call-Off Terms regarding Indexation). Any other prices should be consistent with the principles in paragraph 1.5 of Schedule 4 (Charges) of the Framework Agreement.]

Charge	Fixed Charge (£)
[e.g M3]	
[e.g SC31]	
[e.g. OSC1]	

TABLE 4: FIRM PRICES

[DN: any prices included in Table 4 should be lower than any equivalent charges in Table 4 of Annex 1 of Schedule 4 (Charges) of the Framework Agreement. Any other prices should be consistent with the principles in paragraph 1.5 of Schedule 4 (Charges) of the Framework Agreement.]

Charge	Fixed Charge (£)
[e.g M4]	
[e.g. OMS3]	

TABLE 5: VOLUME CHARGES

[DN: any prices included in Table 5 should be lower than any equivalent charges in Table 5 of Annex 1 of Schedule 4 (Charges) of the Framework Agreement (subject to the provisions in the Call-Off Terms regarding Indexation). Any other volume charges should be consistent with the principles in paragraph 1.5 of Schedule 4 (Charges) of the Framework Agreement]

Charge Number	Unit	Number of units per Service Period	Charge per unit (£)
[e.g M2]		[][]	[]
		[][]	[]
		[][]	[]
[e.g SC2]		[][]	[]
		[][]	[]
		[][]	[]
[e.g OSC2]		[][]	[]
		[][]	[]
		[][]	[]

PART 2

Charging mechanisms and adjustments

[DN: this should specify the pricing mechanisms that will apply in respect of each of the Services (ie fixed, firm, T&M, Volume), the triggers for payment and any applicable Delay Payments. Column 1 of each table should make clear which are the Milestone Payments and Service Charges for the purposes of the definitions of those terms in Schedule 1 (Definitions) of the Call-Off Terms.]

1. TABLE 1: MILESTONE PAYMENTS AND DELAY PAYMENTS

Charge Number	Pricing Mechanism (FIX/FIRM/ T&M)	CPP Milestone Charge Number	Delay Payments (if Key Milestone) (£ per day)		
			<3 months' notice	3-6 months' notice	>6 months' notice
[e.g M1]	[FIRM]	[e.g. M2]			
[e.g. M2]	[FIRM]	[e.g. M2]			

2. TABLE 2: SERVICE CHARGES

Charge Number	Pricing Mechanism (VOL/FIX/T&M)	Service Charge Trigger Event	Service Charge Expiration Trigger Event
[e.g SC1]	[VOL]	[e.g. Achievement of Milestone 4]	
[e.g. SC2]	[FIX]		

3. TABLE 3: OPTIONAL SERVICES MILESTONE PAYMENTS

Charge Number	Pricing Mechanism (FIX/FIRM/ T&M)	CPP Milestone Charge Number	Delay Payments (if Key Milestone) (£ per day)
[e.g OMS1]	[FIRM]	[e.g. OMS2]	
[e.g. OMS2]	[FIRM]	[e.g. OMS2]	

4. **TABLE 4: OPTIONAL SERVICES SERVICE CHARGES**

Charge Number	Pricing Mechanism (VOL/FIX/T&M)	Service Charge Trigger Event	Service Charge Expiration Trigger Event
[e.g OSC1]	[VOL]	[e.g. Achievement of Milestone 8]	
[e.g. OSC2]	[FIX]		

ANNEX 7**EXIT MANAGEMENT****1. Termination Services**

- 1.1 [In addition to the services set out in Annex 1 of Schedule 14 (Exit Management) of the Call-Off Terms t][T]he Termination Services to be provided by the Supplier shall include such of the following services as Network Rail may specify:

[DN: Annex 1 of Schedule 14 (Exit Management) of the Call-Off Terms contains a generic list of Termination Services that Network Rail may require the Supplier to provide on exit. The list is non-exhaustive. However, if there are specific Termination Services related to this Call-Off Agreement then they should be included here]

ANNEX 8

SOFTWARE AND PROJECT SPECIFIC IPRS

[DN: This Annex should be completed by the Supplier with details of Specially Written Software, Project Specific IPRs, Supplier Software, Third Party Software and Open Source Software provided as part of the Supplier Solution. It should also indicate which Software will be Deposited Software.]

1. IPR

1.1 The IPR below is licensed or transferred (as applicable) to Network Rail in accordance with clauses 16 (Intellectual Property Rights) and Schedule 20 (Intellectual Property Rights) of the Call-Off Terms.

1.2 The Parties agree that they will update this Annex regularly, and in any event no less than every six (6) months from the Call-Off Effective Date, to record any Specially Written Software or Project Specific IPRs created, or Supplier Software or Third Party Software subsequently licensed, by the Supplier or third parties for the purposes of the delivery of the Services.

2. SPECIALLY WRITTEN SOFTWARE

2.1 The Specially Written Software includes:

Software	Supplier (if Affiliate of the Supplier)	Purpose

3. PROJECT SPECIFIC IPRS

Project Specific IPR	Supplier (if Affiliate of the Supplier)	Nature

Project Specific IPR	Supplier (if Affiliate of the Supplier)	Nature

4. SUPPLIER SOFTWARE

The Supplier Software includes the following items:

Supplier Software	Supplier (if Affiliate of the Supplier)	Purpose	Number of Licences	Restrictions	Number of Copies	COTS or Non-COTS?	Deposited Software (Y/N)

5. THIRD PARTY SOFTWARE

The Third Party Software includes the following items:

Third Party Software	Supplier	Purpose	[Number of Licences]	Restrictions	[Number of Copies]	COTS or Non-COTS?	Deposited Software (Y/N)

6. **OSS**

The OSS shall consist of the following items:

OSS	Owner	Link/url for licence terms (without prejudice to Paragraph 4 (Open Source) of Schedule 20 (Intellectual Property Rights))

ANNEX 9**TESTING**

[DN: This includes the Test Success Criteria for the purposes of Schedule 8 (Testing Procedures). It will not be required where it is possible to define the Test Success Criteria prior to execution of the Framework Agreement such that the relevant criteria are already set out in Annex 1 of Schedule 8 of the Call-Off Terms]

1. Tests to be Achieved in order to Achieve the ATP Milestone

Test	Pre-conditions *	Test Success Criteria
<i>[List all Tests relating to ATP Milestone]</i>		

Note: *The Pre-Conditions are that e.g. the Success Criteria for the previous Tests must be satisfied before the ATP Milestone tests are commenced.*

2. Tests to be Achieved in order to Achieve a CPP Milestone

CPP Milestone Charge No.	Test	Test Success Criteria
	<i>[List all Tests relating to CPP Milestone Charge No.]</i>	

ANNEX 10**STANDARDS**

1. The following standards shall be added to the list which shall be “Standards” for the purposes of this Agreement:

[DN: Network Rail to complete only if there are standards with which the Supplier must comply in addition to those already included within the definition of “Standards” in Schedule 1 (Definitions).]

ANNEX 11**SECURITY****Part 1 APPLICABLE SECURITY SCHEDULE**

Schedule [4A (Assurance)][4B (Accreditation)] applies. **[Guidance Note: Delete as applicable]**

The following amended time periods shall apply:

[Guidance Note: specify any amendments to the timescales set out in square brackets in the Schedule]

[In respect of paragraph 5.2 of Schedule 4B (Accreditation): [Option 1] or [Option 2] applies.]

[Guidance Note: specify which option applies. Where Option 1 is selected, complete and attach Annex 4 to the schedule]

Part 2 ADDITIONAL SECURITY REQUIREMENTS

[DN: Network Rail to include any specific security requirements in relation to the Services provided under the Call-Off Contract, which are not otherwise set out in Schedule 3 (Standards) or Schedule 4 (Security Management) of the Call-Off Terms or Annex 2 of the Call-Off Form.]

ANNEX 12

ANTICIPATED SAVINGS

[DN: this should include any anticipated savings to which Network Rail expects clause 20.9 of the Call-Off Terms should apply and which are not already set out in Schedule 12 (Anticipated Savings).]

This Annex defines the key benefit categories in which savings are anticipated and applies [in addition to][in place of] those specified in Schedule 12 (Anticipated Savings).

Ref.	Benefit Category	Indicative amount (£k)	Timescale
1	[E.g. – <i>Reduction in Service Charges as Service delivery becomes more efficient and effective.</i> <i>Benefit realisation is measured against [a 2012/13 baseline]</i>	£[amount] per annum	Contract Years [x] to [y]
2	[E.g. – <i>Improvements in Network Rail staff productivity from using more flexible and agile services that match the needs of the business.</i> <i>Benefits realisation is measured against a baseline of 4,000 directly employed staff in 2013/14]</i>	£[amount] year on year improvement ([x]% productivity increase)	Contract Years [x] to [y]
3	[E.g. – <i>Reduced electrical power consumption arising from adoption of new low energy technology.</i> <i>Benefit realisation is measured against a 2012/13 baseline]</i>	£[amount] per annum	Contract Years [x] to [y]

ANNEX 13**RECORDS****1. Records to be kept by the Supplier**

- 1.1 Pursuant to paragraph 2.1 of Schedule 13 (Reports and Records Provisions) of the Call-Off Terms, the additional records to be kept by the Supplier are:

[DN: insert any records that Network Rail require the Supplier to provide which are specific to this Call-Off Form. All other record-keeping requirements are contained within Schedule 13]

ANNEX 14

PROTECTION OF PERSONAL DATA

[Guidance Note: NR to include any additional requirements regarding the protection of personal data and complete table below]

Processing Personal Data

This Annex shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with Network Rail at its absolute discretion.

- 1.1 The contact details of Network Rail's Data Protection Officer are: **[Insert Contact details]**
- 1.2 The contact details of the Supplier's Data Protection Officer are: **[Insert Contact details]**
- 1.3 The Processor shall comply with any further written instructions with respect to processing by the Controller.
- 1.4 Any such further instructions shall be incorporated into this Annex.

Description	Details
Identity of Controller for each Category of Personal Data	<p>Network Rail is Controller and the Supplier is Processor</p> <p>The Parties acknowledge that in accordance with Clause 18.2 to 18.15 of the Framework Agreement and for the purposes of the Data Protection Legislation, Network Rail is the Controller and the Supplier is the Processor of the following Personal Data:</p> <p>[Insert the scope of Personal Data for which the purposes and means of the processing by the Supplier is determined by Network Rail]</p> <p>The Supplier is Controller and the Network Rail is Processor</p> <p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Supplier is the Controller and Network Rail is the Processor in accordance with Clause 18.2 to 18.15 of the Framework Agreement of the following Personal Data:</p> <p>[Insert the scope of Personal Data for which the purposes and means of the processing by Network Rail is determined by the Supplier]</p> <p>The Parties are Joint Controllers</p> <p>The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:</p> <p>[Insert the scope of Personal Data for which the purposes and means of the processing is determined by both Parties together]</p> <p>The Parties are Independent Controllers of Personal Data</p> <p>The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of: Business contact details of Supplier Personnel, Business contact details of any directors, officers, employees, agents, consultants and contractors of Network Rail</p>

	<p>(excluding the Supplier Personnel) engaged in the performance of Network Rail's duties under the Call-Off Contract).</p> <p><i>[Insert the scope of other Personal Data provided by one Party who is Data Controller to the other Party who will separately determine the nature and purposes of its processing the Personal Data on receipt.]</i></p> <p><i>e.g. where (1) the Supplier has professional or regulatory obligations in respect of Personal Data received, (2) a standardised service is such that Network Rail cannot dictate the way in which Personal Data is processed by the Supplier, or (3) where the Supplier comes to the transaction with Personal Data for which it is already Controller for use by Network Rail]</i></p>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.]</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>

ANNEX 15
CONTRACT SPECIFIC AMENDMENTS

[To be populated if any.]

SIGNED by or on behalf of the Parties:

For and on behalf of Network Rail:

Name and Title	
Signature	

For and on behalf of the Supplier:

Name and Title	
Signature	

FRAMEWORK AGREEMENT**SCHEDULE 6****FRAMEWORK AGREEMENT KEY PERSONNEL**

1. This Schedule lists the Key Roles and names of the persons who the Supplier shall appoint as Key Personnel to fill those Key Roles at the Framework Effective Date.

KEY ROLE	NAME OF FRAMEWORK AGREEMENT KEY PERSONNEL	RESPONSIBILITIES/AUTHORITIES	PHASE OF THE PROJECT DURING WHICH THEY WILL BE FRAMEWORK AGREEMENT KEY PERSONNEL	MINIMUM PERIOD IN KEY ROLE

FRAMEWORK AGREEMENT**SCHEDULE 7****GOVERNANCE****1 DEFINITIONS**

In this Schedule, the following definitions shall apply:

“Board Member” the initial persons appointed by Network Rail and Supplier to the Boards as set out in Annex 1 and any replacements from time to time agreed by the Parties in accordance with paragraph 3.3 of Schedule 7 (Governance);

“Business as Usual Services” the Services of a business as usual, operational or ongoing nature, including those specified as such in the Call-Off Form;

“Board to Board Meeting” the governance level described in paragraph 4 of Schedule 7 (Governance);

“Boards” the Board to Board Meeting, the Chief Information Officer Review, the Strategic Account Review, the Programme and Project Delivery Review, the Service Management Review, the Project Delivery Meeting, the Commercial Review Meeting and the IT Design Board, and “Board” shall mean any of them;

“Chief Information Officer Review” the governance level described in paragraph 5 of Schedule 7 (Governance);

“Commercial Review Meeting” the governance level described in paragraph 7 of Schedule 7 (Governance);

“IT Design Board” the governance level described in paragraph 10 of Schedule 7 (Governance);

“Project Delivery Meeting” the governance level described in paragraph 11 of Schedule 7 (Governance);

“Project Manager” the individual appointed as such by the Supplier in accordance with paragraph 2.1 of Schedule 7 (Governance);

“Projects” the Services of a one-off or project nature, including those specified as such in the Call-Off Form;

“Programme and Project Delivery Review” the governance level described in paragraph 9 of Schedule 7 (Governance);

“Service Management Review” the governance level described in paragraph 8 of Schedule 7 (Governance); and

“Strategic Account Review” the governance level described in paragraph 6 of Schedule 7 (Governance).

2 Management of the services

- 2.1 The Supplier shall appoint a Project Manager for the purposes of this Agreement.
- 2.2 A representative of Network Rail and the Project Manager, will be responsible for the day-to-day management of the receipt and delivery of Services, respectively.
- 2.3 The Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Agreement can be fully realised.

3 Boards

Establishment and structure of the Boards

- 3.1 The Boards shall be established by Network Rail for the purposes of this Agreement on which both the Supplier and Network Rail shall be represented.
- 3.2 In relation to each Board, the:
- (a) Network Rail Board Members;
 - (b) Supplier Board Members;
 - (c) frequency that the Board shall meet (unless otherwise agreed between the Parties);
 - (d) location of the Board's meetings;
 - (e) planned start date by which the Board shall be established,
- shall be as set out in Annex 1.
- 3.3 In the event that either Party wishes to replace any of its appointed Board Members, that Party shall notify the other in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that Network Rail's Board Member has at all times a counterpart Supplier Board Member of equivalent seniority and expertise.
- 3.4 The Supplier may be required to attend the Boards referred to in this Schedule 7 (Governance) as a minimum, however it may be required to attend additional boards as required by Network Rail from time to time.

Board meetings

- 3.5 Each Party shall ensure that its Board Members shall make all reasonable efforts to attend Board meetings at which that Board Member's attendance is required. If any Board Member is not able to attend a Board meeting, the Party that person represents shall use all reasonable endeavours to ensure that:
- (a) a delegate attends the relevant Board meeting in his/her place who (wherever possible) is properly briefed and prepared; and
 - (b) that he/she is debriefed by such delegate after the Board Meeting.
- 3.6 A chairperson shall be appointed by Network Rail for each Board as identified in Annex 1. The chairperson shall be responsible for:

- (a) scheduling Board meetings;
- (b) setting the agenda for Board meetings and circulating to all attendees in advance of such meeting;
- (c) chairing the Board meetings;
- (d) monitoring the progress of any follow up tasks and activities agreed to be carried out following Board meetings;
- (e) ensuring that minutes for Board meetings are recorded and disseminated electronically to the appropriate persons and to all Board meeting participants within seven (7) Working Days after the Board meeting; and
- (f) facilitating the process or procedure by which any decision agreed at any Board meeting is given effect in the appropriate manner.

3.7 Board meetings shall be quorate as long as Network Rail has at least two representatives present, and the Supplier has at least two representatives present.

3.8 The Parties shall ensure, as far as reasonably practicable, that all Boards shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each Party shall endeavour to ensure that Board Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

4 Board to Board Meeting

4.1 A board to board meeting shall be held annually throughout the Term on a date to be agreed between the Parties.

4.2 This purpose of this meeting will be to discuss the overall relationship between the Parties.

4.3 The Supplier will also provide a strategic business update.

4.4 The meetings shall be attended by the Director of Route Services for Network Rail and the Chief Executive Officer of the Supplier and any other persons considered by Network Rail necessary for the review.

5 Chief Information Officer Review

5.1 A Chief Information Officer Review meeting shall be held bi-annually throughout the Term on dates to be agreed between the Parties.

5.2 The purpose of this meeting is to:

- (a) review the strategic direction of the relationship between both Parties and ensure there is alignment to corporate governance;
- (b) discuss achievements and any concerns of the Supplier's performance under this Agreement; and
- (c) be the point of escalation from the Strategic Account Review.

5.3 The meetings shall be attended by the Chief Information Officer of Route Services and Head of Commercial for Technology for Network Rail and the Executive Officer and Account Director of the Supplier and any other persons considered by Network Rail necessary from time to time.

6 Strategic Account Review

6.1 A Strategic Account Review meeting shall be held quarterly throughout the Term on dates to be agreed between the Parties.

6.2 The purpose of this meeting is to look at the overall relationship including but not limited to; performance of the Services, commercial and contractual items, operational delivery of the Services, review of ongoing projects, account management and innovation.

6.3 The purpose of this meeting includes but is not limited to;

- (a) review the Supplier's performance of Services under each Call-Off Contract;
- (b) review current and future activity;
- (c) review innovation and continuous improvement activities; and
- (d) update on innovation and continuous improvement activities.

6.4 The Strategic Account Review meeting shall:

- (a) provide senior level guidance, leadership and strategy for the overall delivery of the Services;
- (b) be the point of escalation from the Programme and Project Delivery Review, the Service Management Review and the Commercial Review Meeting;
- (c) consider and resolve Disputes escalated to it by the Service Management Review in respect of Business as Usual Services, or by the Programme and Project Delivery Review in respect of Projects and if necessary escalate the Dispute to the Network Rail Representative and the Supplier Representative in accordance with paragraph 2.1.2 of Schedule 11 (Dispute Resolution Procedure);
- (d) review any escalated commercial items on the agenda;
- (e) ensure that this Agreement is operated throughout the Term in a manner which optimises the value for money and operational benefit derived by Network Rail and the commercial benefit derived by the Supplier;
- (f) receive and review reports from the Service Management Review and review reports on technology, service and other developments that offer potential for improving the benefit that either Party is receiving, in particular value for money;
- (g) determine business strategy and provide guidance on policy matters which may impact on the implementation of the Services; and
- (h) provide guidance and authorisation to the Programme and Project Delivery Review and the Service Management Review on relevant Changes.

- 6.5 Where a Dispute:
- (a) is escalated to the Strategic Account Review, it shall be convened as soon as reasonably practicable and in any event within ten (10) Working Days of such escalation to consider resolving such a Dispute; and
 - (b) has not been resolved within twenty (20) Working Days of having been escalated to the Strategic Account Review, it will be deemed escalated to the Network Rail Representative and the Supplier Representative in accordance with paragraph 2.1.2 of Schedule 11 (Dispute Resolution Procedure).
- 6.6 The Strategic Account Review shall assess the impact and approve or reject all Change Requests.
- 6.7 The Strategic Account Review shall:
- (a) analyse and record the impact of all Changes, specifically whether the proposed Change:
 - (i) has an impact on other areas or aspects of this Agreement and/or other documentation relating to the Services;
 - (ii) has an impact on the ability of Network Rail to meet its agreed business needs within agreed timescales;
 - (iii) will raise any risks or issues relating to the proposed Change; and
 - (iv) will provide value for money in consideration of any changes to the Financial Model, future Charges and/or Performance Indicators; and
 - (b) approve or reject (close) all proposed Changes.
- 6.8 The purpose of the Strategic Account Review is to review all aspects of Services delivery with all Sub-contractors in the supply chain, and includes:
- (a) all Supplier view of current operations and planned changes;
 - (b) technical operations update;
 - (c) Changes in the preceding quarter that failed or caused Incidents; and
 - (d) proposed Changes or Upgrades in the coming quarter.
- 6.9 The meetings shall be attended by [INSERT] for Network Rail and the [INSERT] for the Supplier and any other persons considered by Network Rail necessary from time to time.

7 Commercial Review Meeting

- 7.1 The Commercial Review Meeting shall be held quarterly throughout the Term on dates to be agreed between the Parties.
- 7.2 The Commercial Review Meeting shall be responsible for the management of any commercial and contractual items and shall:

- (a) be responsible for oversight and management of the commercial relationship between the Parties;
- (b) review the Balanced Scorecard Report (as such term is defined in Schedule 2 (Performance Levels) of the Call-Off Terms) submitted by the Supplier; and
- (c) review any escalated commercial items including but not limited to;
 - (i) invoicing queries;
 - (ii) aged debt;
 - (iii) contract changes;
 - (iv) commercial disputes;
 - (v) trends and forecast; and
 - (vi) service credits.

7.3 The meetings shall be attended by the Procurement Manager for Network Rail and the Commercial Manager and Account Director of the Supplier and any other persons considered by Network Rail necessary from time to time.

8 Service Management Review

8.1 The Service Management Review shall be responsible for the executive management of the delivery and maintenance of Business as Usual Services and shall:

- (a) be accountable to the Strategic Account Review for comprehensive oversight of the Business as Usual Services and for the senior management of the operational relationship between the Parties;
- (b) report to the Strategic Account Review on significant issues requiring decision and resolution;
- (c) receive reports on matters such as issues relating to delivery of existing Business as Usual Services and performance against Performance Indicators, progress against the deliverables and possible future developments;
- (d) review and report to the Strategic Account Review on service management, co-ordination of individual projects, changes, and any integration issues;
- (e) deal with the prioritisation and appointment of resources on behalf of the Parties;
- (f) consider and resolve Disputes in respect of Business as Usual Services (including Disputes as to the cause of a Delay or the performance of the Business as Usual Services) in the first instance and if necessary escalate the Dispute to the Strategic Account Review. Where such a Dispute has not been resolved within twenty (20) Working Days of having arisen or occurred, it will be deemed escalated to the Strategic Account Review;
- (g) ratify or refuse requests to close risks on the risk register;

- (h) identify risks relating to or arising out of the performance of the Business as Usual Services and provisional owners of these risks;
 - (i) be responsible for oversight of the Business as Usual Services and for the management of the operational relationship between the Parties;
 - (j) receive reports from the Supplier on matters such as performance against Performance Indicators, progress against plans and possible future developments;
 - (k) review and report on service management;
 - (l) receive and review reports from the Balanced Scorecard Report (as such term is defined in Schedule 2 (Performance Levels) of the Call-Off Terms) and review reports on technology, service and other developments that offer potential for improving the benefit that either Party is receiving, in particular value for money;
 - (m) determine business strategy and provide guidance on policy matters which may impact on the implementation of the Business as Usual Services;
 - (n) provide guidance and authorisation on relevant Changes;
 - (o) review principle events of the relevant period;
 - (p) review Service Incidents raised and resolutions;
 - (q) review major Service Incidents;
 - (r) review open tickets;
 - (s) review the status of high profile problem records;
 - (t) review a new and outstanding post incident review (PIR);
 - (u) review proposed continuous improvement initiatives; and
 - (v) review next Upgrade and future Upgrade plans.
- 8.2 The Service Management Review shall be attended by [INSERT] for Network Rail and the [INSERT] for the Supplier and any other persons considered by Network Rail necessary from time to time.
- 8.3 Where a Dispute arises in respect of Business as Usual Services, the Service Management Review shall be convened as soon as reasonably practicable and in any event within ten (10) Working Days of its occurrence to consider resolving such a Dispute.

9 Programme and Project Delivery Review

- 9.1 The Programme and Project Delivery Review shall be responsible for the executive management of the delivery of all Projects and shall:
- (a) be the accountable to the Strategic Account Review meeting for comprehensive oversight of the delivery of all Projects;

- (b) discuss significant issues requiring decision and resolution by the Board for each project, on progress against the high level Implementation Plan;
 - (c) receive reports from the Project Manager(s) on matters such as issues relating to specific projects, including delivery of existing Services and performance against Performance Indicators, progress against the Implementation Plan and possible future developments;
 - (d) review and report on coordination of individual projects and any integration issues;
 - (e) deal with the prioritisation of resources and the appointment of Project Manager(s) on behalf of the Parties;
 - (f) consider and resolve Disputes regarding Projects (including Disputes as to the cause of a Delay or the performance of the Projects) in the first instance and if necessary escalate the Dispute to the Strategic Account Review. Where such a Dispute has not been resolved within twenty (20) Working Days of having arisen or occurred, it will be deemed escalated to the Strategic Account Review;
 - (g) develop operational/supplier relationship and propose the relationship development strategy and ensure the implementation of the same;
 - (h) provide senior level guidance, leadership and strategy for the overall delivery of the projects;
 - (i) be the point of escalation from the IT Design Board and the Project Delivery Meeting; and
 - (j) receive and review reports from the Project Delivery Meeting and review reports on technology, service and other developments that offer potential for improving the benefit that either Party is receiving, in particular value for money.
- 9.2 Where a Dispute arises in respect of Projects, the Programme and Project Delivery Review shall be convened as soon as reasonably practicable and in any event within ten (10) Working Days of its occurrence to consider resolving such a Dispute.
- 9.3 The Programme and Project Delivery Review will act as an escalation point where needed to assess the impact and approve or reject all Change Requests. Changes which will have a significant impact on the Projects shall be escalated to the Strategic Account Review.
- 9.4 The Programme and Project Delivery Review shall:
- (a) act as an escalation point from the Project Delivery Meeting where needed for Changes, specifically whether the proposed Change:
 - (i) has an impact on other areas or aspects of this Agreement and/or other documentation relating to the Services;
 - (ii) has an impact on the ability of Network Rail to meet its agreed business needs within agreed timescales;
 - (iii) will raise any risks or issues relating to the proposed Change; and

- (iv) will provide value for money in consideration of any changes to the Financial Model, future Charges and/or Performance Indicators;
 - (b) provide recommendations, seek guidance and authorisation from the Strategic Account Review as required;
 - (c) approve or reject (close) all proposed Changes; and
 - (d) identify the risks to be reported to the Strategic Account Review via the regular risk reports.
- 9.5 The Programme and Project Delivery Review shall be attended by [INSERT] for Network Rail and the [INSERT] for the Supplier and any other persons considered by Network Rail necessary from time to time.

10 IT Design Board

- 10.1 The IT Design Board (ITDB) is responsible for oversight of the architecture, technology, business capability, security, safety and services proposed within the Supplier Solution to ensure that requirements are met through appropriate choices to maximise the long-term viability and value of the Supplier Solution as a business asset of Network Rail.
- 10.2 The ITDB shall not normally be for attendance by the Supplier Personnel, however the Supplier will need to be aware of the function of the ITDB.
- 10.3 The ITDB shall:
- (a) ensure compliance with Standards (relevant legislative, Network Rail specified and architectural as mandated by the ARB);
 - (b) assess the architectural risks associated to the proposed Supplier Solution, evaluating the impact within the solution scope and to the Network Rail enterprise as a whole;
 - (c) consider and accept dispensations or architecture waivers for variations from such compliance where appropriate;
 - (d) assure the coherence and consistency of the architecture in-scope and affected by the Supplier Solution;
 - (e) monitor developments in new technology and reporting on their potential benefit;
 - (f) provide advice, guidance and information on solution development;
 - (g) review and maintain technology roadmaps;
 - (h) act as the escalation point for all technology issues raised; and
 - (i) assure that the architecture of the Supplier Solution is aligned to the Services Description and has sufficient flexibility to cope with future requirements of Network Rail.
- 10.4 The ITDB shall be attended by [INSERT] for Network Rail and the [INSERT] for the Supplier and any other persons considered by Network Rail necessary from time to time.

11 Project Delivery Meeting

- 11.1 The Project Delivery Meeting is responsible for the following activities, which relate to the day to day operational management of all project delivery services:
- (a) discuss progress against the delivery of the Implementation Plan against individual projects;
 - (b) approval or rejection of all project specific Change Requests;
 - (c) review, agree and update actions on the RAID log;
 - (d) update the list of issues to be escalated to the Programme and Project Delivery Review; and
 - (e) review the periodic Balanced Scorecard Report (as such term is defined in Schedule 2 (Performance Levels) of the Call-Off Terms) submitted by the Supplier.
- 11.2 The meetings shall be attended by [INSERT] for Network Rail and the [INSERT] for the Supplier and any other persons considered by Network Rail necessary from time to time.

Annex 1**Board to Board Meeting Representation and Structure**

Network Rail's members of Board to Board Meeting	
Supplier members of Board to Board Meeting	
Start Date for Board to Board Meeting	
Frequency of Board to Board Meeting	
Location of Board to Board Meeting	

Chief Information Officer Review Representation and Structure

Network Rail's members of Chief Information Officer Review	
Supplier members of Chief Information Officer Review	
Start Date for Chief Information Officer Review	
Frequency of Chief Information Officer Review	
Location of Chief Information Officer Review	

Strategic Account Review Representation and Structure

Network Rail's members of Strategic Account Review	
Supplier members of Strategic Account Review	
Start Date for Strategic Account Review	
Frequency of Strategic Account Review	
Location of Strategic Account Review	

Programme and Project Delivery Review Representation and Structure

Network Rail's members of Programme and Project Delivery Review	
Supplier members of Programme and Project Delivery Review	
Start Date for Programme and Project Delivery Review	
Frequency of Programme and Project Delivery Review	
Location of Programme and Project Delivery Review	

Service Management Review Representation and Structure

Network Rail's members of Service Management Review	
Supplier members of Service Management Review	
Start Date of Service Management Review	
Frequency of Service Management Review	
Location	

Project Delivery Meeting Representation and Structure

Network Rail's members of Project Delivery Meeting	
Supplier members of Project Delivery Meeting	
Start Date of Project Delivery Meeting	
Frequency of Project Delivery Meeting	
Location	

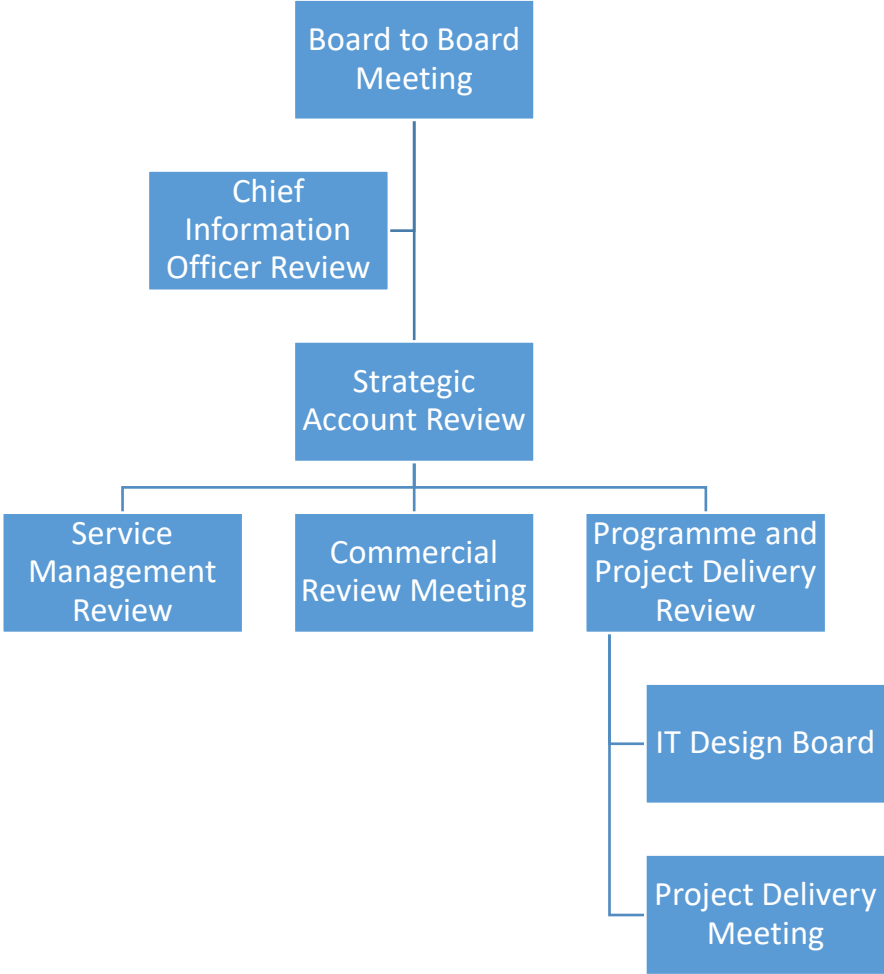
Commercial Review Meeting Representation and Structure

Network Rail's members of Commercial Review Meeting	
Supplier members of Commercial Review Meeting	
Start Date of Commercial Review Meeting	
Frequency of Commercial Review Meeting	
Location	

IT Design Board Representation and Structure

Network Rails' Member of IT Design Board	
Supplier Member of IT Design Board	
Start Date of IT Design Board	
Frequency of IT Design Board	
Location	

Annex 2



FRAMEWORK AGREEMENT

SCHEDULE 8

GUARANTEE

[INSERT STANDARD NR TEMPLATE]

FRAMEWORK AGREEMENT**SCHEDULE 9****CONDUCT OF CLAIMS****1. INDEMNITIES**

- 1.1 This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this Framework Agreement or any Call-Off Contract (the “**Indemnifier**”), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the “**Beneficiary**”).
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Framework Agreement or any Call-Off Contract (a “**Claim**”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within ten (10) Working Days of receipt of the same.
- 1.3 Subject to paragraph 2, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to paragraph 2.2, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to paragraph 1.3:
- 1.4.1 the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
 - 1.4.2 the Indemnifier shall not bring the name of the Beneficiary into disrepute;
 - 1.4.3 the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - 1.4.4 the Indemnifier shall conduct the Claim with all due diligence.
- 1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Framework Agreement or any Call-Off Contract if:
- 1.5.1 the Indemnifier is not entitled to take conduct of the Claim in accordance with paragraph 1.3;
 - 1.5.2 the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within ten (10) Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or
 - 1.5.3 the Indemnifier fails to comply in any material respect with the provisions of paragraph 1.4.

2. SENSITIVE CLAIMS

- 2.1 With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a "**Sensitive Claim**"), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.
- 2.2 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which paragraph 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

3. RECOVERY OF SUMS

If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:

- 3.1 an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
- 3.2 the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

4. MITIGATION

Each of Network Rail and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.

FRAMEWORK AGREEMENT

SCHEDULE 10

FINANCIAL DISTRESS

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

- “Additional FDE Group Member”** any entity (if any) specified as an Additional FDE Group Member in Part A of Annex 3 of this Schedule;
- “Applicable Financial Indicators”** means the financial indicators from Part C of Annex 2 which are to apply to the Monitored Suppliers as set out in Part B of Annex 3;
- “Credit Rating Threshold”** the minimum credit rating level for each entity in the FDE Group as set out in Part A of Annex 2;
- “Credit Reference Agencies”** the credit reference agencies listed in Part B of Annex 1;
- “Credit Score Notification Trigger”** the minimum size of any downgrade in a credit score, set out in Part B of Annex 2, which triggers a Credit Score Notification Trigger Event;
- “Credit Score Notification Trigger Event”** any downgrade of a credit score which is equal to or greater than the Credit Score Notification Trigger;
- “Credit Score Threshold”** the minimum credit score level for each entity in the FDE Group as set out in Part B of Annex 2;
- “FDE Group”** the Supplier and any Additional FDE Group Member;
- “Financial Distress Event”**
 - (a) the occurrence of one or more of the following events:
 - (b) the credit rating of any FDE Group entity dropping below the applicable Credit Rating Threshold;
 - (c) any FDE Group entity issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;
 - (d) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of any FDE Group entity;
 - (e) any FDE Group entity committing a material breach of covenant to its lenders;
 - (f) any FDE Group entity extends the filing period for filing its accounts with the Registrar of Companies so that the filing period ends more than 9 months after its accounting reference date without an

explanation to Network Rail which Network Rail (acting reasonably) considers to be adequate;

- (g) any FDE Group entity is late to file its annual accounts without a public notification or an explanation to Network Rail which Network Rail (acting reasonably) considers to be adequate;
- (h) the directors and/or external auditors of any FDE Group entity conclude that a material uncertainty exists in relation to that FDE Group entity's going concern in the annual report including in a reasonable but plausible downside scenario. This includes, but is not limited to, commentary about liquidity and trading prospects in the reports from directors or external auditors;
- (i) any of the following:
 - (i) any FDE Group entity makes a public announcement which contains commentary with regards to that FDE Group entity's liquidity and trading and trading prospects, such as but not limited to, a profit warning or ability to trade as a going concern;
 - (ii) commencement of any litigation against any FDE Group entity with respect to financial indebtedness greater than £5m or obligations under a contract with a total contract value greater than £5m;
 - (iii) non-payment by any FDE Group entity of any financial indebtedness;
 - (iv) any financial indebtedness of any FDE Group entity becoming due as a result of an event of default; or
 - (v) the cancellation or suspension of any financial indebtedness in respect of any FDE Group entity,

in each case which Network Rail reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance of the Framework Agreement and / or any Call-Off Contract and delivery of the Deliverables and Services in accordance with any Call-Off Contract;

- (j) any of the Financial Indicators set out at Paragraph 5 for the Monitored Company failing to meet the required Financial Target Threshold;
- (k) any suspension of listed shares on the relevant stock exchange;
- (l) an Insolvency Event;

- (m) the directors of any FDE Group entity considers that the FDE Group entity is or is likely to become unable to pay its debts as they fall due; or
- (n) any [one] of the Financial Indicators set out in Part C of Annex 2 of this Schedule for any of the FDE Group entities failing to meet the required Financial Target Threshold;

“Financial Distress Service Continuity Plan” a plan setting out how the Supplier will ensure the continued performance and delivery of the Deliverables and Services in accordance with the Framework Agreement in the event that a Financial Distress Event occurs. This plan should include what Network Rail would need to put in place to ensure performance and delivery of the Deliverables and Services in accordance with this Framework Agreement up to and including any Insolvency Event in respect of the relevant FDE Group entity;

“Financial Indicators” in respect of the Supplier and the Guarantor, means each of the financial indicators set out at Part C of Annex 2; and in respect of each Monitored Supplier, means those Applicable Financial Indicators;

“Financial Target Thresholds” the target thresholds for each of the Financial Indicators set out at Part C of Annex 2;

“Primary Metric” [credit rating pursuant to Paragraph 2.3]/[credit score pursuant to Paragraph 3.3 /[Financial Indicators pursuant to Paragraph 4.4]

[Guidance: The Primary Metric is used in Paragraph 7 as the means of measuring whether the Supplier has resolved the Financial Distress Event. If the Financial Distress Event is resolved by reference to the selected Primary Metric then the Supplier is entitled to relief under Paragraph 7 whether or not the other metrics still show continuing Financial Distress Events.]

“Monitored Supplier” those entities specified in Part B of Annex 3; and

“Rating Agencies” the rating agencies listed in Part A of Annex 1.

2. CREDIT RATINGS

2.1 The Supplier warrants and represents to Network Rail that as at the Framework Agreement Effective Date:

- 2.1.1 the long term credit ratings issued for each entity in the FDE Group by each of the Rating Agencies are as set out in Part A of Annex 2; and
- 2.1.2 the financial position or, as appropriate, the financial performance of each entity in the FDE Group satisfies the Financial Target Thresholds.

2.2 The Supplier shall:

- 2.2.1 regularly monitor the credit ratings of each entity in the FDE Group with the Rating Agencies;

- 2.2.2 promptly (and in any event within five (5) Working Days) notify Network Rail in writing if there is any downgrade in the credit rating issued by any Rating Agency for any entity in the FDE Group.
- 2.3 For the purposes of determining whether a Financial Distress Event has occurred, and for the purposes of determining relief under Paragraph 7 if credit rating is the Primary Metric, the credit rating of an FDE Group entity shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have given a credit rating level for that FDE Group entity which is below the applicable Credit Rating Threshold.
3. **CREDIT SCORES**
- 3.1 The Supplier warrants and represents to Network Rail that as at the Framework Agreement Effective Date the credit scores issued for each entity in the FDE Group by each of the Credit Reference Agencies are as set out in Part B of Annex 2.
- 3.2 The Supplier shall:
- 3.2.1 regularly monitor the credit scores of each entity in the FDE Group with the Credit Reference Agencies; and
- 3.2.2 promptly notify (or shall procure that its auditors promptly notify) Network Rail in writing if there is any Credit Score Notification Trigger Event for any entity in the FDE Group (and in any event within five (5) Working Days).
- 3.3 For the purposes of determining whether a Financial Distress Event has occurred, and for the purposes of determining relief under Paragraph 7 if credit score is the Primary Metric, the credit score of an FDE Group entity shall be deemed to have dropped below the applicable Credit Score Threshold if any of the Credit Reference Agencies have given a credit score for that FDE Group entity which is below the applicable Credit Score Threshold.
4. **FINANCIAL INDICATORS**
- 4.1 The Supplier shall monitor and report on the Financial Indicators for each entity in the FDE Group against the Financial Target Thresholds at least at the frequency set out for each at Part C of Annex 2 (where specified) and in any event, on a regular basis and no less than once a year within one hundred and twenty (120) days after the accounting reference date
- 4.2 The Financial Indicators and the corresponding calculations and thresholds used to determine whether a Financial Distress Event has occurred in respect of those Financial Indicators, shall be as set out in Part C of Annex 2.
- 4.3 Each report submitted by the Supplier pursuant to Paragraph 4.1 shall:
- 4.3.1 be a single report with separate sections for each of the FDE Group entities;
- 4.3.2 contain a sufficient level of information to enable Network Rail to verify the calculations that have been made in respect of the Financial Indicators;
- 4.3.3 include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes; **[and]**
- 4.3.4 be based on the audited accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date, on unaudited management accounts prepared in accordance with their normal timetable[.]/[; and
- 4.3.5 **include a history of the Financial Indicators reported by the Supplier in graph form to enable Network Rail to easily analyse and assess the trends in financial performance.]**

- 4.4 For the purposes of determining whether a Financial Distress Event has occurred, and for the purposes of determining relief under Paragraph 7 if Financial Indicators are the Primary Metric, the Financial Indicator of an FDE Group entity shall be deemed to have dropped below the applicable Financial Target Threshold if:
 - 4.4.1 a report submitted by the Supplier pursuant to Paragraph 4.1 shows that any FDE Group entity has failed to meet or exceed the Financial Target Threshold for any **one** of the Financial Indicators set out in Part C of Annex 2 of this Schedule;
 - 4.4.2 a report submitted by the Supplier pursuant to Paragraph 4.1 does not comply with the requirements set out in Paragraph 4.3; or
 - 4.4.3 the Supplier does not deliver a report pursuant to Paragraph 4.1 in accordance with the applicable monitoring and reporting frequency.

5. CONSEQUENCES OF FINANCIAL DISTRESS EVENTS

- 5.1 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) Network Rail in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event.
- 5.2 In the event of a Financial Distress Event then, immediately upon notification of the Financial Distress Event (or if Network Rail becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and Network Rail shall have the rights and remedies as set out in Paragraphs 5.3.2 to 5.6.
- 5.3 The Supplier shall (and shall procure that each Additional FDE Group Member shall):
 - 5.3.1 at the request of Network Rail meet Network Rail as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event) to review the effect of the Financial Distress Event on the continued performance of the Framework Agreement and delivery of the Deliverables and Services in accordance the Framework Agreement and the Call-Off Contracts; and
 - 5.3.2 where Network Rail reasonably believes (taking into account the discussions and any representations made under Paragraph 5.3.1) that the Financial Distress Event could impact on the continued performance of the Framework Agreement and delivery of the Deliverables and Services in accordance with the Framework Agreement and/or any Call-Off Contract:
 - (a) submit to Network Rail for its written approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event); and
 - (b) use reasonable endeavours to put in place the necessary measures with each Additional FDE Group Member to ensure that it is able to provide financial information relating to that Additional FDE Group Member to Network Rail; and
 - (c) provide such financial information relating to the FDE Group entity as Network Rail may reasonably require.
- 5.4 Network Rail shall not withhold its approval of a draft Financial Distress Service Continuity Plan unreasonably. If Network Rail does not (acting reasonably) approve the draft Financial

Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to Network Rail within five (5) Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is approved in writing by Network Rail or referred to the Dispute Resolution Procedure.

- 5.5 If Network Rail considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.
- 5.6 Following approval of the Financial Distress Service Continuity Plan by Network Rail, the Supplier shall:
- 5.6.1 on a regular basis (which shall not be less than monthly):
- (a) review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance the Framework Agreement and delivery of the Deliverables and Services in accordance with the Framework Agreement and any Call-Off Contract; and
 - (b) provide a written report of the results of each review and assessment carried out under limb (a) above to Network Rail;
 - (c) provide a written report to Network Rail setting out its progress against the Financial Distress Service Continuity Plan;
- 5.6.2 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 5.6.1, submit an updated Financial Distress Service Continuity Plan to Network Rail for its Approval, and the provisions of Paragraphs 5.5 and 5.6 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and
- 5.6.3 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
- 5.7 Where the Supplier reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify Network Rail and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under Paragraph 5.6.

6. TERMINATION RIGHTS

Network Rail shall be entitled to terminate this Framework Agreement under Clause 20.2 28.1.2 (Financial Standing) if:

- 6.1 the Supplier fails to notify Network Rail of a Financial Distress Event in accordance with Paragraph 5.1;
- 6.2 the Supplier fails to comply with any part of Paragraph 5.3;
- 6.3 Network Rail and the Supplier fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 5.3 to 5.5; and/or

- 6.4 the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 5.6.3.

7. **PRIMACY OF PRIMARY METRIC**

Without prejudice to the Supplier's obligations and Network Rail's rights and remedies under this Schedule, if, following the occurrence of a Financial Distress Event pursuant to limb (a) of the definition of Financial Distress Event, the Supplier evidences to Network Rail's satisfaction that the Primary Metric shows that the Financial Distress Event no longer exists, then, unless there is also a Financial Distress Event pursuant to another limb of the definition of Financial Distress Event:

- 7.1 the Supplier shall be relieved automatically of its obligations under Paragraphs 5.3 to 5.6; and
- 7.2 Network Rail shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 5.3.2(b).

8. **BOARD CONFIRMATION**

- 8.1 If this Framework Agreement has been specified as a Critical Service Contract under Paragraph 1.1 of Part B to Schedule 15 (*Service Continuity Plan and Corporate Resolution Planning*) of the Call-Off Terms then, subject to Paragraph 8.4 of this Schedule, the Supplier shall within one hundred and twenty (120) days after each Accounting Reference Date or within 15 months of the previous Board Confirmation (whichever is the earlier) provide a Board Confirmation to Network Rail in the form set out at Annex 4 of this Schedule, confirming that to the best of the Board's knowledge and belief, it is not aware of and has no knowledge:

8.1.1 that a Financial Distress Event has occurred since the later of the Effective Date or the previous Board Confirmation or is subsisting; or

8.1.2 of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event.

- 8.2 The Supplier shall ensure that in its preparation of the Board Confirmation it exercises due care and diligence and has made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to understand and confirm the position.

- 8.3 In respect of the first Board Confirmation to be provided under this Framework Agreement, the Supplier shall provide the Board Confirmation within 15 months of the Effective Date if earlier than the timescale for submission set out in Paragraph 8.1 of this Schedule.

- 8.4 Where the Supplier is unable to provide a Board Confirmation in accordance with Paragraphs 8.1 to 8.3 of this Schedule due to the occurrence of a Financial Distress Event or knowledge of subsisting matters which could reasonably be expected to cause a Financial Distress Event, it will be sufficient for the Supplier to submit in place of the Board Confirmation, a statement from the Board of Directors to Network Rail (and where the Supplier is a Strategic Supplier, the Supplier shall send a copy of the statement to the Cabinet Office Markets and Suppliers Team) setting out full details of any Financial Distress Events that have occurred and/or the matters which could reasonably be expected to cause a Financial Distress Event.

ANNEX 1: RATING AGENCIES AND CREDIT REFERENCE AGENCIES

Part A: Rating Agencies

[Rating Agency 1] Company Watch

[Rating Agency 2] Dun & Bradstreet

Part B: Credit Reference Agencies

[Credit Reference Agency 1]

[Credit Reference Agency 2]

ANNEX 2: CREDIT RATINGS, CREDIT SCORES AND FINANCIAL INDICATORS

Part A: Credit Rating

[Guidance: Subsidiary entities are unlikely to have a credit rating. The credit rating is most likely to be awarded to the ultimate parent company of a group. For the credit rating provisions to apply, the entity in the supplier’s group which has a credit rating should be included as a Monitored Supplier if it is not the Guarantor.]

Entity	Credit rating (long term)	Credit Rating Threshold
Supplier	Company Watch H-Score	10 or below
Supplier	D&B Failure Score	10 or below
Guarantor		
[Monitored Supplier]		

Part B: Credit Score

Entity	Credit score	Credit Score Notification Trigger	Credit Score Threshold
Supplier			
Guarantor			
[Monitored Supplier]			

Part C: Financial Indicators

Financial Indicator	Calculation	Financial Threshold	Target	Monitoring Reporting Frequency and
Solvency Ratio	Total Liabilities/Equity	Less than zero and greater than 5		Quarterly
Burn Rate	Tangible Net Worth (Total Assets – Intangible Assets)/Post-tax Loss	Less than 5x (5 years cover)		Quarterly
Current Ratio	Current Assets/Current Liabilities	Less than 0.7x		Quarterly

ANNEX 3: ADDITIONAL FDE GROUP MEMBERS AND MONITORED SUPPLIERS

Part A: Additional FDE Group Members

[Guidance: List the entities that Network Rail wants to include in the FDE Group]

- 1. **[[Guarantor]]**; and
- 2. **[Monitored Suppliers]]**;

Part B: Monitored Suppliers

[Guidance: Insert details of any other entities which the Supplier is required to monitor against the Financial Indicators. These are in addition to the Supplier’s monitoring of itself and the Guarantor. Not all the Financial Indicators may be applicable to a Monitored Supplier, so indicate which of those are to apply in the table below]

Entity Name	Company Number	Applicable Financial Indicators (these are the Financial Indicators from the table in Part C of Annex 2 which are to apply to the Monitored Suppliers)

ANNEX 4: BOARD CONFIRMATION

Supplier Name:

Contract Reference Number:

The Board of Directors acknowledge the requirements set out at paragraph 8 of Schedule 10 (Financial Distress) and confirm that the Supplier has exercised due care and diligence and made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to enable the Board to prepare this statement.

The Board of Directors confirms, to the best of its knowledge and belief, that as at the date of this Board Confirmation it is not aware of and has no knowledge:

- (a) that a Financial Distress Event has occurred since the later of the previous Board Confirmation and the Effective Date or is subsisting; or
- (b) of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event

On behalf of the Board of Directors:

Chair

Signed

Date

Director

Signed

Date

FRAMEWORK AGREEMENT

SCHEDULE 11

DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

“CEDR”	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 1 Patternoster Lane, St Paul’s,, London EC4M 7BQ;
“Counter Notice”	has the meaning given in paragraph 7.2 of Schedule 11 (Dispute Resolution Procedure);
“Expert”	in relation to a Dispute, a person appointed in accordance with paragraph 6.2 of Schedule 11 (Dispute Resolution Procedure) to act as an expert in relation to that Dispute;
“Expert Determination”	determination by an Expert in accordance with paragraph 6 of Schedule 11 (Dispute Resolution Procedure);
“Mediation Notice”	has the meaning given in paragraph 4.2 of Schedule 11 (Dispute Resolution Procedure);
“Mediator”	the independent third party appointed in accordance with paragraph 5.1 of Schedule 11 (Dispute Resolution Procedure) to mediate a Dispute;
“Multi-Party Dispute”	a Dispute which involves the Parties and one (1) or more Related Third Parties;
“Multi-Party Dispute Representatives”	has the meaning given in paragraph 9.6 of Schedule 11 (Dispute Resolution Procedure);
“Multi-Party Dispute Resolution Board”	has the meaning given in paragraph 9.6 of Schedule 11 (Dispute Resolution Procedure);
“Related Third Party”	a party to: <ul style="list-style-type: none"> (a) another contract with Network Rail or the Supplier which is relevant to this Framework Agreement and/or any Call-Off Contract; or (b) a Sub-contract; and
“Supplier Request”	a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.

2. DISPUTE NOTICES

- 2.1 If a Dispute arises then:
- 2.1.1 the provisions of Schedule 7 (Governance) shall apply to a Dispute relating to:
 - 2.1.1.1 Business as Usual Services (as defined in Schedule 7 (Governance)), such that these are sought to be resolved in accordance with paragraphs 6 and 8 of Schedule 7 (Governance); and
 - 2.1.1.2 Projects (as defined in Schedule 7 (Governance)), such that these are sought to be resolved in accordance with paragraphs 6 and 9 of Schedule 7 (Governance);
 - 2.1.2 for any other Dispute, or where a Dispute is escalated by the Strategic Account Review (as defined in Schedule 7 (Governance) in accordance with paragraph 6.4(c) of Schedule 7 (Governance), the Network Rail Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and
 - 2.1.3 if such attempts are not successful within a reasonable period, not being longer than twenty (20) Working Days, either Party may issue to the other a Dispute Notice.
- 2.2 A Dispute Notice:
- 2.2.1 shall set out:
 - 2.2.1.1 the material particulars of the Dispute;
 - 2.2.1.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
 - 2.2.1.3 if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and
 - 2.2.2 may specify in accordance with the requirements of paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of Network Rail) or considers (in the case of the Supplier) that the Dispute is a Multi-Party Dispute, in which case paragraph 2.3 shall apply.
- 2.3 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Multi-Party Dispute pursuant to paragraph 2.2.2, then:
- 2.3.1 if it is served by Network Rail it shall be treated as a Multi-Party Procedure Initiation Notice; and
 - 2.3.2 if it is served by the Supplier it shall be treated as a Supplier Request, and in each case the provisions of paragraph 9 shall apply.
- 2.4 Subject to paragraphs 2.5 and 3.2 and so long as Network Rail has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, following the issue of a Dispute Notice the Parties shall seek to resolve the Dispute:
- 2.4.1 first by reference to the Service Management Review and, if necessary, the Strategic Account Review, both as defined in and in accordance with Schedule 7 (Governance);
 - 2.4.2 then by commercial negotiation (as prescribed in paragraph 4);

- 2.4.3 then, if either Party serves a Mediation Notice, by mediation (as prescribed in paragraph 5); and
 - 2.4.4 lastly by recourse to arbitration (as prescribed in paragraph 7) or litigation (in accordance with clause 37 (Law and Jurisdiction) of the Framework Agreement or clause 41 (Governing Law and Jurisdiction) of the Call-Off Terms (as applicable)).
- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in paragraph 6) where specified under the provisions of this Framework Agreement and/or any Call-Off Contract and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 6.1.
- 2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Framework Agreement and any Call-Off Contract regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice or proceedings under paragraph 8.

3. **EXPEDITED DISPUTE TIMETABLE**

- 3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within five (5) Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of Network Rail.
- 3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of paragraph 3.1 or is otherwise specified under the provisions of this Framework Agreement or any Call-Off Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:
- 3.2.1 in paragraph 4.2.3, ten (10) Working Days;
 - 3.2.2 in paragraph 5.1, ten (10) Working Days;
 - 3.2.3 in paragraph 6.2, five (5) Working Days; and
 - 3.2.4 in paragraph 7.2, ten (10) Working Days.
- 3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree such an extension within two (2) Working Days after the applicable deadline has passed, Network Rail may determine a revised deadline, provided that it is no less than, as applicable:
- 3.3.1 five (5) Working Days before the end of the applicable period of time specified in the paragraphs 4.2.3, 5.1 or 7.2; or
 - 3.3.2 two (2) Working Days before the end of the period of time specified in paragraph 6.2,

and any agreed or determined extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If Network Rail fails to set such a revised deadline in accordance with the above, the use of the Expedited Dispute Timetable shall cease and the normal timescales shall apply from that point onwards.

4. **COMMERCIAL NEGOTIATION**

- 4.1 Following the service of a Dispute Notice, then, so long as Network Rail has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, and following consideration

by the Service Management Review (as defined in Schedule 7 (Governance)) and, if necessary, the Strategic Account Review (as defined in Schedule 7 (Governance)), Network Rail and the Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between Network Rail's Procurement Manager and the Supplier's [*insert role*].

4.2 If:

4.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution;

4.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this paragraph 4; or

4.2.3 the Parties have not settled the Dispute in accordance with paragraph 4.1 within thirty (30) Working Days of service of the Dispute Notice, either Party may serve a written notice to proceed to mediation in accordance with paragraph 5 (a "**Mediation Notice**").

5. **MEDIATION**

5.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with CEDR's Model Mediation Agreement which is current at the time the Mediation Notice is served (or such other version as the Parties may agree).

5.2 If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within twenty (20) Working Days from (and including) the service of a Mediation Notice then either Party may apply to CEDR to nominate such a person.

5.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.

5.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Framework Variation Procedure and/or the Change Control Procedure as applicable and where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

6. **EXPERT DETERMINATION**

6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a matter of an IT, accounting or financing nature and the Dispute has not been resolved by commercial negotiation in accordance with paragraph 4 or, if applicable, mediation in accordance with paragraph 5, then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an expert for determination.

6.2 The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days of the relevant request made pursuant to paragraph 6.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed:

6.2.1 if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);

- 6.2.2 if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or
 - 6.2.3 if the Dispute relates to a matter of a technical nature not falling within paragraphs 6.2.1 or 6.2.2, on the instructions of the president (or equivalent) of:
 - 6.2.3.1 an appropriate body agreed between the Parties; or
 - 6.2.3.2 if the Parties do not reach agreement on the relevant body within fifteen (15) Working Days of the relevant request made pursuant to paragraph 6.1, such body as may be specified by the President of the Law Society on application by either Party.
- 6.3 The Expert shall act on the following basis:
- 6.3.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
 - 6.3.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
 - 6.3.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
 - 6.3.4 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;
 - 6.3.5 the process shall be conducted in private and shall be confidential; and
 - 6.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

7. **ARBITRATION**

- 7.1 Subject to compliance with its obligations under paragraph 4.1 and to the provisions of paragraph 6, Network Rail may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 7.5.
- 7.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on Network Rail of its intentions and Network Rail shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 7.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
- 7.3 If Network Rail serves a Counter Notice, then:
 - 7.3.1 if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 7.5 shall apply; or
 - 7.3.2 if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.

- 7.4 If Network Rail does not serve a Counter Notice within the fifteen (15) Working Day period referred to in paragraph 7.2, the Supplier may either commence arbitration proceedings in accordance with paragraph 7.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.
- 7.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to paragraphs 7.1 to 7.4:
- 7.5.1 the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“**LCIA**”) (subject to paragraphs 7.5.5, 7.5.6 and 7.5.7);
 - 7.5.2 the arbitration shall be administered by the LCIA;
 - 7.5.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Framework Agreement and/or the relevant Call-Off Contract (as applicable) and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
 - 7.5.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
 - 7.5.5 the chair of the arbitral tribunal shall be British;
 - 7.5.6 the arbitration proceedings shall take place in London and in the English language; and
 - 7.5.7 the seat of the arbitration shall be London.

8. **URGENT RELIEF**

Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

- 8.1 for interim or interlocutory remedies in relation to this Framework Agreement and/or the relevant Call-Off Contract (as applicable) or infringement by the other Party of that Party's Intellectual Property Rights; and/or
- 8.2 where compliance with paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

9. **MULTI-PARTY DISPUTES**

- 9.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this paragraph 9 (the “**Multi-Party Dispute Resolution Procedure**”).
- 9.2 If at any time following the issue of a Dispute Notice, Network Rail reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then Network Rail shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a notice on the Supplier which sets out Network Rail's determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure, such notice a “**Multi-Party Procedure Initiation Notice**”.
- 9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination or to arbitration in accordance with paragraph 7, the Supplier has reasonable

grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on Network Rail.

- 9.4 Network Rail shall (acting reasonably) consider each Supplier Request and shall determine within five (5) Working Days whether the Dispute is:
- 9.4.1 a Multi-Party Dispute, in which case Network Rail shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
 - 9.4.2 not a Multi-Party Dispute, in which case Network Rail shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with paragraphs 3 to 8.
- 9.5 If Network Rail has determined, following a Supplier Request, that a Dispute is not a Multi-Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.
- 9.6 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the “**Multi-Party Dispute Resolution Board**”) comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:
- 9.6.1 Network Rail;
 - 9.6.2 the Supplier;
 - 9.6.3 each Related Third Party involved in the Multi-Party Dispute; and
 - 9.6.4 any other representatives of any of the Parties and/or any Related Third Parties whom Network Rail considers necessary, (together “**Multi-Party Dispute Representatives**”).
- 9.7 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:
- 9.7.1 the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;
 - 9.7.2 the Multi-Party Dispute Resolution Board shall first meet within ten (10) Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within five (5) Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by Network Rail, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and
 - 9.7.3 in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.
- 9.8 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within twenty five (25) Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:

- 9.8.1 either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case paragraph 5 shall apply;
- 9.8.2 either Party may request that the Multi-Party Dispute is referred to an expert in which case paragraph 6 shall apply; and/or
- 9.8.3 subject to paragraph 9.9, paragraph 7 shall apply to the Multi-Party Dispute,

and in each case references to the “**Supplier**” or the “**Parties**” in such provisions shall include a reference to all Related Third Parties.

- 9.9 If a Multi-Party Dispute is referred to arbitration in accordance with paragraph 7 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, Network Rail or the Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub-Contractor, by the Supplier.

FRAMEWORK AGREEMENT

SCHEDULE 12

INSURANCE REQUIREMENTS

1. OBLIGATION TO MAINTAIN INSURANCES

- 1.1 Without prejudice to its obligations to Network Rail under this Framework Agreement or any Call-Off Contract, including its indemnity and liability obligations, the Supplier shall for the periods specified in this Schedule take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 and any other insurances as may be required by applicable Law (together the “**Insurances**”). The Supplier shall ensure that each of the Insurances is effective no later than the date on which the relevant risk commences.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor operating the same or substantially similar business in respect of risks insured in the [UK] [international] insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with insurers who are:
- 1.3.1 of good financial standing;
 - 1.3.2 appropriately regulated;
 - 1.3.3 regulated by the applicable regulatory body and is in good standing with that regulator; and
 - 1.3.4 except in the case of any Insurances provided by an Affiliate of the Supplier, of good repute in the [UK] [international] insurance market.
- 1.4 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which Network Rail shall be indemnified in respect of claims made against Network Rail in respect of death or bodily injury or third party property damage arising out of or in connection with the Services and for which the Supplier is legally liable.

2. GENERAL OBLIGATIONS

Without limiting the other provisions of this Framework Agreement, the Supplier shall:

- 2.1 take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
- 2.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
- 2.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

3. FAILURE TO INSURE

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to cancel, rescind or suspend any of the Insurances or cover, or to treat any of the Insurances,

cover or claim as avoided in whole or in part refuse to pay any claim under any of the Insurances.

- 3.2 Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, Network Rail may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and Network Rail shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

4. **EVIDENCE OF INSURANCES**

- 4.1 The Supplier shall provide notice to Network Rail at least fifteen (15) Working Days prior to the renewal or replacement of the Insurances that the Insurances shall be renewed or replaced and upon the Framework Effective Date and within fifteen (15) Working Days after the renewal or replacement of each of the Insurances, the Supplier shall provide evidence, in a form satisfactory to Network Rail, that the Insurances are in force and effect and meet in full the requirements of this Schedule. Receipt of such evidence by Network Rail shall not in itself constitute acceptance by Network Rail or relieve the Supplier of any of its liabilities and obligations under this Framework Agreement and/or any Call-Off Contract.
- 4.2 The Supplier shall provide any further information reasonably requested by Network Rail in relation to the Insurances at any time on reasonable notice.

5. **CANCELLATION**

- 5.1 Subject to paragraph 5.2, the Supplier shall notify Network Rail in writing at least twenty (20) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances, and as soon as reasonably practicable of any avoidance or attempted avoidance of any of the Insurances.
- 5.2 Without prejudice to the Supplier's obligations under paragraph 4, paragraph 5.1 shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Schedule.

6. **INSURANCE CLAIMS, PREMIUMS AND DEDUCTIBLES**

- 6.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services, this Framework Agreement and/or any Call-Off Contract for which it may be entitled to claim under any of the Insurances. In the event that Network Rail receives a claim relating to or arising out of the Services, this Framework Agreement and/or any Call-Off Contract, the Supplier shall co-operate with Network Rail and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.
- 6.2 The Supplier shall maintain a register of all claims under the Insurances in connection with this Framework Agreement or any Call-Off Contract and shall allow Network Rail to review such register at any time.
- 6.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 6.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from Network Rail any sum paid by way of excess or deductible under the Insurances whether under the terms of this Framework Agreement or any Call-Off Contract or otherwise.

7. LIMIT OF LIABILITY

Neither failure to comply, nor full compliance, with the insurance provisions set out in this Schedule shall limit or relieve the Supplier of its other liabilities and obligations under this Framework Agreement or any Call-Off Contract.

ANNEX 1

Required Insurances

PART A: INSURANCE CLAIM NOTIFICATION

Except where Network Rail is the claimant party, the Supplier shall give Network Rail notice within twenty (20) Working Days after any insurance claim in excess of [£100,000] relating to or arising out of the provision of the Services or this Framework Agreement or any Call-Off Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by Network Rail) full details of the incident giving rise to the claim.

PART B: THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE

1. Insured

The Supplier
2. Interest

To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

 - 2.1 death or bodily injury to or sickness, illness or disease contracted by any person; and
 - 2.2 loss of or damage to physical property;

happening during the period of insurance (as specified in paragraph 5) and arising out of or in connection with the provision of the Services and in connection with this Framework Agreement or any Call-Off Contract.
3. Limit of indemnity

Not less than £[**to be determined by Network Rail**] in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period , but £[**to be determined by Network Rail**] in the aggregate per annum in respect of products and pollution liability.
4. Territorial limits

[TO BE DETERMINED BY NETWORK RAIL]
5. Period of insurance

From the date of this Framework Agreement for the Term and the term of any Call-Off Contract and renewable on an annual basis unless agreed otherwise by Network Rail in writing.
6. Cover features and extensions
 - 6.1 Indemnity to principals clause under which Network Rail shall be indemnified in respect of claims made against Network Rail in respect of death or bodily injury or third party property damage arising out of or in connection with the Framework Agreement or any Call-Off Contract and for which the Supplier is legally liable.
7. Principal exclusions
 - 7.1 War and related perils.
 - 7.2 Nuclear and radioactive risks.

- 7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of the the course of their employment.
- 7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.
- 7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.
- 8. Maximum deductible threshold

Not to exceed £[**INSERT: FIGURE ON CONTRACT AWARD BASED ON THE SUPPLIER'S ACCEPTABLE RESPONSE TO THE ITT**] for each and every third party property damage claim (personal injury claims to be paid in full).

PART C: PROFESSIONAL INDEMNITY INSURANCE

- 1. Insured
The Supplier
- 2. Interest
To indemnify the Insured for all sums which the Insured shall become legally liable to pay (including claimants' costs and expenses) as a result of claims first made against the Insured during the period of insurance (as specified in paragraph 5) by reason of any negligent act, error and/or omission arising from or in connection with the provision of the Services.
- 3. Limit of indemnity
Not less than £[**to be determined by Network Rail**] in respect of any one (1) claim and in the aggregate per annum, exclusive of defence costs which are payable in addition.
- 4. Territorial Limits
- 5. **[United Kingdom]**
- 6. Period of insurance
From the date of this Framework Agreement and renewable on an annual basis unless agreed otherwise by Network Rail in writing (a) throughout the Term and the term of any Call-Off Contract and (b) for a period of six (6) years thereafter.
- 7. Cover features and extensions
Retroactive cover to apply to any claims made policy wording in respect of this Framework Agreement or any Call-Off Contract or retroactive date to be no later than the Effective Date.
- 8. Principal exclusions
- 8.1 War and related perils

- 8.2 Nuclear and radioactive risks
- 9. Maximum deductible threshold

Not to exceed £[**INSERT: FIGURE ON CONTRACT AWARD BASED ON THE SUPPLIER'S ACCEPTABLE RESPONSE TO THE ITT**] for each and every claim.

FRAMEWORK AGREEMENT

SCHEDULE 13

CALL-OFF TERMS

CONTENTS

Clause	Page
SECTION A - PRELIMINARIES	139
1 DEFINITIONS AND INTERPRETATION.....	139
2 DUE DILIGENCE	139
3 WARRANTIES	140
SECTION B – THE SERVICES	142
4 TERM.....	142
5 SERVICES.....	142
6 IMPLEMENTATION	148
7 PERFORMANCE INDICATORS	149
8 EARLY WARNING	151
9 EQUIPMENT AND MAINTENANCE.....	151
SECTION C – PAYMENT AND TAXATION	154
10 FINANCIAL AND TAXATION MATTERS	154
SECTION D – CONTRACT GOVERNANCE	155
11 GOVERNANCE	155
12 RECORDS, REPORTS, AUDITS & OPEN BOOK DATA	156
13 CHANGE.....	156
SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN	158
14 SUPPLIER PERSONNEL	158
15 SUPPLY CHAIN RIGHTS AND PROTECTIONS.....	161
SECTION F – INTELLECTUAL PROPERTY	168
16 INTELLECTUAL PROPERTY RIGHTS	168
17 ESCROW	168
18 IPRs INDEMNITY.....	168
19 NETWORK RAIL DATA AND SECURITY REQUIREMENTS.....	169
SECTION G – LIABILITY, INDEMNITIES AND INSURANCE	171
20 LIMITATIONS ON LIABILITY	171
21 INSURANCE	173
SECTION H – REMEDIES AND RELIEF	174
22 RECTIFICATION PLAN PROCESS	174
23 DELAY PAYMENTS.....	175
24 REMEDIAL ADVISER.....	176
25 STEP-IN RIGHTS.....	177
26 NETWORK RAIL CAUSE	179
27 FORCE MAJEURE	181
SECTION I – TERMINATION AND EXIT MANAGEMENT	184
28 TERMINATION RIGHTS	184

29 CONSEQUENCES OF EXPIRY OR TERMINATION 185

SECTION J – MISCELLANEOUS AND GOVERNING LAW 188

30 COMPLIANCE 188

31 REAL LIVING WAGE 190

32 ASSIGNMENT AND NOVATION 190

33 WAIVER AND CUMULATIVE REMEDIES 191

34 RELATIONSHIP OF THE PARTIES 191

35 SEVERANCE..... 191

36 FURTHER ASSURANCES..... 191

37 ENTIRE AGREEMENT 192

38 THIRD PARTY RIGHTS 192

39 NOTICES 192

40 DISPUTES 193

41 GOVERNING LAW AND JURISDICTION 193

42 COUNTERPARTS/DUPLICATES..... 194

SCHEDULE 1 DEFINITIONS..... 197

SCHEDULE 2 PERFORMANCE LEVELS 239

SCHEDULE 3 STANDARDS 257

SCHEDULE 4 SECURITY MANAGEMENT..... 264

SCHEDULE 5 NETWORK RAIL RESPONSIBILITIES 318

SCHEDULE 6 ESCROW TERMS..... 320

SCHEDULE 7 IMPLEMENTATION PLAN 338

SCHEDULE 8 TESTING PROCEDURES 341

SCHEDULE 9 CHARGES AND INVOICING 354

SCHEDULE 10 PAYMENTS ON TERMINATION..... 370

SCHEDULE 11 FINANCIAL REPORTS AND AUDIT RIGHTS 378

SCHEDULE 12 ANTICIPATED SAVINGS..... 387

SCHEDULE 13 REPORTS AND RECORDS PROVISIONS 389

SCHEDULE 14 EXIT MANAGEMENT 410

SCHEDULE 15 SERVICE CONTINUITY PLAN AND CORPORATE RESOLUTION
PLANNING 435

SCHEDULE 16 STAFF TRANSFER 452

SCHEDULE 17 SOFTWARE 477

SCHEDULE 18 CHANGE CONTROL PROCEDURE 483

SCHEDULE 19 BENCHMARKING..... 492

SCHEDULE 20 INTELLECTUAL PROPERTY RIGHTS..... 504

CALL-OFF SCHEDULES

1. Definitions
2. Performance Levels
3. Standards
4. Security Management
5. Network Rail Responsibilities
6. Escrow Terms
7. Implementation Plan
8. Testing Procedures
9. Charges and Invoicing
10. Payments on Termination
11. Financial Reports and Audit Rights
12. Anticipated Savings
13. Reports and Records Provisions
14. Exit Management
15. Service Continuity Plan and Corporate Resolution Planning
16. Staff Transfer
17. Software
18. Change Control Procedure
19. Benchmarking
20. Intellectual Property Rights

SECTION A - PRELIMINARIES

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears. If a capitalised term or phrase used in this Agreement is not defined within Schedule 1 (Definitions) or any other Schedule it shall have the meaning as set out in the Framework Agreement. If a capitalised expression does not have an interpretation in this Agreement or the Framework Agreement, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.

1.2 Interpretation is as set out in Schedule 1 (Definitions).

1.3 Network Rail shall not be deemed to be in Default pursuant to this Agreement to the extent that any such Default is due to the Default of the Supplier.

1.4 If there is any conflict between the clauses and the Schedules and/or any annexes to the schedules and/or any conflict between the Schedules and/or between annexes to the Schedules and/or any other documents referred to in this Agreement, the conflict shall be resolved in accordance with the following order of precedence:

- 1.4.1 the Framework Agreement;
- 1.4.2 the Call-Off Form (except for the Supplier Solution);
- 1.4.3 the clauses and Schedule 1 (Definitions) of this Agreement;
- 1.4.4 the Services Description and Schedule 2 (Performance Levels);
- 1.4.5 any other Schedules and their annexes (except for the Supplier Solution);
- 1.4.6 the Supplier Solution; and
- 1.4.7 any other document referred to in this or any other document attached to this Agreement.

1.5 The Schedules and their Annexes form part of this Agreement.

2. DUE DILIGENCE

2.1 The Supplier acknowledges that:

2.1.1 Network Rail has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Agreement;

2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;

2.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with Network Rail before the Call-Off Effective Date) of all relevant details relating to:

2.1.3.1 Network Rail Requirements;

- 2.1.3.2 the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Call-Off Effective Date) future Operating Environment;
 - 2.1.3.3 the operating processes and procedures and the working methods of Network Rail;
 - 2.1.3.4 the ownership, functionality, capacity, condition and suitability for use in the Services of the Network Rail Assets; and
 - 2.1.3.5 the existing contracts (including any licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Agreement and/or which the Supplier will require the benefit of for the provision of the Services; and
- 2.1.4 it has advised Network Rail in writing of:
- 2.1.4.1 each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
 - 2.1.4.2 the actions needed to remedy each such unsuitable aspect; and
 - 2.1.4.3 a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,
- and such actions, timetable and costs are fully reflected in this Agreement, including the Call-Off Form.
- 2.2 The Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:
- 2.2.1 any unsuitable aspects of the Operating Environment;
 - 2.2.2 any misinterpretation of the Network Rail Requirements; and/or
 - 2.2.3 any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.
3. **WARRANTIES**
- 3.1 Network Rail represents and warrants that:
- 3.1.1 it has full capacity and authority to enter into and to perform this Agreement;
 - 3.1.2 this Agreement is executed by its duly authorised representative;
 - 3.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement; and
 - 3.1.4 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

- 3.2 The Supplier represents and warrants that:
- 3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
 - 3.2.2 it has full capacity and authority to enter into and to perform this Agreement;
 - 3.2.3 this Agreement is executed by its duly authorised representative;
 - 3.2.4 it has all necessary consents and regulatory approvals to enter into this Agreement;
 - 3.2.5 it has notified Network Rail in writing of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, any threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;
 - 3.2.6 its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
 - 3.2.7 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
 - 3.2.8 all written statements and representations in any written submissions made by the Supplier as part of the Ordering Procedure relating to this Agreement, including in the Call-Off Form as provided by the Supplier, remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to Network Rail in writing prior to the date of this Agreement;
 - 3.2.9 it has notified Network Rail in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
 - 3.2.10 it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to Network Rail which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by Network Rail;
 - 3.2.11 the Contract Inception Report is a true and accurate reflection of the Costs and Supplier Profit Margin forecast by the Supplier and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Financial Model;
 - 3.2.12 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
 - 3.2.13 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and

- 3.2.14 within the previous twelve (12) months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Agreement had this Agreement been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.
- 3.3 The representations and warranties set out in clause 3.2 shall be deemed to be repeated by the Supplier on the Call-Off Effective Date (if later than the date of signature of this Agreement) by reference to the facts then existing.
- 3.4 Each of the representations and warranties set out in clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.
- 3.5 If at any time a Party becomes aware that a representation or warranty given by it under clause 3.1 or 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.6 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which Network Rail may have in respect of breach of that provision by the Supplier.
- 3.7 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

SECTION B – THE SERVICES

4. TERM

This Agreement shall come into force on the Call-Off Effective Date and, unless terminated at an earlier date by operation of Law or in accordance with clause 28 (Termination Rights), shall terminate:

- 4.1.1 at the end of the Initial Term; or
- 4.1.2 if Network Rail elects to extend the Initial Term by giving the Supplier at least six (6) months' notice before the end of the Initial Term, at the end of the Extension Period; or
- 4.1.3 if Network Rail elects to extend any Extension Period by giving the Supplier at least six (6) months' notice before the end of an Extension Period, at the end of the final Extension Period,

provided that the aggregate duration of all Extension Periods shall be no longer than the Maximum Extension Period.

5. SERVICES

Standard of Services

- 5.1 The Supplier shall provide:
- 5.1.1 the Implementation Services from (and including) the Implementation Services Commencement Date; and
- 5.1.2 the Operational Services in each case from (and including) the relevant Operational Service Commencement Date.

5.2 The Supplier shall ensure that:

5.2.1 the Services:

5.2.1.1 comply in all respects with the Services Description; and

5.2.1.2 are supplied in accordance with the Supplier Solution and the provisions of this Agreement; and

5.2.2 where:

5.2.2.1 the Operational Services to be provided from any Operational Service Commencement Date are similar to services that Network Rail was receiving immediately prior to that Operational Service Commencement Date (such similar services being "**Preceding Services**"); and

5.2.2.2 the standard and level of service received by Network Rail in respect of any of the Preceding Services in the twelve (12) month period immediately prior to that Operational Service Commencement Date have been disclosed to the Supplier in the Due Diligence Information (such preceding services being "**Relevant Preceding Services**"),

the Operational Services to be provided from the relevant Operational Service Commencement Date that are similar to the Relevant Preceding Services are in each case provided to a standard and level of service which is at least as good as the standard and level of service received by Network Rail in respect of the Relevant Preceding Services in the twelve (12) month period immediately prior to the relevant Operational Service Commencement Date.

5.3 The Supplier shall:

5.3.1 perform its obligations under this Agreement, including in relation to the supply of the Services and any Goods in accordance with:

5.3.1.1 all applicable Law;

5.3.1.2 Good Industry Practice;

5.3.1.3 the Standards;

5.3.1.4 the Baseline Security Requirements;

5.3.1.5 the Quality Plans;

5.3.1.6 the Network Rail IT Strategy; and

5.3.1.7 the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of clauses 5.3.1.1 to 5.3.1.6; and

5.3.1.8 deliver the Services using efficient business processes and ways of working having regard to Network Rail's obligation to ensure value for money.

5.4 In the event that the Supplier becomes aware of any inconsistency between the requirements of clauses 5.3.1.1 to 5.3.1.6, the Supplier shall immediately notify the Network Rail Representative in writing of such inconsistency and the Network Rail Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

Supplier covenants

5.5 The Supplier shall:

- 5.5.1 at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Agreement;
- 5.5.2 save to the extent that obtaining and maintaining the same are Network Rail Responsibilities and subject to clause 13 (Change), obtain, and maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- 5.5.3 ensure that:
 - 5.5.3.1 it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to Network Rail which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by Network Rail; the release of any new Software or upgrade to any Software complies with the interface requirements in the Services Description and (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the requirements of Schedule 4 (Security Management)) shall notify Network Rail three (3) months before the release of any new Software or Upgrade;
 - 5.5.3.2 all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
 - 5.5.3.3 any products or services recommended or otherwise specified by the Supplier for use by Network Rail in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the Network Rail Requirements; and
 - 5.5.3.4 the Supplier System and Assets used in the performance of the Services will be free:
 - (a) free of all encumbrances (except as agreed in writing with Network Rail) ; and
 - (b) compliant with the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012 in respect of all Assets made available to Network Rail by the Supplier;
- 5.5.4 minimise any disruption to the Services, the IT Environment and/or Network Rail's operations when carrying out its obligations under this Agreement;
- 5.5.5 ensure that any Documentation and training provided by the Supplier to Network Rail are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- 5.5.6 co-operate with any Other Suppliers notified to the Supplier by Network Rail from time to time by providing:

- 5.5.6.1 reasonable information (including any Documentation);
 - 5.5.6.2 advice; and
 - 5.5.6.3 reasonable assistance,
- in connection with the Services to any such Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Agreement for any reason, to enable the timely transition of the Services (or any of them) to Network Rail and/or to any Replacement Supplier, in each case in accordance with the following collaborative working principles:
- 5.5.6.4 proactively leading on, mitigating and contributing to the resolution of problems or issues irrespective of its contractual obligations, acting in accordance with the principle of “fix first, settle later”;
 - 5.5.6.5 being open, transparent and responsive in sharing relevant and accurate information with such Other Suppliers;
 - 5.5.6.6 where reasonable, adopting common working practices, terminology, standards and technology and a collaborative approach to service development and resourcing with such Other Suppliers;
 - 5.5.6.7 providing reasonable cooperation, support, information and assistance to such Other Suppliers in a proactive, transparent and open way and in a spirit of trust and mutual confidence; and
 - 5.5.6.8 identifying, implementing and capitalising on opportunities to improve deliverables and deliver better solutions and performance throughout the relationship lifecycle;
- 5.5.7 to the extent it is legally able to do so, hold on trust for the sole benefit of Network Rail, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that Network Rail may notify from time to time to the Supplier;
 - 5.5.8 unless it is unable to do so, assign to Network Rail on Network Rail’s written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in clause 5.5.7;
 - 5.5.9 provide Network Rail with such assistance as Network Rail may reasonably require during the Term in respect of the supply of the Services;
 - 5.5.10 gather, collate and provide such information and co-operation as Network Rail may reasonably request for the purposes of ascertaining the Supplier’s compliance with its obligations under this Agreement;
 - 5.5.11 notify Network Rail in writing as soon as reasonably practicable and in any event within one (1) month of any change of Control taking place;
 - 5.5.12 notify Network Rail in writing within ten (10) Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;
 - 5.5.13 ensure that neither it, nor any of its Affiliates, embarrasses Network Rail or otherwise brings Network Rail into disrepute by engaging in any act or omission in

relation to this Agreement which is reasonably likely to diminish the trust that the public places in Network Rail; and

- 5.5.14 manage closure or termination of Services and end of life of Goods to take account of Network Rail's disposal requirements, including recycling and scope for re-use, and all applicable Standards.
- 5.6 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.
- 5.7 Without prejudice to clauses 18.2 and 18.3 (IPRs Indemnity) and any other rights and remedies of Network Rail howsoever arising, the Supplier shall:
- 5.7.1 remedy any breach of its obligations in clauses 5.5.2 to 5.5.4 inclusive within three (3) Working Days of becoming aware of the breach or being notified of the breach by Network Rail where practicable or within such other time period as may be agreed with Network Rail (taking into account the nature of the breach that has occurred);
- 5.7.2 remedy any breach of its obligations in clause 5.5.1 and clauses 5.5.5 to 5.5.10 inclusive within twenty (20) Working Days of becoming aware of the breach or being notified of the breach by Network Rail; and
- 5.7.3 meet all the costs of, and incidental to, the performance of such remedial work,
- and any failure of the Supplier to comply with its obligations under clause 5.7.1 or clause 5.7.2 within the specified or agreed timeframe shall constitute a Notifiable Default.

Software warranty

- 5.8 Without prejudice to clauses 5.5.14 (Supplier Covenants) and 5.7 (Services) and any other rights and remedies of Network Rail howsoever arising, the Supplier warrants to Network Rail that all components of the Software shall:
- 5.8.1 be free from material design and programming errors;
- 5.8.2 provide the functionality set out in, and perform in all material respects in accordance, with the relevant specifications contained in the Services Description, the Supplier Solution and the Documentation;
- 5.8.3 interface with the Network Rail System as set out in the Services Description and the Supplier Solution; and
- 5.8.4 not infringe any Intellectual Property Rights.

Software as a Service

- 5.9 In the case of any Software as a Service, such Software may be substituted for another Software as a Service or Service at any point in time and as determined by Network Rail, in accordance with the following principles (as applicable):
- 5.9.1 where:
- 5.9.1.1 an end of life notice has been issued by the relevant manufacturer; and/or
- 5.9.1.2 the Software as a Service is no longer going to be supported in the market generally at a reasonable price,

in which case Network Rail can require the Supplier to replace the Software as a Service with an equivalent or successor software / cloud software which is envisaged to deliver the same or similar output or functionality;

- 5.9.2 a new version or release of the Software as a Service has been issued, in which case Network Rail may require the Supplier to replace the Software as a Service with the new version or release (or equivalent) and/or may simply add the new version or release (or equivalent) as an additional option (as well as the release or version currently set out in the list) for purchase by Network Rail in accordance with this Agreement;
- 5.9.3 a successor software and/or replacement software and/or type of software has been issued to the market, in which case Network Rail may require the Supplier to replace the Software as a Service with the successor product or replacement product or type of product and/or may simply add the successor software as an additional option for purchase by Network Rail in accordance with this Agreement, in each case which is envisaged to deliver the same or similar output or functionality; and/or
- 5.9.4 a new or evolving or successor technology or type of software has been issued to the market, in which case Network Rail can add such new or evolving or successor technology or type of software to the existing Software as a Service, in each case which is envisaged to deliver the same or similar output or functionality.

Continuing obligation to provide the Services

- 5.10 The Supplier shall continue to perform all of its obligations under this Agreement and shall not suspend the supply of the Services, notwithstanding:
 - 5.10.1 any withholding of the Service Charges by Network Rail pursuant to clause 7.2.4.2 (Performance Failures);
 - 5.10.2 the existence of an unresolved Dispute; and/or
 - 5.10.3 any failure by Network Rail to pay any Charges,

unless the Supplier is entitled to terminate this Agreement under clause 28.3.1 (Termination by the Supplier) for failure to pay undisputed Charges.

Optional Services

- 5.11 Network Rail may require the Supplier to provide any or all of the Optional Services at any time by giving notice to the Supplier in writing. The Supplier acknowledges that Network Rail is not obliged to take any Optional Services from the Supplier and that nothing shall prevent Network Rail from receiving services that are the same as or similar to the Optional Services from any third party.
- 5.12 If a Change Request is submitted, the Supplier shall, as part of the Impact Assessment provided by the Supplier in relation to such Change Request, provide details of the impact (if any) that the proposed Change will have on the relevant Optional Services.
- 5.13 Following receipt of Network Rail's notice pursuant to clause 5.11:
 - 5.13.1 the Parties shall document the inclusion of the relevant Optional Services within the Services in accordance with the Change Control Procedure, modified to reflect the fact that the terms and conditions on which the Supplier shall provide the relevant Optional Services have already been agreed;
 - 5.13.2 the Supplier shall implement and Test the relevant Optional Services in accordance with the Optional Services Implementation Plan;

- 5.13.3 any additional charges for the Optional Services shall be incorporated in the Charges as specified in Paragraph 3 of Part B of Schedule 9 (Charges and Invoicing); and
- 5.13.4 the Supplier shall, from the date agreed in the Optional Services Implementation Plan (or, if later, the date of Achievement of any Milestones associated with the commencement of the relevant Optional Services (if any)), provide the relevant Optional Services to meet or exceed the applicable Target Performance Level in respect of all Performance Indicators applicable to the Optional Services as set out in Annex 1 of Schedule 2 (Performance Levels).

Network Rail Responsibilities

- 5.14 Network Rail shall comply with its responsibilities set out in the Call-Off Form.
- 5.15 The Supplier acknowledges and agrees that it shall have no claim against Network Rail and that Network Rail shall be deemed not to be in Default, to the extent that the Default of Network Rail is a failure to comply with Network Rail's Responsibilities and such failure is caused or contributed to by the Supplier, any Affiliate of the Supplier or any Supplier Party under this Agreement or any other contract with Network Rail or otherwise.

6. IMPLEMENTATION

Quality Plans

- 6.1 The Supplier shall develop, within twenty (20) Working Days of the Call-Off Effective Date, quality plans that ensure that all aspects of the Services are the subject of quality management systems and either are consistent with BS EN ISO 9001 or sufficient to meet the requirements of this standard to the satisfaction of Network Rail ("**Quality Plans**").
- 6.2 The Supplier shall obtain the Network Rail Representative's written approval of the Quality Plans before implementing them, which approval shall not be unreasonably withheld or delayed. The Supplier acknowledges and accepts that Network Rail's approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Agreement.
- 6.3 Following the approval by Network Rail of the Quality Plans:
- 6.3.1 the Supplier shall design and deliver all Deliverables in accordance with the Quality Plans; and
- 6.3.2 any Changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

Implementation Plan and Delays

- 6.4 The Parties shall comply with the provisions of Schedule 7 (Implementation Plan) in relation to the agreement and maintenance of the Detailed Implementation Plan.
- 6.5 The Supplier shall:
- 6.5.1 comply with the Implementation Plan; and
- 6.5.2 ensure that each Milestone is Achieved on or before its Milestone Date.
- 6.6 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:
- 6.6.1 it shall:

- 6.6.1.1 notify Network Rail in accordance with clause 22.1 (Rectification Plan Process); and
- 6.6.1.2 comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
- 6.6.1.3 use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and

if the Delay or anticipated Delay relates to a Key Milestone, the provisions of clause 23 (Delay Payments) shall apply.

Testing and Achievement of Milestones

- 6.7 The Parties shall comply with the provisions of Schedule 8 (Testing Procedures) in relation to the procedures to determine whether a Milestone or Test has been Achieved.

7. PERFORMANCE INDICATORS

- 7.1 The Supplier shall:

- 7.1.1 provide the Operational Services in such a manner so as to meet or exceed the Target Performance Level for each Performance Indicator from the Milestone Date for each relevant CPP Milestone; and
- 7.1.2 comply with the provisions of Schedule 2 (Performance Levels) in relation to the monitoring and reporting on its performance against the Performance Indicators.

Performance Failures

- 7.2 If in any Service Period:

- 7.2.1 a KPI Failure occurs, Service Credits shall be deducted from the Service Charges in accordance with Paragraph 2 of Part C of Schedule 9 (Charges and Invoicing);
- 7.2.2 a Material KPI Failure occurs, the Supplier shall comply with the Rectification Plan Process (in addition to Service Credits accruing in accordance with clause 7.2.1);
- 7.2.3 a PI Failure occurs, the Supplier shall notify Network Rail of the action (if any) it will take to rectify the PI Failure and/or to prevent the PI Failure from recurring; and/or
- 7.2.4 a Material PI Failure occurs:
 - 7.2.4.1 the Supplier shall comply with the Rectification Plan Process; and
 - 7.2.4.2 Network Rail may withhold a proportionate amount of the Service Charges in accordance with the process set out in clause 10.7 (Set Off and Withholding) until the relevant Material PI Failure is rectified to the reasonable satisfaction of Network Rail, at which point Network Rail shall pay the amount withheld.

- 7.3 Service Credits shall be Network Rail's exclusive financial remedy for a KPI Failure except where:

- 7.3.1 the Supplier has over the previous twelve (12) month period accrued Service Credits in excess of the Service Credit Cap;
- 7.3.2 the KPI Failure:

- 7.3.2.1 breaches the relevant KPI Service Threshold;
- 7.3.2.2 has arisen due to the wilful default by the Supplier or any Supplier Personnel; or
- 7.3.2.3 results in:
 - (a) the corruption or loss of any Network Rail Data (in which case the remedies under clause 19.7 (Network Rail Data and Security Requirements) shall also be available); and/or
 - (b) Network Rail being required to make a compensation payment to one or more third parties;
- 7.3.3 the Supplier has fraudulently misreported its performance against any Performance Indicator; and/or
- 7.3.4 Network Rail is otherwise entitled to or does terminate the relevant Services or this Agreement pursuant to clause 28.1.2 (Termination by Network Rail).

Unacceptable KPI Failure

7.4 If in any Service Period an Unacceptable KPI Failure occurs:

- 7.4.1 Network Rail shall (subject to the Service Credit Cap set out in clause 20.4.2 (Financial and other limits)) be entitled to withhold and retain as compensation for the Unacceptable KPI Failure a sum equal to any Service Charges which would otherwise have been due to the Supplier in respect of that Service Period (such sum being "**Compensation for Unacceptable KPI Failure**"); and
- 7.4.2 if Network Rail withholds and retains such Compensation for Unacceptable KPI Failure, any Service Points and Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue,

provided that the operation of this clause 7.4 shall be without prejudice to any right which Network Rail may have to terminate this Agreement and/or to claim damages from the Supplier as a result of such Unacceptable KPI Failure.

7.5 The Supplier:

- 7.5.1 agrees that the application of clause 7.4 is commercially justifiable where an Unacceptable KPI Failure occurs; and
- 7.5.2 acknowledges that it has taken legal advice on the application of clause 7.4 and has had the opportunity to price for that risk when calculating the Service Charges.

Critical Performance Failure

7.6 If a Critical Performance Failure occurs, Network Rail may exercise its rights to terminate this Agreement in whole or in part pursuant to clause 28.1 or 28.2 (Termination by Network Rail).

Changes to Performance Indicators and Service Credits

7.7 Not more than once in each Contract Year Network Rail may, on giving the Supplier at least three (3) months' notice:

- 7.7.1 change the weighting that applies in respect of one or more specific Key Performance Indicators; and/or
- 7.7.2 convert one or more:

7.7.2.1 Key Performance Indicators into a Subsidiary Performance Indicator; and/or

7.7.2.2 Subsidiary Performance Indicators into a Key Performance Indicator (in which event Network Rail shall also set out in the notice details of what will constitute a Minor KPI Failure and a Severe KPI Failure for the new Key Performance Indicator).

7.8 The Supplier shall not be entitled to object to any changes made by Network Rail under clause 7.7, or increase the Service Charges as a result of such changes provided that:

- 7.8.1 the total number of Key Performance Indicators does not exceed twenty (20) ;
- 7.8.2 the principal purpose of the change is to reflect changes in Network Rail's business requirements and/or priorities or to reflect changing industry standards; and
- 7.8.3 there is no change to the Service Credit Cap.

8. EARLY WARNING

8.1 Without prejudice to any other provisions of this Agreement, the Supplier shall give an early warning by notifying Network Rail as soon as possible after it becomes aware of any matter which could:

- 8.1.1 increase or reduce the Charges;
- 8.1.2 adversely affect the performance of the Services;
- 8.1.3 impair Network Rail's ability to use the IT Environment or otherwise adversely affect Network Rail's operations; or
- 8.1.4 lead to a Performance Failure or likely Performance Failure.

8.2 If Network Rail considers that a matter notified is sufficiently important to require an early warning meeting, an early warning meeting shall be convened and attended by the Supplier Representative, Network Rail Representative and such other people as the Parties agree.

8.3 At an early warning meeting those who attend will co-operate in:

- 8.3.1 making and considering proposals for how the effect of each matter which has been notified as an early warning can be avoided or reduced;
- 8.3.2 seeking solutions that will bring advantage to all those who will be affected; and
- 8.3.3 deciding upon actions which they will take and who, in accordance with this Agreement, will take them.

8.4 The Supplier Representative will record the proposals considered and decisions taken at an early warning meeting and will give a copy of his record to the Network Rail Representative.

9. EQUIPMENT AND MAINTENANCE

Supplier Equipment

9.1 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites, including its off-loading, removal of all packaging and all other associated costs. Likewise on termination or expiry of this Agreement the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites, including the cost of packing, carriage and making good the Sites following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements. For

the avoidance of doubt, the Supplier shall ensure that all Supplier Equipment is (as applicable) collected, delivered, treated, recovered and disposed of in accordance with the Waste Electrical and Electronic Equipment Regulations 2013 ("**WEEE**") and that all Supplier Equipment shall be supplied inclusive of any costs or charges for compliance with the collection, delivery, treatment, recovery and environmentally sound disposal of such Supplier Equipment as required by WEEE.

- 9.2 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier.
- 9.3 Subject to any express provision of the Service Continuity Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Agreement, including the Target Performance Levels.

Maintenance

- 9.4 The Supplier shall create and maintain a rolling schedule of planned maintenance to the IT Environment (the "**Maintenance Schedule**") which shall be agreed with Network Rail. Once the Maintenance Schedule has been agreed with Network Rail Representative, the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.
- 9.5 The Supplier shall give as much notice as is reasonably practicable to the Network Rail Representative prior to carrying out any Emergency Maintenance.
- 9.6 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the IT Environment or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the IT Environment and the Services.

Supply of Goods

- 9.7 Where, as part of the Services, the Supplier is to sell goods or equipment ("**Goods**") to Network Rail:
- 9.7.1 the relevant Goods and their prices shall be as set out in Annexes 2 and 6 of the Call-Off Form;
- 9.7.2 the Supplier shall supply and, where relevant, install the Goods in accordance with the relevant specification;
- 9.7.3 the Supplier shall ensure that upon delivery the Goods:
- 9.7.3.1 are free from material defects in design, materials and workmanship;
- 9.7.3.2 are of satisfactory quality within the meaning of the Sale of Goods Act 1979;
- 9.7.3.3 conform with the relevant specification; and
- 9.7.3.4 provide the functionality set out in the Services Description and the Supplier Solution or the relevant Impact Assessment, as applicable;
- and shall remain so for twelve (12) months after either:
- (a) the date of installation of the Goods; or
- (b) where the Goods do not require installation, the date of delivery;

- 9.7.4 if following inspection or testing Network Rail considers that the Goods do not conform with the requirements of clause 9.7.3, Network Rail shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance; and
- 9.7.5 without prejudice to any other rights or remedies of Network Rail:
- 9.7.5.1 risk in the Goods shall pass to Network Rail at the time of delivery; and
- 9.7.5.2 ownership of the Goods shall pass to Network Rail at the time of payment.

SECTION C – PAYMENT AND TAXATION**10. FINANCIAL AND TAXATION MATTERS****Charges and Invoicing**

- 10.1 In consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Services, Network Rail shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 9 (Charges and Invoicing).
- 10.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under this Agreement.
- 10.3 If Network Rail fails to pay any undisputed Charges properly invoiced under this Agreement, the Supplier shall have the right to charge 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 due date up to the date of actual payment, whether before or after judgment.

VAT

- 10.4 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by Network Rail following delivery of a valid VAT invoice.
- 10.5 The Supplier shall indemnify Network Rail on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on Network Rail at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Agreement. Any amounts due under this clause 10.5 shall be paid in cleared funds by the Supplier to Network Rail not less than five (5) Working Days before the date upon which the tax or other liability is payable by Network Rail.

Set-off and Withholding

- 10.6 Network Rail may set off any amount owed by the Supplier to Network Rail against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and Network Rail.
- 10.7 If Network Rail wishes to:
- 10.7.1 set off any amount owed by the Supplier to Network Rail against any amount due to the Supplier pursuant to clause 10.6; or
 - 10.7.2 exercise its right pursuant to clause 7.2.4.2 (Performance Failures) to withhold payment of a proportion of the Service Charges, it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out Network Rail's reasons for withholding or retaining the relevant Charges.

Benchmarking

- 10.8 The Parties shall comply with the provisions of Schedule 19 (Benchmarking) in relation to the benchmarking of any or all of the Services.

SECTION D – CONTRACT GOVERNANCE**11. GOVERNANCE**

11.1 The Parties shall comply with the provisions of Schedule 7 (Governance) of the Framework Agreement in relation to the management and governance of this Agreement.

Representatives

11.2 Each Party shall have a representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.

11.3 The initial Supplier Representative shall be the person named as such in the Call-Off Form. Any change to the Supplier Representative shall be agreed in accordance with clause 14 (Supplier Personnel).

11.4 Network Rail shall notify the Supplier of the identity of the initial Network Rail Representative within five (5) Working Days of the Call-Off Effective Date. Network Rail may, by written notice to the Supplier, revoke or amend the authority of the Network Rail Representative or appoint a new Network Rail Representative.

11.5 The Network Rail Representative may delegate any of his or her actions or functions under this Agreement and may cancel his delegation and will notify the Supplier in writing of such delegation or cancellation.

11.6 The Supplier will not act on instructions given by an employee or officer of Network Rail (including any instructions to implement a change to the Services) unless the employee or officer is a Network Rail Representative or has been notified to the Supplier pursuant to clause 11.5 above.

Rights and obligations under the Framework Agreement

11.7 Subject to clause 11.9 below, the Supplier agrees to comply, and shall ensure and procure that its Sub-contractors comply, with the following rights and obligations set out in more detail in the Framework Agreement as at the Framework Agreement Effective Date:

11.7.1 clause 10 (Prevention of Fraud and Bribery) of the Framework Agreement;

11.7.2 clause 16 (Confidentiality) of the Framework Agreement;

11.7.3 clause 17 (Transparency and Freedom of Information) of the Framework Agreement;

11.7.4 clause 18 (Protection of Personal Data) of the Framework Agreement;

11.7.5 clause 19 (Publicity) of the Framework Agreement;

11.7.6 clause 25 (Guarantee) of the Framework Agreement;

11.7.7 schedule 3 (Commercially Sensitive Information) of the Framework Agreement;

11.7.8 schedule 7 (Governance) of the Framework Agreement;

11.7.9 schedule 8 (Guarantee) of the Framework Agreement;

11.7.10 schedule 10 (Financial Distress) of the Framework Agreement;

11.7.11 schedule 11 (Dispute Resolution Procedure) of the Framework Agreement

and any other relevant clauses and/or schedules which expressly or by implication are stated to confer a benefit on Network Rail under any Call-Off Contract.

- 11.8 Where the Supplier and/or its Sub-contractors breach any obligation under the Framework Agreement cited in clause 11.7 above or which expressly or by implication are stated to confer a benefit on Network Rail under any Call-Off Contract, clause 20 (Limitations on Liability) shall apply when calculating the extent of the Supplier's liability to Network Rail under this Agreement.
- 11.9 Any change to the rights and obligations set out in the clauses and/or schedules of the Framework Agreement cited in clause 11.7 above or which expressly or by implication are stated to confer a benefit on Network Rail under any Call-Off Contract shall take effect as a Change to this Agreement unless Network Rail specifies otherwise by notice in writing to the Supplier.

12. RECORDS, REPORTS, AUDITS & OPEN BOOK DATA

12.1 The Supplier shall comply with the provisions of:

12.1.1 Schedule 13 (Reports and Records Provisions) in relation to the maintenance and retention of Records; and

12.1.2 Part A of Schedule 11 (Financial Reports and Audit Rights) in relation to the maintenance of Open Book Data.

12.2 The Parties shall comply with the provisions of:

12.2.1 Part B of Schedule 11 (Financial Reports and Audit Rights) in relation to the provision of the Financial Reports; and

12.2.2 Part C of Schedule 11 (Financial Reports and Audit Rights) in relation to the exercise of the Audit Rights by Network Rail or any Audit Agents.

13. CHANGE

Change Control Procedure

13.1 Save to the extent expressly specified otherwise in clauses 28.8 and 28.9 (Framework Variation Procedure) of the Framework Agreement, any requirement for a Change shall be subject to the Change Control Procedure. Subject to clauses 28.8 and 28.9 (Framework Variation Procedure) of the Framework Agreement, no change to the Framework Agreement shall be deemed to take effect as a Change to this Agreement unless and until agreed by the Parties in accordance with this clause 13.1.

Change in Law

13.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Agreement nor be entitled to an increase in the Charges as the result of:

13.2.1 a General Change in Law; or

13.2.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Call-Off Effective Date.

13.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in clause 13.2.2), the Supplier shall:

13.3.1 notify Network Rail as soon as reasonably practicable of the likely effects of that change, including:

- 13.3.1.1 whether any Change is required to the Services, the Charges or this Agreement; and
- 13.3.1.2 whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Target Performance Levels; and
- 13.3.2 provide Network Rail with evidence:
 - 13.3.2.1 that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
 - 13.3.2.2 as to how the Specific Change in Law has affected the cost of providing the Services; and
 - 13.3.2.3 demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of clause 4.9 (Services Improvement) of the Framework Agreement, has been taken into account in amending the Charges.
- 13.4 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in clause 13.2.2) shall be implemented in accordance with the Change Control Procedure.

SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN**14. SUPPLIER PERSONNEL****14.1 The Supplier shall:**

- 14.1.1 provide in advance of any admission to Network Rail Premises a list of the names of all Supplier Personnel and prospective Supplier personnel it intends to engage in the provision of the Services or performance of the Supplier's obligations under this Agreement, and shall promptly update the list as necessary. In particular, the list shall specify the names of all Supplier Personnel requiring admission to Network Rail Premises, specifying the capacity in which they require admission and giving such other particulars as Network Rail may reasonably require;
- 14.1.2 ensure that all Supplier Personnel:
 - 14.1.2.1 are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - 14.1.2.2 are vetted in accordance with the Supplier's staff vetting procedures as amended from time to time (which shall, in any event, be of a standard that is no less strict than Good Industry Practice) and, where applicable, the security requirements set out in the Services Description and Schedule 4 (Security Management);
 - 14.1.2.3 that were employed or engaged by the Supplier prior to the Call-Off Effective Date were vetted and recruited on the basis that is equivalent to and no less strict than the Supplier's staff vetting procedures in effect at the date upon which they were employed (which shall, in any event, be of a standard that is no less strict than Good Industry Practice); and
 - 14.1.2.4 comply with all reasonable requirements of Network Rail concerning conduct at Network Rail Premises, including the security requirements as set out in Schedule 4 (Security Management);
- 14.1.3 subject to Schedule 16 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of Network Rail;
- 14.1.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Agreement shall be a Default by the Supplier;
- 14.1.5 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- 14.1.6 replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
- 14.1.7 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel;
- 14.1.8 procure that the Supplier Personnel shall vacate Network Rail Premises immediately upon the termination or expiry of this Agreement; and
- 14.1.9 procure that Supplier Personnel and all Sub-contractors shall comply with the security vetting procedures set out below:

- 14.1.9.1 Supplier Personnel that have access to Network Rail's infrastructure, premises, government classified information or computer systems shall undertake Baseline Personnel Security Standard (BPSS) pre-employment checks, as stated in the HMG Personnel Security Controls;
- 14.1.9.2 to control risk to the railway associated with government classified information (official-sensitive or above), important sites or critical equipment, certain Supplier Personnel will be required to complete additional security checks as outlined in HMG Personnel Security Controls. Roles that require additional security checks and the level to be attained will be notified to the Supplier by Network Rail;
- 14.1.9.3 the Supplier shall prevent Supplier Personnel who are unable to obtain the required security clearances from carrying out specified roles and accessing Network Rail's infrastructure, premises government classified information or computer systems; and
- 14.1.9.4 Supplier Personnel that have access to Network Rail infrastructure, premises, government classified information or computer systems are required to undergo railway security induction training. Additionally, Supplier Personnel carrying out line management or supervisory duties must undergo biennial security training. Records of training completion shall be kept by the Supplier for five years and made available to Network Rail on request. Training material will be provided by Network Rail at no additional cost to the Supplier; and

such other rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel at Network Rail Premises.

- 14.2 If Network Rail reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Agreement, it may:
 - 14.2.1 refuse admission to the relevant person(s) to Network Rail Premises; and/or
 - 14.2.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

Call-Off Key Personnel

- 14.3 The Supplier shall ensure that the Call-Off Key Personnel fulfil the Key Roles at all times during the Term. The Call-Off Form lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Call-Off Effective Date.
- 14.4 Network Rail may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Call-Off Key Personnel.
- 14.5 The Supplier shall not remove or replace any Call-Off Key Personnel (including when carrying out Exit Management) unless:
 - 14.5.1 requested to do so by Network Rail;
 - 14.5.2 the person concerned resigns, retires or dies or is on maternity leave, paternity leave or shared parental leave or long-term sick leave;
 - 14.5.3 the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or

- 14.5.4 the Supplier obtains Network Rail's prior written consent (such consent not to be unreasonably withheld or delayed).
- 14.6 The Supplier shall:
- 14.6.1 notify Network Rail promptly of the absence of any Call-Off Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
- 14.6.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
- 14.6.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Call-Off Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Call-Off Key Personnel's employment contract, this will mean at least sixty (60) Working Days' notice;
- 14.6.4 ensure that all arrangements for planned changes in Call-Off Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
- 14.6.5 ensure that any replacement for a Key Role:
- 14.6.5.1 has a level of qualifications and experience appropriate to the relevant Key Role; and
- 14.6.5.2 is fully competent to carry out the tasks assigned to the Call-Off Key Personnel whom he or she has replaced.

Employment Indemnity

- 14.7 The Parties agree that:
- 14.7.1 the Supplier shall both during and after the Term indemnify Network Rail against all Employee Liabilities that may arise as a result of any claims brought against Network Rail by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel; and
- 14.7.2 Network Rail shall both during and after the Term indemnify the Supplier against all Employee Liabilities that may arise as a result of any claims brought against the Supplier by any person where such claim arises from any act or omission of Network Rail or any of Network Rail's employees, agents, consultants and contractors.

Income Tax and National Insurance Contributions

- 14.8 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Agreement, the Supplier shall:
- 14.8.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- 14.8.2 indemnify Network Rail against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

Staff Transfer

- 14.9 The Parties agree that:
- 14.9.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers of Transferring Former Supplier Employees, Part B of Schedule 16 (Staff Transfer) shall apply and Part C of Schedule 16 (Staff Transfer) shall not apply;
 - 14.9.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 16 (Staff Transfer) shall apply and Part B of Schedule 16 (Staff Transfer) shall not apply; and
 - 14.9.3 Part D of Schedule 16 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services.

15. SUPPLY CHAIN RIGHTS AND PROTECTIONS**Appointment of Sub-contractors**

- 15.1 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:
- 15.1.1 manage any Sub-contractors in accordance with Good Industry Practice;
 - 15.1.2 comply with its obligations under this Agreement in the delivery of the Services; and
 - 15.1.3 assign, novate or otherwise transfer to Network Rail or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Agreement.
- 15.2 Prior to sub-contracting any of its obligations under this Agreement, the Supplier shall notify Network Rail in writing of:
- 15.2.1 the proposed Sub-contractor's name, registered office and company registration number;
 - 15.2.2 the scope of any Services to be provided by the proposed Sub-contractor; and
 - 15.2.3 where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of Network Rail that the proposed Sub-contract has been agreed on "arm's-length" terms.
- 15.3 If requested by Network Rail within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to clause 15.2, the Supplier shall also provide:
- 15.3.1 a copy of the proposed Sub-contract; and
 - 15.3.2 any further information reasonably requested by Network Rail.
- 15.4 Network Rail may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to clause 15.2 (or, if later, receipt of any further information requested pursuant to clause 15.3), object to the appointment of the relevant Sub-contractor if it considers that:
- 15.4.1 the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of Network Rail;
 - 15.4.2 the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and

15.4.3 the proposed Sub-contractor employs unfit persons;

in which case, the Supplier shall not proceed with the proposed appointment.

15.5 If:

15.5.1 Network Rail has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of ten (10) Working Days of receipt of:

15.5.1.1 the Supplier's notice issued pursuant to clause 15.1; and

15.5.1.2 any further information requested by Network Rail pursuant to clause 15.3; and

15.5.2 the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of Network Rail in accordance with clause 15.6 (Appointment of Key Sub-contractors),

the Supplier may proceed with the proposed appointment and, where the Sub-contract is entered into exclusively for the purpose of delivery of the Services, add that Sub-contract to a list of exclusive Sub-contract maintained for this purpose and provide a copy of the same to Network Rail upon Network Rail's request.

Appointment of Key Sub-contractors

15.6 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of Network Rail, such consent not to be unreasonably withheld or delayed. For these purposes, Network Rail may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:

15.6.1 the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of Network Rail;

15.6.2 the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or

15.6.3 the proposed Key Sub-contractor employs unfit persons;

15.7 Network Rail consents to the appointment of the Key Sub-contractors listed on the Call-Off Form.

15.8 Except where Network Rail has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:

15.8.1 provisions which will enable the Supplier to discharge its obligations under this Agreement;

15.8.2 a right under CRTPA for Network Rail to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon Network Rail;

15.8.3 a provision enabling Network Rail to enforce the Key Sub-contract as if it were the Supplier;

15.8.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to Network Rail or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by Network Rail;

15.8.5 obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Agreement in respect of:

- 15.8.5.1 data protection requirements set out in clauses 19 (Network Rail Data and Security Requirements) and 18 (Protection of Personal Data) of the Framework Agreement;
- 15.8.5.2 FOIA requirements set out in clause **Error! Reference source not found.** (Transparency and Freedom of Information) of the Framework Agreement;
- 15.8.5.3 the obligation not to embarrass Network Rail or otherwise bring Network Rail into disrepute set out in clause 5.5.13 (Services);
- 15.8.5.4 the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
- 15.8.5.5 the conduct of Audits set out in Part C of Schedule 11 (Financial Reports and Audit Rights);
- 15.8.6 provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on Network Rail under clauses 28.1.1 (Termination by Network Rail) and 29.4 (Payments by Network Rail) and Schedule 10 (Payments on Termination) of this Agreement;
- 15.8.7 a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of Network Rail;
- 15.8.8 a provision enabling the Supplier or Network Rail to appoint a Remedial Adviser on substantially the same terms as are set out in clause 24 (Remedial Adviser);
- 15.8.9 a provision enabling the Supplier, Network Rail or any other person on behalf of Network Rail to step-in on substantially the same terms as are set out in clause 25 (Step-In Rights);
- 15.8.10 a provision requiring the Key Sub-contractor to participate in, and if required by Network Rail in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure;
- 15.8.11 a provision requiring the Key Sub-contractor to:
 - 15.8.11.1 promptly notify the Supplier and Network Rail in writing of any of the following of which it is, or ought to be, aware:
 - (a) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
 - (b) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor, and in any event, provide such notification within ten (10) Working Days of the date on which the Key Sub-contractor first becomes aware of such); and
 - 15.8.11.2 co-operate with the Supplier and Network Rail in order to give full effect to the provisions of Schedule 10 (Financial Distress) of the Framework Agreement, including meeting with the Supplier and Network Rail to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Service Continuity Plan, and providing the information

specified at paragraph 5.3.2 of Schedule 10 (*Financial Distress*) of the Framework Agreement.

- 15.8.12 provisions which require the Key Sub-contractor to notify Network Rail promptly in writing of any material non-payment or late payment of any sums properly due to the Key Sub-contractor from the Supplier under the Key Sub-contract, under a specified valid invoice and not subject to a genuine dispute;
 - 15.8.13 a provision obliging the Key Sub-contractor to test its own service continuity plan on a regular basis and in any event not less than once in every Contract Year; and
 - 15.8.14 a provision requiring the Key Sub-contractor to have in place an appropriate exit and migration plan which enables it to comply (and will enable the Supplier to comply) with the requirements of this Agreement, to put such plan into effect on any termination (however arising) or expiry of the Key Sub-contract, and otherwise to ensure that any such termination or expiry will not affect the continuity of the Services.
- 15.9 The Supplier shall not terminate or materially amend the terms of any Key Sub-contract without Network Rail's prior written consent, which shall not be unreasonably withheld or delayed.

Supply chain protection

- 15.10 The Supplier shall ensure that all Sub-contracts (which in this sub-clause means any contract in the Supplier's supply chain entered into after the Call-Off Effective Date made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement, and Sub-contractor shall be construed accordingly) contain provisions:
- 15.10.1 giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour Law;
 - 15.10.2 requiring the Supplier or other party receiving goods or services under the Sub-contract to consider and verify invoices under that Sub-contract in a timely fashion;
 - 15.10.3 stating that if the Supplier or other party fails to consider and verify an invoice in accordance with clause 15.10.2, the invoice shall be regarded as valid and undisputed for the purpose of clause 15.10.4 after a reasonable time has passed;
 - 15.10.4 requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding twenty eight (28) days from verifying that the invoice is valid and undisputed;
 - 15.10.5 giving Network Rail a right for to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
 - 15.10.6 requiring the Sub-contractor to include a clause to the same effect as this clause 15.10 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of the Sub-contract.
- 15.11 The Supplier shall use reasonable endeavours to ensure that all Sub-contracts (which in this sub-clause means any contract in the Supplier's supply chain entered into before the Call-Off Effective Date made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement) contain provisions:
- 15.11.1 giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour Law;

- 15.11.2 requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
 - 15.11.3 that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 15.11.2, the invoice shall be regarded as valid and undisputed for the purpose of Clause 15.11.4 after a reasonable time has passed;
 - 15.11.4 requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding twenty-eight (28) days of verifying that the invoice is valid and undisputed;
 - 15.11.5 giving Network Rail a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
 - 15.11.6 requiring the Sub-contractor to include a clause to the same effect as this Clause 15.11 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement.
- 15.12 The Supplier shall:
- 15.12.1 pay any undisputed sums which are due from it to a Sub-contractor within twenty-eight (28) days of verifying that the invoice is valid and undisputed;
 - 15.12.2 include within the Balanced Scorecard Report produced by it pursuant to Schedule 2 (Performance Levels) a summary of its compliance with clause 15.12.1, such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.
- 15.13 Without prejudice to clause 15.12.1, the Supplier shall:
- 15.13.1 pay any sums which are due from it to any Sub-contractor or Unconnected Sub-contractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:
 - 15.13.1.1 the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or
 - 15.13.1.2 the date that falls sixty (60) days after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and
 - 15.13.2 include within the Balanced Scorecard Report produced by it pursuant to Schedule 2 (Performance Levels) a summary of its compliance with clause 15.13.1, such data to be certified every six months by a director of the Supplier as being accurate and not misleading.
- 15.14 If any Balanced Scorecard Report shows that in either of the last two six month periods the Supplier failed to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt, the Supplier shall upload to the Virtual Library within fifteen (15) Working Days of submission of the latest Balanced Scorecard Report an action plan (the "**Action Plan**") for improvement. The Action Plan shall include, but not be limited to, the following:
- 15.14.1 identification of the primary causes of failure to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt;
 - 15.14.2 actions to address each of the causes set out in clause 15.14.1 15.14.1; and

- 15.14.3 mechanism for and commitment to regular reporting on progress to the Board.
- 15.15 The Action Plan shall be certificated by a director of the Supplier and the Action Plan or a summary of the Action Plan published on the Supplier's website within ten (10) Working Days of the date on which the Action Plan is uploaded to the Virtual Library.
- 15.16 Where the Supplier fails to pay any sums due to any Sub-contractor or Unconnected Sub-contractor in accordance with the terms set out in the relevant Sub-contract or Unconnected Sub-contract, the Action Plan shall include details of the steps the Supplier will take to address this.
- 15.17 The Supplier shall comply with the Action Plan or any similar action plan connected to the payment of Sub-contractors or Unconnected Sub-contractors which is required to be submitted to Network Rail as part of the procurement process and such action plan shall be included as part of the Supplier Solution (to the extent it is not already included).
- 15.18 Notwithstanding any provision of clauses 16 (Confidentiality) and 19 (Publicity) of the Framework Agreement, if the Supplier notifies Network Rail (whether in a Balanced Scorecard Report or otherwise) that the Supplier has failed to pay a Sub-contractor's undisputed invoice within twenty eight (28) days of receipt or that it has failed to pay 95% or above of its Sub-Contractors or Unconnected Sub-contractors within sixty (60) days after the day on which the Supplier receives an invoice or otherwise has notice of an amount for payment, or Network Rail otherwise discovers the same, Network Rail shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

Termination of Sub-contracts

- 15.19 Network Rail may require the Supplier to terminate:
- 15.19.1 a Sub-contract where:
- 15.19.1.1 the acts or omissions of the relevant Sub-contractor have caused or materially contributed to Network Rail's right of termination pursuant to clause 28.1.2 (Termination by Network Rail);
 - 15.19.1.2 the relevant Sub-contractor or any of its Affiliates have embarrassed Network Rail or otherwise brought Network Rail into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in Network Rail, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;
 - 15.19.1.3 the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and
- 15.19.2 a Key Sub-contract where there is a change of Control of the relevant Key Sub-contractor, unless:
- 15.19.2.1 Network Rail has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
 - 15.19.2.2 Network Rail has not served its notice of objection within six (6) months of the later of the date the change of Control took place or the date on which Network Rail was given notice of the change of Control.

Competitive Terms

- 15.20 If Network Rail is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier or the Supplier Personnel in the supply of the Services, then Network Rail may require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by Network Rail in respect of the relevant item.
- 15.21 If Network Rail exercises its option pursuant to clause 15.20, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.

Retention of Legal Obligations

- 15.22 Notwithstanding the Supplier's right to sub-contract pursuant to this clause 15, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. In respect of any element of the Services delivered by Supplier Personnel and/or which are Sub-contracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing under this Agreement, shall include an obligation on the Supplier to procure that the Supplier Personnel and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those elements of the Services.
- 15.23 Not used.
- 15.24 Not used:
- 15.25 Not used.
- 15.26 Not used.
- 15.27 Not used.

Data processing supply chain

- 15.28 The provisions of this clause 15 are subject to clause 18 (Protection of Personal Data) of the Framework Agreement in respect of any sub-contracts relating to data processing.

Supply Chain Transparency Information

- 15.29 The Supplier shall where requested by Network Rail populate Network Rail's Supplier Intelligence Database (SID), or other similar data capture systems. SID is a database for which internal supplier leads and external suppliers provide information with regards to usage of SMEs, supplier information, capacity & spend based on forecasts, contract details, lower tier supply chain usage, chain of custody details, diversity & Inclusion information, number of apprenticeships, business continuity management, background checks, assurance of completion of Pre-Qualification Questionnaire (PQQ) and compliance with Modern Slavery Act 2015, insurance policies in place, health & safety policies/ processes and information security & data protection. SID helps by gathering information about a range of topics thus helping to minimise the ad hoc requests from multiple sources across Network Rail's business. Providing the requested information will support compliance with the Government's supply chain data requests, foster resilience and provide insight to collectively and effectively protect multi-tiered supplier network.
- 15.30 When requested by Network Rail information the Supplier shall review and update its SID data on a six (6) monthly basis to provide enhanced visibility and understanding of direct suppliers as well as their Sub-contractors and supply chain requirements.
- 15.31 Any queries relating to SID can be directed to:
SupplyChainRiskManagement@networkrail.co.uk.

SECTION F – INTELLECTUAL PROPERTY

16. INTELLECTUAL PROPERTY RIGHTS

16.1 The Parties agree that the terms set out in Schedule 20 (Intellectual Property Rights)] shall apply to this Agreement.

17. ESCROW

17.1 The Supplier shall, and shall procure that each owner of the Deposited Software shall, not less than ten (10) Working Days following an Authority to Proceed or such other periods as Network Rail may require deposit the Source Code of such part of the Software that consists of Deposited Software in escrow with Software Escrow Services (“SES”) on terms in substantially in the form set out in Schedule 6 (Escrow Terms). The Supplier shall ensure that (and shall procure that each owner of the Deposited Software shall ensure that) the deposited version of the Source Code is the current version of the Deposited Software and that the deposited version is kept up-to-date as the Deposited Software is modified or upgraded. The Supplier shall pay the initial and ongoing storage fees under the escrow agreement and Network Rail shall pay the release fees.

17.2 Where the Supplier is unable to procure compliance with the provisions of clause 17.1 in respect of any Third Party Software, it shall provide Network Rail with written evidence of its inability to comply with these provisions and shall agree with Network Rail a suitable alternative to escrow that affords Network Rail the nearest equivalent protection. The Supplier shall be excused from its obligations under clause 17.1 only to the extent that the Parties have agreed on a suitable alternative.

17.3 In circumstances where Network Rail obtains the release of the Source Code from escrow, the Supplier hereby grants to Network Rail a perpetual, assignable, royalty-free and non-exclusive licence to Use and support the Source Code version of the Deposited Software to the extent necessary for the receipt of the Services or any Replacement Services or Network Rail’s normal business undertakings.

18. IPRs INDEMNITY

18.1 The Supplier shall at all times, during and after the Term, on written demand indemnify Network Rail and each other Indemnified Person, and keep Network Rail and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.

18.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:

18.2.1 procure for Network Rail or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or

18.2.2 replace or modify the relevant item with non-infringing substitutes provided that:

18.2.2.1 the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;

18.2.2.2 the replaced or modified item does not have an adverse effect on any other services or the IT Environment;

18.2.2.3 there is no additional cost to Network Rail or relevant Indemnified Person (as the case may be); and

18.2.2.4 the terms and conditions of this Agreement shall apply to the replaced or modified Services.

- 18.3 If the Supplier elects to procure a licence in accordance with clause 18.2.1 or to modify or replace an item pursuant to clause 18.2.2, but this has not avoided or resolved the IPRs Claim, then:
- 18.3.1 Network Rail may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; and
 - 18.3.2 without prejudice to the indemnity set out in clause 18.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.
19. **NETWORK RAIL DATA AND SECURITY REQUIREMENTS**
- 19.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Network Rail Data.
- 19.2 The Supplier shall not store, copy, disclose, or use the Network Rail Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by Network Rail.
- 19.3 To the extent that Network Rail Data is held and/or processed by the Supplier, the Supplier shall supply that Network Rail Data to Network Rail as requested by Network Rail in the format specified in the Services Description.
- 19.4 The Supplier shall preserve the integrity of Network Rail Data and prevent the corruption or loss of Network Rail Data at all times that the relevant Network Rail Data is under its control or the control of any Sub-contractor.
- 19.5 The Supplier shall perform secure back-ups of all Network Rail Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Service Continuity Plan. The Supplier shall ensure that such back-ups are available to Network Rail (or to such other person as Network Rail may direct) at all times upon request and are delivered to Network Rail at no less than six (6) monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 19.6 The Supplier shall ensure that any system on which the Supplier holds any Network Rail Data, including back-up data, is a secure system that complies with the Security Requirements.
- 19.7 If Network Rail Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, Network Rail may:
- 19.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of Network Rail Data to the extent and in accordance with the requirements specified in Schedule 15 (Service Continuity Plan and Corporate Resolution Planning) and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of Network Rail's notice; and/or
 - 19.7.2 itself restore or procure the restoration of Network Rail Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 15 (Service Continuity Plan and Corporate Resolution Planning).
- 19.8 If at any time the Supplier suspects or has reason to believe that Network Rail Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify Network Rail immediately and inform Network Rail of the remedial action the Supplier proposes to take.
- 19.9 The Supplier shall comply with the requirements of Schedule 4 (Security Management).

- 19.10 Network Rail shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.
- 19.11 If the Supplier believes that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.
- 19.12 At any time prior to or during the Term, the Supplier acknowledges and agrees that it may be subject to assessment by Network Rail of its organisational security arrangements in any relevant jurisdiction being used to process any Network Rail Data.

Information Security

- 19.13 The Supplier shall comply with Network Rail's Security Principles for Supplier Selection and Management Standard (as notified to it by Network Rail) if connecting into Network Rail's network or if it has access to Network Rail's information classified as Official Sensitive or above on the Call-Off Form.

SECTION G – LIABILITY, INDEMNITIES AND INSURANCE**20. LIMITATIONS ON LIABILITY****Unlimited liability**

20.1 Neither Party limits its liability for:

20.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);

20.1.2 fraud or fraudulent misrepresentation by it or its employees;

20.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

20.1.4 any liability to the extent it cannot be limited or excluded by Law.

20.2 The Supplier's liability in respect of the indemnities in clause 10.5 (VAT), clause 14.7 (Employment Indemnity), clause 14.8 (Income Tax and National Insurance Contributions), clause 18 (IPRs Indemnity) and Schedule 16 (Staff Transfer) shall be unlimited.

20.3 Network Rail's liability in respect of the indemnities in clause 14.7 (Employment Indemnity), and Schedule 16 (Staff Transfer) shall be unlimited.

Financial and other limits

20.4 Subject to clauses 20.1 and 20.2 (Unlimited Liability) and clauses 20.8 and 20.9 (Consequential losses):

20.4.1 the Supplier's aggregate liability in respect of loss of or damage to Network Rail Premises or other property or assets of Network Rail (including technical infrastructure, assets or equipment but excluding any loss or damage to Network Rail's Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed £10 million;

20.4.2 the Supplier's aggregate liability in respect of:

20.4.2.1 loss or damage to Network Rail Data;

20.4.2.2 Losses incurred by Network Rail due to breach of the Data Protection Legislation

that is caused by Default of the Supplier occurring in each and any Contract Year shall in no event exceed £20 million;

20.4.3 the Supplier's aggregate liability in respect of all:

20.4.3.1 Service Credits; and

20.4.3.2 Compensation for Unacceptable KPI Failure,

incurred in any rolling period of twelve (12) months shall be subject to the Service Credit Cap; and

20.4.4 the Supplier's aggregate liability in respect of all other Losses incurred by Network Rail under or in connection with this Agreement as a result of Defaults by the Supplier shall in no event exceed:

- 20.4.4.1 in relation to Defaults occurring in the first Contract Year, an amount equal to 150% of the Estimated Year 1 Charges;
- 20.4.4.2 in relation to Defaults occurring during any subsequent Contract Year, an amount equal to 150% of the Charges paid and/or due to be paid to the Supplier under this Agreement in the Contract Year immediately preceding the occurrence of the Default; and
- 20.4.4.3 in relation to Defaults occurring after the end of the Term, an amount equal to 150% of the Charges paid and/or due to be paid to the Supplier in the twelve (12) month period immediately prior to the last day of the Term,

provided that where any Losses referred to in clause 20.4.4 have been incurred by Network Rail as a result of the Supplier's abandonment of this Agreement or the Supplier's wilful default, wilful breach of a fundamental term of this Agreement or wilful repudiatory breach of this Agreement, the references in such clause to 150% shall be deemed to be references to 200%.

- 20.5 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under clause 20.4.4.
- 20.6 Subject to clauses 20.1 and 20.3 (Unlimited Liability) and clause 20.8 (Consequential Losses) and without prejudice to Network Rail's obligation to pay the Charges as and when they fall due for payment:
 - 20.6.1 Network Rail's total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of early termination of this Agreement by Network Rail pursuant to clause 28.1.1 (Termination by Network Rail) or by the Supplier pursuant to clause 28.3.1 (Termination by the Supplier) shall in no event exceed the following amounts set out in the Call-Off Form in relation to:
 - 20.6.1.1 the Unrecovered Payment;
 - 20.6.1.2 the Breakage Costs Payment; and
 - 20.6.1.3 the Compensation Payment; and
 - 20.6.2 Network Rail's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of Defaults of Network Rail shall in no event exceed an amount equal to fifty per cent (50%) of the total Charges paid, due or which would have been payable during the Term, as set out in the Financial Model.
- 20.7 For the avoidance of doubt:
 - 20.7.1 any liability of a party which falls within clause 20.1 of the Supplier which falls within clause 20.2 or of Network Rail which falls within clause 20.3 will not be taken into account in assessing whether the financial limits in clauses 20.4 and/or 20.6 (as applicable) have been reached;
 - 20.7.2 the financial limits in clauses 20.4.1, 20.4.2 and 20.4.4 are separate not cumulative and any liability of the Supplier which falls within one of those clauses shall not be taken into account in assessing whether the financial limits in the other such clauses have been reached; and
 - 20.7.3 the financial limits in clause 20.6.1.1, 20.6.1.2, 20.6.1.3 and 20.6.2 are separate not cumulative and any liability of Network Rail which falls within one sub-clause in clause 20.6 shall not be taken into account in assessing whether the financial limits in any of the other sub-clauses have been reached.

Consequential Losses

- 20.8 Subject to clauses 20.1, 20.2 and 20.3 (Unlimited Liability) and clause 20.9, neither Party shall be liable to the other Party for:
- 20.8.1 any indirect, special or consequential Loss; or
 - 20.8.2 any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 20.9 Notwithstanding clause 20.8 but subject to clause 20.4, the Supplier acknowledges that Network Rail may, amongst other things, recover from the Supplier the following Losses incurred by Network Rail to the extent that they arise as a result of a Default by the Supplier:
- 20.9.1 any additional operational and/or administrative costs and expenses incurred by Network Rail, including costs relating to time spent by or on behalf of Network Rail in dealing with the consequences of the Default;
 - 20.9.2 any wasted expenditure or charges;
 - 20.9.3 the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Agreement;
 - 20.9.4 any compensation or interest paid to a third party by Network Rail;
 - 20.9.5 any fine or penalty incurred by Network Rail pursuant to Law and any costs incurred by Network Rail in defending any proceedings which result in such fine or penalty; and
 - 20.9.6 any anticipated savings identified in Schedule 12 (Anticipated Savings).

Conduct of indemnity claims

- 20.10 Where under this Agreement one Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 9 (Conduct of Claims) of the Framework Agreement in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

Mitigation

- 20.11 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Agreement.

21. INSURANCE

- 21.1 The Supplier shall comply with the provisions of Schedule 12 (Insurance Requirements) of the Framework Agreement in relation to obtaining and maintaining insurance.
- 21.2 The Supplier shall comply with any additional insurance requirements of Network Rail as set out in the Call-Off Form.

SECTION H – REMEDIES AND RELIEF

22. RECTIFICATION PLAN PROCESS

22.1 In the event that:

22.1.1 there is, or is reasonably likely to be, a Delay; and/or

22.1.2 in any Service Period there has been:

22.1.2.1 a Material KPI Failure; and/or

22.1.2.2 a Material PI Failure; and/or

22.1.3 the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),

(each a “**Notifiable Default**”), the Supplier shall notify Network Rail of the Notifiable Default as soon as practicable but in any event within three (3) Working Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default and, unless the Notifiable Default also constitutes a Rectification Plan Failure or other Supplier Termination Event, Network Rail may not terminate this Agreement in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process.

Notification

22.2 If:

22.2.1 the Supplier notifies Network Rail pursuant to clause 22.1 that a Notifiable Default has occurred; or

22.2.2 Network Rail notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

then, unless the Notifiable Default also constitutes a Supplier Termination Event and Network Rail serves a Termination Notice, the Supplier shall comply with the Rectification Plan Process.

22.3 The “**Rectification Plan Process**” shall be as set out in clauses 22.4 (Submission of the draft Rectification Plan) to 22.9 (Agreement of the Rectification Plan).

Submission of the draft Rectification Plan

22.4 The Supplier shall submit a draft Rectification Plan to Network Rail for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to clause 22.2 (Notification). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

22.5 The draft Rectification Plan shall set out:

22.5.1 full details of the Notifiable Default that has occurred, including a root cause analysis;

22.5.2 the actual or anticipated effect of the Notifiable Default; and

- 22.5.3 the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).
- 22.6 The Supplier shall promptly provide to Network Rail any further documentation that Network Rail reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 6 of Schedule 11 (Dispute Resolution Procedure) of the Framework Agreement.

Agreement of the Rectification Plan

- 22.7 Network Rail may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- 22.7.1 is insufficiently detailed to be capable of proper evaluation;
 - 22.7.2 will take too long to complete;
 - 22.7.3 will not prevent reoccurrence of the Notifiable Default; and/or
 - 22.7.4 will rectify the Notifiable Default but in a manner which is unacceptable to Network Rail.
- 22.8 Network Rail shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If Network Rail rejects the draft Rectification Plan, Network Rail shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to Network Rail for review within five (5) Working Days (or such other period as agreed between the Parties) of Network Rail's notice rejecting the first draft.
- 22.9 If Network Rail consents to the Rectification Plan:
- 22.9.1 the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
 - 22.9.2 Network Rail may no longer terminate this Agreement in whole or in part on the grounds of the relevant Notifiable Default,
- save in the event of a Rectification Plan Failure or other Supplier Termination Event.

23. DELAY PAYMENTS

- 23.1 If a Key Milestone has not been Achieved by its relevant Milestone Date, the provisions of Paragraph 1 of Part C of Schedule 9 (Charges and Invoicing) shall apply in relation to the payment of Delay Payments.
- 23.2 Delay Payments shall be Network Rail's exclusive financial remedy for the Supplier's failure to Achieve a Key Milestone by its Milestone Date except where:
- 23.2.1 Network Rail is entitled to or does terminate this Agreement pursuant to clause 28.1.2 (Termination by Network Rail);
 - 23.2.2 the Delay exceeds the Delay Deduction Period; or
 - 23.2.3 no Delay Payments are specified in the Call-Off Form or the Delay Payment is £0.

24. **REMEDIAL ADVISER**

24.1 If:

- 24.1.1 any of the Intervention Trigger Events occur; or
- 24.1.2 Network Rail reasonably believes that any of the Intervention Trigger Events are likely to occur,

(each an “**Intervention Cause**”), Network Rail may give notice to the Supplier (an “**Intervention Notice**”) giving reasonable details of the Intervention Cause and requiring:
 - 24.1.2.1 a meeting between the Network Rail Representative and the Supplier Representative to discuss the Intervention Cause; and/or
 - 24.1.2.2 the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this clause 24.

For the avoidance of doubt, if the Intervention Cause is also a Supplier Termination Event, Network Rail has no obligation to exercise its rights under this clause 24.1 prior to or instead of exercising its right to terminate this Agreement.

24.2 If Network Rail gives notice that it requires the appointment of a Remedial Adviser:

- 24.2.1 the Remedial Adviser shall be:
 - 24.2.1.1 a person selected by the Supplier and approved by Network Rail; or
 - 24.2.1.2 if none of the persons selected by the Supplier have been approved by Network Rail (or no person has been selected by the Supplier) within ten (10) Working Days following the date on which the Intervention Notice is given, a person identified by Network Rail;
- 24.2.2 the terms of engagement and start date agreed with the Remedial Adviser must be approved by Network Rail; and
- 24.2.3 any right of Network Rail to terminate this Agreement pursuant to clause 28.1.2 (Termination by Network Rail) for the occurrence of that Intervention Cause shall be suspended for sixty (60) Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties)(the “**Intervention Period**”).

24.3 The Remedial Adviser’s overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this objective (but without diminishing the Supplier’s responsibilities under this Agreement), the Parties agree that the Remedial Adviser may undertake any one (1) or more of the following actions:

- 24.3.1 observe the conduct of and work alongside the Supplier Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;
- 24.3.2 gather any information the Remedial Adviser considers relevant in the furtherance of its objective;
- 24.3.3 write reports and provide information to Network Rail in connection with the steps being taken by the Supplier to remedy the Intervention Cause;

- 24.3.4 make recommendations to Network Rail and/or the Supplier as to how the Intervention Cause might be mitigated or avoided in the future; and/or
 - 24.3.5 take any other steps that Network Rail and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.
- 24.4 The Supplier shall:
- 24.4.1 work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
 - 24.4.2 ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;
 - 24.4.3 submit to such monitoring as Network Rail and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;
 - 24.4.4 implement any reasonable recommendations made by the Remedial Adviser that have been approved by Network Rail within the timescales given by the Remedial Adviser; and
 - 24.4.5 not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of Network Rail (such consent not to be unreasonably withheld).
- 24.5 The Supplier shall be responsible for:
- 24.5.1 the costs of appointing, and the fees charged by, the Remedial Adviser; and
 - 24.5.2 its own costs in connection with any action required by Network Rail and/or the Remedial Adviser pursuant to this clause 24.
- 24.6 If:
- 24.6.1 the Supplier:
 - 24.6.1.1 fails to perform any of the steps required by Network Rail in an Intervention Notice; and/or
 - 24.6.1.2 is in Default of any of its obligations under clause 24.4; and/or
 - 24.6.2 the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,

(each a “**Remedial Adviser Failure**”), Network Rail shall be entitled to terminate this Agreement pursuant to clause 28.1.2 (Termination by Network Rail).

25. **STEP-IN RIGHTS**

- 25.1 On the occurrence of a Step-In Trigger Event, Network Rail may serve notice on the Supplier (a “**Step-In Notice**”) that it will be taking action under this clause 25 (Step-In Rights), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to clause 16 (Confidentiality) of the Framework Agreement). The Step-In Notice shall set out the following:
- 25.1.1 the action Network Rail wishes to take and in particular the Services that it wishes to control (or appoint a third party to control) (the “**Required Action**”);

- 25.1.2 the Step-In Trigger Event that has occurred and whether Network Rail believes that the Required Action is due to the Supplier's Default;
 - 25.1.3 the date on which it wishes to commence the Required Action;
 - 25.1.4 the time period which it believes will be necessary for the Required Action;
 - 25.1.5 whether Network Rail will require access to the Supplier's premises and/or the Sites; and
 - 25.1.6 to the extent practicable, the impact that Network Rail anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.
- 25.2 Following service of a Step-In Notice, Network Rail shall:
- 25.2.1 take the Required Action, or procure that a third party takes the action, set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
 - 25.2.2 be cognisant of any objections raised by the Supplier in respect of the appointment of a third party, though notwithstanding the foregoing, Network Rail shall be free to take the Required Action or any other action permitted by clause 25.2.1 at its sole discretion;
 - 25.2.3 keep records of the Required Action taken and provide information about the Required Action to the Supplier;
 - 25.2.4 co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which Network Rail is not assuming control; and
 - 25.2.5 act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of Network Rail's rights under this clause 25.
- 25.3 For so long as and to the extent that the Required Action is continuing, then:
- 25.3.1 the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
 - 25.3.2 no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of clause 25.4 shall apply to Deductions from Charges in respect of other Services;
 - 25.3.3 Network Rail shall pay to the Supplier the Charges after subtracting any applicable Deductions and Network Rail's costs of taking the Required Action;
 - 25.3.4 the Supplier shall cooperate fully with Network Rail and any third party appointed by Network Rail under clause 25.2.1 to facilitate the steps taken;
 - 25.3.5 the Supplier shall grant and procure that any Sub-contractor or relevant third party grants such licences and permissions as are reasonably required provided that these result in no additional cost to either Network Rail or the Supplier; and
 - 25.3.6 the Supplier shall afford (and procure that its Sub-contractors afford as applicable) to Network Rail such cooperation, access to and use of (as applicable):
 - 25.3.6.1 such equipment, goods, services, premises, personnel, documents, information and other items as are reasonably required to provide the Services;

- 25.3.6.2 the Supplier's Intellectual Property Rights used in relation to the Services (excluding any source code); and
 - 25.3.6.3 premises, equipment, personnel, documents, information or other items as are reasonably required.
- 25.4 If the Supplier demonstrates to the reasonable satisfaction of Network Rail that the Required Action has resulted in:
- 25.4.1 the degradation of any Services not subject to the Required Action; or
 - 25.4.2 the non-Achievement of a Milestone,
- beyond that which would have been the case had Network Rail not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges.
- 25.5 Before ceasing to exercise its step in rights under this clause 25 Network Rail shall deliver a written notice to the Supplier (a "**Step-Out Notice**"), specifying:
- 25.5.1 the Required Action it has actually taken; and
 - 25.5.2 the date on which Network Rail plans to end the Required Action (the "**Step-Out Date**") subject to Network Rail being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with clause 25.6.
- 25.6 The Supplier shall, following receipt of a Step-Out Notice and not less than twenty (20) Working Days prior to the Step-Out Date, develop for Network Rail's approval a draft plan (a "**Step-Out Plan**") relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.
- 25.7 If Network Rail does not approve the draft Step-Out Plan, Network Rail shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to Network Rail for Network Rail's approval. Network Rail shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
- 25.8 The Supplier shall bear its own costs in connection with any step-in by Network Rail under this clause 25, provided that Network Rail shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by Network Rail under:
- 25.8.1 limbs (c) or (d) of the definition of a Step-In Trigger Event; or
 - 25.8.2 limbs (e), (f) and (g) of the definition of a Step-In Trigger Event (insofar as the primary cause of Network Rail serving the Step-In Notice is identified as not being the result of the Supplier's Default).
26. **NETWORK RAIL CAUSE**
- 26.1 Notwithstanding any other provision of this Agreement, if the Supplier has failed to:
- 26.1.1 Achieve a Milestone by its Milestone Date;
 - 26.1.2 provide the Operational Services in accordance with the Target Performance Levels; and/or
 - 26.1.3 comply with its obligations under this Agreement,
- (each a "**Supplier Non-Performance**"),

and can demonstrate that the Supplier Non-Performance would not have occurred but for an Network Rail Cause, then (subject to the Supplier fulfilling its obligations in this clause 26):

- 26.1.3.1 the Supplier shall not be treated as being in breach of this Agreement to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by Network Rail Cause;
- 26.1.3.2 Network Rail shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:
 - (a) to terminate this Agreement pursuant to clause 28.1.2 (Termination by Network Rail); or
 - (b) to take action pursuant clauses 24 (Remedial Adviser) or 25 (Step-In);
- 26.1.3.3 where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
 - (a) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by Network Rail Cause;
 - (b) if Network Rail, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from Network Rail Cause;
 - (c) if the Milestone is a Key Milestone, the Supplier shall have no liability to pay any Delay Payments associated with the Key Milestone to the extent that the Supplier can demonstrate that such failure was caused by Network Rail Cause; and
 - (d) the Supplier shall be entitled to claim compensation subject to and in accordance with the principles set out in Paragraph 2 of Part C of Schedule 9 (Charges and Invoicing); and/or
- 26.1.3.4 where the Supplier Non-Performance constitutes a Performance Failure:
 - (a) the Supplier shall not be liable to accrue Service Credits;
 - (b) Network Rail shall not be entitled to withhold any of the Service Charges pursuant to clause 7.2.4.2 (Performance Failures);
 - (c) Network Rail shall not be entitled to withhold and retain any Compensation for Unacceptable KPI Failure pursuant to clause 7.4.1 (Unacceptable KPI Failure); and
 - (d) the Supplier shall be entitled to invoice for the Service Charges for the relevant Operational Services affected by the Network Rail Cause,

in each case, to the extent that the Supplier can demonstrate that the Performance Failure was caused by Network Rail Cause.

- 26.2 In order to claim any of the rights and/or relief referred to in clause 26.1, the Supplier shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware (or from when it should have been aware) that an Network Rail Cause has caused, or

is reasonably likely to cause, a Supplier Non-Performance, give Network Rail notice (a “**Relief Notice**”) setting out details of:

- 26.2.1 the Supplier Non-Performance;
 - 26.2.2 the Network Rail Cause (including the specific Network Rail Responsibility alleged to have been breached by Network Rail and why that breach is material) and its effect, or likely effect, on the Supplier’s ability to meet its obligations under this Agreement and details of the causal link between such effect and the Network Rail Cause;
 - 26.2.3 any steps which Network Rail can take to eliminate or mitigate the consequences and impact of such Network Rail Cause; and
 - 26.2.4 the relief and/or compensation claimed by the Supplier.
- 26.3 Following the receipt of a Relief Notice, Network Rail shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Network Rail Cause and whether it agrees with the Supplier’s assessment set out in the Relief Notice as to the effect of the relevant Network Rail Cause and its entitlement to relief and/or compensation, consulting with the Supplier where necessary.
- 26.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Network Rail Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.
- 26.5 Without prejudice to clause 5.10 (Continuing obligation to provide the Services), if a Dispute arises as to:
- 26.5.1 whether a Supplier Non-Performance would not have occurred but for an Network Rail Cause; and/or
 - 26.5.2 the nature and/or extent of the relief and/or compensation claimed by the Supplier,
- either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.
- 26.6 Any Change that is required to the Implementation Plan or to the Charges pursuant to this clause 26 shall be implemented in accordance with the Change Control Procedure.
27. **FORCE MAJEURE**
- 27.1 Subject to the remaining provisions of this clause 27 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 15 (Service Continuity Plan and Corporate Resolution Planning)), a Party may claim relief under this clause 27 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 27.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 27.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this clause 27 to the extent that consequences of the relevant Force Majeure Event:

- 27.3.1 are capable of being mitigated, but the Supplier has failed to do so;
 - 27.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement; or
 - 27.3.3 are the result of the Supplier's failure to comply with its Service Continuity Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the Service Continuity Plan).
- 27.4 Subject to clause 27.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 27.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 27.6 Where, as a result of a Force Majeure Event:
- 27.6.1 an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:
 - 27.6.1.1 the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to clause 28.1.3 (Termination by Network Rail) or clause 28.3.2 (Termination by the Supplier); and
 - 27.6.1.2 neither Party shall be liable for any Default arising as a result of such failure;
 - 27.6.2 the Supplier fails to perform its obligations in accordance with this Agreement:
 - 27.6.2.1 Network Rail shall not be entitled:
 - (a) during the continuance of the Force Majeure Event to exercise its rights under clause 24 (Remedial Adviser) and/or clause 25 (Step-In Rights) as a result of such failure;
 - (b) to receive Delay Payments pursuant to clause 23 (Delay Payments) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
 - (c) to receive Service Credits, to withhold any of the Service Charges pursuant to clause 7.2.4.2 (Performance Failures) or withhold and retain any of the Service Charges as compensation pursuant to clause 7.4.1 (Unacceptable KPI Failure) to the extent that a Performance Failure has been caused by the Force Majeure Event; and
 - 27.6.2.2 the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.

- 27.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.
- 27.8 Relief from liability for the Affected Party under this clause 27 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under clause 27.7.

SECTION I – TERMINATION AND EXIT MANAGEMENT

28. TERMINATION RIGHTS

Termination by Network Rail

28.1 Network Rail may terminate this Agreement (or part thereof) by issuing a Termination Notice to the Supplier:

- 28.1.1 for convenience at any time;
- 28.1.2 if a Supplier Termination Event occurs;
- 28.1.3 if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or
- 28.1.4 if the Agreement has been amended to the extent that the Public Contracts Regulations or Utilities Contracts Regulations (as applicable) require a new procurement procedure,

and this Agreement shall terminate on the date specified in the Termination Notice.

28.2 Where Network Rail:

- 28.2.1 is terminating this Agreement under clause 28.1.2 due to the occurrence of either limb (b) and/or (i) and/or (j) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
- 28.2.2 wishes to terminate this Agreement under clause 28.1.1 it may, prior to or instead of terminating the whole of the Agreement, serve a Termination Notice requiring the partial termination of this Agreement; and/or
- 28.2.3 has the right to terminate this Agreement under clause 28.1.2 or clause 28.1.3, it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the partial termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

Termination by the Supplier

28.3 The Supplier may, by issuing a Termination Notice to Network Rail, terminate:

- 28.3.1 this Agreement if Network Rail fails to pay an undisputed sum due to the Supplier under this Agreement which in aggregate exceeds the relevant amount specified in the Call-Off Form for the purposes of this clause 28.3.1, and such amount remains outstanding forty (40) Working Days after the receipt by Network Rail of a notice of non-payment from the Supplier; or
- 28.3.2 any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days,

and this Agreement or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice). If the operation of clause 28.3.2 would result in a Partial Termination, the provisions of clause 28.4 (Partial Termination) shall apply.

Partial Termination

- 28.4 If the Supplier notifies Network Rail pursuant to clause 28.3.2 (Termination by the Supplier) that it intends to terminate this Agreement in part and Network Rail, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of Network Rail Requirements, then Network Rail shall be entitled to terminate the remaining part of this Agreement by serving a Termination Notice to the Supplier within one (1) month of receiving the Supplier's Termination Notice. For the purpose of this clause 28.4, in assessing the significance of any part of Network Rail Requirements, regard shall be had not only to the proportion of that part to the Network Rail Requirements as a whole, but also to the importance of the relevant part to Network Rail.
- 28.5 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Charges, provided that:
- 28.5.1 the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;
- 28.5.2 any adjustment to the Charges (if any) shall be calculated in accordance with the Financial Model and must be reasonable; and
- 28.5.3 the Supplier shall not be entitled to reject the Change.

29. CONSEQUENCES OF EXPIRY OR TERMINATION

General Provisions on Expiry or Termination

- 29.1 The provisions of clauses 5.8 (Specially Written Software warranty), 10.4 and 10.5 (VAT), 10.6 and 10.7 (Set-off and Withholding), 12 (Records, Reports, Audits and Open Book Data), 14.7 (Employment Indemnity), 14.8 (Income Tax and National Insurance Contributions), 16 (Intellectual Property Rights), **Error! Reference source not found.** (Licences Granted by the Supplier), 17 (Escrow), 18.1 (IPRs Indemnity), 20 (Limitations on Liability), 29 (Consequences of Expiry or Termination), 35 (Severance), 37 (Entire Agreement), 38 (Third Party Rights), 40 (Disputes) and 41 (Governing Law and Jurisdiction), and the provisions of Schedules 1 (Definitions), 9 (Charges and Invoicing), 10 (Payments on Termination), 11 (Financial Reports and Audit Rights), 13 (Reports and Records Provisions), 14 (Exit Management), 16 (Staff Transfer) and Schedule 20 (Intellectual Property Rights) and the Call-Off Form shall survive the termination or expiry of this Agreement, together with any other provision which is either expressed to or by implication (which includes provisions which need to survive to the extent that they apply to any Call-Off Contracts) is intended to survive termination (however arising), Suspension or expiry of this Agreement.

Exit Management

- 29.2 The Parties shall comply with the provisions of Schedule 14 (Exit Management) and any current Exit Plan in relation to orderly transition of the Services to Network Rail or a Replacement Supplier.

Payments by Network Rail

- 29.3 If this Agreement is terminated by Network Rail pursuant to clause 28.1.1 (Termination by Network Rail) or by the Supplier pursuant to clause 28.3.1 (Termination by the Supplier), Network Rail shall pay the Supplier the following payments (which shall be the Supplier's sole remedy for the termination of this Agreement):
- 29.3.1 the Termination Payment; and
- 29.3.2 the Compensation Payment, if either of the following periods is less than three hundred and sixty-five (365) days:

- 29.3.2.1 the period from (but excluding) the date that the Termination Notice is given (or, where Paragraph 2.1.1 of Part D of Schedule 9 (Charges and Invoicing) applies, deemed given) by Network Rail pursuant to clause 28.1.1 (Termination by Network Rail)) to (and including) the Termination Date; or
- 29.3.2.2 the period from (and including) the date of the non-payment by Network Rail referred to in clause 28.3.1 (Termination by the Supplier) to (and including) the Termination Date.
- 29.4 If this Agreement is terminated (in part or in whole) by Network Rail pursuant to clauses 28.1.2, 28.1.3 and/or 28.2 (Termination by Network Rail), and/or by the Supplier pursuant to clause 28.3.2 (Termination by Supplier) or the Term expires, the only payments that Network Rail shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:
- 29.4.1 payments in respect of any Assets or apportionments in accordance with Schedule 14 (Exit Management); and
- 29.4.2 payments in respect of unpaid Charges for Services received up until the Termination Date.
- 29.5 Unless otherwise set out in this Agreement and/or a relevant Schedule, the costs of termination incurred by the Parties shall lie where they fall if:
- 29.5.1 either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to clauses 28.1.3 or 28.2.3 (Termination by Network Rail) or 28.3.2 (Termination by the Supplier); or
- 29.5.2 Network Rail terminates this Agreement under clause 28.1.4 (Termination by Network Rail).
- Payments by the Supplier**
- 29.6 In the event of termination or expiry of this Agreement, the Supplier shall repay to Network Rail all Charges it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination.
- 29.7 If this Agreement is terminated (in whole or in part) by Network Rail pursuant to clause 28.1.2 (Termination by Network Rail) prior to Achievement of one or more CPP Milestones, Network Rail may at any time on or within twelve (12) months of the issue of the relevant Termination Notice by issue to the Supplier of written notice (a "**Milestone Adjustment Payment Notice**") require the Supplier to repay to Network Rail an amount equal to the aggregate Milestone Adjustment Payment Amounts in respect of each CPP Milestone to which the Milestone Adjustment Payment Notice relates.
- 29.8 A Milestone Adjustment Payment Notice shall specify:
- 29.8.1 each CPP Milestone to which it relates;
- 29.8.2 in relation to each such CPP Milestone, each Deliverable relating to that CPP Milestone that Network Rail wishes to retain, if any (each such Deliverable being a "**Retained Deliverable**"); and
- 29.8.3 those Retained Deliverables, if any, the Allowable Price for which Network Rail considers should be subject to deduction of an adjusting payment on the grounds that they do not or will not perform in all material respects in accordance with their specification (such adjusting payment being an "**Allowable Price Adjustment**"),
- and may form part of a Termination Notice.

- 29.9 The Supplier shall within ten (10) Working Days of receipt of a Milestone Adjustment Payment Notice, in each case as applicable:
- 29.9.1 notify Network Rail whether it agrees that the Retained Deliverables which Network Rail considers should be subject to an Allowable Price Adjustment as specified in the relevant Milestone Adjustment Payment Notice should be so subject; and
 - 29.9.2 in relation to each such Retained Deliverable that the Supplier agrees should be subject to an Allowable Price Adjustment, notify Network Rail of the Supplier's proposed amount of the Allowable Price Adjustment and the basis for its approval;
 - 29.9.3 provide Network Rail with its calculation of the Milestone Adjustment Payment Amount in respect of each CPP Milestone the subject of the relevant Milestone Adjustment Payment Notice using its proposed Allowable Price Adjustment, including details of:
 - 29.9.3.1 all relevant Milestone Payments; and
 - 29.9.3.2 the Allowable Price of each Retained Deliverable; and
 - 29.9.4 provide Network Rail with such supporting information as Network Rail may require.
- 29.10 If the Parties do not agree the calculation of a Milestone Adjustment Payment Amount within twenty (20) Working Days of the Supplier's receipt of the relevant Milestone Adjustment Payment Notice, either Party may refer the Dispute to the Dispute Resolution Procedure.
- 29.11 If Network Rail issues a Milestone Adjustment Payment Notice pursuant to clause 29.7:
- 29.11.1 Network Rail shall:
 - 29.11.1.1 securely destroy or return to the Supplier all Non-retained Deliverables that are in tangible form; and
 - 29.11.1.2 ensure that all Non-retained Deliverables that are held in electronic, digital or other machine-readable form cease to be readily accessible (other than by the information technology staff of Network Rail) from any computer, word processor, voicemail system or any other device containing such all Non-retained Deliverables,

in each case as soon as reasonably practicable after repayment of the aggregate Milestone Adjustment Payment Amounts repayable pursuant to that Milestone Adjustment Payment Notice; and
 - 29.11.2 all licences granted by the Supplier pursuant to Schedule 20 (Intellectual Property Rights) in respect of any Specially Written Software and Project Specific IPRs and any Supplier Non-COTS Software and/or Supplier Background IPRs shall terminate upon such repayment to the extent that they relate to the Non-retained Deliverables and Network Rail shall, upon request by the Supplier, reassign to the Supplier title that Network Rail has (if any) to, and all rights and interest (if any) that Network Rail has in, any Specially Written Software and Project Specific IPRs to the extent that these form part of the Non-retained Deliverables.

SECTION J – MISCELLANEOUS AND GOVERNING LAW

30. COMPLIANCE

Health and Safety

30.1 The Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:

30.1.1 all applicable Law regarding health and safety;

30.1.2 the HSEA Requirements; and

30.1.3 the Health and Safety Policy whilst at Network Rail Premises.

30.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at Network Rail Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

Employment Law

30.3 The Supplier must perform its obligations meeting the requirements of all applicable Law regarding employment.

Equality and Diversity

30.4 The Supplier shall:

30.4.1 perform its obligations under this Agreement (including those in relation to the Services) in accordance with:

30.4.1.1 all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

30.4.1.2 Network Rail's equality and diversity policy as provided to the Supplier from time to time; and

30.4.1.3 any other requirements and instructions which Network Rail reasonably imposes in connection with any equality obligations imposed on Network Rail at any time under applicable equality Law;

30.4.2 take all reasonable steps to secure the observance of clause 30.4.1 above by its employees, agents, representatives and Sub-contractors; and

30.4.3 take all necessary steps, and inform Network Rail of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

30.5 The Supplier acknowledges that Network Rail is under a duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination (on the grounds of a Relevant Protected Characteristic), to advance equality of opportunity, and to foster good relations, between persons who share a Relevant Protected Characteristic and persons who do not share it. In performing its obligations under this Agreement, the Supplier shall assist and co-operate with Network Rail where possible in satisfying this duty.

Official Secrets Act and Finance Act

30.6 The Supplier shall comply with the provisions of:

30.6.1 the Official Secrets Acts 1911 to 1989; and

30.6.2 section 182 of the Finance Act 1989.

Conflicts of Interest

30.7 The Supplier:

30.7.1 must take action to ensure that neither the Supplier nor the Supplier Personnel are placed in the position of an actual, potential or perceived Conflict of Interest.

30.7.2 must promptly notify and provide details to Network Rail if an actual, potential or perceived Conflict of Interest happens or is expected to happen.

30.8 Network Rail will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of Network Rail, such measures do not or will not resolve an actual or potential Conflict of Interest, Network Rail may terminate this Agreement immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest.

Modern Slavery

30.9 The Supplier:

30.9.1 shall not use, nor allow its sub-contractors to use forced, bonded or involuntary prison labour;

30.9.2 shall not require any Supplier Personnel or the personnel of any sub-contractors to lodge deposits or identity papers with their employer and shall be free to leave their employer after reasonable notice;

30.9.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;

30.9.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;

30.9.5 shall make reasonable enquires to ensure that its officers, employees and sub-contractors have not been convicted of slavery or human trafficking offences anywhere around the world;

30.9.6 shall have and maintain throughout the Term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its sub-contractors anti-slavery and human trafficking provisions;

30.9.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract;

30.9.8 shall prepare and deliver to Network Rail, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business (as statement under section 54 of the Modern Slavery Act 2015 shall suffice for these purposes);

30.9.9 shall not use, nor allow its officers, employees or sub-contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and

verbal abuse or other forms of intimidation of its officers, employees or sub-contractors;

30.9.10 shall not use or allow child or slave labour to be used by its sub-contractors; and

30.9.11 shall report the discovery or suspicion of any slavery or trafficking by it or its sub-contractors to Network Rail and the Modern Slavery Helpline.

Whistleblowing

30.10 As soon as it is aware of it, the Supplier and Supplier Personnel must report to Network Rail any actual or suspected breach of:

30.10.1 Law;

30.10.2 this clause 30; or

30.10.3 clause 10 (Prevention of Fraud and Bribery) of the Framework Agreement.

30.11 The Supplier must not retaliate against any of the Supplier Personnel who in good faith reports a breach listed in clause 30.10 to Network Rail or a Prescribed Person.

31. REAL LIVING WAGE

31.1 The Supplier shall and shall procure that its relevant Sub-contractors shall:

31.1.1 ensure that none of its workers or its subcontractor's workers engaged in the performance of this Agreement in London and the rest of the UK and who would also satisfy the eligibility criteria set by the Living Wage Foundation (or any replacement thereof) are paid an hourly wage (or equivalent of an hourly wage) less than the Real Living Wage; and

31.1.2 co-operate and provide all reasonable assistance to Network Rail in monitoring the effect of the Real Living Wage.

31.2 If the Real Living Wage increases during the Term, the Supplier shall not be entitled to adjust the Charges and the Parties agree and acknowledge that any increases in the Real Living Wage anticipated during the Term have been factored into the Charges.

31.3 Any failure by the Supplier to comply with the provisions of this clause 31 shall be treated as a material Default under this Agreement.

32. ASSIGNMENT AND NOVATION

32.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of Network Rail.

32.2 Network Rail may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:

32.2.1 any Central Government Body; or

32.2.2 to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by Network Rail,

and the Supplier shall, at Network Rail's request, enter into a novation agreement in such form as Network Rail shall reasonably specify in order to enable Network Rail to exercise its rights pursuant to this clause 32.2.

32.3 A change in the legal status of Network Rail shall not (subject to clause 32.4) affect the validity of this Agreement and this Agreement shall be binding on any successor body to Network Rail.

32.4 If Network Rail assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds Network Rail (any such body a “**Successor Body**”), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of Network Rail under limb (k) of the definition of Supplier Termination Event (as if references in that limb (k) to the Supplier and the Guarantor to the Successor Body).

33. **WAIVER AND CUMULATIVE REMEDIES**

33.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

33.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

34. **RELATIONSHIP OF THE PARTIES**

Except as expressly provided otherwise in this Agreement, nothing in this Agreement, nor any actions taken by the Parties pursuant to this Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

35. **SEVERANCE**

35.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.

35.2 In the event that any deemed deletion under clause 30.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.

35.3 If the Parties are unable to agree on the revisions to this Agreement within 5 Working Days of the date of the notice given pursuant to clause 30.2, the matter shall be dealt with in accordance with Paragraph 4 (Commercial Negotiation) of Schedule 11 (Dispute Resolution Procedure) of the Framework Agreement except that if the representatives are unable to resolve the dispute within thirty (30) Working Days of the matter being referred to them, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this clause 35.3.

36. **FURTHER ASSURANCES**

Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this Agreement.

37. ENTIRE AGREEMENT

- 37.1 This Agreement (including the Call-Off Form) constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 37.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
- 37.3 Nothing in this clause 37 shall exclude any liability in respect of misrepresentations made fraudulently.

38. THIRD PARTY RIGHTS

- 38.1 The provisions of clause 18.1 (IPRs Indemnity), Paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, Paragraphs 2.1 and 2.3 of Part C and Paragraphs 1.4, 2.3 and 2.8 of Part D of Schedule 16 (Staff Transfer) and the provisions of Paragraph 7.9 of Schedule 14 (Exit Management) (together “**Third Party Provisions**”) confer benefits on persons named or identified in such provisions other than the Parties (each such person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- 38.2 Subject to clause 38.1, a person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 38.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of Network Rail, which may, if given, be given on and subject to such terms as Network Rail may determine.
- 38.4 Any amendments or modifications to this Agreement may be made, and any rights created under clause 38.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

39. NOTICES

- 39.1 Any notices sent under this Agreement must be in writing.
- 39.2 Subject to clause 39.5, the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Working Day after sending.	Dispatched as a pdf attachment to an email to the correct email address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt.
Prepaid, Royal Mail Signed for 1 st Class or other prepaid, next Working Day	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

service providing proof of delivery.	on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	
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- 39.3 Notices shall be sent to the addresses specified in the Call-Off Form or to such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement.
- 39.4 Where any information or documentation is to be provided or submitted to the Representatives it shall be provided signed by or on behalf of the party giving it and shall be served by sending it to the addresses specified in the Call-Off Form or to such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this clause.
- 39.5 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in clause 39.2:
- 39.5.1 Step-In Notices;
 - 39.5.2 Force Majeure Notices;
 - 39.5.3 notices issued by the Supplier pursuant to clause 28.3 (Termination by the Supplier);
 - 39.5.4 Termination Notices; and
 - 39.5.5 Dispute Notices.
- 39.6 Failure to send any original notice by personal delivery or recorded delivery in accordance with clause 39.5 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in clause 39.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- 39.7 This clause 39 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
40. **DISPUTES**
- 40.1 The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure.
- 40.2 The Supplier shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.
41. **GOVERNING LAW AND JURISDICTION**
- 41.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 41.2 Subject to clause 40 (Disputes) and Schedule 11 (Dispute Resolution Procedure) of the Framework Agreement (including Network Rail's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

42. COUNTERPARTS/DUPLICATES

42.1 This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but which shall together constitute one agreement.

42.2 This Agreement may be executed in duplicate, each of which shall constitute an original.

EXECUTED BY or on behalf of the Parties on **[INSERT DATE]**..

EXECUTED AS A DEED by NETWORK RAIL INFRASTRUCTURE LIMITED

acting by its attorney.....

in exercise of a power of attorney dated in the presence of:

Signature of witness

Name of witness

Address of witness

I confirm that I was physically present when signed this deed

..... [signature
of witness]

OR

SIGNED for and on behalf of **NETWORK RAIL INFRASTRUCTURE LIMITED**

by:

Authorised signatory

Printed Name:.....

SIGNED as a DEED for and on behalf of
.....

By

Director

Printed Name.....

Director/Company Secretary

Printed Name.....

OR

SIGNED for and on behalf of

By

Director

Printed Name.....

CALL-OFF TERMS**SCHEDULE 1****DEFINITIONS****1. DEFINITIONS**

In this Agreement, unless otherwise provided or the context otherwise requires the capitalised expressions shall have the meanings set out in this Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.

2. INTERPRETATION

2.1 In this Agreement, unless the context otherwise requires:

- 2.1.1 the singular includes the plural and vice versa;
- 2.1.2 reference to a gender includes the other gender and the neuter;
- 2.1.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
- 2.1.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- 2.1.5 any references to “re-enacted” in respect of any statute or statutory provision (including any subordinate legislation) include references to the preservation, continuation of effect, conversion or incorporation of any of them into the law of England and Wales, Scotland and Northern Ireland;
- 2.1.6 the words “including”, “other”, “in particular”, “for example” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
- 2.1.7 references to “writing” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
- 2.1.8 the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
- 2.1.9 references to clauses and Schedules are references to the clauses and schedules of this Agreement and references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear;
- 2.1.10 references to this Agreement are references to this Agreement as amended from time to time;
- 2.1.11 references to a series of clauses or paragraphs shall be inclusive of the clause or paragraph numbers specified; and
- 2.1.12 references to “representations” shall be construed as references to present facts, to “warranties” as references to present and future facts and to “undertakings” as references to obligations under the Agreement.

2.2 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify Network Rail and the Parties shall update this Agreement with a reference to the replacement hyperlink.

<i>Expression</i>	<i>Meaning</i>
“Achieve”	<p>(a) in respect of a Test, to successfully pass a Test without any Test Issues; and</p> <p>(b) in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions of Schedule 8 (Testing Procedures),</p> <p>and “Achieved” and “Achievement” shall be construed accordingly;</p>
“Acquired Rights Directive”	the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
“Accounting Reference Date”	in each year the date to which the Supplier prepares its annual audited financial statements;
“Action Plan”	has the meaning given in clause 15.14;
“Affected Party”	the Party seeking to claim relief in respect of a Force Majeure Event;
“Agreement”	the Call-Off Form, the clauses of these Call-Off Terms together with the Schedules, appendices and annexes to it and any documents referred to it or attached to it;
“Allowable Price”	<p>in relation to the Retained Deliverables relating to a CPP Milestone, if any, an amount determined in accordance with the formula:</p> <p>A – B</p> <p>where:</p> <p>(a) A is an amount equal to the Costs incurred by the Supplier in providing or developing the relevant Retained Deliverables as reflected in the Financial Model together with an amount equal to the Anticipated Contract Life Profit Margin thereon; and</p>

(b) B is an amount equal to the Allowable Price Adjustment relating to the relevant Retained Deliverables, if any, or if there is no such Allowable Price Adjustment, zero,

provided that the Allowable Price for any Retained Deliverables shall in no circumstances exceed the aggregate amount of the Milestone Payments paid to the Supplier in respect of the Milestones (or in the case of Partial Termination, the Milestones for the parts of the Services terminated) relating to that CPP Milestone;

“Allowable Price Adjustment” has the meaning given in clause 29.8.3 (Payments by the Supplier);

“Annual Contract Report” has the meaning given in Schedule 11 (Financial Reports and Audit Rights);

“Annual Revenue” for the purposes of determining whether an entity is a Public Sector Dependent Supplier, the audited consolidated aggregate revenue (including share of revenue of joint ventures and Associates) reported by the Supplier or, as appropriate, the Supplier Group in its most recent published accounts, subject to the following methodology:

figures for accounting periods of other than 12 months should be scaled pro rata to produce a proforma figure for a 12 month period; and

where the Supplier, the Supplier Group and/or their joint ventures and Associates report in a foreign currency, revenue should be converted to British Pound Sterling at the closing exchange rate on the Accounting Reference Date;

“Anticipated Contract Life Profit Margin” has the meaning given in Schedule 9 (Charges and Invoicing);

“Approved Sub-Licensee” any of the following:

- (a) a Central Government Body;
- (b) any third party providing services to Network Rail; and/or
- (c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by Network Rail;

“Assets”	all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding the Network Rail Assets;
“Assurance”	written confirmation from a Relevant Authority to the Supplier that the CRP Information is approved by the Relevant Authority;
“ATP Milestone”	the Milestone linked to Authority to Proceed for the relevant Operational Services set out in the Implementation Plan;
“Audit”	any exercise by Network Rail of its Audit Rights pursuant to clause 12 (Records, Reports, Audit and Open Book Data) and Schedule 11 (Financial Reports and Audit Rights);
“Audit Agents”	<ul style="list-style-type: none"> (a) Network Rail’s internal and external auditors; (b) Network Rail’s statutory or regulatory auditors; (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; (d) HM Treasury or the Cabinet Office; (e) any party formally appointed by Network Rail to carry out audit or similar review functions; and (f) successors or assigns of any of the above;
“Audit Rights”	the audit and access rights referred to in Schedule 11 (Financial Reports and Audit Rights);
“Authority to Proceed” or “ATP”	the authorisation to the Supplier to commence the provision of the relevant Operational Services to Network Rail, provided by Network Rail in the form of a Milestone Achievement Certificate in respect of the ATP Milestone;
“Balanced Scorecard Report”	has the meaning given in Paragraph 1.1(b) of Part B of Schedule 2 (Performance Levels);
“Baseline Security Requirements”	Network Rail’s baseline security requirements, the current copy of which is contained in Annex 1 of Schedule 4 (Security Management), as updated from time to time by Network Rail and notified to the Supplier;
“Board”	the Supplier’s board of directors;

“Breakage Costs Payment”	has the meaning given in Schedule 10 (Payments on Termination);
“Cabinet Office Markets and Suppliers Team”	the UK Government’s team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function;
“Call-Off Effective Date”	the date specified as such on the Call-Off Form;
“Call-Off Form”	the form, based on the proforma set out in Schedule 5 (Call-Off Form) of the Framework Agreement, completed and agreed in writing by the Parties which forms part of this Agreement;
“Call-Off Key Personnel”	those members of the Supplier Personnel described in the Call-Off Form as such is modified by agreement of the Parties;
“Central Government Body”	<p>a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"> (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive or tribunal); (c) Non-Ministerial Department; or (d) Executive Agency;
“Change”	any change to this Agreement;
“Change Authorisation Note”	has the meaning given to it in Schedule 18 (Change Control Procedure);
“Change Control Procedure”	the procedure for changing this Agreement set out in Schedule 18 (Change Control Procedure);
“Change in Law”	any change in Law which impacts on the performance of the Services which comes into force after the Call-Off Effective Date;
“Change Request”	a written request for a Contract Change substantially in the form of Annex 1 of Schedule 18 (Change Control Procedure);
“Charges”	the charges for the provision of the Services set out in the Call-Off Form and derived in accordance with or otherwise calculated in accordance with Schedule 4 (Charges) of the

	Framework Agreement, including any Milestone Payment or Service Charge;
“Class 1 Transaction”	has the meaning set out in the listing rules issued by the UK Listing Authority;
“Commencement Date”	the date on which the Services start, as set out in the Call-Off Form;
“Commercially Sensitive Information”	the information listed in Schedule 3 (Commercially Sensitive Information) of the Framework Agreement comprising the information of a commercially sensitive nature relating to the pricing of the Services, details of the Supplier’s IPRs or the Supplier’s business and investment plans or which the Supplier has indicated to Network Rail that, if disclosed by Network Rail, would cause the Supplier significant commercial disadvantage or material financial loss;
“Comparable Supply”	the supply of services to another customer of the Supplier that are the same or similar to any of the Services;
“Compensation for Unacceptable KPI Failure”	has the meaning given in clause 7.4.1 (Unacceptable KPI Failure);
“Compensation Payment”	has the meaning given in Schedule 10 (Payments on Termination);
“Confidential Information”	has the meaning given to it in the Framework Agreement;
“Conflict of Interest”	a conflict between the financial or personal duties of the Supplier or the Supplier Personnel and the duties owed to Network Rail under the Contract, in the reasonable opinion of Network Rail;
“Contract Change”	any change to this Agreement other than an Operational Change;
“Contract Inception Report”	the initial Financial Model in a form agreed by the Supplier and Network Rail in writing on or before the Call-Off Effective Date;
“Contract Year”	<p>(a) a period of twelve (12) months commencing on the Call-Off Effective Date; or</p> <p>(b) thereafter a period of twelve (12) months commencing on each anniversary of the Call-Off Effective Date,</p> <p>provided that the final Contract Year shall end on the expiry or termination of the Term;</p>

- “Corporate Change Event”**
- (a) any change of Control of the Supplier or a Parent Undertaking of the Supplier;
 - (b) any change of Control of any member of the Supplier Group which, in the reasonable opinion of Network Rail, could have a material adverse effect on the Services;
 - (c) any change to the business of the Supplier or any member of the Supplier Group which, in the reasonable opinion of Network Rail, could have a material adverse effect on the Services;
 - (d) a Class 1 Transaction taking place in relation to the shares of the Supplier or any Parent Undertaking of the Supplier whose shares are listed on the main market of the London Stock Exchange plc;
 - (e) an event that could reasonably be regarded as being equivalent to a Class 1 Transaction taking place in respect of the Supplier or any Parent Undertaking of the Supplier;
 - (f) payment of dividends by the Supplier or the ultimate Parent Undertaking of the Supplier Group exceeding 25% of the Net Asset Value of the Supplier or the ultimate Parent Undertaking of the Supplier Group respectively in any 12 month period;
 - (g) an order is made or an effective resolution is passed for the winding up of any member of the Supplier Group;
 - (h) any member of the Supplier Group stopping payment of its debts generally or becoming unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Supplier Group ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made with creditors of any member of the Supplier Group;
 - (i) the appointment of a receiver, administrative receiver or administrator in respect of or over all or a material part of the undertaking or assets of any member of the Supplier Group; and/or
 - (j) any process or events with an effect analogous to those in Paragraphs (e) to (g) inclusive above occurring to a member of the Supplier Group in a jurisdiction outside England and Wales;
- “Corporate Change Event Grace Period”** a grace period agreed to by the Relevant Authority for providing CRP Information and/or updates to

“Corporate Resolvability Assessment (Structural Review)”	<p>Service Continuity Plan after a Corporate Change Event;</p> <p>part of the CRP Information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraph 2 of Part B and Annex 2: Corporate Resolvability Assessment (Structural Review) of Schedule 15 (Service Continuity Plan And Corporate Resolution Planning);</p>
“Costs”	<p>has the meaning given in Schedule 9 (Charges and Invoicing);</p>
“CPP Milestone”	<p>a contract performance point as set out in the Implementation Plan, being the Milestone at which the Supplier has demonstrated that the Supplier Solution or relevant Service is working satisfactorily in its operating environment in accordance with Schedule 8 (Testing Procedures);</p>
“Critical National Infrastructure” or “CNI”	<p>those critical elements of UK national infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in:</p> <ul style="list-style-type: none"> <li data-bbox="762 1052 1404 1265">(a) major detrimental impact on the availability, integrity or delivery of essential services – including those services whose integrity, if compromised, could result in significant loss of life or casualties – taking into account significant economic or social impacts; and/or <li data-bbox="762 1299 1404 1400">(b) significant impact on the national security, national defence, or the functioning of the UK;
“Critical Performance Failure”	<p>has the meaning given to it on the Call-Off Form;</p>
“Critical Service Contract”	<p>the overall status of the Services provided under this Agreement as determined by Network Rail and specified in paragraph 1.1 of Part B to Schedule 15 (Service Continuity Plan and Corporate Resolution Planning);</p>
“CRP Information”	<p>the Corporate Resolution Planning Information, together, the:</p> <ul style="list-style-type: none"> <li data-bbox="762 1792 1332 1825">(a) Exposure Information (Contracts List); <li data-bbox="762 1859 1404 1915">(b) Corporate Resolvability Assessment (Structural Review); and <li data-bbox="762 1948 1348 1982">(c) Financial Information and Commentary;

“CRTPA”	the Contracts (Rights of Third Parties) Act 1999;
“Default”	<p>any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:</p> <ul style="list-style-type: none"> (a) in the case of Network Rail, of its employees, servants, agents; or (b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel, <p>in connection with or in relation to the subject matter of this Agreement and in respect of which such Party is liable to the other;</p>
“Defect”	<ul style="list-style-type: none"> (a) any error, damage or defect in the manufacturing of a Deliverable; or (b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or (c) any failure of any Deliverable to provide the performance, features and functionality specified in Network Rail Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria; or (d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in Network Rail Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria;
“Delay”	<ul style="list-style-type: none"> (a) a delay in the Achievement of a Milestone by its Milestone Date; or (b) a delay in the design, development, testing or implementation of a

Deliverable by the relevant date set out in the Implementation Plan;

“Delay Deduction Period”	the period of one hundred (100) days commencing on the relevant Milestone Date;
“Delay Payments”	the amounts payable by the Supplier to Network Rail in respect of a Delay in Achieving a Key Milestone as specified in the Call-Off Form;
“Deliverable”	an item or feature delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Agreement;
“Deposited Software”	the Software the Source Code of which is to be placed in escrow as listed in the Call-Off Form;
“Detailed Implementation Plan”	the plan developed and revised from time to time in accordance with Schedule 7 (Implementation Plan);
“Disclosed Date”	information relating to the Project disclosed to the Supplier and its advisors prior to the Call-Off Effective Date including the information specified in the Call-Off Form;
“Dispute”	any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
“Dispute Notice”	a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
“Dispute Resolution Procedure”	the dispute resolution procedure set out in Schedule 11 (Dispute Resolution Procedure) of the Framework Agreement;
“Documentation”	descriptions of the Services and Performance Indicators, details of the Supplier System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating

manuals, process definitions and procedures, and all such other documentation as:

- (a) is required to be supplied by the Supplier to Network Rail under this Agreement;
- (b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by Network Rail to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services;
- (c) is required by the Supplier in order to provide the Services; and/or
- (d) has been or shall be generated for the purpose of providing the Services;

“Due Diligence Information”

any information supplied to the Supplier by or on behalf of Network Rail prior to the Call-Off Effective Date;

“Emergency Maintenance”

ad hoc and unplanned maintenance provided by the Supplier where:

- (a) Network Rail reasonably suspects that the IT Environment or the Services, or any part of the IT Environment or the Services, has or may have developed a fault, and notifies the Supplier of the same; or
- (b) the Supplier reasonably suspects that the IT Environment or the Services, or any part of the IT Environment or the Services, has or may have developed a fault;

“Employee Liabilities”

all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;

- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

“Employment Regulations”

the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;

“Escalation Process”

the initial stages of the process for dealing with Disputes without the intervention of third parties as set out in Schedule 11 (Dispute Resolution Procedure) of the Framework Agreement;

“Estimated Year 1 Charges”

the estimated Charges payable by Network Rail during the first Contract Year, as set out in the Financial Model;

“Estimated Initial Service Charges”

the estimated Service Charges payable by Network Rail during the period of twelve (12) months from the first Operational Service Commencement Date, as set out in the Financial Model;

“Exposure Information (Contracts List)”

part of the CRP Information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 2 of Part B and Annex 1 of Part B of Schedule 15 (Service Continuity Plan and Corporate Resolution Planning);

“Exit Management”	services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to Network Rail and/or a Replacement Supplier, as set out or referred to in Schedule 14 (Exit Management);
“Exit Plan”	the plan produced and updated by the Supplier during the Term in accordance with Paragraph 5 of Schedule 14 (Exit Management);
“Expedited Dispute Timetable”	the reduced timetable for the resolution of Disputes set out in Paragraph 3 of Schedule 11 (Dispute Resolution Procedure) of the Framework Agreement;
“Expert”	has the meaning given in Schedule 11 (Dispute Resolution Procedure) of the Framework Agreement;
“Expert Determination”	the process described in Paragraph 6 of Schedule 11 (Dispute Resolution Procedure) of the Framework Agreement
“Extension Period”	a period of no greater than twelve (12) months from the end of the Initial Term or subsequent Extension Period, as applicable;
“Financial Distress Service Continuity Plan”	has the meaning given to it in the Framework Agreement;
“Financial Model”	has the meaning given in Schedule 11 (Financial Reports and Audit Rights);
“Financial Reports”	has the meaning given in Schedule 11 (Financial Reports and Audit Rights);
“Financial Information and Commentary”	part of the CRP Information requirements set out in accordance with Paragraphs 2 and Annex 3 of Part B of Schedule 15 (Service Continuity Plan and Corporate Resolution Planning);
“Financial Transparency Objectives”	has the meaning given in Schedule 11 (Financial Reports and Audit Rights);
“Force Majeure Event”	any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or other natural disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any

			other failure in the Supplier's or a Sub-contractor's supply chain;
	"Force Majeure Notice"		a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
	"Former Supplier"		has the meaning given in Schedule 16 (Staff Transfer);
	"Framework Agreement"		the framework agreement entered into between Network Rail and the Supplier dated [insert date] ;
	"General Change in Law"		a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
	"Good Industry Practice"		at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like Network Rail, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;
	"Goods"		has the meaning given in clause 9.7 (Supply of Goods);
	"Guarantee"		has the meaning given to it in Schedule 1 (Definitions) of the Framework Agreement;
	"Guarantor"		has the meaning given to it in Schedule 1 (Definitions) of the Framework Agreement;
	"Health and Safety Policy"		the health and safety policy of Network Rail and/or other relevant as provided to the Supplier on or before the Call-Off Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;
"HMG	Personnel	Security	Version 4 of HMG Personnel Security Controls, a guide to the government's personnel security and national security vetting policies, as amended, substituted or replaced from time to time, available through the following hyperlink:
	Controls"		https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachmen

t_data/file/714017/HMG_Personnel_Security_Controls_-_May_2018.pdf

“HMRC”	HM Revenue & Customs;
“HSEA Requirements”	the health and safety, quality and environmental requirements set out in Annex 1 of Schedule 3 (Standards);
“Impact Assessment”	has the meaning given in Schedule 18 (Change Control Procedure);
“Implementation Plan”	the Outline Implementation Plan or (if and when approved by Network Rail pursuant to Paragraph 3 of Schedule 7 (Implementation Plan)) the Detailed Implementation Plan as updated in accordance with Paragraph 4 of Schedule 7 (Implementation Plan) from time to time;
“Implementation Services”	the implementation services described as such in the Call-Off Form;
“Implementation Services Commencement Date”	the date on which the Supplier is to commence provision of the first of the Services, as specified in the Call-Off Form;
“Indemnified Person”	Network Rail and each and every person to whom Network Rail (or any direct or indirect sub-licensee of Network Rail) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Agreement;
“Insolvency Continuity Plan”	has the meaning given in Schedule 15 (Service Continuity Plan and Corporate Resolution Planning);
“Initial Term”	the period specified in the Call-Off Form;
“Insolvency Event”	with respect to any person: <ul style="list-style-type: none"> (a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or: <ul style="list-style-type: none"> (i) (being a company or an LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (ii) (being a partnership) is deemed unable to pay its debts within the meaning

of section 222 of the Insolvency Act 1986;

- (b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that other person;
- (c) another person becomes entitled to appoint a receiver over the assets of that Party or a receiver is appointed over the assets of the other Party;
- (d) a creditor or encumbrancer of the that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within fourteen (14) days;
- (e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (f) where the other Party is a company, a LLP or a partnership:
 - (i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or

more other companies or the solvent reconstruction of that person;

(ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;

(iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or

(iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or

(g) any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;

“Insurance”

all or any of the insurance required to be maintained by the Supplier pursuant to this Agreement as set out in Schedule 12 (Insurance Requirements) of the Framework Agreement;

“Intellectual Property Rights” or “IPRs”

(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade

	secrets and other rights in Confidential Information;
	(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
	(c) all other rights having equivalent or similar effect in any country or jurisdiction;
“Intervention Cause”	has the meaning given in clause 24.1.2 (Remedial Adviser);
“Intervention Notice”	has the meaning given in clause 24.1.2 (Remedial Adviser);
“Intervention Period”	has the meaning given in clause 24.2.3 (Remedial Adviser);
“Intervention Trigger Event”	<p>(a) any event falling within limb (a), (b), (c), (e), (f) or (g) of the definition of a Supplier Termination Event;</p> <p>(b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;</p> <p>(c) the Supplier accruing in aggregate the number of Service Points (in terms of the number of the points allocated) specified on the Call-Off Form in the period specified on the Call-Off Form for the purposes of this term;</p> <p>(d) the Supplier accruing Service Credits which meet or exceed 75% of the Service Credit Cap; and/or</p> <p>(e) the Supplier not Achieving a Key Milestone within seventy five (75) days of its relevant Milestone Date;</p>
“IPRs Claim”	any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of Network Rail Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Agreement or for a purpose not reasonably to be inferred from the

	Call-Off Form or the provisions of this Agreement;
“IT”	information and communications technology;
“IT Environment”	Network Rail System and the Supplier System;
“Key Milestone”	the Milestones identified in the Implementation Plan as key milestones and in respect of which Delay Payments may be payable in accordance with Paragraph 1 of Part C of Schedule 9 (Charges and Invoicing) if the Supplier fails to Achieve the Milestone Date in respect of such Milestone;
“Key Performance Indicator”	the key performance indicators set out in Table 1 of Part 1 of Annex 1 of Schedule 2 (Performance Levels) insofar as they relate to the Services, as specified in of Table 1 of Annex 4 (Performance Levels) of the Call-Off Form;
“Key Roles”	a role described as a Key Role in the Call-Off Form and any additional roles added from time to time in accordance with clause 14.4 (Call-Off Key Personnel);
“Key Sub-contract”	each Sub-contract with a Key Sub-contractor;
“Key Sub-contractor”	any Sub-contractor: <ul style="list-style-type: none"> (a) which, in the opinion of Network Rail, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or (b) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under any Call-Off Contract (as set out in the Financial Model for that Call-Off Contract);
“Know-How”	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party’s possession before this Agreement;
“KPI Failure”	a failure to meet the Target Performance Level in respect of a Key Performance Indicator;
“KPI Service Threshold”	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part 1 of Annex 1 of Schedule 2 (Performance Levels)

or as otherwise specified in Table 1 of Annex 4 of the Call-Off Form;

“Law”	any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
“Licensed Software”	all and any Software licensed by or through the Supplier, its Sub-contractors or any third party to Network Rail for the purposes of or pursuant to this Agreement, including any Supplier Software, Third Party Software and/or in any Supplier Background IPRs;
“Losses”	losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
“Maintenance Schedule”	shall have the meaning set out in clause 9.4 (Maintenance);
“Malicious Software”	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
“Material KPI Failure”	<p>(a) a Severe KPI Failure; or</p> <p>(b) a failure by the Supplier to meet a KPI Service Threshold;</p>
“Material PI Failure”	<p>(a) a failure by the Supplier to meet the PI Service Threshold in respect of 25% or more of the Subsidiary Performance Indicators that are measured in that Service Period; and/or</p> <p>(b) a failure by the Supplier to meet the Target Performance Level in respect of 50% or more of the Subsidiary Performance Indicators that are measured in that Service Period;</p>

“Maximum Extension Period”	the maximum permitted period of any extension(s) of this Agreement, as specified on the Call-Off Form;
“Measurement Period”	in relation to a Key Performance Indicator, the period over which the Supplier’s performance is measured (for example, a Service Period if measured periodically, four (4) weekly, or a twelve (12) month period if measured annually);
“Milestone”	an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date;
“Milestone Achievement Certificate”	the certificate to be granted by Network Rail when the Supplier has Achieved a Milestone, which shall be in substantially the same form as that set out in Annex 3 of Schedule 8 (Testing Procedures);
“Milestone Adjustment Payment Amount”	<p>in respect of each CPP Milestone the subject of a Milestone Adjustment Payment Notice, an amount determined in accordance with the formula:</p> <p style="margin-left: 40px;">A – B</p> <p>where:</p> <p>(a) A is an amount equal to the aggregate sum of all Milestone Payments paid to the Supplier in respect of the Milestones (or in the case of Partial Termination, the Milestones for the parts of the Services terminated) relating to that CPP Milestone; and</p> <p>(b) B is an amount equal to the aggregate Allowable Price for the Retained Deliverables relating to that CPP Milestone or, if there are no such Retained Deliverables, zero;</p>
“Milestone Adjustment Payment Notice”	has the meaning given in clause 29.7 (Payments by the Supplier);
“Milestone Date”	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
“Milestone Payment”	a payment identified in Part 2 of Annex 6 of the Call-Off Form to be made following the issue of a Milestone Achievement Certificate;
“Milestone Retention”	has the meaning given in Schedule 9 (Charges and Invoicing);

“Minor KPI Failure”	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part 1 of Annex 1 of Schedule 2 (Performance Levels) or as otherwise specified in Table 1 of Annex 4 of the Call-Off Form;
“month”	a calendar month and “monthly” shall be interpreted accordingly;
“Multi-Party Dispute Resolution Procedure”	has the meaning given in Paragraph 9.1 of Schedule 11 (Dispute Resolution Procedure) of the Framework Agreement;
“Multi-Party Procedure Initiation Notice”	has the meaning given in Paragraph 9.2 of Schedule 11 (Dispute Resolution Procedure) of the Framework Agreement;
“Network Rail Assets”	Network Rail Materials, Network Rail infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to Network Rail and which is or may be used in connection with the provision or receipt of the Services;
“Network Rail Background IPRs”	<p>(a) IPRs owned by Network Rail before the Call-Off Effective Date, including IPRs contained in any of Network Rail's Know-How, documentation, processes and procedures;</p> <p>(b) IPRs created by Network Rail independently of this Agreement; and/or</p> <p>(c) Crown Copyright which is not available to the Supplier otherwise than under this Agreement,</p> <p>but excluding IPRs owned by Network Rail subsisting in Network Rail Software;</p>
“Network Rail Cause”	<p>any material breach by Network Rail of any of Network Rail Responsibilities, except to the extent that such breach is:</p> <p>(a) the result of any act or omission by Network Rail to which the Supplier has given its prior consent; or</p> <p>(b) caused by the Supplier, any Sub-contractor or any Supplier Personnel;</p>
“Network Rail Data”	has the meaning given to it in the Framework Agreement;
“Network Rail IT Strategy”	Network Rail's IT policy in force as at the Call-Off Effective Date (a copy of which has been supplied to the Supplier), as updated from time

to time in accordance with the Change Control Procedure;

“Network Rail Materials”

Network Rail Data together with any materials, documentation, information, programs and codes supplied by Network Rail to the Supplier, the IPRs in which:

- (a) are owned or used by or on behalf of Network Rail; and
- (b) are or may be used in connection with the provision or receipt of the Services,

but excluding any Supplier Software, Third Party Software and Documentation relating to Supplier Software or Third Party Software;

“Network Rail Premises”

premises owned, controlled or occupied by Network Rail and/or any which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them);

“Network Rail Representative”

the representative appointed by Network Rail pursuant to clause 11.4 (Representatives);

“Network Rail Requirements”

the requirements of Network Rail set out in the Services Description and Schedules 2 (Performance Levels), 3 (Standards), 4 (Security Management), 7 (Implementation Plan), 13 (Reports and Records Provisions), 14 (Exit Management) and 15 (Service Continuity Plan and Corporate Resolution Planning);

“Network Rail Responsibilities”

the responsibilities of Network Rail specified in Schedule 5 (Network Rail Responsibilities) and in the Call-Off Form;

“Network Rail Software”

software which is owned by or licensed to Network Rail (other than under or pursuant to this Agreement) and which is or will be used by the Supplier for the purposes of providing the Services;

“Network Rail System”

Network Rail's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by Network Rail or the Supplier in connection with this Agreement which is owned by Network Rail or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for Network Rail to receive the Services;

“New Releases”

an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or

performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;

“Non-trivial Customer Base”

a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor;

“Non-retained Deliverables”

in relation to a CPP Milestone Payment Notice and each CPP Milestone the subject of that CPP Milestone Payment Notice, Deliverables provided to Network Rail which relate to the relevant CPP Milestone(s) and which are not Retained Deliverables;

“Notifiable Default”

shall have the meaning given in clause 22.1 (Rectification Plan Process);

“Object Code”

software and/or data in machine-readable, compiled object code form;

“Occasions of Tax Non-Compliance”

has the meaning given to it in Schedule 1 (Definitions) of the Framework Agreement;

“Open Book Data”

has the meaning given in Schedule 11 (Financial Reports and Audit Rights);

“Open Source”

computer software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source;

“Operating Environment”

the Network Rail System and the Sites;

“Operational Change”

any change in the Supplier's operational procedures which in all respects, when implemented:

- (a) will not affect the Charges and will not result in any other costs to Network Rail;
- (b) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services;
- (c) will not adversely affect the interfaces or interoperability of the Services with any of Network Rail's IT infrastructure; and
- (d) will not require a change to this Agreement;

“Operational Phase”	the phase in which the Supplier will deliver the Operational Services commencing from the Operational Service Commencement Date;
“Operational Service Commencement Date”	in relation to an Operational Service, the later of: <ul style="list-style-type: none"> (a) the date identified in the Implementation Plan upon which the Operational Service is to commence; and (b) where the Implementation Plan states that the Supplier must have Achieved the relevant ATP Milestone before it can commence the provision of that Operational Service, the date upon which the Supplier Achieves the relevant ATP Milestone;
“Operational Services”	the operational services described as such in the Call-Off Form;
“Optional Services”	such of the services described as such in the Services Description which are to be provided by the Supplier if required by Network Rail in accordance with clause 5.11 (Optional Services) and as are prescribed on the Call-Off Form;
“OSS”	the Open Source listed in the Call-Off Form;
“Other Supplier”	any supplier to Network Rail (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
“Outline Implementation Plan”	the outline plan set out at Annex 5 (Outline Implementation Plan) of the Call-Off Form;
“Parent Undertaking”	has the meaning set out in section 1162 of the Companies Act 2006;
“Partial Termination”	the partial termination of this Agreement to the extent that it relates to the provision of any part of the Services as further provided for in clause 28.2.3 (Termination by Network Rail) or 28.3.2 (Termination by the Supplier);
“Parties” and “Party”	have the meanings respectively given on page 1 of this Agreement;
“Performance Failure”	a KPI Failure or a PI Failure;
“Performance Indicators”	the Key Performance Indicators and the Subsidiary Performance Indicators;

“Permitted Maintenance”	has the meaning given in clause 9.4 (Maintenance);
“Performance Monitoring Report”	has the meaning given in Schedule 2 (Performance Levels);
“PI Failure”	a failure to meet the Target Performance Level in respect of a Subsidiary Performance Indicator;
“PI Service Threshold”	shall be as set out against the relevant Subsidiary Performance Indicator in Annex 4 of the Call-Off Form;
“Preceding Services”	has the meaning given in clause 5.2.2 (Standard of Services);
“Prescribed Person”	a legal adviser, an MP, or an appropriate body which a whistle-blower may make a disclosure to as detailed in ‘Whistleblowing: list of prescribed people and bodies’, available online at: https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies, as updated from time to time;
“Programme Board”	the body described in Paragraph 5 of Schedule 8 (Governance) of the Framework Agreement;
“Project Specific IPRs”	(a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Agreement and updates and amendments of these items including (but not limited to) database schema; and/or (b) Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Agreement; but shall not include the Supplier Background IPRs or the Specially Written Software;
“Public Contracts Regulations”	the Public Contracts Regulations 2015 (as amended from time to time);
“Public Sector Dependent Supplier”	a supplier where that supplier, or that supplier's group has Annual Revenue of £50 million or more of which over 50% is generated from UK Public Sector Business;
“Publishable Performance Information”	any of the information in the Performance Monitoring Report as it relates to a Performance Indicator where it is expressed

as publishable in the table in Part I of Annex 1 of Schedule 2 (Performance Levels) which shall not constitute Commercially Sensitive Information;

“Quality Plans” has the meaning given in clause 6.1 (Quality Plans);

“Quarter” the first three (3) Service Periods and each subsequent three (3) Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Agreement);

“Real Living Wage” means the separate basic hourly rates for London and the rest of the UK, as applicable, as set by the Living Wage Commission (before tax, other deductions and any increase for overtime), as may be revised from time to time;

“Recipient” has the meaning given in the Framework Agreement (Confidentiality);

“Records” has the meaning given in Schedule 13 (Records Provision);

“Rectification Plan” a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;

“Rectification Plan Failure”

- (a) the Supplier failing to submit or resubmit a draft Rectification Plan to Network Rail within the timescales specified in clauses 22.4 (Submission of the draft Rectification Plan) or 22.8 (Agreement of the Rectification Plan);
- (b) Network Rail, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to clause 22.7 (Agreement of the Rectification Plan);
- (c) the Supplier failing to rectify a material Default within the later of:
 - (i) thirty (30) Working Days of a notification made pursuant to clause 22.2 (Notification); and
 - (ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in

the Rectification Plan by which the Supplier must rectify the material Default;

- (d) a Material KPI Failure re-occurring in respect of the same Key Performance Indicator for the same (or substantially the same) root cause in any of the 3 Measurement Periods subsequent to the Measurement Period in which the initial Material KPI Failure occurred;
- (e) the Supplier not Achieving a Key Milestone by the expiry of the Delay Deduction Period; and/or
- (f) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of six (6) months for the same (or substantially the same) root cause as that of the original Notifiable Default;

“Rectification Plan Process”

the process set out in clauses 22.4 (Submission of the Rectification Plan) to 22.9 (Agreement of the Rectification Plan);

“Registers”

has the meaning given in Schedule 14 (Exit Management);

“Reimbursable Expenses”

has the meaning given in Schedule 9 (Charges and Invoicing);

“Relevant Authority” or “Relevant Authorities”

Network Rail and the Cabinet Office Markets and Suppliers Team or, where the Supplier is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team;

“Relevant IPRs”

IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to Network Rail or a third party in the fulfilment of the Supplier’s obligations under this Agreement including IPRs in the Specially Written Software, the Project Specific IPRs, the Supplier Non-COTS Software, the Supplier Non-COTS Background IPRs, the Third Party Non-COTS Software and the Third Party Non-COTS IPRs but excluding any IPRs in Network Rail Software, Network Rail Background IPRs, the Supplier COTS Software, the Supplier COTS Background IPRs, the Third Party COTS Software and/or the Third Party COTS IPRs;

“Relevant Preceding Services”	has the meaning given in clause 5.2.2 (Standard of Services);
“Relevant Protected Characteristic”	has the meaning given in section 149 (7) of the Equality Act 2010;
“Relevant Tax Authority”	HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;
“Relief Notice”	has the meaning given in clause 26.2 (Network Rail Cause);
“Remedial Adviser”	the person appointed pursuant to clause 24.2 (Remedial Adviser);
“Remedial Adviser Failure”	has the meaning given in clause 24.6 (Remedial Adviser);
“Replacement Services”	any services which are the same as or substantially similar to any of the Services and which Network Rail receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Agreement, whether those services are provided by Network Rail internally and/or by any third party;
“Replacement Supplier”	any third party service provider of Replacement Services appointed by Network Rail from time to time (or where Network Rail is providing replacement Services for its own account, Network Rail);
“Required Action”	has the meaning given in clause 25.1.1 (Step-In Rights);
“Retained Deliverables”	has the meaning given in clause 29.8.2 (Payments by the Supplier);
“Security Policy”	as defined in the Framework Agreement;
“Security Management Plan”	has the meaning given to it in Schedule 4 (Security Management);
“Service Charges”	the periodic payments made in accordance with Schedule 9 (Charges and Invoicing) of this Agreement in respect of the supply of the Operational Services, as specified in Part 2 of Annex 6 of the Call-Off Form;
“Service Continuity Plan”	any plan prepared pursuant to Paragraph 2 of Part A of Schedule 15 (Service Continuity Plan and Corporate Resolution Planning) as may be amended from time to time;

“Service Continuity Services”	the business continuity, disaster recovery and insolvency continuity services set out in Schedule 15 (Service Continuity Plan and Corporate Resolution Planning);
“Service Credit Cap”	<p>(a) in the period of twelve (12) months from the first Operational Service Commencement Date to occur after the Call-Off Effective Date, the agreed percentage of the Estimated Initial Service Charges as is identified on the Call-Off Form; and</p> <p>(b) during the remainder of the Term, the agreed percentage of the Service Charges paid and/or due to be paid to the Supplier under this Agreement in the period of twelve (12) months immediately preceding the Service Period in respect of which Service Credits are accrued,</p> <p>provided that for the purposes of this definition the “agreed percentage” shall be the relevant percentage specified in the Call-Off Form;</p>
“Service Credits”	credits payable by the Supplier due to the occurrence of one (1) or more KPI Failures, calculated in accordance with Schedule 9 (Charges and Invoicing) and the Call-Off Form;
“Service Failure”	has the meaning given to it in Schedule 2 (Performance Levels);
“Service Period”	the meaning given to it in Schedule 2 (Performance Levels);
“Service Points”	in relation to a KPI Failure, the points that are set out against the relevant Key Performance Indicator in the fifth column of the tables in Part 1 of Annex 1 of Schedule 2 (Performance Levels), as specified in Annex 4 (Performance Levels) of the Call-Off Form;
“Service Threshold”	the level below which the quality of any Services becomes unacceptable to Network Rail as set out in Part 1 of Annex 1 of Schedule 2 (Performance Levels) or as otherwise specified in Annex 4 (Performance Levels) of the Call-Off Form;
“Service Transfer Date”	has the meaning given in Schedule 16 (Staff Transfer);
“Services”	any and all of the services to be provided by the Supplier under this Agreement, including such of the services set out in Schedule 2 (Service Requirements and Supplier Service

Descriptions) of the Framework Agreement as are prescribed in the Call-Off Form;

“Services Description”

the description of the Services set out in relevant section (as referenced in in Appendix 3 of the Call-Off Form) of Schedule 2 (Service Requirements and Supplier Service Descriptions) of the Framework Agreement;

“Severe KPI Failure”

shall be as set out against the relevant Key Performance Indicator in Table 1 of Part 1 of Annex 1 of Schedule 2 (Performance Levels) or as otherwise specified in Table 1 of Annex 4 (Performance Levels) of the Call-Off Form;

“Sites”

any premises (including Network Rail Premises, the Supplier’s premises or third party premises):

- (a) from, to or at which:
 - (i) the Services are (or are to be) provided; or
 - (ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or
- (b) where:
 - (i) any part of the Supplier System is situated; or
 - (ii) any physical interface with the Network Rail System takes place;

“SME”

an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;

“Social Value”

the additional social benefits that can be achieved in the delivery of the Contract, set out in the Network Rail Requirements;

“Software”

Specially Written Software, Supplier Software and Third Party Software;

“Software as a Service”

Software which is provided to the market as a service rather than as a tangible good and usually made available over the internet;

“Software Supporting Materials”

has the meaning given in Paragraph 2.1(b)] of Schedule 20 (Intellectual Property Rights);

“Source Code”	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
“Specially Written Software”	<p>any software (including, but not limited to database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-contractor or other third party on behalf of the Supplier) specifically for the purposes of this Agreement, including:</p> <p>(a) any modifications or enhancements to Network Rail Software, Supplier Software or Third Party Software created specifically for the purposes of this Agreement; and</p> <p>(b) as specified in the Call-Off Form;</p>
“Specific Change in Law”	a Change in Law that relates specifically to the business of Network Rail and which would not affect a Comparable Supply;
“Staffing Information”	has the meaning given in Schedule 16 (Staff Transfer);
“Standards”	the standards, codes, policies, procedures, practices and Quality Plans identified in Schedule 2 (Service Requirements and Supplier Service Descriptions) of the Framework Agreement and Schedule 3 (Standards), together with any additional standards specified in Annex 10 of the Call-Off Form and any other applicable British standards, notified Network Rail internal policies and procedures from time to time in force;
“Step-In Notice”	has the meaning given in clause 25.1 (Step-In Rights);
“Step-In Trigger Event”	<p>(a) any event falling within the definition of a Supplier Termination Event;</p> <p>(b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;</p> <p>(c) a Force Majeure Event that is materially preventing or materially delaying the performance of the</p>

Services or any material part of the Services;

- (d) Network Rail considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Agreement;
- (e) Network Rail being advised by a regulatory body that the exercise by Network Rail of its rights under clause 25 (Step-In Rights) is necessary;
- (f) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or
- (g) a need by Network Rail to take action to discharge a statutory duty;

“Step-Out Date” has the meaning given in clause 25.5.2 (Step-In Rights);

“Step-Out Notice” has the meaning given in clause 25.5 (Step-In Rights);

“Step-Out Plan” has the meaning given in clause 25.6 (Step-In Rights);

“Strategic Supplier” those suppliers to government listed at <https://www.gov.uk/government/publications/strategic-suppliers>;

“Sub-contract” any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;

“Sub-contractor” any third party with whom:

- (a) the Supplier enters into a Sub-contract; or
- (b) a third party under (a) above enters into a Sub-contract,

or the servants or agents of that third party;

“Subsidiary Performance Indicator” the performance indicators set out in Table 2 of Part I of Annex 1 of Schedule 2 (Performance Levels) insofar as they relate to

	the Services, as specified in Table 2 of Annex 4 (Performance Levels) of the Call-Off Form;
“Successor Body”	has the meaning given in clause 32.4 (Assignment and Novation);
“Supplier Background IPRs”	<p>(a) Intellectual Property Rights owned by the Supplier before the Call-Off Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or</p> <p>(b) Intellectual Property Rights created by the Supplier independently of this Agreement,</p> <p>which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;</p>
“Supplier COTS Background IPRs”	<p>any embodiments of Supplier Background IPRs that:</p> <p>(a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</p> <p>(b) has a Non-trivial Customer Base;</p>
“Supplier COTS Software”	<p>Supplier Software (including Open Source) that:</p> <p>(a) the Supplier makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</p> <p>(b) has a Non-trivial Customer Base;</p>
“Supplier Equipment”	the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub-contractors (but not hired, leased or loaned

		from Network Rail) for the provision of the Services;
“Supplier Background IPRs”	Non-COTS	any embodiments of Supplier Background IPRs that have been delivered by the Supplier to Network Rail and that are not Supplier COTS Background IPRs;
“Supplier Software”	Non-COTS	Supplier Software that is not Supplier COTS Software;
“Supplier Performance”	Non-	has the meaning given in clause 26.1 (Network Rail Cause);
“Supplier Personnel”		all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier’s obligations under this Agreement;
“Supplier Profit”		has the meaning given in Schedule 9 (Charges and Invoicing);
“Supplier Profit Margin”		has the meaning given in Schedule 9 (Charges and Invoicing);
“Supplier Representative”		the representative appointed by the Supplier pursuant to clause 11.3 (Representatives);
“Supplier Software”		software which is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in the Call-Off Form but excluding any Specifically Written Software;
“Supplier Solution”		the Supplier's solution for the Services set out in the relevant sections (as referenced in the Call-Off Form) of Schedule 2 (Service Requirements and Supplier Service Descriptions) of the Framework Agreement;
“Supplier System”		the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Network Rail System);
“Supplier Event”	Termination (a)	the Supplier’s level of performance constituting a Critical Performance Failure;
	(b)	the Supplier committing a material Default which is irremediable;
	(c)	as a result of the Supplier's Default, Network Rail incurring Losses in any Contract Year

which exceed 80% of the value of the aggregate annual liability cap for that Contract Year as set out in clause 20.6.1 (Financial and other limits);

- (d) a Remedial Adviser Failure;
- (e) a Rectification Plan Failure;
- (f) where a right of termination is expressly reserved in this Agreement, including pursuant to:
 - (i) clause 18 (IPRs Indemnity);
 - (ii) clause 10 (Prevention of Fraud and Bribery) of the Framework Agreement;
 - (iii) clause 30 (Compliance);
 - (iv) Paragraph 6 of Schedule 10 (Financial Distress) of the Framework Agreement; and/or
 - (v) Paragraph 3.1 of Part B to Schedule 15 (Service Continuity Plan and Corporate Resolution Planning);
- (g) not used
- (h) the representation and warranty given by the Supplier pursuant to clause 3.2.9 (Warranties) being materially untrue or misleading;
- (i) the Supplier committing a material Default under clause 9.3 (Promoting Tax Compliance) of the Framework Agreement or the Supplier failing to provide details of the of steps being taken and mitigating factors which in the reasonable opinion of Network Rail are acceptable;
- (j) the Supplier committing a material Default under any of the following clauses:
 - (i) clause 5.5.10 (Services);
 - (ii) clause 18 (Protection of Personal Data) of the Framework Agreement;
 - (iii) clause 17 (Transparency and Freedom of Information);

- (iv) clause 16 (Confidentiality) under the Framework Agreement; and
 - (v) clause 30 (Compliance); and/or
 - (vi) in respect of any security requirements set out in the Services Description, Schedule 4 (Security Management) or the Baseline Security Requirements; and/or
 - (vii) in respect of any requirements set out in Schedule 16 (Staff Transfer);
- (k) any failure by the Supplier to implement the changes set out in a Benchmark Report as referred to in Paragraph 5.9 of Schedule 19 (Benchmarking);
- (l) an Insolvency Event occurring in respect of the Supplier or the Guarantor;
- (m) the Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of Network Rail with the Guarantor or with another guarantor which is acceptable to Network Rail);
- (n) a change of Control of the Supplier or the Guarantor unless:
- (i) Network Rail has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
 - (ii) Network Rail has not served its notice of objection within six (6) months of the later of the date on which the change of Control took place or the date on which Network Rail was given notice of the change of Control; or
- (o) a change of Control of a Key Sub-contractor unless, within six (6) months of being notified by Network Rail that it objects to such change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by Network Rail pursuant to clause 15.6 (Appointment of Key Sub-contractors); or
- (p) not used;

- (q) the Supplier is in breach of clause 25 (Guarantee and Financial Distress) of the Framework Agreement; or
- (r) Network Rail terminates or Suspends the Framework Agreement (or part thereof);
- (s) if specified in the Call-Off Form, Network Rail has become aware that the Supplier should have been excluded under [Regulation 57(1) or (2) of the Public Contracts Regulations][Regulation 57(1) or (2) of the Public Contracts Regulations (by application of Regulation 80(2) of the Utilities Contracts Regulations)][**Guidance note: delete as applicable**] from the procurement procedure leading to the award of this Agreement; or
- (t) a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law; or
- (u) in relation to Schedule 4 (Security Management):
 - (i) Network Rail has issued two rejection notices in respect of the Security Management Plan under [Paragraph 4.5.1 (Part A)/ Paragraph 6.8.1 (Part B)] [**Guidance note: delete as applicable**];
 - (ii) the Supplier fails to implement a change required by the Required Changes Register (as defined in Schedule 4 (Security Management) in accordance with the timescales set out in the Required Changes Register;
 - (iii) Supplier COTS Software and Third Party COTS Software is not within mainstream support unless Network Rail has agreed in writing.
 - (iv) the Supplier fails to patch vulnerabilities in accordance with the Security Requirements; and/or,
- (v) the Supplier fails to comply with the Incident Management Process.

“Target Level”

Performance

the minimum level of performance for a Performance Indicator which is required by Network Rail, as set out against the relevant

	Performance Indicator in the tables in Annex 1 of Schedule 2 (Performance Levels) insofar as they relate to the Services or as otherwise specified in Annex 6 of the Call-Off Form;
“Term”	the period commencing on the Call-Off Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Agreement;
“Termination Assistance Notice”	has the meaning given in Paragraph 6.1 of Schedule 14 (Exit Management);
“Termination Assistance Period”	in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Services as such period may be extended pursuant to Paragraph 6.2 of Schedule 14 (Exit Management);
“Termination Date”	the date set out in a Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate;
Termination Notice”	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement (or any part thereof) on a specified date and setting out the grounds for termination;
“Termination Payment”	the payment determined in accordance with Schedule 10 (Payments on Termination);
“Termination Services”	the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Annex 1 of Schedule 14 (Exit Management), and any other services required pursuant to the Termination Assistance Notice;
“Test Issues”	has the meaning given in Schedule 8 (Testing Procedures);
“Tests” and “Testing”	any tests required to be carried out under this Agreement, as further described in Schedule 8 (Testing Procedure) and “Tested” shall be construed accordingly;
“Test Success Criteria”	has the meaning given in Schedule 8 (Testing Procedures);
“Third Party Auditor”	an independent third party auditor as appointed by Network Rail from time to time to confirm the completeness and accuracy of information uploaded to the Virtual Library in accordance with the requirements outlined in

Schedule 13 (Reports and Records Provisions);

“Third Party Beneficiary” has the meaning given in clause 38.1 (Third Party Rights);

“Third Party COTS IPRs” Third Party IPRs that:

- (a) the Supplier or relevant third party makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and
- (b) has a Non-trivial Customer Base;

“Third Party COTS Software” Third Party Software that:

- (a) the Supplier or relevant third party makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and
- (b) has a Non-trivial Customer base,

including where indicated as such in the Call-Off Form;

“Third Party IPRs” Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software, which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services;;

“Third Party Non-COTS IPRs” Third Party IPRs that are not Third Party COTS IPRs;

“Third Party Non-COTS Software” Third Party Software that is not Third Party COTS Software including where indicated as such in the Call-Off Form;

“Third Party Provisions” has the meaning given in clause 38.1 (Third Party Rights);

“Third Party Software” software which is proprietary to any third party (other than an Affiliate of the Supplier) which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, including the software specified as such in the Call-Off Form and including the OSS, but excluding the Specifically Written Software;

“Transferring Assets”	has the meaning given in Paragraph 7.2.1 of Schedule 14 (Exit Management);
“Transferring Former Supplier Employees”	has the meaning given in Schedule 16 (Staff Transfer);
“Transferring Supplier Employees”	has the meaning given in Schedule 16 (Staff Transfer);
“UK”	the United Kingdom;
“UK GDPR”	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (United Kingdom General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, together with the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019;
“UK Public Sector Business”	any goods, service or works provision to UK public sector bodies, including Central Government Departments and their arm's length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police, fire and rescue, education bodies and devolved administrations;
“Unacceptable Failure”	KPI the Supplier failing to achieve the KPI Service Threshold in respect of more than 50% of the Key Performance Indicators that are measured in that Service Period;
“Unconnected contract”	Sub- any contract or agreement which is not a Sub-contract and is between the Supplier and a third party (which is not an Affiliate of the Supplier) and is a qualifying contract under regulation 6 of The Reporting on Payment Practices and Performance Regulations 2017;
“Unconnected contractor”	Sub- any third party with whom the Supplier enters into an Unconnected Sub-contract;
“Unrecovered Payment”	has the meaning given in Schedule 10 (Payments on Termination);
“Update Requirement”	the occurrence of an event detailed in Schedule 13 (Reports and Records Provisions) Annex 3 (Virtual Library) which requires the Supplier to update the relevant information hosted on the Virtual Library;
“Updates”	in relation to any Software and/or any Deliverable means a version of such item

which has been produced primarily to overcome Defects in, or to improve the operation of, that item;

“Upgrades”

any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Term;

“Utilities Contracts Regulations”

the Utilities Contracts Regulations 2016 (as amended from time to time);

“Valid”

in respect of an Assurance, has the meaning given to it in Paragraph 2.7 of Part B to Schedule 15 (Service Continuity Plan and Corporate Resolution Planning);

“Virtual Library”

the data repository hosted by the Supplier containing the information about this Agreement and the Services provided under it in accordance with Schedule 13 (Reports and Records Provisions); and

“Working Day”

any day other than a Saturday, Sunday or public holiday in England and Wales.

CALL-OFF TERMS**SCHEDULE 2****PERFORMANCE LEVELS****1. Definitions**

In this Schedule, the following definitions shall apply:

“End User”	any person authorised by Network Rail to use the IT Environment and/or the Services;
“Help Desk”	the single point of contact help desk set up and operated by the Supplier for the purposes of this Agreement;
“Network Rail’s Procurement Tool”	Network Rail’s current procurement tool from time to time, currently BravoNR, which provides end-to-end procurement and contract management;
“Non-Available”	in relation to the IT Environment or the Services, that the IT Environment or the Services are not Available;
“Operational Hours”	in relation to any Service, the hours for which that Service is to be operational as set out in the Services Description);
“Performance Monitoring Report”	has the meaning given in paragraph 1.1.1 of Part B of Schedule 2 (Performance Levels);
“Performance Review Meeting”	the regular meetings between the Supplier and Network Rail to manage and review the Supplier's performance under this Agreement, as further described in paragraph 1.5 of Part B of Schedule 2 (Performance Levels);
“Repeat KPI Failure”	has the meaning given in paragraph 3.1 of Part A of Schedule 2 (Performance Levels);
“Satisfaction Survey”	has the meaning given in paragraph 5.1 of Part II of Annex 1 of Schedule 2 (Performance Levels);
“Service Downtime”	any period of time during which any of the Services are not available;
“Service Incident”	a reported occurrence of a failure to deliver any part of the Services in accordance with Network Rail Requirements or the Target Performance Levels;
“Service Period”	a period of twenty-eight (28) days;
“Severity 1 Service Incident”	a Service Incident which, in the reasonable opinion of Network Rail:

- (a) constitutes a loss of the Service which prevents a large group of End Users from working;
- (b) has a critical impact on the activities of Network Rail;
- (c) causes significant financial loss and/or disruption to Network Rail; or
- (d) results in any material loss or corruption of Network Rail Data;

Non-exhaustive examples:

- (i) a loss of power to a data centre causing failure of Services; or
- (ii) a failure of the Services to provide user authentication service;

“Severity 2 Service Incident”

a Service Incident which, in the reasonable opinion of Network Rail has the potential to:

- (a) have a major (but not critical) adverse impact on the activities of Network Rail and no workaround acceptable to Network Rail is available;
- (b) have a major (but not critical) adverse impact on the activities of Network Rail and no workaround acceptable to Network Rail is available; or
- (c) cause a financial loss and/or disruption to Network Rail which is more than trivial but less severe than the significant financial loss described in the definition of a Severity 1 Service Failure;

Non-exhaustive examples:

- (i) corruption of organisational database tables; or
- (ii) loss of ability to update Network Rail Data;

“Severity 3 Service Incident”

a Service Incident which, in the reasonable opinion of Network Rail has the potential to:

- (a) have a major adverse impact on the activities of Network Rail which can be reduced to a moderate adverse impact due to the availability of a workaround acceptable to Network Rail; or
- (b) have a moderate adverse impact on the activities of Network Rail;

Non-exhaustive example:

inability to access data for a class of customers;

“Severity 4 Service Incident”

a Service Incident which, in the reasonable opinion of Network Rail has the potential to have a minor adverse impact on the provision of the Services to End Users;

Non-exhaustive example:

inability to access data for a single customer;

“Supplier System Response Time”

the average System Response Time measured over the course of a Service Period;

“System Availability”

has the meaning given in paragraph 1.2 of Part II of Annex 1 to Schedule 2 (Performance Levels) and “**Available**” shall be construed accordingly; and

“System Response Time”

the round trip time taken to process a message or request of the IT Environment and/or the Services, and shall be measured from the moment the last packet of data which relates to a particular message is received at the external interface of the IT Environment until a response is generated and the first block of data leaves the external interface (including, for the avoidance of doubt, the time taken for any necessary processing).

PART A

Performance Indicators and Service Credits

1. Performance Indicators

- 1.1 Annex 1 sets out the Key Performance Indicators and Subsidiary Performance Indicators which the Parties have agreed shall be used to measure the performance of the Services and Social Value by the Supplier.
- 1.2 The Supplier shall monitor its performance against each Performance Indicator and shall send Network Rail a report detailing the level of service actually achieved in accordance with Part 2.
- 1.3 Service Points, and therefore Service Credits, shall accrue for any KPI Failure and shall be calculated in accordance with paragraphs 2, 3 and 5.

2. Service Points

- 2.1 If the level of performance of the Supplier during a Service Period achieves the Target Performance Level in respect of a Key Performance Indicator, no Service Points shall accrue to the Supplier in respect of that Key Performance Indicator.
- 2.2 If the level of performance of the Supplier during a Service Period is below the Target Performance Level in respect of a Key Performance Indicator, Service Points shall accrue to the Supplier in respect of that Key Performance Indicator as set out in paragraph 2.3.
- 2.3 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure shall be the applicable number as set out in Annex 1 depending on whether the KPI Failure is a Minor KPI Failure or a Severe KPI Failure, unless the KPI Failure is a Repeat KPI Failure when the provisions of paragraph 3.2 shall apply.

3. Repeat KPI Failures and related KPI Failures

Repeat KPI Failures

- 3.1 If a KPI Failure occurs in respect of the same Key Performance Indicator in any two (2) consecutive Measurement Periods, the second and any subsequent such KPI Failure shall be a “Repeat KPI Failure”.
- 3.2 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure that is a Repeat KPI Failure shall be calculated as follows:

$$SP = P \times 2$$

where:

SP = the number of Service Points that shall accrue for the Repeat KPI Failure; and

P = the applicable number of Service Points for that KPI Failure as set out in Annex 1 depending on whether the Repeat KPI Failure is a Minor KPI Failure, a Severe KPI Failure or a failure to meet the KPI Service Threshold.

Worked example based on the following Service Points regime for System Availability:

System Availability Severity Levels	Network metric	Rail	Service Points
Above Target Performance Level: >99%	Outstanding		0

Target Performance Level:	99%		
Minor KPI Failure:	98.0% - 98.9%	Good	0
Severe KPI Failure:	97.0% - 97.9%	Partially Achieved	1
KPI Service Threshold:	below 97%	SPIR	2
		Not applicable	3

Example 1:

If the Supplier achieves System Availability of 98.5% in a given Measurement Period, it will incur a Minor KPI Failure for System Availability in that Measurement Period and accordingly accrue one (1) Service Point. If, in the next Measurement Period, it achieves System Availability of 97.5%, it will incur a Severe KPI Failure and accordingly accrue two (2) Service Points, but as the failure is a Repeat Failure, this amount is doubled and so the Supplier will incur four (4) Service Points for the failure (i.e. SP = 2 x 2). If in the next Measurement Period it achieves System Availability of 97.5%, the Supplier will again incur four (4) Service Points.

Example 2:

If the Supplier achieves System Availability of 97.5% in a given Measurement Period, it will incur a Severe KPI Failure for System Availability in that Measurement Period and accordingly accrue two (2) Service Points. If, in the next Measurement Period, it achieves System Availability of 98.5%, it will incur a Minor KPI Failure and accordingly accrue one (1) Service Point, but as the failure is a Repeat Failure, this amount is doubled and so the Supplier will incur two (2) Service Points for the failure (i.e. SP = 1 x 2). If in the next Measurement Period it achieves System Availability of 97.5%, the Supplier will incur four (4) Service Points.

Related KPI Failures

- 3.3 If any specific Key Performance Indicators refer to both System Availability and System Response Times, the System Response Times achieved by the Supplier for any period of time during a Service Period during which the relevant Service or element of a Service is determined to be Non-Available shall not be taken into account in calculating the average System Response Times over the course of that Service Period. Accordingly, the Supplier shall not incur any Service Points for failure to meet System Response Times in circumstances where such failure is a result of, and the Supplier has already incurred Service Points for, the Service being Non-Available.
4. **Permitted Maintenance**
- 4.1 The Supplier shall be allowed to book a maximum of **[insert number]** hours Service Downtime for Permitted Maintenance in any one Service Period which shall take place between the hours and on the day specified in the Maintenance Schedule unless otherwise agreed in writing with Network Rail.
5. **Service Credits**
- 5.1 Schedule 9 (Charges and Invoicing) sets out the mechanism by which Service Points shall be converted into Service Credits.
- 5.2 Network Rail shall use the Performance Monitoring Reports provided pursuant to Part B, among other things, to verify the calculation and accuracy of the Service Credits (if any) applicable to each Service Period.

PART B

Performance Monitoring

1. Performance Monitoring and Performance Review

1.1 Within five (5) Working Days of the end of each Service Period, the Supplier shall provide:

1.1.1 a report to the Network Rail Representative which summarises the performance by the Supplier against each of the Performance Indicators as more particularly described in paragraph 1.2 (the “**Performance Monitoring Report**”); and

1.1.2 a report created by the Supplier via Network Rail’s Procurement Tool which summarises the Supplier’s performance over the relevant Service Period as more particularly described in paragraph 1.3 (the “**Balanced Scorecard Report**”).

Performance Monitoring Report

1.2 The Performance Monitoring Report shall be in such format as agreed between the Parties from time to time and contain, as a minimum, the following information:

Information in respect of the Service Period just ended

1.2.1 for each Key Performance Indicator and Subsidiary Performance Indicator, the actual performance achieved over the Service Period, and that achieved over the previous three (3) Measurement Periods;

1.2.2 a summary of all Performance Failures that occurred during the Service Period;

1.2.3 the severity level of each KPI Failure which occurred during the Service Period and whether each PI Failure which occurred during the Service Period fell below the PI Service Threshold;

1.2.4 which Performance Failures remain outstanding and progress in resolving them;

1.2.5 for any Material KPI Failures or Material PI Failures occurring during the Service Period, the cause of the relevant KPI Failure or PI Failure and the action being taken to reduce the likelihood of recurrence;

1.2.6 the status of any outstanding Rectification Plan processes, including:

1.2.6.1 whether or not a Rectification Plan has been agreed; and

1.2.6.2 where a Rectification Plan has been agreed, a summary of the Supplier’s progress in implementing that Rectification Plan;

1.2.7 for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;

1.2.8 the number of Service Points awarded in respect of each KPI Failure;

1.2.9 the Service Credits to be applied, indicating the KPI Failure(s) to which the Service Credits relate;

1.2.10 the conduct and performance of any agreed periodic tests that have occurred, such as the annual failover test of the Service Continuity Plan;

1.2.11 relevant particulars of any aspects of the Supplier’s performance which fail to meet the requirements of this Agreement;

- 1.2.12 such other details as Network Rail may reasonably require from time to time; and

Information in respect of previous Service Periods

- 1.2.13 a rolling total of the number of Performance Failures that have occurred over the past six (6) Service Periods;
- 1.2.14 the amount of Service Credits that have been incurred by the Supplier over the past six (6) Service Periods;
- 1.2.15 the conduct and performance of any agreed periodic tests that have occurred in such Service Period such as the annual failover test of the Service Continuity Plan; and

Information in respect of the next Quarter

- 1.2.16 any scheduled Service Downtime for Permitted Maintenance and Updates that has been agreed between Network Rail and the Supplier for the next Quarter.

Balanced Scorecard Report

- 1.3 The Balanced Scorecard Report shall be presented in the form of an online accessible dashboard using Network Rail's Procurement Tool and, as a minimum, shall contain a high level summary of the Supplier's performance over the relevant Service Period, including details of the following:
- 1.3.1 financial indicators;
- 1.3.2 the Target Performance Levels achieved;
- 1.3.3 behavioural indicators;
- 1.3.4 performance against its obligation to pay its Sub-contractors within twenty-eight (28) days of receipt of an undisputed invoice;
- 1.3.5 performance against its obligation to pay its Unconnected Sub-contractors within sixty (60) days of receipt of an invoice;
- 1.3.6 Milestone trend chart, showing performance of the overall programme;
- 1.3.7 sustainability indicators, for example net zero carbon, waste minimisation or performance to support a circular economy; and
- 1.3.8 Social Value (as applicable).
- 1.4 The Performance Monitoring Report and the Balanced Scorecard Report shall be reviewed and their contents agreed by the Parties at the next Performance Review Meeting held in accordance with paragraph 1.5.
- 1.5 The Parties shall attend at least one meeting per Service Period (unless otherwise agreed) to review the Performance Monitoring Reports and the Balanced Scorecard Reports. The Performance Review Meetings shall (unless otherwise agreed):
- 1.5.1 take place within five (5) Working Days of the Performance Monitoring Report being issued by the Supplier;

- 1.5.2 take place at such location and time (within normal business hours) as Network Rail shall reasonably require (unless otherwise agreed in advance); and
- 1.5.3 be attended by the Supplier Representative and the Network Rail Representative.
- 1.6 Network Rail shall be entitled to raise any additional questions and/or request any further information from the Supplier regarding any KPI Failure and/or PI Failure.
- 1.7 Where agreed by Network Rail, the Supplier shall self-score its performance in the Balance Scorecard Report, in respect of the applicable Service Period.
- 1.8 For the purposes of Network Rail's dashboard, the Supplier shall be scored based on their performance against each Key Performance Indicator, where:
 - 1.8.1 'Outstanding' is awarded a score of 100 points;
 - 1.8.2 'Good' is awarded a score of 80 points;
 - 1.8.3 'Partially Achieve' is awarded a score of 60 points; and
 - 1.8.4 'SPIR' is awarded a score of 0 points.

2. Performance Records

- 2.1 The Supplier shall keep appropriate documents and records (including Help Desk records, staff records, timesheets, training programmes, staff training records, goods received documentation, supplier accreditation records, complaints received etc) in relation to the Services being delivered. Without prejudice to the generality of the foregoing, the Supplier shall maintain accurate records of call histories for a minimum of twelve (12) months and provide prompt access to such records to Network Rail upon Network Rail's request. The records and documents of the Supplier shall be available for inspection by Network Rail and/or its nominee at any time and Network Rail and/or its nominee may make copies of any such records and documents.
- 2.2 In addition to the requirement in paragraph 2.1 to maintain appropriate documents and records, the Supplier shall provide to Network Rail such supporting documentation as Network Rail may reasonably require in order to verify the level of the performance of the Supplier both before and after each Operational Service Commencement Date and the calculations of the amount of Service Credits for any specified period.
- 2.3 The Supplier shall ensure that the Performance Monitoring Report, the Balanced Scorecard Report (as well as historic Performance Monitoring Reports and historic Balanced Scorecard Reports) and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule and any other document or record reasonably required by Network Rail are available to Network Rail on-line and are capable of being printed.

3. Performance Verification

- 3.1 Network Rail reserves the right to verify the System Availability of the IT Environment and/or the Services and the Supplier's performance under this Agreement against the Performance Indicators including by sending test transactions through the IT Environment or otherwise.
- 3.2 The Supplier may be required to submit evidence into Network Rail's Procurement Tool as evidence to support the information provided in the Balanced Scorecard Report.

ANNEX 1

Key Performance Indicators and Subsidiary Performance Indicators

PART I: Key Performance Indicators and Subsidiary Performance Indicators Tables

The Key Performance Indicators and Subsidiary Performance Indicators that shall apply to the Operational Services and the Key Performance Indicators relating to Social Value shall be such of the indicators set out below as are specified in Annex 4 (Performance Levels) of the Call-Off Form.

1. Key Performance Indicators

No.	Key Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Service Points	Network Rail metric	Publishable Performance Information
KPI1	[System Availability]	See paragraph 1 of Part II of this Annex		Target Performance Level: [] Minor KPI Failure: [] Severe KPI Failure: [] KPI Service Threshold: []	0 [] [] []	Good Partially Achieved Partially Achieved SPIR	[YES/NO]
KPI2	[Virtual Library Completeness]	See Paragraph 47 of Part II of this Annex		Target Performance Level: [x]% Minor KPI Failure: [x]%-[x]% Severe KPI Failure: [x]%-[x]% KPI Service Threshold: below [x]%	0 [] [] []		[YES/NO]
KPI3	[Social Value KPI]	[Insert definition or cross reference to]		Performance Level: [x]% Minor KPI Failure: [x]%-[x]% Severe KPI Failure: [x]%-[x]% KPI Service Threshold:	0 [] []		[YES/NO]

No.	Key Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Service Points	Network Rail metric	Publishable Performance Information
				below [x]%	[]		
KPI[●]	etc						

2. Subsidiary Performance Indicators

No.	Subsidiary Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels
PI1	[Sustainability/Efficiency indicators]	[See the Services Description]		Target Performance Level: [XX%] Service Threshold: [XX%]

OPTIONAL SERVICES

The Key Performance Indicators and Subsidiary Performance Indicators that shall apply to the Optional Services shall be such of the indicators set out below as are specified in Annex 4 (Performance Levels) of the Call-Off Form:

3. Key Performance Indicators

No.	Key Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Service Points	Network Rail metric	Publishable Performance Information
KPI1	[]	[]		Target Performance Level: [] Minor KPI Failure: [] Severe KPI Failure: [] KPI Service Threshold: []	0 [] [] []	Good Partially Achieved Partially Achieved SPIR	[YES/NO]

4. Subsidiary Performance Indicators

No.	Subsidiary Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels
PI1	[]	[]		Target Performance Level: [] Service Threshold: []

PART II: Definitions

[Guidance note: This section includes definitions for various potential KPIs. Only include those relevant to the KPIs populated in the above tables.]

1. System Availability

1.1 The IT Environment and/or the Services shall be Available (and “Available” shall be interpreted accordingly) when:

1.1.1 End Users are able to access and utilise all the functions of the Supplier System and/or the Services; and

1.1.2 the Supplier System is able to process the Network Rail Data and to provide any required reports within the timescales set out in the Services Description (as measured on a 24 x 7 basis); and

1.1.3 all Performance Indicators other than System Availability are above the KPI Service Threshold.

1.2 System Availability shall be measured as a percentage of the total time in a Service Period, in accordance with the following formula:

$$\text{System Availability \%} = \frac{\text{MTBF} \times 100}{\text{MTBF} + \text{MTTR}}$$

where:

MTBF = the average number of calendar days between the occurrence of Service Downtime to Network Rail, calculated as the total time of correct operation in the relevant Service Period divided by the number of occurrences of Service Downtime in such Service Period; and

MTTR = the number of hours of Service Downtime in the relevant Service Period, divided by the number of occurrences of Service Downtime in such Service Period.

1.3 When calculating System Availability in accordance with this paragraph 1:

1.3.1 Service Downtime arising due to Permitted Maintenance that is carried out by the Supplier in accordance with clause 9.4 (Maintenance) shall be subtracted from the total number of hours in the relevant Service Period; and

1.3.2 Service Points shall accrue if:

1.3.2.1 any Service Downtime occurs as a result of Emergency Maintenance undertaken by the Supplier; or

1.3.2.2 where maintenance undertaken by the Supplier exceeds **[insert number]** hours in any Service Period.

2. System Response Times

2.1 The “**System Response Time**” is the round trip time taken to process a message or request of the IT Environment and/or the Services, and shall be measured from the moment the last packet of data which relates to a particular message is received at the external interface of the IT Environment until a response is generated and the first block of data leaves the external interface (including, for the avoidance of doubt, the time taken for any necessary processing).

2.2 The Supplier System Response Time shall be the average System Response Time measured over the course of a Service Period.

3. **Help Desk Response Times**

3.1 Measurement of Help Desk response times will be based on the time taken for a Help Desk operative to answer a call. Calls receiving an automated response or placed into a queuing system shall be deemed not to have been answered.

3.2 The Supplier shall monitor the Help Desk response times and shall provide the results of such monitoring to Network Rail in accordance with the provisions of Part B of this Schedule.

4. **Fix Times**

4.1 The “**Fix Time**” of a Service Incident is the period from the time that the Service Incident has been reported to the Supplier to the point of its Resolution and “**Resolution**” means in relation to a Service Incident either:

4.1.1 the root cause of the Service Incident has been removed and the Services are being provided in accordance with the Services Description and Service Levels; or

4.1.2 Network Rail has been provided with a workaround in relation to the Service Incident deemed acceptable by Network Rail.

4.2 Fix Times for Severity 3 Service Incidents and Severity 4 Service Incidents shall be measured in Operational Hours.

4.3 Fix times for Severity 1 Service Incidents and Severity 2 Service Incidents shall be measured 24x7.

5. **Satisfaction (CSAT Score)**

5.1 In order to assess the level of performance of the Supplier, Network Rail may undertake satisfaction surveys in respect of End Users or various groups of End Users (each such survey a “**Satisfaction Survey**”), the results of which may be reflected in the Balanced Scorecard Report. The subject matter of Satisfaction Surveys may include:

5.1.1 the assessment of the Supplier’s performance by the End Users against the agreed Key Performance Indicators and Subsidiary Performance Indicators; and/or

5.1.2 other suggestions for improvements to the Services.

5.2 Network Rail shall reflect in the Balanced Scorecard Report any aspects of the Supplier’s performance of the Services which the responses to the Satisfaction Surveys reasonably suggest are not meeting the Services Description.

5.3 The KPI shall be calculated by reference to the score achieved by the Supplier in the most recent Satisfaction Survey, based on a scoring scale of 1 – 10, where 1 is the worst and 10 is the best.

6. **Close Calls**

6.1 In accordance with the Network Rail Close Call Procedures, the number of Close Calls which have been reported by the Supplier’s organisation per £1m spent by Network Rail with the Supplier’s organisation.

6.2 In this paragraph 6:

6.2.1 “**Close Call**” means any act or omission caused by the acts or omissions of the Supplier or the Supplier Personnel, that has the potential to cause death, personal

injury or other damage or may otherwise threaten or endanger health and safety of any persons; and

6.2.2 “**Network Rail Close Call Procedures**” means Network Rail’s procedures in place from time to time to seek to mitigate and address the occurrence of any Close Calls by itself, its contractors and/or third parties.

7. **Lost Time Injury Frequency Rate**

7.1 The total number of Lost Time Injuries per 100,000 of man hours worked:

$$\frac{\text{(Total number of Lost Time Injuries)}}{\text{(Total number of man hours worked)} * (100,000/\text{total number of man hours worked})}$$

7.2 For the purposes of this paragraph 7, “Lost Time Injuries” means accidents which result in an employee being away from work, or unable to perform their normal work duties, as the result of their injury.

8. **Cyber Security Incidents**

8.1 The average number of Breaches of Security (as defined in Schedule 4 (Security Management) of the Call-Off Terms) occurring within the Supplier’s organisation per annum per £1m of operating revenue.

9. **Cyber Security Recovery**

9.1 The percentage of impacted Services which have been restored to ‘business as usual’ in a in a timely manner over the past 12 months following a Security Incident within the Supplier’s organisation.

10. **Cyber Security Lost Time Frequency Rate**

The total number of Security Incidents where lost-time was incurred expressed per 100,000 man hours worked:

$$\frac{\text{(Total number of Security Incidents where lost-time was incurred)}}{\text{(Total number of man hours worked)} * (100,000/\text{total number of man hours worked})}$$

11. **Mean time between Cyber Security Failure**

The average number of calendar days between the occurrence of Security Incidents within the Supplier’s organisation, expressed as a percentage of the contract duration elapsed (up to a maximum of 365 days).

12. **Lifesaving Rule Breaches**

12.1 The number of times that, subject to investigation in accordance with the Network Rail Fair Culture Principles, the Supplier has been found to have breached the Life Saving Rules.

12.2 For the purposes of this paragraph 12, “**Network Rail Fair Culture Principles**” means the principles of a fair culture document signed by Network Rail, the RMT, the TSSA and Unite dated December 2014.

13. **Safety Conversations**

The number of safety leadership conversations which have been carried out by the Supplier’s organisation over the last 12 months.

14. Suppliers Customer Service Rating

The perception of the Supplier's customer service for the last review period.

15. Unforeseen Network Rail Activities

The number of times that Network Rail has been required to take action, during the latest review period, that was unexpected based on the Network Rail responsibilities defined in the Agreement. This excludes reasons of a breach of Network Rail policies or standards.

16. Supplier Performance Perception

The perception of the Supplier's performance for the last review period.

17. Dispute Resolution

The average number of days taken to resolve contractual disputes under the Agreement.

18. Network Rail Meeting Obligations

The Supplier's perception of Network Rail's overall performance in meeting its obligations under this Agreement during the most recent Service Period.

19. Continuous Improvement

The extent to which the Supplier is on target to complete all Deliverables, on the dates stated in an agreed structured continuous improvement plan to deliver the services defined within the Agreement more effectively, more efficiently and more economically.

20. Compliance to Policies & Standards

The number of times that Network Rail has taken action due to a breach by the Supplier of Network Rail policy or non-compliance to Network Rail Standards..

21. Key Personnel Turnover Rate

The percentage turnover of the Supplier's Call-Off Key Personnel named within the Agreement during the past 12 months. Please refer to clause 14.5 of the Call-Off Terms for further information.

22. Variance to Initial Anticipated Final Cost

22.1 The value of the Initial Anticipated Final Cost less the current Anticipated Final Cost (taking into account any efficiencies made during the term), expressed as a percentage of the initial Anticipated Final Cost (based on the quantities and charges defined in the Agreement at the time of contract signature by all parties).

22.2 For the purposes of this paragraph 22:

22.2.1 "**Anticipated Final Cost**" means the anticipated total cost of a project upon completion, once the project budget has been approved; and

22.2.2 "**Initial Anticipated Final Cost**" means the estimate of the total cost of a project upon its completion, prior to the approval of the project budget.

23. Network Rail Payment to Terms Performance

The number of payment days by Network Rail following submission of an invoice on a valid purchase order.

24. Payment to Sub-Contractors

The average number of days payment in which the Supplier's organisation has paid the subcontractors it relies on to provide the Service in accordance with this Agreement.

25. Value of Outstanding Debt

The value of currently outstanding and overdue payment related to invoices submitted by the Supplier against valid purchase orders, expressed as a percentage of the aggregation of all charges that have been paid and those that are now due for payment.

26. Severity 1 Incident Resolution

The rating that represents the Supplier's performance in the resolution of Severity 1 Service Incidents as defined in Annex 1.

27. Severity 2 Incident Resolution

The rating that represents the Supplier's performance in the resolution of Severity 2 Service Incidents as defined in Annex 1.

28. Severity 3 Incident Resolution

The rating that represents the Supplier's performance in the resolution of Severity 3 Service Incidents as defined in Annex 1.

29. Severity 4 Incident Resolution

The rating that represents the Supplier's performance in the resolution of Severity 4 Service Incidents as defined in Annex 1.

30. % Orders Requiring Rework

The extent to which the Supplier's organisation has been required to carry out further activity on services beyond the due date, in order to achieve the requirements specification detailed within the Agreement.

31. On-Time In Full (OTIF)

The extent to which the Supplier's organisation has met its obligations to complete on time and in full the services, based on the original schedule agreed.

32. Schedule Variance

The latest forecast duration less the duration stated in the original schedule, expressed as a percentage of the duration as stated in the original schedule.

33. Landfill Diversion

33.1 The proportion (% by weight) of annual non-hazardous waste diverted from landfill by the Supplier's organisation.

33.2 "Diverted" means reused, recycled or recovered waste.

34. Environmental Incident Occurrence

The number of environmental incidents within the Supplier's organisation that are either under regulator investigation or have resulted in prosecution.

35. **Environmental Management System Effectiveness**

The progress made in delivering the Supplier's environmental KPI targets, in accordance with the Suppliers' Environment Management System (EMS).

36. **Supporting Britain's development – Small Medium Enterprises ('SME')**

36.1 The proportion of Small Medium Enterprises that the Supplier's organisation contracts with, expressed as a percentage of all the Supplier's contractors within the Supplier's supply chain.

36.2 "Small Medium Enterprise" in this instance means a supplier with a headcount below 250 and a turnover less than €50m or balance sheet total less than €43m.

37. **Compliance to Commercial Terms**

The extent to which the products/services been delivered to the agreed commercial terms with no unanticipated costs or dispute.

38. **Continuous Development**

The extent the Supplier has worked proactively to look to improve the services, followed appropriate governance/processes, communicated, worked in a flexible manner and provided the services in line with expectations.

39. **Driving Efficiency**

The extent the Supplier has promoted solutions which deliver benefits through most efficient total cost operation (people/process/technology).

40. **Best Practice**

The extent the Supplier has promoted the alignment of asset information industry best practice to the specific business needs of Network Rail.

41. **Industry Standards**

The extent to which the Supplier has promoted industry standards and initiatives, open standards, information sharing tools to facilitate collaboration across rail industry supply chain.

42. **Accident Reporting**

The number of accidents and incidents reported in line with the Network Rail's requirements.

43. **Benchmarking**

A measure of whether performance has been equal to or better than market averages as published by Investment Property Databank ("IPD") on an annual basis.

44. **RIDDOR Occurrence**

The average number of reportable incidents within the Supplier's organisation per annum per £1m of operating revenue in accordance with the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013.

45. **Annual reduction (%) of absolute CO₂e emissions per £m turnover**

45.1 The extent to which the Supplier's organisation has achieved an annual reduction (based on a baseline in the year prior to contract commencement) in its absolute CO₂e emissions per £1m operating revenue expressed as a percentage of the baseline.

- 45.2 “**CO₂e**” is Carbon dioxide equivalent, including contributions from CO₂ emissions plus other Greenhouse Gas emissions aggregated and normalised to CO₂ equivalence.
- 45.3 CO₂e should include Scope 1 and Scope 2 emissions as defined by the Greenhouse Gas Protocol (currently set at at <http://www.ghgprotocol.org/about-us> as revised from time to time). Scope 3 emissions are excluded.
- 45.4 For transparency, any restrictions that apply to the carbon emission data should be stated (i.e. which official carbon foot-printing scope definitions have been applied; which business operations are included/excluded, which global/geographical regions are included/exclude).
46. **Total number of Fatalities, Specified Injuries and Lost Time Injuries per 100,000 man hours worked over 13 Periods**
- ((13 periods of Fatalities, Specified Injuries and periods Lost Time Injuries)/13 Periods hours worked)*100,000**
- For the purposes of this paragraph 46:
- 46.1 “**Fatalities**” means the death of any workers, with the exception of suicides if they arise from a work-related accident, including an act of physical violence to a worker;
- 46.2 “**Specified Injuries**” means the occurrence of any specified injuries shown in regulation 4 of RIDDOR 2013 (which, for the avoidance of doubt, replaces the previous list of 'major injuries' in RIDDOR 1995) and includes:
- 46.2.1 fractures, other than to fingers, thumbs and toes
 - 46.2.2 amputations
 - 46.2.3 any injury likely to lead to permanent loss of sight or reduction in sight
 - 46.2.4 any crush injury to the head or torso causing damage to the brain or internal organs
 - 46.2.5 serious burns (including scalding) which:
 - 46.2.6 covers more than 10% of the body
 - 46.2.7 causes significant damage to the eyes, respiratory system or other vital organs
 - 46.2.8 any scalping requiring hospital treatment
 - 46.2.9 any loss of consciousness caused by head injury or asphyxia
 - 46.2.10 any other injury arising from working in an enclosed space which:
 - 46.2.11 leads to hypothermia or heat-induced illness
 - 46.2.12 requires resuscitation or admittance to hospital for more than 24 hours
- 46.3 “**Lost Time Injuries**” means accidents which result in an employee being away from work, or unable to perform their normal work duties, as the result of their injury.
47. **Virtual Library Completeness**
- The Virtual Library shall be complete where all of the information required under Schedule 13 (Reports and Records Provisions) of the Call-Off Terms Annex 3 (Virtual Library) has been uploaded to the Virtual Library in accordance with paragraph 3 of that Schedule.

Annex 1 – Incident Resolution

[Details to be inserted]

CALL-OFF TERMS

SCHEDULE 3

STANDARDS

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

- “Standards Hub”** the Government’s open and transparent standards adoption process as documented at <http://standards.data.gov.uk/>; and
- “Suggested Challenge”** a submission to suggest the adoption of new or emergent standards in the format specified on Standards Hub.

2. GENERAL

- 2.1 Throughout the term of this Agreement, the Parties shall monitor and notify each other of any new or emergent standards which could affect the Supplier’s provision, or Network Rail’s receipt, of the Services. Any changes to the Standards, including the adoption of any such new or emergent standard, shall be agreed in accordance with the Change Control Procedure.
- 2.2 Where a new or emergent standard is to be developed or introduced by Network Rail, the Supplier shall be responsible for ensuring that the potential impact on the Supplier’s provision, or Network Rail’s receipt, of the Services is explained to Network Rail (in a reasonable timeframe), prior to the implementation of the new or emergent standard.
- 2.3 Where Standards referenced conflict with each other or with Good Industry Practice, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard(s) shall require the prior written agreement of Network Rail and shall be implemented within an agreed timescale.

3. TECHNOLOGY AND DIGITAL SERVICES PRACTICE

The Supplier shall (when designing, implementing and delivering the Services) adopt the applicable elements of HM Government’s Technology Code of Practice as documented at <https://www.gov.uk/service-manual/technology/code-of-practice.html>.

4. OPEN DATA STANDARDS & STANDARDS HUB

- 4.1 The Supplier shall comply to the extent within its control with UK Government’s Open Standards Principles as documented at <http://www.gov.uk/government/publications/open-standards-principles>, as they relate to the specification of standards for software interoperability, data and document formats in the IT Environment.
- 4.2 Without prejudice to the generality of paragraph 2.2, the Supplier shall, when implementing or updating a technical component or part of the Software or Supplier Solution where there is a requirement under this Agreement or opportunity to use a new or emergent standard, submit a Suggested Challenge compliant with the UK Government’s Open Standards Principles (using the process detailed on Standards Hub and documented at <http://standards.data.gov.uk/>). Each Suggested Challenge submitted by the Supplier shall detail, subject to the security and confidentiality provisions in this Agreement, an illustration of such requirement or opportunity within the IT Environment, Supplier Solution and Government’s IT infrastructure and the suggested open standard.

- 4.3 The Supplier shall ensure that all documentation published on behalf of Network Rail pursuant to this Agreement is provided in a non-proprietary format (such as PDF or OpenDocument Format (ISO 26300 or equivalent)) as well as any native file format documentation in accordance with the obligation under paragraph 4.1 to comply with the UK Government's Open Standards Principles, unless Network Rail otherwise agrees in writing.

5. **TECHNOLOGY ARCHITECTURE STANDARDS**

The Supplier shall produce full and detailed technical architecture documentation for the Supplier Solution in accordance with Good Industry Practice. If documentation exists that complies with the Open Group Architecture Framework 9.2 or its equivalent, then this shall be deemed acceptable.

6. **ACCESSIBLE DIGITAL STANDARDS**

The Supplier shall comply with (or with equivalents to):

- 6.1 the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.0 Conformance Level AA; and
- 6.2 ISO/IEC 13066-1: 2011 Information Technology – Interoperability with assistive technology (AT) – Part 1: Requirements and recommendations for interoperability.

7. **SERVICE MANAGEMENT SOFTWARE & STANDARDS**

- 7.1 Subject to paragraphs 2 to 4 (inclusive), the Supplier shall reference relevant industry and HM Government standards and best practice guidelines in the management of the Services, including the following and/or their equivalents:

7.1.1 ITIL v3 2011;

7.1.2 ISO/IEC 20000-12018 "Information technology management – Part 1" ;

7.1.3 ISO/IEC 20000-2 2018 "Information technology management – Part 2";

7.1.4 ISO 10007 2017 "Quality management systems – Guidelines for configuration management"; and

7.1.5 ISO 22313:2020 "Security and resilience. Business continuity management systems. Guidance on the use of ISO 22301" and, ISO/IEC 27031:2011 and ISO 22301:2019.

- 7.2 For the purposes of management of the Services and delivery performance the Supplier shall make use of Software that complies with Good Industry Practice including availability, change, incident, knowledge, problem, release & Model deployment, request fulfilment, service asset and configuration, service catalogue, service level and service portfolio management. If such Software has been assessed under the ITIL Software Scheme as being compliant to "Bronze Level", then this shall be deemed acceptable.

8. **ENVIRONMENTAL STANDARDS**

- 8.1 The Supplier warrants that it has obtained ISO 14001 (or equivalent) certification for its environmental management from a UKAS accredited body and shall comply with and maintain certification requirements throughout the Term. The Supplier shall follow a sound environmental management policy, ensuring that any Goods and the Services are procured, produced, packaged, delivered, and are capable of being used and ultimately disposed of in ways appropriate to such standard.

8.2 In performing its obligations under the Agreement, the Supplier shall to the reasonable satisfaction of Network Rail (where the anticipated Charges in any Contract Year are above £5 million per annum (excluding VAT)), where related to and proportionate to the contract in accordance with PPN 06/21), publish and maintain a credible Carbon Reduction Plan in accordance with PPN 06/21.

8.3 The Supplier shall comply with Network Rail and HM Government's objectives to reduce waste and meet the aims of the Greening Government: IT strategy contained in the document "Greening Government: ICT Strategy issue (March 2011)" at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/155098/greening-government-ict-strategy.pdf.

9. **HARDWARE SAFETY STANDARDS**

9.1 The Supplier shall comply with those BS or other standards relevant to the provision of the Services, including the following or their equivalents:

9.1.1 any new hardware required for the delivery of the Services (including printers), shall conform to BS EN IEC 62368- 1:2020+A11:2020 or subsequent replacements. In considering where to site any such hardware, the Supplier shall consider the future working user environment and shall position the hardware sympathetically, wherever possible;

9.1.2 any new audio, video and similar electronic apparatus required for the delivery of the Services, shall conform to the following standard: BS EN IEC 62368-1:2020+A11:2020 or any subsequent replacements;

9.1.3 any new laser printers or scanners using lasers, required for the delivery of the Services, shall conform to either of the following safety Standards: BS EN 60825-1:2014 or any subsequent replacements; and

9.1.4 any new apparatus for connection to any telecommunication network, and required for the delivery of the Services, shall conform to the following safety Standard: BS EN 62949:2017 or any subsequent replacements.

9.2 Where required to do so as part of the Services, the Supplier shall perform electrical safety checks in relation to all equipment supplied under this Agreement in accordance with the relevant health and safety regulations.

10. **SECURITY STANDARDS**

10.1 The Supplier shall comply with the following Network Rail Security and Data Classification Standards

10.1.1 Information Security Policy: NR/L1/INF/02232; and

10.1.2 Supplier (Supply Chain) Security Policy.

These can be accessed at: <http://networkrailstandards/bsi/iphompage.aspx?id=778>

11. **PROJECT LIFECYCLE**

Unless stated otherwise in the Call-Off Form, the Supplier shall be responsible to deliver the scope of all Call-Offs with adherence to the Network Rail IT Delivery Lifecycle, as set out in Annex 3 of this Schedule and as updated by Network Rail and notified to the Supplier from time to time.

12. QUALITY

12.1 Without prejudice to clauses 6.1 to 6.3 (Quality Plans) of the Call-Off Terms, the Supplier will utilise a recognised development methodology for the measurement and control of quality. Network Rail reserves the right to undertake audits to confirm the Supplier's adherence to its processes.

12.2 Network Rail will assess quality against output based specification through the adherence to the Network Rail Lifecycle and Governance process.

13. STRATEGIC PRINCIPLES

The Software and the provision of the Services will abide by the Network Rail IT Principles as set out in Annex 2 of this Schedule. This document is subject to change throughout the duration of the Framework Agreement and it is the Supplier's responsibility to ensure their responses to Call-Offs are up to date and present.

14. CODE OF CONDUCT

14.1 The Supplier shall comply with Network Rail's Code of Conduct. This can be accessed on Network Rail's website: <http://www.safety.networkrail.co.uk>.

14.2 Without prejudice to clause 15 (Supply Chain Rights and Protections) of the Call-Off Terms, the Supplier shall not sub-contract any of its obligations under this Agreement to a third party that has not met the requirements of the Network Rail Code of Conduct and it will therefore be reasonable for consent to be withheld by Network Rail if the third party has not met the requirements of the Network Rail Code of Conduct.

15. DIVERSITY AND INCLUSION

The Supplier shall comply with Network Rail's Diversity and Inclusion Strategy.

16. HSEA REQUIREMENTS

Without prejudice to the other requirements set out in this Schedule and the Agreement, the Supplier shall comply with the HSEA Requirements set out in Annex 1 of this Schedule.

Annex 1 – HSEA Requirements

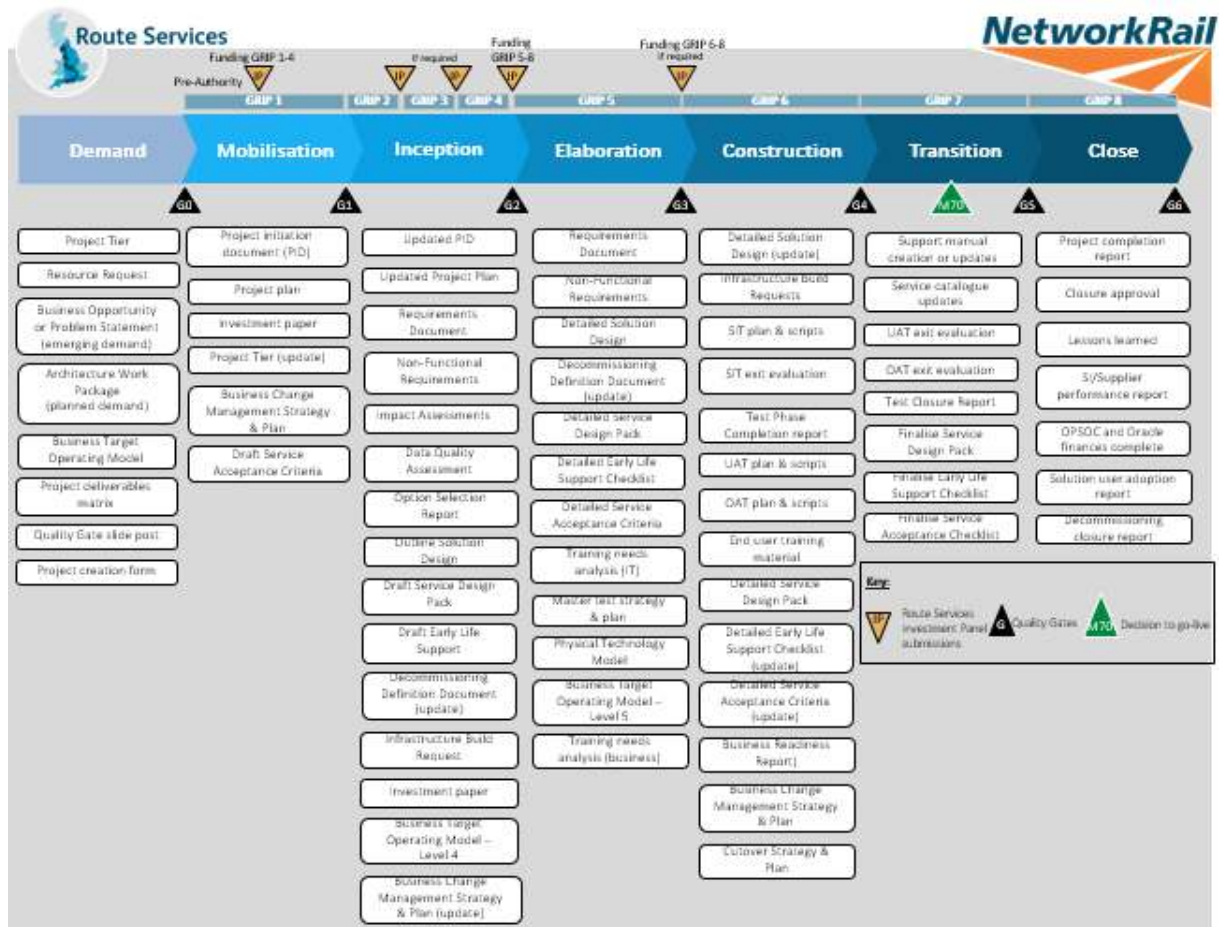
To be inserted

Annex 2 – Network Rail IT Principles



NR IT Strategy - IT
Principles.pdf

Annex 3 - Network Rail IT Delivery Lifecycle



CALL-OFF TERMS**SCHEDULE 4****SECURITY MANAGEMENT****[Guidance]**

1. ***This Schedule was provided by the Cabinet Office Commercial Information Assurance team who have provided two alternative Security procedures for HMG replacing the legacy long and short form Security Schedules:***
 - 1.1 ***Part A to this Schedule - Security Assurance***
 - 1.2 ***Part B to this Schedule - Security Accreditation***
2. ***The essential difference between the two versions of this Schedule is that the Accreditation version requires Network Rail to directly assess the security of the systems used to Process Network Rail Data. The Assurance Schedule requires less Network Rail involvement in that review process. In the Assurance Schedule, the decision whether or not to allow the Supplier to Process Network Rail Data is based on a desktop review of the Supplier's Security Management Plan. The decision whether to use the Assurance or Accreditation version of the Schedule depends mainly on the quantity and nature of the Network Rail Data which the Supplier will Process. In addition, Network Rail will need to consider whether it possesses, or has access to, the technical capability to perform the accreditation role.***
3. ***Network Rail or organisation running the procurement will need to consider several definitions used in the versions of this Schedule and adapt them to the Services being provided. The Schedule incorporates a series of "flow downs" to different categories of Sub-contractor to ensure that those bodies contribute to the Supplier's compliance with the obligations in this Schedule. These are:***
 - 3.1 ***All Sub-contractors that Process Network Rail Data. These Sub-contractors must comply with the Sub-contractor Security Requirements in Annex 2. Network Rail must check that these requirements are appropriate to the full range of Sub-contractors that will Process Network Rail Data.***
 - 3.2 ***Higher Risk Sub-contractors. These Sub-contractors are subject to a requirement to be certified to ISO/IEC 27001(at least ISO/IEC 27001:2013) and/or to possess HMG's Cyber Essentials Plus certification. Network Rail will need to consider the nature and quantity of Network Rail Data being Processed under the contract to determine the threshold for designating a Sub-contractor as a Higher Risk Sub-contractor.***
 - 3.3 ***Medium Risk Sub-contractors. These Sub-contractors require certification under the Cyber Essentials scheme. Again, Network Rail will need to determine the threshold for designation.***
 - 3.4 ***For the accreditation version, the CIMS Sub-contractor. This is defined in the Schedule as "a Sub-contractor that provides or operates the whole, or a substantial part, of the Core Information Management System". Network Rail will need to consider whether it will allow the Supplier to subcontract this element of the requirement. This is an aspect it will need to consider as part of its engagement with the Supplier as part of its pre-contract engagement. If Network Rail will not allow such subcontracting to occur, it will need to amend the Schedule accordingly.***
4. ***The "Baseline Security Requirements" set out in Annex 1 to this Schedule require review prior before issuing to bidders to ensure that all necessary security***

requirements are documented, and each of the requirements is clearly expressed and appropriate for the Services which are to be provided. In particular, Network Rail should review the National Cyber Security Centre Cloud Security Principles to determine what implementation approach for each of those principles it will require.

- 5. Network Rail will need to check the text that is in square brackets. These relate mainly to timeframes and dates for the provision of information or reports by the Supplier or for decisions by Network Rail. Network Rail will need to ensure that these dates are consistent with its plans for the implementation of the services and that it has sufficient allocated resource to make the appropriate decisions within the timeframes it specifies.**
- 6. This Schedule does not deal specifically with the Processing of Personal Data but documents the Protective Measures in place to secure compliance with that requirement of the UK GDPR or EU GDPR, as applicable. Network Rail will need to ensure that the relevant provisions of the contract (ie, Clause 18 (Protection of Personal Data) and Schedule 16 (Processing Personal Data) of the Framework Agreement) accurately reflect the Controller and Processor relationships in the Contract.**
- 7. As the default position, this version of Schedule 5 (Security Management) requires that all Processing of Network Rail Data must take place in the UK (see Part A, Annex 1, paragraph 8 and Annex 2, paragraph 3.1 and Part B paragraph 12.1(a)). Network Rail may depart from this position where it has considered the risks of doing so and if using the Accreditation schedule incorporated its requirements in the Statement of Information Risk Appetite. Network Rail will need to ensure if it chooses to allow the Supplier to Process Network Rail Data outside the UK, this Processing occurs in compliance with the requirements of the Data Protection Legislation and any other relevant government policy.**
- 8. Both Part A and Part B contain provisions in square brackets that will need to be reviewed and resolved when the Framework Agreement is being put in place.**

Assurance version only

- 9. One key difference between the two versions of the Schedule is that the Assurance version omits the express rights to terminate contained in the Accreditation version. Network Rail should consider whether to include express termination rights in all or some of the following circumstances:**
 - 9.1 Network Rail has issued two rejection notices in respect of the Security Management Plan;**
 - 9.2 the Supplier fails to implement a change required by the Required Changes Risk Register in accordance with the timescales set out in the Required Changes Risk Register;**
 - 9.3 the Supplier fails to patch vulnerabilities in accordance with the Security Requirements; and/or**
 - 9.4 the Supplier materially fails to comply with the Incident Management Process.**

Accreditation version only

- 10. Network Rail will need to agree with the Supplier what constitutes the Core Information Management System and its boundary with the Wider Information Management System. This process is essential to determining the scope of the Accreditation exercise. If Network Rail will determine and map this boundary as part of the procurement exercise, then the first option in Paragraph 4.2 should be used. If Network Rail chooses this approach, will need to ask the bidders to provide sufficient details of the proposed information system (e.g. a description of the system architecture, the hardware and software components, Sub-contractors and other suppliers) to enable Network Rail to**

categorise prior to contract award what parts of the proposed information system are to be categorised as either: the “Core Information Management System” and subject to accreditation in accordance with Paragraph 6 of this Schedule, or the “Wider Information Management System” and subject to the Certification Requirements set out in Paragraph 7. This description should be in the form of a diagram setting out the components of the Information Management System and the linkages and data flows between them. This diagram should then be included as Annex 3 to this Schedule.

- 11. If Network Rail will agree the boundary as part of the implementation process, then the second option in Paragraph 4.2] (with any necessary modifications to reflect the actual implementation process adopted) should be used.**
- 12. This version allows Network Rail to play an active role in assessing the Core Information Management System. Network Rail must satisfy itself that the Core information Management System, as implemented by the Supplier, will adequately meet the requirements of the Baseline Security Requirements (set out in Annex 1 to this Schedule) and the Statement of Information Risk Appetite prepared by Network Rail as part of the procurement process. If Network Rail lacks the technical capability to perform this task, it should consider whether to use the Assurance version of the Schedule.**
- 13. The key document that Network Rail must prepare to use this Schedule is the Statement of Information Risk Appetite. This sets out the overall amount of risk an organisation is prepared to accept, tolerate or be exposed to at any point in time. Network Rail will need to prepare this document as part of the documentation provided to bidders along with other documents describing Network Rail’s system requirements for them to bid against.]**

PART A: SECURITY ASSURANCE**1. Definitions****1.1 In this Schedule:**

“Anti-Malicious Software”	means software that scans for and identifies possible Malicious Software in the IT Environment;
“Breach of Security”	an event that results, or could result, in: <ul style="list-style-type: none"> (a) any unauthorised access to or use of Network Rail Data, the Services and/or the Information Management System; and/or (b) the loss, corruption and/or unauthorised disclosure of any information or data (including the Confidential Information and Network Rail Data), including any copies of such information or data, used by Network Rail and/or the Supplier in connection with this Agreement;
“Certification Requirements”	means the information security requirements set out in Paragraph 6;
“CHECK Service Provider”	means a company which has been certified by the National Cyber Security Centre, holds “Green Light” status and is authorised to provide the IT Health Check services required by Paragraph 7.1;
“CREST Service Provider”	means a company with a SOC Accreditation from CREST International;
“Higher Risk Sub-contractor”	means a Sub-contractor that Processes Network Rail Data[, where that data includes either: <ul style="list-style-type: none"> (a) the Personal Data of 1000 or more individuals in aggregate during the period between the first Operational Service Commencement Date and the date on which this Agreement terminates in accordance with Clause 4 (Term); or (b) any part of that data includes any of the following: <ul style="list-style-type: none"> (i) financial information (including any tax and/or welfare information) relating to any person; (ii) any information relating to actual or alleged criminal

- offences (including criminal records);
- (iii) any information relating to children and/or vulnerable persons;
 - (iv) any information relating to social care;
 - (v) any information relating to a person's current or past employment; or
 - (vi) Special Category Personal Data; or
- (c) Network Rail in its discretion, designates a Sub-contractor as a Higher Risk Sub-Contractor in any procurement document related to this Agreement; or
- (d) Network Rail considers in its discretion, that any actual or potential Processing carried out by the Sub-contractor is high risk]

[Guidance: This definition is provided as an example only and should be modified to take into account the circumstances of the individual Agreement.]

“Cyber Essentials”	means the Cyber Essentials certificate issued under the Cyber Essentials Scheme;
“Cyber Essentials Plus”	means the Cyber Essentials Plus certificate issued under the Cyber Essentials Scheme;
“Cyber Essentials Scheme”	means the Cyber Essentials scheme operated by the National Cyber Security Centre;
“Incident Management Process”	means the process which the Supplier shall implement immediately after it becomes aware of a Breach of Security which is intended to restore normal operations as quickly as possible, minimising any adverse impact on Network Rail Data, Network Rail, the Services and/or users of the Services and which shall be prepared by the Supplier in accordance with Paragraph 4 using the template set out in Annex 3;
“Information Assurance Assessment”	means the set of policies, procedures, systems and processes which the Supplier shall implement, maintain and update in accordance with Paragraph 4 in order to manage, mitigate and, where possible, avoid information security risks including cyber-attacks, hacks, data leaks, Personal Data Breaches and/or theft and which

shall be prepared by the Supplier using the template set out in Annex 3;

“Information Management System”

means

- (a) those parts of the Supplier System, and those of the Sites, that the Supplier or its Sub-contractors will use to provide the parts of the Services that require Processing Network Rail Data; and
- (b) the associated information assets and systems (including organisational structure, controls, policies, practices, procedures, processes and resources);

“Information Security Approval Statement”

means a notice issued by Network Rail which sets out the information risks which the Supplier has identified as being associated with using the Information Management System and confirms that:

Network Rail is satisfied that the identified risks have been adequately and appropriately addressed;

Network Rail has accepted the residual risks; and

the Supplier may use the Information Management System to Process Network Rail Data;

“IT Health Check”

has the meaning given in Paragraph 7.1;

“Medium Risk Sub-contractor”

means a Sub-contractor that Processes Network Rail Data, [where that data

- (a) includes the Personal Data of between 100 and 999 individuals (inclusive) in the period between the first Operational Service Commencement Date and the date on which this Agreement terminates in accordance with Clause 4 (Term); and
- (b) does not include Special Category Personal Data];

[Guidance: This definition is provided as an example only and should be modified to take into account the circumstances of the individual Agreement.]

“Process”

means any operation which is performed on data, whether or not by automated means, including collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making

available, alignment or combination, restriction, erasure or destruction;

“Remediation Action Plan” has the meaning given in Paragraph 7.3.3.1;

“Required Changes Register” mean the register within the Security Management Plan which is to be maintained and updated by the Supplier and which shall record each of the changes that the Supplier shall make to the Information Management System and/or the Security Management Plan as a consequence of the occurrence of any of the events set out in Paragraph 5.2 together with the date by which such change shall be implemented and the date on which such change was implemented;

“Risk Register” is the risk register within the Information Assurance Assessment which is to be prepared and submitted to Network Rail for approval in accordance with Paragraph 4;

“Security Management Plan” means the document prepared by the Supplier using the template in Annex 3, comprising:

- (a) the Information Assurance Assessment;
- (b) the Required Changes Register; and
- (c) the Incident Management Process;

Special Category Personal Data means the categories of Personal Data set out in article 9(1) of the UK GDPR;

2. Introduction

2.1 This Part A of this Schedule sets out:

2.1.1 the arrangements the Supplier must implement before, and comply with when, providing the Services and performing its other obligations under this Agreement to ensure the security of Network Rail Data and the Information Management System;

2.1.2 the Certification Requirements applicable to the Supplier and each of those Sub-contractors which Processes Network Rail Data;

2.1.3 the security requirements in Annex 1, with which the Supplier must comply;

2.1.4 the tests which the Supplier shall conduct on the Information Management System during the Term; and

2.1.5 the Supplier's obligations to:

2.1.5.1 return or destroy Network Rail Data on the expiry or earlier termination of this Agreement; and

2.1.5.2 prevent the introduction of Malicious Software into the Supplier System and to scan for, contain the spread of, and minimise the

impact of Malicious Software which is introduced into the Supplier System in Paragraph 9; and

2.1.5.3 report Breaches of Security to Network Rail.

3. Principles of Security

3.1 The Supplier acknowledges that Network Rail places great emphasis on the confidentiality, integrity and availability of Network Rail Data and, consequently on the security of:

3.1.1 the Sites;

3.1.2 the IT Environment;

3.1.3 the Information Management System; and

3.1.4 the Services.

3.2 Notwithstanding the involvement of Network Rail in assessing the arrangements which the Supplier implements to ensure the security of Network Rail Data and the Information Management System, the Supplier shall be, and shall remain, responsible for:

3.2.1 the security, confidentiality, integrity and availability of Network Rail Data whilst that Network Rail Data is under the control of the Supplier or any of its Sub-contractors; and

3.2.2 the security of the Information Management System.

3.3 The Supplier shall:

3.3.1 comply with the security requirements in Annex 1; and

3.3.2 ensure that each Sub-contractor that Processes Network Rail Data complies with the Sub-contractor Security Requirements.

3.4 The Supplier shall provide Network Rail with access to Supplier Personnel responsible for information assurance to facilitate Network Rail's assessment of the Supplier's compliance with its obligations set out in this Schedule at reasonable times on reasonable notice.

4. Information Security Approval Statement

4.1 The Supplier must ensure that its Implementation Plan sets out in sufficient detail how it will ensure compliance with the requirements of this Schedule, including any requirements imposed on Sub-contractors by Annex 2, from the first Operational Services Commencement Date.

4.2 The Supplier may not use the Information Management System to Process Network Rail Data unless and until:

4.2.1 the Supplier has procured the conduct of an IT Health Check of the Supplier System by a CHECK Service Provider or a CREST Service Provider in accordance with Paragraph 7.1; and

4.2.2 Network Rail has issued the Supplier with an Information Security Approval Statement in accordance with the process set out in this Paragraph 4.

4.3 The Supplier shall document in the Security Management Plan how the Supplier and its Sub-contractors shall comply with the requirements set out in this Schedule and the Agreement in order to ensure the security of Network Rail Data and the Information Management System.

- 4.4 The Supplier shall prepare and submit to Network Rail within [20] Working Days of the date of this Agreement, the Security Management Plan, which comprises:
- 4.4.1 an Information Assurance Assessment;
 - 4.4.2 the Required Changes Register; and
 - 4.4.3 the Incident Management Process.
- 4.5 Network Rail shall review the Supplier's proposed Security Management Plan as soon as possible and, in any event within [20] Working Days of receipt and shall either issue the Supplier with:
- 4.5.1 an Information Security Approval Statement, which shall confirm that the Supplier may use the Information Management System to Process Network Rail Data; or
 - 4.5.2 a rejection notice, which shall set out Network Rail's reasons for rejecting the Security Management Plan.
- 4.6 If Network Rail rejects the Supplier's proposed Security Management Plan, the Supplier shall take Network Rail's reasons into account in the preparation of a revised Security Management Plan, which the Supplier shall submit to Network Rail for review within [10] Working Days or such other timescale as agreed with Network Rail.
- 4.7 Network Rail may require, and the Supplier shall provide Network Rail and its authorised representatives with:
- 4.7.1 access to the Supplier Personnel;
 - 4.7.2 access to the Information Management System to audit the Supplier and its Sub-contractors' compliance with this Agreement; and
 - 4.7.3 such other information and/or documentation that Network Rail or its authorised representatives may reasonably require,

to assist Network Rail to establish whether the arrangements which the Supplier and its Sub-contractors have implemented in order to ensure the security of Network Rail Data and the Information Management System are consistent with the representations in the Security Management Plan. The Supplier shall provide the access required by Network Rail in accordance with this Paragraph within [10] Working Days of receipt of such request, except in the case of a Breach of Security in which case the Supplier shall provide Network Rail with the access that it requires within [24 hours] of receipt of such request.

5. **Compliance Reviews**

- 5.1 The Supplier shall regularly review and update the Security Management Plan, and provide such to Network Rail, at least once each year and as required by this Paragraph.
- 5.2 The Supplier shall notify Network Rail within [2] Working Days after becoming aware of:
- 5.2.1 a significant change to the components or architecture of the Information Management System;
 - 5.2.2 a new risk to the components or architecture of the Information Management System;
 - 5.2.3 a vulnerability to the components or architecture of the Service which is classified 'Medium', 'High', 'Critical' or 'Important' in accordance with the classification methodology set out in Paragraph 9.2 of Annex 1 to this Schedule;

- 5.2.4 a change in the threat profile;
 - 5.2.5 a significant change to any risk component;
 - 5.2.6 a significant change in the quantity of Personal Data held within the Service;
 - 5.2.7 a proposal to change any of the Sites from which any part of the Services are provided; and/or
 - 5.2.8 an ISO/IEC 27001 (at least ISO/IEC 27001:2013) audit report produced in connection with the Certification Requirements indicates significant concerns.
- 5.3 Within [10] Working Days of such notifying Network Rail or such other timescale as may be agreed with Network Rail, the Supplier shall make the necessary changes to the Required Changes Register and submit the updated Required Changes Register Network Rail for review and approval.
- 5.4 Where the Supplier is required to implement a change, including any change to the Information Management System, the Supplier shall effect such change at its own cost and expense.
- 6. Certification Requirements**
- 6.1 The Supplier shall be certified as compliant with:
- 6.1.1 ISO/IEC 27001 (at least ISO/IEC 27001:2013) by a UK Accreditation Service-approved certification body or is included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2013); and
 - 6.1.2 Cyber Essentials PLUS,
- and shall provide Network Rail with a copy of each such certificate of compliance before the Supplier shall be permitted to receive, store or Process Network Rail Data.
- 6.2 The Supplier shall ensure that each Higher Risk Sub-contractor is certified as compliant with either:
- 6.2.1 ISO/IEC 27001 (at least ISO/IEC 27001:2013) by a UK Accreditation Service-approved certification body or is included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2013); or
 - 6.2.2 Cyber Essentials PLUS,
- and shall provide Network Rail with a copy of each such certificate of compliance before the Higher-Risk Sub-contractor shall be permitted to receive, store or Process Network Rail Data.
- 6.3 The Supplier shall ensure that each Medium Risk Sub-contractor is certified compliant with Cyber Essentials.
- 6.4 The Supplier shall ensure that the Supplier and each Sub-contractor who is responsible for the secure destruction of Network Rail Data:
- 6.4.1 securely destroys Network Rail Data only on Sites which are included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2013);
 - 6.4.2 should satisfy Network Rail that their data destruction/deletion practices comply with UK GDPR requirements and follows all relevant NCSC guidance; and
 - 6.4.3 must maintain an asset register of all Network Rail supplied information, data and equipment to ensure Network Rail assets are returned and/or deleted.

- 6.5 The Supplier shall provide Network Rail with evidence of its and its Sub-contractor's compliance with the requirements set out in this Paragraph 6 before the Supplier or the relevant Sub-contractor (as applicable) may carry out the secure destruction of any Network Rail Data.
- 6.6 The Supplier shall notify Network Rail as soon as reasonably practicable and, in any event within 2 Working Days, if the Supplier or any Sub-contractor ceases to be compliant with the Certification Requirements and, on request from Network Rail, shall or shall procure that the relevant Sub-contractor shall:
- 6.6.1 immediately ceases using Network Rail Data; and
- 6.6.2 procure that the relevant Sub-contractor promptly returns, destroys and/or erases Network Rail Data in accordance with the requirements set out in this Paragraph.
- 6.7 Network Rail may agree to exempt, in whole or part, the Supplier or any Sub-contractor from the requirements of this Paragraph 6. Any exemption must be in writing to be effective. The Supplier must include the exemption in the Security Management Plan.
- 7. Security Testing**
- 7.1 The Supplier shall, at its own cost and expense procure and conduct:
- 7.1.1 testing of the Information Management System by a CHECK Service Provider or a CREST Service Provider ("IT Health Check"); and
- 7.1.2 such other security tests as may be required by Network Rail,
- 7.2 The Supplier shall:
- 7.2.1 complete all of the above security tests before:
- 7.2.1.1 the Supplier submits the Security Management Plan to Network Rail for review in accordance with Paragraph 4; and
- 7.2.1.2 before the Supplier is given permission by Network Rail to Process or manage any Network Rail Data; and
- 7.2.2 repeat the IT Health Check not less than once every 12 months during the Term and submit the results of each such test to Network Rail for review in accordance with this Paragraph.
- 7.3 In relation to each IT Health Check, the Supplier shall:
- 7.3.1 agree with Network Rail the aim and scope of the IT Health Check;
- 7.3.2 promptly, and no later than ten (10) Working Days, following the receipt of each IT Health Check report, provide Network Rail with a copy of the full report;
- 7.3.3 in the event that the IT Health Check report identifies any vulnerabilities, the Supplier shall:
- 7.3.3.1 prepare a remedial plan for approval by Network Rail (each a "Remediation Action Plan") which sets out in respect of each vulnerability identified in the IT Health Check report:
- (a) how the vulnerability will be remedied;
- (b) unless otherwise agreed in writing between the Parties, the date by which the vulnerability will be remedied, which must be:

- (1) within three months of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of “medium”;
 - (2) within one month of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of “high”; and
 - (3) within 7 Working Days of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of “critical”;
 - (c) the tests which the Supplier shall perform or procure to be performed (which may, at the discretion of Network Rail, include a further IT Health Check) to confirm that the vulnerability has been remedied;
 - 7.3.3.2 comply with the Remediation Action Plan; and
 - 7.3.3.3 conduct such further tests on the Service as are required by the Remediation Action Plan to confirm that the Remediation Action Plan has been complied with.
- 7.4 The Supplier shall ensure that any testing which could adversely affect the Supplier System shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such tests shall be agreed in advance with Network Rail.
- 7.5 If any testing conducted by or on behalf of the Supplier identifies a new risk, new threat, vulnerability or exploitation technique that has the potential to affect the security of the Information Management System, the Supplier shall within [2] Working Days of becoming aware of such risk, threat, vulnerability or exploitation technique provide Network Rail with a copy of the test report and:
- 7.5.1 propose interim mitigation measures to vulnerabilities in the Information Management System known to be exploitable where a security patch is not immediately available; and
 - 7.5.2 where and to the extent applicable, remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the Supplier System) within the timescales set out in the test report or such other timescales as may be agreed with Network Rail.
- 7.6 The Supplier shall conduct such further tests of the Supplier System as may be required by Network Rail from time to time to demonstrate compliance with its obligations set out this Schedule and the Agreement.
- 7.7 The Supplier shall notify Network Rail immediately if it fails to, or believes that it will not, mitigate the vulnerability within the timescales set out in Paragraph 7.3.
- 8. Security Monitoring and Reporting**
- 8.1 The Supplier shall:
- 8.1.1 monitor the delivery of assurance activities;
 - 8.1.2 maintain and update the Security Management Plan in accordance with Paragraph 5;

- 8.1.3 agree a document which presents the residual security risks to inform Network Rail's decision to give approval to the Supplier to Process and transit Network Rail Data;
- 8.1.4 monitor security risk impacting upon the operation of the Service;
- 8.1.5 report Breaches of Security in accordance with the approved Incident Management Process;
- 8.1.6 agree with Network Rail the frequency and nature of the security reports to be prepared and submitted by the Supplier to Network Rail within [20] Working Days of Effective Date.

9. **Malicious Software**

- 9.1 The Supplier shall install and maintain Anti-Malicious Software or procure that Anti-Malicious Software is installed and maintained on any part of the Information Management System which may Process Network Rail Data and ensure that such Anti-Malicious Software is configured to perform automatic software and definition updates as well as regular scans of the Information Management System to check for, prevent the introduction of Malicious Software or where Malicious Software has been introduced into the Information Management System, to identify, contain the spread of, and minimise the impact of Malicious Software.
- 9.2 If Malicious Software is found, the parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Network Rail Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.
- 9.3 Any cost arising out of the actions of the parties taken in compliance with the provisions of Paragraph 9.2 shall be borne by the parties as follows:
 - 9.3.1 by the Supplier where the Malicious Software originates from:
 - 9.3.1.1 the Supplier Software;
 - 9.3.1.2 the Third Party Software supplied by the Supplier; or
 - 9.3.1.3 Network Rail Data whilst Network Rail Data is or was under the control of the Supplier,

unless, in the case of Network Rail Data only, the Supplier can demonstrate that such Malicious Software was present in Network Rail Data and not quarantined or otherwise identified by Network Rail when Network Rail provided Network Rail Data to the Supplier; and
 - 9.3.2 by Network Rail, in any other circumstance.

10. **Breach of Security**

- 10.1 If either party becomes aware of a Breach of Security it shall notify the other in accordance with the Incident Management Process.
- 10.2 The Incident Management Process shall, as a minimum, require the Supplier to do the following upon it becoming aware of a Breach of Security or attempted Breach of Security:
 - 10.2.1 Immediately take all reasonable steps necessary to:
 - 10.2.1.1 minimise the extent of actual or potential harm caused by such Breach of Security;

- 10.2.1.2 remedy such Breach of Security to the extent possible;
 - 10.2.1.3 apply a tested mitigation against any such Breach of Security; and
 - 10.2.1.4 prevent a further Breach of Security in the future which exploits the same root cause failure;
- 10.2.2 as soon as reasonably practicable and, in any event, within 2 Working Days, following the Breach of Security or attempted Breach of Security, provide to Network Rail full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by Network Rail.
- 10.3 In the event that any action is taken in response to a Breach of Security or attempted Breach of Security as a result of non-compliance by the Supplier, its Sub-contractors and/or all or any part of the Information Management System with this Agreement, then such remedial action shall be completed at no additional cost to Network Rail.

ANNEX 1: SECURITY REQUIREMENTS**1. Security Classification of Information**

1.1 If the provision of the Services requires the Supplier to Process Network Rail Data which is classified as:

1.1.1 OFFICIAL-SENSITIVE, the Supplier shall implement such additional measures as agreed with Network Rail from time to time in order to ensure that such information is safeguarded in accordance with the applicable Standards; and/or

1.1.2 SECRET or TOP SECRET, the Supplier shall only do so where it has notified Network Rail prior to receipt of such Network Rail Data and the Supplier shall implement additional measures as agreed with Network Rail from time to time in order to ensure that such information is safeguarded in accordance with the applicable Standards.

2. End User Devices

2.1 The Supplier must manage, and must ensure that all Sub-contractors manage, all end-user devices used by the Supplier on which Network Rail Data is Processed in accordance the following requirements:

2.1.1 the operating system and any applications that Process or have access to Network Rail Data must be in current support by the vendor, or the relevant community in the case of Open Source operating systems or applications;

2.1.2 users must authenticate before gaining access;

2.1.3 all Network Rail Data must be encrypted using an encryption tool agreed to by Network Rail;

2.1.4 the end-user device must lock and require any user to re-authenticate after a period of time that is proportionate to the risk environment, during which the end-user device is inactive;

2.1.5 the end-user device must be managed in a way that allows for the application of technical policies and controls over applications that have access to Network Rail Data;

2.1.6 the Supplier or Sub-contractor, as applicable, can, without physical access to the end-user device, remove or make inaccessible all Network Rail Data on the device and prevent any user or group of users from accessing the device;

2.1.7 all end-user devices are within in the scope of any current Cyber Essentials Plus certificate held by the Supplier, or any ISO/IEC 27001 (at least ISO/IEC 27001:2013) certification issued by a UKAS-approved certification body, where the scope of that certification includes the Services.

2.2 The Supplier must comply, and ensure that all Sub-contractors comply, with the recommendations in NCSC Device Guidance, as updated, amended or replaced from time to time, as if those recommendations were incorporated as specific obligations under this Agreement.

2.3 Where there any conflict between the requirements of this Schedule 4 (Security Management) and the requirements of the NCSC Device Guidance, the requirements of this Schedule will take precedence.

3. **Encryption**

3.1 The Supplier must ensure, and must ensure that all Sub-contractors ensure, that Network Rail Data is encrypted:

3.1.1 when stored at any time when no operation is being performed on it; and

3.1.2 when transmitted.

3.2 Where the Supplier, or a Sub-contractor, cannot encrypt Network Rail Data the Supplier must:

3.2.1 immediately inform Network Rail of the subset or subsets of Network Rail Data it cannot encrypt and the circumstances in which and the reasons why it cannot do so;

3.2.2 provide details of the protective measures the Supplier or Sub-contractor (as applicable) proposes to take to provide equivalent protection to Network Rail as encryption; and

3.2.3 provide Network Rail with such information relating to Network Rail Data concerned, the reasons why that Network Rail Data cannot be encrypted and the proposed protective measures as Network Rail may require.

3.3 Network Rail, the Supplier and, where Network Rail requires, any relevant Sub-contractor shall meet to agree appropriate protective measures for the unencrypted Network Rail Data.

3.4 Where Network Rail and Supplier reach agreement, the Supplier must update the Security Management Plan to include:

3.4.1 the subset or subsets of Network Rail Data not encrypted and the circumstances in which that will occur; and

3.4.2 the protective measure that the Supplier and/or Sub-contractor will put in place in respect of the unencrypted Network Rail Data.

3.5 Where Network Rail and Supplier do not reach agreement within 40 Working Days of the date on which the Supplier first notified Network Rail that it could not encrypt certain Network Rail Data, either party may refer the matter to [be determined in accordance with the Dispute Resolution Procedure].

4. **Personnel Security**

4.1 All Supplier Personnel shall be subject to a pre-employment check before they may participate in the provision and or management of the Services. Such pre-employment checks must include all pre-employment checks which are required by the HMG Baseline Personnel Security Standard including: verification of the individual's identity; verification of the individual's nationality and immigration status; and, verification of the individual's employment history; verification of the individual's criminal record.

4.2 Network Rail and the Supplier shall review the roles and responsibilities of the Supplier Personnel who will be involved in the management and/or provision of the Services in order to enable Network Rail to determine which roles require additional vetting and a specific national security vetting clearance (e.g. a Counter Terrorist Check; a Security Check). Roles which are likely to require additional vetting and a specific national security vetting clearance include system administrators whose role would provide those individuals with privileged access to IT systems which Process Network Rail Data or data which, if it were Network Rail Data, would be classified as OFFICIAL-SENSITIVE.

4.3 The Supplier shall not permit Supplier Personnel who fail the security checks required by Paragraphs 4.1 and 4.2 to be involved in the management and/or provision of the Services

except where Network Rail has expressly agreed in writing to the involvement of the named individual in the management and/or provision of the Services.

- 4.4 The Supplier shall ensure that Supplier Personnel are only granted such access to Network Rail Data as is necessary to enable the Supplier Personnel to perform their role and to fulfil their responsibilities.
- 4.5 The Supplier shall ensure that Supplier Personnel who no longer require access to Network Rail Data (e.g. they cease to be employed by the Supplier or any of its Sub-contractors), have their rights to access Network Rail Data revoked within 1 Working Day.
- 4.6 The Supplier shall ensure that Supplier Staff that have access to the Sites, the IT Environment or Network Rail Data receive regular training on security awareness that reflects the degree of access those individuals have to the Sites, the IT Environment or Network Rail Data.
- 4.7 The Supplier shall ensure that the training provided to Supplier Staff under paragraph 4.6 includes training on the identification and reporting fraudulent communications intended to induce individuals to disclose Personal Data or any other information that could be used, including in combination with other Personal Data or information, or with other techniques, to facilitate unauthorised access to the Sites, the IT Environment or Network Rail Data (“phishing”).

5. Identity, Authentication and Access Control

- 5.1 The Supplier shall operate an access control regime to ensure:
- 5.1.1 all users and administrators of the Supplier System are uniquely identified and authenticated when accessing or administering the Services; and
- 5.1.2 all persons who access the Sites are identified and authenticated before they are allowed access to the Sites.
- 5.2 The Supplier shall apply the ‘principle of least privilege’ when allowing persons access to the Supplier System and Sites so that such persons are allowed access only to those parts of the Sites and the Supplier System they require.
- 5.3 The Supplier shall retain records of access to the Sites and to the Supplier System and shall make such record available to Network Rail on request.

6. Data Destruction or Deletion

- 6.1 The Supplier shall:
- 6.1.1 prior to securely sanitising any Network Rail Data or when requested the Supplier shall provide the Government with all Network Rail Data in an agreed open format;
- 6.1.2 have documented processes to ensure the availability of Network Rail Data in the event of the Supplier ceasing to trade;
- 6.1.3 securely erase in a manner agreed with Network Rail any or all Network Rail Data held by the Supplier when requested to do so by Network Rail;
- 6.1.4 securely destroy in a manner agreed with Network Rail all media that has held Network Rail Data at the end of life of that media in accordance with any specific requirements in this Agreement and, in the absence of any such requirements, as agreed by Network Rail; and
- 6.1.5 implement processes which address the CPNI and NCSC guidance on secure sanitisation.

7. Audit and Protective Monitoring

- 7.1 The Supplier shall collect audit records which relate to security events in the Information Management System or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include regular reports and alerts setting out details of access by users of the Information Management System, to enable the identification of (without limitation) changing access trends, any unusual patterns of usage and/or accounts accessing higher than average amounts of Network Rail Data.
- 7.2 The Supplier and Network Rail shall work together to establish any additional audit and monitoring requirements for the Information Management System.
- 7.3 The retention periods for audit records and event logs must be agreed with Network Rail and documented in the Security Management Plan.

8. Location of Network Rail Data

- 8.1 The Supplier shall not and shall procure that none of its Sub-contractors Process Network Rail Data outside the [UK] without the prior written consent of Network Rail, which may be subject to conditions.

9. Vulnerabilities and Corrective Action

- 9.1 Network Rail and the Supplier acknowledge that from time to time vulnerabilities in the Information Management System will be discovered which unless mitigated will present an unacceptable risk to Network Rail Data.
- 9.2 The severity of vulnerabilities for COTS Software shall be categorised by the Supplier as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the agreed method in the Security Management Plan and using the appropriate vulnerability scoring systems including:
- 9.2.1 the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST at <http://nvd.nist.gov/cvss.cfm>); and
- 9.2.2 Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.
- 9.3 Subject to Paragraph 9.4, the Supplier shall procure the application of security patches to vulnerabilities in the Information Management System within:
- 9.3.1 seven (7) days after the public release of patches for those vulnerabilities categorised as 'Critical';
- 9.3.2 thirty (30) days after the public release of patches for those vulnerabilities categorised as 'Important'; and
- 9.3.3 sixty (60) days after the public release of patches for those vulnerabilities categorised as 'Other'.
- 9.4 The timescales for applying patches to vulnerabilities in the Information Management System set out in Paragraph 9.3 shall be extended where:
- 9.4.1 the Supplier can demonstrate that a vulnerability in the Information Management System is not exploitable within the context of the Services (e.g. because it resides in a Software component which is not involved in running in the Services) provided such vulnerabilities shall be remedied by the Supplier within the timescales set out

in Paragraph 9.3 if the vulnerability becomes exploitable within the context of the Services;

- 9.4.2 the application of a 'Critical' or 'Important' security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of five (5) days, provided the Supplier had followed and continues to follow the security patch test plan agreed with Network Rail; or
 - 9.4.3 Network Rail agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the Security Management Plan.
- 9.5 The Security Management Plan shall include provisions for major version upgrades of all COTS Software to be kept up to date such that all COTS Software are always in mainstream support throughout the Term unless otherwise agreed by Network Rail in writing. All COTS Software should be no more than N-1 versions behind the latest software release.

10. **Secure Architecture**

- 10.1 The Supplier shall design the Information Management System in accordance with:
- 10.1.1 the NCSC "Security Design Principles for Digital Services", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/security-design-principles-digital-services-main>;
 - 10.1.2 the NCSC "Bulk Data Principles", a copy of which can be found at <https://www.ncsc.gov.uk/guidance/protecting-bulk-personal-data-main>; and
 - 10.1.3 the NSCS "Cloud Security Principles", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles> and which are summarised below:
 - 10.1.3.1 "Cloud Security Principle 1: data in transit protection" which, amongst other matters, requires that user data transiting networks should be adequately protected against tampering and eavesdropping;
 - 10.1.3.2 "Cloud Security Principle 2: asset protection and resilience" which, amongst other matters, requires that user data, and the assets storing or processing it, should be protected against physical tampering, loss, damage or seizure;
 - 10.1.3.3 "Cloud Security Principle 3: separation between users" which, amongst other matters, requires that a malicious or compromised user of the service should not be able to affect the service or data of another;
 - 10.1.3.4 "Cloud Security Principle 4: governance framework" which, amongst other matters, requires that the Supplier should have a security governance framework which coordinates and directs its management of the Services and information within it;
 - 10.1.3.5 "Cloud Security Principle 5: operational security" which, amongst other matters, requires that the Services need to be operated and managed securely in order to impede, detect or prevent a Breach of Security;
 - 10.1.3.6 "Cloud Security Principle 6: personnel security" which, amongst other matters, requires that where Supplier Personnel have access to Network Rail Data and/or Network Rail System that those

- personnel be subject to appropriate security screening and regular security training;
- 10.1.3.7 “Cloud Security Principle 7: secure development” which, amongst other matters, requires that the Services be designed and developed to identify and mitigate threats to their security;
- 10.1.3.8 “Cloud Security Principle 8: supply chain security” which, amongst other matters, requires the Supplier to ensure that appropriate security controls are in place with its Sub-contractors and other suppliers;
- 10.1.3.9 “Cloud Security Principle 9: secure user management” which, amongst other matters, requires the Supplier to make the tools available for Network Rail to securely manage Network Rail’s use of the Service;
- 10.1.3.10 “Cloud Security Principle 10: identity and authentication” which, amongst other matters, requires the Supplier to implement appropriate controls in order to ensure that access to Service interfaces is constrained to authenticated and authorised individuals;
- 10.1.3.11 “Cloud Security Principle 11: external interface protection” which, amongst other matters, requires that all external or less trusted interfaces with the Services should be identified and appropriately defended;
- 10.1.3.12 “Cloud Security Principle 12: secure service administration” which, amongst other matters, requires that any ICT system which is used for administration of a cloud service will have highly privileged access to that service;
- 10.1.3.13 “Cloud Security Principle 13: audit information for users” which, amongst other matters, requires the Supplier to be able to provide Network Rail with the audit records it needs to monitor access to the Service and Network Rail Data held by the Supplier and/or its Sub-contractors; and
- 10.1.3.14 “Cloud Security Principle 14: secure use of the service” which, amongst other matters, requires the Supplier to educate Supplier Personnel on the safe and secure use of the Information Management System.

ANNEX 2: SECURITY REQUIREMENTS FOR SUB-CONTRACTORS

1. Application of Annex

- 1.1 This Annex applies to all Sub-contractors that Process Network Rail Data.
- 1.2 The Supplier must:
 - 1.2.1 ensure that those Sub-contractors comply with the provisions of this Annex;
 - 1.2.2 keep sufficient records to demonstrate that compliance to Network Rail; and
 - 1.2.3 ensure that its Implementation Plan includes Deliverable Items, Milestones and Milestone Dates that relate to the design, implementation and management of any systems used by Sub-contractors to Process Network Rail Data.

2. Designing and managing secure solutions

- 2.1 The Sub-contractor shall implement their solution(s) to mitigate the security risks in accordance with the NCSC's Cyber Security Design Principles <https://www.ncsc.gov.uk/collection/cyber-security-design-principles>.
- 2.2 The Sub-contractor must assess their systems against the NCSC Cloud Security Principles: <https://www.ncsc.gov.uk/collection/cloud-security?curPage=/collection/cloud-security/implementing-the-cloud-security-principles> at their own cost and expense to demonstrate that the people, process, technical and physical controls have been delivered in an effective way. The Sub-contractor must document that assessment and make that documentation available to Network Rail on Network Rail's request.

3. Data Processing, Storage, Management and Destruction

- 3.1 The Sub-contractor must not Process any Network Rail Data outside the [UK]. Network Rail may permit the Sub-contractor to Process Network Rail Data outside the [UK] and may impose conditions on that permission, with which the Sub-contractor must comply. Any permission must be in writing to be effective.
- 3.2 The Sub-contractor must when requested to do so by Network Rail:
 - 3.2.1 securely destroy Authority Data only on Sites which are included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2013);
 - 3.2.2 satisfy Network Rail that their data destruction/deletion practices comply with UK GDPR requirements and follows all relevant NCSC guidance; and
 - 3.2.3 maintain an asset register of all Network Rail supplied information, data and equipment to ensure Network Rail assets are returned and/or deleted.

4. Personnel Security

- 4.1 The Sub-contractor must perform appropriate checks on their staff before they may participate in the provision and or management of the Services. Those checks must include all pre-employment checks required by the HMG Baseline Personnel Security Standard including: verification of the individual's identity; verification of the individual's nationality and immigration status; verification of the individual's employment history; and verification of the individual's criminal record. The HMG Baseline Personnel Security Standard is at <https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>.

4.2 The Sub-contractor must, if Network Rail requires, at any time, ensure that one or more of the Sub-contractor's staff obtains Security Check clearance in order to Process Network Rail Data containing Personal Data above certain volumes specified by Network Rail, or containing Special Category Personal Data.

4.3 Any Sub-contractor staff who will, when performing the Services, have access to a person under the age of 18 years must undergo Disclosure and Barring Service checks.

5. End User Devices

5.1 The Supplier must manage, and must ensure that all Sub-contractors manage, all end-user devices used by the Supplier on which Network Rail Data is Processed in accordance the following requirements:

5.1.1 the operating system and any applications that Process or have access to Network Rail Data must be in current support by the vendor, or the relevant community in the case of Open Source operating systems or applications;

5.1.2 users must authenticate before gaining access;

5.1.3 all Network Rail Data must be encrypted using an encryption tool agreed to by Network Rail;

5.1.4 the end-user device must lock and require any user to re-authenticate after a period of time that is proportionate to the risk environment, during which the end-user device is inactive;

5.1.5 the end-user device must be managed in a way that allows for the application of technical policies and controls over applications that have access to Network Rail Data;

5.1.6 the Supplier or Sub-contractor, as applicable, can, without physical access to the end-user device, remove or make inaccessible all Network Rail Data on the device and prevent any user or group of users from accessing the device;

5.1.7 all end-user devices are within in the scope of any current Cyber Essentials Plus certificate held by the Supplier, or any ISO/IEC 27001 (at least ISO/IEC 27001:2013) certification issued by a UKAS-approved certification body, where the scope of that certification includes the Services.

5.2 The Supplier must comply, and ensure that all Sub-contractors comply, with the recommendations in NCSC Device Guidance, as updated, amended or replaced from time to time, as if those recommendations were incorporated as specific obligations under this Agreement.

5.3 Where there any conflict between the requirements of this Schedule 4 (Security Management) and the requirements of the NCSC Device Guidance, the requirements of this Schedule will take precedence.

6. Encryption

6.1 The Supplier must ensure, and must ensure that all Sub-contractors ensure, that Network Rail Data is encrypted:

6.1.1 when stored at any time when no operation is being performed on it; and

6.1.2 when transmitted.

6.2 Where the Supplier, or a Sub-contractor, cannot encrypt Network Rail Data the Supplier must:

- 6.2.1 immediately inform Network Rail of the subset or subsets of Network Rail Data it cannot encrypt and the circumstances in which and the reasons why it cannot do so;
 - 6.2.2 provide details of the protective measures the Supplier or Sub-contractor (as applicable) proposes to take to provide equivalent protection to Network Rail as encryption; and
 - 6.2.3 provide Network Rail with such information relating to Network Rail Data concerned, the reasons why that Network Rail Data cannot be encrypted and the proposed protective measures as Network Rail may require.
- 6.3 Network Rail, the Supplier and, where Network Rail requires, any relevant Sub-contractor shall meet to agree appropriate protective measures for the unencrypted Network Rail Data.
- 6.4 Where Network Rail and Supplier reach agreement, the Supplier must update the Security Management Plan to include:
- 6.4.1 the subset or subsets of Network Rail Data not encrypted and the circumstances in which that will occur; and
 - 6.4.2 the protective measure that the Supplier and/or Sub-contractor will put in place in respect of the unencrypted Network Rail Data.
- 6.5 Where Network Rail and Supplier do not reach agreement within 40 Working Days of the date on which the Supplier first notified Network Rail that it could not encrypt certain Network Rail Data, either party may refer the matter to [be determined in accordance with the Dispute Resolution Procedure].
- 7. Patching and Vulnerability Scanning**
- 7.1 The Sub-contractor must proactively monitor supplier vulnerability websites and ensure all necessary patches and upgrades are applied to maintain security, integrity and availability in accordance with the NCSC Cloud Security Principles.
- 8. Third Party Sub-contractors**
- 8.1 The Sub-contractor must not transmit or disseminate Network Rail Data to any other person unless specifically authorised by Network Rail. Such authorisation must be in writing to be effective and may be subject to conditions.
- 8.2 The Sub-contractor must not, when performing any part of the Services, use any software to Process Network Rail Data where the licence terms of that software purport to grant the licensor rights to Process Network Rail Data greater than those rights strictly necessary for the use of the software.

ANNEX 3: SECURITY MANAGEMENT PLAN TEMPLATE FOR PARTS A FOR PART B**Security Management Plan Template****[Project/Service and Supplier Name]****1. Executive Summary**

<This section should contain a brief summary of the business context of the system, any key IA controls, the assurance work done, any off-shoring considerations and any significant residual risks that need acceptance.>

2. System Description**2.1 Background**

< A short description of the project/product/system. Describe its purpose, functionality, aim and scope.>

2.2 Organisational Ownership/Structure

<Who owns the system and operates the system and the organisational governance structure. This should include how any ongoing security management is integrated into the project governance e.g. how a Security Working Group reports to the project board.>

2.3 Information assets and flows

<The information assets processed by the system which should include a simple high level diagram on one page. Include a list of the type and volumes of data that will be processed, managed and stored within the supplier system. If personal data, please include the fields used such as name, address, department DOB, NI number etc.>

2.4 System Architecture

<A description of the physical system architecture, to include the system management. A diagram will be needed here>

2.5 Users

<A brief description of the system users, to include HMG users as well as any service provider users and system managers. If relevant, security clearance level requirements should be included.>

2.6 Locations

<Where the data assets are stored and managed from. If any locations hold independent security certifications (e.g. ISO27001 (at least ISO/IEC 27001:2013) these should be noted. Any off-shoring considerations should be detailed.>

2.7 Test and Development Systems

<Include information about any test and development systems, their locations and whether they contain live system data.>

2.8 Key roles and responsibilities

<A brief description of the lead security roles such as that of the SIRO, IAO, Security manager, Accreditor >

3. Risk Assessment

3.1 Accreditation/Assurance Scope

<This section describes the scope of the Accreditation/Assurance for the system. The scope of the assurance assessment should be clearly indicated, with components of the architecture upon which reliance is placed but assurance will not be done clearly shown e.g. a cloud hosting service. A logical diagram should be used along with a brief description of the components.>

3.2 Risk appetite

<A risk appetite should be agreed with the SRO and included here.>

3.3 Business impact assessment

< A description of the information assets and the impact of their loss or corruption (e.g. large amounts of Official Sensitive personal data the loss of which would be severely damaging to individuals, embarrassing to HMG, and make HMG liable to ICO investigations) in business terms should be included. This section should cover the impact on loss of confidentiality, integrity and availability of the assets. The format of this assessment may be dependent on the risk assessment method chosen.>

3.4 Risk assessment

<The content of this section will depend on the risk assessment methodology chosen and for Part B should contain the output of the formal information risk assessment in a prioritised list using business language. Experts on the system and business process should have been involved in the risk assessment to ensure the formal risk methodology used has not missed out any risks. The example table below should be used as the format to identify the risks and document the controls used to mitigate those risks. >

Risk ID	Inherent risk	Inherent risk level	Vulnerability	Controls	Residual risk level
R1	Internet attackers could hack the system.	Medium	The service systems are exposed to the internet via the web portal.	C1: Internet-facing firewalls C2: Internet-facing IP whitelist C3: System hardening C4: Protective monitoring C5: Application access control C16: Anti-virus for incoming files C54: Files deleted when processed	Very low

				C59: Removal of departmental identifier	
R2	Remote attackers could intercept or disrupt information crossing the internet.	Medium	File sharing with organisations across the internet.	C9: TLS communications C10: PGP file-sharing	Very low
R3	Internal users could maliciously or accidentally alter bank details.	Medium-High	Users bank details can be altered as part of the normal business function.	C12. System administrators hold SC clearance. C13. All changes to user information are logged and audited. C14. Letters are automatically sent to users' home addresses when bank details are altered. C15. Staff awareness training	Low

3.5 Controls

<The controls listed above to mitigate the risks identified should be detailed. There should be a description of each control, further information and configuration details where relevant, and an assessment of the implementation status of, and assurance in, the control. A sample layout is included below.>

ID	Control title	Control description	Further information and assurance status
C1	Internet-facing firewalls	Internet-facing firewalls are in place between the internet and the system', which restrict access from the internet to the required ports only.	Assured via ITHC firewall rule check
C2	Internet-facing IP whitelist	An IP whitelist is in place for all access from the internet.	Assured via ITHC

C15	Staff awareness training	All staff must undertake annual security awareness training and this process is audited and monitored by line managers.	Assured as part of ISO/IEC 27001 (at least ISO/IEC 27001:2013) certification
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3.6 Residual risks and actions

<A summary of the residual risks which are likely to be above the risk appetite stated after all controls have been applied and verified should be listed with actions and timescales included.>

4. **In-service controls**

< This section should describe the controls relating to the information lifecycle, including development, testing, in-service, termination and on-going risk management and accreditation assurance. Details of any formal assurance requirements specified in the contract such as security CHECK testing or maintained ISO/IEC 27001 (at least ISO/IEC 27001:2013) certification should be included. This section should include at least:

- 4.1.1 information risk management and timescales and triggers for a review;
- 4.1.2 contractual patching requirements and timescales for the different priorities of patch;
- 4.1.3 protective monitoring arrangements to include how anomalous behaviour is identified and acted upon as well as how logging and auditing of user activity is done;
- 4.1.4 configuration and change management;
- 4.1.5 incident management;
- 4.1.6 vulnerability management;
- 4.1.7 user access management; and
- 4.1.8 data sanitisation and disposal.>

5. **Security Operating Procedures (SyOPs)**

< If needed any SyOps requirements should be included and referenced here.>

6. **Major Hardware and Software and end of support dates**

< This should be a table which lists the end of support dates for hardware and software products and components. An example table is shown below.>

Name	Version	End of mainstream Support/Extended Support	Notes/RAG Status
Server Host	HP XXXX	Feb 2020/ March 2022	

7. **Incident Management Process**

<The suppliers’ process, as agreed with Network Rail/Customer, should be included here. It must as a minimum include the protocol for how and when incidents will be reported to Network

Rail/customer and the process that will be undertaken to mitigate the incidents and investigate the root cause.>

8. **Security Requirements for User Organisations**

<Any security requirements for connecting organisations or departments should be included or referenced here.>

9. **Required Changes Register**

<The table below shows the headings for the Required Changes Register which should be maintained and used to update the contents of this document at least annually.>

Ref	Section	Change	Agreed With	Date agreed	Documentation update	Status
1	6.4	A new Third Party supplier XXXX will be performing the print capability.	Network Rail	11/11/2018	Jul-2019	Open

10. **Sub-contractors**

<This should include a table which shows for each Sub-contractor their name, the function that they are performing, the data and data volume being processed, the location, and their certification status>

11. **Annex A. ISO/IEC 27001 (at least ISO/IEC 27001:2013) and/or Cyber Essential Plus certificates**

<Any certifications relied upon should have their certificates included>

12. **Annex B. Cloud Security Principles assessment**

<A spreadsheet may be attached>

13. **Annex C. Protecting Bulk Data assessment if required by Network Rail/Customer**

<A spreadsheet may be attached>

14. **Annex D. Latest ITHC report and Remediation Action Plan**

PART B: SECURITY ACCREDITATION**1. Definitions**

1.1 In this Schedule, the following definitions shall apply:

“Accreditation”	means the assessment of the Core Information Management System in accordance with Paragraph 6 by Network Rail or an independent information risk manager/professional appointed by Network Rail, which results in an Accreditation Decision;
“Accreditation Decision”	means is the decision of Network Rail, taken in accordance with the process set out in Paragraph 6, to issue the Supplier with a Residual Risk Statement or a Risk Management Rejection Notice in respect of the Core Information Management System;
“Accreditation Plan”	means the Supplier's plan to attain a Residual Risk Statement from Network Rail, which is prepared by the Supplier and approved by Network Rail in accordance with Paragraph 6.6;
“Anti-Malicious Software”	means software that scans for and identifies possible Malicious Software in the IT Environment;
“Breach of Security”	<p>means the occurrence of:</p> <p>(a) any unauthorised access to or use of the Services, Network Rail Premises, the Sites, the Supplier System, Network Rail System and/or any information or data (including the Confidential Information and Network Rail Data) used by Network Rail, the Supplier or any Sub-contractor in connection with this Agreement;</p> <p>(b) the loss (physical or otherwise) and/or unauthorised disclosure of any information or data (including the Confidential Information and Network Rail Data), including copies of such information or data, used by Network Rail, the Supplier or any Sub-contractor in connection with this Agreement; and/or</p> <p>(c) any part of the Supplier System ceasing to be compliant with the Certification Requirements,</p> <p>in each case as more particularly set out in the security requirements in Schedule 2 (Services Requirements and Supplier Service Descriptions) of the Framework Agreement, Annex 11 (Security Management) of the Call-Off Form and the Baseline Security Requirements;</p>
“Certification Requirements”	means the requirements set out in Paragraphs 7.1 to 7.7, inclusive;

“CHECK Service Provider”	means a company which has been certified by the National Cyber Security Centre, holds “Green Light” status and is authorised to provide the IT Health Check services required by the Paragraph 8.1;
“CIMS Sub-contractor”	means a Sub-contractor that provides or operates the whole, or a substantial part, of the Core Information Management System;
“Commercial off the shelf Software” or “COTS Software”	means the Supplier COTS Software and the Third Party COTS Software;
“Core Information Management System”	means those information assets, IT systems and/or Sites which will be used by the Supplier and/or its Sub-contractors to Process Network Rail Data, together with the associated information management system (including organisational structure, controls, policies, practices, procedures, processes and resources) which Network Rail has determined in accordance with Paragraph 4.2 shall be subject to Accreditation;
“CREST Service Provider”	means a company with a SOC Accreditation from CREST International;
“Cyber Essentials”	means the Cyber Essentials certificate issued under the Cyber Essentials Scheme;
“Cyber Essentials Plus”	means the Cyber Essentials Plus certificate issued under the Cyber Essentials Scheme;
“Cyber Essentials Scheme”	means the Cyber Essentials scheme operated by the National Cyber Security Centre;
“Higher Risk Sub-contractor”	<p>means a Sub-contractor that Processes Network Rail Data[, where that data includes either:</p> <p>(a) the Personal Data of 1000 or more individuals in aggregate during the period between the first Operational Service Commencement Date and the date on which this Agreement terminates in accordance with Clause 4 (Term); or</p> <p>(b) any part of that data includes any of the following:</p> <p>(i) financial information (including any tax and/or welfare information) relating to any person;</p> <p>(ii) any information relating to actual or alleged criminal offences (including criminal records);</p> <p>(iii) any information relating to children and/or vulnerable persons;</p> <p>(iv) any information relating to social care;</p>

(v) any information relating to a person's current or past employment; or

(vi) Special Category Personal Data; or

(c) Network Rail in its discretion, designates a Sub-contractor as a Higher Risk Sub-Contractor in any procurement document related to this Agreement; or

(d) Network Rail considers in its discretion, that any actual or potential Processing carried out by the Sub-contractor is high risk]

[Guidance: This definition is provided as an example only and should be modified to take into account the circumstances of the individual Agreement.]

“Information Management System”	means the Core Information Management System and the Wider Information Management System;
“IT Health Check”	has the meaning given Paragraph 8.1.1;
“Medium Risk Sub-contractor”	<p>means a Sub-contractor that Processes Network Rail Data[, where that data</p> <p>(a) includes the Personal Data of between 100 and 999 individuals (inclusive) in the period between the first Operational Service Commencement Date and the date on which this Agreement terminates in accordance with Clause 4 (Term); and</p> <p>(b) does not include Special Category Personal Data;]</p> <p><i>[Guidance: This definition is provided as an example only and should be modified to take into account the circumstances of the individual Agreement.]</i></p>
“Process”	means any operation which is performed on data, whether or not by automated means, including collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
“Remediation Action Plan”	has the meaning given in Paragraph 8.3.3.1;
“Required Changes Register”	means the register forming part of the Security Management Plan which records each of the changes that the Supplier has agreed with Network Rail shall be made to the Core Information Management System and/or the Security Management Plan as a consequence of

	the occurrence of any of the events set out in Paragraph 6.15.1 together with the date on which each such change shall be implemented and the date on which each such change was implemented;
“Residual Risk Statement”	means a notice issued by Network Rail which sets out the information risks associated with using the Core Information Management System and confirms that Network Rail is satisfied that the identified risks have been adequately and appropriately addressed and that the residual risks are understood and accepted by Network Rail;
“Risk Management Reject Notice”	has the meaning given in Paragraph 6.8.2;
“Security Management Plan”	has the meaning given in Paragraph 6.5;
“Security Test”	has the meaning given Paragraph 8.1; and
“Special Category Personal Data”	means the categories of Personal Data set out in article 9(1) of the UK GDPR.
“Statement of Information Risk Appetite”	has the meaning given in Paragraph 5.1;
“Sub-contractor Security Requirements”	means those requirements set out in Annex 2; and
“Wider Information Management System”	means those information assets, IT systems and/or Sites which will be used by the Supplier and/or its Sub-contractors to Process Network Rail Data which have not been determined by Network Rail to form part of the Core Information Management System, together with the associated information management system (including organisational structure, controls, policies, practices, procedures, processes and resources).

2. Introduction

2.1 This Part B of this Schedule sets out:

- 2.1.1 the arrangements the Supplier must implement before, and comply with when, providing the Services and performing its other obligations under this Agreement to ensure the security of Network Rail Data, the IT Environment, the Services and the Information Management System;
- 2.1.2 the process which shall apply to the Accreditation of the Core Information Management System in Paragraph 6;
- 2.1.3 the Certification Requirements applicable to the Wider Information Management System in Paragraph 7;
- 2.1.4 the Security Tests which the Supplier shall conduct during the Contract Period in Paragraph 8;

- 2.1.5 the Security Tests which Network Rail may conduct during the Contract Period in Paragraph 8.6;
- 2.1.6 the requirements to patch vulnerabilities in the Core Information Management System in Paragraph 9;
- 2.1.7 the obligations on the Supplier to prevent the introduction of Malicious Software into the Information Management System and to scan for, contain the spread of, and minimise the impact of Malicious Software which is introduced into the Information Management System in Paragraph 10; and
- 2.1.8 each Party's obligations in the event of an actual or attempted Breach of Security in Paragraph 11.

3. Principles of Security

- 3.1 The Supplier acknowledges that Network Rail places great emphasis on the confidentiality, integrity and availability of Network Rail Data and, consequently on the security of:
 - 3.1.1 the Sites;
 - 3.1.2 the IT Environment;
 - 3.1.3 the Services; and
 - 3.1.4 the Core Information Management System.
- 3.2 Notwithstanding the involvement of Network Rail in the Accreditation of the Core Information Management System, the Supplier shall be and shall remain responsible for:
 - 3.2.1 the security, confidentiality, integrity and availability of Network Rail Data whilst that Network Rail Data is under the control of the Supplier or any of its Sub-contractors; and
 - 3.2.2 the security of the Information Management System.
- 3.3 The Supplier shall:
 - 3.3.1 comply with the Baseline Security Requirements; and
 - 3.3.2 ensure that each Sub-contractor that Processes Network Rail Data complies with the Sub-contractor Security Requirements.
- 3.4 The IT Design Board established under Paragraph 10 of Schedule 7 (Governance) of the Framework Agreement [**Guidance: Consider on a project specific basis whether this is the applicable governance board to be responsible for security issues**] shall, in addition to its responsibilities set out in that Schedule, monitor and may also provide recommendations to the Supplier on the Accreditation of the Core Information Management System.
- 3.5 To facilitate the Supplier's design, implementation, operation, management and continual improvement of the Security Management Plan and the security of the Services and Information Management System and otherwise:
 - 3.5.1 the Supplier shall provide access to the Supplier Personnel responsible for information assurance; and
 - 3.5.2 Network Rail shall provide access to its personnel responsible for information assurance

in each case at reasonable times on reasonable notice.

4. **Information Management System**

- 4.1 The Information Management System comprises the Core Information Management System and the Wider Information Management System.
- 4.2 [The component parts of the Core Information Management System and its boundary with the Wider Information Management System are shown in the diagram in Annex 4.

OR

Network Rail shall be responsible for determining the boundary between the Core Information Management System and the Wider Information Management System. In order to enable Network Rail to make such determination, the Supplier shall provide Network Rail with such documentation and information that Network Rail may reasonably require regarding any information assets, IT systems and/or Sites which will be used by the Supplier or any Sub-contractor to Process Network Rail Data together with the associated information management system (including organisational structure, controls, policies, practices, procedures, processes and resources). Network Rail shall notify the Supplier, as soon as reasonably practical following the receipt of such documentation and information, of its decision regarding the component parts of the Core Information Management System and its boundary with the Wider Information Management System. The Supplier shall reproduce Network Rail's decision as a diagram documenting the Core Information Management System, the Wider Information Management system and the boundary between the two. This diagram shall form part of the Security Management Plan.]

- 4.3 Any proposed change to the component parts of the Core Information Management System or the boundary between the Core Information Management System and the Wider Information Management System shall be notified and processed in accordance with the Change Control Procedure.

5. **Statement of Information Risk Appetite and Baseline Security Requirements**

- 5.1 The Supplier acknowledges that Network Rail has provided and the Supplier has received a statement of information risk appetite for the Supplier System and the Services (the "Statement of Information Risk Appetite").
- 5.2 Network Rail's Baseline Security Requirements in respect of the Core Information Management System are set out in Annex 1.

6. **Accreditation of the Core Information Management System**

- 6.1 The Core Information Management System shall be subject to Accreditation in accordance with this Paragraph 6.
- 6.2 The Supplier acknowledges that the purpose of Accreditation is to ensure that:
- 6.2.1 the Security Management Plan accurately represents the Core Information Management System;
 - 6.2.2 the Accreditation Plan, if followed, provides Network Rail with sufficient confidence that the CIMS will meet the requirements of the Baseline Security Requirements and the Statement of Risk Appetite; and
 - 6.2.3 the residual risks of the Core Information Management System are no greater than those provided for in the Statement of Risk Appetite and Baseline Security Requirements.
- 6.3 The Accreditation shall be performed by Network Rail or by representatives appointed by Network Rail.

- 6.4 In addition to any obligations imposed by Schedule 7 (Implementation Plan) or Schedule 8 (Testing Procedures) the Supplier must ensure that its Detailed Implementation Plan sets out in sufficient detail how it will ensure compliance with the requirements of this Schedule 4 (Security Management), including any requirements imposed on Sub-contractors by Annex 2, from any relevant Operational Service Commencement Date.
- 6.5 By the date specified in the Detailed Implementation Plan, the Supplier shall prepare and submit to Network Rail the risk management documentation for the Core Information Management System, which shall be subject to approval by Network Rail in accordance with, this Paragraph 6 (the "Security Management Plan").
- 6.6 The Security Management Plan shall be structured in accordance with the template as set out in Annex 3 of Part A and include
- 6.6.1 the Accreditation Plan, which shall include:
 - 6.6.1.1 the dates on which each subsequent iteration of the Security Management Plan will be delivered to Network Rail for review and staged approval; and
 - 6.6.1.2 the date by which the Supplier is required to have received a Residual Risk Statement from Network Rail together with details of each of the tasks which must be completed by the Supplier, Milestones which must be Achieved and Network Rail Responsibilities which must be completed in order for the Supplier to receive a Residual Risk Statement pursuant to Paragraph 6.11;
 - 6.6.2 a formal risk assessment of the Core Information Management System and a risk treatment plan for the Core Information Management System;
 - 6.6.3 a completed ISO/IEC 27001 (at least ISO/IEC 27001:2013) Statement of Applicability for the Core Information Management System; the process for managing any security risks from Sub-contractors and third parties authorised by Network Rail with access to the Services, processes associated with the delivery of the Services, Network Rail Premises, the Sites, the Supplier System, Network Rail System (to extent that it is under the control of the Supplier) and any IT, Information and data (including the Confidential Information of Network Rail and Network Rail Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Services;
 - 6.6.4 unless such requirement is waived by Network Rail, proposed controls that will be implemented in respect of all aspects of the Services and all processes associated with the delivery of the Services, including Network Rail Premises, the Sites, the Supplier System, Network Rail System (to the extent that it is under the control of the Supplier) and any IT, Information and data (including the Confidential Information of Network Rail and Network Rail Data) to the extent used by Network Rail or the Supplier in connection with this Agreement or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Services;
 - 6.6.5 the Required Changes Register;
 - 6.6.6 evidence that the Supplier and each applicable Sub-contractor is compliant with the Certification Requirements; and
 - 6.6.7 the diagram documenting the Core Information Management System, the Wider Information Management System and the boundary between them [created under Paragraph 4.2 OR contained in Annex 4].

- 6.7 To facilitate Accreditation of the Core Information Management System, the Supplier shall provide Network Rail and its authorised representatives with:
- 6.7.1 access to the Sites, ICT information assets and ICT systems within the Core Information Management System on request or in accordance with the Accreditation Plan; and
 - 6.7.2 such other information and/or documentation that Network Rail or its authorised representatives may reasonably require, to enable Network Rail to establish that the Core Information Management System is compliant with the Security Management Plan.
- 6.8 Network Rail shall, by the relevant date set out in the Accreditation Plan, review the Security Management Plan and issue to the Supplier either:
- 6.8.1 a Residual Risk Statement which will then form part of the Security Management Plan, confirming that Network Rail is satisfied that the identified risks to the Core Information Management System have been adequately and appropriately addressed and that the residual risks are understood and accepted by Network Rail; or
 - 6.8.2 a rejection notice stating that Network Rail considers that the identified risks to the Core Information Management System have not been adequately or appropriately addressed, or the residual risks to the Core Information Management System have not been reduced to the level anticipated by the Statement of Information Risk Appetite, and the reasons why ("Risk Management Rejection Notice").
- 6.9 If Network Rail issues a Risk Management Rejection Notice, the Supplier shall, within 20 Working Days of the date of the Risk Management Rejection Notice:
- 6.9.1 address all of the issues raised by Network Rail in such notice;
 - 6.9.2 update the Security Management Plan, as appropriate, and
 - 6.9.3 notify Network Rail that the Core Information Management System is ready for an Accreditation Decision.
- 6.10 If Network Rail issues a two or more Risk Management Rejection Notices, the failure to receive a Residual Risk Statement shall constitute a material Default and Network Rail may by terminate this Agreement with immediate effect by issuing a Termination Notice to the Supplier in accordance with Clause 26.1.2 (Termination by Network Rail).
- 6.11 Subject to Paragraph 6.10, the process set out in Paragraphs 6.8 to 6.10 shall be repeated until such time as Network Rail issues a Residual Risk Statement to the Supplier or terminates this Agreement.
- 6.12 The Supplier shall not use the Core Information Management System to Process Network Rail Data before receiving a Residual Risk Statement.
- 6.13 The Supplier shall keep the Core Information Management System and Security Management Plan under review and shall update the Security Management Plan annually in accordance with this Paragraph and Network Rail shall review the Accreditation Decision annually and following the occurrence of any of the events set out in Paragraph 6.15.
- 6.14 The Supplier shall notify Network Rail within [2] Working Days after becoming aware of:
- 6.14.1 a significant change, or a significant planned change, to the components or architecture of the Core Information Management System;

- 6.14.2 a new risk or vulnerability is identified to the components or architecture of the Core Information Management System;
 - 6.14.3 a change in the threat profile;
 - 6.14.4 a Sub-contractor failure to comply with the Core Information Management System code of connection;
 - 6.14.5 a significant change to any risk component;
 - 6.14.6 a significant change in the quantity of Personal Data held within the Core Information Management System;
 - 6.14.7 where the Supplier has previously Processed Personal Data that does not include Special Category Personal Data, it starts to, or proposes to start to, Process Special Category Personal Data under this Agreement;
 - 6.14.8 a proposal to change any of the Sites from which any part of the Services are provided; and/or
 - 6.14.9 an ISO/IEC 27001 (at least ISO/IEC 27001:2013) audit report produced in connection with the Certification Requirements indicates significant concerns; and
 - 6.14.10 update the Required Changes Register and provide the updated Required Changes Register to Network Rail for review and approval within [10] Working Days after the initial notification or such other timescale as may be agreed with Network Rail.
- 6.15 If the Supplier fails to implement a change set out in the Required Changes Register by the date agreed with Network Rail, such failure shall constitute a material Default and the Supplier shall:
- 6.15.1 immediately cease using the Core Information Management System to Process Network Rail Data until the Default is remedied, unless directed otherwise by Network Rail in writing and then it may only continue to Process Network Rail Data in accordance with Network Rail's written directions; and
 - 6.15.2 where such Default is capable of remedy, the Supplier shall remedy such Default within the timescales set by Network Rail and, should the Supplier fail to remedy the Default within such timescales, Network Rail may terminate this Agreement with immediate effect by issuing a Termination Notice to the Supplier in accordance with Clause 28.1.2 Termination by Network Rail).
- 6.16 The Supplier shall review each Change Request against the Security Management Plan to establish whether the documentation would need to be amended should such Change Request be agreed and, where a Change Request would require an amendment to the Security Management Plan, the Supplier shall set out any proposed amendments to the documentation in the Impact Assessment associated with such Change Request for consideration and approval by Network Rail.
- 6.17 The Supplier shall be solely responsible for the costs associated with developing and updating the Security Management Plan and carrying out any remedial action required by Network Rail as part of the Accreditation process.
- 7. Certification Requirements**
- 7.1 The Supplier shall ensure, at all times during the Term, that it is certified as compliant with:

- 7.1.1 ISO/IEC 27001 (at least ISO/IEC 27001:2013) by a UK Accreditation Service (UKAS)-approved certification body or are included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2013); and
- 7.1.2 Cyber Essentials Plus,
- and shall provide Network Rail with a copy of each such certificate of compliance before the Supplier shall be permitted to use the Core Information Management System to receive or Process Network Rail Data.
- 7.2 Notwithstanding anything else in this Agreement, a CIMS Sub-contractor shall be treated for all purposes as a Key Sub-contractor.
- 7.3 In addition to the obligations contained in Clause 15 (Supply Chain Rights and Protections), the Supplier must ensure that the Key Subcontract with each CIMS Sub-contractor:
- 7.3.1 contains obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Schedule 4 (Security Management); but
- 7.3.2 provides for Network Rail to perform Accreditation of any part of the Core Information Management System that the CIMS Sub-contractor provides or operates which is not otherwise subject to Accreditation under this Schedule 4 (Security Management).
- 7.4 The Supplier shall ensure that each Higher Risk Sub-contractor is certified as compliant with either:
- 7.4.1 ISO/IEC 27001 (at least ISO/IEC 27001:2013) by a UK Accreditation Service (UKAS)-approved certification body or is included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2013); or
- 7.4.2 Cyber Essentials Plus,
- and shall provide Network Rail with a copy of each such certificate of compliance before the Higher-Risk Sub-contractor shall be permitted to receive or Process Network Rail Data.
- 7.5 The Supplier shall ensure that each Medium Risk Sub-contractor is certified compliant with Cyber Essentials.
- 7.6 The Supplier shall ensure that the Supplier and each Sub-contractor who is responsible for the secure destruction of Network Rail Data:
- 7.6.1 securely destroys Network Rail Data only on Sites which are included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2013);
- 7.6.2 should satisfy Network Rail that their data destruction/deletion practices comply with UK GDPR requirements and follows all relevant NCSC guidance; and
- 7.6.3 must maintain an asset register of all Network Rail supplied information, data and equipment to ensure Network Rail assets are returned and/or deleted.
- 7.7 The Supplier shall provide Network Rail with evidence of its and its Sub-contractor's compliance with the requirements set out in this Paragraph before the Supplier or the relevant Sub-contractor (as applicable) shall be permitted to carry out the secure destruction of Network Rail Data.
- 7.8 The Supplier shall notify Network Rail as soon as reasonably practicable and, in any event within 2 Working Days, if the Supplier or any Sub-contractor ceases to be compliant with the Certification Requirements and shall or shall procure that the relevant Sub-contractor shall:

- 7.8.1 immediately ceases receiving or Processing Network Rail Data; and
 - 7.8.2 procure that the relevant Sub-contractor promptly returns, destroys and/or erases Network Rail Data in accordance with Baseline Security Requirements.
- 7.9 Network Rail may agree to exempt in whole or part the Supplier or any Sub-contractor from the Certification Requirements. Any exemption must be in writing to be effective. The Supplier must include the exemption in the Security Management Plan.
8. **Security Testing**
- 8.1 The Supplier shall, at its own cost and expense:
- 8.1.1 procure testing of the Core Information Management System by a CHECK Service Provider or a CREST Service Provider (an "IT Health Check"):
 - 8.1.1.1 prior to it submitting the Security Management Plan to Network Rail for an Accreditation Decision;
 - 8.1.1.2 before the Supplier is given permission by Network Rail to Process or manage any Network Rail Data;
 - 8.1.1.3 if directed to do so by Network Rail; and
 - 8.1.1.4 once every 12 months during the Term.
 - 8.1.2 conduct vulnerability scanning and assessments of the Core Information Management System monthly;
 - 8.1.3 conduct an assessment as soon as reasonably practicable following receipt by the Supplier or any of its Sub-contractors of a critical vulnerability alert from a supplier of any software or other component of the Core Information Management System to determine whether the vulnerability affects the Core Information Management System; and
 - 8.1.4 conduct such other tests as are required by:
 - 8.1.4.1 any Remediation Action Plans;
 - 8.1.4.2 the ISO/IEC 27001 (at least ISO/IEC 27001:2013) certification requirements;
 - 8.1.4.3 the Security Management Plan; and
 - 8.1.4.4 Network Rail following a Breach of Security or a significant change to the components or architecture of the Core Information Management System,

(each a "Security Test").
- 8.2 The Supplier shall provide Network Rail with the results of such Security Tests (in a form approved by Network Rail in advance) as soon as practicable, and in any case within 10 Working Days, after completion of each Security Test.
- 8.3 In relation to each IT Health Check, the Supplier shall:
- 8.3.1 agree with Network Rail the aim and scope of the IT Health Check;

- 8.3.2 promptly, and in any case no later than [10] Working Days, following receipt of each IT Health Check report, provide Network Rail with a copy of the IT Health Check report;
- 8.3.3 in the event that the IT Health Check report identifies any vulnerabilities, the Supplier shall:
- 8.3.3.1 prepare a remedial plan for approval by Network Rail (each a “Remediation Action Plan”) which sets out in respect of each vulnerability identified in the IT Health Check report:
- (a) how the vulnerability will be remedied;
- (b) unless otherwise agreed in writing between the Parties, the date by which the vulnerability will be remedied, which must be:
- (1) within three months of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of “medium”;
- (2) within one month of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of “high”; and
- (3) within 7 Working Days of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of “critical”;
- (c) the tests which the Supplier shall perform or procure to be performed (which may, at the discretion of Network Rail, include a further IT Health Check) to confirm that the vulnerability has been remedied;
- 8.3.3.2 comply with the Remediation Action Plan; and
- 8.3.3.3 conduct such further Security Tests on the Core Information Management System to provide independent evidence that the Supplier has complied with the Remediation Action Plan.
- 8.4 The Security Tests shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such Security Tests shall be agreed in advance with Network Rail. Subject to the Supplier complying with this Paragraph 8.4, if a Security Test causes a Performance Failure in a particular Measurement Period, the Supplier shall be granted relief in respect of such Performance Failure for that Measurement Period.
- 8.5 Network Rail shall be entitled to send a representative to witness the conduct of the Security Tests. Without prejudice to the Supplier’s obligations under Paragraph 8.3, the Supplier shall provide Network Rail with the results of such Security Tests (in a form approved by Network Rail in advance) as soon as practicable, and in any case no later than 10 Working Days, after completion of each Security Test.
- 8.6 Network Rail and/or its authorised representatives shall be entitled, at any time and without giving notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the Service, the Information Management System and/or the Supplier’s compliance with the Security Management Plan (“Network Rail Security Tests”). Network Rail shall take reasonable steps to notify the Supplier prior to carrying out such Network Rail Security Test to the extent that it is reasonably practicable for it to do so taking into account the nature of Network Rail Security Test.

- 8.7 Network Rail shall notify the Supplier of the results of such Network Rail Security Tests after completion of each Network Rail Security Test.
- 8.8 Network Rail Security Tests shall be designed and implemented so as to minimise their impact on the delivery of the Services. If an Network Rail Security Test causes Supplier Non-Performance, Network Rail Security Test shall be treated as an Network Rail Cause, except where the root cause of the Supplier Non-Performance was a weakness or vulnerability exposed by Network Rail Security Test.
- 8.9 Without prejudice to the provisions of Paragraph 8.3.3, where any Security Test carried out pursuant to this Paragraph 8 reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Supplier shall promptly notify Network Rail of any changes to the Core Information Management System and/or the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to Network Rail's prior written approval, the Supplier shall implement such changes to the Core Information Management System and/or the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with Network Rail or, otherwise, as soon as reasonably possible.
- 8.10 If Network Rail unreasonably withholds its approval to the implementation of any changes proposed by the Supplier to the Security Management Plan in accordance with Paragraph 8.8 above, the Supplier shall not be deemed to be in breach of this Agreement to the extent it can be shown that such breach:
- 8.10.1 has arisen as a direct result of Network Rail unreasonably withholding its approval to the implementation of such proposed changes; and
- 8.10.2 would have been avoided had Network Rail given its approval to the implementation of such proposed changes.
- 8.11 For the avoidance of doubt, where a change to the Core Information Management System and/or the Security Management Plan is required to remedy non-compliance with the Risk Management Documentation, the Baseline Security Requirements and/or any obligation in this Agreement, the Supplier shall effect such change at its own cost and expense.
- 8.12 If any repeat Security Test carried out pursuant to Paragraph 8.9 reveals an actual or potential Breach of Security or weakness exploiting the same root cause failure, such circumstance shall constitute a material Default and Network Rail may by terminate this Agreement with immediate effect by issuing a Termination Notice to the Supplier in accordance with Clause 28.1.2 (Termination by Network Rail) .
- 8.13 The Supplier shall, by [31 March] of each year during the Term, provide to Network Rail a letter from its chief executive officer (or equivalent officer) confirming that having made due and careful enquiry:
- 8.13.1 the Supplier has in the previous year carried out all tests and has in place all procedures required in relation to security matters under this Agreement; and
- 8.13.2 the Supplier is confident that its security and risk mitigation procedures with respect to the Services remain effective.
- 9. Vulnerabilities and Corrective Action**
- 9.1 Network Rail and the Supplier acknowledge that from time to time vulnerabilities in the Information Management System will be discovered which unless mitigated will present an unacceptable risk to Network Rail Data.
- 9.2 The severity of vulnerabilities for Supplier COTS Software and Third Party COTS Software shall be categorised by the Supplier as 'Critical', 'Important' and 'Other' by aligning these

- categories to the vulnerability scoring according to the agreed method in the Security Management Plan and using the appropriate vulnerability scoring systems including:
- 9.2.1 the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST at <http://nvd.nist.gov/cvss.cfm>); and
 - 9.2.2 Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.
- 9.3 Subject to Paragraph 9.4, the Supplier shall procure the application of security patches to vulnerabilities in the Core Information Management System within:
- 9.3.1 seven (7) days after the public release of patches for those vulnerabilities categorised as 'Critical';
 - 9.3.2 thirty (30) days after the public release of patches for those vulnerabilities categorised as 'Important'; and
 - 9.3.3 sixty (60) days after the public release of patches for those vulnerabilities categorised as 'Other'.
- 9.4 The timescales for applying patches to vulnerabilities in the Core Information Management System set out in Paragraph 9.3 shall be extended where:
- 9.4.1 the Supplier can demonstrate that a vulnerability in the Core Information Management System is not exploitable within the context of the Services (e.g. because it resides in a Software component which is not involved in running in the Services) provided such vulnerabilities shall be remedied by the Supplier within the timescales set out in Paragraph 9.3 if the vulnerability becomes exploitable within the context of the Services;
 - 9.4.2 the application of a 'Critical' or 'Important' security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of five (5) days, provided the Supplier had followed and continues to follow the security patch test plan agreed with Network Rail; or
 - 9.4.3 Network Rail agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the Security Management Plan.
- 9.5 The Security Management Plan shall include provisions for major version upgrades of all Supplier COTS Software and Third Party COTS Software to be kept up to date such that all Supplier COTS Software and Third Party COTS Software are always with support throughout the Term unless otherwise agreed by Network Rail in writing.
- 9.6 The Supplier shall:
- 9.6.1 implement a mechanism for receiving, analysing and acting upon threat information supplied by NCSC, or any other competent Central Government Body;
 - 9.6.2 promptly notify NCSC of any actual or sustained attempted Breach of Security;
 - 9.6.3 ensure that the Core Information Management System is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;
 - 9.6.4 ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the Core Information Management System by actively monitoring the threat landscape during the Term;

- 9.6.5 pro-actively scan the Core Information Management System for vulnerable components and address discovered vulnerabilities through the processes described in the Security Management Plan;
- 9.6.6 from the date specified in the Accreditation Plan and within 5 Working Days of the end of each subsequent month during the Term, provide Network Rail with a written report which details both patched and outstanding vulnerabilities in the Core Information Management System, the elapsed time between the public release date of patches and either time of application or for outstanding vulnerabilities the time of issue of such report and any failure to comply with the timescales set out in Paragraph 9.3 for applying patches to vulnerabilities in the Core Information Management System;
- 9.6.7 propose interim mitigation measures to vulnerabilities in the Core Information Management System known to be exploitable where a security patch is not immediately available;
- 9.6.8 remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the Core Information Management System); and
- 9.6.9 inform Network Rail when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the Core Information Management System and provide initial indications of possible mitigations.
- 9.7 If the Supplier is unlikely to be able to mitigate the vulnerability within the timescales under Paragraph 10, the Supplier shall immediately notify Network Rail.
- 9.8 If the Supplier fails to patch vulnerabilities in the Core Information Management System in accordance with Paragraph 9.3, such failure shall constitute a material Default and Network Rail may by terminate this Agreement with immediate effect by issuing a Termination Notice to the Supplier.
- 10. Malicious Software**
- 10.1 The Supplier shall install and maintain Anti-Malicious Software or procure that Anti-Malicious Software is installed and maintained on any part of the Information Management System which may Process Network Rail Data and ensure that such Anti-Malicious Software is configured to perform automatic software and definition updates as well as regular scans of the Information Management System to check for, prevent the introduction of Malicious Software or where Malicious Software has been introduced into the Information Management System, to identify, contain the spread of, and minimise the impact of Malicious Software.
- 10.2 If Malicious Software is found, the Parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Network Rail Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.
- 10.3 any cost arising out of the actions of the Parties taken in compliance with the provisions of Paragraph 10.2 shall be borne by the Parties as follows:
- 10.3.1 by the Supplier where the Malicious Software originates from:
- 10.3.1.1 the Supplier Software;
- 10.3.1.2 the Third-Party Software supplied by the Supplier; or
- 10.3.1.3 Network Rail Data whilst Network Rail Data is or was under the control of the Supplier,

unless, in the case of Network Rail Data, the Supplier can demonstrate that such Malicious Software was present in Network Rail Data and not quarantined or otherwise identified by Network Rail when Network Rail provided Network Rail Data to the Supplier; and

10.3.2 otherwise by Network Rail.

11. Breach of Security

- 11.1 If either Party becomes aware of a Breach of Security or an attempted Breach of Security it shall notify the other in accordance with the security incident management process as set out in the Security Management Plan.
- 11.2 The security incident management process set out in the Security Management Plan shall, as a minimum, require the Supplier upon becoming aware of a Breach of Security or an attempted Breach of Security to:
- 11.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by Network Rail which shall be completed within such timescales as Network Rail may reasonably require) necessary to:
- 11.2.1.1 minimise the extent of actual or potential harm caused by such Breach of Security;
- 11.2.1.2 remedy such Breach of Security to the extent possible and protect the integrity of the Information Management System against any such potential or attempted Breach of Security;
- 11.2.1.3 apply a tested mitigation against any such Breach of Security or potential or attempted Breach of Security and, provided that reasonable testing has been undertaken by the Supplier, if the mitigation adversely affects the Supplier's ability to deliver the Services so as to meet any Performance Indicator, the Supplier shall be granted relief against the failure to meet such affected Performance Indicator for such period as Network Rail, acting reasonably, may specify by written notice to the Supplier; and
- 11.2.1.4 prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure;
- 11.2.2 as soon as reasonably practicable and, in any event, within 2 Working Days, following the Breach of Security or attempted Breach of Security, provide to Network Rail full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by Network Rail.
- 11.3 In the event that any action is taken in response to a Breach of Security or attempted Breach of Security which occurred as a result of non-compliance of the Information Management System and/or the Security Management Plan with the Baseline Security Requirements and/or this Agreement, then such action and any required change to the Information Management System and/or Security Management Plan shall be completed by the Supplier at no cost to Network Rail.
- 11.4 If the Supplier fails to comply with its obligations set out in this Paragraph 11, such failure shall constitute a material Default, which if not remedied to the satisfaction of Network Rail, shall permit Network Rail to terminate this Agreement with immediate effect by issuing a Termination Notice to the Supplier.

12. Data Processing, Storage, Management and Destruction

12.1 In addition to the obligations on the Supplier set out Clause 18 (Protection of Personal Data) of the Framework Agreement in respect of Processing Personal Data and compliance with the Data Protection Legislation, the Supplier shall:

- 12.1.1 Process Network Rail Data only in the [UK], except where Network Rail has given its consent in writing to a transfer of Network Rail Data to such other country;
- 12.1.2 on demand, provide Network Rail with all Network Rail Data in an agreed open format;
- 12.1.3 have documented processes to guarantee availability of Network Rail Data in the event of the Supplier ceasing to trade;
- 12.1.4 securely erase any or all Network Rail Data held by the Supplier when requested to do so by Network Rail; and
- 12.1.5 securely destroy all media that has held Network Rail Data at the end of life of that media in accordance with any specific requirements in this Agreement and, in the absence of any such requirements, as directed by Network Rail.

ANNEX 1: BASELINE SECURITY REQUIREMENTS**1. Security Classification of Information**

1.1 If the provision of the Services requires the Supplier to Process Network Rail Data which is classified as:

1.1.1 OFFICIAL-SENSITIVE, the Supplier shall implement such additional measures as agreed with Network Rail from time to time in order to ensure that such information is safeguarded in accordance with the applicable Standards; and/or

1.1.2 SECRET or TOP SECRET, the Supplier shall only do so where it has notified Network Rail prior to receipt of such Network Rail Data and the Supplier shall implement additional measures as agreed with Network Rail from time to time in order to ensure that such information is safeguarded in accordance with the applicable Standards.

2. End User Devices

2.1 The Supplier must manage, and must ensure that all Sub-contractors manage, all end-user devices used by the Supplier on which Network Rail Data is Processed in accordance the following requirements:

2.1.1 the operating system and any applications that Process or have access to Network Rail Data must be in current support by the vendor, or the relevant community in the case of Open Source operating systems or applications;

2.1.2 users must authenticate before gaining access;

2.1.3 all Network Rail Data must be encrypted using an encryption tool agreed to by Network Rail;

2.1.4 the end-user device must lock and require any user to re-authenticate after a period of time that is proportionate to the risk environment, during which the end-user device is inactive;

2.1.5 the end-user device must be managed in a way that allows for the application of technical policies and controls over applications that have access to Network Rail Data;

2.1.6 the Supplier or Sub-contractor, as applicable, can, without physical access to the end-user device, remove or make inaccessible all Network Rail Data on the device and prevent any user or group of users from accessing the device;

2.1.7 all end-user devices are within in the scope of any current Cyber Essentials Plus certificate held by the Supplier, or any ISO/IEC 27001 (at least ISO/IEC 27001:2013) certification issued by a UKAS-approved certification body, where the scope of that certification includes the Services.

2.2 The Supplier must comply, and ensure that all Sub-contractors comply, with the recommendations in NCSC Device Guidance, as updated, amended or replaced from time to time, as if those recommendations were incorporated as specific obligations under this Agreement.

2.3 Where there any conflict between the requirements of this Schedule 4 (Security Management) and the requirements of the NCSC Device Guidance, the requirements of this Schedule will take precedence.

3. Encryption

- 3.1 The Supplier must ensure, and must ensure that all Sub-contractors ensure, that Network Rail Data is encrypted:
- 3.1.1 when stored at any time when no operation is being performed on it; and
 - 3.1.2 when transmitted.
- 3.2 Where the Supplier, or a Sub-contractor, cannot encrypt Network Rail Data the Supplier must:
- 3.2.1 immediately inform Network Rail of the subset or subsets of Network Rail Data it cannot encrypt and the circumstances in which and the reasons why it cannot do so;
 - 3.2.2 provide details of the protective measures the Supplier or Sub-contractor (as applicable) proposes to take to provide equivalent protection to Network Rail as encryption; and
 - 3.2.3 provide Network Rail with such information relating to Network Rail Data concerned, the reasons why that Network Rail Data cannot be encrypted and the proposed protective measures as Network Rail may require.
- 3.3 Network Rail, the Supplier and, where Network Rail requires, any relevant Sub-contractor shall meet to agree appropriate protective measures for the unencrypted Network Rail Data.
- 3.4 Where Network Rail and Supplier reach agreement, the Supplier must update the Security Management Plan to include:
- 3.4.1 the subset or subsets of Network Rail Data not encrypted and the circumstances in which that will occur; and
 - 3.4.2 the protective measure that the Supplier and/or Sub-contractor will put in place in respect of the unencrypted Network Rail Data.
- 3.5 Where Network Rail and Supplier do not reach agreement within 40 Working Days of the date on which the Supplier first notified Network Rail that it could not encrypt certain Network Rail Data, either party may refer the matter to [be determined in accordance with the Dispute Resolution Procedure].
- 4. Personnel Security**
- 4.1 All Supplier Staff shall be subject to a pre-employment check before they may participate in the provision and or management of the Services. Such pre-employment checks must include all pre-employment checks which are required by the HMG Baseline Personnel Security Standard including: verification of the individual's identity; verification of the individual's nationality and immigration status; and, verification of the individual's employment history; verification of the individual's criminal record.
- 4.2 Network Rail and the Supplier shall review the roles and responsibilities of the Supplier Staff who will be involved in the management and/or provision of the Services in order to enable Network Rail to determine which roles require additional vetting and a specific national security vetting clearance (e.g. a Counter Terrorist Check; a Security Check). Roles which are likely to require additional vetting and a specific national security vetting clearance include system administrators whose role would provide those individuals with privileged access to IT systems which Process Network Rail Data or data which, if it were Network Rail Data, would be classified as OFFICIAL-SENSITIVE.
- 4.3 The Supplier shall not permit Supplier Staff who fail the security checks required by Paragraphs 4.1 and 4.2 to be involved in the management and/or provision of the Services except where Network Rail has expressly agreed in writing to the involvement of the named individual in the management and/or provision of the Services.

- 4.4 The Supplier shall ensure that Supplier Staff are only granted such access to Network Rail Data as is necessary to enable the Supplier Staff to perform their role and to fulfil their responsibilities.
- 4.5 The Supplier shall ensure that Supplier Staff who no longer require access to Network Rail Data (e.g. they cease to be employed by the Supplier or any of its Sub-contractors), have their rights to access Network Rail Data revoked within 1 Working Day.
- 4.6 The Supplier shall ensure that Supplier Staff that have access to the Sites, the IT Environment or Network Rail Data receive regular training on security awareness that reflects the degree of access those individuals have to the Sites, the IT Environment or Network Rail Data.
- 4.7 The Supplier shall ensure that the training provided to Supplier Staff under Paragraph 4.6 includes training on the identification and reporting fraudulent communications intended to induce individuals to disclose Personal Data or any other information that could be used, including in combination with other Personal Data or information, or with other techniques, to facilitate unauthorised access to the Sites, the IT Environment or Network Rail Data (“phishing”).

5. Identity, Authentication and Access Control

- 5.1 The Supplier shall operate an access control regime to ensure:
- 5.1.1 all users and administrators of the Supplier System are uniquely identified and authenticated when accessing or administering the Services; and
- 5.1.2 all persons who access the Sites are identified and authenticated before they are allowed access to the Sites.
- 5.2 The Supplier shall apply the ‘principle of least privilege’ when allowing persons access to the Supplier System and Sites so that such persons are allowed access only to those parts of the Sites and the Supplier System they require.
- 5.3 The Supplier shall retain records of access to the Sites and to the Supplier System and shall make such record available to Network Rail on request.

6. Audit and Protective Monitoring

- 6.1 The Supplier shall collect audit records which relate to security events in Core Information Management System or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include regular reports and alerts setting out details of access by users of the Core Information Management System, to enable the identification of (without limitation) changing access trends, any unusual patterns of usage and/or accounts accessing higher than average amounts of Network Rail Data.
- 6.2 In addition to any requirement in Clause 10.3 (Prevention of Fraud and Bribery) of the Framework Agreement, the Supplier shall
- 6.2.1 Implement audit and monitoring of the Core Information Management System sufficient to comply with any applicable Relevant Requirements and to prevent or detect any Prohibited Act;
- 6.2.2 Keep sufficient records to demonstrate compliance with the requirements of Paragraph 6.2.1 to Network Rail; and
- 6.2.3 Make those records and any documents describing the audit and monitoring undertaken to Network Rail on request.

6.3 The Supplier and Network Rail shall work together to establish any additional audit and monitoring requirements for the Core Information Management System.

6.4 The retention periods for audit records and event logs must be agreed with Network Rail and documented in the Security Management Plan.

7. **Secure Architecture**

7.1 The Supplier shall design the Core Information Management System in accordance with:

7.1.1 the NCSC “Security Design Principles for Digital Services”, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/security-design-principles-digital-services-main>;

7.1.2 the NCSC “Bulk Data Principles”, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/protecting-bulk-personal-data-main>; and

7.1.3 the NSCS “Cloud Security Principles”, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles> and which are summarised below:

7.1.3.1 “Cloud Security Principle 1: data in transit protection” which, amongst other matters, requires that user data transiting networks should be adequately protected against tampering and eavesdropping;

7.1.3.2 “Cloud Security Principle 2: asset protection and resilience” which, amongst other matters, requires that user data, and the assets storing or processing it, should be protected against physical tampering, loss, damage or seizure;

7.1.3.3 “Cloud Security Principle 3: separation between users” which, amongst other matters, requires that a malicious or compromised user of the service should not be able to affect the service or data of another;

7.1.3.4 “Cloud Security Principle 4: governance framework” which, amongst other matters, requires that the Supplier should have a security governance framework which coordinates and directs its management of the Services and information within it;

7.1.3.5 “Cloud Security Principle 5: operational security” which, amongst other matters, requires that the Services need to be operated and managed securely in order to impede, detect or prevent a Breach of Security;

7.1.3.6 “Cloud Security Principle 6: personnel security” which, amongst other matters, requires that where Supplier Staff have access to Network Rail Data and/or Network Rail System that those personnel be subject to appropriate security screening and regular security training;

7.1.3.7 “Cloud Security Principle 7: secure development” which, amongst other matters, requires that the Services be designed and developed to identify and mitigate threats to their security;

7.1.3.8 “Cloud Security Principle 8: supply chain security” which, amongst other matters, requires the Supplier to ensure that appropriate security controls are in place with its Sub-contractors and other suppliers;

- 7.1.3.9 “Cloud Security Principle 9: secure user management” which, amongst other matters, requires the Supplier to make the tools available for Network Rail to securely manage Network Rail’s use of the Service;
- 7.1.3.10 “Cloud Security Principle 10: identity and authentication” which, amongst other matters, requires the Supplier to implement appropriate controls in order to ensure that access to Service interfaces is constrained to authenticated and authorised individuals;
- 7.1.3.11 “Cloud Security Principle 11: external interface protection” which, amongst other matters, requires that all external or less trusted interfaces with the Services should be identified and appropriately defended;
- 7.1.3.12 “Cloud Security Principle 12: secure service administration” which, amongst other matters, requires that any IT system which is used for administration of a cloud service will have highly privileged access to that service;
- 7.1.3.13 “Cloud Security Principle 13: audit information for users” which, amongst other matters, requires the Supplier to be able to provide Network Rail with the audit records it needs to monitor access to the Service and Network Rail Data held by the Supplier and/or its Sub-contractors;
- 7.1.3.14 “Cloud Security Principle 14: secure use of the service” which, amongst other matters, requires the Supplier to educate Supplier Staff on the safe and secure use of the Information Management System.

ANNEX 2: SECURITY REQUIREMENTS FOR SUB-CONTRACTORS**1. Application of Annex**

1.1 This Annex applies to all Sub-contractors that Process Network Rail Data.

1.2 The Supplier must:

1.2.1 ensure that those Sub-contractors comply with the provisions of this Annex;

1.2.2 keep sufficient records to demonstrate that compliance to Network Rail; and

1.2.3 ensure that its Detailed Implementation Plan includes Deliverables, Milestones and Milestone Dates that relate to the design, implementation and management of any systems used by Sub-contractors to Process Network Rail Data.

2. Designing and managing secure solutions

2.1 The Sub-contractor shall implement their solution(s) to mitigate the security risks in accordance with the NCSC's Cyber Security Design Principles <https://www.ncsc.gov.uk/collection/cyber-security-design-principles>.

2.2 The Sub-contractor must assess their systems against the NCSC Cloud Security Principles: <https://www.ncsc.gov.uk/collection/cloud-security?curPage=/collection/cloud-security/implementing-the-cloud-security-principles> at their own cost and expense to demonstrate that the people, process, technical and physical controls have been delivered in an effective way. The Sub-contractor must document that assessment and make that documentation available to Network Rail on Network Rail's request.

3. Data Processing, Storage, Management and Destruction

3.1 The Sub-contractor must not Process any Network Rail Data outside the [UK]. Network Rail may permit the Sub-contractor to Process Network Rail Data outside the [UK] and may impose conditions on that permission, with which the Sub-contractor must comply. Any permission must be in writing to be effective.

3.2 The Sub-contractor must when requested to do so by Network Rail:

3.2.1 securely destroy Network Rail Data only on Sites which are included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2013);

3.2.2 satisfy Network Rail that their data destruction/deletion practices comply with UK GDPR requirements and follows all relevant NCSC guidance; and

3.2.3 maintain an asset register of all Network Rail supplied information, data and equipment to ensure Network Rail assets are returned and/or deleted.

4. Personnel Security

4.1 The Sub-contractor must perform appropriate checks on their staff before they may participate in the provision and or management of the Services. Those checks must include all pre-employment checks required by the HMG Baseline Personnel Security Standard including: verification of the individual's identity; verification of the individual's nationality and immigration status; verification of the individual's employment history; and verification of the individual's criminal record. The HMG Baseline Personnel Security Standard is at <https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>.

4.2 The Sub-contractor must, if Network Rail requires, at any time, ensure that one or more of the Sub-contractor's staff obtains Security Check clearance in order to Process Network Rail Data containing Personal Data above certain volumes specified by Network Rail, or containing Special Category Personal Data.

4.3 Any Sub-contractor staff who will, when performing the Services, have access to a person under the age of 18 years must undergo Disclosure and Barring Service checks.

5. End User Devices

5.1 The Supplier must manage, and must ensure that all Sub-contractors manage, all end-user devices used by the Supplier on which Network Rail Data is Processed in accordance the following requirements:

5.1.1 the operating system and any applications that Process or have access to Network Rail Data must be in current support by the vendor, or the relevant community in the case of Open Source operating systems or applications;

5.1.2 users must authenticate before gaining access;

5.1.3 all Network Rail Data must be encrypted using an encryption tool agreed to by Network Rail;

5.1.4 the end-user device must lock and require any user to re-authenticate after a period of time that is proportionate to the risk environment, during which the end-user device is inactive;

5.1.5 the end-user device must be managed in a way that allows for the application of technical policies and controls over applications that have access to Network Rail Data;

5.1.6 the Supplier or Sub-contractor, as applicable, can, without physical access to the end-user device, remove or make inaccessible all Network Rail Data on the device and prevent any user or group of users from accessing the device;

5.1.7 all end-user devices are within in the scope of any current Cyber Essentials Plus certificate held by the Supplier, or any ISO/IEC 27001 (at least ISO/IEC 27001:2013) certification issued by a UKAS-approved certification body, where the scope of that certification includes the Services.

5.2 The Supplier must comply, and ensure that all Sub-contractors comply, with the recommendations in NCSC Device Guidance, as updated, amended or replaced from time to time, as if those recommendations were incorporated as specific obligations under this Agreement.

5.3 Where there any conflict between the requirements of this Schedule 4 (Security Management) and the requirements of the NCSC Device Guidance, the requirements of this Schedule will take precedence.

6. Encryption

6.1 The Supplier must ensure, and must ensure that all Sub-contractors ensure, that Network Rail Data is encrypted:

6.1.1 when stored at any time when no operation is being performed on it; and

6.1.2 when transmitted.

6.2 Where the Supplier, or a Sub-contractor, cannot encrypt Network Rail Data the Supplier must:

- 6.2.1 immediately inform Network Rail of the subset or subsets of Network Rail Data it cannot encrypt and the circumstances in which and the reasons why it cannot do so;
 - 6.2.2 provide details of the protective measures the Supplier or Sub-contractor (as applicable) proposes to take to provide equivalent protection to Network Rail as encryption; and
 - 6.2.3 provide Network Rail with such information relating to Network Rail Data concerned, the reasons why that Network Rail Data cannot be encrypted and the proposed protective measures as Network Rail may require.
- 6.3 Network Rail, the Supplier and, where Network Rail requires, any relevant Sub-contractor shall meet to agree appropriate protective measures for the unencrypted Network Rail Data.
- 6.4 Where Network Rail and Supplier reach agreement, the Supplier must update the Security Management Plan to include:
- 6.4.1 the subset or subsets of Network Rail Data not encrypted and the circumstances in which that will occur; and
 - 6.4.2 the protective measure that the Supplier and/or Sub-contractor will put in place in respect of the unencrypted Network Rail Data.
- 6.5 Where Network Rail and Supplier do not reach agreement within 40 Working Days of the date on which the Supplier first notified Network Rail that it could not encrypt certain Network Rail Data, either party may refer the matter to [be determined in accordance with the Dispute Resolution Procedure].
- 7. Patching and Vulnerability Scanning**
- 7.1 The Sub-contractor must proactively monitor supplier vulnerability websites and ensure all necessary patches and upgrades are applied to maintain security, integrity and availability in accordance with the NCSC Cloud Security Principles.
- 8. Third Party Sub-contractors**
- 8.1 The Sub-contractor must not transmit or disseminate Network Rail Data to any other person unless specifically authorised by Network Rail. Such authorisation must be in writing to be effective and may be subject to conditions.
- 8.2 The Sub-contractor must not, when performing any part of the Services, use any software to Process Network Rail Data where the licence terms of that software purport to grant the licensor rights to Process Network Rail Data greater than those rights strictly necessary for the use of the software.

ANNEX 3: INFORMATION MANAGEMENT SYSTEM

[Guidance: If Network Rail and Supplier have agreed the Information Management System and the boundary between the Core Information Management System and Wider Information Management System during the procurement process, then include diagram setting out the elements of the Information Management System, the linkages and data flows between those elements, and the boundary here.]

CALL-OFF TERMS
SCHEDULE 5
NETWORK RAIL RESPONSIBILITIES

Network Rail Responsibilities

1. INTRODUCTION

- 1.1 The responsibilities of Network Rail set out in this Schedule shall constitute Network Rail Responsibilities under this Agreement. Any obligations of Network Rail in the Services Description and the Supplier Solution shall not be Network Rail Responsibilities and Network Rail shall have no obligation to perform any such obligations unless they are specifically stated to be “**Network Rail Responsibilities**” and cross referenced in the table in paragraph 3 or specified on the Call-Off Form.
- 1.2 The responsibilities specified within this Schedule shall be provided to the Supplier free of charge, unless otherwise agreed between the Parties.

2. GENERAL OBLIGATIONS

Network Rail shall:

- 2.1 perform those obligations of Network Rail which are set out in the Clauses of this Agreement and Paragraphs of the Schedules and the Call-Off Form (except the Services Description and the Supplier Solution));
- 2.2 use its reasonable endeavours to provide the Supplier with access to appropriate members of Network Rail's staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term and the Termination Assistance Period;
- 2.3 provide sufficient and suitably qualified staff to fulfil Network Rail's roles and duties under this Agreement as defined in the Implementation Plan;
- 2.4 use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Agreement provided that such documentation, data and/or information is available to Network Rail and is authorised for release by Network Rail; and
- 2.5 procure for the Supplier such agreed access and use of Network Rail Premises (as a licensee only) and facilities (including relevant IT systems) as is reasonably required for the Supplier to comply with its obligations under this Agreement, such access to be provided during Network Rail's normal working hours on each Working Day or as otherwise agreed by Network Rail (such agreement not to be unreasonably withheld or delayed).

3. SPECIFIC OBLIGATIONS

Network Rail shall, in relation to this Agreement perform Network Rail's responsibilities identified as such in this Agreement the details of which are set out below or in the table in Annex 3 (Network Rail Responsibilities) of the Call-Off Form:

Document	Location (Paragraph)
[Insert Schedule details here]	[Refer to specific Paragraphs here]

CALL-OFF TERMS
SCHEDULE 6
ESCROW TERMS

[Guidance note: Check with Software Escrow Solutions if this is current version before using.]

SOFTWARE ESCROW SOLUTIONS - INDIVIDUAL LICENSEE ESCROW AGREEMENT

THIS AGREEMENT is made on **[INSERT DATE]** BETWEEN THE FOLLOWING PARTIES:

- (1) **FINANCECHAIN LIMITED t/a SOFTWARE ESCROW SOLUTIONS** (registered number 3551656) whose registered office is at 51 Wilmslow Road, Cheadle, Stockport, Cheshire SK8 1HG (“**SES**”);
- (2) **[INSERT LICENSOR NAME]** (registered number **[INSERT COMPANY REGISTRATION NUMBER]**) whose registered office is at **[INSERT COMPANY REGISTERED ADDRESS]** (“**Licensor**”); and

OR

[INSERT LICENSOR NAME] whose principal place of business is at **[INSERT PRINCIPAL PLACE OF BUSINESS]** (“**Licensor**”); and

- (3) **Network Rail Infrastructure Limited** (registered number 2904587) whose registered office is at Waterloo General Office,, London SE1 8SW (“**Licensee**”).

OR

[INSERT LICENSEE NAME] whose principal place of business is at **[INSERT PRINCIPAL PLACE OF BUSINESS]** (“**Licensee**”).

RECITALS:

- (A) The Licensor has licensed the Licensee to use in object code form only the Licensed Programs (as defined below) upon the terms and conditions of the licence attached to this Agreement.
- (B) The Licensor has agreed to deposit the source code version of the Licensed Programs (as defined below) with SES and has authorised SES, subject to the terms and conditions of this Agreement, to release the same to the Licensee in the circumstances provided for within this Agreement.

1. Definitions

1.1 In this Agreement unless the context otherwise requires:

“**Basic Validation Testing**” means basic validation testing as more fully described in Schedule 4, Part 1;

“**Commencement Date**” means the date of this Agreement;

“**Complete Validation Testing**” means complete validation testing as more fully described in Schedule 4, Part 2;

“**Complete Validation Testing Fee**” means the complete validation testing fee set out in the Order Form;

“**Confidential Information**” means secret or confidential commercial, financial, marketing or technical information, know-how, trade secrets and other information in any form or medium of a party or its Employees which is acquired by and/or disclosed orally or in writing before or after the Commencement Date to the other party or parties and their Employees together with any reproduction of such information in any form or medium or any part(s) of this information (and, for the purposes of this Agreement, “**Confidential**” means that the information, either in its entirety or in the precise configuration or assembly of its components, is not publicly available);

“Confidentiality Undertaking” means the confidentiality agreement attached to this Agreement in Schedule 3;

“Container” means the metal fire-proof box in which the Source Code is to be placed by SES in accordance with Clause 3.1(a);

“Dispute Resolution Procedure” means the dispute resolution procedure set out in Clause 15;

“Employees” means employees, agents, contractors and/or sub-contractors;

“Fees” means SES’s fees for the provision of escrow services under this Agreement as set out in the Order Form and amended from time to time in accordance with the provisions of Clause 9.2;

“Implementation Fee” means the implementation fee listed in the Order Form as amended from time to time by SES in accordance with the terms of Clause 9.2;

“Intellectual Property Rights” means copyright, rights in software, moral rights, database rights, domain names, patents, know how, registered designs, unregistered designs, trade marks and service marks (whether registered or not) and all other intellectual property rights, whether registerable or not, subsisting anywhere in the world;

“Licence” means the licence agreement between the Licensor and Licensee,

“Licensed Programs” means the software programs listed in Schedule 1 which are licensed to the Licensee under the Licence;

“Licensee Authorised Representative” means the person listed in Schedule 1;

“Licensor Warranty” means the warranty set out in Clause 8.1(a);

“Material Breach Relevant Event” means a material breach by the Licensor of its obligations in the Licence and which the Licensor has failed to remedy pursuant to the terms of the Licence;

“Modification” means any modification, enhancement, revision or update to the Licensed Programs made from time to time by the Licensor;

“Order Form” means the SES order form, a copy of which is appended to this Agreement in Schedule 2;

“Release Fee” means the release fee listed in the Order Form as amended from time to time by SES in accordance with the terms of Clause 9.2;

“Relevant Event” means any or all of the following events:

- (a) a creditor attaches or takes possession of, or a distress, execution, sequestration or other process is levied or enforced upon or sued out against any of the undertakings, assets, rights or revenues of the property of the Licensor and is not discharged within seven (7) days; or the Licensor is deemed unable to pay its debts in accordance with section 123(1)(a), (b) or (e) or (2) Insolvency Act 1986; or the Licensor becomes, or admits to being, unable generally to pay its debts as they fall due; or the Licensor otherwise becomes insolvent or stops or suspends making payments (whether of principal or interest) with respect to all or any class of its debts or announces an intention to do so; or any meeting of the Licensor is convened for the purpose of considering any resolution to present or otherwise make an application for an administration order or a notice of intention to appoint an administrator or a notice of appointment of an administrator is given or filed at court; or an application for an administration order in relation to the Licensor is presented to the Court; or the Licensor passes a resolution to

present an application for an administration order; or an administration order is made or an administrator is appointed in relation to the Licensor; or any administrative or other receiver and/or manager is appointed of the Licensor or any part of its assets and/or undertaking or the directors of the Licensor request any person to appoint such a receiver and/or manager; or any encumbrance over all or any part of the assets and/or undertaking of the Licensor is enforced or steps are taken to enforce the same; or any meeting of the Licensor is convened for the purpose of considering any resolution for (or to petition for) its winding up; or the Licensor passes such a resolution; or an order for the winding up of the Licensor is made (not being a winding-up or dissolution of the Licensor involving an amalgamation or reorganisation on a solvent basis); or the Licensor suspends or ceases or threatens to suspend or cease to carry on its business;

- (b) any judgment or order made against the Licensor is not stayed or complied with within fourteen (14) days; or any steps are taken, or negotiations commenced by the Licensor or by any of his creditors with a view to proposing any kind of composition, compromise or arrangement involving the Licensor and any of his creditors; or a petition for an interim order is presented in relation to the Licensor or the Licensor is adjudicated bankrupt;
- (c) the Licensor suffers or undergoes any procedure analogous to any of those specified in parts (a) and (b) above or any other similar procedure available in the country in which the Licensor is constituted, established or domiciled;
- (d) the Licensor is in material breach of its obligation to deposit revised or replacement copies (as appropriate) of the Source Code pursuant to Clauses 2.1(a) or 10.1;
- (e) the Licensor assigns the copyright in the Licensed Programs and the assignee fails within sixty (60) days of such assignment to offer the Licensee substantially similar protection to that provided by this Agreement without materially increasing the cost to the Licensee;

“Secure Address” means PO Box 57, Heywood, Lancashire OL10 1FG or such other address as SES may from time to time in writing indicate to the Licensor;

“Source Code” means the source code version of the Licensed Programs including any Modification and, for the avoidance of doubt, any Third Party Source Code;

“Statutory Declaration” means a statutory declaration in the form set out in Clause 4.1;

“Term” means the term of this Agreement;

“Third Party Source Code” means the source code of any Licensed Programs the Intellectual Property Rights in which are owned by a third party to this Agreement.

- 1.2 The headings used in this Agreement are for convenience only and will not affect its interpretation or construction.
- 1.3 References to Clauses and Schedules are references to the clauses of and schedules to this Agreement. The Schedules are deemed to be incorporated in, and form part of, this Agreement and the term "Agreement" will be construed accordingly. Should any conflict arise between the terms of the body of this Agreement and the Schedules, the terms of the body of the Agreement will take precedence.
- 1.4 Words imparting the singular will include the plural and vice versa. References to persons include an individual, company, corporation, firm or partnership.
- 1.5 All sums payable hereunder are exclusive of VAT or any other applicable tax or duty payable upon such sums which will be added if appropriate at the rate prevailing at the relevant tax point.

1.6 The words and phrases "other", "including" and "in particular" will not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.

2. **Deposit of Source Code**

2.1 Within twenty one (21) days of:

- (a) the Commencement Date the Licensor will deposit with SES at the Secure Address one copy of the Source Code together with written details of the Licensor's name and address, the name and version of the Licensed Programs deposited, all relevant passwords and encryption details and all relevant documentation;
- (b) the date of any Modification the Licensor will deposit with SES at the Secure Address a revised copy of the whole (or the relevant part) of the Source Code incorporating the Modification and agree to pay the relevant Fee to SES;
- (c) each anniversary of the Commencement Date the Licensor will deposit with SES a replacement copy of the Source Code then deposited. Upon receipt of the said replacement copy, SES will at its option either confidentially destroy or return to the Licensor, at the Licensor's cost, the previously deposited copy of the Source Code;
- (d) receipt of written notification from SES that the Source Code has been damaged, destroyed or lost the Licensor will deposit with SES a replacement copy of the Source Code updated with all relevant Modifications.

3. **Custody of Source Code**

3.1 Forthwith upon receipt of the Source Code pursuant to Clause 2.1 or Clause 10.1 SES will:

- (a) place the Source Code in the Container and submit it for storage in accordance with its standard procedures; and
- (b) send written confirmation to the Licensor and Licensee of receipt and storage of the Source Code.

4. **Release of Source Code**

4.1 Within thirty (30) days of the Licensee becoming aware of a Relevant Event and/or a Material Breach Relevant Event occurring, the Licensee will prepare and submit to SES a Confidentiality Undertaking in the form set out in Schedule 3 and a Statutory Declaration which:

- (a) is sworn by a duly authorised officer of the Licensee;
- (b) sets out the facts and circumstances of the Relevant Event and/or Material Breach Relevant Event;
- (c) confirms that the Licence, or a superseding licence for the Licensed Programs, is valid and subsisting at the date of the Statutory Declaration and, in the case of the superseding licence, attaches a copy of such licence; and
- (d) attaches all relevant supporting documentation in the Licensee's possession.

4.2 On SES's receipt of a Statutory Declaration and a signed Confidentiality Undertaking relating to a Relevant Event, SES will submit a copy of the Licensee's Statutory Declaration to the Licensor. If the Licensor does not by written notice deny the occurrence of the Relevant Event and confirm such denial with supporting documentation within thirty (30) days of the Relevant

Event, SES is hereby authorised by the parties to release the Source Code to the Licensee on receipt of the Release Fee.

4.3 On receipt of a Statutory Declaration and Confidentiality Undertaking relating to a Material Breach Relevant Event, SES will submit a copy of the Licensee's Statutory Declaration to the Licensor. If the Licensor does not either:

- (a) remedy the breach giving rise to the Material Breach Relevant Event; or
- (b) by written notice (setting out all relevant facts and circumstances and having attached thereto all relevant documentation in the Licensor's possession) deny its occurrence,

within thirty (30) days of receipt of the Licensee's copy Statutory Declaration, then upon the expiry of said thirty (30) day period and receipt of the Release Fee, SES is hereby authorised by the parties to release the Source Code to the Licensee.

4.4 If the Licensor denies the occurrence of a Relevant Event and/or a Material Breach Relevant Event by written notice pursuant to Clauses 4.2 and 4.3(b) respectively:

- (a) SES will not release the Source Code to the Licensee;
- (b) SES will forthwith submit a copy of the Licensor's written notice to the Licensee;
- (c) each of the Licensor and the Licensee hereby agrees to use its reasonable endeavours within fourteen (14) days of the Licensee's receipt of the Licensor's written notice under Clause 4.4(b) to reach agreement upon whether or not a Relevant Event and/or a Material Breach Relevant Event has occurred. Should the Licensor and Licensee fail to reach such an agreement the matter will be settled in accordance with the Dispute Resolution Procedure; and
- (d) if it is agreed by the parties pursuant to Clause 4.4(c) or decided pursuant to the Dispute Resolution Procedure that:
 - (i) a Relevant Event has occurred then SES is hereby authorised on receipt of the Release Fee and a further Statutory Declaration from the Licensee confirming the Relevant Event has occurred, to release the Source Code to the Licensee;
 - (ii) a Material Breach Relevant Event has occurred then the Licensor will have thirty (30) days from the date of said agreement or decision (as the case may be) to remedy the breach giving rise to the Material Breach Relevant Event. Should the Licensor fail to comply with such obligation, SES is hereby authorised on receipt of the Release Fee and a Statutory Declaration from the Licensee that the said breach remains unremedied, to release the Source Code to the Licensee;
 - (iii) a Relevant Event and/or a Material Breach Relevant Event has not occurred the terms of this Agreement shall continue in full force and effect and SES will not release the Source Code to the Licensee.

4.5 Subject to ensuring compliance with the provisions of Clauses 4.1(a) to 4.1(d), SES will not be under any obligation to examine enquire into or check the accuracy completeness or authenticity of any Statutory Declaration submitted by the Licensee.

5. Intellectual Property Rights and Confidential Information

5.1 Notwithstanding the deposit and release of the Source Code in accordance with the terms of this Agreement:

- (a) all Intellectual Property Rights in and ownership of the Source Code will remain vested in the Licensor and/or its licensors; and
 - (b) the Source Code will remain the Confidential Information of the Licensor and/or its licensors.
- 5.2 The Licensor grants to SES the non-exclusive, royalty-free right for the Term to copy the Source Code for the purpose of complying with the terms of this Agreement.
- 5.3 The Licensor has listed in Schedule 1 all Third Party Source Code comprised in the Source Code.
- 5.4 All Intellectual Property Rights subsisting in the reports created during the Basic Validation Testing and Complete Validation Testing processes shall belong to SES and, where relevant, its sub-contractors. The Licensor and relevant Licensee shall be entitled to use such reports solely for internal purposes and for complying with their obligations under this Agreement.
- 6. Licensee Obligations**
- 6.1 Upon receipt of the Source Code in accordance with the procedure set out in Clause 4, the Licensee will:
- (a) use the Source Code solely for the purposes of maintaining and/or enhancing the Licensed Programs;
 - (b) keep confidential the Source Code and limit access to the Source Code to those of its Employees who either have a need to know or who are directly engaged in the maintenance and/or enhancement of the Licensed Programs;
 - (c) not assign, transfer, sell, lease, rent, charge or otherwise deal in or encumber the Source Code in any way whatsoever nor use the same on behalf of or for the benefit of any other party without the prior written consent of the Licensor;
 - (d) not alter or remove any proprietary notices affixed to or contained in the Source Code and will ensure the inclusion of such proprietary notices on any back-up copies of the Source Code held by or under the control of the Licensee; and
 - (e) without prejudice to the generality of the foregoing will take all such other steps as will from time to time be reasonably necessary to protect the Confidential Information and Intellectual Property Rights of the Licensor in the Source Code and to ensure the compliance with the provisions of this Clause 6 by its Employees.
- 6.2 Upon the proper termination of the Licence, the Licensee will at the option of the Licensor (or any person to whom the title to the Licensed Programs has been assigned or transferred) either return all copies of the Source Code in its care or under its control or certify in writing that the same have been destroyed.
- 7. SES Obligations**
- 7.1 SES hereby covenants and undertakes to the Licensor:
- (a) not to assign, transfer, sell, lease, rent, charge or otherwise deal in or encumber the Source Code;
 - (b) not to use, and procure that any of its Employees do not use, the Source Code for its own purposes or on behalf of any other party nor to disclose, test or release the same except in accordance with the provisions of this Agreement; and
 - (c) without prejudice to the generality of the foregoing to take all such reasonable steps as will from time to time be necessary to protect the security of the Source Code at

the Secure Address and to ensure the compliance with the provisions of this Clause 7 by its Employees.

7.2 Save in accordance with the terms of Clause 10, SES will not be under any obligation to examine, enquire into or otherwise inspect the accuracy, completeness or currency of the Source Code from time to time deposited with it by the Licensor.

7.3 SES will not be obliged to request any Modifications from the Licensor. It is the responsibility of the Licensor to send all Modifications to SES and the responsibility of the Licensee to notify SES if it becomes aware of any such Modifications.

8. Licensor Warranties

8.1 The Licensor represents and warrants to SES and the Licensee that:

- (a) subject to the time limit for depositing revisions to the Source Code set out in Clause 2.1(a), the Source Code deposited with SES will at all times be a complete, accurate and up-to-date copy of the source code version of the current release of the Licensed Programs;
- (b) the Source Code will contain all information in human readable form necessary to enable a reasonably skilled programmer or analyst to maintain and/or enhance the Licensed Programs without the help of any other person or reference to any other material and that without prejudice to the generality of the foregoing the Source Code will contain all listings of code programmer's comments logic manuals and flow charts;
- (c) the Licensor owns all Intellectual Property Rights in the Source Code other than in the Third Party Source Code;
- (d) the Licensor has a licence from the owner of the Intellectual Property Rights in the Third Party Source Code and such licence permits the Licensor to place the Third Party Source Code on deposit under the terms of this Agreement and to permit the release of the Third Party Source Code on the occurrence of a Relevant Event or a Material Breach Relevant Event.

8.2 The Licensor hereby indemnifies, and keeps fully indemnified, SES and its Employees against all costs, expenses, fees (including, without limitation, legal and other professional advisers' fees), losses, damages and other liabilities that SES and/or its Employees suffer due to the Licensor breaching any of its warranties in Clause 8.1 and/or a third party claiming that SES is infringing its Intellectual Property Rights by holding the Source Code on deposit or releasing of the Source Code to the Licensee in accordance with the terms of Clause 4.

9. Fees

9.1 The Licensor and Licensee will respectively pay the Fees in the proportions and at the times set out in the Order Form.

9.2 SES will be entitled to increase its Fees not more than once in every successive period of twelve (12) months during the Term upon giving not less than thirty (30) days notice to each of the Licensor and Licensee.

9.3 SES reserves the right to charge the Licensor and Licensee interest in respect of the late payment of any sum due under this Agreement at the rate of 8% per cent per annum above the base rate from time to time of the Bank of England from the due date therefore until payment.

9.4 For the avoidance of doubt, SES will not be obliged to refund any part of the Fees on termination of the Agreement.

10. Testing of the Source Code

- 10.1 On receipt of the Licensed Programs SES will conduct Basic Validation Testing on the Source Code. On completion of the Basic Validation Testing a report will be sent to SES, the Licensor and the Licensee. The Basic Validation Testing is limited to those areas of testing set out in Schedule 4, Part 1. SES will not test for any other problem, fault, error, non-compliance with the Licensor Warranty or specification or any other failure of any nature whatsoever with the Source Code and neither SES nor any Employee will be held liable now or at any time in the future to the Licensee or other person due to any of the same occurring.
- 10.2 SES will, upon receipt of a written request from a Licensee and subject to the payment of the Complete Validation Testing Fee, undertake Complete Validation Testing on the Source Code. The Licensor agrees that on following reasonable written notice from SES it will grant SES and for its Employees reasonable access to its premises, the Licensed Programs and all relevant hardware in order to undertake Complete Validation Testing. The results of the Complete Validation Testing will be sent to the Licensor and the Licensee and shall be treated by each party as Confidential Information. The Complete Validation Testing is limited to those areas of testing set out in Schedule 4, Part 2 and SES does not test for any other problem, fault, error, non-compliance with specification or any other failure of any nature whatsoever with the Source Code and neither SES nor any Employee will be held liable now or at any time in the future to the Licensee or any other person due to any of the same occurring.
- 10.3 If in SES's reasonable judgment the Licensor is in breach of the Licensor's Warranty, it will notify the Licensor and the Licensor will be obliged to deposit with SES within thirty (30) days of receipt of said notice such revisions to the Source Code as will be necessary to ensure its compliance with the Licensor's Warranty.
- 10.4 If in SES's reasonable judgment the Licensor is in breach of the Licensor's Warranty, then SES's charges in respect of the conversion undertaken pursuant to Clause 10.1 (to be levied in accordance with Clause 10.5) will be paid by the Licensor. If in SES's reasonable judgment the Licensor is not in breach of the Licensor's Warranty then SES's charges will be paid in accordance with Clause 10.5 by the Licensee.
- 10.5 SES will be entitled to levy its charges in arrears on a time and materials basis at its then prevailing rates. Such charges will be payable (together with value added tax thereon) by the Licensor or Licensee (as the case may be) within thirty (30) days of receipt of an invoice therefore.
- 10.6 SES will be entitled to use any Employee to undertake the Basic Validation Testing and Complete Validation Testing and will procure that such Employee complies with its confidentiality obligations in Clause 7.1(b).

11. Limitation of Liability

- 11.1 SES will have no obligation, duty or liability in contract, tort, for breach of duty or otherwise, beyond that of a duty to exercise reasonable skill and care. Unless expressly stated in this agreement, all other conditions and warranties whether expressed or implied by statute, common law, usage or otherwise, are excluded to the fullest extent permitted by law.
- 11.2 SES will not be liable to either the Licensor or the Licensee in contract, tort or otherwise (including liability for negligence of breach of statutory duty) for loss (whether direct or indirect) of business revenue or profit or anticipated savings or for wasted expenditure, or for corruption or destruction of data or for any indirect or consequential loss whatsoever, regardless of whether the same was reasonably foreseeable by SES and whether the Licensor or Licensee had notified SES of the likelihood of the same occurring.
- 11.3 Subject to Clauses 11.1 and 11.2, SES's total liability in contract, tort or otherwise (including, without limitation, negligence or breach of statutory duty) in connection with any and all claims arising under or in connection with this Agreement is limited to £1,000,000 (one million pounds sterling).

11.4 For the avoidance of doubt, SES does not exclude or restrict liability for death or personal injury resulting from its own negligence or the negligence of its Employees for fraudulent misrepresentation.

12. Termination

12.1 This Agreement may be terminated:

- (a) by SES upon giving not less than forty five (45) days' notice to each of the Licensor and Licensee;
- (b) by SES should the party responsible for payment of the Fees due under the Agreement have failed to pay such Fees within thirty (30) days of written request to do so by SES. Should the Licensor be responsible for such failure of payment, SES will notify the Licensee of the Licensor's failure to pay the Fees and will give the Licensee fourteen (14) days to pay the outstanding Fees on behalf of the Licensor prior to SES terminating the Agreement;
- (c) by the Licensee on thirty (30) days written notice;
- (d) by the Licensor by notifying SES that the Licence has expired or been properly terminated for breach or otherwise provided that documentary evidence accompanies such notice. On receipt of such notice SES will forward a copy to the Licensee Authorised Representative who shall have a period of fourteen (14) days to deny such expiry or termination has taken place. If no such denial is received by SES within the stated time period, this Agreement will be terminated. If a denial is received, the issue will be settled by means of the Dispute Resolution Procedure;
- (e) jointly by the Licensor and Licensee upon giving not less than thirty (30) days' notice to SES.

12.2 Forthwith upon receipt of notice of termination pursuant to Clause 12.1(a), the Licensor and Licensee agree to use their respective best endeavours to appoint a mutually acceptable replacement depositee of the Source Code on terms and conditions as near as possible identical to those set out in this Agreement.

12.3 In the event of the termination of this Agreement pursuant to Clause 12, SES will either destroy all copies of the Source Code that it holds or, at the request and expense of the Licensor, return the Source Code to the Licensor at its registered office or such other address as the Licensor notifies to SES in writing.

12.4 Without prejudice to the provisions of Clause 12.1, this Agreement will terminate upon the release of the Source Code by SES to the Licensee pursuant to Clause 4.

12.5 The terms of Clauses 5.1, 6.1, 6.2, 7.1, 8.2, 9.3, 9.4, 11, 12.2, 15.6 and 16.1 will survive termination of this Agreement.

13. General

13.1 No party will be liable for a delay in performing its obligations under this Agreement if the delay or failure results from circumstances beyond its reasonable control including but not limited to force majeure, act of God, governmental act, fire, explosion, accident, civil commotion or industrial dispute. On the occurrence of any such circumstances, the party affected will give written notice thereof to the other parties and shall use all reasonable endeavours to minimise the period of any such delay.

13.2 This Agreement sets out the entire agreement and understanding between the parties in connection with the retention of the Licensed Programs in escrow and supersedes all prior arrangements, undertakings and agreements (whether oral or written) between the parties in respect of the subject matter hereof.

- 13.3 If at any time any one or more of the Clauses or sub-clauses of this Agreement is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from the Agreement and the validity and/or enforceability of the remaining provisions of the Agreement shall not in any way be affected or impaired as a result of that omission.
- 13.4 Nothing in this Agreement shall create, or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the parties.
- 13.5 Any variation to the terms of this Agreement must be made in writing and signed by the authorised signatories of each of the parties.
- 13.6 The Licensor will not assign, transfer or sub-contract its rights or obligations under this Agreement to a third party without the prior written consent of the Licensee and SES, such consent (in either instance) not to be unreasonably withheld or delayed. The Licensee will not assign, transfer or sub-contract its rights and obligations under this Agreement to a third party without the prior written consent of the Licensor and SES, such consent (in either instance) not to be unreasonably withheld or delayed.
- 13.7 The rights and remedies of any party in respect of the Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by one party to either of the other parties nor by any failure of, or delay by the said party in ascertaining or exercising any such rights or remedies. The waiver by any party of a breach of the Agreement shall not prevent the subsequent enforcement of that breach and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.
- 13.8 No person who is not a party to the Agreement (including any Employees of either party) shall have the right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any term of the Agreement which expressly or by implication confers a benefit on that person without the express prior agreement in writing of all of the parties.
14. Notices
- 14.1 Any notice or other communication given or made under or in connection with the matters contemplated by this Agreement shall be in writing (other than writing on the screen of a visual display unit or other similar device which shall not be treated as writing for the purposes of this Clause 14).
- 14.2 Any such notice or other communication shall be sent to the address listed at the head of this Agreement (unless a party notifies the other parties that it requires notices to be sent to an alternative address) and, if so addressed, shall be deemed to have been duly given or made as follows:
- (a) if sent by personal delivery, upon delivery at the address of the relevant party;
 - (b) if sent by first class post, then two (2) days after posting; and
 - (c) if sent by facsimile, when acknowledged by the recipient or otherwise upon the date upon which receipt can be proven.
15. Dispute Resolution Procedure
- 15.1 If a dispute arises between any or all of the parties, the authorised representatives of the relevant parties will use their reasonable endeavours to settle the dispute within fourteen (14) days of the matter being raised. Should the dispute not be resolved within this time period it may be escalated by written notice from either party to the managers of the authorised representatives.

- 15.2 On receipt of written notice of the terms of a dispute in accordance with the terms of Clause 15.1, the managers of the authorised representatives will use their reasonable endeavours to settle the dispute within fourteen (14) days of notification of the dispute.
- 15.3 If the dispute is not resolved by the managers under Clause 15.2, either party who is subject to the dispute will be entitled to request that the dispute be referred to a mediator for resolution. Following such request, the parties will reasonably agree the appointment of a mediator. If there is a failure to agree the appointment within three (3) days of a proposal by one party, the mediator will be appointed (at the request of either party) by the Centre for Dispute Resolution (CEDR) situated in London. All negotiations connected with the dispute during the mediation will be conducted in confidence without prejudice to the rights of the parties in any further proceedings. If agreement is reached on the resolution of the dispute during the mediation the parties will enter into a signed written agreement which will be binding. The parties will bear their own legal costs incurred in preparation for and conduct of the mediation. The costs and expenses of the mediation itself will be borne equally between the parties.
- 15.4 The procedures set out in this Clause 15 are without prejudice to any rights and remedies that may be available in respect of any breach of the provisions of this Agreement.
- 15.5 Nothing herein will prevent a party from seeking (including obtaining or implementing) interlocutory or other immediate relief.
- 15.6 The Licensor and Licensee jointly and severally indemnify SES against all costs, expenses, fees (including legal and other professional fees) and other liabilities (including, for the avoidance of doubt, management time) that SES directly or indirectly incurs due to SES and/or any Employees of SES being required to participate in the Dispute Resolution Procedure to settle a dispute between the Licensor and the Licensee.
16. **Law**
- 16.1 This Agreement will be governed by and construed in accordance with English Law. The parties hereby submit to the exclusive jurisdiction of the English courts.

IN WITNESS OF WHICH the parties to agree to the terms of this Agreement on the date of signature by both.

Schedule 1

Licensed Programs

Part 1: Licensed Programs owned by Licensor.....

Part 2: Licensed Programs owned by Third Party.....

Part 3: Licensee Authorised Representative:

Name:

Telephone Number:

Fax Number:

Address:

Schedule 2Order Form

Please note these rates may be subject to change at any point in the duration of the Agreement.

[Guidance: Update with correct pricing if including this Schedule]

Service	Description	Cost		Total
Agreement Set-up	Contract Implementation Payable before commencement of work	Individual		
Non Standard Contract	To compile and approve a non-standard agreement chargeable by the hour in addition to the implementation fee			
Escrow Annual Subscription	Payable on commencement of contract per Licensee and on each anniversary thereafter	2 Deposits per Annum		
		4 Deposits per Annum		
Additional Source Code Deposits	Includes Basic Validation Testing			
Data Deposits	Includes Data Deposit Report confirming deposit frequency			
Remote Full Validation	Full build of source code into working application by software owner, witnessed and documented by SES performed remotely			
Release Fee	Releasing deposited material to the Licensee (+ reasonable expenses to courier the material)			
Sub Total				
VAT 20%				
Total				

Schedule 3**Confidentiality Undertaking**

This undertaking is given on release of the Source Code pursuant to a Source Code Deposit Agreement dated the **Date** and made between (1) **Insert name of Licensee (“Licensor”)**; and (2) **Insert name of Licensee (“Licensee”)**; and (3) **Financechain Limited t/a Software Escrow Solutions (“SES”)**.

1. Definitions contained in the Single Licensee Escrow Agreement will apply to this Confidentiality Undertaking.
2. In consideration of SES delivering to the Licensee a copy of the Source Code, the Licensee hereby undertakes with SES and with the Licensor:
 - 2.1 to use the Source Code solely for the purposes of maintaining, and/or enhancing the Licensed Programs;
 - 2.2 not to use the Source Code for any other purpose nor disclose it to any person save to such of its Employees who need access to the same in order to maintain, and/or enhance the Licensed Programs on behalf of the Licensee;
 - 2.3 to hold all media containing the Source Code in a safe or strong room when not in use;
 - 2.4 forthwith to destroy the Source Code should the Licensee cease to be entitled to use the Licensed Programs;
 - 2.5 not to alter or remove any proprietary notices affixed to or contained in the Source Code and to ensure the inclusion of such proprietary notices on any back-up copies of the Source Code held by or under the control of the Licensee;
 - 2.6 not to assign transfer, sell, lease, rent, charge or otherwise deal in or encumber the Source Code nor use the same on behalf of or for the benefit of any other party; and
 - 2.7 without prejudice to the generality of the foregoing to take all such other steps as will from time to time be necessary to protect the Confidential Information and Intellectual Property Rights of the Licensor in the Source Code and to ensure the compliance with the provisions of this Clause by its Employees.
3. SES will upon receipt of the Release Fee plus its reasonable expenses together with the Statutory Declaration and any other documents specified in Clauses 4.1 and/or 4.2, as appropriate, deliver a copy of the Source Code to the Licensee.

Schedule 4

Validation Testing

PART 1: BASIC VALIDATION TESTING

Basic Validation Testing is checking that the media supplied contains the correct software and that all attributes of the Licensed Programs are correct and in line with the requirements that the Licensee has notified to SES. The following checks are carried out as part of the Basic Validation Testing:

- Check the Source Code is apparent on the Media.
- If any files on the media are compressed, ensure they can be de-compressed.
- Assess whether any files on the media are encrypted. If encryption is detected, it will be ensured that the files can be decrypted and the method will be noted and returned.
- Check all passwords are correct.
- Scan supplied media for viruses.
- Check that source code files can be retrieved. A sample number of files shall be viewed to ensure that they can be retrieved.
- Check the version of the operating system for which the Source Code has been developed.
- Check the version number of the software.

If any of the above checks fail, the Licensor will be notified and asked to provide a replacement, which will be retested.

Once completed SES will compile a report which will be forwarded to all parties concerned under the Escrow agreements confirming all checks have been made. SES will ask the Licensor to submit the most up to date Source Code once per annum thus complying with terms and conditions set out in the Agreement

PART 2: COMPLETE VALIDATION TESTING

The Complete Validation Testing service is a more comprehensive approach than Basic Validation and involves an SES Employee based on the site of the Licensor testing the software to ensure that the Source Code supplied is present and correct and that it can be built into the target application as expected by the Licensee.

Prior to Complete Validation Testing taking place, the process will be explained to the Licensor. This process will take the form of a short meeting with the following agenda:

- Explanation of the structure of Complete Validation Testing process (SES)
- Description of the Technical Infrastructure (Licensee) to include hardware, software database(s), middleware and any peripheral applications/utilities required.
- If a database is a part of the delivery, a schematic relationship diagram will be provided and summarised (Licensee)

The Licensor will then carry out the Complete Validation Testing whilst the SES Employee oversees the build. The Complete Validation Testing has the following procedure:

- Verify the presence of Source Code files on the validation hardware (including files that are genuine source code files, have modification histories, comments and meaningful file naming

conventions and that they can be read/edited). Please note that only a sample of the Source Code files will be taken into consideration.

- Where database(s) are used, the schema details provided in the initial meeting will be used to check for the presence of several sample database tables. The tables will be checked for the correct fields and relationships where applicable.
- The complete system will then be built from the Source Code, database and ancillary parts of the application in order to prove the system. All steps carried out in the build of the complete application will be carefully documented and included in the final report.
- The compiled system will then be installed, again, all actions required to do this will be carefully documented and returned to the client.
- Some basic tests will then be carried out on the actual system itself. These can be based on the physical requirements of the Licensee, or can be put together by SES Employees, based on the documented system requirements.
- Any documentation that goes with the system (e.g. training or support documents) will be catalogued and, it will be ensured that these items are placed on the media supplied.
- The media will then be handed over to the SES Employee who will carry out the Basic Validation Testing exercise upon it, to ensure compliance with the Basic Validation requirements.
- Once this is complete, the full report will be compiled, to include all the steps above and, the report from the Basic Validation Testing.
- The media, together with confirmation of what is being deposited into Escrow will be handed over to the SES Employee.
- The SES Employee will then ensure that the Source Code and all documentation arrive with SES safely, for secure storage.

The Basic Validation Testing service is a straightforward process and is likely to take a similar amount of time for most applications. However, the time for completion of the Complete Validation Testing service is likely to vary depending on the size of the application in question. Please contact an SES Employee to discuss this in more detail.

SIGNED by)
).....
 on behalf of) Authorised Signatory
FINANCECHAIN LIMITED)
T/A SOFTWARE ESCROW SOLUTIONS) Date:.....
 in the presence of:)

 Witness Signature

Print Witness Name and Address

SIGNED by)
).....
 on behalf of) Authorised Signatory
[INSERT LICENSOR NAME])
 in the presence of:) Date:.....

 Witness Signature

Print Witness Name and Address

SIGNED by)
).....
 on behalf of) Authorised Signatory
[INSERT LICENSEE NAME])
 in the presence of:) Date:.....

 Witness Signature

Print Witness Name and Address

CALL-OFF TERMS

SCHEDULE 7

IMPLEMENTATION PLAN

1. INTRODUCTION

This Schedule defines the process for the preparation and implementation of the Outline Implementation Plan and Detailed Implementation Plan.

2. OUTLINE IMPLEMENTATION PLAN

2.1 The Outline Implementation Plan is set out in Annex 5 (Outline Implementation Plan) of the Call-Off Form.

2.2 All changes to the Outline Implementation Plan shall be subject to the Change Control Procedure provided that the Supplier shall not attempt to postpone any of the Milestones using the Change Control Procedure or otherwise (except in accordance with Clause 26 (Network Rail Cause)).

3. APPROVAL OF THE DETAILED IMPLEMENTATION PLAN

3.1 The Supplier shall submit a draft of the Detailed Implementation Plan to Network Rail for approval within five (5) Working Days of the Call-Off Effective Date.

3.2 The Supplier shall ensure that the draft Detailed Implementation Plan:

3.2.1 incorporates all of the Milestones and Milestone Dates set out in the Outline Implementation Plan;

3.2.2 includes (as a minimum) the Supplier's proposed timescales in respect of the following for each of the Milestones:

3.2.2.1 the completion of each design document;

3.2.2.2 the completion of the build phase;

3.2.2.3 the completion of any Testing to be undertaken in accordance with Schedule 8 (Testing Procedures);

3.2.2.4 training and roll-out activities; and

3.2.2.5 any specific Deliverables specified in the Call-Off Form;

3.2.3 clearly outlines all the steps required to implement the Milestones to be achieved in timescales specified in the Call-Off Form, together with a high level plan for the rest of the programme, in conformity with Network Rail Requirements;

3.2.4 clearly outlines the required roles and responsibilities of both Parties, including staffing requirements; and

3.2.5 is produced using a software tool as specified, or agreed by Network Rail.

3.3 Prior to the submission of the draft Detailed Implementation Plan to Network Rail in accordance with paragraph 3.1, Network Rail shall have the right:

- 3.3.1 to review any documentation produced by the Supplier in relation to the development of the Detailed Implementation Plan, including:
 - 3.3.1.1 details of the Supplier's intended approach to the Detailed Implementation Plan and its development;
 - 3.3.1.2 copies of any drafts of the Detailed Implementation Plan produced by the Supplier; and
 - 3.3.1.3 any other work in progress in relation to the Detailed Implementation Plan; and
- 3.3.2 to require the Supplier to include any reasonable changes or provisions in the Detailed Implementation Plan.
- 3.4 Following receipt of the draft Detailed Implementation Plan from the Supplier, Network Rail shall:
 - 3.4.1 review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable; and
 - 3.4.2 notify the Supplier in writing that it approves or rejects the draft Detailed Implementation Plan no later than twenty (20) Working Days after the date on which the draft Detailed Implementation Plan is first delivered to Network Rail.
- 3.5 If Network Rail rejects the draft Detailed Implementation Plan:
 - 3.5.1 Network Rail shall inform the Supplier in writing of its reasons for its rejection; and
 - 3.5.2 the Supplier shall then revise the draft Detailed Implementation Plan (taking reasonable account of Network Rail's comments) and shall re-submit a revised draft Detailed Implementation Plan to Network Rail for Network Rail's approval within five (5) Working Days of the date of Network Rail's notice of rejection. The provisions of paragraph 3.4 and this paragraph 3.5 shall apply again to any resubmitted draft Detailed Implementation Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 3.6 If Network Rail approves the draft Detailed Implementation Plan, it shall replace the Outline Implementation Plan from the date of Network Rail's notice of approval.
- 4. **UPDATES TO AND MAINTENANCE OF THE DETAILED IMPLEMENTATION PLAN**
- 4.1 Following the approval of the Detailed Implementation Plan by Network Rail:
 - 4.1.1 the Supplier shall submit a revised Detailed Implementation Plan to Network Rail every one (1) month starting one (1) month from the Call-Off Effective Date or such other timescales as agreed with Network Rail;
 - 4.1.2 without prejudice to paragraph 4.1.1, Network Rail shall be entitled to request a revised Detailed Implementation Plan at any time by giving written notice to the Supplier and the Supplier shall submit a draft revised Detailed Implementation Plan to Network Rail within five (5) Working Days of receiving such a request from Network Rail (or such longer period as the Parties may agree provided that any failure to agree such longer period shall be referred to the Dispute Resolution Procedure);
 - 4.1.3 any revised Detailed Implementation Plan shall (subject to paragraph 4.2) be submitted by the Supplier for approval in accordance with the procedure set out in paragraph 3; and

- 4.1.4 the Supplier's performance against the Implementation Plan shall be monitored at meetings of the Programme and Project Delivery Review (as defined in Schedule 7 (Governance) of the Framework Agreement). In preparation for such meetings, the current Detailed Implementation Plan shall be provided by the Supplier to Network Rail not less than five (5) Working Days in advance of each meeting of the Service Management Review (as defined in Schedule 7 (Governance) of the Framework Agreement).
- 4.2 Save for any amendments which are of a type identified and notified by Network Rail (at Network Rail's discretion) to the Supplier in writing as not requiring approval, any material amendments to the Detailed Implementation Plan shall be subject to the Change Control Procedure provided that:
- 4.2.1 any amendments to elements of the Detailed Implementation Plan which are based on the contents of the Outline Implementation Plan shall be deemed to be material amendments; and
- 4.2.2 in no circumstances shall the Supplier be entitled to alter or request an alteration to any Milestone Date except in accordance with Clause 26 (Network Rail Cause).
- 4.3 Any proposed amendments to the Detailed Implementation Plan shall not come into force until they have been approved in writing by Network Rail.

5. **GOVERNMENT REVIEWS**

The Supplier acknowledges that the Services may be subject to Government review at key stages of the project. The Supplier shall cooperate with any bodies undertaking such review and shall allow for such reasonable assistance as may be required for this purpose within the Charges.

CALL-OFF TERMS**SCHEDULE 8****TESTING PROCEDURES****1. DEFINITIONS**

In this Schedule, the following definitions shall apply:

“Component”	any constituent parts of the infrastructure for a Service, hardware or Software;
“Defect”	a failure to meet any component of the Test Success Criteria;
“Defect Threshold”	in relation to the Tests applicable to a Milestone, a maximum number of Medium and Low Defects as set out in the relevant Test Plan;
“Defect Log”	a log for the recording of Defects as described further in paragraph 9.1 of Schedule 8 (Testing Procedures);
“Entry Criteria”	the set of conditions for officially starting a defined task;
“Exit Criteria”	the set of conditions for officially completing a defined task;
“Functional Testing”	Testing conducted to evaluate the compliance of a Deliverables with functional requirements;
“Material Defect”	a Defect where the criteria is Critical or High which is described in Annex 1 of Schedule 8 (Testing Procedures);
“Non-Functional Testing”	Testing conducted to evaluate the compliance of a Deliverables with non-functional requirements;
“NR Assurance”	a process to assure the integrity and usability of documents and Deliverables and information produced by the Supplier, including identification of risks to products or services provided, or risks due to anomalies or uncertainties in the process, planning, scope or approach;
“Operational Acceptance Testing”	operational testing in the acceptance test phase, typically performed in a (simulated) operational environment by operations and/or systems administration staff focusing on operational aspects;
“Performance Testing”	Testing to determine the performance of a software Deliverables;
“Regression Testing”	Testing of a previously tested Deliverable following modification to ensure that defects have not been

	introduced or have been uncovered in unchanged areas of the software, as a result of the changes made;
“Severity Level”	the level of severity of a Defect, the criteria for which are described in Annex 1 of Schedule 8 (Testing Procedures);
“Test Certificate”	a certificate materially in the form of the document contained in Annex 2 of Schedule 8 (Testing Procedures) issued by Network Rail when a Deliverable has satisfied its relevant Test Success Criteria;
“Test Phase”	any part of a Test that will determine whether Test Success Criteria have been met for the relevant part or component of such Test;
“Test Plan”	a plan: <ul style="list-style-type: none"> (a) for the Testing of Deliverables; and (b) setting out other agreed criteria related to the achievement of Milestones, as described further in paragraph 5 of Schedule 8 (Testing Procedures);
“Test Reports”	the reports to be produced by the Supplier setting out the results of Tests;
“Test Schedule”	in respect of any forthcoming Testing, a list of activities, tasks or events that specifies the intended start and finish dates and times and interdependencies of such Tests;
“Test Specification”	the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in paragraph 7 of Schedule 8 (Testing Procedures);
“Test Strategy”	a strategy for the conduct of Testing as described further in paragraph 4 of Schedule 8 (Testing Procedures);
“Test Success Criteria”	in relation to a Test, the test success criteria for that Test as referred to in paragraph 6 of Schedule 8 (Testing Procedures);
“Test Witness”	any person appointed by Network Rail pursuant to paragraph 10.1 of Schedule 8 (Testing Procedures); and
“Testing Procedures”	the application testing procedures and Test Success Criteria set out in Schedule 8 (Testing Procedures).

2. RISK

- 2.1 The issue of a Test Certificate, a Milestone Achievement Certificate, conditional Milestone Achievement Certificate and/or NR Assurance of a Test Phase shall not:

- 2.1.1 operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy Network Rail's requirements for that Deliverable or Milestone; or
- 2.1.2 affect Network Rail's right subsequently to reject:
 - 2.1.2.1 all or any element of the Deliverables to which a Test Certificate relates; or
 - 2.1.2.2 any Milestone to which the Milestone Achievement Certificate relates.
- 2.2 Notwithstanding the issuing of any Milestone Achievement Certificate (including the Milestone Achievement Certificate in respect of Authority to Proceed), the Supplier shall remain solely responsible for ensuring that:
 - 2.2.1 the Supplier Solution as designed and developed is suitable for the delivery of the Services and meets Network Rail Requirements;
 - 2.2.2 the Services are implemented in accordance with this Agreement; and
 - 2.2.3 each Target Performance Level is met from the relevant Operational Service Commencement Date.
- 3. **TESTING OVERVIEW**
- 3.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, the Test Plans and the Test Specifications.
- 3.2 The Supplier shall not submit any Deliverable for Testing:
 - 3.2.1 unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;
 - 3.2.2 until Network Rail has issued a Test Certificate in respect of any prior, dependant Deliverable(s); and
 - 3.2.3 until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).
- 3.3 The Supplier shall submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.
- 3.4 Prior to the issue of a Test Certificate, Network Rail shall be entitled to review the relevant Test Reports and the Defect Log.
- 3.5 Any Disputes between Network Rail and the Supplier regarding Testing shall be referred to the Dispute Resolution Procedure using the Expedited Dispute Timetable.
- 3.6 Network Rail employees may be involved in Testing, on the proviso that their roles and responsibilities are clearly specified and agreed by both parties in writing.
- 3.7 The Supplier will be required to carry out appropriate Testing comprised of Functional Testing, Non-Functional Testing, Operational Acceptance Testing, Performance Testing and/or Regression Testing, as specified by Network Rail.
- 3.8 Where Network Rail shall arrange or perform any components of the Testing process, it shall be agreed as such in the Call-Off Form.

4. TEST STRATEGY

- 4.1 The Supplier will develop and maintain a Test Strategy as soon as practicable after the Call-Off Effective Date but in any case no later than twenty (20) Working Days (or such other period as the Parties may agree in writing) after the Call-Off Effective Date.
- 4.2 The final Test Strategy shall apply to all Deliverables implemented under this Call-Off Contract, and shall, save as specified otherwise in the Call-Off Form, include:
- 4.2.1 an overview of how Testing will be conducted in accordance with the Implementation Plan and demonstrating how different Test Phases may be used for Deliverables;
 - 4.2.2 the process and methods to be used to capture and record Test results and the categorisation of Defects;
 - 4.2.3 Test suspension and resumption criteria;
 - 4.2.4 the method for mapping the expected Test results to the Test Success Criteria;
 - 4.2.5 the procedure to be followed if a Deliverable fails to satisfy the Test Success Criteria or produces unexpected results, including a procedure for the resolution of Defects including Functional, Non-Functional and Regression Testing elements;
 - 4.2.6 the procedure to be followed to sign off each Test;
 - 4.2.7 the process for the production and maintenance of Test Reports and reporting, including templates for the Test Reports and the Defect Log;
 - 4.2.8 the names and contact details of Network Rail's and the Supplier's Test representatives;
 - 4.2.9 a high level identification of the resources required for Testing, including facilities, infrastructure, tools, personnel and Network Rail and/or third party involvement in the conduct of the Tests;
 - 4.2.10 the technical environments required to support the Tests;
 - 4.2.11 the procedure for managing the configuration of the Test environments;
 - 4.2.12 the risks, assumptions, issues and dependencies associated with the Test Strategy; and
 - 4.2.13 details of Entry and Exit Criteria for each Test Phase.

5. TEST PLANS

- 5.1 For each Deliverable, the Supplier shall develop Test Plans and submit these for the approval of Network Rail as soon as practicable but in any case no later than twenty (20) Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start date for the relevant Testing (as specified in the Implementation Plan).
- 5.2 Each Test Plan shall include as a minimum:
- 5.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested (these should be presented as a requirements traceability matrix) and, for each Test, the specific Test Success Criteria to be satisfied;
 - 5.2.2 a detailed procedure for the Tests to be carried out, including:

- 5.2.2.1 details of which Test phases and environments from the Test Strategy will be employed for each Deliverable;
- 5.2.2.2 a reference to the components detailed in the Test Strategy that shall be within the scope of Testing for each Deliverable;
- 5.2.2.3 the timetable for the Tests, including start/end dates and those by which documentation will be available for review in order to establish whether Test Success Criteria has been met;
- 5.2.2.4 the Testing mechanism;
- 5.2.2.5 dates and methods by which Network Rail can inspect Test results or witness the Tests in order to establish that the Test Success Criteria have been met;
- 5.2.2.6 the dates by which documentation will be available for review in order to establish that Test Success Criteria have been met;
- 5.2.2.7 the mechanism for ensuring the quality, completeness and relevance of the Tests;
- 5.2.2.8 the format and an example of Test progress reports and the process with which Network Rail accesses daily Test Schedules;
- 5.2.2.9 the process which Network Rail will use to review Defects and the Supplier's progress in resolving these in a timely basis;
- 5.2.2.10 the Test Schedule;
- 5.2.2.11 the re-Test procedure, the timetable and the resources which would be required for re-Testing;
- 5.2.2.12 the process for escalating Defects from a re-Test situation to the taking of specific remedial action to resolve the Defect;
- 5.2.2.13 links to Test Specifications/scripts;
- 5.2.2.14 details of Entry and Exit criteria specific to each phase of the project;
- 5.2.2.15 named resources for the roles deemed necessary from the Test Strategy;
- 5.2.2.16 details of any risks, issues, assumptions or dependencies specific to Testing the Deliverable not already mentioned in the Test Strategy; and
- 5.2.2.17 details of Test deliverables pertaining to each Deliverable.

5.3 Network Rail shall not unreasonably withhold or delay its approval of the Test Plans provided that the Supplier shall incorporate any reasonable requirements of Network Rail in the Test Plans.

6. **TEST SUCCESS CRITERIA**

The Test Success Criteria for:

6.1 each Test that must be Achieved for the Supplier to Achieve either the ATP Milestone or a CPP Milestone will be aligned with the with the Network Rail IT Delivery Lifecycle (as set out

in Annex 3 of Schedule 3 (Standards) to the Call-Off Terms) are set out in Annex 9 (Testing) of the Call-Off Form; and

6.2 all other Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to paragraph 5.

7. TEST SPECIFICATION

7.1 As part of the Test Plan, the Supplier shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least ten (10) Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start of the relevant Testing (as specified in the Implementation Plan).

7.2 Each Test Specification shall include as a minimum:

7.2.1 the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by Network Rail and the extent to which it is equivalent to live operational data;

7.2.2 a plan to make the resources available for Testing;

7.2.3 Test scripts;

7.2.4 details of traceability of Tests to requirements, i.e. a requirements traceability matrix to determine correlation between requirements and the outcomes of Testing;

7.2.5 scripts to cover Functional Testing, Non-Functional Testing and Regression Testing elements;

7.2.6 Test pre-requisites and the mechanism for measuring them; and

7.2.7 expected Test results.

8. TESTING

8.1 Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.

8.2 The Supplier shall manage the progress of Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with paragraph 10.

8.3 The Supplier shall notify Network Rail at least ten (10) Working Days (or such other period as the Parties may agree in writing) in advance of the date, time and location of the relevant Tests and Network Rail shall ensure that the Test Witnesses attend the Tests.

8.4 Network Rail may raise and close Defects during the Test witnessing process.

8.5 The Supplier shall provide to Network Rail in relation to each Test:

8.5.1 a draft Test Report not less than two (2) Working Days (or such other period as the Parties may agree in writing) prior to the date on which the Test is planned to end; and

8.5.2 the final Test Report within two (2) Working Days (or such other period as the Parties may agree in writing) of completion of Testing.

8.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:

- 8.6.1 an overview of the Testing conducted;
 - 8.6.2 identification of the relevant Test Success Criteria that have been satisfied;
 - 8.6.3 identification of the relevant Test Success Criteria that have not been satisfied together with the Supplier's explanation of why those criteria have not been met;
 - 8.6.4 the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;
 - 8.6.5 the Test Success Criteria that were satisfied, not satisfied or which were not Tested, and any other relevant categories, in each case grouped by Severity Level in accordance with paragraph 9.1;
 - 8.6.6 the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing; and
 - 8.6.7 a high level view of all defects raised and their status. This shall include a detailed view, including descriptions, of those being carried forward into the next Test or project phase.
- 8.7 The Supplier will be required to support Network Rail in respect of:
- 8.7.1 provision of user acceptance testing (UAT) facilities at an agreed location, which may include a sub-set of the proposed operational technical architecture;
 - 8.7.2 working with Network Rail to agree the criteria and plans for acceptance of Deliverables into, and from UAT;
 - 8.7.3 preparing a set of UAT plans for agreement by both Parties; and
 - 8.7.4 warranty and/or support provision for the Deliverables following acceptances from UAT, to be agreed subject to commercial discussions between the Parties.
- 8.8 The Supplier will be required to support the Network Rail Route Services IT in respect of:
- 8.8.1 jointly agreeing with Network Rail the criteria and plans for acceptance of Deliverables into, and from Operational Acceptance Testing; and
 - 8.8.2 preparing a set of operational test plans for agreement by both Parties.
- 8.9 The Supplier will be required to support or perform Performance Testing in respect of;
- 8.9.1 jointly agreeing the criteria and plans for acceptance of Deliverables into, and from Operational Acceptance Testing;
 - 8.9.2 preparing a set of operational test plans for agreement by both Parties.
9. **DEFECTS**
- 9.1 Where a Test Report identifies a Defect, the Parties shall agree the classification of the Defect using the criteria specified in Annex 1 and the Defect Log maintained by the Supplier shall log Defects reflecting the Severity Level allocated to each Defect.
- 9.2 Unless stated otherwise in the Call-Off Form, the Supplier shall be responsible for maintaining the Defect Log and for ensuring that its contents accurately represent the current status of each Defect at all relevant times. The Supplier shall make the Defect Log available to Network Rail upon request.

9.3 Network Rail shall confirm the classification of any Defect unresolved at the end of a Test in consultation with the Supplier. If the Parties are unable to agree the classification of any unresolved Defect, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable.

10. TEST WITNESSING

10.1 Network Rail may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by Network Rail.

10.2 The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.

10.3 The Test Witnesses:

10.3.1 shall actively review the Test documentation;

10.3.2 will attend and engage in the performance of the Tests on behalf of Network Rail so as to enable Network Rail to gain an informed view of whether a Defect may be closed or whether the relevant element of the Test should be re-Tested;

10.3.3 shall not be involved in the execution of any Test but may request specific scenarios be run in addition to those scheduled;

10.3.4 shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;

10.3.5 may produce and deliver their own, independent reports on Testing, which may be used by Network Rail to assess whether the Tests have been Achieved;

10.3.6 may raise Defects on the Defect Log in respect of any Testing; and

10.3.7 may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Defect is closed.

11. TEST QUALITY AUDIT

11.1 Without prejudice to its rights pursuant to Clause 12.2.2 (Records, Reports, Audits & Open Book Data), Network Rail may perform on-going quality audits in respect of any part of the Testing (each a "**Testing Quality Audit**") subject to the provisions set out in the agreed Quality Plan.

11.2 The focus of the Testing Quality Audits shall be on:

11.2.1 adherence to an agreed methodology;

11.2.2 adherence to the agreed Testing process;

11.2.3 adherence to the Quality Plan;

11.2.4 review of status and key development issues; and

11.2.5 identification of key risk areas.

11.3 The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.

- 11.4 Network Rail will give the Supplier at least five (5) Working Days' written notice of Network Rail's intention to undertake a Testing Quality Audit and the Supplier may request, following receipt of that notice, that any Testing Quality Audit be delayed by a reasonable time period if in the Supplier's reasonable opinion, the carrying out of a Testing Quality Audit at the time specified by Network Rail will materially and adversely impact the Implementation Plan.
- 11.5 A Testing Quality Audit may involve document reviews, interviews with the Supplier Personnel involved in or monitoring the activities being undertaken pursuant to this Schedule, Network Rail witnessing Tests and demonstrations of the Deliverables to Network Rail. Any Testing Quality Audit shall be limited in duration to a maximum time to be agreed between the Supplier and Network Rail on a case by case basis (such agreement not to be unreasonably withheld or delayed). The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by Network Rail to enable it to carry out the Testing Quality Audit.
- 11.6 If the Testing Quality Audit gives Network Rail concern in respect of the Testing Procedures or any Test, Network Rail shall:
- 11.6.1 discuss the outcome of the Testing Quality Audit with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities; and
- 11.6.2 subsequently prepare a written report for the Supplier detailing its concerns,
- and the Supplier shall, within a reasonable timeframe, respond in writing to Network Rail's report.
- 11.7 In the event of an inadequate response to Network Rail's report from the Supplier, Network Rail (acting reasonably) may withhold a Test Certificate (and consequently delay the grant of a Milestone Achievement Certificate) or NR Assurance of a Test Phase until the issues in the report have been addressed to the reasonable satisfaction of Network Rail.

12. **OUTCOME OF TESTING**

- 12.1 Network Rail shall issue a Test Certificate or NR Assurance of a Test Phase as soon as reasonably practicable when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Defects.
- 12.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then Network Rail shall notify the Supplier and:
- 12.2.1 Network Rail may issue a Test Certificate conditional upon the remediation of the Defects or provide NR Assurance of a Test Phase with caveats;
- 12.2.2 where the Parties agree that there is sufficient time prior to the relevant Milestone Date, Network Rail may extend the Test Plan by such reasonable period or periods as the Parties may reasonably agree and require the Supplier to rectify the cause of the Defect and resubmit the Deliverables (or the relevant part) to Testing; or
- 12.2.3 where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to Network Rail's other rights and remedies, such failure shall constitute a Notifiable Default for the purposes of Clause 22.1 (Rectification Plan Process).
- 12.3 Network Rail shall be entitled, without prejudice to any other rights and remedies that it has under this Agreement, to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Deliverable to be satisfied.

13. **ISSUE OF MILESTONE ACHIEVEMENT CERTIFICATE**

- 13.1 Network Rail shall issue a Milestone Achievement Certificate in respect of a given Milestone as soon as is reasonably practicable following:
- 13.1.1 the issuing by Network Rail of Test Certificates or NR Assurance of a Test Phase and/or conditional Test Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and
 - 13.1.2 performance by the Supplier to the reasonable satisfaction of Network Rail of any other tasks identified in the Implementation Plan as associated with that Milestone (which may include the submission of a Deliverable that is not due to be Tested, such as the production of Documentation).
- 13.2 The grant of a Milestone Achievement Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of Schedule 9 (Invoicing).
- 13.3 If a Milestone is not Achieved, Network Rail shall promptly issue a report to the Supplier setting out:
- 13.3.1 the applicable Defects ; and
 - 13.3.2 any other reasons for the relevant Milestone not being Achieved.
- 13.4 If there are Defects but these do not exceed the Defects Threshold, then provided there are no Material Defects, Network Rail shall issue a Milestone Achievement Certificate.
- 13.5 Without prejudice to Network Rail's other remedies, the following shall constitute a Notifiable Default for the purposes of Clause 22.1 (Rectification Plan Process) and Network Rail shall refuse to issue a Milestone Achievement Certificate where:
- 13.5.1 there is one or more Material Defect(s); or
 - 13.5.2 the information required under Schedule 13 (Reports and Records Provisions) Annex 3 (Virtual Library) of the Call-Off Terms has not been uploaded to the Virtual Library in accordance with Paragraph 3 of that Schedule.
- 13.6 If there are Defects which exceed the Defects Threshold but there are no Material Defects, Network Rail may at its discretion (without waiving any rights in relation to the other options) choose to issue a Milestone Achievement Certificate conditional on the remediation of the Defects in accordance with an agreed Rectification Plan provided that:
- 13.6.1 any Rectification Plan shall be agreed before the issue of a conditional Milestone Achievement Certificate unless Network Rail agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by Network Rail within five (5) Working Days of receipt of Network Rail's report pursuant to paragraph 13.3); and
 - 13.6.2 where Network Rail issues a conditional Milestone Achievement Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.
- 13.7 Acceptance of software will require that it has been proven to integrate fully with the Network Rail System.

ANNEX 1

Defects – Severity Levels

Severity	Description
Critical	The defect results in the failure of a business critical part of the Deliverables and there is no workaround. Reviews/Testing cannot proceed and, in a live environment, this defect would have a critical impact on the operation of the business. These defects are referred to as 'Showstoppers'. The solution shall not be accepted by the business with this defect. For the avoidance of doubt, these constitute a Material Defect.
High	Either the defect results in the failure of a business critical part of the Deliverables and there is no practical workaround; or a significant portion of the Deliverable is not operational and, in a live environment; this defect would have a critical impact on the operation of the business. The solution shall not be accepted by the business with this defect. For the avoidance of doubt, these constitute a Material Defect.
Medium	Either a defect in a business critical function with minor consequences, or a significant defect in a non-critical part of the Deliverable. The defect does not result in failure, but causes the solution to produce incorrect, incomplete, or inconsistent results, or the defect impairs the solution's usability. The defect should be corrected in the next release.
Low	This is a defect that has minimal impact to the system, e.g. incorrect font on a report or spelling mistake. The defect does not cause a failure and does not impair usability but should be corrected in a subsequent release.

ANNEX 2**Test Certificate**

To: **[NAME OF SUPPLIER]**

FROM: **[NETWORK RAIL]**

[Date]

Dear Sirs,

TEST CERTIFICATE

Deliverables: **[insert description of Deliverables]**

We refer to the agreement (the “**Agreement**”) relating to the provision of the Services between the **[Network Rail Infrastructure Limited]** (“**Network Rail**”) and **[name of Supplier]** (the “**Supplier**”) dated **[date]**.

Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (Definitions) or Schedule 8 (Testing Procedures) of the Agreement.

[We confirm that the Deliverables listed above have been tested successfully in accordance with the Test Plan relevant to those Deliverables.]

OR

[This Test Certificate is issued pursuant to paragraph 12.1 of Schedule 8 (Testing Procedures) of the Agreement on the condition that any Defects are remedied in accordance with the Rectification Plan attached to this certificate.]*

**delete as appropriate*

Yours faithfully

[Name]

[Position]

acting on behalf of **[Network Rail]**

ANNEX 3

Milestone Achievement Certificate

To: **[NAME OF SUPPLIER]**FROM: **[NETWORK RAIL]****[Date]**

Dear Sirs,

MILESTONE ACHIEVEMENT CERTIFICATE

Milestone: **[insert description of Milestone]**

We refer to the agreement (the “**Agreement**”) relating to the provision of the Services between the **[Network Rail Infrastructure Limited]** (“**Network Rail**”) and **[name of Supplier]** (the “**Supplier**”) dated **[date]**.

Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (*Definitions*) or Schedule 8 (Testing Procedures) of the Agreement.

[We confirm that all the Deliverables relating to Milestone **[number]** have been tested successfully in accordance with the Test Plan relevant to this Milestone [or that a conditional Test Certificate has been issued in respect of those Deliverables that have not satisfied the relevant Test Success Criteria.]]*

OR

[This Milestone Achievement Certificate is granted pursuant to paragraph 13.1 of Schedule 8 (Testing Procedures) of the Agreement on the condition that any Defects are remedied in accordance with the Rectification Plan attached to this certificate.]*

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with the provisions of Schedule 9 (Invoicing) of the Agreement]*

*delete as appropriate

Yours faithfully

[Name]**[Position]**acting on behalf of **[Network Rail]**

CALL-OFF TERMS

SCHEDULE 9

CHARGES AND INVOICING

[Guidance note: where Goods are being provided to Network Rail by the Supplier see (clause 9.7.1), add pricing provisions in relation to Goods into the Order Form]

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

- “Achieved Profit Margin”** the cumulative Supplier Profit Margin calculated from (and including) the Call-Off Effective Date (or, if applicable, the date of the last adjustment to the Charges made pursuant to paragraph 2 of Part D of this Schedule 9 (Charges and Invoicing)) to (and including) the last day of the previous Contract Year;
- “Anticipated Contract Life Profit Margin”** the anticipated Supplier Profit Margin over the Term as reflected in the Financial Model;
- “Capped ADR”** means a capped average day rate calculated by reference to a Time and Materials pricing mechanism, being £[**INSERT AMOUNT**]; rates and prices specified in Table 1 in Annex 1 of Schedule 4 (Charges) of the Framework Agreement and any rates and prices specified in Part 1 of Annex 6 of the Call-Off Form (as applicable);
- “Costs”** the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:

 - (a) the cost to the Supplier or the Key Sub-contractor (as the context requires), calculated per Work Day, of engaging the Supplier Personnel, including:
 - (i) base salary paid to the Supplier Personnel;
 - (ii) employer’s national insurance contributions;
 - (iii) pension contributions;
 - (iv) car allowances; and
 - (v) any other contractual employment benefits;
 - (vi) staff training;
 - (vii) work place accommodation;

- (viii) work place IT equipment and tools reasonably necessary to perform the Services (but not including items included within limb (b) below); and
- (ix) reasonable recruitment costs, as agreed with Network Rail;
- (b) costs incurred in respect of those Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Assets by the Supplier to Network Rail or (to the extent that risk and title in any Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Assets;
- (c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the delivery of the Services;
- (d) Reimbursable Expenses to the extent these are incurred in delivering any Services where the Charges for those Services are to be calculated on a Fixed Price or Firm Price pricing mechanism;
- (e) but excluding:
 - (i) Overhead;
 - (ii) financing or similar costs;
 - (iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the term of the relevant Call-Off Contract, whether in relation to Assets or otherwise;
 - (iv) taxation;
 - (v) fines and penalties;
 - (vi) amounts payable under Schedule 19 (Benchmarking); and
 - (vii) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

“Delay Payment Rate”

has the meaning given in paragraph 1.1.1 of Part C of this Schedule 9 (Charges and Invoicing);

“Indexation” and “Index”	the adjustment of an amount or sum in accordance with paragraph 5 of Part C of Schedule 9 (Charges and Invoicing);
“Maximum Permitted Profit Margin”	the Anticipated Contract Life Profit Margin plus 5%;
“Milestone Retention”	has the meaning given in paragraph 1.3 of Part B of this Schedule 9 (Charges and Invoicing);
“Overhead”	those amounts which are intended to recover a proportion of the Supplier’s or the Key Sub-contractor’s (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of “Costs” or the applicable day cost;
“Reimbursable Expenses”	<p>reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with Network Rail’s expenses policy current from time to time, but not including:</p> <ul style="list-style-type: none"> (a) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless Network Rail otherwise agrees in advance in writing; and (b) subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;
“Supplier Profit”	in relation to a period or a Milestone (as the context requires), the difference between the total Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant period or in relation to the relevant Milestone;
“Supplier Profit Margin”	in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage; and
“Supporting Documentation”	sufficient information in writing to enable Network Rail reasonably to assess whether the Charges, Reimbursable Expenses and other sums due from Network Rail detailed in the information are properly

payable, including copies of any applicable Milestone Achievement Certificates or receipts.

“Work Day”

seven and a half (7.5) Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day; and

“Work Hours”

the hours spent by the Supplier Personnel properly working on the Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks

PART A

Pricing

1. APPLICABLE PRICING MECHANISM

- 1.1 The Charges shall be calculated using the pricing mechanisms specified in Part 2 of Annex 6 of the Call-Off Form and on the basis of the rates and prices specified in Annex 1 of Schedule 4 (Charges) of the Framework Agreement and/or any rates and prices specified in Part 1 of Annex 6 of the Call-Off Form (as applicable), as more particularly set out in this Schedule.
- 1.2 Table 1 of Part 2 of Annex 6 of the Call-Off Form, sets out which pricing mechanism shall be used to calculate any Milestone Payment, which shall be one or more of the following:
- 1.2.1 "Time and Materials", in which case the provisions of paragraph 2 shall apply;
 - 1.2.2 "Fixed Price", in which case the provisions of paragraph 3 shall apply; or
 - 1.2.3 "Firm Price", in which case the provisions of paragraph 4 shall apply.
- 1.3 Table 2 of Part 2 of Annex 6 of the Call-Off Form sets out which pricing mechanism shall be used to calculate any Service Charge, which shall be one or more of the following:
- 1.3.1 "Time and Materials", in which case the provisions of paragraph 2 shall apply;
 - 1.3.2 "Volume Based" pricing, in which case the provisions of paragraph 5 shall apply; or "Fixed Price" in which case the provisions of paragraph 3 shall apply.

2. TIME AND MATERIALS MILESTONE PAYMENTS OR SERVICE CHARGES

- 2.1 Where a Milestone Payment or Service Charge (as applicable) is to be calculated by reference to a Time and Materials pricing mechanism:
- 2.1.1 the day rates set out in Table 1 of Annex 1 of Schedule 4 (Charges) of the Framework Agreement or any alternative lower day rates set out in Table 1 of Part 1 of Annex 6 of the Call-Off Form shall be used to calculate the relevant Charges, provided that the Supplier (or its Sub-contractor) shall:
- 2.1.1.1 not be entitled to include any uplift for risks or contingencies within its day rates;
 - 2.1.1.2 not be paid any Charges to the extent that they would otherwise exceed:
 - (a) any cap specified against the relevant Charge in Table 2 of Annex 1 of Schedule 4 (Charges) of the Framework Agreement or any lower cap specified against that Charge in Table 2 of Part 1 of Annex 6 of the Call-Off Form; or
 - (b) any other cap specified against the relevant Charge in Table 2 of Part 1 of Annex 6 of the Call-Off Form,

unless the Supplier has obtained Network Rail's prior written consent. The Supplier shall monitor the amount of each Charge incurred in relation to the relevant cap and notify Network Rail immediately in the event of any risk that the cap may be exceeded and Network Rail shall instruct the Supplier on how to proceed;
 - 2.1.1.3 unless otherwise agreed by Network Rail in relation to the relevant Milestone Payment or Service Charge (as the case may be), not be

paid any Charges to the extent that they would otherwise exceed the amount calculated by multiplying:

- (a) the total number of days expended by the Supplier in relation to the relevant Milestone; or
- (b) the total number of days expended by the Supplier during the relevant Service Period in relation to the relevant Service, by the Capped ADR; and

2.1.1.4 only be entitled to be paid Charges that have been properly and reasonably incurred, taking into account the Supplier's obligation to deliver the Services in a proportionate and efficient manner; and

2.1.2 the Supplier shall keep records of hours properly worked by Supplier Personnel (in the form of timesheets) and expenses incurred and submit a summary of the relevant records with each invoice. If Network Rail requests copies of such records, the Supplier shall make them available to Network Rail within ten (10) Working Days of Network Rail's request.

2.2 The Supplier shall be entitled to Index the rates set out in Table 1 of Annex 1 of Schedule 4 (Charges) of the Framework Agreement, any rates set out in Table 1 of Part 1 of Annex 6 of the Call-Off Form, and the Capped ADR in accordance with paragraph 5 of Part C of this Schedule but any caps set out in Table 2 of Annex 1 or Table 2 of Part 1 of Annex 6 of the Call-Off Form shall not be subject to Indexation.

3. **FIXED PRICE MILESTONE PAYMENTS OR SERVICE CHARGES**

3.1 Where a Milestone Payment or Service Charge is to be calculated by reference to a Fixed Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge number in Table 3 of Annex 1 of Schedule 4 (Charges) of the Framework Agreement or any alternative lower amount set out in Table 3 of Part 1 of Annex 6 of the relevant Call-Off Form.

3.2 Charges calculated by reference to a Fixed Price pricing mechanism shall be subject to increase by way of Indexation.

4. **FIRM PRICE MILESTONE PAYMENTS**

4.1 Where a Milestone Payment is to be calculated by reference to a Firm Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge number in Table 4 of Annex 1 of Schedule 4 (Charges) of the Framework Agreement or any alternative lower amount set out in Table 4 of Part 1 of Annex 6 of the relevant Call-Off Form.

4.2 Charges calculated by reference to a Firm Price pricing mechanism shall not be subject to increase by way of Indexation.

5. **VOLUME BASED SERVICE CHARGES**

5.1 Where a Service Charge is to be calculated by reference to a Volume Based pricing mechanism, the relevant Charges shall be calculated on the basis of the unit costs set out against that Service Charge in Table 5 of Annex 1 of Schedule 4 (Charges) of the Framework Agreement or any alternative lower amount set out in Table 5 of Part 1 of Annex 6 of the relevant Call-Off Form.

5.2 In the event that the volume of any Services that are to be calculated by reference to a Volume Based pricing mechanism fall outside the relevant volume bands set out against that Service Charge in Table 5 of Annex 1 of Schedule 4 (Charges) of the Framework Agreement or any lower alternative volume bands set out in Table 5 of Part 1 of Annex 6 of the relevant Call-Off Form, the relevant Service Charges shall be calculated in accordance with the Change Control Procedure and Part C of this Schedule.

5.3 The Charge per unit set out in Table 5 of Annex 1 of Schedule 4 (Charges) of the Framework Agreement or any applicable Charge per unit set out in Table 5 of Part 1 of Annex 6 of any Call-Off Form shall be subject to annual Indexation.

6. **REIMBURSABLE EXPENSES**

6.1 Where:

6.1.1 Services are to be charged using the Time and Materials; and

6.1.2 Network Rail so agrees in writing,

the Supplier shall be entitled to be reimbursed by Network Rail for Reimbursable Expenses (in addition to being paid the relevant Charges), provided that such Reimbursable Expenses are supported by Supporting Documentation.

6.2 Network Rail shall provide a copy of its current expenses policy to the Supplier upon request.

6.3 Except as expressly set out in paragraph 6.1, the Charges shall include all costs and expenses relating to the Deliverables, the Services and/or the Supplier's performance of its obligations under this Agreement and no further amounts shall be payable by Network Rail to the Supplier in respect of such performance, including in respect of matters such as:

6.3.1 any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document and report reproduction, shipping, desktop and office equipment costs required by the Supplier Personnel, including network or data interchange costs or other telecommunications charges; or

6.3.2 any amount for any services provided or costs incurred by the Supplier prior to the applicable Call-Off Effective Date.

PART B

Charging Mechanisms

1. MILESTONE PAYMENTS

- 1.1 Subject to the provisions of paragraph 1.3 of Part C in relation to the deduction of Delay Payments, on the Achievement of a Milestone the Supplier shall be entitled to invoice Network Rail for the Milestone Payment associated with that Milestone less the applicable Milestone Retention in accordance with this Part B.
- 1.2 Each invoice relating to a Milestone Payment shall be supported by a Milestone Achievement Certificate.
- 1.3 The "Milestone Retention" for each Milestone shall be [0]% of the Charges for that Milestone, and, in the case of a Key Milestone, prior to deduction from the Milestone Payment of any Delay Payment attributable to that Key Milestone and without taking account of any amount payable by the Supplier pursuant to paragraph 1.3 of Part C.

Release of Milestone Retentions

- 1.4 On Achievement of a CPP Milestone relating to the Supplier Solution or one or more Services (as the case may be), the Supplier shall be entitled to invoice Network Rail for an amount equal to all Milestone Retentions that relate to Milestones identified in the "CPP Milestone as identified in Table 1 (or, in relation to Milestone Retentions in respect of Optional Services, Table 4) of Part 2 of Annex 6 of the Call-Off Form that have not been paid before such CPP Milestone.

2. SERVICE CHARGES

- 2.1 Each Service to which a Service Charge relates shall commence on the applicable Service Charge Trigger Event.
- 2.2 Service Charges shall be invoiced by the Supplier for each Service Period in arrears in accordance with the requirements of Part E.
- 2.3 If a Service Charge is to be calculated by reference to a Fixed Price pricing mechanism and the relevant Service:
- 2.3.1 commences on a day other than the first day of a month; and/or
- 2.3.2 ends on a day other than the last day of a month, the Service Charge for the relevant Service Period shall be pro-rated based on the proportion which the number of days in the month for which the Service is provided bears to the total number of days in that month.
- 2.4 Any Service Credits that accrue during a Service Period shall be deducted from the Service Charges payable for the next following Service Period. An invoice for a Service Charge shall not be payable by Network Rail unless all adjustments (including Service Credits) relating to the Service Charges for the immediately preceding Service Period have been agreed.

3. OPTIONAL SERVICES

- 3.1 If Network Rail gives notice pursuant to clause 5.11 (Optional Services) of the Call-Off Terms that it requires the Supplier to provide any or all of the Optional Services:
- 3.1.1 the Milestone Payments (if any) for the relevant Optional Services shall be calculated by reference to the pricing mechanism for those Optional Services set out in Table 3 of Part 2 of Annex 6 of the Call-Off Form; and

3.1.2 the Service Charges for the relevant Optional Services shall be calculated by reference to the pricing mechanism for those Optional Services set out in Table 4 of Part 2 of Annex 1 of the Call-Off Form,

in each case on the basis of the rate card specified in Annex 1 of Schedule 4 (Charges) of the Framework Agreement[and/or the rates and prices specified in Part 1 of Annex 6 of the Call-Off Form (as applicable)].

PART C

Adjustments to the Charges

1. DELAY PAYMENTS

- 1.1 If a Key Milestone has not been Achieved on or before the relevant Milestone Date, the Supplier shall pay a Delay Payment to Network Rail in respect of that Key Milestone. Delay Payments shall accrue:
- 1.1.1 at the daily rate (the “**Delay Payment Rate**”) determined in accordance with paragraph 1.2;
 - 1.1.2 from (but excluding) the relevant Milestone Date to (and including) the earlier of:
 - 1.1.2.1 the date on which the Key Milestone is Achieved; and
 - 1.1.2.2 the expiry of the Delay Deduction Period; and
 - 1.1.3 on a daily basis, with any part day’s Delay counting as a day.
- 1.2 Where a Delay Payment is payable in respect of a Key Milestone, the Delay Payment Rate shall be:
- 1.2.1 where the Supplier has given Network Rail less than three (3) months’ prior notice of the Delay, the amount set out in column 4 of Table 1 of Part 2 of Annex 6 of the Call-Off Form for the Key Milestone;
 - 1.2.2 where the Supplier has given Network Rail between three (3) months’ and six (6) months’ prior notice of the Delay, the amount set out in column 5 of Table 1 of Part 2 of Annex 6 of the Call-Off Form for the Key Milestone; or
 - 1.2.3 where the Supplier has given Network Rail more than six (6) months’ prior notice of the Delay, the amount set out in column 6 of Table 1 of Part 2 of Annex 6 of the Call-Off Form for the Key Milestone.
- 1.3 Where the Supplier serves a notice pursuant to paragraph 1.2.2 or 1.2.3, the Supplier shall, within five (5) Working Days of the date the notice is served:
- 1.3.1 pay to Network Rail in cleared funds on account of the relevant Delay Payment (but subject always to paragraph 1.4) an amount equal to:
 - 1.3.1.1 in the case of a notice served pursuant to paragraph 1.2.2, five (5) days of Delay Payments; or
 - 1.3.1.2 in the case of a notice served pursuant to paragraph 1.2.3, ten (10) days of Delay Payments in accordance with paragraph 1.4, in each case calculated at the applicable Delay Payment Rate; and
 - 1.3.2 issue a credit note to Network Rail in respect of the relevant amount.
- Failure to make payment within ten (10) Working Days of the Supplier’s notice shall invalidate the notice.
- 1.4 Any amounts paid to Network Rail pursuant to paragraph 1.3 shall not be refundable to the Supplier in any circumstances, including where a Delay as referred to in the Supplier’s notice:
- 1.4.1 does not occur; or

- 1.4.2 does occur but continues for fewer days during the relevant Delay Deduction Period than the number of days referred to in paragraph 1.3.1 or 1.3.2 as the case may be.
- 1.5 The Parties agree that Delay Payments calculated in accordance with the applicable Delay Payment Rates are in each case a genuine pre-estimate of the Losses which Network Rail will incur as a result of any failure by the Supplier to Achieve the relevant Key Milestone by the Milestone Date. Delay Payment Rates are stated exclusive of VAT.
- 1.6 The Delay Payment in respect of a Key Milestone (net of any payment made in respect of that Key Milestone pursuant to paragraph 1.3) shall be shown as a deduction from the amount due from Network Rail to the Supplier in the next invoice due to be issued by the Supplier after the date on which the relevant Key Milestone is Achieved or the expiry of the Delay Deduction Period (as the case may be). If the relevant Key Milestone is not Achieved by the expiry of the Delay Deduction Period and no invoice is due to be issued by the Supplier within ten (10) Working Days of expiry of the Delay Deduction Period, then the Supplier shall within ten (10) Working Days of expiry of the Delay Deduction Period:
- 1.6.1 issue a credit note to Network Rail in respect of the total amount of the Delay Payment in respect of the Key Milestone (net of any payment made in respect of the Key Milestone pursuant to paragraph 1.3); and
- 1.6.2 pay to Network Rail as a debt a sum equal to the total amount of the Delay Payment in respect of the Key Milestone together with interest on such amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from (and including) the due date up to (but excluding) the date of actual payment, whether before or after judgment.

2. PAYMENTS FOR DELAYS DUE TO NETWORK RAIL USE

- 2.1 If the Supplier is entitled in accordance with clause 26.1.3.3 (Network Rail Cause) of the Call-Off Terms to compensation for failure to Achieve a Milestone by its Milestone Date, then, subject always to clause 20 (Limitations on Liability) of the Call-Off Terms, such compensation shall be determined in accordance with the following principles:
- 2.1.1 the compensation shall reimburse the Supplier for additional Costs incurred by the Supplier that the Supplier:
- 2.1.1.1 can demonstrate it has incurred solely and directly as a result of Network Rail Cause; and
- 2.1.1.2 is, has been, or will be unable to mitigate, having complied with its obligations under clause 26.4 (Network Rail Cause) of the Call-Off Terms together with an amount equal to the Anticipated Contract Life Profit Margin thereon;
- 2.1.2 the compensation shall not operate so as to put the Supplier in a better position than it would have been in but for the occurrence of Network Rail Cause;
- 2.1.3 where the relevant Milestone Payment is to be calculated based upon a Fixed Price or a Firm Price pricing mechanism, the compensation shall include such amount as is appropriate to maintain the Supplier Profit Margin only where the Supplier has clearly set this out in respect of the relevant Milestone; and
- 2.1.4 where the Milestone Payment includes any Charges which are capped, then to the extent that the compensation agreed pursuant to this paragraph 2 results in Network Rail paying additional Time and Materials Charges for resources or effort which the Supplier demonstrates are required as a result of Network Rail Cause, the relevant cap shall be uplifted by any additional Time and Materials Charges agreed between the Parties.

2.2 The Supplier shall provide Network Rail with any information Network Rail may require in order to assess the validity of the Supplier's claim to compensation.

3. SERVICE CREDITS

3.1 Service Credits shall be calculated by reference to the number of Service Points accrued in any one Service Period pursuant to the provisions of Schedule 2 (Performance Levels).

3.2 For each Service Period:

3.2.1 the Service Points accrued shall be converted to a percentage deduction from the Service Charges for the relevant Service Period on the basis of one point equating to a [***Insert Percentage***] % deduction in the Service Charges; and

3.2.2 the total Service Credits applicable for the Service Period shall be calculated in accordance with the following formula:

$$SC = TSP \times X \times AC$$

where:

SC is the total Service Credits for the relevant Service Period;

TSP is the total Service Points that have accrued for the relevant Service Period;

X is [***Insert percentage deduction per Service Point***] %; and

AC is the total Services Charges payable for the relevant Service Period (prior to deduction of applicable Service Credits).

3.3 The liability of the Supplier in respect of Service Credits shall be subject to clause 20.4.3 (Financial and other Limits) provided that, for the avoidance of doubt, the operation of the Service Credit Cap shall not affect the continued accrual of Service Points in excess of such financial limit in accordance with the provisions of Schedule 2 (Performance Levels).

3.4 Service Credits are a reduction of the Service Charges payable in respect of the relevant Services to reflect the reduced value of the Services actually received and are stated exclusive of VAT.

3.5 Service Credits shall be shown as a deduction from the amount due from Network Rail to the Supplier in the invoice for the Service Period immediately succeeding the Service Period to which they relate.

4. CHANGES TO CHARGES

4.1 Any Changes to the Charges shall be developed and agreed by the Parties in accordance with Schedule 18 (Change Control Procedure)[and on the basis that the Supplier Profit Margin on such Charges shall:

4.1.1 be no greater than that applying to Charges using the same pricing mechanism as at the applicable Call-Off Effective Date (as set out in the Contract Inception Report); and

4.1.2 in no event exceed the Maximum Permitted Profit Margin.]

4.2 Network Rail may request that any Impact Assessment presents Charges without Indexation for the purposes of comparison.

5. INDEXATION

- 5.1 Any amounts or sums in this Agreement and any Call-Off Contract which are expressed to be “subject to Indexation” shall be adjusted in accordance with the provisions of this paragraph 5 to reflect the effects of inflation.
- 5.2 Where Indexation applies, the relevant adjustment shall be:
- 5.2.1 applied on the first day of the second April following the applicable Call-Off Effective Date and on the first day of April in each subsequent year (each such date an “adjustment date”); and
- 5.2.2 determined by multiplying the relevant amount or sum by the percentage increase or decreases in the Consumer Price Index published for the twelve (12) months ended on the 31 January immediately preceding the relevant adjustment date.
- 5.3 For the purposes of this paragraph 5, “Consumer Price Index” shall mean the United Kingdom consumer prices index published by the Office for National Statistics, or such other equivalent or comparable index as is published in substitution for such index or such other appropriate index as the Parties may agree from time to time.
- 5.4 Except as set out in this paragraph 5, neither the Charges nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-contractors of the performance of their obligations.
- 5.5

PART D**Excessive Supplier Profit Margin**

1. **LIMIT ON SUPPLIER PROFIT MARGIN**
- 1.1 The Supplier acknowledges that the Achieved Profit Margin applicable over the Term shall not exceed the Maximum Permitted Profit Margin.
- 1.2 The Supplier shall include in each Annual Contract Report the Achieved Profit Margin as at the end of the Contract Year to which the Annual Contract Report is made up and the provisions of paragraph 2 of Part B of Schedule 11 (Financial Reports and Audit Rights) shall apply to the approval of the Annual Contract Report.
2. **ADJUSTMENT TO THE CHARGES IN THE EVENT OF EXCESS SUPPLIER PROFIT**
- 2.1 If an Annual Contract Report demonstrates (or it is otherwise determined pursuant to paragraph 2 of Part B of Schedule 11 (Financial Reports and Audit Rights)) that the Achieved Profit Margin as at the end of the Contract Year to which the Annual Contract Report is made up exceeds the Maximum Permitted Profit Margin:
 - 2.1.1 the Supplier shall, within five (5) Working Days of delivery to Network Rail of the Annual Contract Report, propose such adjustments to the Charges as will ensure that the Achieved Profit Margin both over the Contract Year to which the next Annual Contract Report will relate and over the Term will not exceed the Maximum Permitted Profit Margin;
 - 2.1.2 Network Rail (acting reasonably) may agree or reject the proposed adjustments;
 - 2.1.3 if Network Rail rejects the proposed adjustments it shall give reasons and the Supplier shall propose revised adjustments within ten (10) Working Days of receiving those reasons; and
 - 2.1.4 if the Parties cannot agree such revised adjustments and Network Rail terminates this Agreement by issuing a Termination Notice to the Supplier pursuant to clause 28.1.1 (Termination by Network Rail), then for the purpose of calculating any Compensation Payment due to the Supplier, the Termination Notice shall be deemed to have been served as at the date of receipt by Network Rail of the relevant Annual Contract Report.
- 2.2 Pending agreement of a proposed adjustment to the Charges pursuant to this Part D, the Charges then in force shall continue to apply. Once the adjustments to the Charges are agreed in accordance with paragraph 2.1, the Parties shall document the adjustment in a Change Authorisation Note and the adjusted Charges shall apply with effect from the first day of the Service Period that immediately follows the Service Period in which the Change Authorisation Note is executed or such other date as is specified in the Change Authorisation Note.]

Part E

Invoicing and Payment Terms

1. PURPOSE OF THIS PART OF THE SCHEDULE

- 1.1 This Part E of the Schedule set out the method by which the Supplier shall raise invoices to the Supplier for payment of the Charges, together with the requirement which apply to such invoices and the payment terms thereof.

2. SUPPLIER INVOICES

The Supplier shall prepare and provide to Network Rail for approval a draft template invoice for the Charges within ten (10) Working Days of the Call-Off Effective Date which shall include, as a minimum, the details set out in paragraph 2.1 together with such other information as Network Rail may reasonably require to assess whether the Charges that will be detailed therein are properly payable. If the template invoice is not approved by Network Rail then the Supplier shall make such amendments as may be reasonably required by Network Rail. If Network Rail uses an e-invoicing system then the Supplier shall instead comply with the requirements of that system.

- 2.1 The Supplier shall ensure that each invoice is submitted in the correct format for the Network Rail's e-invoicing system, or that it contains the following information:

- 2.1.1 the date of the invoice;
- 2.1.2 a unique invoice number;
- 2.1.3 the Service Period or other period(s) to which the relevant Charge(s) relate;
- 2.1.4 the correct reference for this Agreement and the applicable Call-Off Contract;
- 2.1.5 the reference number of the purchase order to which it relates (if any);
- 2.1.6 the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
- 2.1.7 a description of the Services to which the invoice relates;
- 2.1.8 the pricing mechanism used to calculate the Charges (such as Fixed Price, Time and Materials etc);
- 2.1.9 any payments due in respect of Achievement of a Milestone, including the Milestone Achievement Certificate number for each relevant Milestone;
- 2.1.10 the total Charges gross and net of any applicable deductions and, separately, the amount of any Reimbursable Expenses properly chargeable to Network Rail under the terms of the applicable Call-Off Contract, and, separately, any VAT or other sales tax payable in respect of each of the same;
- 2.1.11 details of any Service Credits or Delay Payments or similar deductions that shall apply to the Charges detailed on the invoice;
- 2.1.12 reference to any reports required by Network Rail in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by Network Rail, then to any such reports as are validated by Network Rail in respect of the Services);
- 2.1.13 a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries; and

- 2.1.14 the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number); and
- 2.1.15 where the Services have been structured into separate Service lines, the information at 2.1.1 to 2.1.14 of this 2.1 paragraph shall be broken down in each invoice per Service line.
- 2.2 The Supplier shall be entitled to invoice Network Rail in respect of Services in accordance with the requirements in Part B. Prior to submitting any invoice the Supplier shall first submit to Network Rail a draft invoice setting out the Charges payable. The Parties shall endeavour to agree the draft invoice within five (5) Working Days of its receipt by Network Rail, following which the Supplier shall be entitled to submit its invoice.
- 2.3 Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by Network Rail as to what constitutes Supporting Documentation shall not be conclusive and the Supplier undertakes to provide to Network Rail any other documentation reasonably required by Network Rail from time to time to substantiate an invoice.
- 2.4 The Supplier shall submit all invoices and Supporting Documentation through Network Rail's electronic system [name] or if that is not possible to:
- [Insert address or email address]***
- with a copy (again including any Supporting Documentation) to such other person and at such place as Network Rail may notify to the Supplier from time to time.
- 2.5 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by Network Rail in writing.
- 2.6 Network Rail shall regard an invoice as valid only if it complies with the provisions of this Part E. Where any invoice does not conform to Network Rail's requirements set out in this Part E, Network Rail shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.
- 2.7 If Network Rail fails to consider and verify an invoice in accordance with paragraphs 2.2 and 2.6, the invoice shall be regarded as valid and undisputed for the purpose of paragraph 3.1 after a reasonable time has passed.
3. **PAYMENT TERMS**
- 3.1 Subject to the relevant provisions of this Schedule, Network Rail shall make payment to the Supplier within twenty-eight (28) days of verifying that the invoice is valid and undisputed by Network Rail at its nominated address for invoices.
- 3.2 Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Supplier has specified on its invoice.

CALL-OFF TERMS

SCHEDULE 10

PAYMENTS ON TERMINATION

[Guidance: Network Rail need to ensure they are comfortable with the payments in this schedule, which is the standard CCS schedule. Note that these do include elements of Supplier profit.]

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

- “Applicable Supplier Personnel”** any Supplier Personnel who;
- (a) at the Termination Date:
 - (i) are employees of the Supplier;
 - (ii) are Dedicated Supplier Personnel;
 - (iii) have not transferred (and are not in scope to transfer at a later date) to Network Rail or the Replacement Supplier by virtue of the Employment Regulations; and
 - (b) are dismissed or given notice of dismissal by the Supplier within:
 - (i) forty (40) Working Days of the Termination Date; or
 - (ii) such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and
 - (c) have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and
 - (d) the Supplier can demonstrate to the satisfaction of Network Rail:
 - (i) are surplus to the Supplier's requirements after the Termination Date notwithstanding its obligation to provide services to its other customers;
 - (ii) are genuinely being dismissed for reasons of redundancy; and
 - (iii) have been selected for redundancy by the Supplier on objective grounds other than the

fact that the Supplier is entitled to reimbursement under this provision in respect of such employees;

“Breakage Costs Payment”	an amount equal to the Redundancy Costs and the Contract Breakage Costs as at the Termination Date as determined in accordance with paragraph 3 of Schedule 10 (Payments on Termination);
“Compensation Payment”	the payment calculated in accordance with paragraph 6 of Schedule 10 (Payments on Termination);
“Contract Breakage Costs”	the amounts payable by the Supplier to its Key Subcontractors or other third parties (as applicable) for terminating all relevant Key Sub-contracts or Third Party Contracts as a direct result of the early termination of this Agreement;
“Dedicated Supplier Personnel”	all Supplier Personnel then assigned to the Services or any part of the Services. If the Supplier is unsure as to whether Supplier Personnel are or should be regarded as so assigned, it shall consult with Network Rail whose view shall be determinative provided that the employee has been materially involved in the provision of the Services or any part of the Services;
“Profit Already Paid”	the Supplier Profit paid or payable to the Supplier under this Agreement for the period from the Call-Off Effective Date up to (and including) the Termination Date;
“Redundancy Costs”	<p>the total sum of any of the following sums paid to Applicable Supplier Personnel, each amount apportioned between the Supplier and Network Rail based on the time spent by such employee on the Services as a proportion of the total Service duration:</p> <ul style="list-style-type: none"> (a) any statutory redundancy payment; and (b) in respect of an employee who was a Transferring Former Supplier Employee or a Transferring Network Rail Employee, any contractual redundancy payment (or where such a contractual benefit on redundancy is a benefit payable from a pension scheme, the increase in cost to the Supplier as a net present value compared to the benefit payable on termination of employment without redundancy), provided that such employee was entitled to such contractual redundancy payment immediately prior to his or her transfer to the Supplier under the Employment Regulations;
“Request for Estimate”	a written request sent by Network Rail to the Supplier, requiring that the Supplier provide it with an accurate estimate of the Termination Payment and Compensation Payment that would be payable if Network Rail exercised its right under clause 28.1.1 (Termination by Network Rail) to terminate this

	Agreement for convenience on a specified Termination Date;
“Shortfall Period”	has the meaning given in paragraph 6.2 of Schedule 10 (Payments on Termination);
“Termination Estimate”	has the meaning given in paragraph 11.2 of Schedule 10 (Payments on Termination);
“Third Party Contract”	a contract with a third party entered into by the Supplier exclusively for the purpose of delivering the Services;
“Total Costs Incurred”	the Costs incurred by the Supplier up to the Termination Date in the performance of this Agreement and detailed in the Financial Model (but excluding Contract Breakage Costs, Redundancy Costs and any costs the Supplier would not otherwise be able to recover through the Charges) less any Deductions up to (and including) the Termination Date;
“Unrecovered Costs”	the Costs incurred by the Supplier in the performance of this Agreement (as summarised in the Financial Model) to the extent that the same remain at the Termination Date to be recovered through Charges that but for the termination of this Agreement would have been payable by Network Rail after the Termination Date in accordance with Schedule 9 (Invoicing) as such Costs and Charges are forecast in the Financial Model;
“Unrecovered Payment”	an amount equal to the lower of: <ul style="list-style-type: none"> (a) the sum of the Unrecovered Costs and the Unrecovered Profit; and (b) the amount specified in paragraph 4 of Schedule 10 (Payments on Termination);
“Unrecovered Profit”	$(\text{Total Costs Incurred} \times \text{Anticipated Contract Life Profit Margin}) - \text{Profit Already Paid} + \text{Milestone Retentions remaining unpaid at the Termination Date.}$

2. TERMINATION PAYMENT

The Termination Payment payable pursuant to clause 29.3.1 (Payments by Network Rail) shall be an amount equal to the aggregate of the Breakage Costs Payment and the Unrecovered Payment.

3. BREAKAGE COSTS PAYMENT

3.1 The Supplier may recover through the Breakage Costs Payment only those costs incurred by the Supplier directly as a result of the termination of this Agreement which:

- 3.1.1 would not have been incurred had this Agreement continued until expiry of the Initial Term, or in the event that the Term has been extended, the expiry of the Extension Period;
- 3.1.2 are unavoidable, proven, reasonable, and not capable of recovery;
- 3.1.3 are incurred under arrangements or agreements that are directly associated with this Agreement;

3.1.4 are not Contract Breakage Costs relating to contracts or Sub-contracts with Affiliates of the Supplier; and

3.1.5 relate directly to the termination of the Services.

Limitation on Breakage Costs Payment

3.2 The Breakage Costs Payment shall not exceed the lower of:

3.2.1 the relevant limit set out in Annex 1; and

3.2.2 100% of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

Redundancy Costs

3.3 Network Rail shall not be liable under this Schedule for any costs associated with Supplier Personnel (whether relating to redundancy, redeployment or otherwise) other than the Redundancy Costs.

3.4 Where the Supplier can demonstrate that a member of Supplier Personnel will be made redundant following termination of this Agreement, but redeployment of such person is possible and would offer value for money to Network Rail when compared with redundancy, then Network Rail shall pay the Supplier the actual direct costs incurred by the Supplier or its Sub-contractor arising out of the redeployment of such person (including retraining and relocation costs) subject to a maximum amount of £30,000 per relevant member of the Supplier Personnel.

Contract Breakage Costs

3.5 The Supplier shall be entitled to Contract Breakage Costs only in respect of Third Party Contracts or Sub-contracts which:

3.5.1 are not assigned or novated to a Replacement Supplier at the request of Network Rail in accordance with Schedule 14 (Exit Management); and

3.5.2 the Supplier can demonstrate:

3.5.2.1 are surplus to the Supplier's requirements after the Termination Date, whether in relation to use internally within its business or in providing services to any of its other customers; and

3.5.2.2 have been entered into by it in the ordinary course of business.

3.6 The Supplier shall seek to negotiate termination of any Third Party Contracts or Sub-contracts with the relevant third party or Sub-contractor (as the case may be) using all reasonable endeavours to minimise the cancellation or termination charges.

3.7 Except with the prior written agreement of Network Rail, Network Rail shall not be liable for any costs (including cancellation or termination charges) that the Supplier is obliged to pay in respect of:

3.7.1 the termination of any contractual arrangements for occupation of, support of and/or services provided for Supplier premises which may arise as a consequence of the termination of this Agreement; and/or

3.7.2 Assets not yet installed at the Termination Date.

4. UNRECOVERED PAYMENT

The Unrecovered Payment shall not exceed the lowest of:

- 4.1 the relevant limit set out in Annex 1;
- 4.2 100% of the estimate for the Unrecovered Payment set out in any relevant Termination Estimate; and
- 4.3 the Charges that but for the termination of this Agreement would have been payable by Network Rail after the Termination Date in accordance with Schedule 9 (Invoicing) as forecast in the Financial Model.

5. **MITIGATION OF CONTRACT BREAKAGE COSTS, REDUNDANCY COSTS AND UNRECOVERED COSTS**

- 5.1 The Supplier agrees to use all reasonable endeavours to minimise and mitigate Contract Breakage Costs, Redundancy Costs and Unrecovered Costs by:
 - 5.1.1 the appropriation of Assets, employees and resources for other purposes;
 - 5.1.2 at Network Rail's request, assigning any Third Party Contracts and Subcontracts to Network Rail or a third party acting on behalf of Network Rail; and
 - 5.1.3 in relation Third Party Contracts and Sub-contract that are not to be assigned to Network Rail or to another third party, terminating those contracts at the earliest possible date without breach or where contractually permitted.
- 5.2 If Assets, employees and resources can be used by the Supplier for other purposes, then there shall be an equitable reduction in the Contract Breakage Costs, Redundancy Costs and Unrecovered Costs payable by Network Rail or a third party to the Supplier. In the event of any Dispute arising over whether the Supplier can use any Assets, employees and/or resources for other purposes and/or over the amount of the relevant equitable reduction, the Dispute shall be referred to an Expert for determination in accordance with the procedure detailed in Schedule 11 of the Framework Agreement (Dispute Resolution Procedure).

6. **COMPENSATION PAYMENT**

- 6.1 The Compensation Payment payable pursuant to Clause 29.3.2 (Payments by Network Rail) shall be an amount equal to the total forecast Charges over the Shortfall Period (as stated in the Financial Model) multiplied by the Anticipated Contract Life Profit Margin.
- 6.2 For the purposes of paragraph 6.1, the "**Shortfall Period**" means:
 - 6.2.1 where Network Rail terminates this Agreement pursuant to Clause 28.1.1 (Termination by Network Rail), a number of days equal to the number of days by which the notice given (or deemed given pursuant to paragraph 2.1.1 of Part D of Schedule 9 (Invoicing)) falls short of 365 days; or
 - 6.2.2 where the Supplier terminates this Agreement pursuant to Clause 28.3.1 (Termination by the Supplier), a number of days equal to the number of days by which the period from (and including) the date of the non-payment by Network Rail to (and including) the Termination Date falls short of 365 days, but in each case subject to the limit set out in paragraph 6.3.
- 6.3 The Compensation Payment shall be no greater than the lower of:
 - 6.3.1 the relevant limit set out in Annex 1; and
 - 6.3.2 100% of the estimate for the Compensation Payment set out in the relevant Termination Estimate.

7. FULL AND FINAL SETTLEMENT

Any Termination Payment and/or Compensation Payment paid under this Schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by Network Rail pursuant to Clause 28.1.1 (Termination by Network Rail) or termination by the Supplier pursuant to Clause 28.3.1 (Termination by the Supplier) (as applicable), and the Supplier shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

8. INVOICING FOR THE PAYMENTS ON TERMINATION

All sums due under this Schedule shall be payable by Network Rail to the Supplier in accordance with the payment terms set out in Schedule 9 (Invoicing).

9. SET-OFF

Network Rail shall be entitled to set off any outstanding liabilities of the Supplier against any amounts that are payable by it pursuant to this Schedule.

10. NO DOUBLE RECOVERY

10.1 If any amount payable under this Schedule (in whole or in part) relates to or arises from any Transferring Assets then, to the extent that Network Rail makes any payments pursuant to Schedule 14 (Exit Management) in respect of such Transferring Assets, such payments shall be deducted from the amount payable pursuant to this Schedule.

10.2 The value of the Termination Payment and/or the Compensation Payment shall be reduced or extinguished to the extent that the Supplier has already received the Charges or the financial benefit of any other rights or remedy given under this Agreement so that there is no double counting in calculating the relevant payment.

10.3 Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.

11. ESTIMATE OF TERMINATION PAYMENT AND COMPENSATION PAYMENT

11.1 Network Rail may issue a Request for Estimate at any time during the Term provided that no more than two (2) Requests for Estimate may be issued in any six (6) month period.

11.2 The Supplier shall within twenty (20) Working Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written estimate of the Termination Payment and the Compensation Payment that would be payable by Network Rail based on a postulated Termination Date specified in the Request for Estimate (such estimate being the "**Termination Estimate**"). The Termination Estimate shall:

11.2.1 be based on the relevant amounts set out in the Financial Model;

11.2.2 include:

11.2.2.1 details of the mechanism by which the Termination Payment is calculated;

11.2.2.2 full particulars of the estimated Contract Breakage Costs in respect of each Sub-contract or Third Party Contract and appropriate supporting documentation; and

11.2.2.3 such information as Network Rail may reasonably require; and

11.2.3 state the period for which that Termination Estimate remains valid, which shall be not less than twenty (20) Working Days.

- 11.3 The Supplier acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by Network Rail to terminate this Agreement.
- 11.4 If Network Rail issues a Termination Notice to the Supplier within the stated period for which a Termination Estimate remains valid, the Supplier shall use the same mechanism to calculate the Termination Payment as was detailed in the Termination Estimate unless otherwise agreed in writing between the Supplier and Network Rail.

ANNEX 1

Maximum Payments on Termination

The table at paragraph 5.1 of Annex 1 of the Call-Off Form sets out, by Contract Year, the maximum amount of the Unrecovered Payment, Breakage Costs Payment and Compensation Payment that Network Rail shall be liable to pay to the Supplier pursuant to this Agreement.

CALL-OFF TERMS

SCHEDULE 11

FINANCIAL REPORTS AND AUDIT RIGHTS

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

- “Annual Contract Report”** the annual contract report to be provided by the Supplier to Network Rail pursuant to paragraph 1 of Part B of Schedule 11 (Financial Reports and Audit Rights);
- “Contract Amendment Report”** the contract amendment report to be provided by the Supplier to Network Rail pursuant to paragraph 1 of Part B of Schedule 11 (Financial Reports and Audit Rights);
- “Final Reconciliation Report”** the final reconciliation report to be provided by the Supplier to Network Rail pursuant to paragraph 1 of Part B of Schedule 11 (Financial Reports and Audit Rights);
- “Financial Model”** the Contract Inception Report, the latest Annual Contract Report or the latest Contract Amendment Report, whichever has been most recently approved by Network Rail in accordance with paragraph 2 of Part B of Schedule 11 (Financial Reports and Audit Rights);
- “Financial Reports”** the contract Inception Report and the Reports listed in the table in paragraph 1.1 of Part B of Schedule 11 (Financial Reports and Audit Rights);
- “Financial Representative”** a reasonably skilled and experienced member of the Supplier’s staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data and Financial Reports;
- “Financial Transparency Objectives”** has the meaning given in paragraph 1 of Part A of Schedule 11 (Financial Reports and Audit Rights);
- “Material Change”** a Change which:
 - (a) materially changes the profile of the Charges; or
 - (b) varies the total Charges payable during the Term (as forecast in the latest Financial Model) by:
 - (i) 5% or more; or
 - (ii) £1m or more;

“Open Book Data”

complete and accurate financial and non-financial information which is sufficient to enable Network Rail to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term including details and all assumptions relating to:

- (a) the Supplier's Costs broken down against each Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;
- (b) operating expenditure relating to the provision of the Services including an analysis showing:
 - (i) the unit costs and quantity of consumables and bought-in services;
 - (ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;
 - (iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin; and
 - (iv) reimbursable Expenses
- (c) overheads;
- (d) all interest expenses and any other third party financing costs incurred in relation to the provision of the Services;
- (e) the supplier Profit achieved over the Term and on an annual basis;
- (f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
- (g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and
- (h) the actual Costs profile for each Service Period.

PART A

Financial Transparency Objectives and Open Book Data

1. FINANCIAL TRANSPARENCY OBJECTIVES

The Supplier acknowledges that the provisions of this Schedule are designed (inter alia) to facilitate, and the Supplier shall co-operate with Network Rail in order to achieve, the following objectives:

Understanding the Charges

- (a) for Network Rail to understand any payment sought from it by the Supplier including an analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Personnel in providing the Services and the Supplier Profit Margin;
- (b) for both Parties to be able to understand the Financial Model and Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;
- (c) to facilitate the use of Guaranteed Maximum Price with Target Cost pricing mechanisms (where relevant as referred to in Schedule 9 (Invoicing));

Agreeing the impact of Change

- (d) for both Parties to agree the quantitative impact of any Changes that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Supplier's Charges;
- (e) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

Continuous improvement

- (f) for the Parties to challenge each other with ideas for efficiency and improvements; and
- (g) to enable Network Rail to demonstrate that it is achieving value for money for the tax payer relative to current market prices,

(together the "**Financial Transparency Objectives**").

2. OPEN BOOK DATA

2.1 The Supplier acknowledges the importance to Network Rail of the Financial Transparency Objectives and Network Rail's need for complete transparency in the way in which the Charges are calculated.

2.2 During the Term, and for a period of seven (7) years following the end of the Term, the Supplier shall:

- 2.2.1 maintain and retain the Open Book Data; and
- 2.2.2 disclose and allow Network Rail and/or the Audit Agents access to the Open Book Data.

PART B

Financial Reports

1. PROVISION OF THE FINANCIAL REPORTS

1.1 The Supplier shall provide:

1.1.1 the Contract Inception Report on or before the Call-Off Effective Date; and

1.1.2 during the Term the following financial reports to Network Rail, in the frequency specified below:

Financial Report	When to be provided
Contract Amendment Report	Within one (1) month of a Material Change being agreed between the Supplier and Network Rail
Quarterly Contract Report	Within one (1) month of the end of each Quarter
Annual Contract Report	Within one (1) month of the end of the Contract Year to which that report relates
Final Reconciliation Report	Within six (6) months after the end of the Term

1.2 The Supplier shall provide to Network Rail the Financial Reports in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by Network Rail to the Supplier on or before the Call-Off Effective Date for the purposes of this Agreement. Network Rail shall be entitled to modify the template for any Financial Report by giving written notice to the Supplier, including a copy of the updated template.

1.3 A copy of each Financial Report shall be held by both Network Rail and the Supplier. If there is a Dispute regarding a Financial Report, Network Rail’s copy of the relevant Financial Report shall be authoritative.

1.4 Each Financial Report shall:

1.4.1 be completed by the Supplier using reasonable skill and care;

1.4.2 incorporate and use the same defined terms as are used in this Agreement;

1.4.3 quote all monetary values in pounds sterling;

1.4.4 quote all Costs as exclusive of any VAT; and

1.4.5 quote all Costs and Charges based on current prices.

1.5 Each Annual Contract Report and the Final Reconciliation Report shall be certified by the Supplier’s Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by Network Rail in advance of issue of the relevant Financial Report), acting with express authority, as:

1.5.1 being accurate and not misleading;

- 1.5.2 having been prepared in conformity with generally accepted accounting principles within the United Kingdom;
 - 1.5.3 being a true and fair reflection of the information included within the Supplier's management and statutory accounts; and
 - 1.5.4 compliant with the requirements of paragraph 1.6.
- 1.6 The Supplier shall:
- 1.6.1 prepare each Financial Report using the same methodology as that used for the Contract Inception Report;
 - 1.6.2 to the extent permitted by Law, ensure that each Annual Contract Report and each Contract Amendment Report (if any) is a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;
 - 1.6.3 to the extent permitted by Law, ensure that the Final Reconciliation Report is a true and fair reflection of the Costs; and
 - 1.6.4 not have any other internal financial model in relation to the Services inconsistent with the Financial Model.
- 1.7 During the Term, and for a period of eighteen (18) months following the end of the Term, the Supplier shall make available the Financial Representative at reasonable times and on reasonable notice to answer any queries that Network Rail may have on any of the Financial Reports and/or Open Book Data.
- 1.8 If the Supplier becomes aware of the occurrence, or the likelihood of the future occurrence, of an event which will or may have a material effect on the following:
- 1.8.1 the Costs incurred (or those forecast to be incurred) by the Supplier; and/or
 - 1.8.2 the forecast Charges for the remainder of the Term, the Supplier shall, as soon as practicable, notify Network Rail in writing of the event in question detailing the actual or anticipated effect. For the avoidance of doubt, notifications provided in accordance with this paragraph 1.8 shall not have the effect of amending any provisions of this Agreement.

2. FINANCIAL MODEL

- 2.1 Following the delivery by the Supplier of each Annual Contract Report and any Contract Amendment Report:
- 2.1.1 the Parties shall meet to discuss its contents within ten (10) Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting;
 - 2.1.2 the Supplier shall make appropriate Supplier Personnel and advisers available to discuss any variations between the relevant Financial Report and the Contract Inception Report or immediately preceding Annual Contract Report or Contract Amendment Report (as the case may be) and to explain such variations (with reference to supporting evidence) to the satisfaction of Network Rail; and
 - 2.1.3 Network Rail shall either within ten (10) Working Days of the meeting referred to in paragraph 2.1.1 notify the Supplier that:
 - 2.1.3.1 the relevant Financial Report contains errors or omissions or that further explanations or supporting information is required, in which event the Supplier shall make any necessary modifications to the

Financial Report and/or supply Network Rail with such supporting evidence as is required to address Network Rail’s concerns within ten (10) Working Days of such notification and Network Rail shall following receipt of such amended Financial Report and/or supporting information, approve or reject such Financial Report; or

2.1.3.2 Network Rail has approved the relevant Financial Report.

2.2 Following approval by Network Rail of the relevant Financial Report in accordance with paragraph 2.1.3, that version shall become, with effect from the date of such approval, the current approved version of the Financial Model for the purposes of this Agreement, a version of which shall be held by both Network Rail and the Supplier. If there is a Dispute regarding a Financial Report, Network Rail’s copy of the relevant Financial Report shall be authoritative.

2.3 If the Parties are unable to reach agreement on any Financial Report within thirty (30) Working Days of its receipt by Network Rail, the matter shall be referred for determination in accordance with Schedule 11 (Dispute Resolution Procedure) of the Framework Agreement

3. DISCUSSION OF QUARTERLY CONTRACT REPORTS AND FINAL RECONCILIATION REPORT

3.1 Following the delivery by the Supplier of each Quarterly Contract Report, the Parties shall meet to discuss its contents within ten (10) Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

3.2 Following the delivery by the Supplier of the Final Reconciliation Report, the Parties shall meet to discuss its contents within ten (10) Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

4. KEY SUB-CONTRACTORS

4.1 The Supplier shall, if requested by Network Rail, provide (or procure the provision of) a report or reports including the level of information set out in the Financial Reports in relation to the costs and expenses to be incurred by any of its Key Sub-contractors.

4.2 Without prejudice to paragraph 1.1 of Part C, the Supplier shall:

4.2.1 be responsible for auditing the financial models/reports of its Key Subcontractors and for any associated costs and expenses incurred or forecast to be incurred; and

4.2.2 on written request by Network Rail, provide Network Rail or procure that Network Rail is provided with:

4.2.2.1 full copies of audit reports for the Key Sub-contractors. Network Rail shall be entitled to rely on such audit reports; and

4.2.2.2 further explanation of, and supporting information in relation to, any audit reports provided.

PART C**Audit Rights****1. AUDIT RIGHTS**

1.1 Network Rail, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of eighteen (18) months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier's obligations under this Agreement, including for the following purposes:

- 1.1.1 to verify the integrity and content of any Financial Report;
- 1.1.2 to verify the accuracy of the Charges and any other amounts payable by Network Rail under this Agreement (and proposed or actual variations to such Charges and payments);
- 1.1.3 to verify the Costs (including the amounts paid to all Sub-contractors and any third party suppliers);
- 1.1.4 to verify the [Certificate of Costs and/or] the Open Book Data;
- 1.1.5 to verify the Supplier's and each Key Sub-contractor's compliance with this Agreement and applicable Law;
- 1.1.6 to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances Network Rail shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- 1.1.7 to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor and/or any Key Subcontractors or their ability to perform the Services;
- 1.1.8 to obtain such information as is necessary to fulfil Network Rail's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- 1.1.9 to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Agreement;
- 1.1.10 to carry out Network Rail's internal and statutory audits and to prepare, examine and/or certify Network Rail's annual and interim reports and accounts;
- 1.1.11 to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which Network Rail has used its resources;
- 1.1.12 to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;
- 1.1.13 to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
- 1.1.14 to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);
- 1.1.15 to review the accuracy and completeness of the Registers;

- 1.1.16 to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
 - 1.1.17 to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
 - 1.1.18 to review the Supplier's compliance with the Standards;
 - 1.1.19 to inspect Network Rail Assets, including Network Rail's IPRs, equipment and facilities, for the purposes of ensuring that Network Rail Assets are secure and that any register of assets is up to date; and/or
 - 1.1.20 to review the integrity, confidentiality and security of Network Rail Data.
- 1.2 Except where an audit is imposed on Network Rail by a regulatory body or where Network Rail has reasonable grounds for believing that the Supplier has not complied with its obligations under this Agreement, Network Rail may not conduct an audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.
- 1.3 Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.
- 2. CONDUCT OF AUDITS**
- 2.1 Network Rail shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that Network Rail deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 2.2 Subject to Network Rail's obligations of confidentiality, the Supplier shall on demand provide Network Rail and the Audit Agents with all reasonable cooperation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:
- 2.2.1 all information requested by Network Rail within the permitted scope of the audit;
 - 2.2.2 reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - 2.2.3 access to the Supplier System; and
 - 2.2.4 access to Supplier Personnel.
- 2.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators.
- 2.4 Network Rail shall endeavour to (but is not obliged to) provide at least fifteen (15) Working Days' notice of its intention to conduct an audit.
- 2.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this paragraph 2, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse Network Rail for all Network Rail's reasonable costs incurred in connection with the audit.
- 3. USE OF SUPPLIER'S INTERNAL AUDIT TEAM**

- 3.1 As an alternative to Network Rail's right pursuant to paragraph 1.1 to exercise an audit either itself or through its Audit Agents, Network Rail may require in writing that an audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in paragraph 1.1.
- 3.2 Following the receipt of a request from Network Rail under paragraph 3.1 above, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that Network Rail has unfettered access to:
- 3.2.1 the resultant audit reports; and
- 3.2.2 all relevant members of the Supplier's internal audit team for the purpose of understanding such audit reports.

4. **RESPONSE TO AUDITS**

- 4.1 If an audit undertaken pursuant to paragraphs 1 or 3 identifies that:
- 4.1.1 the Supplier has committed a Default, Network Rail may (without prejudice to any rights and remedies Network Rail may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
- 4.1.2 there is an error in a Financial Report, the Supplier shall promptly rectify the error;
- 4.1.3 Network Rail has overpaid any Charges, the Supplier shall pay to Network Rail:
- 4.1.3.1 the amount overpaid;
- 4.1.3.2 interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by Network Rail up to the date of repayment by the Supplier; and
- 4.1.3.3 the reasonable costs incurred by Network Rail in undertaking the audit, Network Rail may exercise its right to deduct such amount from the Charges if it prefers; and
- 4.1.4 Network Rail has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by Network Rail.

CALL-OFF TERMS
SCHEDULE 12
ANTICIPATED SAVINGS

ANTICIPATED SAVINGS

This Schedule and Annex 12 (Anticipated Savings) of the Call-Off Form define the key benefit categories in which savings are anticipated.

Ref.	Benefit Category	Indicative amount (£k)	Timescale
1	[E.g. – <i>Reduction in Service Charges as Service delivery becomes more efficient and effective.</i> <i>Benefit realisation is measured against [a 2012/13 baseline]</i>	£[amount] per annum	Contract Years [x] to [y]
2	[E.g. – <i>Improvements in Network Rail staff productivity from using more flexible and agile services that match the needs of the business.</i> <i>Benefits realisation is measured against a baseline of 4,000 directly employed staff in 2013/14]</i>	£[amount] year on year improvement ([x]% productivity increase)	Contract Years [x] to [y]
3	[E.g. – <i>Reduced electrical power consumption arising from adoption of new low energy technology.</i> <i>Benefit realisation is measured against a 2012/13 baseline]</i>	£[amount] per annum	Contract Years [x] to [y]

CALL-OFF TERMS
SCHEDULE 13
REPORTS AND RECORDS PROVISIONS

Reports and Records Provisions

1. TRANSPARENCY REPORTS

- 1.1 Within three (3) months of the Call-Off Effective Date the Supplier shall provide to Network Rail for its approval (such approval not to be unreasonably withheld or delayed) draft reports in accordance with Annex 1 (once approved, the “**Transparency Reports**”).
- 1.2 If Network Rail rejects any draft Transparency Report, the Supplier shall submit a revised version of the relevant report for further approval by Network Rail within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by Network Rail. If the Parties fail to agree on a draft Transparency Report Network Rail shall determine what should be included.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to Network Rail at the frequency referred to in Annex 1.
- 1.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 1.5 The requirements for Transparency Reports are in addition to any other reporting requirements in this Agreement.

2. OTHER REPORTS

Network Rail may require any or all of the following reports:

- 2.1 delay reports;
- 2.2 reports relating to Testing and tests carried out under Schedule 4 (Security Management) and Schedule 15 (Service Continuity Plan and Corporate Resolution Planning);
- 2.3 reports which the Supplier is required to supply as part of the Management Information;
- 2.4 annual reports on the Insurances;
- 2.5 security reports; and
- 2.6 Force Majeure Event reports.

3. RECORDS

- 3.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in paragraph 1, Annex 2 and any other records specified on the Call-Off Form (together “**Records**”):
 - 3.1.1 in accordance with the requirements of The National Archives and Good Industry Practice;
 - 3.1.2 in chronological order;
 - 3.1.3 in a form that is capable of audit; and
 - 3.1.4 at its own expense.
- 3.2 The Supplier shall make the Records available for inspection to Network Rail on request, subject to Network Rail giving reasonable notice.

- 3.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to Network Rail.
- 3.4 The Supplier shall, during the Term and a period of at least seven (7) years following the expiry or termination of this Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.
- 3.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least seven (7) years after the expiry or termination of this Agreement.
- 3.6 Without prejudice to the foregoing, the Supplier shall provide Network Rail:
- 3.6.1 as soon as they are available, and in any event within sixty (60) Working Days after the end of the first six (6) months of each financial year of the Supplier during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its un-audited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such six (6) month period; and
- 3.6.2 as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than one hundred and thirty (130) Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.

4. VIRTUAL LIBRARY

- 4.1 The Supplier shall, no later than eight (8) weeks prior to the Operational Service Commencement Date and without charge to Network Rail, create a Virtual Library on which the Supplier shall (subject to any applicable legislation governing the use or processing of personal data) make information about this Agreement available in accordance with the requirements outlined in this Schedule.
- 4.2 The Supplier shall ensure that the Virtual Library is:
- 4.2.1 capable of holding and allowing access to the information described in Annex 3 of this Schedule and includes full and accurate file details of all uploaded items including date and time of upload, version number and the name of the uploader;
- 4.2.2 structured so that each document uploaded has a unique identifier which is automatically assigned;
- 4.2.3 readily accessible by Network Rail at all times in full via a user-friendly, password protected interface to such nominated users as are notified to the Supplier by Network Rail from time to time,
- 4.2.4 structured so as to allow nominated users to download either specific documents or the complete Virtual Library (to the extent it has access permission as indicated Annex 3 of this Schedule (“**Access Permission**”)) in bulk and store and view the content offline (on a regular and automated basis);
- 4.2.5 structured and maintained in accordance with the security requirements as set out in this Agreement including those set out in Schedule 4 (Security Management);

- 4.2.6 created and based on open standards in Schedule 3 (Standards); and
- 4.2.7 backed up on a secure off-site system.
- 4.3 For the avoidance of doubt, the Virtual Library (excluding any Software used to host it) shall form a database which constitute Project Specific IPRs which shall be subject to the provisions of Schedule 20 (Intellectual Property Rights).
- 4.4 The Supplier shall upload complete and accurate information specified in Annex 3 by the initial upload date set out in column 4 of Annex 3 (“**Initial Upload Date**”) (except where prior to the launch of the Virtual Library in which case the date at which the Virtual Library is made available in accordance with paragraph 4.1) onto Virtual Library in the format specified.
- 4.5 Upon any document being uploaded to the Virtual Library, and where Network Rail has been granted Access Permission to that document, the Supplier shall email on the same date as the upload, a copy of the document to the nominated Network Rail email address at:
- []
- 4.6 Except for notices under Clause 39.5 or items covered by Clause 39.7, where the Supplier is under an obligation to provide information to Network Rail in a provision under this Agreement, then the Supplier’s upload of that information onto the Virtual Library shall satisfy the Supplier’s obligation to provide Network Rail with that information provided that Network Rail has access in accordance with this paragraph 4 and the uploaded information meets the requirements more particularly specified in the relevant provision.
- 4.7 Except to the extent that the requirements provide for earlier and more regular Network Rail access to up-to-date information, Annex 3 shall not take precedence over any other obligation to provide information in this Agreement and the Supplier shall refer to the applicable clause for further details as to the requirement.
- 4.8 The Supplier shall provide each specified person (as set out in column 6 of the table at Annex 3) access to view and download the specified information in the Virtual Library in Annex 3 subject upon the occurrence of the event specified in the column marked Access Permission in Annex 3 to this Schedule.
- 4.9 Where Access Permission is not listed (in column 6 of the table at Annex 3) as being subject to the occurrence of a certain event the Supplier shall grant access to the person and information specified (in column 6 of the table at Annex 3) from the Initial Upload Date.
- 4.10 Where Access Permission is specified as being granted to Network Rail’s Third Party Auditor (prior to Network Rail being granted access) it shall:
- 4.10.1 be entitled to access, view and download information specified in Annex 3 subject to it entering into a confidentiality agreement with the Supplier to keep the contents confidential (except to the extent disclosure of the confidential information is required under paragraph 4.10.2 of this Schedule); and
- 4.10.2 report to Network Rail (at its request) as to the completeness and accuracy of the information but not the substance of the information.
- 4.11 The Supplier shall ensure that the Virtual Library retains in an accessible form all historic or superseded records of the information specified Annex 3. In order to maintain the integrity of the historic archive of the information and documentation and for the purposes of maintaining a clear audit trail, the Supplier shall not delete or overwrite any information that has been stored in the Virtual Library, except for the purposes of maintenance (provided no information is lost during maintenance) or to enable the Supplier to comply with Data Protection Legislation.

- 4.12 The Supplier warrants that the information uploaded to the Virtual Library is accurate, complete, up-to-date and in accordance with this Agreement at the date of upload.
- 4.13 Where the Supplier becomes aware that any of the information provided on the Virtual Library is materially inaccurate, incomplete or out of date (other than in respect of historic versions of documents) the Supplier shall provide an update to the information within fourteen (14) days unless already due to be updated beforehand due to an Update Requirement specified in Annex 3.
- 4.14 In the event of a conflict between any requirement in this Agreement(excluding Annex 3) for the Supplier to provide information to Network Rail and the requirements set out in Annex 3 of this Schedule, the requirement elsewhere in this Agreement shall prevail.
- 4.15 The Supplier shall ensure that all approved users of the Virtual Library are alerted by email each time that information in the Virtual Library is uploaded or updated as it occurs.
- 4.16 No later than one (1) Month prior to the Operational Service Commencement Date, the Supplier shall provide training manuals to Network Rail relating to the use of the Virtual Library.
- 4.17 On request by Network Rail the Supplier shall provide Network Rail's nominated users with a reasonable level of training and ongoing support to enable them to make use of the Virtual Library.
- 4.18 For the avoidance of doubt, the cost of any redactions, access restrictions or compliance with the Data Protection Legislation in respect of the information hosted on the Virtual Library shall be at the Supplier's own cost and expense.

ANNEX 1

Transparency Reports

TITLE	CONTENT	FORMAT	FREQUENCY
<i>(Performance)</i>			
<i>(Charges)</i>			
<i>(Major sub-contractors)</i>			
<i>(Technical)</i>			
<i>(Performance management)</i>			

ANNEX 2**Records to be kept by the Supplier**

The records to be kept by the Supplier are:

1. This Agreement, its Schedules and all amendments to such documents.
2. All other documents which this Agreement expressly requires to be prepared.
3. Records relating to the appointment and succession of the Supplier Representative and each member of the Key Personnel.
4. Notices, reports and other documentation submitted by any Expert.
5. All operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services and the underlying IT Environment and Supplier Equipment.
6. Documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event.
7. All formal notices, reports or submissions made by the Supplier to the Network Rail Representative in connection with the provision of the Services.
8. All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services.
9. Documents prepared by the Supplier in support of claims for the Charges.
10. Documents submitted by the Supplier pursuant to the Change Control Procedure.
11. Documents submitted by the Supplier pursuant to invocation by it or Network Rail of the Dispute Resolution Procedure.
12. Documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier and/or the Guarantor, where such change may cause a change of Control; and including documents detailing the identity of the persons changing such ownership or interest.
13. Invoices and records related to VAT sought to be recovered by the Supplier.
14. Financial records, including audited and un-audited accounts of the Guarantor and the Supplier.
15. Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.
16. All documents relating to the insurances to be maintained under this Agreement and any claims made in respect of them.
17. All journals and audit trail data referred to in Schedule 4 (Security Management).
18. All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Agreement.

ANNEX 3

Records to Upload to Virtual Library

[Guidance: This Annex is an example template and currently includes a list of some of the information already required under the Contract which is required to be maintained in the Virtual Library by the Supplier. You will need to update this table to reflect the requirements of your particular procurement and any changes which you have made to the drafting elsewhere in the Contract in respect of any of the information listed here and will need to consider Access Permissions and Access Events for each item of information listed, depending on the nature of the information.]

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Cl. 5.5.5, 5.5.6, 5.8.2 and [Paras 2.1 and 2.2(a)(ii) of Sch 20 of the Agreement (exclude where Option 2 in Sch. 20 is chosen)]	Documentation	As appropriate and agreed by Network Rail	Within seven (7) days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable.	-	Network Rail
Cl 14.4 of the Agreement	Call-Off Key Personnel	Call-Off Form, Annex 1, Para. 2.2	Call-Off Effective Date	On replacement of Call-Off Key Personnel	Network Rail
Sch 2, Part B Para 2.3 of the Agreement	Performance Monitoring Report and the Balanced	Sch 2, Part B of the Agreement	Service Commencement	Within ten (10) Working Days of the end of each	Network Rail

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
	Scorecard Report			Service Period	
[If using Part A Security Assurance] Sch 4, Para 2.1.5.1 of the Agreement	Security Management Plan	Sch 4, Annex 3: Security Management Plan Template For Parts A For Part B of the Agreement	Within [20] Working Days of the date of the Contract	Regular review and at least annually	Network Rail
[If using Part A – Security Assurance] Sch 4, Para 6.1, 6.2 and 6.3 of the Agreement	Security certificates	As appropriate and agreed by Network Rail	Prior to receiving, storing or processing any Network Rail Data		-
[If using Part B – Security Accreditation] Sch 4, para 4.2 of the Agreement	Core Information Management System diagram	Sch 4, Annex 3: Information Management System of the Agreement	The date specified in the Detailed Implementation Plan	Regular review and at least annually	Network Rail

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
<p>[If using Part B – Security Accreditation]</p> <p>Sch 4, para 7.1, 7.4, 7.6 of the Agreement</p>	Security certificates	Sch 4, Annex 3: Information Management System of the Agreement	Prior to receiving, storing or processing any Network Rail Data	-	-
Sch 12, Para 4 of the Framework Agreement	Evidence of Insurances	Schedule 12 of the Framework Agreement	Call-Off Effective Date	Within fifteen (15) days after policy renewal or replacement	Network Rail
CI 17 of the Framework Agreement	Commercially Sensitive Information	Schedule 3 of the Framework Agreement	Call-Off Effective Date	Upon agreement by Network Rail to vary the information	Network Rail and/or Auditor
CI 15.7 of the Framework Agreement	Notified Key Subcontractors	Call-Off Form, Annex 1, Para. 3.1	Call-Off Effective Date	On replacement of key subcontractor	Network Rail
CI 15.2 and 15.3 of the Agreement	Sub-contract information	Call-Off Form, Annex 1, Para. 3.1	Call-Off Effective Date	With each approved appointment or variation	Network Rail

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
CI 15.29 to 15.31 of the Agreement	Supply Chain Transparency Information	CI 15.29 to 15.31	When requested Network Rail	Every six (6) months	Network Rail
CI 16 and Call-Off Form, Annex 8	Software and Project Specific IPRs	Call-Off Form, Annex 8	Operational Services Commencement Date	Upon agreement by Network Rail to vary the information	Network Rail
CI 6.4 of the Agreement	Detailed Implementation Plan	Schedule 7 of the Agreement	Within 20 Working Days of Call-Off Effective Date	Every 3 months from Effective Date	Network Rail
CI 30.9.8 of the Agreement	Annual slavery and human trafficking report	As appropriate and agreed by Network Rail	Within twelve (12) months	Every twelve (12) months	Network Rail
Sch 8, Para 4 of the Agreement	Test Strategy	As appropriate and agreed by Network Rail	Within 20 Working Days of Call-Off Effective Date	Upon update to the test strategy	Network Rail

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 8, Para 5 of the Agreement	Test Plan	As appropriate and agreed by Network Rail	20 Working Days prior to relevant test	Upon update to the test plan	Network Rail
Sch 8, Para 7 of the Agreement	Test Specification	As appropriate and agreed by Network Rail	10 Working Days prior to relevant test	Upon update to the test specification	Network Rail
Sch 8, Para 8 of the Agreement	Test Report	As appropriate and agreed by Network Rail	2 Working Days prior to the date on which the test is planned to end for the Draft Test Report 5 days for the Final Test Report following the relevant test completion	Reissue with each retest	Network Rail
Sch 9, Part E Para 1.1 of the Agreement	Template Invoice	As appropriate and agreed	Within 10 Working Days of the Call-Off Effective Date	Upon agreement by Network Rail	Network Rail

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
		by Network Rail		to vary the template	
Sch 19, Para 5 of the Agreement	Benchmarking Plan	Schedule 19 of the Agreement	Upon receipt from Benchmarker	Approval of Plan	Network Rail and Auditor
Sch 19, Para 5 of the Agreement	Benchmarking report	Schedule 19 of the Agreement	Upon receipt from Benchmarker	Any update	Network Rail and Auditor
Sch 10 Para 4.1 of the Framework Agreement	Financial Indicator Reports	Sch 10 para 4.3 of the Framework Agreement	As specified in para 4.1 of Sch 10 of the Framework Agreement	As specified in Para 4.1 of Sch 10 of the Framework Agreement	Network Rail
Sch 10 Para 5.3.2 of the Framework Agreement	Financial Distress Service Continuity Plan	As appropriate and agreed by Network Rail	As soon as reasonably practicable and in any event within 10 Working Days of initial notification or awareness of a Financial Distress Event	As specified in Sch 10 Para 5.6.1 of the Framework Agreement	Network Rail

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 11, Part B, para 1.1 of the Agreement	Contract Amendment Report	Sch 11, Part B, para 1.2 of the Agreement	Within 1 month of a material change being agreed	-	Network Rail
Sch 11, Part B, para 1.1 of the Agreement	Quarterly Contract Report	Sch 11, Part B, para 1.2 of the Agreement	Within 1 month of the end of each Quarter	-	Network Rail
Sch 11, Part B, para 1.1 of the Agreement	Annual Contract Report	Sch 11, Part B, para 1.2 of the Agreement	Within 1 month of the end of the Contract Year to which that report relates	-	Network Rail
Sch 11 Part B, para 1.1 of the Agreement	Financial Reconciliation Report	Sch 11, Part B, para 1.2 of the Agreement	Within 6 months after the end of the Term	-	Network Rail
Sch 7, Para 3.3 of the Framework Agreement	Representation and Structure of boards	Sch 7 Annex 1 of the Framework Agreement	Within 7 days of receipt of intention, or in the case of a non-Network Rail board member, agreement by Network Rail	-	Network Rail

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 7, Para 3.6(e) of the Framework Agreement	Minutes of governance meetings (all boards)	As appropriate and agreed by Network Rail	Within 7 days of receipt from chairperson	-	Network Rail
Sch 18 Para 4.3 of the Agreement	Impact Assessment Estimate	As appropriate and agreed by Network Rail	Within 10 Working Days of date of receiving change request.	-	Network Rail
Sch 18 Para 5 of the Agreement	Impact Assessment	As appropriate and agreed by Network Rail	Within the period agreed by the Impact Assessment Estimate	Within 10 Working Days of request by Network Rail to update under Schedule 18 Para 5.4	Network Rail
Sch 18, Para 2.6 of the Agreement	Update full copy of the Contract and copy of annotated version illustrating changes	PDF and MS Word (editable)	Signature of Variation Date	Any variation	Network Rail

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 18, Para 4 of the Agreement	Change Request	Sch 18, Annex 1 of the Agreement	Within 10 Working Days of Network Rail issuing the Change Request	-	Network Rail
Sch 11, Para 2.1 of the Framework Agreement	Dispute Notice	Sch 11 Para 2.2 of the Framework Agreement	No longer than 20 Working Days from an unresolved dispute arising	Any variation	Network Rail
Sch 11, Para 2.4 of the Framework Agreement	Mediation Notice	As appropriate	When first served	Any variation	Network Rail
Sch 13, Para 1 of the Agreement	Reports and Records Provisions	Sch 13, Annex 1 of the Agreement	Within 3 months of the Call-Off Effective Date	Frequency specified in Sch 13, Annex 1 of the Agreement	Network Rail
Sch 14, Para 2.1.1 of the Agreement	Register of All Assets, Sub-contracts and Other Relevant Agreements	As appropriate and agreed by Network Rail	Within 3 months of the Call-Off Effective Date	Any variation	Network Rail

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 14, Para 2.1.2 of the Agreement	Configuration Database of Technical Infrastructure and Operating Procedures	As appropriate and agreed by Network Rail	Within 3 months of the Call-Off Effective Date	Any variation	Network Rail
Sch 14, Para 3.1 of the Agreement	Exit Information	As appropriate and agreed by Network Rail	On reasonable notice given by Network Rail at any point during the Term	Within 10 Working Days of Network Rail's written request	Network Rail and its potential Replacement Suppliers
Sch 14, Para 5.1 of the Agreement	Exit Plan	Sch 14, Para 5.3 of the Agreement	Within 3 months of the Call-Off Effective Date	<p>In the first month of each contract year; and</p> <p>Within 14 days if requested by Network Rail following a Financial Distress Event</p> <p>Within 20 days after service of Termination</p>	Network Rail

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
				Notice or 6 months prior to expiry of the Contract	
Sch 14, Para 6.3.5 of the Agreement	Provide up to date Registers during the Termination Assistance Period	As appropriate	As requested by Network Rail	As appropriate	
Sch 14, Para 6.7.2 of the Agreement	Network Rail Data (handback)	Sch 14, Para 3 of the Agreement and/or as appropriate and agreed by Network Rail	At the end of the Termination Assistance Period	-	Network Rail
Sch 14, Annex 1, Paras 1.1, 1.2, 1.3 & 1.4 of the Agreement	Termination Services supporting documentation and knowledge transfer material	As appropriate and agreed by Network Rail	As specified in the Termination Assistance Notice and in any event prior to the end of the Termination Assistance Period	As specified in the Termination Assistance Notice or otherwise requested by Network Rail	-

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 15, Part A: Service Continuity Plan of the Agreement	Service Continuity Plan	Sch 15, Part A Para 2.2 of the Agreement	Within 40 Working Days from the Call-Off Effective Date	Sch 15, Part A Para 7.1 of the Agreement	Network Rail
Sch 15, Part A, Para 7.2 of the Agreement	Service Continuity Plan Review Report	Sch 15, Part A Para 6.2 of the Agreement	Within 20 Working Days of the conclusion of each review of the Service Continuity Plan.	-	-
Sch 15, Part B: Corporate Resolution Planning of the Agreement	Corporate Resolution Planning Information	Sch 15, Part B, Para 2.2 of the Agreement	Sch 15 Part B Para 2.2 of the Agreement	Sch 15, Part B Para 2.8 of the Agreement	Network Rail
Sch 10 Para 8 of the Framework Agreement	Board Confirmation	As set out at Annex 4: Board Confirmation of Sch 10 of the Framework Agreement	Within 120 days of the first Accounting Reference Date to occur	Within 15 months of the previous Board Confirmation provided or within 120 days after each Accounting Reference Date	Network Rail

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
				(whichever is the earlier)	
Sch 16, Part D, Para 1.1 of the Agreement	Supplier's Provisional Supplier Personnel List and, Staffing Information	As appropriate and agreed by Network Rail	Sch 16, Part D, Paras 1.1.1 and 1.1.2 of the Agreement	At such intervals as are reasonably requested by Network Rail	Network Rail
Sch 16, Part D, Para 1.2 of the Agreement	Supplier's Final Supplier Personnel List	As appropriate and agreed by Network Rail	At least 20 Working Days prior to the Service Transfer Date	Upon any material change to the list of employees	Network Rail and, at the discretion of Network Rail, the Replacement Supplier and/or any Replacement Subcontractor
Sch 16, Part D, Para 1.6 of the Agreement	Information relating to the manner in which the services are organised	As appropriate and agreed by Network Rail	Call-Off Effective Date	-	Network Rail

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 16, Part D, Para 1.7 of the Agreement	Payroll and benefits information	As appropriate and agreed by Network Rail	Within 5 Working Days following the Service Transfer Date	-	Network Rail, any Replacement Supplier and/or Replacement Sub-contractor
Schedule 16 of the Agreement and Call-Off Form, Annex 1, Para. 11	List of Notified Sub-contractors	As appropriate and agreed by Network Rail	Call-Off Effective Date	Upon any change	Network Rail
Para 2.1 of Sch 16 of the Framework Agreement	Reports on Data Subject Access Requests	As appropriate and agreed by Network Rail	As agreed with Network Rail	As agreed with Network Rail	Network Rail and Supplier

CALL-OFF TERMS
SCHEDULE 14
EXIT MANAGEMENT

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

“Emergency Exit”	any termination of this Agreement which is a: <ul style="list-style-type: none"> (a) termination of the whole or part of this Agreement in accordance with clause 28 (Termination Rights), except where the period of notice given under that clause is greater than or equal to six (6) months; (b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to clause 28 (Termination Rights); or (c) wrongful termination or repudiation of this Agreement by either Party;
“Ethical Wall Agreement”	an ethical wall agreement in a form similar to the draft ethical wall agreement set out at Annex 2;
“Exclusive Assets”	those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services;
“Exit Information”	has the meaning given in paragraph 3.1 of Schedule 14 (Exit Management);
“Exit Manager”	the person appointed by each Party pursuant to paragraph 2.3 of Schedule 14 (Exit Management) for managing the Parties’ respective obligations under Schedule 14 (Exit Management);
“Net Book Value”	the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to Network Rail of the same date as this Agreement;
“Non-Exclusive Assets”	those Assets (if any) which are used by the Supplier or a Key Sub-contractor in connection with the Services but which are also used by the Supplier or Key Sub-contractor for other purposes of material value;
“Ordinary Exit”	any termination of the whole or any part of this Agreement which occurs: <ul style="list-style-type: none"> (a) pursuant to clause 28 (Termination Rights) where the period of notice given by the Party serving notice to terminate pursuant to such

clause is greater than or equal to six (6) months; or

- (b) as a result of the expiry of the initial Term or any Extension Period;

“Registers”	the register and configuration database referred to in paragraphs 2.1.1 and 2.1.2 of Schedule 14 (Exit Management);
“Transferable Assets”	those of the Exclusive Assets which are capable of legal transfer to Network Rail;
“Transferable Contracts”	the Sub-contracts, licences for Supplier’s Software, licences for Third Party Software or other agreements which are necessary to enable Network Rail or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation;
“Transferring Contracts”	has the meaning given in paragraph 7.2.3 of Schedule 14 (Exit Management).

2. OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

2.1 During the Term, the Supplier shall:

- 2.1.1 create and maintain a register of all:
- 2.1.1.1 Assets, detailing their:
 - (a) make, model and asset number;
 - (b) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
 - (c) Net Book Value;
 - (d) condition and physical location; and
 - (e) use (including technical specifications); and
 - 2.1.1.2 Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;
- 2.1.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit Network Rail and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;
- 2.1.3 agree the format of the Registers with Network Rail as part of the process of agreeing the Exit Plan; and
- 2.1.4 at all times keep the Registers up to date, in particular in the event that Assets, Sub-contracts or other relevant agreements are added to or removed from the Services.

- 2.2 The Supplier shall procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Agreement.
- 2.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within three (3) months of the Call-Off Effective Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this Schedule and each Party's compliance with it.
3. **OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES**
- 3.1 On reasonable notice at any point during the Term, the Supplier shall provide to Network Rail and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by Network Rail of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
- 3.1.1 details of the Service(s);
 - 3.1.2 a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
 - 3.1.3 an inventory of Network Rail Data in the Supplier's possession or control;
 - 3.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - 3.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;
 - 3.1.6 to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Agreement; and
 - 3.1.7 such other material and information as Network Rail shall reasonably require,
- (together, the "**Exit Information**").
- 3.2 The Supplier acknowledges that Network Rail may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom Network Rail is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that Network Rail may not under this paragraph 3.2 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-contractors' prices or costs).
- 3.3 The Supplier shall:
- 3.3.1 notify Network Rail within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with Network Rail regarding such proposed material changes; and
 - 3.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from Network Rail.

- 3.4 The Supplier may charge Network Rail for its reasonable additional costs to the extent Network Rail requests more than four (4) updates in any six (6) month period.
- 3.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
- 3.5.1 prepare an informed offer for those Services; and
- 3.5.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).
4. **OBLIGATION TO ENTER INTO AN ETHICAL WALL AGREEMENT ON RE-TENDERING OF SERVICES**
- 4.1 Network Rail may require the Supplier to enter into the Ethical Wall Agreement at any point during a re-tendering or contemplated re-tendering of the Services or any part of the Services.
- 4.2 If required to enter into the Ethical Wall Agreement, the Supplier will return a signed copy of the Ethical Wall Agreement within ten (10) Working Days of receipt. The Supplier's costs of entering into the Ethical Wall Agreement will be borne solely by the Supplier.
5. **EXIT PLAN**
- 5.1 The Supplier shall, at least twenty (20) Working Days prior to the Call-Off Effective Date, have delivered to Network Rail an Exit Plan which:
- 5.1.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the Supplier to Network Rail and/or its Replacement Supplier on the Partial Termination, expiry or termination of this Agreement;
- 5.1.2 complies with the requirements set out in paragraph 5.2; and
- 5.1.3 is otherwise reasonably satisfactory to Network Rail.
- 5.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 5.3 The Exit Plan shall set out, as a minimum:
- 5.3.1 how the Exit Information is obtained;
- 5.3.2 separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as Network Rail shall require to enable Network Rail or its sub-contractors to provide the Services;
- 5.3.3 a mechanism for dealing with Partial Termination on the assumption that the Supplier will continue to provide the remaining Services under this Agreement;
- 5.3.4 the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
- 5.3.5 the management structure to be employed during the Termination Assistance Period;

- 5.3.6 a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
 - 5.3.7 how the Services will transfer to the Replacement Supplier and/or Network Rail, including details of the processes, documentation, data transfer, systems migration, security and the segregation of Network Rail's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
 - 5.3.8 the scope of the Termination Services that may be required for the benefit of Network Rail (including such of the services set out in Annex 1 and any other such services as may be identified in the Call-Off Form as are applicable);
 - 5.3.9 a timetable and critical issues for providing the Termination Services;
 - 5.3.10 any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;
 - 5.3.11 how the Termination Services would be provided (if required) during the Termination Assistance Period;
 - 5.3.12 procedures to deal with requests made by Network Rail and/or a Replacement Supplier for Staffing Information pursuant to Schedule 16 (Staff Transfer); and
 - 5.3.13 how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or Network Rail with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.
- 5.4 The Parties acknowledge that the migration of the Services from the Supplier to Network Rail and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.
- 5.5 The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year) and if requested by Network Rail following the occurrence of a Financial Distress Event, within 14 days of such request, to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update the Supplier shall submit the revised Exit Plan to Network Rail for review. Within twenty (20) Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that twenty (20) Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- Finalisation of the Exit Plan.**
- 5.6 Within twenty (20) Working Days after service of a Termination Notice by either Party or six (6) months prior to the expiry of this Agreement, the Supplier will submit for Network Rail's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
- 5.7 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days following its delivery to Network Rail then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Supplier shall provide the Termination Services in

accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

6. TERMINATION SERVICES

Notification of Requirements for Termination Services

6.1 Network Rail shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a “**Termination Assistance Notice**”) at least four (4) months prior to the date of termination or expiry of this Agreement or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:

6.1.1 the date from which Termination Services are required;

6.1.2 the nature of the Termination Services required; and

6.1.3 the period during which it is anticipated that Termination Services will be required, which shall continue no longer than twenty four (24) months after expiry of the Initial Term or any Extension Period or earlier termination of this Agreement.

6.2 Network Rail shall have:

6.2.1 an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend the Termination Assistance period beyond the date which is thirty (30) months after expiry of the Initial Term or any Extension Period or earlier termination of this Agreement and provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Services is otherwise due to expire; and

6.2.2 the right to terminate its requirement for Termination Services by serving not less than twenty (20) Working Days' written notice upon the Supplier to such effect.

Termination Assistance Period

6.3 Throughout the Termination Assistance Period, or such shorter period as Network Rail may require, the Supplier shall:

6.3.1 continue to provide the Services (as applicable) and, if required by Network Rail pursuant to paragraph 6.1, provide the Termination Services;

6.3.2 in addition to providing the Services and the Termination Services, provide to Network Rail any reasonable assistance requested by Network Rail to allow the Services to continue without interruption following the Partial Termination, termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to Network Rail and/or its Replacement Supplier;

6.3.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 6.3.2 without additional costs to Network Rail;

6.3.4 provide the Services and the Termination Services at no detriment to the Target Performance Levels, save to the extent that the Parties agree otherwise in accordance with paragraph 6.5; and

6.3.5 at Network Rail's request and on reasonable notice, deliver up-to-date Registers to Network Rail.

- 6.4 Without prejudice to the Supplier's obligations under paragraph 6.3.3, if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in paragraph 6.3.2 without additional costs to Network Rail, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.
- 6.5 If the Supplier demonstrates to Network Rail's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Target Performance Level(s), the Parties shall vary the relevant Target Performance Level(s) and/or the applicable Service Credits to take account of such adverse effect.

Termination Obligations

- 6.6 The Supplier shall comply with all of its obligations contained in the Exit Plan in respect of a Partial Termination, termination or expiry of the Agreement.
- 6.7 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), in respect of Services that have been terminated, the Supplier shall:
- 6.7.1 cease to use Network Rail Data;
 - 6.7.2 provide Network Rail and/or the Replacement Supplier with a complete and uncorrupted version of Network Rail Data in electronic form (or such other format as reasonably required by Network Rail);
 - 6.7.3 erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Network Rail Data and promptly certify to Network Rail that it has completed such deletion;
 - 6.7.4 return to Network Rail such of the following as is in the Supplier's possession or control:
 - 6.7.4.1 all copies of Network Rail Software and any other software licensed by Network Rail to the Supplier under this Agreement;
 - 6.7.4.2 all materials created by the Supplier under this Agreement in which the IPRs are owned by Network Rail;
 - 6.7.4.3 any parts of the IT Environment and any other equipment which belongs to Network Rail; and
 - 6.7.4.4 any items that have been on-charged to Network Rail, such as consumables;
 - 6.7.5 vacate any Network Rail Premises unless access is required to continue to deliver the Services;
 - 6.7.6 provide access during normal working hours to Network Rail and/or the Replacement Supplier for up to twelve (12) months after the Partial Termination expiry or termination of this Agreement to:
 - 6.7.6.1 such information relating to the Services as remains in the possession or control of the Supplier; and
 - 6.7.6.2 such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are

still employed by the Supplier, provided that Network Rail and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this paragraph 6.7.6.2.

- 6.8 Upon Partial Termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.
- 6.9 Except where this Agreement provides otherwise, all licences, leases and authorisations granted by Network Rail to the Supplier in relation to the terminated Services shall be terminated with effect from the end of the Termination Assistance Period.

7. ASSETS, SUB-CONTRACTS AND SOFTWARE

- 7.1 Following notice of termination or Partial Termination of this Agreement and during the Termination Assistance Period, the Supplier shall not, in respect of the Terminated Services, without Network Rail's prior written consent:
- 7.1.1 terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges;
 - 7.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
 - 7.1.3 terminate, enter into or vary any licence for software in connection with the Services.
- 7.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to paragraph 6.3.5, Network Rail shall provide written notice to the Supplier setting out:
- 7.2.1 which, if any, of the Transferable Assets Network Rail requires to be transferred to Network Rail and/or the Replacement Supplier in respect of the Terminated Services ("**Transferring Assets**");
 - 7.2.2 which, if any, of:
 - 7.2.2.1 the Exclusive Assets that are not Transferable Assets; and
 - 7.2.2.2 the Non-Exclusive Assets,
 Network Rail and/or the Replacement Supplier requires the continued use of; and
 - 7.2.3 which, if any, of Transferable Contracts Network Rail requires to be assigned or novated to Network Rail and/or the Replacement Supplier (the "**Transferring Contracts**"),

in order for Network Rail and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by Network Rail and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to Network Rail and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts Network Rail and/or its Replacement Supplier requires to provide the Services or Replacement Services. Where requested by the Supplier, Network Rail and/or its

Replacement Supplier shall discuss in good faith with the Supplier which Transferable Contracts are used by the Supplier in matters unconnected to the Services or Replacement Services.

- 7.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to Network Rail and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where:
- 7.3.1 a Termination Payment is payable by Network Rail to the Supplier, in which case, payment for such Assets shall be included within the Termination Payment; or
- 7.3.2 the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Agreement, in which case Network Rail shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges.
- 7.4 Risk in the Transferring Assets shall pass to Network Rail or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to Network Rail or the Replacement Supplier (as appropriate) on payment for the same.
- 7.5 Where the Supplier is notified in accordance with paragraph 7.2.2 that Network Rail and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
- 7.5.1 procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by Network Rail) for Network Rail and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
- 7.5.2 procure a suitable alternative to such assets and Network Rail or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 7.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to Network Rail and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as Network Rail reasonably requires to effect this novation or assignment.
- 7.7 Network Rail shall:
- 7.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
- 7.7.2 once a Transferring Contract is novated or assigned to Network Rail and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 7.8 The Supplier shall hold any Transferring Contracts on trust for Network Rail until such time as the transfer of the relevant Transferring Contract to Network Rail and/or the Replacement Supplier has been effected.
- 7.9 The Supplier shall indemnify Network Rail (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to Network Rail (and/or Replacement Supplier) pursuant to paragraph 7.6 both:

- 7.9.1 in relation to any matters arising prior to the date of assignment or novation of such Sub-contract; and
- 7.9.2 in relation to any matters arising after the date of assignment or novation of such Sub-contract where the loss, liability or cost arises as a result of the Supplier's failure to comply with Clauses 16 (Intellectual Property Rights) and/or Schedule 20 (Intellectual Property Rights).

8. SUPPLIER PERSONNEL

- 8.1 Network Rail and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 16 (Staff Transfer) shall apply.
- 8.2 The Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to Network Rail and/or the Replacement Supplier.
- 8.3 During the Termination Assistance Period, the Supplier shall give Network Rail and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to Network Rail and/or the Replacement Supplier.
- 8.4 The Supplier shall immediately notify Network Rail or, at the direction of Network Rail, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 8.5 The Supplier shall not for a period of twelve (12) months from the date of transfer reemploy or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to Network Rail and/or the Replacement Supplier, except that this paragraph shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

9. CHARGES

- 9.1 During the Termination Assistance Period (or for such shorter period as Network Rail may require the Supplier to provide the Termination Services), Network Rail shall pay the Charges to the Supplier in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Change Control Procedure.
- 9.2 Where Network Rail requests an extension to the Termination Services beyond the Termination Assistance Period in accordance with paragraph 6.2.1:
 - 9.2.1 where more than 6 months' notice is provided, the same rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable; and
 - 9.2.2 where less than 6 months' notice is provided, no more than [1.2] times the rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable.
- 9.3 For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.
- 9.4 Except as otherwise expressly specified in this Agreement, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and Network Rail shall not be

obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

10. **APPORTIONMENTS**

10.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between Network Rail and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:

10.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;

10.1.2 Network Rail shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and

10.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

10.2 Each Party shall pay (and/or Network Rail shall procure that the Replacement Supplier shall pay) any monies due under paragraph 10.1 as soon as reasonably practicable.

ANNEX 1**Scope of the Termination Services**

- 1.
- 1.1 The Termination Services to be provided by the Supplier shall include such of the following services as Network Rail may specify:
 - 1.1.1 ceasing all non-critical Software changes (except where agreed in writing with Network Rail);
 - 1.1.2 notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
 - 1.1.3 providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by Network Rail and/or the Replacement Supplier after the end of the Termination Assistance Period;
 - 1.1.4 delivering to Network Rail the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the twelve (12) month period immediately prior to the commencement of the Termination Services);
 - 1.1.5 providing details of work volumes and staffing requirements over the twelve (12) month period immediately prior to the commencement of the Termination Services;
 - 1.1.6 with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
 - 1.1.7 providing Network Rail with any problem logs which have not previously been provided to Network Rail;
 - 1.1.8 providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of twelve (12) months after the Termination Assistance Period;
 - 1.1.9 providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;
 - 1.1.10 agreeing with Network Rail an effective communication strategy and joint communications plan which sets out the implications for Supplier Personnel, Network Rail staff, customers and key stakeholders;
 - 1.1.11 reviewing all Software libraries used in connection with the Services and providing details of these to Network Rail and/or the Replacement Supplier;
 - 1.1.12 providing assistance and expertise as necessary to support Network Rail and/or the Replacement Supplier develop the migration plan for business operations and Network Rail Data to the Replacement Supplier, which may include migration approach, testing of plans, contingency options, and handling of historic or archived Network Rail Data;

- 1.1.13 provide all necessary support, equipment, tools, and Software such as data migration services and/or automated programming interfaces, in order to enable and support the execution of the migration plan by Network Rail and/or Replacement Supplier;
- 1.1.14 making available to Network Rail and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by Network Rail (acting reasonably) at the time of termination or expiry;
- 1.1.15 assisting in establishing naming conventions for any new production site;
- 1.1.16 analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- 1.1.17 generating a computer listing of the Source Code of **[insert details of relevant Software]** in a form and on media reasonably requested by Network Rail;
- 1.1.18 agreeing with Network Rail a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
- 1.1.19 delivering copies of the production databases (with content listings) to Network Rail's and/or the Replacement Supplier's operations staff (on appropriate media) as reasonably requested by Network Rail;
- 1.1.20 assisting with the loading, testing and implementation of the production databases;
- 1.1.21 assisting in the execution of a parallel operation until the effective date of expiry or termination of this Agreement;
- 1.1.22 in respect of the maintenance and support of the Supplier System, providing historical performance data for the entire Term;
- 1.1.23 assisting in the execution of a parallel operation of the maintenance and support of the Supplier System until the end of the Termination Assistance Period or as otherwise specified by Network Rail (provided that these Services shall end on a date no later than the end of the Termination Assistance Period);
- 1.1.24 providing an information pack listing and describing the Services for use by Network Rail in the procurement of the Replacement Services;
- 1.1.25 answering all reasonable questions from Network Rail and/or the Replacement Supplier regarding the Services;
- 1.1.26 agreeing with Network Rail and/or the Replacement Supplier a plan for the migration of Network Rail Data to Network Rail and/or the Replacement Supplier;
- 1.1.27 providing access to Network Rail and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding six (6) months afterwards for the purpose of the smooth transfer of the Services to Network Rail and/or the Replacement Supplier:
 - 1.1.27.1 to information and documentation relating to the Transferring Services that is in the possession or control of the Supplier or its Subcontractors (and the Supplier agrees and shall procure that its Subcontractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and

- 1.1.27.2 following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
- 1.1.28 knowledge transfer services, including:
 - 1.1.28.1 transferring all training material and providing appropriate training to those Network Rail and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;
 - 1.1.28.2 providing for transfer to Network Rail and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents
 - 1.1.28.3 providing the Supplier and/or the Replacement Supplier with access to such members of the Supplier's or its Sub-contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors;
 - 1.1.28.4 allowing Network Rail and/or the Replacement Supplier to work alongside and observe the performance of the Services by the Supplier at its Sites used to fulfil the Services (subject to compliance by Network Rail and the Replacement Supplier with any applicable security and/or health and safety restrictions

and any such person who is provided with such knowledge transfer services will sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require).
- 1.2 The Supplier shall:
 - 1.2.1 provide a documented plan relating to the training matters referred to in paragraph 1.1.12 for agreement by Network Rail at the time of termination or expiry of this Agreement;
 - 1.2.2 co-operate fully in the execution of the handover plan agreed pursuant to paragraph 1.1.19, providing skills and expertise of a suitable standard; and
 - 1.2.3 fully co-operate in the execution of Network Rail Database migration plan agreed pursuant to paragraph 1.1.26, providing skills and expertise of a reasonably acceptable standard.
- 1.3 To facilitate the transfer of knowledge from the Supplier to Network Rail and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of Network Rail and/or the Replacement Supplier.
- 1.4 The information which the Supplier shall provide to Network Rail and/or the Replacement Supplier pursuant to paragraph 1.1.28 shall include:
 - 1.4.1 copies of up-to-date procedures and operations manuals;
 - 1.4.2 product information;

- 1.4.3 agreements with third party suppliers of goods and services which are to be transferred to Network Rail and/or the Replacement Supplier;
- 1.4.4 key support contact details for third party supplier personnel under contracts which are to be assigned or novated to Network Rail pursuant to this Schedule;
- 1.4.5 information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
- 1.4.6 details of physical and logical security processes and tools which will be available to Network Rail; and
- 1.4.7 any relevant interface information

and such information shall be updated by the Supplier at the end of the Termination Assistance Period.

1.5 During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and Suppliers) of the Replacement Supplier and/or Network Rail access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:

- 1.5.1 any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this paragraph 1.5 shall:
 - 1.5.1.1 sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
 - 1.5.1.2 during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that Network Rail deems reasonable; and
- 1.5.2 Network Rail and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

ANNEX 2
Draft Ethical Wall Agreement

[NETWORK RAIL]

and

[THE COUNTERPARTY]

ETHICAL WALL AGREEMENT

This Agreement is dated [] 20[]

Between

- (1) **NETWORK RAIL INFRASTRUCTURE LIMITED** a company registered in England and Wales under company number 02904587 whose registered office is at Waterloo General Office, London SE1 8SW (“**Network Rail**”); and
- (2) **[NAME OF COUNTERPARTY]** a [company]/[limited liability partnership] registered in England and Wales under registered number [insert registered number] whose registered office is at [insert Counterparty’s registered address] (the “**Counterparty**”).

BACKGROUND

- (A) Network Rail is obliged to ensure transparency, fairness, non-discrimination and equal treatment in relation to its procurement process pursuant to [the Public Contracts Regulations 2015 (as amended) (“**PCR**”)] [the Utilities Contracts Regulations 2016 (as amended (“**UCR**”))]. The purpose of this document (“**Agreement**”) is to define the protocols to be followed to prevent, identify and remedy any conflict of interest (whether actual, potential or perceived) in the context of the Procurement.
- (B) Network Rail is conducting a procurement exercise for the [supply/purchase] of [insert details of project/goods/services] (the “**Purpose**”).
- (C) Network Rail has an obligation to deal with conflicts of interest as set out in [Regulation 24 (1) of the PCR] [Regulation 42 (1) of the UCR]. The concept of conflict of interest is wide. In the [PCR] [UCR] it is described as covering at least “*any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure*” [(Regulation 24(2))] [(Regulation 42(2))]. “*Staff members*” refers to staff members of Network Rail or of a procurement service provider acting on behalf of Network Rail who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure. “*Procurement service provider*” refers to a public or private body which offers ancillary purchasing activities on the market.
- (D) Pursuant to Regulation [41 of the PCR] [59 of the UCR], Network Rail is under an obligation to ensure that competition is not distorted by the participation of any bidder. Accordingly, Network Rail has identified that a potential distortion of competition could arise as a consequence of a bidder wishing to submit a Tender for this procurement, where it has also performed services for Network Rail under existing contractual arrangements or as a subcontractor under those same arrangements.
- (E) The parties wish to enter into this Agreement to ensure that a set of management processes, barriers and disciplines are put in place to ensure that conflicts of interest do not arise, and that the Counterparty does not obtain an unfair competitive advantage over Other Bidders.

IT IS AGREED:**1. DEFINITIONS AND INTERPRETATION**

1.1 The following words and expressions shall have the following meanings in this agreement and its recitals:

"Affiliate" means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;

"Agreement" means this ethical walls agreement duly executed by the Parties;

"Bid Team" means any Counterparty, Affiliate, connected to the preparation of an ITT Response;

"Central Government Body" means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

"Conflicted Personnel" means any Counterparty, Affiliate, staff or agents of the Counterparty or an Affiliate who, because of the Counterparty's relationship with Network Rail under any contract have or have had access to information which creates or may create a conflict of interest;

"Contract" means the [contract for []] dated [] between Network Rail and the Counterparty and/or an Affiliate;

"Control" means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and **"Controls"** and **"Controlled"** shall be interpreted accordingly;

"Effective Date" means the date of this Agreement as set out above;

"Invitation to Tender" or **"ITT"** means an invitation to submit tenders issued by Network Rail as part of an ITT Process;

"ITT Process" means, with regard to the Purpose, the relevant procedure provided for in the PCR which Network Rail has elected to use to select a contractor, together with all relevant information, correspondence and/or documents issued by Network Rail as part of that procurement exercise, all information, correspondence and/or documents issued by the bidders in response together with any resulting contract;

"ITT Response" means the tender submitted or to be submitted by the Counterparty or an Affiliate [(or, where relevant, by an Other Bidder)] in response to an ITT;

"Other Affiliate" any person who is a subsidiary, subsidiary undertaking or holding company of any Other Bidder;

"Other Bidder" means any other bidder or potential bidder that is not the Counterparty or any Affiliate that has or is taking part in the ITT Process;

"Parties" means Network Rail and the Counterparty;

“Professional Advisor” means a supplier, subcontractor, advisor or consultant engaged by the Counterparty under the auspices of compiling its ITT Response;

“Purpose” has the meaning given to it in recital (B) to this Agreement;

“Representative” refers to a person's officers, directors, employees, advisers and agents and, where the context admits, providers or potential providers of finance to the Counterparty or any Affiliate in connection with the ITT Process and the representatives of such providers or potential providers of finance; and

“Third Party” means any person who is not a Party and includes Other Affiliates and Other Bidders.

- 1.2 Reference to the disclosure of information includes any communication or making available information and includes both direct and indirect disclosure.
- 1.3 Reference to the disclosure of information, or provision of access, by or to Network Rail or the Counterparty includes disclosure, or provision of access, by or to the representatives of Network Rail or Representatives of the Counterparty (as the case may be).
- 1.4 Reference to persons includes legal and natural persons.
- 1.5 Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time.
- 1.6 Reference to clauses and recitals is to clauses of and recitals to this Agreement.
- 1.7 Reference to any gender includes any other.
- 1.8 Reference to writing includes email.
- 1.9 The terms “associate”, “holding company”, “subsidiary”, “subsidiary undertaking” and “wholly owned subsidiary” have the meanings attributed to them in the Companies Act 2006, except that for the purposes of section 1159(1)(a) of that Act, the words ‘holds a majority of the voting rights’ shall be changed to ‘holds 30% or more of the voting rights’, and other expressions shall be construed accordingly.
- 1.10 The words “include” and “including” are to be construed without limitation.
- 1.11 The singular includes the plural and vice versa.
- 1.12 The headings contained in this Agreement shall not affect its construction or interpretation.

2. ETHICAL WALLS

- 2.1 In consideration of the sum of £1 payable by Network Rail to the Counterparty, receipt of which is hereby acknowledged, the Counterparty:
 - (a) shall take all appropriate steps to ensure that neither the Counterparty nor its Affiliates and/or Representatives are in a position where, in the reasonable opinion of Network Rail, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Counterparty or its Affiliates or Representatives and the duties owed to Network Rail under the Contract or pursuant to an open and transparent ITT Process;
 - (b) acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty or an Affiliate intends to take part in the ITT Process and, because of the Counterparty’s relationship with Network Rail under any Contract, the Counterparty, its Affiliates and/or Representatives have or have had access to information which could provide the Counterparty and/or its Affiliates with an advantage and render unfair an otherwise genuine and open competitive ITT Process; and

- (c) where there is or is likely to be a conflict of interest or the perception of a conflict of interest of any kind in relation to the ITT Process, shall comply with Clause 2.2.

2.2 The Counterparty shall:

- (a) Not assign any of the Conflicted Personnel to the Bid Team at any time;
- (b) Provide to Network Rail a complete and up to date list of the Conflicted Personnel and the Bid Team and reissue such list upon any change to it;
- (c) Ensure that by no act or omission by itself, its staff, agents and/or Affiliates results in information of any kind or in any format and however so stored:
 - (i) about the Contract, its performance, operation and all matters connected or ancillary to it becoming available to the Bid Team; and/or
 - (ii) which would or could in the opinion of Network Rail confer an unfair advantage on the Counterparty in relation to its participation in the ITT Process becoming available to the Bid Team;
- (d) Ensure that by no act or omission by itself, its staff, agents and/or Affiliates and in particular the Bid Team results in information of any kind or in any format and however so stored about the ITT Process, its operation and all matters connected or ancillary to it becoming available to the Conflicted Personnel;
- (e) Ensure that confidentiality agreements which flow down the Counterparty's obligations in this Agreement are entered into as necessary between Network Rail and the Counterparty, its Affiliates, its staff, agents, any Conflicted Personnel, and between any other parties necessary in a form to be prescribed by Network Rail;
- (f) physically separate the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;
- (g) provide regular training to its staff, agents and its Affiliates to ensure it is complying with this Agreement;
- (h) monitor Conflicted Personnel movements within restricted areas (both physical and electronic online areas) to ensure it is complying with this Agreement ensure adherence to the ethical wall arrangements;
- (i) ensure that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
- (j) comply with any other action as Network Rail, acting reasonably, may direct.

2.3 In addition to the obligations set out in Clause (a) and 2.1(c), the Counterparty shall:

- (a) notify Network Rail immediately of all perceived, potential and/or actual conflicts of interest that arise;
- (b) submit in writing to Network Rail full details of the nature of the conflict including (without limitation) full details of the risk assessments undertaken, the impact or potential impact of the conflict, the measures and arrangements that have been established and/or are due to be established to eliminate the conflict and the Counterparty's plans to prevent future conflicts of interests from arising; and
- (c) seek Network Rail's approval thereto,

which Network Rail shall have the right to grant, grant conditionally or deny (if Network Rail denies its approval the Counterparty shall repeat the process set out in Clause 2.3 until such time as Network Rail grants approval or the Counterparty withdraws from the ITT Process).

- 2.4 Any breach of Clause 2.1, Clause 2.2 or Clause 2.3 shall entitle Network Rail to exclude the Counterparty or any Affiliate or Representative from the ITT Process, and Network Rail may, in addition to the right to exclude, take such other steps as it deems necessary where, in the reasonable opinion of Network Rail there has been a breach of Clause 2.1, Clause 2.2 or Clause 2.3.
- 2.5 The Counterparty will provide, on demand, any and all information in relation to its adherence with its obligations set out under Clauses 2.1 and 2.2 as reasonably requested by Network Rail.
- 2.6 Network Rail reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under Clauses 2.1(c) and 2.2.
- 2.7 The Counterparty acknowledges that any provision of information or demonstration of measures, in accordance with Clauses 2.5 and 2.6, does not constitute acceptance by Network Rail of the adequacy of such measures and does not discharge the Counterparty of its obligations or liability under this Agreement.
- 2.8 The actions of Network Rail pursuant to Clause 2.4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to Network Rail.
- 2.9 In no event shall Network Rail be liable for any bid costs incurred by:
- (a) the Counterparty or any Affiliate or Representative; or
 - (b) any Other Bidder, Other Affiliate or Other Representative,
- as a result of any breach by the Counterparty, Affiliate or Representative of this Agreement, including, without limitation, where the Counterparty or any Affiliate or Representative, or any Other Bidder, Other Affiliate or Other Representative are excluded from the ITT Process.
- 2.10 The Counterparty acknowledges and agrees that:
- (a) neither damages nor specific performance are adequate remedies in the event of its breach of the obligations in Clause 2; and
 - (b) in the event of such breach by the Counterparty of any of its obligations in Clause 2 which cannot be effectively remedied Network Rail shall have the right to terminate this Agreement and the Counterparty's participation in the ITT Process.
3. **SOLE RESPONSIBILITY**
- 3.1 It is the sole responsibility of the Counterparty to comply with the terms of this Agreement. No approval by Network Rail of any procedures, agreements or arrangements provided by the Counterparty or any Affiliate or Representative to Network Rail shall discharge the Counterparty's obligations.
4. **WAIVER AND INVALIDITY**
- 4.1 No failure or delay by any Party in exercising any right, power or privilege under this Agreement or by law shall constitute a waiver of that or any other right, power or privilege, nor shall it restrict the further exercise of that or any other right, power or privilege. No single or partial exercise of such right, power or privilege shall prevent or restrict the further exercise of that or any other right, power or privilege.
- 4.2 If any provision of this Agreement is prohibited or unenforceable in any jurisdiction in relation to any Party, such prohibition or unenforceability will not invalidate the remaining provisions of this Agreement or affect the validity or enforceability of the provisions of this Agreement in relation to any other Party or any other jurisdiction.

5. ASSIGNMENT AND NOVATION

5.1 Subject to Clause 5.2 the Parties shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of Network Rail.

5.2 Network Rail may assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:

- (a) any Central Government Body; or
- (b) to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by Network Rail; and
- (c) the Counterparty shall, at Network Rail's request, enter into a novation agreement in such form as Network Rail may reasonably specify in order to enable Network Rail to exercise its rights pursuant to this Clause 5.

5.3 A change in the legal status of Network Rail such that it ceases to be a Central Government Body shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to Network Rail.

6. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

6.1 A person who is not a Party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any term of this Agreement but this does not affect any right remedy of any person which exists or is available otherwise than pursuant to that Act.

7. TRANSPARENCY

7.1 The parties acknowledge and agree that Network Rail is under a legal duty pursuant to the PCR to run transparent and fair procurement processes. Accordingly, Network Rail may disclose the contents of this Agreement to potential bidders in the ITT Process, for the purposes of transparency and in order to evidence that a fair procurement process has been followed.

8. NOTICES

8.1 Any notices sent under this Agreement must be in writing.

8.2 The following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt.

Prepaid, Royal Mail Signed For™ 1 st Class or other prepaid, next working day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.
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- 8.3 Notices shall be sent to the addresses set out below or at such other address as the relevant party may give notice to the other party for the purpose of service of notices under this Agreement:

	Counterparty	Network Rail
Contact		
Address		
Email		

- 8.4 This Clause 8 does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

9. WAIVER AND CUMULATIVE REMEDIES

- 9.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 9.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

10. TERM

- 10.1 Each party's obligations under this Agreement shall continue in full force and effect for period of years from the Effective Date.

11. GOVERNING LAW AND JURISDICTION

- 11.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

- 11.2 The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

Signed by Network Rail

Name:

Signature:

Position in Network Rail:

Signed by the Counterparty

Name:

Signature:

Position in Counterparty:

CALL-OFF TERMS

SCHEDULE 15

SERVICE CONTINUITY PLAN AND CORPORATE RESOLUTION PLANNING

PART A: SERVICE CONTINUITY PLAN

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

- “Business Continuity Plan”** has the meaning given in Paragraph 2.2.1.2;
- “Business Continuity Services”** has the meaning given in Paragraph 4.2.2;
- “Department”** a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:
 - (a) Government Department; or
 - (b) Non-Ministerial Department.
- “Disaster”** the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for a period of [insert details] or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;
- “Disaster Recovery Plan”** has the meaning given in Paragraph 2.2.1.3;
- “Disaster Recovery Services”** the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
- “Disaster Recovery System”** the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services;
- “Insolvency Continuity Plan”** has the meaning given in Paragraph 2.2.1.4.
- “Related Service Provider”** any person who provides services to Network Rail in relation to this Agreement from time to time, which persons include as at the Effective Date [insert details];
- “Review Report”** has the meaning given in Paragraphs 7.2.1 to 7.2.3;
- “Service Continuity Plan”** means the plan prepared pursuant to Paragraph 2 of this Schedule which incorporates the Business Continuity Plan, Disaster Recovery Plan and the Insolvency Continuity Plan;

2. SERVICE CONTINUITY PLAN

2.1 Within forty (40) Working Days from the Effective Date the Supplier shall prepare and deliver to Network Rail for Network Rail’s written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:

- 2.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services (including where caused by an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member); and

- 2.1.2 the recovery of the Services in the event of a Disaster.
- 2.2 The Service Continuity Plan shall:
- 2.2.1 be divided into four parts:
- 2.2.1.1 Part A which shall set out general principles applicable to the Service Continuity Plan;
- 2.2.1.2 Part B which shall relate to business continuity (the “Business Continuity Plan”);
- 2.2.1.3 Part C which shall relate to disaster recovery (the “Disaster Recovery Plan”);
- 2.2.1.4 Part D which shall relate to an Insolvency Event of the Supplier, any Key Sub-contractors and/or any Supplier Group member (the “Insolvency Continuity Plan”); and
- 2.2.2 unless otherwise required by Network Rail in writing, be based upon and be consistent with the provisions of Paragraphs 3, 4, 5 and 6.
- 2.3 Following receipt of the draft Service Continuity Plan from the Supplier, Network Rail shall:
- 2.3.1 review and comment on the draft Service Continuity Plan as soon as reasonably practicable; and
- 2.3.2 notify the Supplier in writing that it approves or rejects the draft Service Continuity Plan no later than twenty (20) Working Days after the date on which the draft Service Continuity Plan is first delivered to Network Rail.
- 2.4 If Network Rail rejects the draft Service Continuity Plan:
- 2.4.1 Network Rail shall inform the Supplier in writing of its reasons for its rejection; and
- 2.4.2 the Supplier shall then revise the draft Service Continuity Plan (taking reasonable account of Network Rail's comments) and shall re-submit a revised draft Service Continuity Plan to Network Rail for Network Rail's approval within twenty (20) Working Days of the date of Network Rail's notice of rejection. The provisions of Paragraph 2.3 and this Paragraph 2.4 shall apply again to any resubmitted draft Service Continuity Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
3. **SERVICE CONTINUITY PLAN: PART A – GENERAL PRINCIPLES AND REQUIREMENTS**
- 3.1 Part A of the Service Continuity Plan shall:
- 3.1.1 set out how the business continuity, disaster recovery and insolvency continuity elements of the plan link to each other;
- 3.1.2 provide details of how the invocation of any element of the Service Continuity Plan may impact upon the operation of the Services and any services provided to Network Rail by a Related Service Provider;
- 3.1.3 contain an obligation upon the Supplier to liaise with Network Rail and (at Network Rail's request) any Related Service Provider with respect to issues concerning business continuity, disaster recovery and insolvency continuity where applicable;

- 3.1.4 detail how the Service Continuity Plan links and interoperates with any overarching and/or connected disaster recovery, business continuity and/or insolvency continuity plan of Network Rail and any of its other Related Service Providers in each case as notified to the Supplier by Network Rail from time to time;
 - 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by Network Rail;
 - 3.1.6 contain a risk analysis, including:
 - 3.1.6.1 failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - 3.1.6.2 identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
 - 3.1.6.3 identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider;
 - 3.1.6.4 identification of risks arising from an Insolvency Event of the Supplier, any Key Sub-contractors and/or Supplier Group member; and
 - 3.1.6.5 a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
 - 3.1.7 provide for documentation of processes, including business processes, and procedures;
 - 3.1.8 set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for Network Rail;
 - 3.1.9 identify the procedures for reverting to “normal service”;
 - 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
 - 3.1.11 identify the responsibilities (if any) that Network Rail has agreed it will assume in the event of the invocation of the Service Continuity Plan; and
 - 3.1.12 provide for the provision of technical advice and assistance to key contacts at Network Rail as notified by Network Rail from time to time to inform decisions in support of Network Rail’s business continuity plans.
- 3.2 The Service Continuity Plan shall be designed so as to ensure that:
- 3.2.1 the Services are provided in accordance with this Agreement at all times during and after the invocation of the Service Continuity Plan;
 - 3.2.2 the adverse impact of any Disaster; service failure; an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member; or disruption on the operations of Network Rail, is minimal as far as reasonably possible;
 - 3.2.3 it complies with the relevant provisions of ISO/IEC 22301 and all other industry standards from time to time in force; and

3.2.4 there is a process for the management of disaster recovery testing detailed in the Service Continuity Plan.

3.3 The Service Continuity Plan shall be upgradeable and sufficiently flexible to support any changes to the Services, to the business processes facilitated by and the business operations supported by the Services, and/or changes to the Supplier Group structure.

3.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Agreement.

4. **SERVICE CONTINUITY PLAN: PART B – BUSINESS CONTINUITY**

PRINCIPLES AND CONTENTS

4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless Network Rail expressly states otherwise in writing:

4.1.1 the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and

4.1.2 the steps to be taken by the Supplier upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.

4.2 The Business Continuity Plan shall:

4.2.1 address the various possible levels of failures of or disruptions to the Services;

4.2.2 set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the “Business Continuity Services”);

4.2.3 specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Business Continuity Plan; and

4.2.4 clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

5. **SERVICE CONTINUITY PLAN: PART C – DISASTER RECOVERY**

PRINCIPLES AND CONTENTS

5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of Network Rail supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.

5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.

5.3 The Disaster Recovery Plan shall include the following:

5.3.1 the technical design and build specification of the Disaster Recovery System;

- 5.3.2 details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
- 5.3.2.1 data centre and disaster recovery site audits;
 - 5.3.2.2 backup methodology and details of the Supplier's approach to data back-up and data verification;
 - 5.3.2.3 identification of all potential disaster scenarios;
 - 5.3.2.4 risk analysis;
 - 5.3.2.5 documentation of processes and procedures;
 - 5.3.2.6 hardware configuration details;
 - 5.3.2.7 network planning including details of all relevant data networks and communication links;
 - 5.3.2.8 invocation rules;
 - 5.3.2.9 Service recovery procedures; and
 - 5.3.2.10 steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;
- 5.3.3 any applicable Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Disaster Recovery Plan;
- 5.3.4 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- 5.3.5 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
- 5.3.6 testing and management arrangements.

6. **SERVICE CONTINUITY PLAN: PART D – INSOLVENCY CONTINUITY PLAN**

PRINCIPLES AND CONTENTS

- 6.1 The Insolvency Continuity Plan shall be designed by the Supplier to permit continuity of the business operations of Network Rail supported by the Services through continued provision of the Services following an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member with, as far as reasonably possible, minimal adverse impact.
- 6.2 The Insolvency Continuity Plan shall include the following:
- 6.2.1 communication strategies which are designed to minimise the potential disruption to the provision of the Services, including key contact details in respect of the supply chain and key contact details for operational and contract Supplier Personnel, Key Sub-contractor personnel and Supplier Group member personnel;
 - 6.2.2 identification, explanation, assessment and an impact analysis of risks in respect of dependencies between the Supplier, Key Sub-contractors and Supplier Group

members where failure of those dependencies could reasonably have an adverse impact on the Services;

- 6.2.3 plans to manage and mitigate identified risks;
- 6.2.4 details of the roles and responsibilities of the Supplier, Key Sub-contractors and/or Supplier Group members to minimise and mitigate the effects of an Insolvency Event of such persons on the Services;
- 6.2.5 details of the recovery team to be put in place by the Supplier (which may include representatives of the Supplier, Key Sub-contractors and Supplier Group members); and
- 6.2.6 sufficient detail to enable an appointed insolvency practitioner to invoke the plan in the event of an Insolvency Event of the Supplier.

7. **REVIEW AND AMENDMENT OF THE SERVICE CONTINUITY PLAN**

7.1 The Supplier shall review and update the Service Continuity Plan (and the risk analysis on which it is based):

- 7.1.1 on a regular basis and as a minimum once every [six (6) months / twelve (12) months];
- 7.1.2 within three calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to Paragraph 9;
- 7.1.3 within fourteen (14) days of a Financial Distress Event;
- 7.1.4 within thirty (30) days of a Corporate Change Event (unless the Relevant Authority (acting reasonably) agrees to a Corporate Change Event Grace Period, as set out in Paragraph 2.8.2.1, in which case that Corporate Change Event Grace Period will apply); and
- 7.1.5 where Network Rail requests any additional reviews (over and above those provided for in Paragraphs 7.1.1 to 7.1.4) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with Network Rail's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by Network Rail for Network Rail's approval. The costs of both Parties of any such additional reviews shall be met by Network Rail except that the Supplier shall not be entitled to charge Network Rail for any costs that it may incur above any estimate without Network Rail's prior written approval.

7.2 Each review of the Service Continuity Plan pursuant to Paragraph 7.1 shall be a review of the procedures and methodologies set out in the Service Continuity Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the Service Continuity Plan or the last review of the Service Continuity Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the Service Continuity Plan. The review shall be completed by the Supplier within the period required by the Service Continuity Plan or, if no such period is required, within such period as Network Rail shall reasonably require. The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the Service Continuity Plan, provide to Network Rail a report (a "Review Report") setting out:

- 7.2.1 the findings of the review;
- 7.2.2 any changes in the risk profile associated with the Services; and

- 7.2.3 the Supplier's proposals (the "Supplier's Proposals") for addressing any changes in the risk profile and its proposals for amendments to the Service Continuity Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.
- 7.3 Following receipt of the Review Report and the Supplier's Proposals, Network Rail shall:
- 7.3.1 review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
- 7.3.2 notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than twenty (20) Working Days after the date on which they are first delivered to Network Rail.
- 7.4 If Network Rail rejects the Review Report and/or the Supplier's Proposals:
- 7.4.1 Network Rail shall inform the Supplier in writing of its reasons for its rejection; and
- 7.4.2 the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of Network Rail's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to Network Rail for Network Rail's approval within twenty (20) Working Days of the date of Network Rail's notice of rejection. The provisions of Paragraph 7.3 and this Paragraph 7.4 shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 7.5 The Supplier shall as soon as is reasonably practicable after receiving Network Rail's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.
- 8. TESTING OF THE SERVICE CONTINUITY PLAN**
- 8.1 The Supplier shall test the Service Continuity Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to Paragraph 8.2, Network Rail may require the Supplier to conduct additional tests of some or all aspects of the Service Continuity Plan at any time where Network Rail considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Service Continuity Plan.
- 8.2 If Network Rail requires an additional test of the Service Continuity Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with Network Rail's requirements and the relevant provisions of the Service Continuity Plan. The Supplier's costs of the additional test shall be borne by Network Rail unless the Service Continuity Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 8.3 The Supplier shall undertake and manage testing of the Service Continuity Plan in full consultation with Network Rail and shall liaise with Network Rail in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of Network Rail in this regard. Each test shall be carried out under the supervision of Network Rail or its nominee.
- 8.4 The Supplier shall ensure that any use by it or any Sub-contractor of "live" data in such testing is first approved with Network Rail. Copies of live test data used in any such testing shall be

(if so required by Network Rail) destroyed or returned to Network Rail on completion of the test.

8.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to Network Rail a report setting out:

8.5.1 the outcome of the test;

8.5.2 any failures in the Service Continuity Plan (including the Service Continuity Plan's procedures) revealed by the test; and

8.5.3 the Supplier's proposals for remedying any such failures.

8.6 Following each test, the Supplier shall take all measures requested by Network Rail, (including requests for the re-testing of the Service Continuity Plan) to remedy any failures in the Service Continuity Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to Network Rail, by the date reasonably required by Network Rail and set out in such notice.

8.7 For the avoidance of doubt, the carrying out of a test of the Service Continuity Plan (including a test of the Service Continuity Plan's procedures) shall not relieve the Supplier of any of its obligations under this Agreement.

8.8 The Supplier shall also perform a test of the Service Continuity Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by Network Rail.

9. **INVOCATION OF THE SERVICE CONTINUITY PLAN**

9.1 In the event of a loss of any critical part of the Service or a Disaster, the Supplier shall immediately invoke the business continuity and disaster recovery provisions in the Service Continuity Plan, including any linked elements in other parts of the Service Continuity Plan, and shall inform Network Rail promptly of such invocation. In all other instances the Supplier shall invoke the business continuity and disaster recovery plan elements only with the prior consent of Network Rail.

9.2 The Insolvency Continuity Plan element of the Service Continuity Plans, including any linked elements in other parts of the Service Continuity Plan, shall be invoked by the Supplier:

9.2.1 where an Insolvency Event of a Key Sub-contractor and/or Supplier Group member (other than the Supplier) could reasonably be expected to adversely affect delivery of the Services; and/or

9.2.2 where there is an Insolvency Event of the Supplier and the insolvency arrangements enable the Supplier to invoke the plan;

PART B: CORPORATE RESOLUTION PLANNING**1. Service Status and Supplier Status**

1.1 This Agreement [insert 'is' or 'is not'] a Critical Service Contract.

[Guidance: A Critical Service Contract is a service contract which Network Rail has categorised as a Gold contract using the Cabinet Office Contract Tiering Tool available on the Knowledge Hub or which Network Rail in consultation with the Cabinet Office Markets and Suppliers Team if appropriate otherwise considers should be classed as a Critical Service Contract.]

1.2 The Supplier shall notify Network Rail and the Cabinet Office Markets and Suppliers Team (Resolution.planning@cabinetoffice.gov.uk) in writing within five (5) Working Days of the Effective Date and throughout the Term within one hundred and twenty (120) days after each Accounting Reference Date as to whether or not it is a Public Sector Dependent Supplier.

2. Provision of Corporate Resolution Planning Information (CRP Information)

2.1 Paragraphs 2 to 2.4 of this Part B shall apply if this Agreement has been specified as a Critical Service Contract under Paragraph 1.1 of this Part B or the Supplier is or becomes a Public Sector Dependent Supplier.

2.2 Subject to Paragraphs 2.6, 2.10 and 2.11 of this Part B:

2.2.1 where this Agreement is a Critical Service Contract, the Supplier shall provide the Relevant Authority or Relevant Authorities with CRP Information within sixty (60) days of the Effective Date; and

2.2.2 except where it has already been provided in accordance with Paragraph 2.2.1 of this Part B, where the Supplier is a Public Sector Dependent Supplier, it shall provide the Relevant Authority or Relevant Authorities with the CRP Information within sixty (60) days of the date of the Relevant Authority's or Relevant Authorities' request.

2.3 The Supplier shall ensure that the CRP Information provided pursuant to Paragraphs 2.2, 2.8 and 2.9 of this Part B:

2.3.1 is full, comprehensive, accurate and up to date;

2.3.2 is split into three parts:

2.3.2.1 Exposure Information (Contracts List);

2.3.2.2 Corporate Resolvability Assessment (Structural Review);

2.3.2.3 Financial Information and Commentary

2.3.2.4 and is structured and presented in accordance with the requirements and explanatory notes set out at the relevant Annex of the latest published versions of the Resolution Planning Guidance Notes published by the Cabinet Office Government Commercial Function and available at <https://www.gov.uk/government/publications/the-sourcing-and-consultancy-playbooks> and contains the level of detail required (adapted as necessary to the Supplier's circumstances);

2.3.2.5 incorporates any additional commentary, supporting documents and evidence which would reasonably be required by the Relevant

- Authority or Relevant Authorities to understand and consider the information for approval;
- 2.3.2.6 provides a clear description and explanation of the Supplier Group members that have agreements for goods, services or works provision in respect of UK Public Sector Business and/or CNI and the nature of those agreements; and
- 2.3.2.7 complies with the requirements set out at Annex 1 (Exposure Information (Contracts List)), Annex 1 (Corporate Resolvability Assessment (Structural Review)) and Annex 3 (Financial Information and Commentary) respectively.
- 2.4 Following receipt by the Relevant Authority or Relevant Authorities of the CRP Information pursuant to Paragraphs 2.2, 2.8 and 2.9 of this Part B, Network Rail shall procure that the Relevant Authority or Relevant Authorities discuss in good faith the contents of the CRP Information with the Supplier and no later than sixty (60) days after the date on which the CRP Information was delivered by the Supplier either provide an Assurance to the Supplier that Relevant Authority or Relevant Authorities approve the CRP Information or that Relevant Authority or Relevant Authorities reject the CRP Information.
- 2.5 If the Relevant Authority or Relevant Authorities reject the CRP Information:
- 2.5.1 Network Rail shall (and shall procure that the Cabinet Office Markets and Suppliers Team shall) inform the Supplier in writing of its reasons for its rejection; and
- 2.5.2 the Supplier shall revise the CRP Information, taking reasonable account of the Relevant Authority's or Relevant Authorities' comments, and shall re-submit the CRP Information to the Relevant Authority or Relevant Authorities for approval within thirty (30) days of the date of the Relevant Authority's or Relevant Authorities' rejection. The provisions of Paragraph 2.3 to 2.5 of this Part B shall apply again to any resubmitted CRP Information provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 2.6 Where the Supplier or a member of the Supplier Group has already provided CRP Information to a Department or the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely to the Cabinet Office Markets and Suppliers Team) and has received an Assurance of its CRP Information from that Department and the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely from the Cabinet Office Markets and Suppliers Team), then provided that the Assurance remains Valid on the date by which the CRP Information would otherwise be required, the Supplier shall not be required to provide the CRP Information under Paragraph 2.2 if it provides a copy of the Valid Assurance to the Relevant Authority or Relevant Authorities on or before the date on which the CRP Information would otherwise have been required.
- 2.7 An Assurance shall be deemed Valid for the purposes of Paragraph 2.6 of this Part B if:
- 2.7.1 the Assurance is within the validity period stated in the Assurance (or, if no validity period is stated, no more than twelve (12) months has elapsed since it was issued and no more than eighteen (18) months has elapsed since the Accounting Reference Date on which the CRP Information was based); and
- 2.7.2 no Corporate Change Events or Financial Distress Events (or events which would be deemed to be Corporate Change Events or Financial Distress Events if this Agreement had then been in force) have occurred since the date of issue of the Assurance.
- 2.8 If this Agreement is a Critical Service Contract, the Supplier shall provide an updated version of the CRP Information (or, in the case of Paragraph 2.8.3 of this Part B its initial CRP Information) to the Relevant Authority or Relevant Authorities:

- 2.8.1 within fourteen (14) days of the occurrence of a Financial Distress Event (along with any additional highly confidential information no longer exempted from disclosure under Paragraph 2.11 of this Part B) unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph 7.1 of Schedule 10 (Financial Distress) of the Framework Agreement;
- 2.8.2 within thirty (30) days of a Corporate Change Event unless:
- 2.8.2.1 the Supplier requests and the Relevant Authority (acting reasonably) agrees to a Corporate Change Event Grace Period, in the event of which the time period for the Supplier to comply with this Paragraph shall be extended as determined by the Relevant Authority (acting reasonably) but shall in any case be no longer than six months after the Corporate Change Event. During a Corporate Change Event Grace Period the Supplier shall regularly and fully engage with the Relevant Authority to enable it to understand the nature of the Corporate Change Event and the Relevant Authority shall reserve the right to terminate a Corporate Change Event Grace Period at any time if the Supplier fails to comply with this Paragraph; or
- 2.8.2.2 not required pursuant to Paragraph 2.10;
- 2.8.3 within thirty (30) days of the date that:
- 2.8.3.1 the credit rating(s) of each of the Supplier and its Parent Undertakings fail to meet any of the criteria specified in Paragraph 2.10; or
- 2.8.3.2 none of the credit rating agencies specified at Paragraph 2.10 hold a public credit rating for the Supplier or any of its Parent Undertakings; and
- 2.8.4 in any event, within six (6) months after each Accounting Reference Date or within fifteen (15) months of the date of the previous Assurance received from the Relevant Authority (whichever is the earlier), unless:
- 2.8.4.1 updated CRP Information has been provided under any of Paragraphs 2.8.1 2.8.2 or 2.8.3 since the most recent Accounting Reference Date (being no more than twelve (12) months previously) within the timescales that would ordinarily be required for the provision of that information under this Paragraph 2.8.4; or
- 2.8.4.2 unless not required pursuant to Paragraph 2.10.
- 2.9 Where the Supplier is a Public Sector Dependent Supplier and this Agreement is not a Critical Service Contract, then on the occurrence of any of the events specified in Paragraphs 2.8.1 to 2.8.4 of this Part B, the Supplier shall provide at the request of the Relevant Authority or Relevant Authorities and within the applicable timescales for each event as set out in Paragraph 2.8 (or such longer timescales as may be notified to the Supplier by Network Rail), the CRP Information to the Relevant Authority or Relevant Authorities.
- 2.10 Where the Supplier or a Parent Undertaking of the Supplier has a credit rating of either:
- 2.10.1 Aa3 or better from Moody's; or
- 2.10.2 AA- or better from Standard and Poor's; or
- 2.10.3 AA- or better from Fitch;

the Supplier will not be required to provide any CRP Information unless or until either (i) a Financial Distress Event occurs (unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph 7.1 7.1 of Schedule 10 (Financial Distress) of the Framework Agreement) or (ii) the Supplier and its Parent Undertakings cease to fulfil the criteria set out in this Paragraph 2.10, in which cases the Supplier shall provide the updated version of the CRP Information in accordance with Paragraph 2.8.

- 2.11 Subject to Paragraph 4, where the Supplier demonstrates to the reasonable satisfaction of the Relevant Authority or Relevant Authorities that a particular item of CRP Information is highly confidential, the Supplier may, having orally disclosed and discussed that information with the Relevant Authority or Relevant Authorities, redact or omit that information from the CRP Information provided that if a Financial Distress Event occurs, this exemption shall no longer apply and the Supplier shall promptly provide the relevant information to the Relevant Authority or Relevant Authorities to the extent required under Paragraph 2.8.

3. Termination Rights

- 3.1 Network Rail shall be entitled to terminate this Agreement under Clause 28.1.2 (Termination by Network Rail) if the Supplier is required to provide CRP Information under Paragraph 2 of this Part B and either:
- 3.1.1 the Supplier fails to provide the CRP Information within four (4) months of the Effective Date if this is a Critical Service Contract or otherwise within four (4) months of the Relevant Authority's or Relevant Authorities' request; or
- 3.1.2 the Supplier fails to obtain an Assurance from the Relevant Authority or Relevant Authorities within four (4) months of the date that it was first required to provide the CRP Information under this Agreement.

4. Confidentiality and usage of CRP Information

- 4.1 Network Rail agrees to keep the CRP Information confidential and use it only to understand the implications of an Insolvency Event of the Supplier and/or Supplier Group members on its UK Public Sector Business and/or services in respect of CNI and to enable contingency planning to maintain service continuity for end users and protect CNI in such eventuality.
- 4.2 Where the Relevant Authority is the Cabinet Office Markets and Suppliers Team, at the Supplier's request, Network Rail shall use reasonable endeavours to procure that the Cabinet Office enters into a confidentiality and usage agreement with the Supplier containing terms no less stringent than those placed on Network Rail under paragraph 4.1 of this Part B and Clause 16(Confidentiality) of the Framework Agreement.
- 4.3 The Supplier shall use reasonable endeavours to obtain consent from any third party which has restricted the disclosure of the CRP Information to enable disclosure of that information to the Relevant Authority or Relevant Authorities pursuant to Paragraph 2 of this Part B subject, where necessary, to the Relevant Authority or Relevant Authorities entering into an appropriate confidentiality agreement in the form required by the third party.
- 4.4 Where the Supplier is unable to procure consent pursuant to Paragraph 4.3 of this Part B, the Supplier shall use all reasonable endeavours to disclose the CRP Information to the fullest extent possible by limiting the amount of information it withholds including by:
- 4.4.1 redacting only those parts of the information which are subject to such obligations of confidentiality
- 4.4.2 providing the information in a form that does not breach its obligations of confidentiality including (where possible) by:
- 4.4.2.1 summarising the information;

- 4.4.2.2 grouping the information;
- 4.4.2.3 anonymising the information; and
- 4.4.2.4 presenting the information in general terms

- 4.5 The Supplier shall provide the Relevant Authority or Relevant Authorities with contact details of any third party which has not provided consent to disclose CRP Information where that third party is also a public sector body and where the Supplier is legally permitted to do so.

ANNEX 1: EXPOSURE INFORMATION (CONTRACTS LIST)

1. The Supplier shall:
 - 1.1 provide details of all agreements held by members of the Supplier Group where those agreements are for goods, services or works provision and:
 - 1.1.1 are with any UK public sector bodies including: central Government departments and their arms-length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police fire and rescue, education bodies and the devolved administrations;
 - 1.1.2 are with any private sector entities where the end recipient of the service, goods or works provision is any of the bodies set out in paragraph 1.1.1 of this Annex 1 and where the member of the Supplier Group is acting as a key sub-contractor under the agreement with the end recipient; or
 - 1.1.3 involve or could reasonably be considered to involve CNI;
 - 1.2 provide the Relevant Authority with a copy of the latest version of each underlying contract worth more than £5m per contract year and their related key sub-contracts, which shall be included as embedded documents within the CRP Information or via a directly accessible link.

ANNEX 2: CORPORATE RESOLVABILITY ASSESSMENT (STRUCTURAL REVIEW)

1. The Supplier shall:
 - 1.1 provide sufficient information to allow the Relevant Authority to understand the implications on the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Annex 1 if the Supplier or another member of the Supplier Group is subject to an Insolvency Event.
 - 1.2 ensure that the information is presented so as to provide a simple, effective and easily understood overview of the Supplier Group; and
 - 1.3 provide full details of the importance of each member of the Supplier Group to the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Annex 1 and the dependencies between each.

ANNEX 3: FINANCIAL INFORMATION AND COMMENTARY

1. The Supplier shall:
 - 1.1 provide sufficient financial information for the Supplier Group level, contracting operating entities level, and shared services entities' level to allow the Relevant Authority to understand the current financial interconnectedness of the Supplier Group and the current performance of the Supplier as a standalone entity; and
 - 1.2 ensure that the information is presented in a simple, effective and easily understood manner.
2. For the avoidance of doubt the financial information to be provided pursuant to Paragraph 1 of this Annex 3 should be based on the most recent audited accounts for the relevant entities (or interim accounts where available) updated for any material changes since the Accounting Reference Date provided that such accounts are available in a reasonable timeframe to allow the Supplier to comply with its obligations under this Schedule 15 (Service Continuity Plan and Corporate Resolution Planning). If such accounts are not available in that timeframe, financial information should be based on unpublished unaudited accounts or management accounts (disclosure of which to the Cabinet Office Markets and Suppliers Team remains protected by confidentiality).

CALL-OFF TERMS**SCHEDULE 16****STAFF TRANSFER**

[Guidance: Legal advice may be required on the use of this Schedule 16 and also whether New Fair Deal pension protection and whether any pension provisions are required (the CCS model services contract has a Part D on pensions which has not been included below).

Network Rail will need to ensure that appropriate provisions are included to deal with staff transfer on both entry and exit.

There is an assumption that there will be no transfer of Network Rail staff on entry, so Part A from the CCS model services contract has not been included.

If there is a staff transfer from former/incumbent supplier on entry, Part B shall apply and Part C should be deleted.

If there is no staff transfer at the Call-Off Effective Date then Part C shall apply and Part B should be deleted.

If the position on staff transfers is not known at the bid stage, include Parts B and C at the bid stage and then update before signing to specify whether Part B or C applies to the Contract, deleting the other. Network Rail should note that which parts of this schedule are applicable is likely to be material to Suppliers for bid development and pricing and therefore clarity on this early on in the procurement process is likely to assist Suppliers in preparing bids.

Part D (dealing with staff transfer on exit) shall apply to every Contract.]

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

“Former Supplier”	a supplier supplying services to Network Rail before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
“Notified Sub-contractor”	a Sub-contractor identified in the Call-Off Form to whom Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
“Replacement Sub-contractor”	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such subcontractor);
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;
“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
“Service Transfer”	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or

	any Subcontractor to a Replacement Supplier or a Replacement Sub-contractor;
“Service Transfer Date”	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
“Staffing Information”	in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, all information required in Annex 2 in the format specified and with the identities of Data Subjects anonymised where possible. Network Rail may acting reasonably make changes to the format or information requested in Annex 2 from time to time;
“Supplier’s Final Supplier Personnel List”	a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
“Supplier’s Provisional Supplier Personnel List”	a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
“Transferring Former Supplier Employees”	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date;
“Transferring Supplier Employees”	those employees of the Supplier and/or the Supplier’s Subcontractors to whom the Employment Regulations will apply on the Service Transfer Date.

2. INTERPRETATION

Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Subcontractors shall comply with such obligation and provide such indemnity, undertaking or warranty to Network Rail, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be.

PART A

Not Used

PART B**Transferring Former Supplier Employees at commencement of Services****1. RELEVANT TRANSFERS**

- 1.1 Network Rail and the Supplier agree that:
- 1.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
 - 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms dis-applied through the operation of Regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-contractor and each such Transferring Former Supplier Employee.
- 1.2 Network Rail shall use reasonable endeavours to procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date and the Supplier shall make, and Network Rail shall use reasonable endeavours to procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

2. FORMER SUPPLIER INDEMNITIES

- 2.1 Subject to paragraph 2.2, Network Rail shall use reasonable endeavours to procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:
- 2.1.1 any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;
 - 2.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
 - 2.1.2.1 any collective agreement applicable to the Transferring Former Supplier Employees; and/or
 - 2.1.2.2 any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
 - 2.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - 2.1.3.1 in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - 2.1.3.2 in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the

Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;

- 2.1.4 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
 - 2.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Subcontractor as appropriate may be liable by virtue of this Agreement and/or the Employment Regulations; and
 - 2.1.6 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under Regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with Regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Subcontractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Subcontractor to occur in the period from (and including) the Relevant Transfer Date; or
 - 2.2.2 arising from the failure by the Supplier and/or any Sub-contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by Network Rail as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by Network Rail as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations then:
- 2.3.1 the Supplier shall, or shall procure that the Notified Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to Network Rail and, where required by Network Rail, to the Former Supplier; and
 - 2.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier and/or the Notified Sub-contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 2.4 If an offer referred to in paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or Network Rail, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the fifteen (15) Working Day period specified in paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;

2.5.2 such offer has been made but not accepted; or

2.5.3 the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, Network Rail shall use reasonable endeavours to procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in paragraph 2.6:

2.7.1 shall not apply to:

2.7.1.1 any claim for:

(a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or

2.7.1.2 any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and

2.7.2 shall apply only where the notification referred to in paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to Network Rail and, if applicable, the Former Supplier, within six (6) months of the Call-Off Effective Date.

2.8 If any such person as is described in paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

3. SUPPLIER INDEMNITIES AND OBLIGATIONS

3.1 Subject to paragraph 3.2, the Supplier shall indemnify Network Rail and/or the Former Supplier against any Employee Liabilities arising from or as a result of:

3.1.1 any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Former Supplier Employee or any employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;

- 3.1.2 the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:
 - 3.1.2.1 any collective agreement applicable to the Transferring Former Supplier Employee; and/or
 - 3.1.2.2 any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
- 3.1.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 3.1.4 any proposal by the Supplier or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Subcontractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5 any statement communicated to or action undertaken by the Supplier or a Sub-contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with Network Rail and/or the Former Supplier in writing;
- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - 3.1.6.1 in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - 3.1.6.2 in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Subcontractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;
- 3.1.8 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to obligations under

Regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under Regulation 13 of the Employment Regulations; and

- 3.1.9 a failure by the Supplier or any Sub-contractor to comply with its obligations under paragraph 2.8 above.
- 3.2 The indemnities in paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with Regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

4. **INFORMATION**

The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to Network Rail and/or at Network Rail's direction, the Former Supplier, in writing such information as is necessary to enable Network Rail and/or the Former Supplier to carry out their respective duties under Regulation 13 of the Employment Regulations. Network Rail shall use reasonable endeavours to procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under Regulation 13 of the Employment Regulations.

5. **PROCUREMENT OBLIGATIONS**

Notwithstanding any other provisions of this Part B, where in this Part B Network Rail accepts an obligation to use reasonable endeavours to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that Network Rail's contract with the Former Supplier contains a contractual right in that regard which Network Rail may enforce. The obligation to use reasonable endeavours to procure that a Former Supplier does or does not do something shall not apply where Network Rail has no such contractual right.

PART C

No transfer of employees at commencement of Services

1. PROCEDURE IN THE EVENT OF TRANSFER

1.1 Network Rail and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of Network Rail and/or any Former Supplier.

1.2 If any employee of Network Rail and/or a Former Supplier claims, or it is determined in relation to any employee of Network Rail and/or a Former Supplier, that his/her contract of employment has been transferred from Network Rail and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations then:

1.2.1 the Supplier shall, and shall procure that the relevant Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to Network Rail and, where required by Network Rail, give notice to the Former Supplier; and

1.2.2 Network Rail and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier or the Sub-contractor (as appropriate) or take such other reasonable steps as Network Rail or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

1.3 If an offer referred to in paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by Network Rail and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

1.4 If by the end of the fifteen (15) Working Day period specified in paragraph 1.2.2:

1.4.1 no such offer of employment has been made;

1.4.2 such offer has been made but not accepted; or

1.4.3 the situation has not otherwise been resolved,

the Supplier and/or the Sub-contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2. INDEMNITIES

2.1 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to paragraph 2.4, Network Rail shall:

2.1.1 indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of Network Rail referred to in paragraph 1.2 made pursuant to the provisions of paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

2.1.2 use reasonable endeavours to procure that the Former Supplier indemnifies the Supplier and/or any relevant Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier made pursuant to the provisions of paragraph 1.4 provided that the Supplier takes,

or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

- 2.2 If any such person as is described in paragraph 1.2 is neither re employed by Network Rail and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the fifteen (15) Working Day period referred to in paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify Network Rail and any Former Supplier, and shall procure that the Subcontractor shall indemnify Network Rail and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.
- 2.4 The indemnities in paragraph 2.1:
- 2.4.1 shall not apply to:
- 2.4.1.1 any claim for:
- (a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
- 2.4.1.2 any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure; and
- 2.4.2 shall apply only where the notification referred to in paragraph 1.2.1 is made by the Supplier and/or any Sub-contractor to Network Rail and, if applicable, Former Supplier within six (6) months of the Call-Off Effective Date.

3. **PROCUREMENT OBLIGATIONS**

Where in this Part C Network Rail accepts an obligation to use reasonable endeavours to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that Network Rail's contract with the Former Supplier contains a contractual right in that regard which Network Rail may enforce. The obligation to use reasonable endeavours to procure that a Former Supplier does or does not do something shall not apply where Network Rail has no such contractual right.

PART D**EMPLOYMENT EXIT PROVISIONS****1. PRE-SERVICE TRANSFER OBLIGATIONS**

1.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:

- 1.1.1 receipt of a notification from Network Rail of a Service Transfer or intended Service Transfer;
- 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Agreement;
- 1.1.3 the date which is twelve (12) months before the end of the Term; and
- 1.1.4 receipt of a written request of Network Rail at any time (provided that Network Rail shall only be entitled to make one such request itself in any six (6) month period),

it shall provide in a suitably anonymised format so as to comply with Data Protection Legislation, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by Network Rail.

1.2 At least twenty (20) Working Days prior to the Service Transfer Date, the Supplier shall provide to Network Rail or at the direction of Network Rail to any Replacement Supplier and/or any Replacement Sub-contractor:

- 1.2.1 the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
- 1.2.2 the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).

1.3 Network Rail shall be permitted to use and disclose information provided by the Supplier under paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor (including those parties who are invited to take part in a tender exercise for the provision of the Services). Where directed by Network Rail, the Supplier shall provide the information referred to in paragraphs 1.1 and 1.2 direct to such prospective Replacement Suppliers, Replacement Sub-contractors and tenderers as request the same following such direction by Network Rail, and the Supplier shall provide a contact name and details for such requests to be received. For the purposes of the restriction referred to paragraph 1.1.4, any one request by Network Rail and each request by a prospective Replacement Supplier, Replacement Sub-contractor or tenderer related to the same procurement exercise shall be treated as a single request.

1.4 The Supplier warrants, for the benefit of Network Rail, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

1.5 From the date of the earliest event referred to in paragraph, 1.1.1 and 1.1.3, the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of Network Rail (not to be unreasonably withheld or delayed):

- 1.5.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade,

skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

- 1.5.2 make, promise, propose or permit any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);
- 1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- 1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, Network Rail or, at the direction of Network Rail, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or relevant Sub-contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

- 1.6 During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to Network Rail any information Network Rail may reasonably require relating to the manner in which the Services are organised, which shall include:
 - 1.6.1 the numbers of employees engaged in providing the Services;
 - 1.6.2 the percentage of time spent by each employee engaged in providing the Services; and
 - 1.6.3 a description of the nature of the work undertaken by each employee by location.
- 1.7 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to Network Rail, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Subcontractor shall provide, to Network Rail or, at the direction of Network Rail, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
 - 1.7.1 the most recent month's copy pay slip data;
 - 1.7.2 details of cumulative pay for tax and pension purposes;
 - 1.7.3 details of cumulative tax paid;
 - 1.7.4 tax code;
 - 1.7.5 details of any voluntary deductions from pay; and

1.7.6 bank/building society account details for payroll purposes.

2. **EMPLOYMENT REGULATIONS EXIT PROVISIONS**

- 2.1 Network Rail and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Subcontractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations will apply. Network Rail and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms dis-applied through operation of Regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Subcontractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.
- 2.3 Subject to paragraph 2.4, the Supplier shall indemnify Network Rail and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:
- 2.3.1 any act or omission of the Supplier or any Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;
 - 2.3.2 the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:
 - 2.3.2.1 any collective agreement applicable to the Transferring Supplier Employees; and/or
 - 2.3.2.2 any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
 - 2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
 - 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - 2.3.4.1 in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory

- authority relates to financial obligations arising on and before the Service Transfer Date; and
- 2.3.4.2 in relation to any employee who is not identified in the Supplier's Final Supplier Personnel list and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to Network Rail and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- 2.3.5 a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
- 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List for whom it is alleged Network Rail and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations; and
- 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under Regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by Network Rail and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
- 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Subcontractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not identified in the Supplier's Final Supplier Personnel List claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel List, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations, then:
- 2.5.1 Network Rail shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and

- 2.5.2 the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, Network Rail shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the fifteen (15) Working Day period specified in paragraph 2.5.2 has elapsed:
- 2.7.1 no such offer of employment has been made; or
- 2.7.2 such offer has been made but not accepted; or
- 2.7.3 the situation has not otherwise been resolved,
- Network Rail shall advise the Replacement Supplier and/or Replacement Subcontractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in paragraph 2.8:
- 2.9.1 shall not apply to:
- 2.9.1.1 any claim for:
- (a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor; or
- 2.9.1.2 any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
- 2.9.2 shall apply only where the notification referred to in paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within six (6) months of the Service Transfer Date.
- 2.10 If any such person as is described in paragraph 2.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.

- 2.11 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel List before and on the Service Transfer Date and any necessary apportionments in respect of any periodic payments shall be made between:
- 2.11.1 the Supplier and/or any Sub-contractor; and
- 2.11.2 the Replacement Supplier and/or the Replacement Sub-contractor.
- 2.12 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to Network Rail and any Replacement Supplier and/or Replacement Subcontractor, in writing such information as is necessary to enable Network Rail, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under Regulation 13 of the Employment Regulations. Network Rail shall procure that the Replacement Supplier and/or Replacement Subcontractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to paragraph 2.14, Network Rail shall use reasonable endeavours to procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
- 2.13.1 any act or omission of the Replacement Supplier and/or Replacement Subcontractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
- 2.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
- 2.13.2.1 any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
- 2.13.2.2 any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Subcontractor is contractually bound to honour;
- 2.13.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
- 2.13.4 any proposal by the Replacement Supplier and/or Replacement Subcontractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;

- 2.13.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- 2.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- 2.13.6.1 in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
- 2.13.6.2 in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- 2.13.7 a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and
- 2.13.8 any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-contractor in relation to obligations under Regulation 13 of the Employment Regulations.
- 2.14 The indemnities in paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

ANNEX 2**Staffing Information****EMPLOYEE INFORMATION (ANONYMISED)**

Name of Transferor:

Number of Employees in-scope to transfer:

Completion notes

1. *If you have any Key Sub-contractors, please complete all the above information for any staff employed by such Key Sub-contractor(s) in a separate spreadsheet.*
2. *This spreadsheet is used to collect information from the current employer (transferor) about employees performing the relevant services to help plan for a potential TUPE transfer. Some or all of this information may be disclosed to bidders as part of a procurement process. The information should not reveal the employees' identities.*
3. *If the information cannot be included on this form, attach the additional information, such as relevant policies, and cross reference to the item number and employee number where appropriate.*

EMPLOYEE DETAILS & KEY TERMS							
Details	Job Title	Grade / band	Work Location	Age	Employment status (for example, employee, fixed-term employee, self-employed, agency worker)?	Continuous service date (dd/mm/yy)	Date employment started with existing employer
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							

EMPLOYEE DETAILS & KEY TERMS

Details	Contract end date (if fixed term contract or temporary contract)	Contractual notice period	Contractual weekly hours	Regular overtime hours per week	Mobility or flexibility clause in contract?	Previously TUPE transferred to organisation? If so, please specify (i) date of transfer, (ii) name of transferor, and (iii) whether ex public sector	Any collective agreements?
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							

	ASSIGNMENT	CONTRACTUAL PAY AND BENEFITS						
Details	% of working time dedicated to the provision of services under the contract	Salary (or hourly rate of pay)	Payment interval (weekly / fortnightly / monthly)	Bonus payment for previous 12 months (please specify whether contractual or discretionary entitlement)	Pay review method	Frequency of pay reviews	Agreed pay increases	Next pay review date
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								
Emp No								

CONTRACTUAL PAY AND BENEFITS								
Details	Any existing or future commitment to training that has a time-off or financial implication	Car allowance (£ per year)	Lease or company car details	Any other allowances paid (e.g. shift allowance, standby allowance, travel allowance)	Private medical insurance (please specify whether single or family cover)	Life assurance (xSalary)	Long Term Disability / PHI (% of Salary)	Any other benefits in kind
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								
Emp No								

CONTRACTUAL PAY AND BENEFITS						
Details	Annual leave entitlement (excluding bank holidays)	Bank holiday entitlement	Method of calculating holiday pay (i.e. based on fixed salary only or incl. entitlements to variable remuneration such as bonuses, allowances, commission or overtime pay?)	Maternity or paternity or shared parental leave entitlement and pay	Sick leave entitlement and pay	Redundancy pay entitlement (statutory / enhanced / contractual / discretionary)
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

PENSIONS						
Details	Employee pension contribution rate	Employer pension contribution rate	Please provide the name of the pension scheme and a link to the pension scheme website	Is the scheme an occupational pension scheme as defined in the Pension Schemes Act 1993?	If the scheme is not an occupational pension scheme, what type of scheme is it? E.g. personal pension scheme?	Type of pension provision e.g. defined benefit or a defined contribution scheme or an auto enrolment master trust?
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

OTHER			
Details	Security Check Level	Security Clearance Expiry date	Additional info or comments
Emp No 1			
Emp No 2			
Emp No			
Emp No			
Emp No			
Emp No			
Emp No			

CALL-OFF TERMS

SCHEDULE 17

SOFTWARE

ANNEX 1

FORM OF CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [date] 20

BETWEEN:

- (1) [insert name] of [insert address] (the “Sub-licensee”); and
- (2) [insert name] of [insert address] (the “Supplier” and together with the Supplier, the “Parties”).

WHEREAS:

- (A) [insert name] (“Network Rail”) and the Supplier are party to a contract dated [insert date] (the “Contract”) for the provision by the Supplier of [insert brief description of services] to Network Rail.
- (B) Network Rail wishes to grant a sub-licence to the Sub-licensee in respect of certain software and intellectual property rights licensed to Network Rail pursuant to the Contract (the “Sub-licence”).
- (C) It is a requirement of the Contract that, before Network Rail grants such sub licence to the Sub-licensee, the Sub-licensee execute a confidentiality agreement in favour of the Supplier in or substantially in the form of this Agreement to protect the Confidential Information of the Supplier.

IT IS AGREED as follows:

1. Interpretation

1.1 In this Agreement, unless the context otherwise requires:

- “Confidential Information”
 - (a) information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by Network Rail to the Sub-licensee pursuant to or in connection with the Sub-licence that relates to:
 - (i) the Supplier; or
 - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, knowhow and/or personnel of the Supplier;
 - (b) the source code and the object code of the software sub-licensed to the Sub-licensee pursuant to the Sub-licence together with build information, relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test

scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation supplied by the Supplier to Network Rail pursuant to or in connection with the Sub-licence;

(c) other Information provided by Network Rail pursuant to this Agreement to the Sub- licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub- licensee's attention or into the Sub- licensee's possession in connection with the Sub- licence; and

(d) information derived from any of the above,

but not including any Information that:

(i) was in the possession of the Sub- licensee without obligation of confidentiality prior to its disclosure by Network Rail;

(ii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or

(iii) was independently developed without access to the Information;

“Information”

all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and

“Sub-licence”

has the meaning given to that expression in recital (B) to this Agreement.

1.2 In this Agreement:

1.2.1 a reference to any gender includes a reference to other genders;

1.2.2 the singular includes the plural and vice versa;

1.2.3 the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;

1.2.4 references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;

1.2.5 headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and

1.2.6 references to clauses are to clauses of this Agreement.

2. Confidentiality Obligations

- 2.1 In consideration of Network Rail entering into the Sub-licence, the Sub-licensee shall:
- 2.1.1 treat all Confidential Information as secret and confidential;
 - 2.1.2 have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
 - 2.1.3 not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or except as expressly set out in this Agreement;
 - 2.1.4 not transfer any of the Confidential Information outside the United Kingdom;
 - 2.1.5 not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub-licence;
 - 2.1.6 immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
 - 2.1.7 upon the expiry or termination of the Sub-licence:
 - 2.1.7.1 destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
 - 2.1.7.2 ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Sub-licensee) from any computer, word processor, voicemail system or any other device; and
 - 2.1.7.3 make no further use of any Confidential Information.

3. Permitted Disclosures

- 3.1 The Sub-licensee may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:
- 3.1.1 reasonably need to receive the Confidential Information in connection with the Sub-licence; and
 - 3.1.2 have been informed by the Sub-licensee of the confidential nature of the Confidential Information; and
 - 3.1.3 have agreed to terms similar to those in this Agreement.
- 3.2 The Sub-licensee shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Sub-licensee.
- 3.3 Before making a disclosure pursuant to Clause 3.2, the Sub-licensee shall, if the circumstances permit:
- 3.3.1 notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and

3.3.2 ask the court or other public body to treat the Confidential Information as confidential.

4. **General**

4.1 The Sub-licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.

4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:

4.2.1 to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;

4.2.2 to require the Supplier to disclose, continue disclosing or update any Confidential Information; or

4.2.3 as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub-licence.

4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Sub-licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Sub-licensee of any of the provisions of this Agreement. Accordingly, the Sub-licensee acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.

4.5 The maximum liability of the Sub-licensee to the Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).

4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.

4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.

4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

5. **Notices**

5.1 Any notice to be given under this Agreement (each a "**Notice**") shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.

5.2 Any Notice:

5.2.1 if to be given to the Supplier shall be sent to:

[Address]

Attention: [Contact name and/or position, e.g. "The Finance Director"]

5.2.2 if to be given to the Sub-licensee shall be sent to:

[Name of Organisation]

[Address]

Attention: []

6. **Governing law**

6.1 This Agreement shall be governed by, and construed in accordance with, the laws of England and Wales and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with the laws of England and Wales.

6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the courts of England and Wales in respect of any claim or dispute arising out of or in connection with this Agreement.

IN WITNESS of the above this Agreement has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

For and on behalf of [name of Supplier]

Signature:

Date:

Name:

Position:

For and on behalf of [name of Sub-licensee]

Signature:

Date:

Name:

Position:

CALL-OFF TERMS

SCHEDULE 18

CHANGE CONTROL PROCEDURE

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

“Change Request”	a written request for a Contract Change which shall be substantially in the form of Annex 1 of Schedule 18 (Change Control Procedure);
“Change Communication”	any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to of Schedule 18 (Change Control Procedure);
“Fast-track Change”	any Contract Change which the Parties agree to expedite in accordance with paragraph 8 of Schedule 18 (Change Control Procedure);
“Impact Assessment”	an assessment of a Change Request in accordance with paragraph 5 of Schedule 18 (Change Control Procedure);
“Impact Assessment Estimate”	has the meaning given in paragraph 4.3 of Schedule 18 (Change Control Procedure);
“Network Rail Change Manager”	the person, that holds the ‘Authority to Contract’ on behalf of Network Rail or a more senior representative within their direct reporting line. For the avoidance of doubt, this is not the customer from Network Rail support services or project development;
“Receiving Party”	the Party which receives a proposed Contract Change;
“Supplier Change Manager”	the person appointed to that position by the Supplier from time to time and notified in writing to Network Rail or, if no person is notified, the Supplier Representative.

2. GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

- 2.1 This Schedule sets out the procedure for dealing with Changes.
- 2.2 Operational Changes shall be processed in accordance with paragraph 9. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.
- 2.3 The Parties shall deal with Contract Change as follows:
- 2.3.1 either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with paragraph 4;
- 2.3.2 unless this Agreement otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance with paragraph 5 before the Contract Change can be either approved or implemented;

- 2.3.3 Network Rail shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in paragraph 6;
- 2.3.4 the Supplier shall have the right to reject a Change Request solely in the manner set out in paragraph 7;
- 2.3.5 save as otherwise provided in this Agreement, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by Network Rail in accordance with paragraph 6.2; and
- 2.3.6 a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with paragraph 8.
- 2.4 To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties shall follow the procedures set out in Schedule 8 (Testing Procedures), and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify Milestones and/or a Key Milestone and Milestone Date(s) in respect of such Contract Change for the purposes of such procedures.
- 2.5 Until a Change Authorisation Note has been signed and issued by Network Rail in accordance with paragraph 6.2, then:
- 2.5.1 unless Network Rail expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Agreement as if the proposed Contract Change did not apply; and
- 2.5.2 any discussions, negotiations or other communications which may take place between Network Rail and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Agreement.
- 2.6 The Supplier shall:
- 2.6.1 within ten (10) Working Days of Network Rail's signature and issue of a Change Authorisation Note, deliver to Network Rail a copy of this Agreement updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
- 2.6.2 thereafter provide to Network Rail such further copies of the updated Agreement as Network Rail may from time to time request.
- 2.7 Without prejudice to paragraph 2.3, in accordance with Schedule 7 (Governance) of the Framework Agreement, the Parties may escalate any assessment of the potential impact of a Change Request, or whether to approve or reject such Change Request in accordance with this Schedule, to:
- 2.7.1 the Programme and Project Delivery Review (as defined in Schedule 7 (Governance) of the Framework Agreement) in respect of any Change Request; and/or
- 2.7.2 the Strategic Account Review (as defined in Schedule 7 (Governance) of the Framework Agreement) in respect of any Change Requests which may have a significant impact on the Services.
3. **COSTS**
- 3.1 Subject to paragraph 3.3:

- 3.1.1 the costs of preparing each Change Request shall be borne by the Party making the Change Request; and
 - 3.1.2 the costs incurred by the Supplier in undertaking an Impact Assessment shall be borne by the Supplier.
- 3.2 The cost of any Contract Change shall be calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in Schedule 4 (Charges and Invoicing) of the Framework Agreement and Schedule 9 (Charges and Invoicing) of this Agreement. The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.
- 3.3 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Supplier shall be paid for by the Supplier.

4. **CHANGE REQUEST**

- 4.1 Either Party may issue a Change Request to the other Party at any time during the Term. A Change Request shall be substantially in the form of Annex 1 and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.
- 4.2 If the Supplier issues the Change Request, then it shall also provide an Impact Assessment to Network Rail as soon as is reasonably practicable but in any event within ten (10) Working Days of the date of issuing the Change Request.
- 4.3 If Network Rail issues the Change Request, then the Supplier shall provide as soon as reasonably practical and in any event within ten (10) Working Days of the date of receiving the Change Request an estimate ("**Impact Assessment Estimate**") of the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by Network Rail within ten (10) Working Days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by Network Rail.
- 4.4 If Network Rail accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment to Network Rail as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to Network Rail and provided that sufficient information is received by Network Rail to fully understand:
- 4.4.1 the nature of the request for clarification; and
 - 4.4.2 the reasonable justification for the request;

the time period to complete the Impact Assessment shall be extended by the time taken by Network Rail to provide that clarification. Network Rail shall respond to the request for clarification as soon as is reasonably practicable.

5. **IMPACT ASSESSMENT**

- 5.1 Each Impact Assessment shall be completed in good faith and shall include:
- 5.1.1 details of the proposed Contract Change including the reason for the Contract Change; and

- 5.1.2 details of the impact of the proposed Contract Change on the Services, the Optional Services (if any) and the Supplier's ability to meet its other obligations under this Agreement;
- 5.1.3 any variation to the terms of this Agreement that will be required as a result of that impact, including changes to:
 - 5.1.3.1 the Services Description, the Performance Indicators and/or the Target Performance Levels;
 - 5.1.3.2 the format of Network Rail Data, as set out in the Services Description;
 - 5.1.3.3 the Milestones, Implementation Plan and any other timetable previously agreed by the Parties;
 - 5.1.3.4 other services provided by third party contractors to Network Rail, including any changes required by the proposed Contract Change to Network Rail's IT infrastructure;
- 5.1.4 details of the cost of implementing the proposed Contract Change;
- 5.1.5 details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
- 5.1.6 a timetable for the implementation, together with any proposals for the testing of the Contract Change;
- 5.1.7 details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and
- 5.1.8 such other information as Network Rail may reasonably request in (or in response to) the Change Request.
- 5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to clause 18 (Protection of Personal Data) of the Framework Agreement.
- 5.3 Subject to the provisions of paragraph 5.4, Network Rail shall review the Impact Assessment and respond to the Supplier in accordance with paragraph 6 within fifteen (15) Working Days of receiving the Impact Assessment.
- 5.4 If Network Rail is the Receiving Party and Network Rail reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within five (5) Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to Network Rail within ten (10) Working Days of receiving such notification. At Network Rail's discretion, the Parties may repeat the process described in this paragraph 5.4 until Network Rail is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.
- 5.5 The calculation of costs for the purposes of Paragraphs 5.1.4 and 5.1.5 shall:
 - 5.5.1 be based on the Financial Model;
 - 5.5.2 facilitate the Financial Transparency Objectives;

- 5.5.3 include estimated volumes of each type of resource to be employed and the applicable rate card;
- 5.5.4 include full disclosure of any assumptions underlying such Impact Assessment;
- 5.5.5 include evidence of the cost of any assets required for the Change; and
- 5.5.6 include details of any new Sub-contracts necessary to accomplish the Change.

6. NETWORK RAIL'S RIGHT OF APPROVAL

- 6.1 Within fifteen (15) Working Days of receiving the Impact Assessment from the Supplier or within ten (10) Working Days of receiving the further information that it may request pursuant to paragraph 5.4 or a suitable timeframe agreed by both Parties, Network Rail shall evaluate the Change Request and the Impact Assessment and shall do one of the following:
 - 6.1.1 approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in paragraph 6.2;
 - 6.1.2 in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. Network Rail shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If Network Rail does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or
 - 6.1.3 in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within five (5) Working Days of such request. Subject to paragraph 5.4, on receiving the modified Change Request and/or Impact Assessment, Network Rail shall approve or reject the proposed Contract Change within ten (10) Working Days.
- 6.2 If Network Rail approves the proposed Contract Change pursuant to paragraph 6.1 and it has not been rejected by the Supplier in accordance with paragraph 7, then it shall inform the Supplier and the Supplier shall prepare two (2) copies of a Change Authorisation Note which it shall sign and deliver to Network Rail for its signature. Following receipt by Network Rail of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. On Network Rail's signature the Change Authorisation Note shall constitute (or, where Network Rail has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Agreement.
- 6.3 If Network Rail does not sign the Change Authorisation Note within ten (10) Working Days, then the Supplier shall have the right to notify Network Rail and if Network Rail does not sign the Change Authorisation Note within five (5) Working Days of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

7. SUPPLIER'S RIGHT OF APPROVAL

Following an Impact Assessment, if:

- 7.1 the Supplier reasonably believes that any proposed Contract Change which is requested by Network Rail would:
 - 7.1.1 materially and adversely affect the risks to the health and safety of any person; and/or
 - 7.1.2 require the Services to be performed in a way that infringes any Law; and/or

7.2 the Supplier demonstrates to Network Rail's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and neither the Supplier Solution nor the Services Description state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change, then the Supplier shall be entitled to reject the proposed Contract Change and shall notify Network Rail of its reasons for doing so within five (5) Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to paragraph 4.3.

8. **FAST-TRACK CHANGES**

8.1 The Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above.

8.2 If:

8.2.1 the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed four (4) in any twelve (12) month period; and

8.2.2 both Parties agree the value of the proposed Contract Change over the remaining Term and any period for which Termination Services may be required does not exceed £100,000 and the proposed Contract Change is not significant (as determined by Network Rail acting reasonably), then the Parties shall confirm to each other in writing that they shall use the process set out in paragraphs 4, 5, 6 and 7 but with reduced timescales, such that any period of fifteen (15) Working Days is reduced to five (5) Working Days, any period of ten (10) Working Days is reduced to two (2) Working Days and any period of five (5) Working Days is reduced to one (1) Working Day.

8.3 The Parties may agree in writing to revise the parameters set out in paragraph 8.2 from time to time or that the Fast-track Change procedure shall be used in relation to a particular Contract Change notwithstanding that the total number of Contract Changes to which such procedure is applied will then exceed four (4) in a twelve (12) month period.

9. **OPERATIONAL CHANGE PROCEDURE**

9.1 Any Operational Changes identified by the Supplier to improve operational efficiency of the Services may be implemented by the Supplier without following the Change Control Procedure for proposed Contract Changes provided they do not:

9.1.1 have an impact on the business of Network Rail;

9.1.2 require a change to this Agreement;

9.1.3 have a direct impact on use of the Services; or

9.1.4 involve Network Rail in paying any additional Charges or other costs.

9.2 Network Rail may request an Operational Change by submitting a written request for Operational Change ("**RFOC**") to the Supplier Representative.

9.3 The RFOC shall include the following details:

9.3.1 the proposed Operational Change; and

9.3.2 the time-scale for completion of the Operational Change.

9.4 The Supplier shall inform Network Rail of any impact on the Services that may arise from the proposed Operational Change.

- 9.5 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify Network Rail when the Operational Change is completed.

10. **COMMUNICATIONS**

For any Change Communication to be valid under this Schedule, it must be sent to either Network Rail Change Manager or the Supplier Change Manager, as applicable. The provisions of clause 39 (Notices) shall apply to a Change Communication as if it were a notice.

ANNEX 1**Change Request Form**

CR NO.:	TITLE	TYPE OF CHANGE
CONTRACT:		REQUIRED BY DATE:
ACTION:	NAME:	DATE:
RAISED BY:		
KEY MILESTONE DATE (IF ANY):		
AREA(S) IMPACTED (<i>OPTIONAL FIELD</i>):		
ASSIGNED FOR IMPACT ASSESSMENT BY:		
ASSIGNED FOR IMPACT ASSESSMENT TO:		
SUPPLIER REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE CONTRACT):		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE:		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		

ANNEX 2**Change Authorisation Note**

CR NO:	TITLE:	DATE RAISED:
CONTRACT:	TYPE OF CHANGE:	REQUIRED BY DATE:
[KEY MILESTONE DATE: <i>[if any]</i>]		
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED CHANGED TO THE CONTRACT:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE OR COST PLUS BASIS):		
DETAILS OF ANY PROPOSED CONTRACT AMENDMENTS:		
DETAILS OF ANY SERVICE LEVELS AFFECTED:		
DETAILS OF ANY OPERATIONAL SERVICE IMPACT:		
DETAILS OF ANY INTERFACES AFFECTED:		
DETAILED RISK ASSESSMENT:		
RECOMMENDATIONS:		
SIGNED ON BEHALF OF NETWORK RAIL:	SIGNED ON BEHALF OF THE SUPPLIER:	
Signature: _____	Signature: _____	
Signature: _____	Signature: _____	
Signature: _____	Signature: _____	

CALL-OFF TERMS

SCHEDULE 19

BENCHMARKING

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

“Benchmarked Service”	a Service that Network Rail elects to include in a Benchmark Review under paragraph 2.3 of Schedule 19 (Benchmarking);
“Benchmarker”	the independent third party appointed under paragraph 3.1 of Schedule 19 (Benchmarking);
“Benchmark Report”	the report produced by the Benchmarker following the Benchmark Review as further described in paragraph 5 of Schedule 19 (Benchmarking);
“Benchmark Review”	a review of one or more of the Services carried out in accordance with paragraph 4 of Schedule 19 (Benchmarking) to determine whether those Services represent Good Value;
“Comparable Service”	in relation to a Benchmarked Service, a service that is identical or materially similar to the Benchmarked Service (including in terms of scope, specification, volume and quality of performance);
“Comparison Group”	in relation to a Comparable Service, a sample group of organisations providing the Comparable Service identified by the Benchmarker under paragraph 4.8 of Schedule 19 (Benchmarking) which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmarker’s professional opinion) fair comparators with the Supplier or which, in the professional opinion of the Benchmarker, are best practice organisations and, where there are a reasonable number of such organisations, referencing only those organisations that are carrying on at least a significant part of their business within the United Kingdom;
“Equivalent Services Data”	in relation to a Comparable Service, data derived from an analysis of the Comparable Service provided by the Comparison Group as adjusted in accordance with paragraphs 4.8.1 and 4.9 of Schedule 19 (Benchmarking) provided that the Benchmarker shall not use any such data that relates to a period which ended more than thirty six (36) months prior to the date of the appointment of the Benchmarker;
“Good Value”	in relation to a Benchmarked Service, that:

- (a) having taken into account the Service Levels applicable to that Benchmarked Service, the value for money of the Charges attributable to that Benchmarked Service is at least as good as the value for money of the Upper Quartile; and
- (b) any Service Levels applicable to that Benchmarked Service are, having taken into account the Charges attributable to that Benchmarked Service, equal to or better than the median service levels for the Comparable Service using Equivalent Services Data;

“Upper Quartile”

the top 25% of instances of provision of a Comparable Service by members of the Comparison Group ranked by best value for money to the recipients of that Comparable Service.

2. FREQUENCY, PURPOSE AND SCOPE OF BENCHMARK REVIEW

- 2.1 Network Rail may, by written notice to the Supplier, require a Benchmark Review of any or all of the Services in order to establish whether a Benchmarked Service is, and/or the Benchmarked Services as a whole are, Good Value.
- 2.2 Network Rail shall not be entitled to carry out a Benchmark Review of any Services [during the twelve (12) month period from the Operational Service Commencement Date for those Services, nor at intervals of less than twelve (12) months after any previous Benchmark Review relating to the same Services].
- 2.3 The Services that are to be the Benchmarked Services shall be identified by Network Rail in the notice given under paragraph 2.1.

3. APPOINTMENT OF BENCHMARKER

- 3.1 Network Rail shall appoint as the Benchmarking to carry out the Benchmark Review either an organisation on the list of organisations set out in Annex 1 or such other organisation as may be agreed in writing between the Parties.
- 3.2 Network Rail shall, at the written request of the Supplier, require the Benchmarking to enter into a confidentiality agreement with the Supplier in, or substantially in, the form set out in Annex 2.
- 3.3 The costs and expenses of the Benchmarking and the Benchmark Review shall be shared equally between both Parties provided that each Party shall bear its own internal costs of the Benchmark Review. The Benchmarking shall not be compensated on a contingency fee or incentive basis.
- 3.4 Network Rail shall be entitled to pay the Benchmarking's costs and expenses in full and to recover the Supplier's share from the Supplier.

4. BENCHMARK REVIEW

- 4.1 Network Rail shall require the Benchmarking to produce, and to send to each Party for approval, a draft plan for the Benchmark Review within ten (10) Working Days after the date of the appointment of the Benchmarking, or such longer period as the Benchmarking shall reasonably request in all the circumstances. The plan must include:
 - 4.1.1 a proposed timetable for the Benchmark Review;

- 4.1.2 a description of the information that the Benchmarker requires each Party to provide;
 - 4.1.3 a description of the benchmarking methodology to be used;
 - 4.1.4 a description that clearly illustrates that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives under paragraph 2.1;
 - 4.1.5 an estimate of the resources required from each Party to underpin the delivery of the plan;
 - 4.1.6 a description of how the Benchmarker will scope and identify the Comparison Group;
 - 4.1.7 details of any entities which the Benchmarker proposes to include within the Comparison Group; and
 - 4.1.8 if in the Benchmarker's professional opinion there are no Comparable Services or the number of entities carrying out Comparable Services is insufficient to create a Comparison Group, a detailed approach for meeting the relevant benchmarking objective(s) under paragraph 2.1 using a proxy for the Comparison Services and/or Comparison Group as applicable.
- 4.2 The Parties acknowledge that the selection and or use of proxies for the Comparison Group (both in terms of number and identity of entities) and Comparable Services shall be a matter for the Benchmarker's professional judgment.
- 4.3 Each Party shall give notice in writing to the Benchmarker and to the other Party within ten (10) Working Days after receiving the draft plan either approving the draft plan or suggesting amendments to that plan which must be reasonable. Where a Party suggests amendments to the draft plan pursuant to this paragraph 4.3, the Benchmarker shall, if it believes the amendments are reasonable, produce an amended draft plan. paragraph 4.1 and this paragraph 4.3 shall apply to any amended draft plan.
- 4.4 Failure by a Party to give notice under paragraph 4.3 shall be treated as approval of the draft plan by that Party. If the Parties fail to approve the draft plan within thirty (30) Working Days of its first being sent to them pursuant to paragraph 4.1 then the Benchmarker shall prescribe the plan.
- 4.5 Once the plan is approved by both Parties or prescribed by the Benchmarker, the Benchmarker shall carry out the Benchmark Review in accordance with the plan. Each Party shall procure that all the information described in the plan, together with any additional information reasonably required by the Benchmarker is provided to the Benchmarker without undue delay. If the Supplier fails to provide any information requested from it by the Benchmarker and described in the plan, such failure shall constitute a material Default for the purposes of Clause 22.1.3 (Rectification Plan Process).
- 4.6 Each Party shall co-operate fully with the Benchmarker, including by providing access to records, technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarker, provided that the Benchmarker shall be instructed to minimise any disruption to the Services.
- 4.7 Either Party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.
- 4.8 Once it has received the information it requires, the Benchmarker shall:
- 4.8.1 finalise the sample of entities constituting the Comparison Group and collect data relating to Comparable Services. The final selection of the Comparison Group

- (both in terms of number and identity of entities) and of the Comparable Services shall be a matter for the Benchmarker's professional judgment;
- 4.8.2 derive the Equivalent Services Data by applying the adjustment factors listed in paragraph 4.9 and from an analysis of the Comparable Services;
 - 4.8.3 derive the relative value for money of the charges payable for the Comparable Services using the Equivalent Services Data and from that derive the Upper Quartile;
 - 4.8.4 derive the median service levels relating to the Comparable Services using the Equivalent Services Data;
 - 4.8.5 compare the value for money of the Charges attributable to the Benchmarked Services (having regard in particular to the applicable Service Levels) to the value for money of the Upper Quartile;
 - 4.8.6 compare the Service Levels attributable to the Benchmarked Services (having regard to the Charges and Service Credits) with the median service levels using the Equivalent Services Data; and
 - 4.8.7 determine whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.
- 4.9 The Benchmarker shall have regard to the following matters when performing a comparative assessment of a Benchmarked Service and a Comparable Service in order to derive Equivalent Services Data:
- 4.9.1 the contractual and business environment under which the Services are being provided (including the scope, scale, complexity and geographical spread of the Services);
 - 4.9.2 any front-end investment and development costs of the Supplier;
 - 4.9.3 the Supplier's risk profile including the financial, performance or liability risks associated with the provision of the Services as a whole;
 - 4.9.4 the extent of the Supplier's management and contract governance responsibilities;
 - 4.9.5 any other reasonable factors demonstrated by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive (such as erroneous costing, non-sustainable behaviour including excessive consumption of energy or over-aggressive pricing).
- 5. BENCHMARK REPORT**
- 5.1 The Benchmarker shall be required to prepare a Benchmark Report and deliver it simultaneously to both Parties, at the time specified in the plan approved under paragraph 4, setting out its findings. The Benchmark Report shall:
- 5.1.1 include a finding as to whether or not each Benchmarked Service is and/or whether the Benchmarked Services as a whole are, Good Value;
 - 5.1.2 include other findings (if any) regarding the quality and competitiveness or otherwise of those Services;
 - 5.1.3 if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Charges, Service Levels, that would be required to make that Benchmarked Service or those Benchmarked Services as a whole Good Value; and

- 5.1.4 illustrate the method used for any normalisation of the Equivalent Services Data.
- 5.2 The Benchmarker shall act as an expert and not as an arbitrator.
- 5.3 If the Benchmark Report states that any Benchmarked Service is not Good Value or that the Benchmarked Services as a whole are not Good Value, then the Supplier shall (subject to paragraphs 5.5 and 5.6) implement the changes set out in the Benchmark Report as soon as reasonably practicable within timescales agreed with Network Rail but in any event within no more than three (3) months. Any associated changes to the Charges shall take effect only from the same date and shall not be retrospective.
- 5.4 The Supplier acknowledges and agrees that Benchmark Reviews shall not result in any increase to the Charges, dis-application of the Service Levels or any reduction in the Service Levels applicable to the Benchmarked Service.
- 5.5 The Supplier shall be entitled to reject any Benchmark Report if the Supplier reasonably considers that the Benchmarker has not followed the procedure for the related Benchmark Review as set out in this Schedule in any material respect.
- 5.6 The Supplier shall not be obliged to implement any Benchmark Report to the extent this would cause the Supplier to provide the Services at a loss (as determined, by reference to the Financial Model), or to the extent the Supplier cannot technically implement the recommended changes.
- 5.7 In the event of any Dispute arising over whether the Benchmarker has followed the procedure for the related Benchmark Review under paragraph 5.5 and/or any matter referred to in paragraph 5.6, the Dispute shall be referred to Expert Determination. For the avoidance of doubt in the event of a Dispute between the Parties, Network Rail shall continue to pay the Charges to the Supplier in accordance with the terms of this Agreement and the Service Levels shall remain unchanged pending the conclusion of the Expert Determination.
- 5.8 On conclusion of the Expert Determination:
- 5.8.1 if the Expert determines that all or any part of the Benchmark Report recommendations regarding any reduction in the Charges shall be implemented by the Supplier, the Supplier shall immediately repay to Network Rail the difference between the Charges paid by Network Rail up to and including the date of the Expert's determination and the date upon which the recommended reduction in Charges should have originally taken effect pursuant to paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and
- 5.8.2 if the Expert determines that all or any part of the Benchmark Report recommendations regarding any changes to the Service Levels shall be implemented by the Supplier:
- 5.8.2.1 the Supplier shall immediately implement the relevant changes;
- 5.8.2.2 the Supplier shall immediately pay an amount equal to any Service Credits which would have accrued up to and including the date of the Expert's determination if the relevant changes had taken effect on the date determined pursuant to paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and
- 5.8.2.3 the relevant changes shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Agreement.

- 5.9 Any failure by the Supplier to implement the changes as set out in the Benchmark Report in accordance with the relevant timescales determined in accordance with paragraph 5.3 (unless the provisions of paragraph 5.6 and/or paragraph 5.7 apply) or in accordance with paragraph 5.8 shall, without prejudice to any other rights or remedies of Network Rail, constitute [a Supplier Termination Event (as defined in the Call-Off Terms)].

ANNEX 1

Approved Benchmarks

ANNEX 2

Confidentiality Agreement

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [date]

BETWEEN:

- (1) [insert name] of [insert address] (the “Supplier”); and
- (2) [insert name] of [insert address] (the “Benchmarker” and together with the Supplier, the “Parties”).

WHEREAS:

- (A) [insert name of Network Rail] (“Network Rail”) and the Supplier are party to a contract dated [insert date] (the “Contract”) for the provision by the Supplier of [insert brief description of services] to Network Rail.
- (B) The Benchmarker is to receive Confidential Information from the Supplier for the purpose of carrying out a benchmarking review for Network Rail of one or more of such services pursuant to the terms of the Contract (the “Permitted Purpose”).

IT IS AGREED as follows:

1. Interpretation

1.1 In this Agreement, unless the context otherwise requires:

- “Confidential Information”
 - (a) information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Supplier to the Benchmarker pursuant to this Agreement that relates to:
 - (i) the Supplier; or
 - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, knowhow and/or personnel of the Supplier;
 - (b) other Information provided by the Supplier pursuant to this Agreement to the Benchmarker that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Benchmarker’s attention or into the Benchmarker’s possession in connection with the Permitted Purpose;
 - (c) discussions, negotiations, and correspondence between the Supplier or any of its directors, officers, employees, consultants or professional advisers and the Benchmarker or any of its directors, officers,

employees, consultants and professional advisers in connection with the Permitted Purpose and all matters arising therefrom; and

- (d) Information derived from any of the above, but not including any Information that:
- (i) was in the possession of the Benchmarker without obligation of confidentiality prior to its disclosure by the Supplier;
 - (ii) the Benchmarker obtained on a non-confidential basis from a third party who is not, to the Benchmarker's knowledge or belief, bound by a confidentiality agreement with the Supplier or otherwise prohibited from disclosing the information to the Benchmarker;
 - (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or
 - (iv) was independently developed without access to the Confidential Information;

“Information”

all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);

“Permitted Use”

has the meaning given to that expression in recital (B) to this Agreement.

1.2 In this Agreement:

- 1.2.1 a reference to any gender includes a reference to other genders;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;
- 1.2.4 references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;
- 1.2.5 headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and

1.2.6 references to Clauses are to clauses of this Agreement.

2. Confidentiality Obligations

2.1 In consideration of the Supplier providing Confidential Information to the Benchmarking, the Benchmarking shall:

2.1.1 treat all Confidential Information as secret and confidential;

2.1.2 have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);

2.1.3 not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or, if relevant, other owner or except as expressly set out in this Agreement;

2.1.4 not transfer any of the Confidential Information outside the United Kingdom;

2.1.5 not use or exploit any of the Confidential Information for any purpose whatsoever other than the Permitted Purpose;

2.1.6 immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and

2.1.7 once the Permitted Purpose has been fulfilled:

2.1.7.1 destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;

2.1.7.2 ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Benchmarking) from any computer, word processor, voicemail system or any other device; and

2.1.7.3 make no further use of any Confidential Information.

3. Permitted Disclosures

3.1 The Benchmarking may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:

3.1.1 reasonably need to receive the Confidential Information in connection with the Permitted Purpose; and

3.1.2 have been informed by the Benchmarking of the confidential nature of the Confidential Information; and

3.1.3 have agreed to terms similar to those in this Agreement.

3.2 The Benchmarking shall be entitled to disclose Confidential Information to Network Rail for the Permitted Purpose and to any Expert appointed in relation to a Dispute as referred to in paragraph 5.7 of schedule 7.3 (Benchmarking) to the Contract.

3.3 The Benchmarking shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Benchmarking.

- 3.4 Before making a disclosure pursuant to Clause 3.3, the Benchmarker shall, if the circumstances permit:
- 3.4.1 notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
 - 3.4.2 ask the court or other public body to treat the Confidential Information as confidential.
4. **General**
- 4.1 The Benchmarker acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
- 4.2.1 to grant the Benchmarker any licence or rights other than as may be expressly stated in this Agreement;
 - 4.2.2 to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
 - 4.2.3 as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of this Agreement.
- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Benchmarker acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Benchmarker of any of the provisions of this Agreement. Accordingly, the Benchmarker acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Benchmarker to the Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.
5. **Notices**
- 5.1 Any notice to be given under this Agreement (each a “**Notice**”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery

provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in clause 5.2.

5.2 Any Notice:

5.2.1 if to be given to the Supplier shall be sent to:

[Address]

Attention: [Contact name and/or position, e.g. "The Finance Director"]

5.2.2 if to be given to the Benchmarkers shall be sent to:

[Name of Organisation]

[Address]

Attention: []

6. Governing Law

6.1 This Agreement shall be governed by, and construed in accordance with, the laws of England and Wales and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with the laws of England and Wales.

6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the courts of England and Wales in respect of any claim or dispute arising out of or in connection with this Agreement.

IN WITNESS of the above this Agreement has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

For and on behalf of [name of Supplier]

Signature:

Date:

Name:

Position:

For and on behalf of [name of Benchmarkers]

Signature:

Date:

Name:

Position:

CALL-OFF TERMS**SCHEDULE 20****INTELLECTUAL PROPERTY RIGHTS**

[Guidance note: this Schedule on Intellectual Property Rights (IPRs) can be amended depending on how you need to arrange ownership and licencing of all Specially Written Software and Project Specific IPRs created for or pursuant to the contract. There is a default option to reflect the standard Network Rail position, but four alternative options are available (Option 4 is not standalone, but can be used with any of Options 1, 2 or 3). In completing the schedule the unused options should be deleted.]

Default Position: Network Rail owns all Specially Written Software and Project Specific IPRs with limited Supplier rights to all Specially Written Software and Project Specific IPRs in order to deliver the Agreement. This was the approach incorporated in the main body agreement on IPR and licensing under the previous version of NR(IT)02 and the Model Services Contract.

The alternative options are:

- **Option 1: Network Rail ownership of all Specially Written Software and Project Specific IPRs with broader non-exclusive Supplier rights than permitted under the Default Position (including, with NR approval, to commercially exploit);**
- **Option 2: Supplier ownership of all Specially Written Software and Project Specific IPRs with Network Rail rights for the current contract only;**
- **Option 3: Supplier ownership of Specially Written Software and Project Specific IPRs with Network Rail rights for the current contract and broader public sector functions; and**
- **Option 4: Options 1, 2 or 3, plus Network Rail rights to a gain/profit share.**

Option 1 should be considered for use in situations where there is a tangible business benefit to Network Rail in owning Specially Written Software and Project Specific IPRs, but where the Supplier should be able to use any Specially Written Software and Project Specific IPRs developed on a broader non-exclusive basis than permitted under the default position (including to commercially exploit), subject to Network Rail approval. In this situation, Network Rail will not look to publish the Specially Written Software and Project Specific IPRs under Open Licence.

Option 2 should be considered for use where (a) there is no clear benefit in Network Rail owning the Specially Written Software and Project Specific IPRs, or (b) where any Specially Written Software and Project Specific IPRs created cannot easily be separated from the Supplier's Existing IPR (e.g. COTS or Software As A Service (SAAS)), but where a licence is only needed for the current contracted service (and future replacement of that service) and the IPR in question will not be needed for other services. Includes a right for Network Rail to request ownership of unexploited elements of Specially Written Software and Project Specific IPRs after 3 years.

Option 3 is similar to Option 2, except it should be used where the licence to Network Rail for the IPR in question should extend to cover other contracts and services, which may include contracts and services not yet awarded, and broader public sector functions.

Option 4 should be considered if Network Rail has invested significant resource or funding in the development of the project and intends to seek a return on that investment, based on Supplier exploitation of the Specially Written Software and / or Project Specific IPRs.]

Default Position:

[Guidance note: Network Rail owns all Specially Written Software and Project Specific IPRs, with limited Supplier rights to Specially Written Software and Project Specific IPRs in order to deliver the Agreement. If the Default Position is used, Options 1 to 4 should be deleted, together with the Guidance Notes.]

1 INTELLECTUAL PROPERTY RIGHTS

- 1.1 Except as expressly set out in this Agreement:
- (a) Network Rail shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
 - (i) the Supplier Software;
 - (ii) the Third Party Software;
 - (iii) the Third Party IPRs; and
 - (iv) the Supplier Background IPRs;
 - (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of Network Rail or its licensors, including:
 - (i) Network Rail Software;
 - (ii) Network Rail Data; and
 - (iii) Network Rail Background IPRs;
 - (c) Specially Written Software and Project Specific IPRs (except for any Know-How, trade secrets or Confidential Information contained therein) shall be the property of Network Rail.
- 1.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Paragraph 1.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 1.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.
- 1.4 Unless Network Rail otherwise agrees in advance in writing:
- (a) all Specially Written Software and any software element of Project Specific IPRs shall be created in a format, or able to be converted into a format, which is suitable for publication by Network Rail as Open Source; and
 - (b) where the Specially Written Software and any software element of Project Specific IPRs are written in a format that requires conversion before publication as Open Source, the Supplier shall also provide the converted format to Network Rail.
- 1.5 Where Network Rail agrees that any Specially Written Software and/or any software element of Project Specific IPRs should be excluded from Open Source publication, the Supplier shall as soon as reasonably practicable provide written details of the impact that such exclusion will have on Network Rail's ability to publish other Open Source software under Paragraph 4 (*Open Source*).
- 1.6 Unless otherwise agreed in writing, the Parties shall record all Specially Written Software and Project Specific IPRs in Annex 8 to the Call-Off Form and shall keep Annex 8 updated during the Term.

2 TRANSFER AND LICENCES GRANTED BY THE SUPPLIER

Specially Written Software and Project Specific IPRs

2.1 Subject to Paragraph 2.17 (*Patents*) the Supplier hereby assigns (by present assignment of future rights to take effect immediately on their coming into existence) to Network Rail with full guarantee, or shall procure the assignment to Network Rail) title to and all rights and interest (subject to Paragraph 1.1(a) (*Intellectual Property Rights*)) in the Specially Written Software and the Project Specific IPRs including:

- (a) the Documentation, Source Code and the Object Code of the Specially Written Software; and
- (b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the “**Software Supporting Materials**”);

but not including any Know-How, trade secrets or Confidential Information.

2.2 The Supplier:

- (a) shall:
 - (i) inform Network Rail of all Specially Written Software and any element of Project Specific IPRs that constitutes a modification or enhancement to Supplier Software or Third Party Software; and
 - (ii) deliver to Network Rail the Specially Written Software and the software element of Project Specific IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to Network Rail; and
 - (iii) without prejudice to Paragraph 2.11 (*Third Party Software and Third Party IPRs*), provide full details to Network Rail of any Supplier Background IPRs or Third Party IPRs which are embedded in or which are an integral part of the Specially Written Software or any element of Project Specific IPRs;
- (b) acknowledges and agrees that the ownership of the media referred to in Paragraph 2.2(a)(ii) shall vest in Network Rail upon their receipt by Network Rail;
- (c) shall execute or shall procure the execution of all such assignments as are required to ensure that any rights in the Specially Written Software and Project Specific IPRs are properly transferred to Network Rail; and
- (d) waives or shall procure a waiver of any moral rights in any copyright works transferred to Network Rail under this Agreement.

Supplier Software and Supplier Background IPRs

2.3 The Supplier shall not use any Supplier Non-COTS Software or Supplier Non-COTS Background IPR in the provision of the Services unless it is detailed in Annex 8 of the Call-Off Form or approval is granted by Network Rail.

2.4 The Supplier hereby grants to Network Rail:

- (a) subject to the provisions of Paragraph 2.17 (*Patents*) and Clause **Error! Reference source not found.** 29.11.2 (*Consequences of expiry or termination*), perpetual, royalty-free and non-exclusive licences to use (including but not limited to the right

to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)):

- (i) the Supplier Software for which the Supplier delivers a copy, or otherwise makes available, to Network Rail for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of Network Rail's (or any other Central Government Body's) business or function; and
 - (ii) the Supplier Background IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of Network Rail's (or any other Central Government Body's) business or function; and
- (b) a perpetual royalty-free non-exclusive licence to use without limitation any Know-How, trade secrets or Confidential Information contained within the Specially Written Software or the Project Specific IPRs.
- 2.5 At any time during the Term or following termination or expiry of this Agreement, the Supplier may terminate the licence granted in respect of the Supplier Software under Paragraph 2.4(a)(i) or in respect of the Supplier Background IPRs under Paragraph 2.4(a)(ii) by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if Network Rail or any person to whom Network Rail grants a sub-licence pursuant to Paragraph 2.7 (*Network Rail's right to sub-licence*) commits any material breach of the terms of Paragraph 2.4(a)(i) or 2.4(a)(ii) or 2.7(a)(ii) (as the case may be) which, if the breach is capable of remedy, is not remedied within 20 Working Days after the Supplier gives Network Rail written notice specifying the breach and requiring its remedy.
- 2.6 In the event the licence of the Supplier Software or the Supplier Background IPRs is terminated pursuant to Paragraph 2.5, Network Rail shall:
- (a) immediately cease all use of the Supplier Software or the Supplier Background IPRs (as the case may be);
 - (b) at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Software and/or the Supplier Background IPRs, provided that if the Supplier has not made an election within 6 months of the termination of the licence, Network Rail may destroy the documents and other tangible materials that contain any of the Supplier Software and/or the Supplier Background IPRs (as the case may be); and
 - (c) ensure, so far as reasonably practicable, that any Supplier Software and/or Supplier Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of Network Rail) from any computer, word processor, voicemail system or any other device containing such Supplier Software and/or Supplier Background IPRs.

Network Rail's right to sub-licence

- 2.7 Subject to Paragraph 2.17 (*Patents*) Network Rail may sub-licence:
- (a) the rights granted under Paragraph 2.4(a) (*Supplier Software and Supplier Background IPRs*) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
 - (i) the sub-licence is on terms no broader than those granted to Network Rail;
 - (ii) the sub-licence authorises the third party to use the rights licensed in Paragraph 2.4(a) (*Supplier Software and Supplier Background IPRs*) only for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of Network Rail's (or any other Central Government Body's) business or function; and

- (iii) the sub-licensee shall have executed a confidentiality undertaking in favour of the Supplier in or substantially in the form set out in Annex 1 to Schedule 17 (*Software*); and
- (b) the rights granted under Paragraph 2.4(a) (*Supplier Software and Supplier Background IPRs*) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specially Written Software and/or the Project Specific IPRs provided that:
 - (i) the sub-licence is on terms no broader than those granted to Network Rail; and
 - (ii) the Supplier has received a confidentiality undertaking in its favour in or substantially in the form set out in Annex 1 to Schedule 17 (*Software*) duly executed by the Approved Sub-Licensee.

Network Rail's right to assign/novate licences

- 2.8 Network Rail may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Paragraph 2.4(a) (*Supplier Software and Supplier Background IPRs*) to:
- (a) a Central Government Body; or
 - (b) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by Network Rail.
- 2.9 Any change in the legal status of Network Rail which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Paragraph 2.4 (*Supplier Software and Supplier Background IPRs*). If Network Rail ceases to be a Central Government Body, the successor body to Network Rail shall still be entitled to the benefit of the licence granted in Paragraph 2.4 (*Supplier Software and Supplier Background IPRs*).
- 2.10 If a licence granted in Paragraph 2.4 (*Supplier Software and Supplier Background IPRs*) is novated under Paragraph 2.8 (*Network Rail's right to assign/novate licences*) or there is a change of Network Rail's status pursuant to Paragraph 2.9, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by Network Rail.

Third Party Software and Third Party IPRs

- 2.11 The Supplier shall not use in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless detailed in Annex 8 of the Call-Off Form or approval is granted by Network Rail and has in each case either:
- (a) first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to Network Rail on a royalty-free basis to Network Rail and on terms no less favourable to Network Rail than those set out in Paragraphs 2.4(a) and 2.5 (*Supplier Software and Supplier Background IPRs*), Paragraph 2.7 (*Network Rail's right to sub-licence*) and Paragraph 2.8 (*Network Rail's right to assign/novate licences*); or
 - (b) complied with the provisions of Paragraph 2.12.
- 2.12 If the Supplier cannot obtain for Network Rail a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Paragraph 2.11(a), the Supplier shall:
- (a) notify Network Rail in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers

which the Supplier could seek to use, consulting with Network Rail in respect of the same; and

- (b) use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if Network Rail has first approved in writing either:
 - (i) the terms of the licence from the relevant third party; or
 - (ii) use without a licence, with reference to the acts authorised and the specific IPR involved.

2.13 The Supplier shall:

- (a) notify Network Rail in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and
- (b) unless instructed otherwise in writing by Network Rail in any case within 20 Working Days of notification pursuant to Paragraph 2.12(a), use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to Network Rail on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

2.14 Notwithstanding, and without prejudice to the Supplier's obligations under, the other provisions of this Schedule 20 (*Intellectual Property Rights*), should the Supplier become aware at any time, including after termination, that the Specially Written Software and/or the Project Specific IPRs contain any Intellectual Property Rights title to which is not vested in Network Rail, or for which Network Rail does not have a suitable licence, then the Supplier must:

- (a) notify Network Rail within ten (10) days of what those rights are and which parts of the Specially Written Software and the Project Specific IPRs they are found in; and
- (b) as soon as reasonably practicable procure that Network Rail has all rights in such Intellectual Property Rights to satisfy the Supplier's obligations under this Schedule 20 (*Intellectual Property Rights*).

Termination and Replacement Suppliers

2.15 For the avoidance of doubt, the termination or expiry of this Agreement shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Paragraph 1.6.

2.16 The Supplier shall, if requested by Network Rail in accordance with Schedule 14 (*Exit Management*) and at the Supplier's cost:

- (a) grant (or procure the grant) to any Replacement Supplier of a licence to use any Supplier Software, Supplier Background IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software on a royalty-free basis to the Replacement Supplier and on terms no less favourable than those granted to Network Rail in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this Paragraph 2 subject to receipt by the Supplier of a confidentiality undertaking in its favour in or substantially in the form set out in Annex 1 to Schedule 17 (*Software*) duly executed by the Replacement Supplier; and/or
- (b) use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party COTS Software and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

Patents

- 2.17 Where a patent owned by the Supplier is necessarily infringed by the use of the Specially Written Software or Project Specific IPRs by Network Rail or any Replacement Supplier, the Supplier hereby grants to Network Rail and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software solely for the purpose for which they were delivered under this Agreement.

3 LICENCES GRANTED BY NETWORK RAIL

- 3.1 Network Rail hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use Network Rail Software, Network Rail Background IPRs, the Specially Written Software, the Project Specific IPRs and Network Rail Data solely to the extent necessary for performing the Services in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:

- (a) any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 16 (*Confidentiality*) of the Framework Agreement; and
- (b) the Supplier shall not, without Network Rail's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than Network Rail.

- 3.2 In the event of the termination or expiry of this Agreement, the licence granted pursuant to Paragraph 3.1 and any sub-licence granted by the Supplier in accordance with Paragraph 3.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall:

- (a) immediately cease all use of Network Rail Software, Network Rail Background IPRs, the Specially Written Software, the Project Specific IPRs and Network Rail Data (as the case may be);
- (b) at the discretion of Network Rail, return or destroy documents and other tangible materials that contain any of Network Rail Software, Network Rail Background IPRs, the Specially Written Software, the Project Specific IPRs and Network Rail Data, provided that if Network Rail has not made an election within 6 months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of Network Rail Software, Network Rail Background IPRs, the Specially Written Software, the Project Specific IPRs and Network Rail Data (as the case may be); and
- (c) ensure, so far as reasonably practicable, that any Network Rail Software, Network Rail Background IPRs, the Specially Written Software, the Project Specific IPRs and Network Rail Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Network Rail Software, Network Rail Background IPRs, the Specially Written Software, the Project Specific IPRs and/or Network Rail Data.

4 OPEN SOURCE

- 4.1 The Supplier represents and warrants that, except as provided for in Paragraph 1.4 (Intellectual Property Rights) and Paragraphs 4.4 to 4.9 below, the Software:

- (a) does not contain any Open Source other than the OSS; and
- (b) (excluding the OSS) remains separable from or merely links or binds by name to the interfaces of the OSS.

- 4.2 The Supplier shall not, except as provided for in Paragraph 1.4 (Intellectual Property Rights) and Paragraphs 4.4 to 4.9 below, at any time during the Term without Network Rail's express written consent include in or aggregate with the Software any Open Source other than the OSS,

or make any changes to the Software which require it to be aggregated with or operated in conjunction with any Open Source other than the OSS.

- 4.3 The Supplier represents and warrants that the OSS is licensed upon terms which permit its use by the Supplier, Network Rail and Network Rail's end users for all purposes contemplated by this Agreement.
- 4.4 The Supplier agrees that Network Rail may at its sole discretion publish as Open Source software all or part of the Specially Written Software and any software element of the Project Specific IPRs after the Operational Service Commencement Date.
- 4.5 The Supplier hereby warrants that the Specially Written Software and any software element of the Project Specific IPRs:
- (a) are suitable for release as Open Source and the Supplier has used reasonable endeavours when developing the same to ensure that publication by Network Rail will not allow a third party to use the Open Source software to in any way compromise the operation, running or security of the Specially Written Software, the Project Specific IPRs or Network Rail System;
 - (b) have been developed using reasonable endeavours to ensure that their publication by Network Rail shall not cause any harm or damage to any party using anything published as Open Source and that the Specially Written Software and the Project Specific IPRs;
 - (i) do not contain any Malicious Software;
 - (ii) do not contain any material which would bring Network Rail into disrepute upon publication as Open Source;
 - (iii) can be published as Open Source without breaching the rights of any third party; and
 - (iv) will be supplied in a format suitable for publication as Open Source ("**the Open Source Publication Material**") no later than the Operational Service Commencement Date.
- 4.6 The Supplier shall ensure that the Open Source Publication Material provided to Network Rail does not include any Supplier Software or Supplier Background IPRs save that which the Supplier is willing to allow to be included in any Open Source publication. In such a case, the Supplier hereby acknowledges that any such Supplier Software or Supplier Background IPRs will become Open Source and will be licensed and treated as such following publication by Network Rail and any third party that uses the Open Source Publication Materials on the terms of the Open Source licence used by Network Rail when publishing as Open Source.
- 4.7 The Supplier may within 15 days of the Operational Service Commencement Date request in writing that Network Rail excludes all or part of:
- (a) the Project Specific IPR; or
 - (b) Supplier Background IPR or Third Party IPR that would otherwise be included in the Open Source Publication Material supplied to Network Rail pursuant to Paragraph 4.5(b)(iv)4.5,
- from Open Licence publication.
- 4.8 Any decision by Network Rail to approve any such request from the Supplier pursuant to Paragraph 4.7 shall be at Network Rail's sole discretion, not to be unreasonably withheld, delayed or conditioned.
- 4.9 The Supplier hereby indemnifies Network Rail against all claims in which Network Rail is, or is threatened to be, a party for any alleged infringement of any IPR owned or claimed to be owned by any third party which is found, or alleged to be found, in the Specially Written Software and

the Project Specific IPRs arising from publication of the Specially Written Software and any software element of the Project Specific IPRs as Open Source under Paragraph 4.1.

Option 1:

[Guidance note: Network Rail owns all Specially Written Software and Project Specific IPRs with broader non-exclusive Supplier rights than permitted under the Default Position (including, with NR approval, to commercially exploit). Option 4 may be used alongside Option 1, where gain share provisions are required. If the Option 1 is used, the Default Position and other unused Options should be deleted, together with the Guidance Notes.]

1 INTELLECTUAL PROPERTY RIGHTS

1.1 Except as expressly set out in this Agreement:

- (a) Network Rail shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
 - (i) the Supplier Software;
 - (ii) the Third Party Software;
 - (iii) the Third Party IPRs; and
 - (iv) the Supplier Background IPRs;
- (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of Network Rail or its licensors, including:
 - (i) Network Rail Software;
 - (ii) Network Rail Data; and
 - (iii) Network Rail Background IPRs;
- (c) Specially Written Software and Project Specific IPRs (except for any Know-How, trade secrets or Confidential Information contained therein) shall be the property of Network Rail.

1.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Paragraph 1.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

1.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

1.4 Unless otherwise agreed in writing, the Parties shall record all Specially Written Software and Project Specific IPRs in Annex 8 to the Call-Off Form and shall keep Annex 8 updated during the Term.

2 TRANSFER AND LICENCES GRANTED BY THE SUPPLIER

Specially Written Software and Project Specific IPRs

2.1 Subject to Paragraph 2.17 (*Patents*) the Supplier hereby assigns (by present assignment of future rights to take effect immediately on their coming into existence) to Network Rail with full guarantee, or shall procure the assignment to Network Rail) title to and all rights and interest (subject to Paragraph 1.1(a) (*Intellectual Property Rights*)) in the Specially Written Software and the Project Specific IPRs including (without limitation):

- (a) the Documentation, Source Code and the Object Code of the Specially Written Software; and

- (b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the “**Software Supporting Materials**”);

but not including any Know-How, trade secrets or Confidential Information.

2.2 The Supplier:

- (a) shall:
- (i) inform Network Rail of all Specially Written Software and any element of Project Specific IPRs that constitutes a modification or enhancement to Supplier Software or Third Party Software; and
 - (ii) deliver to Network Rail the Specially Written Software and the software element of Project Specific IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to Network Rail; and
 - (iii) without prejudice to Paragraph 2.11 (*Third Party Software and Third Party IPRs*), provide full details to Network Rail of any Supplier Background IPRs or Third Party IPRs which are embedded in or which are an integral part of the Specially Written Software or any element of Project Specific IPRs;
- (b) acknowledges and agrees that the ownership of the media referred to in Paragraph 2.2(a)(ii) shall vest in Network Rail upon their receipt by Network Rail; and
- (c) shall execute or shall procure the execution of all such assignments as are required to ensure that any rights in the Specially Written Software and Project Specific IPRs are properly transferred to Network Rail; and
- (d) waives or shall procure a waiver of any moral rights in any copyright works transferred to Network Rail under this Agreement.

Supplier Software and Supplier Background IPRs

2.3 The Supplier shall not use any Supplier Non-COTS Software or Supplier Non-COTS Background IPR in the provision of the Services unless it is detailed in Annex 8 of the Call-Off Form or approval is granted by Network Rail.

2.4 The Supplier hereby grants to Network Rail:

- (a) subject to the provisions of Paragraph 2.17 (*Patents*) and Clause **Error! Reference source not found.** (*Consequences of expiry or termination*), perpetual, royalty-free and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)):
- (i) the Supplier Software for which the Supplier delivers a copy, or otherwise makes available, to Network Rail for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of Network Rail’s (or any other Central Government Body’s) business or function; and

- (ii) the Supplier Background IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of Network Rail's (or any other Central Government Body's) business or function; and
 - (b) a perpetual royalty-free non-exclusive licence to use without limitation any Know-How, trade secrets or Confidential Information contained within the Specially Written Software or the Project Specific IPRs.
- 2.5 At any time during the Term or following termination or expiry of this Agreement, the Supplier may terminate the licence granted in respect of the Supplier Software under Paragraph 2.4(a)(i) or in respect of the Supplier Background IPRs under Paragraph 2.4(a)(ii) by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if Network Rail or any person to whom Network Rail grants a sub-licence pursuant to Paragraph 2.7 (*Network Rail's right to sub-licence*) commits any material breach of the terms of Paragraph 2.4(a)(i) or 2.4(a)(ii) or 2.7(a)(ii) (as the case may be) which, if the breach is capable of remedy, is not remedied within 20 Working Days after the Supplier gives Network Rail written notice specifying the breach and requiring its remedy.
- 2.6 In the event the licence of the Supplier Software or the Supplier Background IPRs is terminated pursuant to Paragraph 2.5, Network Rail shall:
- (a) immediately cease all use of the Supplier Software or the Supplier Background IPRs (as the case may be);
 - (b) at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Software and/or the Supplier Background IPRs, provided that if the Supplier has not made an election within 6 months of the termination of the licence, Network Rail may destroy the documents and other tangible materials that contain any of the Supplier Software and/or the Supplier Background IPRs (as the case may be); and
 - (c) ensure, so far as reasonably practicable, that any Supplier Software and/or Supplier Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of Network Rail) from any computer, word processor, voicemail system or any other device containing such Supplier Software and/or Supplier Background IPRs.

Network Rail's right to sub-licence

- 2.7 Subject to Paragraph 2.17 (*Patents*) Network Rail may sub-licence:
- (a) the rights granted under Paragraph 2.4(a) (*Supplier Software and Supplier Background IPRs*) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
 - (i) the sub-licence is on terms no broader than those granted to Network Rail;
 - (ii) the sub-licence authorises the third party to use the rights licensed in Paragraph 2.4(a) (*Supplier Software and Supplier Background IPRs*) only for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of Network Rail's (or any other Central Government Body's) business or function; and
 - (iii) the sub- licensee shall have executed a confidentiality undertaking in favour of the Supplier in or substantially in the form set out in Annex 1 to Schedule 17 (*Software*); and
 - (b) the rights granted under Paragraph 2.4(a) (*Supplier Software and Supplier Background IPRs*) to any Approved Sub-Licensee to the extent necessary to use

and/or obtain the benefit of the Specially Written Software and/or the Project Specific IPRs provided that:

- (i) the sub-licence is on terms no broader than those granted to Network Rail; and
- (ii) the Supplier has received a confidentiality undertaking in its favour in or substantially in the form set out in Annex 1 to Schedule 17 (*Software*) duly executed by the Approved Sub-Licensee.

Network Rail's right to assign/novate licences

- 2.8 Network Rail may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Paragraph 2.4(a) (*Supplier Software and Supplier Background IPRs*) to:
- (a) a Central Government Body; or
 - (b) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by Network Rail.
- 2.9 Any change in the legal status of Network Rail which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Paragraph 2.4 (*Supplier Software and Supplier Background IPRs*). If Network Rail ceases to be a Central Government Body, the successor body to Network Rail shall still be entitled to the benefit of the licence granted in Paragraph 2.4 (*Supplier Software and Supplier Background IPRs*).
- 2.10 If a licence granted in Paragraph 2.4 (*Supplier Software and Supplier Background IPRs*) is novated under Paragraph 2.8 (*Network Rail's right to assign/novate licences*) or there is a change of Network Rail's status pursuant to Paragraph 2.9, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by Network Rail.

Third Party Software and Third Party IPRs

- 2.11 The Supplier shall not use in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless detailed in Annex 8 of the Call-Off Form or approval is granted by Network Rail and has in each case either:
- (a) first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to Network Rail on a royalty-free basis to Network Rail and on terms no less favourable to Network Rail than those set out in Paragraphs 2.4(a) and 2.5 (*Supplier Software and Supplier Background IPRs*), Paragraph 2.7 (*Network Rail's right to sub-licence*) and Paragraph 2.8 (*Network Rail's right to assign/novate licences*); or
 - (b) complied with the provisions of Paragraph 2.12.
- 2.12 If the Supplier cannot obtain for Network Rail a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Paragraph 2.11(a), the Supplier shall:
- (a) notify Network Rail in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use, consulting with Network Rail in respect of the same; and
 - (b) use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if Network Rail has first approved in writing either:

- (i) the terms of the licence from the relevant third party; or
- (ii) use without a licence, with reference to the acts authorised and the specific IPR involved.

2.13 The Supplier shall:

- (a) notify Network Rail in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and
- (b) unless instructed otherwise in writing by Network Rail in any case within 20 Working Days of notification pursuant to Paragraph 2.12 use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to Network Rail on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

2.14 Notwithstanding, and without prejudice to the Supplier's obligations under, the other provisions of this Schedule 20 (*Intellectual Property Rights*), should the Supplier become aware at any time, including after termination, that the Specially Written Software and/or the Project Specific IPRs contain any Intellectual Property Rights title to which is not vested in Network Rail, or for which Network Rail does not have a suitable licence, then the Supplier must:

- (a) notify Network Rail within ten (10) days of what those rights are and which parts of the Specially Written Software and the Project Specific IPRs they are found in; and
- (b) as soon as reasonably practicable procure that Network Rail has all rights in such Intellectual Property Rights to satisfy the Supplier's obligations under this Schedule 20 (*Intellectual Property Rights*).

Termination and Replacement Suppliers

2.15 For the avoidance of doubt, the termination or expiry of this Agreement shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Paragraph 2.

2.16 The Supplier shall, if requested by Network Rail in accordance with Schedule 14 (*Exit Management*) and at the Supplier's cost:

- (a) grant (or procure the grant) to any Replacement Supplier of a licence to use any Supplier Software, Supplier Background IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software on a royalty-free basis to the Replacement Supplier and on terms no less favourable than those granted to Network Rail in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this Paragraph 2 subject to receipt by the Supplier of a confidentiality undertaking in its favour in or substantially in the form set out in Annex 1 to Schedule 17 (*Software*) duly executed by the Replacement Supplier; and/or
- (b) use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party COTS Software and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

Patents

2.17 Where a patent owned by the Supplier is necessarily infringed by the use of the Specially Written Software or Project Specific IPRs by Network Rail or any Replacement Supplier, the Supplier hereby grants to Network Rail and the Replacement Supplier a non-exclusive,

irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software solely for the purpose for which they were delivered under this Agreement.

3 LICENCES GRANTED BY NETWORK RAIL

3.1 Subject to Paragraph 3.3, Network Rail hereby grants to the Supplier a **[insert duration or delete if no duration required]** royalty-free, non-exclusive, non-transferable licence to use Network Rail Software, Network Rail Background IPRs, the Specially Written Software and the Project Specific IPRs and Network Rail Data:

- (a) to the extent necessary for performing the Services in accordance with this Agreement; and
- (b) subject always to the provisions of Paragraph 3.3 [and Paragraph [●] (Gain Share)][**Guidance note: where Option 4 is used**] for the purpose of using or exploiting the Specially Written Software and the Project Specific IPRs, provided that the Supplier shall not, without Network Rail's prior written consent (which consent may be subject to such conditions as Network Rail may determine, including as to reductions in Charges or other payments), use Network Rail Software, Network Rail Background IPRs, the Specially Written Software and the Project Specific IPRs and Network Rail Data for the benefit of any person other than Network Rail

including (but not limited to) the right to grant sub-licences to Sub-contractors provided that any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 16 (*Confidentiality*) of the Framework Agreement and that the duration of any sub-licence may be no longer than the applicable licence to the Supplier under this Paragraph 3.1.

3.2 On the expiry of the licence granted pursuant to Paragraph 3.1 any sub-licence granted by the Supplier in accordance with Paragraph 3.1 shall terminate automatically and the Supplier shall:

- (a) immediately cease all use of Network Rail Software, Network Rail Background IPRs, the Specially Written Software, the Project Specific IPRs and Network Rail Data (as the case may be);
- (b) at the discretion of Network Rail, return or destroy documents and other tangible materials that contain any of Network Rail Software, Network Rail Background IPRs, the Specially Written Software, the Project Specific IPRs and Network Rail Data, provided that if Network Rail has not made an election within 6 months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of Network Rail Software, Network Rail Background IPRs, the Specially Written Software, the Project Specific IPRs and Network Rail Data (as the case may be); and
- (c) ensure, so far as reasonably practicable, that any Network Rail Software, Network Rail Background IPRs, the Specially Written Software, the Project Specific IPRs and Network Rail Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Network Rail Software, Network Rail Background IPRs, the Specially Written Software, the Project Specific IPRs and/or Network Rail Data.

3.3 Notwithstanding any licence under Paragraph 3.1(b) which allows the Supplier to exploit the Specially Written Software and/or the Project Specific IPRs:

- (a) where the Supplier proposes to exploit Specially Written Software and/or the Project Specific IPRs, the Supplier must provide, prior to the giving of any written consent from Network Rail that may be required under Paragraph 3.1(b) and any such exploitation taking place:

- (i) a detailed proposal of its plans for exploitation of the Specially Written Software and/or the Project Specific IPRs and the forecast returns, including (but not limited to) details of the goods and services to be offered by the Supplier which use the Specially Written Software and/or the Project Specific IPRs, the target markets and territory, the estimated level of orders, the marketing strategy; full details of the estimated costs, prices, revenues and profits; impact assessment on services delivered under the Agreement; and any other information that would reasonably be required by Network Rail to enable it to consider the commercial, legal and financial implications to the Parties of the proposal and any further information which Network Rail may reasonably request; and
 - (ii) any proposal as to a reduction in the Charges or other payments to Network Rail [including pursuant to Paragraph [●] (Gain Share)] [**Guidance note: where Option 4 is used**]; and
- (b) where the Supplier proposes to reduce the Charges in return for the right to exploit Specially Written Software and/or the Project Specific IPRs, the Supplier must provide clear evidence to demonstrate how the exploitation plans and financial information provided under Paragraph 3.3(a) above have been applied to the Charges for the Deliverables offered to Network Rail and other potential users.
- 3.4 The Supplier acknowledges and agrees that Network Rail is under an obligation to comply with procurement Laws and state aid rules when considering proposals for alternative IPR arrangements and Network Rail will need to consider its position and approach on a case by case basis.

4 OPEN SOURCE

- 4.1 The Supplier represents and warrants that the Software:
- (a) does not contain any Open Source other than the OSS; and
 - (b) (excluding the OSS) remains separable from or merely links or binds by name to the interfaces of the OSS.
- 4.2 The Supplier shall not at any time during the Term without Network Rail's express written consent include in or aggregate with the Software any Open Source other than the OSS, or make any changes to the Software which require it to be aggregated with or operated in conjunction with any Open Source other than the OSS.
- 4.3 The Supplier represents and warrants that the OSS is licensed upon terms which permit its use by the Supplier, Network Rail and Network Rail's end users for all purposes contemplated by this Agreement.

Option 2:

[Guidance note: Supplier ownership of all Specially Written Software and Project Specific IPRs with Network Rail limited licence rights for the current contract only, Option 4 may be used alongside Option 2, where gain share provisions are required. If the Option 2 is used, the Default Position and other unused Options should be deleted, together with the Guidance Notes]

1 INTELLECTUAL PROPERTY RIGHTS

1.1 Except as expressly set out in this Agreement:

- (a) Network Rail shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
 - (i) the Supplier Software;
 - (ii) the Third Party Software;
 - (iii) the Third Party IPRs; and
 - (iv) the Supplier Background IPRs;
- (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of Network Rail or its licensors, including:
 - (i) Network Rail Software;
 - (ii) Network Rail Data; and
 - (iii) Network Rail Background IPRs;
- (c) Specially Written Software and Project Specific IPRs shall be the property of the Supplier[, provided always that Network Rail's agreement to the same is subject to compliance by the Supplier with the provisions of Paragraph [] Gain Share] **[Guidance note: Where Option 4 is used]**.

1.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Paragraph 1.1 it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

1.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

1.4 Unless otherwise agreed in writing, the Parties shall record all Specially Written Software and Project Specific IPRs in Annex 8 to the Call-Off Form and shall keep Annex 8 updated during the Term.

2 TRANSFER AND LICENCES GRANTED BY NETWORK RAIL AND THE SUPPLIER**Specially Written Software and Project Specific IPRs**

2.1 Network Rail shall execute all such assignments as are required to ensure that any rights in the Specially Written Software and Project Specific IPRs are properly vested in the Supplier.

2.2 If within three years of its creation, any Intellectual Property in the Specially Written Software and/or the Project Specific IPRs has not been commercially exploited by the Supplier, and the Supplier is not using its best endeavours to do so, the Supplier shall on written request by Network Rail promptly assign any such Intellectual Property Rights in the Specially Written Software and/or the Project Specific IPRs to Network Rail. The Supplier shall promptly execute all such assignments and take such other actions as are required to ensure that any

such rights in the Specially Written Software and/or the Project Specific IPRs are properly transferred to Network Rail. Each party shall bear its own costs in such assignment.

Supplier Software, Specially Written Software, Project Specific IPRs, Supplier Background IPRs

- 2.3 The Supplier shall not use any Supplier Non-COTS Software or Supplier Non-COTS Background IPR in the provision of the Services unless it is detailed in Annex 8 of the Call-Off Form or approval is granted by Network Rail.
- 2.4 The Supplier hereby grants to Network Rail:
- (a) subject to the provisions of Paragraph 2.17 (*Patents*) and Clause **Error! Reference source not found.** (*Consequences of expiry or termination*), perpetual, royalty-free and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)):
 - (i) the Supplier Software for which the Supplier delivers a copy, or otherwise makes available, to Network Rail solely to the extent necessary for Network Rail to receive and take the benefit of the Services in accordance with this Agreement; and
 - (ii) the Supplier Background IPRs, the Specially Written Software and the Project Specific IPRs solely to the extent necessary for Network Rail to receive and take the benefit of the Services in accordance with this Agreement; and
 - (b) a perpetual royalty-free non-exclusive licence to use without limitation any Know-How, trade secrets or Confidential Information contained within the Specially Written Software or the Project Specific IPRs.
- 2.5 At any time during the Term or following termination or expiry of this Agreement, the Supplier may terminate the licence granted in respect of the Supplier Software under Paragraph 2.4(a)(i) or in respect of the Supplier Background IPRs under Paragraph 2.4(a)(ii) by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if Network Rail or any person to whom Network Rail grants a sub-licence pursuant to Paragraph 2.7 (*Network Rail's right to sub-licence*) commits any material breach of the terms of Paragraph 2.4(a)(i) or 2.4(a)(ii) or 2.7(a)(ii) (as the case may be) which, if the breach is capable of remedy, is not remedied within 20 Working Days after the Supplier gives Network Rail written notice specifying the breach and requiring its remedy. The licences granted in respect of the Specially Written Software and the Project Specific IPRs under Paragraph 2.4(a)(ii) shall be irrevocable.
- 2.6 In the event the licence of the Supplier Software or the Supplier Background IPRs is terminated pursuant to Paragraph 2.5, Network Rail shall:
- (a) immediately cease all use of the Supplier Software or the Supplier Background IPRs (as the case may be);
 - (b) at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Software and/or the Supplier Background IPRs, provided that if the Supplier has not made an election within 6 months of the termination of the licence, Network Rail may destroy the documents and other tangible materials that contain any of the Supplier Software and/or the Supplier Background IPRs (as the case may be); and
 - (c) ensure, so far as reasonably practicable, that any Supplier Software and/or Supplier Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of Network Rail) from any computer, word processor, voicemail system or any other device containing such Supplier Software and/or Supplier Background IPRs.

Network Rail's right to sub-license

- 2.7 Subject to Paragraph 2.17 (*Patents*) Network Rail may sub-license:
- (a) the rights granted under Paragraph 2.4(a) (*Supplier Software, Specially Written Software, Project Specific IPRs and Supplier Background IPRs*) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
 - (i) the sub-license is on terms no broader than those granted to Network Rail;
 - (ii) the sub-license authorises the third party to use the rights licensed in Paragraph 2.4(a) (*Supplier Software, Specially Written Software, Project Specific IPRs and Supplier Background IPRs*) only for purposes relating to the Services (or substantially equivalent services); and
 - (iii) the sub-licensee shall have executed a confidentiality undertaking in favour of the Supplier in or substantially in the form set out in Annex 1 to Schedule 17 (*Software*); and
 - (b) the rights granted under Paragraph 2.4(a) (*Supplier Software, Specially Written Software, Project Specific IPRs and Supplier Background IPRs*) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specially Written Software and/or the Project Specific IPRs provided that:
 - (i) the sub-license is on terms no broader than those granted to Network Rail; and
 - (ii) the Supplier has received a confidentiality undertaking in its favour in or substantially in the form set out in Annex 1 to Schedule 17 (*Software*) duly executed by the Approved Sub-Licensee.

Network Rail's right to assign/novate licences

- 2.8 Network Rail may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Paragraph 2.4(a) (*Supplier Software, Specially Written Software, Project Specific IPRs and Supplier Background IPRs*) to:
- (a) a Central Government Body; or
 - (b) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by Network Rail,
- provided that such transfer is for any purpose relating to the Services (or substantially equivalent services)).
- 2.9 Any change in the legal status of Network Rail which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Paragraph 2.4 (*Supplier Software, Specially Written Software, Project Specific IPRs and Supplier Background IPRs*). If Network Rail ceases to be a Central Government Body, the successor body to Network Rail shall still be entitled to the benefit of the licence granted in Paragraph 2.4 (*Supplier Software, Specially Written Software, Project Specific IPRs and Supplier Background IPRs*).
- 2.10 If a licence granted in Paragraph 2.4 (*Supplier Software, Specially Written Software, Project Specific IPRs and Supplier Background IPRs*) is novated under Paragraph 2.8 (*Network Rail's right to assign/novate licences*) or there is a change of Network Rail's status pursuant to Paragraph 2.9, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by Network Rail.

Third Party Software and Third Party IPRs

- 2.11 The Supplier shall not use in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless detailed in Annex 8 of the Call-Off Form or approval is granted by Network Rail and has in each case either:
- (a) first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to Network Rail on a royalty-free basis and on terms no less favourable to Network Rail than those set out in Paragraph 2.4(a) and 2.5 (*Supplier Software, Specially Written Software, Project Specific IPRs and Supplier Background IPRs*), Paragraph 2.7 (*Network Rail's right to sub-license*) and Paragraph 2.8 (*Network Rail's right to assign/novate licences*); or
 - (b) complied with the provisions of Paragraph 2.12.
- 2.12 If the Supplier cannot obtain for Network Rail a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Paragraph 2.11(a), the Supplier shall:
- (a) notify Network Rail in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use, consulting with Network Rail in respect of the same; and
 - (b) use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if Network Rail has first approved in writing either:
 - (i) the terms of the licence from the relevant third party; or
 - (ii) use without a licence, with reference to the acts authorised and the specific IPR involved.
- 2.13 The Supplier shall:
- (a) notify Network Rail in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and
 - (b) unless instructed otherwise in writing by Network Rail in any case within 20 Working Days of notification pursuant to Paragraph 2.132.12(a)(a), use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to Network Rail on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.
- 2.14 Notwithstanding, and without prejudice to the Supplier's obligations under, the other provisions of this Schedule 20 (*Intellectual Property Rights*), should the Supplier become aware at any time, including after termination, that the Specially Written Software and/or the Project Specific IPRs contain any Intellectual Property Rights for which Network Rail does not have a suitable licence, then the Supplier must:
- (a) notify Network Rail within ten (10) days of what those rights are and which parts of the Specially Written Software and the Project Specific IPRs they are found in; and
 - (b) as soon as reasonably practicable procure that Network Rail has all rights in such Intellectual Property Rights to satisfy the Supplier's obligations under this Schedule 20 (*Intellectual Property Rights*).

Termination and Replacement Suppliers

- 2.15 For the avoidance of doubt, the termination or expiry of this Agreement shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Paragraph 2.
- 2.16 The Supplier shall, if requested by Network Rail in accordance with Schedule 14 (*Exit Management*) and at the Supplier's cost:
- (a) grant (or procure the grant) to any Replacement Supplier of a licence to use any Specially Written Software, Project Specific IPRs, Supplier Software, Supplier Background IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software on a royalty-free basis to the Replacement Supplier and on terms no less favourable than those granted to Network Rail in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this Paragraph 2 subject to receipt by the Supplier of a confidentiality undertaking in its favour in or substantially in the form set out in Annex 1 to Schedule 17 (*Software*) duly executed by the Replacement Supplier; and/or
 - (b) use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party COTS Software and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

Patents

- 2.17 Where a patent owned by the Supplier is necessarily infringed by the use of the Specially Written Software or Project Specific IPRs by Network Rail or any Replacement Supplier, the Supplier hereby grants to Network Rail and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software solely for the purpose for which they were delivered under this Agreement.

3 LICENCES GRANTED BY NETWORK RAIL

- 3.1 Network Rail hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use Network Rail Software, Network Rail Background IPRs and Network Rail Data solely to the extent necessary for performing the Services in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:
- (a) any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 16 (*Confidentiality*) of the Framework Agreement; and
 - (b) the Supplier shall not, without Network Rail's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than Network Rail.
- 3.2 In the event of the termination or expiry of this Agreement, the licence granted pursuant to Paragraph 3.1 and any sub-licence granted by the Supplier in accordance with Paragraph 3.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall:
- (a) immediately cease all use of Network Rail Software, Network Rail Background IPRs and Network Rail Data (as the case may be);
 - (b) at the discretion of Network Rail, return or destroy documents and other tangible materials that contain any of Network Rail Software, Network Rail Background IPRs and Network Rail Data, provided that if Network Rail has not made an election within 6 months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of Network

Rail Software, Network Rail Background IPRs and Network Rail Data (as the case may be); and

- (c) ensure, so far as reasonably practicable, that any Network Rail Software, Network Rail Background IPRs and Network Rail Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Network Rail Software, Network Rail Background IPRs and/or Network Rail Data.
- 3.3 The Supplier shall promptly following any request from Network Rail, provide Network Rail with written information as to its plans for exploitation of the Specially Written Software and/or the Project Specific IPRs, including (but not limited to) details of the goods and services to be offered by the Supplier which use the Specially Written Software and/or the Project Specific IPRs, the target markets and territory, the estimated level of orders, the marketing strategy; full details of the estimated revenues and profits; and its progress to date in respect of the same; together with an impact assessment on services delivered under the Agreement.

4 OPEN SOURCE

- 4.1 The Supplier represents and warrants that the Software:
- (a) does not contain any Open Source other than the OSS; and
 - (b) (excluding the OSS) remains separable from or merely links or binds by name to the interfaces of the OSS.
- 4.2 The Supplier shall not at any time during the Term without Network Rail's express written consent include in or aggregate with the Software any Open Source other than the OSS, or make any changes to the Software which require it to be aggregated with or operated in conjunction with any Open Source other than the OSS.
- 4.3 The Supplier represents and warrants that the OSS is licensed upon terms which permit its use by the Supplier, Network Rail and Network Rail's end users for all purposes contemplated by this Agreement.

Option 3:

[Guidance note: Supplier ownership of all IPR with Network Rail rights for the current contract and broader public sector functions and generally broader licence that under Option 2. Option 4 may be used alongside Option 3, where gain share provisions are required. If the Option 3 is used, the Default Position and other unused Options should be deleted, together with the Guidance Notes.]

1 INTELLECTUAL PROPERTY RIGHTS

1.1 Except as expressly set out in this Agreement:

- (a) Network Rail shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
 - (i) the Supplier Software;
 - (ii) the Third Party Software;
 - (iii) the Third Party IPRs; and
 - (iv) the Supplier Background IPRs;
- (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of Network Rail or its licensors, including:
 - (i) Network Rail Software;
 - (ii) Network Rail Data; and
 - (iii) Network Rail Background IPRs;
- (c) Specially Written Software and Project Specific IPRs shall be the property of the Supplier[, provided always that Network Rail's agreement to the same is subject to compliance by the Supplier with the provisions of Paragraph [] Gain Share] **[Guidance note: Where Option 4 is used]**.

1.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Paragraph, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

1.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

1.4 Unless otherwise agreed in writing, the Parties shall record all Specially Written Software and Project Specific IPRs in Annex 8 to the Call-Off Form and shall keep Annex 8 updated during the Term.

2 LICENCES GRANTED BY THE SUPPLIER**Specially Written Software and Project Specific IPRs**

2.1 Subject to Paragraph 2.19 (*Patents*) and Clause **Error! Reference source not found.** (*Consequences of expiry or termination*), the Supplier hereby grants to Network Rail a perpetual, irrevocable, royalty-free and non-exclusive licence to use (including but not limited to the right to load, execute, store, transmit, display, copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display), modify, adapt, enhance, reverse compile, decode and translate the Specially Written Software and the Project Specific IPRs including (without limitation):

- (a) the Documentation, Source Code and the Object Code of the Specially Written Software; and

- (b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the “**Software Supporting Materials**”)

for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of Network Rail’s (or any other Central Government Body’s) business or function

2.2 The Supplier:

- (a) shall:
- (i) inform Network Rail of all Specially Written Software and any element of Project Specific IPRs that constitutes a modification or enhancement to Supplier Software or Third Party Software; and
 - (ii) deliver to Network Rail the Specially Written Software and the software element of Project Specific IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to Network Rail; and
 - (iii) without prejudice to Paragraph 2.13 (*Third Party Software and Third Party IPRs*), provide full details to Network Rail of any Supplier Background IPRs or Third Party IPRs which are embedded in or which are an integral part of the Specially Written Software or any element of Project Specific IPRs;
- (b) acknowledges and agrees that the ownership of the media referred to in Paragraph 2.2(a)(ii) shall vest in Network Rail upon their receipt by Network Rail.

2.3 Network Rail shall execute all such assignments as are required to ensure that any rights in the Specially Written Software and Project Specific IPRs are properly vested in the Supplier.

2.4 If within three years of its creation, any Intellectual Property Right in the Specially Written Software and/or the Project Specific IPRs has not been commercially exploited by the Supplier, and the Supplier is not using its best endeavours to do so, the Supplier shall on written request by Network Rail promptly assign any such Intellectual Property Rights in the Specially Written Software and/or the Project Specific IPRs to Network Rail. The Supplier shall promptly execute all such assignments and take such other actions as are required to ensure that any such rights in the Specially Written Software and/or the Project Specific IPRs are properly transferred to Network Rail. Each party shall bear its own costs in such assignment.

Supplier Software and Supplier Background IPRs

2.5 The Supplier shall not use any Supplier Non-COTS Software or Supplier Non-COTS Background IPR in the provision of the Services unless it is detailed in Annex 8 of the Call-Off Form or approval is granted by Network Rail.

2.6 The Supplier hereby grants to Network Rail:

- (a) subject to the provisions of Paragraph 2.19 (*Patents*) and Clause **Error! Reference source not found.** (*Consequences of expiry or termination*), perpetual, royalty-free and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)):

- (i) the Supplier Software for which the Supplier delivers a copy, or otherwise makes available, to Network Rail for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of Network Rail's (or any other Central Government Body's) business or function; and
 - (ii) the Supplier Background IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of Network Rail's (or any other Central Government Body's) business or function; and
- (b) a perpetual royalty-free non-exclusive licence to use without limitation any Know-How, trade secrets or Confidential Information contained within the Specially Written Software or the Project Specific IPRs.

2.7 At any time during the Term or following termination or expiry of this Agreement, the Supplier may terminate the licence granted in respect of the Supplier Software under Paragraph 2.6(a)(i) or in respect of the Supplier Background IPRs under Paragraph 2.6(a)(ii) by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if Network Rail or any person to whom Network Rail grants a sub-licence pursuant to Paragraph 2.9 (*Network Rail's right to sub-licence*) commits any material breach of the terms of Paragraph 2.6(a)(i) or 2.6(a)(ii) or 2.9(a)(ii) (as the case may be) which, if the breach is capable of remedy, is not remedied within 20 Working Days after the Supplier gives Network Rail written notice specifying the breach and requiring its remedy.

2.8 In the event the licence of the Supplier Software or the Supplier Background IPRs is terminated pursuant to Paragraph 2.7, Network Rail shall:

- (a) immediately cease all use of the Supplier Software or the Supplier Background IPRs (as the case may be);
- (b) at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Software and/or the Supplier Background IPRs, provided that if the Supplier has not made an election within 6 months of the termination of the licence, Network Rail may destroy the documents and other tangible materials that contain any of the Supplier Software and/or the Supplier Background IPRs (as the case may be); and
- (c) ensure, so far as reasonably practicable, that any Supplier Software and/or Supplier Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of Network Rail) from any computer, word processor, voicemail system or any other device containing such Supplier Software and/or Supplier Background IPRs.

Network Rail's right to sub-licence

2.9 Subject to Paragraph 2.19 (*Patents*) Network Rail may sub-licence:

- (a) the rights granted under Paragraphs 2.1 (*Specially Written Software and Project Specific IPRs*) and 2.6(a) (*Supplier Software and Supplier Background IPRs*) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
 - (i) the sub-licence is on terms no broader than those granted to Network Rail;
 - (ii) the sub-licence authorises the third party to use the rights licensed in Paragraphs 2.1 (*Specially Written Software and Project Specific IPRs*) and 2.6(a) (*Supplier Software and Supplier Background IPRs*) only for purposes relating to the Services (or substantially equivalent services) or

for any purpose relating to the exercise of Network Rail's (or any other Central Government Body's) business or function; and

- (iii) the sub-licensee shall have executed a confidentiality undertaking in favour of the Supplier in or substantially in the form set out in Annex 1 to Schedule 17 (*Software*); and
- (b) the rights granted under Paragraphs 2.1 (*Specially Written Software and Project Specific IPRs*) and 2.6(a) (*Supplier Software and Supplier Background IPRs*) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specially Written Software and/or the Project Specific IPRs provided that:
 - (i) the sub-licence is on terms no broader than those granted to Network Rail; and
 - (ii) the Supplier has received a confidentiality undertaking in its favour in or substantially in the form set out in Annex 1 to Schedule 17 (*Software*) duly executed by the Approved Sub-Licensee.

Network Rail's right to assign/novate licences

- 2.10 Network Rail may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Paragraphs 2.1 (*Specially Written Software and Project Specific IPRs*) and 2.6(a) (*Supplier Software and Supplier Background IPRs*) to:
- (a) a Central Government Body; or
 - (b) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by Network Rail.
- 2.11 Any change in the legal status of Network Rail which means that it ceases to be a Central Government Body shall not affect the validity of any licences granted in Paragraphs 2.1 (*Specially Written Software and Project Specific IPRs*) and 2.6(a) (*Supplier Software and Supplier Background IPRs*). If Network Rail ceases to be a Central Government Body, the successor body to Network Rail shall still be entitled to the benefit of the licences granted in Paragraphs 2.1 (*Specially Written Software and Project Specific IPRs*) and 2.6(a) (*Supplier Software and Supplier Background IPRs*).
- 2.12 If a licence granted in Paragraphs 2.1 (*Specially Written Software and Project Specific IPRs*) and 2.6(a) (*Supplier Software and Supplier Background IPRs*) is novated under Paragraph 2.10 (*Network Rail's right to assign/novate licences*) or there is a change of Network Rail's status pursuant to Paragraph 2.11, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by Network Rail.

Third Party Software and Third Party IPRs

- 2.13 The Supplier shall not use in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless detailed in Annex 8 of the Call-Off Form or approval is granted by Network Rail and has in each case either:
- (a) first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to Network Rail on a royalty-free basis to Network Rail and on terms no less favourable to Network Rail than those set out in Paragraphs 2.6(a) and 2.7 (*Supplier Software and Supplier Background IPRs*), Paragraph 2.9 (*Network Rail's right to sub-license*) and Paragraph 2.10 (*Network Rail's right to assign/novate licences*); or
 - (b) complied with the provisions of Paragraph 2.14.

- 2.14 If the Supplier cannot obtain for Network Rail a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Paragraph 2.13(a), the Supplier shall:
- (a) notify Network Rail in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use, consulting with Network Rail in respect of the same; and
 - (b) use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if Network Rail has first approved in writing either:
 - (i) the terms of the licence from the relevant third party; or
 - (ii) use without a licence, with reference to the acts authorised and the specific IPR involved.
- 2.15 The Supplier shall:
- (a) notify Network Rail in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and
 - (b) unless instructed otherwise in writing by Network Rail in any case within 20 Working Days of notification pursuant to Paragraph 2.14(a) use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to Network Rail on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.
- 2.16 Notwithstanding, and without prejudice to the Supplier's obligations under, the other provisions of this Schedule 20 (*Intellectual Property Rights*), should the Supplier become aware at any time, including after termination, that the Specially Written Software and/or the Project Specific IPRs contain any Intellectual Property Rights for which Network Rail does not have a suitable licence, then the Supplier must:
- (a) notify Network Rail within ten (10) days of what those rights are and which parts of the Specially Written Software and the Project Specific IPRs they are found in; and
 - (b) as soon as reasonably practicable procure that Network Rail has all rights in such Intellectual Property Rights to satisfy the Supplier's obligations under this Schedule 20 (*Intellectual Property Rights*).

Termination and Replacement Suppliers

- 2.17 For the avoidance of doubt, the termination or expiry of this Agreement shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Paragraph 2.
- 2.18 The Supplier shall, if requested by Network Rail in accordance with Schedule 14 (*Exit Management*) and at the Supplier's cost:
- (a) grant (or procure the grant) to any Replacement Supplier of a licence to use any Specially Written Software, Project Specific IPRs, Supplier Software, Supplier Background IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software on a royalty-free basis to the Replacement Supplier and on terms no less favourable than those granted to Network Rail in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this Paragraph 2 subject to receipt by the Supplier of a confidentiality undertaking in its favour in or substantially in the form set out in Annex 1 to Schedule 17 (*Software*) duly executed by the Replacement Supplier; and/or

- (b) use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party COTS Software and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

Patents

- 2.19 Where a patent owned by the Supplier is necessarily infringed by the use of the Specially Written Software or Project Specific IPRs by Network Rail or any Replacement Supplier, the Supplier hereby grants to Network Rail and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software solely for the purpose for which they were delivered under this Agreement.

3 LICENCES GRANTED BY NETWORK RAIL

- 3.1 Network Rail hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use Network Rail Software, Network Rail Background IPRs and Network Rail Data solely to the extent necessary for performing the Services in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:
- (a) any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 16 (*Confidentiality*) of the Framework Agreement; and
 - (b) the Supplier shall not, without Network Rail's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than Network Rail.
- 3.2 In the event of the termination or expiry of this Agreement, the licence granted pursuant to Paragraph 3.1 and any sub-licence granted by the Supplier in accordance with Paragraph 3.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall:
- (a) immediately cease all use of Network Rail Software, Network Rail Background IPRs and Network Rail Data (as the case may be);
 - (b) at the discretion of Network Rail, return or destroy documents and other tangible materials that contain any of Network Rail Software, Network Rail Background IPRs and Network Rail Data, provided that if Network Rail has not made an election within 6 months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of Network Rail Software, Network Rail Background IPRs and Network Rail Data (as the case may be); and
 - (c) ensure, so far as reasonably practicable, that any Network Rail Software, Network Rail Background IPRs and Network Rail Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Network Rail Software, Network Rail Background IPRs and/or Network Rail Data.
- 3.3 The Supplier shall promptly following any request from Network Rail, provide Network Rail with written information as to its plans for exploitation of the Specially Written Software and/or the Project Specific IPRs, including (but not limited to) details of the goods and services to be offered by the Supplier which use the Specially Written Software and/or the Project Specific IPRs, the target markets and territory, the estimated level of orders, the marketing strategy; full details of the estimated revenues and profits; and its progress to date in respect of the same; together with an impact assessment on services delivered under the Agreement.

4 OPEN SOURCE

- 4.1 The Supplier represents and warrants that the Software:
- (a) does not contain any Open Source other than the OSS; and
 - (b) (excluding the OSS) remains separable from or merely links or binds by name to the interfaces of the OSS.
- 4.2 The Supplier shall not at any time during the Term without Network Rail's express written consent include in or aggregate with the Software any Open Source other than the OSS, or make any changes to the Software which require it to be aggregated with or operated in conjunction with any Open Source other than the OSS.
- 4.3 The Supplier represents and warrants that the OSS is licensed upon terms which permit its use by the Supplier, Network Rail and Network Rail's end users for all purposes contemplated by this Agreement.

Option 4

[Guidance note: to be used alongside either Option 1, 2 or 3, where Network Rail rights to a gain/profit share are required, tailored as appropriate for your agreement. If the Option 4 is used alongside one of Option 1, 2 or 3, the Default Position and other unused Options should be deleted, together with the Guidance Notes.]

1 GAIN SHARE

1.1 The Supplier is permitted to [own and] [Guidance note: Where Option 2 or 3 applies] commercially exploit the Specially Written Software and/or the Project Specific IPRs or any material reproducing them provided that it pays to Network Rail an amount to be calculated using one of the following options, such option to be agreed in writing by the parties prior to any commercial exploitation (and in the absence of agreement, as determined by Network Rail):

1.1.1 a levy for the use of the Specially Written Software and/or the Project Specific IPRs including copyright to be calculated at [...] % of the Supplier's gross selling/licensing price [Guidance note: Further commercial detail and drafting should be added with regard to how this calculation is made in order to provide clarity and mitigate the risk of the Supplier artificially deflating the price]; or

1.1.2 a profit sharing arrangement on the basis of a levy payable to Network Rail in respect of the Supplier's exploitation of the Specially Written Software and/or the Project Specific IPRs. This levy expressed as a percentage of the profit and shall be determined as follows:

gross sale or licence price, i.e. the price for which the Supplier invoices its customer

minus

the allowable costs as prescribed by Network Rail for this purpose

[Guidance note: Further commercial detail and drafting should be added with regard to how this calculation is made in order to provide clarity, including suitable definitions of the concepts of "gross sale or licence price" and "allowable costs"]

The profit so determined shall be shared between the Supplier and Network Rail as below, but in no circumstances will any loss be shared:

- (a) the first [...] per cent shall be retained by the Supplier;
(b) the next [...] per cent shall be shared between the Supplier and Network Rail in the ratio of [...];
(c) the remaining profit shall be shared between the Supplier and Network Rail in the ratio of [...].]

1.2 The Supplier shall promptly inform Network Rail if any of the Specially Written Software and/or the Project Specific IPRs is capable of exploitation outside of the Agreement.

1.3 Sales involving, or licences to reproduce, adaptations, extractions, translations or enhancements of the Specially Written Software and/or the Project Specific IPRs shall attract the levy or profit share (as applicable) in accordance with the Agreement unless Network Rail agrees in writing that an allowance may be made for software that was not developed at Network Rail's expense.

1.4 The following provisions shall apply to this Agreement:

- 1.4.1 the Supplier shall provide as soon as possible after delivery of the sale/licensed articles a statement, in a form prescribed by Network Rail, showing the gross selling/licence price and, where a profit share applies, a summary of the allowable costs and the profit ,together in each case with a certificate from its statutory auditors that the statement is correct and complete and that it complies with the accounting conventions agreed by Network Rail for the purpose;
- 1.4.2 the Supplier shall provide such facilities as may be necessary for Network Rail, if it so desires, to verify the statements and for this purpose the Supplier shall maintain proper books of accounts and records at its premises and shall make them available for inspection whether physically or otherwise at all reasonable times by representatives of Network Rail; and
- 1.4.3 the liability of the Supplier to Network Rail for any sum due under this Agreement including interim payment of levy for exploitation of the Specially Written Software and/or the Project Specific IPRs shall accrue on the date of delivery to the third party licensee/sub-licensee excluding the Supplier's works or, where the licence so prescribes, upon shipment.

FRAMEWORK AGREEMENT
SCHEDULE 14
NOT USED

FRAMEWORK AGREEMENT

SCHEDULE 15

SERVICE AWARD CRITERIA

[DN: To include the service award criteria for use in further competitions under the Framework Agreement]

FRAMEWORK AGREEMENT

SCHEDULE 16

PROCESSING OF PERSONAL DATA

1. The Supplier shall comply with any further written instructions with respect to processing by Network Rail.
2. Any such further instructions shall be incorporated into this Schedule.

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

ANNEX 1: JOINT CONTROLLER AGREEMENT

1. Joint Controller Status and Allocation of Responsibilities

1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 1 (Joint Controller Agreement) in replacement of Clause 18.2 - 18.15 (Where one Party is Controller and the other Party is Processor) and 18.17 - 18.28 (Where the Parties are Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.

1.2 The Parties agree that the [Supplier/Network Rail]:

- (a) is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the UK GDPR regarding the exercise by Data Subjects of their rights under the UK GDPR;
- (b) shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
- (c) is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR;
- (d) is responsible for obtaining the informed consent of Data Subjects, in accordance with the UK GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and
- (e) shall make available to Data Subjects the essence of this Joint Controller Agreement (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the [Supplier's/Network Rail's] privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).

1.3 Notwithstanding the terms of Paragraph 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Data Controller.

2. Undertakings of both Parties

2.1 The Supplier and Network Rail each undertake that they shall:

- (a) report to the other Party every [x] months on:
 - (i) the volume of Data Subject Access Requests (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
 - (ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
 - (iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
 - (iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and

- (v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

that it has received in relation to the subject matter of the Framework Agreement during that period;

- (b) notify each other immediately if it receives any request, complaint or communication made as referred to in Paragraphs 2.1(a)(i) to (v); and
- (c) provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Paragraphs 2.1(a)(iii) to (v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation.
- (d) not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under this Framework Agreement or is required by Law) that disclosure or transfer of Personal Data is otherwise considered to be lawful processing of that Personal Data in accordance with Article 6 of the UK GDPR or EU GDPR (as the context requires). For the avoidance of doubt to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex.
- (e) request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information.
- (f) ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data
- (g) take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
 - (i) are aware of and comply with their duties under this Annex 1 (*Joint Controller Agreement*) and those in respect of Confidential Information
 - (ii) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so;
 - (iii) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;
- (h) ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures.
- (i) ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the

request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds;

- (j) ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event;
- (k) where the Personal Data is subject to UK GDPR, not transfer such Personal Data outside of the UK unless the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
 - (i) the transfer is in accordance with Article 45 of the UK GDPR or DPA 2018 Section 73;
 - (ii) the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75) as agreed with the non-transferring Party which could include the International Data Transfer Agreement or International Data Transfer Agreement Addendum to the European Commission's SCCs as published by the Information Commissioner's Office, as well as any additional measures;
 - (iii) the Data Subject has enforceable rights and effective legal remedies;
 - (iv) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
 - (v) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and
- (l) where the Personal Data is subject to EU GDPR, not transfer such Personal Data outside of the EU unless the prior written consent of non-transferring Party has been obtained and the following conditions are fulfilled:
 - (i) the transfer is in accordance with Article 45 of the EU GDPR;
 - (ii) the transferring Party has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the non-transferring Party which could include relevant parties entering into Standard Contractual Clauses in the European Commission's decision 2021/914/EU as well as any additional measures;
 - (iii) the Data Subject has enforceable rights and effective legal remedies;
 - (iv) the transferring Party complies with its obligations under the EU GDPR by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
 - (v) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data.

2.2 Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its' obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations

3. **Data Protection Breach**

3.1 Without prejudice to Paragraph 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the other Party and its advisors with:

- (a) sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation;
- (b) all reasonable assistance, including:
 - (i) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
 - (ii) co-operation with the other Party including taking such reasonable steps as are directed by Network Rail to assist in the investigation, mitigation and remediation of a Personal Data Breach;
 - (iii) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach;
 - (iv) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Paragraph 3.2.

3.2 Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as if it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:

- (a) the nature of the Personal Data Breach;
- (b) the nature of Personal Data affected;
- (c) the categories and number of Data Subjects concerned;
- (d) the name and contact details of the Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained;
- (e) measures taken or proposed to be taken to address the Personal Data Breach; and
- (f) describe the likely consequences of the Personal Data Breach.

4. **Audit**

4.1 The Supplier shall permit:

- (a) Network Rail, or a third-party auditor acting under Network Rail's direction, to conduct, at Network Rail's cost, data privacy and security audits, assessments and inspections concerning the Supplier's data security and privacy procedures relating to Personal Data, its compliance with this Annex 1 and the Data Protection Legislation.

- (b) Network Rail, or a third-party auditor acting under Network Rail's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 of the UK GDPR by the Supplier so far as relevant to the Framework Agreement, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Services.

4.2 Network Rail may, in its sole discretion, require the Supplier to provide evidence of the Supplier's compliance with Paragraph 4.1 in lieu of conducting such an audit, assessment or inspection.

5. **Impact Assessments**

5.1 The Parties shall:

- (a) provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to processing operations, risks and measures);
- (b) maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with this Framework Agreement, in accordance with the terms of Article 30 of the UK GDPR.

6. **ICO Guidance**

6.1 The Parties agree to take account of any guidance issued by the Information Commissioner and/or any relevant Central Government Body. Network Rail may on not less than thirty (30) Working Days' notice to the Supplier amend this Framework Agreement to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant Central Government Body.

7. **Liabilities for Data Protection Breach**

7.1 If financial penalties are imposed by the Information Commissioner on either Network Rail or the Supplier for a Personal Data Breach ("**Financial Penalties**") then the following shall occur:

- (a) If in the view of the Information Commissioner, Network Rail is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of Network Rail, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by Network Rail, then Network Rail shall be responsible for the payment of such Financial Penalties. In this case, Network Rail will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such data incident. The Supplier shall provide to Network Rail and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such data incident;
- (b) If in the view of the Information Commissioner, the Supplier is responsible for the Personal Data Breach, in that it is not a breach that Network Rail is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to Network Rail and its auditors, on request and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such data incident; or
- (c) If no view as to responsibility is expressed by the Information Commissioner, then Network Rail and the Supplier shall work together to investigate the relevant data incident and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any Financial Penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute

Resolution Procedure set out in Schedule 11 (*Dispute Resolution Procedure*) of the Framework Agreement.

- 7.2 If either Network Rail or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction (“**Court**”) by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Personal Data Breach shall be liable for the losses arising from such breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.
- 7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the “**Claim Losses**”):
- (a) if Network Rail is responsible for the relevant breach, then Network Rail shall be responsible for the Claim Losses;
 - (b) if the Supplier is responsible for the relevant breach, then the Supplier shall be responsible for the Claim Losses; and
 - (c) if responsibility is unclear, then Network Rail and the Supplier shall be responsible for the Claim Losses equally.
- 7.4 Nothing in Paragraphs 7.2-7.3 shall preclude Network Rail and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the breach and the legal and financial obligations of Network Rail.
8. **Termination**
- 8.1 If the Supplier is in material Default under any of its obligations under this Annex 1 (*Joint Control Agreement*), Network Rail shall be entitled to terminate this Framework Agreement by issuing a Termination Notice to the Supplier in accordance with Clause 21 (*Suspension or Termination of Supplier’s Appointment*).
9. **Sub-Processing**
- 9.1 In respect of any Processing of Personal performed by a third party on behalf of a Party, that Party shall:
- (a) carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by this Framework Agreement, and provide evidence of such due diligence to the other Party where reasonably requested; and
 - (b) ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.
10. **Data Retention**
- 10.1 The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by a Party for statutory compliance purposes or as otherwise required by this Framework Agreement), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.