

**NR1(MT)**

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**Network Rail Framework Contract  
for  
Goods and/or Non Construction Services**

**Contract Title: [Insert]**

**Contract No: [Insert]**

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**CONTRACT AGREEMENT**


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The Contract is between:

**NETWORK RAIL INFRASTRUCTURE LIMITED** a company registered in England and Wales under number **02904587** whose registered office is at **Waterloo General Office, London, SE1 8SW** (“the Buyer”)

**AND**

**[NAME OF SUPPLIER]** [a company registered in ..... under number ..... whose registered office is at.....] (“the Supplier”)

who agree:

- The Contract is a framework agreement and is entered into in consideration of the payment of the sum of £1 by the Buyer to the Supplier (receipt of which the Supplier acknowledges). The Supplier shall provide such of the Deliverables as described in Schedule 1 (Specification) as ordered by the Buyer from time to time pursuant to a Contract Order in accordance with the provisions of the Contract (if any).
- The Buyer shall pay the Supplier in consideration of the provision of the Deliverables the Charges at the times and in the manner prescribed by the Contract.
- The following documents shall form and be read and construed as part of the Contract, and in the case of any ambiguity or discrepancy shall have the following order of priority:
  1. Contract Agreement
  2. Key Contract Information
  3. Contract Specific Conditions
  4. Conditions
  5. Contract Orders (if any) and Schedules (each of equal precedence)

Signed for and on behalf of:

**THE SUPPLIER**

Name:	.....	Signature:	.....
Position:	.....		

**THE BUYER**

Name:	.....	Signature:	.....
Position:	.....		

<p><b>The Contract is dated and delivered on:</b> <i>insert date on which the last party signs</i></p>
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***For agreements executed using the DocuSign electronic signature process, the digital certification for the signatures of both Parties and date of execution can be found at the end of the contract documentation.***

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## KEY CONTRACT INFORMATION

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(Note: Relevant clause numbers are shown in brackets)

### 1. Buyer's Authorised Representative (Clause 1):

Name:	
Role:	
Address:	
Email:	

### 2. Supplier's Authorised Representative (Clause 1):

Name:	
Role:	
Address:	
Email:	

### 3. Key Supplier Staff (Clause 7.5):

Name:	Role:	Email:

### 4. Contract duration (Clause 13):

Start Date (Clause 13.1):	Date of Contract execution or insert date
Expiry Date (Clause 13.1):	Insert date
Extension Period (Clause 13.2):	None
Notice period for an Extension if applicable (Clause 13.2):	3 months

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## 5. Liability (Clause 15):

Total Aggregate Liability (Clause 15.1)	[£5m] or [£[*]] or [100% of the total Charges paid or payable under the Contract] [ <i>Select and complete as applicable for each Party</i> ], except where otherwise stated below with respect to the Supplier's total aggregate liability for any indemnity given under Clauses 9, 10.3, 11.10 11.9 or 18.22.5
Total Aggregate Liability of the Supplier specifically for indemnities given under Clauses 9, 10.3, 11.10 11.9 or 18.22.5 (Clause 15.4)	[£5m] or [£[*]] or [100% of the total Charges paid or payable under the Contract] [ <i>Select and complete as applicable</i> ]  <i>Note: consider inserting a higher figure if sensitive personal data is being processed for example. Also, if the cap above with respect to the Supplier's liability is set low you may still want to have a higher cap for TUPE and for IPR claims.</i>

## 6. Insurances (Clause 17):

Public Liability Insurance (Clause 17):	£5,000,000 (five million pounds)
Professional Indemnity Insurance (Clause 17):	£5,000,000 (five million pounds) or [£[*]] [ <i>Please insert if alternative level is required</i> ], in respect of all claims made in connection with any one occurrence or all occurrences of a series consequent on or attributed to one source or original cause and which may be subject to an annual aggregate limit.  or  Not required ( <i>Supply of Goods only</i> )

## 7. Addresses for notices (Clause 29):

	Buyer	Supplier
Notices (Clause 29.2):	Buyer's Authorised Representative's address as above	[Insert]
Notices relating to legal proceedings (Clause 29.3):	Company Secretary Network Rail	[Insert]

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	Registered address as stated in Contract Agreement  With a copy to: 1. <a href="mailto:notices@networkrail.co.uk">notices@networkrail.co.uk</a> ; and 2. The Buyer's Authorised Representative by email	
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8. Performance Security (Clause 33):

Parent Company Guarantee (Clause 33.1):	Not applicable  <b>or insert</b> The Supplier's performance will be guaranteed by the Guarantor, who shall enter into a guarantee using the form provided by the Buyer.
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9. Volume of Deliverables Committed to (Clause 35.3):

	Nil [or insert volume]
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10. IR35 ( Schedule 3 Corporate Social Responsibility) - Where the intermediaries legislation applies the Buyer deems that ITEPA 2003 Part 2 Ch10 s61M 1(d) applies to services carried out under the Contract (within IR35) as follows:

	Applies (within IR35) / Does not apply- add CEST determination reference number and attach as an Appendix at the end of the Contract and/or any Contract Order.
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## CONTRACT SPECIFIC CONDITIONS

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[None]

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**CONDITIONS**

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## 1. Definitions used in the contract

- 1.1 In the Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Clause 1 (Definitions used in the Contract) or the relevant Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in the Contract, 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.
- 1.3 In the Contract, unless the context otherwise requires:
- 1.3.1 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
- 1.3.2 a reference to any Law includes a reference to that Law as amended, extended, consolidated, replaced or re-enacted from time to time (including as a consequence of the Retained EU Law (Revocation and Reform) Act 2023);
- 1.3.3 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**";
- 1.3.4 references to "**Clauses**" and "**Schedules**" are, unless otherwise provided, references to the clauses and schedules of these Conditions and the Contract Specific Conditions and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear; and
- 1.3.5 references to "**Paragraphs**" are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided.
- 1.4 In the Contract, unless the context otherwise requires, the following words shall have the following meanings:

<b>"Affiliates"</b>	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, as control is defined in section 450 of the Corporation Tax Act 2010;
<b>"Audit"</b>	<p>the Buyer's right to:</p> <p>(a) verify the accuracy of the Charges and any other amounts payable by the Buyer under the Contract (including proposed or actual variations to them in accordance with the Contract);</p> <p>(b) verify the Supplier's and each Subcontractor's compliance with the applicable Law;</p> <p>(c) identify or investigate any actual or suspected breach of any provision of the Contract;</p> <p>(d) carry out the Buyer's internal and statutory audits and to prepare, examine and/or certify the Buyer's annual and interim reports and accounts; or</p>

	(e) 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 the Buyer has used its resources;
<b>"Buyer Assets"</b>	the Buyer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Buyer and which is or may be used in connection with the provision of the Deliverables which remain the property of the Buyer throughout the term of the Contract;
<b>"Buyer's Authorised Representative"</b>	the representative appointed by the Buyer from time to time in relation to the Contract initially identified in the Key Contract Information and whom may further delegate duties to assistants;
<b>"Buyer Cause"</b>	any breach of the obligations of the Buyer or any other default, act, omission, negligence or statement of the Buyer, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Buyer is liable to the Supplier;
<b>"Buyer Data"</b>	<p>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, including any of the Buyer's Confidential Information, and which:</p> <p>(a) are supplied to the Supplier by or on behalf of the Buyer; and/or</p> <p>(b) the Supplier is required to generate, process, store or transmit pursuant to the Contract; or</p> <p>(c) any Personal Data for which the Buyer is the Controller;</p>
<b>"Buyer Existing IPR"</b>	any and all IPR that are owned by or licensed to the Buyer and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise);
<b>"Buyer Premises"</b>	premises owned, controlled or occupied by the Buyer which are made available for use by the Supplier or its Subcontractors for the provision of the Deliverables (or any of them);
<b>"Buyer's Confidential Information"</b>	<p>(a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Buyer (including all Buyer Existing IPR and New IPR);</p> <p>(b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Buyer's attention or into the Buyer's possession in connection with the Contract; and</p> <p>information derived from any of the above;</p>
<b>"Buyer Materials"</b>	has the meaning given to this term in Clause 3.2.4;
<b>"Charges"</b>	the prices (exclusive of any applicable VAT) payable to the Supplier by the Buyer under the Contract, as set out in Schedule 2 (Charges)

	or as otherwise specified in the Contract Order, for the full and proper performance by the Supplier of its obligations under the Contract, less any deductions provided for under the Contract;
<b>“Claim”</b>	any claim in respect of which the Buyer is entitled to indemnification by the Supplier under the Contract;
<b>“Confidential Information”</b>	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Buyer or the Supplier, including IPRs, together with 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 (excluding Publishable Performance Information (if applicable));
<b>“Contract”</b>	the contract between the Buyer and the Supplier, which consists of the terms set out and referred to in the: <ul style="list-style-type: none"> <li>(a) Contract Agreement;</li> <li>(b) Key Contract Information;</li> <li>(c) Contract Specific Conditions;</li> <li>(d) Conditions; and</li> <li>(e) Schedules</li> </ul> and, unless expressly stated otherwise, includes all Contract Orders;
<b>“Contract Order”</b>	any order issued to the Supplier by the Buyer pursuant to Clause 35 in respect of any of the Goods and/or Services, in the form provided for in Schedule 6 (Process for Issuing Contract Orders);
<b>“Contract Period”</b>	the term of the Contract from the Start Date until the Expiry Date, as such period may be extended or terminated earlier in accordance with the terms and conditions of the Contract;
<b>“Crown Body”</b>	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the Welsh Government), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>“Data Loss Event”</b>	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under the Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of the Contract, including any Personal Data Breach;
<b>“Data Protection Impact Assessment”</b>	an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
<b>“Data Protection Legislation”</b>	all applicable laws relating to data protection, the processing of personal data, privacy and/or electronic communications in force from time to time; and references to <b>“Controller”</b> , <b>“Data Subjects”</b> , <b>“Data Protection Officer”</b> , <b>“Joint Controllers”</b> <b>“Personal Data”</b> ,

	<p><b>“Personal Data Breach”, “Processor” and “Processing”</b> have the meanings set out in and will be interpreted in accordance with such laws;</p>
<b>“Data Subject Request”</b>	<p>a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;</p>
<b>“Default”</b>	<p>any breach of the obligations of the Supplier (including abandonment of the Contract in breach of its terms) or any other default (including Material Default), act, omission, negligence or statement of the Supplier, of its Subcontractors or any Supplier Staff howsoever arising in connection with or in relation to the subject-matter of the Contract and in respect of which the Supplier is liable to the Buyer;</p>
<b>“Defect”</b>	<p>any of the following:</p> <ul style="list-style-type: none"> <li>(a) any error, damage or defect in the manufacturing of a Deliverable; or</li> <li>(b) any error or failure of code within the Software (if applicable and as defined in the ICT Services Schedule where such Schedule is used) which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or</li> <li>(c) any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test (if applicable and as defined in the Implementation Plan &amp; Testing Schedule where such Schedule is used) required under the Contract; or</li> <li>(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 the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test (if applicable and as defined in the Implementation Plan &amp; Testing Schedule where such Schedule is used) required under the Contract;</li> </ul>
<b>“Deliverables”</b>	<p>Goods, Services or software that may be ordered and/or developed under the Contract including the Documentation (in accordance with the process set out under Clause 35);</p>
<b>“Delivery”</b>	<p>delivery of the relevant Deliverable or Milestone in accordance with the terms of the Contract as confirmed and accepted by the Buyer by the either (a) confirmation in writing to the Supplier; or (b) the Implementation Plan and Testing Schedule is used, issue by the Buyer of a Satisfaction Certificate (as defined in the Schedule). <b>“Deliver”</b> and <b>“Delivered”</b> shall be construed accordingly;</p>

<b>“Delivery Date”</b>	the date by which the Deliverables must be delivered to the Buyer, as specified in the Key Contract Information or, where applicable, the Implementation Plan;
<b>“Dispute Resolution Procedure”</b>	the dispute resolution procedure set out in Clause 32 (Resolving disputes);
<b>“Documentation”</b>	<p>descriptions of the Services, technical specifications, manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) as is required to be supplied by the Supplier to the Buyer under the Contract as:</p> <p>(a) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Deliverables</p> <p>(b) is required by the Supplier in order to provide the Deliverables; and/or</p> <p>(c) has been or shall be generated for the purpose of providing the Deliverables;</p>
<b>“EIR”</b>	the Environmental Information Regulations 2004;
<b>“Employment Regulations”</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;
<b>“Existing IPR”</b>	Buyer Existing IPR and/or Supplier Existing IPR, as applicable in the context;
<b>“Expiry Date”</b>	the date of the end of the Contract as specified in the Key Contract Information, as may be extended by the Buyer under Clause 13.2;
<b>“Extension Period”</b>	such period or periods that the Contract may be extended up to a maximum of the number of years in total specified in the Key Contract Information;
<b>“Financial Distress Event”</b>	has the meaning given to it in the Financial Difficulties Schedule where that Schedule is used;
<b>“FOIA”</b>	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the UK information commissioner or relevant UK government department in relation to such legislation;
<b>“Force Majeure Event”</b>	any event, circumstance, matter or cause affecting the performance by either the Buyer or the Supplier of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control which prevent or materially delay it from performing its obligations under the Contract and which is not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, but excluding:

	<ul style="list-style-type: none"> <li>(i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain;</li> <li>(ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and</li> <li>(iii) any failure or delay caused by a lack of funds;</li> </ul>
<b>"General Change in Law"</b>	a change in Law which is not a Specific Change in Law;
<b>"Goods"</b>	goods to be supplied by the Supplier to the Buyer under the Contract as specified in Schedule 1 (Specification), the Key Contract Information and the Contract Order;
<b>"Good Industry Practice"</b>	at any time standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected at such time from a skilled and experienced person or body engaged within the relevant industry or business sector;
<b>"Guarantor"</b>	the person (if any) who has entered into a guarantee in the form prescribed by the Buyer in relation to the Contract;
<b>"Impact Assessment"</b>	<p>an assessment of the impact of a Variation request by the Buyer completed in good faith, including:</p> <ul style="list-style-type: none"> <li>(a) details of the impact of the proposed Variation on the Deliverables and the Supplier's ability to meet its other obligations under the Contract;</li> <li>(b) details of the cost of implementing the proposed Variation;</li> <li>(c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Charges (as applicable), any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;</li> <li>(d) a timetable for the implementation, together with any proposals for the testing of the Variation; and</li> <li>(e) such other information as the Buyer may reasonably request in (or in response to) the Variation request;</li> </ul>
<b>"Implementation Plan"</b>	the plan for provision of the Deliverables set out in the Implementation Plan and Testing Schedule where that Schedule is used or otherwise as agreed between the Supplier and the Buyer (if any);
<b>"Independent Control"</b>	where a Controller has provided Personal Data to another Party which is not a Processor or a Joint Controller because the recipient itself determines the purposes and means of Processing but does so separately from the Controller providing it with Personal Data and <b>"Independent Controller"</b> shall be construed accordingly;

<b>"Insolvency Event"</b>	<p>in respect of a person:</p> <ul style="list-style-type: none"> <li>(a) that person is insolvent; or</li> <li>(b) an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction); or</li> <li>(c) that person makes any composition or arrangement with its creditors; or</li> <li>(d) an administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</li> <li>(e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or</li> <li>(f) any event analogous to those listed in limbs (a) to (e) (inclusive) occurs under the law of any other jurisdiction;</li> </ul>
<b>"Intellectual Property Rights" or "IPR"</b>	<ul style="list-style-type: none"> <li>(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 or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information;</li> <li>(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</li> <li>(c) all other rights having equivalent or similar effect in any country or jurisdiction;</li> </ul>
<b>"IPR Claim"</b>	<p>any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR (excluding COTS Software as defined in the ICT Services Schedule where such Schedule is used) used to provide the Deliverables or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Buyer in the fulfilment of its obligations under the Contract;</p>
<b>"Joint Control"</b>	<p>where two or more Controllers jointly determine the purposes and means of Processing;</p>
<b>"Key Contract Information"</b>	<p>the document outlining the crucial information required for the Contract;</p>
<b>"Key Supplier Staff"</b>	<p>the individuals (if any) identified as such in the Key Contract Information;</p>
<b>"Know-How"</b>	<p>all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Deliverables but excluding know-how already in the other Party's possession before the Start Date;</p>

<b>"Law"</b>	any law and any legally binding rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body and any legally binding industry code of conduct or guideline, in each case which applies to one or each of the Parties or relates to the subject matter or performance of the Contract and which is in force from time to time;
<b>"Losses"</b>	all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and <b>"Loss"</b> shall be interpreted accordingly;
<b>"Material Default"</b>	a single serious Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied);
<b>"Milestone"</b>	an event or task described in the Implementation Plan;
<b>"New IPR"</b>	<p>(a) IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the Contract and updates and amendments of these items; and/or</p> <p>(b) IPR in or arising as a result of the performance of the Supplier's obligations under the Contract and all updates and amendments to the same;</p> <p>but shall not include the Supplier Existing IPR;</p>
<b>"Notifiable Default"</b>	the Supplier commits a Material Default;
<b>"Other Supplier"</b>	any supplier to the Buyer (other than the Supplier) which is specified in the Contract Order from time to time;
<b>"Party"</b>	the Buyer or the Supplier and <b>"Parties"</b> shall mean both of them where the context permits;
<b>"Processor Personnel"</b>	all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under the Contract;
<b>"Protective Measures"</b>	technical and organisational measures designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation including 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;
<b>"Publishable Performance Information"</b>	any performance information (which is not commercially sensitive as determined by the Buyer acting in its absolute discretion) which is identified as being publishable in the Contract;



<b>"Recall"</b>	a request by the Supplier to return Goods to the Supplier or the manufacturer after the discovery of safety issues or Defects (including defects in the IPR rights) that might endanger health or hinder performance;
<b>"Rectification Plan"</b>	the Supplier's plan (or revised plan) to rectify a Notifiable Default which shall include:  (a) full details of the Notifiable Default that has occurred, including a root cause analysis;  (b) the actual or anticipated effect of the Notifiable Default; and  (c) 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);
<b>"Rectification Plan Process"</b>	the process set out in Clause 12;
<b>"Relevant Requirements"</b>	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010;
<b>"Replacement Deliverables"</b>	any deliverables which are substantially similar to any of the Deliverables and which the Buyer receives in substitution for any of the Deliverables, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Request For Information"</b>	a request for information or an apparent request relating to the Contract for the provision of the Deliverables or an apparent request for such information under the FOIA or the EIRs;
<b>"Required Insurances"</b>	the insurances set out in the Key Contract Information;
<b>"Restricted Transfer"</b>	a transfer of Personal Data processed in connection with the Supplier's obligations under the Contract which is undergoing processing or which is intended to be processed after transfer, to a country or territory to which such transfer is prohibited or subject to any requirement to take additional steps to adequately protect the Personal Data for the transfer to be lawful under the Data Protection Legislation;
<b>"Security Incident"</b>	(a) the unlawful or unauthorised processing of Personal Data; or  (b) any security incident affecting the Personal Data (including (without limitation) a personal data breach as defined in the Data Protection Legislation);
<b>"Service Levels"</b>	any service levels applicable to the provision of the Deliverables under the Contract which, where the Service Levels Schedule is used in the Contract, are specified in the Annex to Part A of such Schedule;

<b>"Services"</b>	services to be supplied by the Supplier to the Buyer under the Contract as specified in Schedule 1 (Specification), the Key Contract Information and the Contract Order;
<b>"Sites"</b>	any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which: <ul style="list-style-type: none"> <li>(a) the Deliverables are (or are to be) provided; or</li> <li>(b) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables;</li> <li>(c) those premises at which any Supplier Equipment or any part of the Supplier System is located (where ICT Services are being provided)</li> </ul>
<b>"Specification"</b>	the specification set out in Schedule 1 (Specification), as may, in relation to the Contract, be supplemented by the Contract Order;
<b>"Specific Change in Law"</b>	a change in Law that relates specifically to the business of the Buyer and which would not affect a comparable supply of Deliverables to another buyer where the effect of that Specific Change in Law on the Deliverables is not reasonably foreseeable at the Start Date;
<b>"Start Date"</b>	the date specified on the Key Contract Information;
<b>"Sub-Contract"</b>	any contract or agreement (or proposed contract or agreement), other than the Contract, pursuant to which a third party: <ul style="list-style-type: none"> <li>(a) provides the Deliverables (or any part of them);</li> <li>(b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or</li> <li>(c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);</li> </ul>
<b>"Subcontractor"</b>	any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
<b>"Subprocessor"</b>	any third party appointed to process Personal Data on behalf of the Processor related to the Contract;
<b>"Supplier's Authorised Representative"</b>	the representative appointed by the Supplier named in the Key Contract Information, or later defined in the Contract;
<b>"Supplier Equipment"</b>	the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Buyer) in the performance of its obligations under the Contract;
<b>"Supplier Existing IPR"</b>	any and all IPR that are owned by or licensed to the Supplier and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise) and any Intellectual Property Rights owned by a third party, in each case used by the Supplier in the provision of or otherwise incorporated in the Deliverables;

<b>"Supplier Non-Performance"</b>	<p>where the Supplier has failed to:</p> <ul style="list-style-type: none"> <li>(a) where the Implementation Plan and Testing Schedule is used, Achieve a Milestone by its Milestone Date;</li> <li>(b) Deliver a Deliverable by its Delivery Date;</li> <li>(c) provide the Goods and/or Services in accordance with the Service Levels ; and/or</li> <li>(d) comply with an obligation under the Contract;</li> </ul>
<b>"Supplier Staff"</b>	<p>all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under the Contract;</p>
<b>"Supplier's Confidential Information"</b>	<ul style="list-style-type: none"> <li>(a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Existing IPR) trade secrets, Know-How, and/or personnel of the Supplier;</li> <li>(b) 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 and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with the Contract;</li> </ul> <p>Information derived from any of (a) and (b) above;</p>
<b>"Termination Notice"</b>	<p>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 the Contract on a specified date and setting out the grounds for termination;</p>
<b>"Variation"</b>	<p>a variation to the Contract and/or any Contract Order;</p>
<b>"Variation Procedure"</b>	<p>the procedure set out in Clause 28 (Changing the contract);</p>
<b>"Warranty Period"</b>	<p>has the meaning given to this term in Clause 3.1.3; and</p>
<b>"Working Day"</b>	<p>any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by the Parties in the Key Contract Information.</p>

## 2. How the contract works

- 2.1 The Supplier acknowledges it has all the information required to perform its obligations under the Contract before entering into it. When information is provided by the Buyer no warranty of its accuracy is given to the Supplier.
- 2.2 The Supplier acknowledges it has satisfied itself of all details relating to the Buyer's operating process and working methods and the Buyer's requirements for the Deliverables.
- 2.3 The Supplier warrants and represents that all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

### 3. What needs to be delivered

#### 3.1 All deliverables

- 3.1.1 The Supplier must provide Deliverables:
- a) that comply with the Specification and the Contract;
  - b) using reasonable skill and care;
  - c) using Good Industry Practice;
  - d) using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract;
  - e) on the dates agreed; and
  - f) that comply with Law.
- 3.1.2 In performing its obligations under the Contract, the Supplier must comply and must ensure that its Subcontractors comply with the Buyer's security policies and procedures including:
- a) NR/L1/SCT/002 Cyber security and resilience for digital systems; and
  - b) Supplier (Supply Chain) Security Policy.
- 3.1.3 The Supplier must provide Deliverables with a warranty of at least ninety days from Delivery against all obvious Defects or for such other period as specified in the Contract Order (the "**Warranty Period**").
- 3.1.4 Except as expressly stated in the Contract and/or any Contract Order, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

#### 3.2 Goods Clauses

- 3.2.1 All Goods delivered must be new, or as new if recycled, unused and of recent origin.
- 3.2.2 Where the Charges are calculated by reference to the weight of the Goods, payment will be made on the net weight of the Goods only.
- 3.2.3 The Supplier transfers ownership of, and title to, the Goods on payment for those Goods. Provided that this Clause 3.2.3 shall not apply where the Buyer supplies materials to be incorporated in the Goods, in which case Clause 3.2.4 shall apply.
- 3.2.4 If the Buyer supplies materials to be incorporated into the Goods ("**Buyer Materials**"), and without prejudice to the rights of Buyer to reject and require the replacement of the Goods by the Seller under this Clause 3.2, ownership of, and title to, the Buyer Materials shall remain at all times with the Buyer and on incorporation of the Buyer Materials into the Goods then ownership of, and title to, the Goods shall transfer to the Buyer and the provisions of Clause 3.2.5 shall apply.
- 3.2.5 No Goods, materials or other items referred to in Clause 3.2.4 or any Goods in respect of which payment has been made by the Buyer prior to Delivery, shall be, except in compliance with the Contract, removed from the Supplier's premises without the prior written consent of the Buyer. The Supplier shall set aside and separately identify and clearly mark such Goods, materials and other items as owned by the Buyer and, if required by the Buyer, shall display a notice with such items to the effect that they are the absolute property of the Buyer and may not be removed from the Supplier's premises without the prior written consent of the Buyer.
- 3.2.6 Risk in the Goods or part of the Goods transfers to the Buyer on Delivery of the Goods or part of such Goods (as the case may be) (notwithstanding that payment may have already been made and ownership passed to the Buyer), but remains

with the Supplier if the Buyer notices damage following Delivery and lets the Supplier know within three Working Days of Delivery.

- 3.2.7 The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
- 3.2.8 The Supplier must deliver the Goods on the Delivery Date and to the delivery address specified in the Contract Order during the Buyer's working hours. Late Delivery of the Goods will be a Default of the Contract.
- 3.2.9 The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.
- 3.2.10 All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.
- 3.2.11 The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.
- 3.2.12 The Supplier shall be responsible for all reasonable costs incurred by the Buyer in respect of any Recall of the Goods and must give prompt notice to the Buyer of any actual or anticipated action about the Recall of the Goods.
- 3.2.13 The Buyer can cancel any order or part order of Goods which has not been Delivered and it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier uses all reasonable endeavours to minimise these costs.
- 3.2.14 The Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they don't conform with Clause 3. If the Supplier doesn't do this it will pay the Buyer's reasonable costs including repair or re-supply by a third party.
- 3.2.15 Any Goods replaced or repaired under Clause 3.2.14 shall be subject to the full Warranty Period which shall run from the actual date of delivery of the Goods following their repair or replacement and Clause 3.2.14 shall apply for the full Warranty Period.
- 3.2.16 The Buyer will not be liable for any actions, claims and Losses incurred by the Supplier or any third party during Delivery or installation of the Goods unless and to the extent that it is caused by negligence or other wrongful act of the Buyer or its servant or agent. If the Buyer suffers or incurs any Loss or injury (whether fatal or otherwise) occurring in the course of Delivery or installation then the Supplier shall be responsible for any losses, charges, costs or expenses which arise as a result of or in connection with such Loss or injury where it is attributable to any act or omission of the Supplier or any of its Subcontractors or Supplier Staff.

### 3.3 Services Clauses

- 3.3.1 The Supplier must Deliver the Services in accordance with the Delivery Dates.
- 3.3.2 The Supplier must co-operate with the Buyer and Other Suppliers on all aspects connected with the Delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions of the Buyer or Other Suppliers.
- 3.3.3 The Supplier must at its own risk and expense provide all Supplier Equipment required to Deliver the Services. Any equipment provided by the Buyer to the Supplier for supplying the Services remains the property of the Buyer and is to be returned to the Buyer on expiry or termination of the Contract.
- 3.3.4 The Supplier must allocate sufficient resources and appropriate expertise to the Contract.

- 3.3.5 The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.
- 3.3.6 The Supplier must ensure all Services, and anything used to Deliver the Services, are of good quality and free from Defects.
- 3.3.7 The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.
- 3.3.8 On completion of the Services, the Supplier is responsible for leaving the Buyer Premises in a clean, safe and tidy condition and making good any damage that it has caused to the Buyer Premises or Buyer Assets, other than fair wear and tear.

## 4. Pricing and payments

- 4.1 In exchange for the Deliverables, the Supplier must invoice the Buyer for the Charges as determined in accordance with Schedule 2 (Charges) or as otherwise specified in the Contract Order. Invoices shall be issued either on completion of Delivery of the Deliverables or as otherwise described in Schedule 2 (Charges) or as otherwise specified in the Contract Order.
- 4.2 All Charges:
  - 4.2.1 exclude VAT, which is payable on provision of a valid VAT invoice; and
  - 4.2.2 include all costs connected with the Supply of Deliverables.
- 4.3 The Buyer must pay the Supplier the Charges within twenty-eight days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds to the Supplier's account as notified to the Buyer.
- 4.4 A Supplier invoice is only valid if it:
  - 4.4.1 includes all appropriate references including the Contract reference number and other details reasonably requested by the Buyer;
  - 4.4.2 includes a detailed breakdown of Delivered Deliverables and Milestone(s) (if any); and
  - 4.4.3 is addressed to "Network Rail, Accounts Payable, P.O. Box 4145, Manchester M60 7WZ" or, if no supporting documentation is attached, original computer-generated pdf invoices can be emailed to [invoices@networkrail.co.uk](mailto:invoices@networkrail.co.uk).
- 4.5 The Buyer may retain or set-off payment of any amount owed to it by the Supplier under the Contract, any Contract Orders or any other agreement between the Supplier and the Buyer if notice and reasons are provided.
- 4.6 The Supplier must ensure that all Subcontractors are paid, in full, within twenty-eight days of receipt of a valid, undisputed invoice. If this doesn't happen, the Buyer can publish the details of the late payment or non-payment.

## 5. The Buyer's obligations to the Supplier

- 5.1 If Supplier Non-Performance arises from a Buyer Cause:
  - 5.1.1 the Buyer cannot terminate the Contract and/or any Contract Order under Clause 14.2.1;
  - 5.1.2 the Supplier is entitled to reasonable and proven additional expenses and to relief from liability and any deductions provided for under the Contract;
  - 5.1.3 the Supplier is entitled to additional time needed to make the Delivery.

- 5.2 Clause 5.1 only applies if the Supplier:
- 5.2.1 gives notice to the Buyer of the Buyer Cause within ten Working Days of becoming aware;
  - 5.2.2 demonstrates that the Supplier Non-Performance only happened because of the Buyer Cause; and
  - 5.2.3 mitigated the impact of the Buyer Cause, to the extent reasonably practicable.

## 6. Record keeping and reporting

- 6.1 The Supplier must ensure that suitably qualified representatives attend progress meetings with the Buyer and provide progress reports when specified in any Schedule and/or the Contract Order.
- 6.2 The Supplier must keep and maintain full and accurate records and accounts in respect of the Contract during the Contract Period and for seven years thereafter and in accordance with the Data Protection Legislation, including the records and accounts which the Buyer has a right to Audit.
- 6.3 If the Supplier becomes aware of an event that has occurred or is likely to occur in the future which will have a material effect on the Charges then the Supplier must notify the Buyer in writing as soon as practicable setting out the actual or anticipated effect of the event.
- 6.4 The Buyer or an auditor can Audit the Supplier.
- 6.5 The Supplier must allow the Buyer and/or any auditor appointed by the Buyer access to their premises and the Buyer will use reasonable endeavours to ensure that any such auditor will:
- 6.5.1 comply with the Supplier's operating procedures; and
  - 6.5.2 not unreasonably disrupt the Supplier or its provision of the Deliverables.
- 6.6 During an Audit, the Supplier must provide information to the Buyer and/or auditor appointed by the Buyer and must provide any reasonable co-operation requested, including access to:
- 6.6.1 all information within the permitted scope of the Audit;
  - 6.6.2 any Sites, equipment and the Supplier's ICT system used in the performance of the Contract; and
  - 6.6.3 the Supplier Staff.
- 6.7 The Parties will bear their own costs when an Audit is undertaken unless the Audit identifies a Material Default by the Supplier, in which case the Supplier will repay the Buyer's reasonable costs in connection with the Audit.
- 6.8 The Supplier must comply with the Buyer's reasonable instructions following an Audit, including:
- 6.8.1 correcting any identified Default; and
  - 6.8.2 repaying any Charges that the Buyer has overpaid.
- 6.9 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
- 6.9.1 tell the Buyer and give reasons;
  - 6.9.2 propose corrective action; and
  - 6.9.3 provide a deadline for completing the corrective action.

- 6.10 Except where an Audit is imposed on the Buyer by a regulatory body or where the Buyer has reasonable grounds for believing that the Supplier has not complied with its obligations under the Contract and/or any Contract Order(s), the Buyer may not conduct an Audit of the Supplier more than twice in any consecutive period of twelve months commencing on the Start Date or each anniversary thereof.

## 7. Supplier staff

- 7.1 The Supplier Staff involved in the performance of the Contract must:
- 7.1.1 be appropriately trained and qualified;
  - 7.1.2 be vetted using Good Industry Practice and the security vetting procedure specified in Clause **Error! Reference source not found.**; and
  - 7.1.3 comply with all conduct requirements when on the Buyer's Premises.
- 7.2 Where the Buyer decides (acting reasonably) one of the Supplier's Staff is not suitable to work on the Contract, the Supplier must replace them with a suitably qualified alternative.
- 7.3 The Supplier must provide a list of Supplier Staff needing to access the Buyer's Premises and say why access is required.
- 7.4 The Supplier shall be responsible for all claims brought by any person employed or engaged by the Supplier caused by an act or omission of the Supplier or any Supplier Staff and shall be responsible for all costs and losses incurred by the Buyer in respect of these.
- 7.5 The Key Supplier Staff specified in the Key Contract Information shall carry out the Services and provide the Deliverables, performing the roles identified against their names in the Key Contract Information, unless otherwise agreed with the Buyer (whose agreement shall not be unreasonably withheld or delayed).
- 7.6 The Supplier shall:
- 7.6.1 notify the Buyer as soon as reasonably practicable of the absence of any Key Supplier Staff (other than for short-term sickness or holidays of two weeks or less, in which case the Supplier shall ensure appropriate temporary cover for their role);
  - 7.6.2 ensure that all arrangements for agreed changes in Key Supplier Staff provide adequate periods during which incoming and outgoing staff work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Deliverables; and
  - 7.6.3 ensure that any replacement for Key Supplier Staff has a level of qualifications and experience appropriate to the relevant role and is fully competent to carry out the tasks assigned to the Key Supplier Staff that they have replaced.
- 7.7 The Supplier shall and shall procure that its Subcontractors shall comply with the security vetting procedures specified below:
- 7.7.1 the Supplier Staff have been subject to pre-employment screening required by Law. As a minimum this includes identity verification and UK right to work checks;
  - 7.7.2 to control risk to the railway associated with unsupervised access to sensitive information (OFFICIAL-SENSITIVE or above), Critical National Infrastructure sites and associated systems, certain Supplier Staff may be required to pass additional checks such as employment history check, confirmation of UK residency, disclosure of unspent convictions and National Security Vetting (NSV). Roles that require additional checks will be notified to the Supplier by the Buyer;
  - 7.7.3 the Supplier shall not and shall procure that its Subcontractors shall not use Supplier Staff who are unable to comply with Clauses 7.7.1 and 7.7.2.
  - 7.7.4 the Supplier shall ensure that the Supplier Staff:



- a) that have access to Buyer's infrastructure and premises shall complete the Buyer's 'Railway Counter-Terrorism' training,
- b) that are given a log in to the Buyer's corporate IT system shall complete the Buyer's 'Security on the Railway' training,

both such training to be renewed biennially with training records kept by the Supplier for five years and shall be made available to the Buyer on request. The Buyer shall provide the training material at no additional cost to the Supplier.

- 7.8 The Buyer shall be responsible for all claims brought by any person employed or engaged by the Buyer caused by an act or omission of the Buyer or any of the Buyer's employees, agents, consultants and contractors.

## 8. Supply chain

- 8.1 At the Buyer's request, the Supplier must terminate any Sub-Contracts in any of the following events:
- 8.1.1 the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 14.2; and/or
  - 8.1.2 the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law.
- 8.2 The Supplier is responsible for all acts and omissions of its Subcontractors and those employed or engaged by them as if they were its own.

## 9. TUPE

Notwithstanding anything to the contrary elsewhere in the Contract:

- 9.1 the Supplier shall be responsible for and shall indemnify and keep indemnified the Buyer and any supplier of Replacement Deliverables from and against all and any costs, claims, expenses, damages, demands, actions, losses and liabilities arising out of or in connection with any claim in respect of any person which arises or is alleged to arise by reason of the Supplier's failure to comply with its obligations and/or for failure to inform and consult under the Employment Regulations;
- 9.2 in the last twelve months prior to Expiry Date or after a Termination Notice has been given, within twenty-eight days of the Buyer's request, the Supplier shall provide the Buyer with an anonymised list of all persons who are, who have been, or who may be at any time concerned with the Services or any part of them, specifying their ages, employer, job title, job description, basic salary, bonus and all other emoluments and benefits, period of continuous employment, the percentage of the time that they have worked on the Contract, details of any agreements entered into with employee representative bodies in relation to such persons, details of all training and competency courses attended and certificates or qualifications obtained, place of work, all relevant contractual and non-contractual termination or severance arrangements, notice periods, contractual holiday entitlements, copy of employment contract or applicable standard terms and employee handbook, immigrant status and right to work documentation, information on any disciplinary or grievance procedure taken against or by any person within the preceding two years, information about any tribunal claims in the preceding two years or whether there are reasonable grounds to believe a claim may be brought and such other requirements as the Buyer may reasonably require (altogether the "Employee Data"). The Buyer will, subject to compliance with any Data Protection Legislation, be permitted to disclose any information provided to it under this sub-Clause in summary and/or anonymised form to any person who has been invited to tender for the provision of the Services (or similar services) and to any supplier of Replacement Deliverables and their

subcontractors. The Supplier warrants, for the benefit of the Buyer and any such replacement supplier or subcontractor, that the Employee Data shall be true and accurate in all material respects at the time of providing the information.

- 9.3 in the last twelve months prior to Expiry Date or after a Termination Notice has been given, the Supplier shall (and shall procure that any Subcontractor shall) provide to the people engaged in the performance of the Contract, written contracts of employment or statements of terms of employment, in either case complying with the requirements of Section 1 of the Employment Rights Act 1996, and retain copies of such documents together with such other documentation and PAYE records as may reasonably be required by the Buyer (“Personnel Records”) and shall (where the Employment Regulations is likely to apply) within twenty-eight days of the Buyer’s request, whether during the Contract Period or thereafter, deliver up to the Buyer or to such person as the Buyer may nominate, the Employee Data, such copies of the Personnel Records as may be required by the Buyer and, to the extent not otherwise provided, any employee liability information pursuant to and in accordance with Regulation 11 of the Employment Regulations. The Buyer may communicate such information (prior to the end of the Contract Period in summary and/or anonymised form) to any person who has been invited to tender for the provision of the Services (or similar services) and to any supplier of Replacement Deliverables and their subcontractors. The Supplier warrants, for the benefit of the Buyer and any such replacement supplier or sub-contractor that all information provided pursuant to this Clause 9.3 shall be true and accurate in all material respects at the time of providing the information;
- 9.4 the Supplier shall not (and shall procure that any Subcontractor shall not) (where the Employment Regulations may potentially apply) in the last six months prior to Expiry Date or after a Termination Notice has been given, without the prior written permission of the Buyer:
- 9.4.1 vary or purport or promise to vary (in the employee’s favour), the terms of the contract of employment of any person engaged wholly or principally in the execution of the Services;
  - 9.4.2 terminate or give notice to terminate the employment or engagement of any person engaged wholly or principally in the execution of the Services;
  - 9.4.3 deploy or assign any person to perform the Services who is not already doing so with the effect that the number of persons engaged wholly or principally in the execution of the Services increases;
  - 9.4.4 increase or reduce to any significant degree the proportion of working time spent on the Services by any person engaged wholly or principally in the execution of the Services; or
  - 9.4.5 introduce any new contractual or customary practice (including any payments on termination of employment) applicable to any person engaged wholly or principally in the execution of the Services;
- 9.5 the Supplier shall not (and shall procure that any Subcontractor shall not) (where the Employment Regulations may potentially apply), without the prior written consent of the Buyer create or grant, or promise to create or grant, terms or conditions of employment for any new employee engaged wholly or principally in the execution of the Services if and to the extent that such terms or conditions are materially different to the terms or conditions of employment of equivalent or nearest equivalent existing employees (which

themselves comply with Clause 9.4) at the date of commencement of employment of such new employee;

- 9.6 the Supplier shall (and shall procure that any Subcontractor shall) (where the Employment Regulations may potentially apply) at all times comply with its information and consultation obligations under Regulation 13 of the Employment Regulations; and
- 9.7 the Supplier shall indemnify and keep indemnified the Buyer and any supplier of Replacement Deliverables against all reasonable and foreseeable costs, claims, expenses, damages, demands, actions, losses and liabilities arising out of or in connection with:
- 9.7.1 any act, default or omission of the Supplier or any Subcontractor in respect of any person who was or is employed or engaged by the Supplier or any Subcontractor;
  - 9.7.2 the employment or termination of employment of any person engaged wholly or principally in the execution of the Services up to and including termination or expiry of the Contract;
  - 9.7.3 any breach by the Supplier or any Subcontractor of its obligation to provide employee liability information to the Buyer or any successor supplier in accordance with Regulation 11 of the Employment Regulations; and/or
  - 9.7.4 any breach by the Supplier of Clauses 9.4, 9.5 and/or 9.6;

and, despite anything else in the Contract, such a successor supplier can directly enforce the indemnity in its favour provided for by Clauses 9.1 and 9.7.

## 10. Rights and protection

- 10.1 The Supplier warrants and represents that:
- 10.1.1 it has full capacity and authority to enter into and to perform the Contract which is entered into by its authorised representative;
  - 10.1.2 there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform the Contract;
  - 10.1.3 all necessary rights, authorisations, licences and consents (including in relation to IPRs) are in place to enable the Supplier to perform its obligations under the Contract and for the Buyer to receive the Deliverables;
  - 10.1.4 it is not impacted by an Insolvency Event or (where applicable) a Financial Distress Event; and
  - 10.1.5 neither it nor, to the best of its knowledge the Supplier Staff, have breached the Relevant Requirements prior to the Start Date or been subject to an investigation relating to a breach of Relevant Requirements.
- 10.2 The warranties and representations in Clauses 2.3 and 10.1 are repeated each time the Supplier provides Deliverables under the Contract.
- 10.3 The Supplier indemnifies the Buyer for Losses incurred by it against each of the following:
- 10.3.1 wilful misconduct of the Supplier, Subcontractor and Supplier Staff that impacts the Contract; and
  - 10.3.2 non-payment by the Supplier of any tax or national insurance.
- 10.4 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.
- 10.5 All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier for free.

- 10.6 The description of any provision of the Contract as a warranty does not prevent the Buyer from exercising any termination right that it may have for Default of that clause by the Supplier.

## 11. Intellectual Property Rights (IPRs)

- 11.1 This Clause 11 shall apply in respect of Intellectual Property Rights, except that where either the IPR Schedule or the ICT Services Schedule is used the provisions of those Schedules with regard to Intellectual Property Rights shall replace Clauses **Error! Reference source not found.** to 11.7.
- 11.2 Any New IPR created under the Contract is owned by the Supplier. The Supplier gives the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable licence to use, copy and adapt the New IPR:
- 11.2.1 to enable it to receive and use the Deliverables; and
  - 11.2.2 for any other purpose relating to the exercise of the Buyer's business or function.
- 11.3 Each Party keeps ownership of its own Existing IPR.
- 11.4 The Supplier gives (or procures for) the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable licence to use, copy and adapt the Supplier Existing IPR to enable it receive and use the Deliverables.
- 11.5 The termination or expiry of the Contract does not terminate the licences granted pursuant to Clauses 11.2 and 11.4.
- 11.6 The Buyer gives the Supplier a licence to use any of the Buyer Existing IPR as necessary for the purpose of fulfilling its obligations under the Contract during the Contract Period only.
- 11.7 Where either Party acquires, by operation of law, ownership of Intellectual Property Rights that is inconsistent with Clauses 11.2 and 11.3, it must assign in writing the Intellectual Property Rights concerned to the other Party on the other Party's request (whenever made).
- 11.8 Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks, except as expressly granted under this Contract or as otherwise agreed in writing.
- 11.9 Except as expressly granted elsewhere under this Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.
- 11.10 If there is an IPR Claim, the Supplier indemnifies the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.
- 11.11 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:
- 11.11.1 obtain for the Buyer the rights set out the Contract without infringing any third party IPR; or
  - 11.11.2 replace or modify the relevant item with substitutes that don't infringe IPR without adversely affecting the functionality or performance of the Deliverables.

## 12. Rectifying issues

- 12.1 If there is a Notifiable Default, the Supplier must notify the Buyer within three Working Days of the Supplier becoming aware of the Notifiable Default and the Buyer may request (whether notified or not) that the Supplier provide a Rectification Plan within ten Working Days of the Buyer's request alongside any additional documentation that the Buyer requires.

- 12.2 When the Buyer receives a requested Rectification Plan it can either:
- 12.2.1 reject the Rectification Plan or revised Rectification Plan, giving reasons; or
  - 12.2.2 accept the Rectification Plan or revised Rectification Plan (without limiting its rights) in which case the Supplier must immediately start work on the actions in the Rectification Plan at its own cost.
- 12.3 Where the Rectification Plan or revised Rectification Plan is rejected, the Buyer:
- 12.3.1 will give reasonable grounds for its decision; and
  - 12.3.2 may request that the Supplier provides a revised Rectification Plan within five Working Days.

### **13. Contract duration**

- 13.1 The Contract takes effect on the Start Date and ends on the Expiry Date or earlier if terminated under Clause 14 or if required by Law.
- 13.2 The Buyer can extend the Contract for the Extension Period by giving the Supplier written notice before the Contract expires as specified in the Key Contract Information.

### **14. Ending the contract**

#### **14.1 Ending the contract without a reason**

The Buyer has the right to terminate the Contract and/or any Contract Order(s) at any time without reason (and without liability, except as set out in Clause 14.3.2) by giving the Supplier not less than ninety days' notice and if it's terminated Clause 14.3.2 apply.

#### **14.2 When the Buyer can end the Contract**

- 14.2.1 If any of the following events happen, the Buyer has the right to immediately terminate the Contract and/or any Contract Order(s) by issuing a Termination Notice to the Supplier and the consequences of termination in Clause 14.3.1 shall apply:
- a) there's a Supplier Insolvency Event;
  - b) there's a Material Default that the Contract states is not capable of correction;
  - c) there's a Notifiable Default that, where capable of correction, is not corrected in line with an accepted Rectification Plan;
  - d) the Buyer rejects a Rectification Plan or the Supplier does not provide it within ten Working Days of the request;
  - e) there's a Default (which is not a Material Default or a Notifiable Default covered under limbs b) or c) above respectively) that occurs and then continues to occur on one or more occasions within six months following the Buyer serving a warning notice on the Supplier that it may terminate for persistent breach of the Contract and/or any Contract Order(s);
  - f) there's a change of control (within the meaning of Section 450 of the Corporation Tax Act 2010) of the Supplier which isn't pre-approved by the Buyer in writing;
  - g) the Buyer discovers that the Supplier was in one of the situations in Regulations 57 (1) or 57(2) of the Public Contracts Regulations 2015, or such Regulations by application of Regulation 80(2) of the Utilities Contracts Regulations 2016, at the time the Contract was awarded; or
  - h) the Supplier fails to comply with its legal obligations in the fields of environmental, social, equality or employment Law when providing the Deliverables.

- 14.2.2 The Buyer also has the right to terminate the Contract and/or any Contract Order(s) in accordance with Clause 24.3 and the Buyer may also have rights to terminate the Contract and/or any Contract Order(s) pursuant to the Schedules.
- 14.2.3 If any of the events in 73 (1) (a) or (b) of the Public Contracts Regulations 2015 or 89 (1) (a) or (b) of the Utilities Contracts Regulations 2016 (as applicable) happen, the Buyer has the right to immediately terminate the Contract and/or any Contract Order(s) and Clauses 14.3.1b) to 14.3.1g) apply.

### 14.3 What happens if the contract ends

- 14.3.1 Where the Buyer terminates the Contract and/or any Contract Order(s) under Clause 14.2.1 or pursuant to any of the Schedules, all of the following apply:
- a) The Supplier is responsible for the Buyer's reasonable costs of procuring Replacement Deliverables for the rest of the Contract Period.
  - b) Accumulated rights of the Parties are not affected.
  - c) The Supplier must promptly delete or return the Buyer Data except where required to retain copies by Law or in accordance with regulations governing professional bodies.
  - d) The Supplier must promptly return any of the Buyer's property provided under the terminated Contract and/or any Contract Order(s).
  - e) The Supplier must, at no cost to the Buyer, provide reasonable co-operation in the handover and re-procurement (including to a replacement supplier).
  - f) The Supplier must repay to the Buyer all the Charges that it has been paid in advance for Deliverables that it has not provided as at the date of termination or expiry of the Contract and/or Contract Order(s).
  - g) Any Clauses and Schedules which are expressly or by implication intended to continue shall survive the termination of the Contract and/or Contract Order(s).
- 14.3.2 If the Buyer terminates the Contract and/or any Contract Order(s) under Clause 14.1:
- a) the Buyer must promptly pay all outstanding Charges incurred to the Supplier;
  - b) the Buyer shall pay to the Supplier the costs that the Supplier has incurred directly as a result of the early termination of the Contract and/or Contract Order(s) (as applicable) not then completed which are unavoidable, reasonable and not capable of recovery as long as the Supplier provides a fully itemised and costed schedule with evidence and takes all reasonable steps to mitigate the same. The maximum value of this payment is limited to the total costs which would have been paid to the Supplier as part of the Charges if the Contract and/or Contract Order(s) (as applicable) had not been terminated; and
  - c) Clauses 14.3.1b) to 14.3.1g) apply.
- 14.3.3 If either Party terminates the Contract and/or any Contract Order(s) under Clause 24.3:
- a) each party must cover its own Losses; and
  - b) Clauses 14.3.1b) to 14.3.1g) apply.
- 14.3.4 Where either Party terminates the Contract as permitted in accordance with its terms this will, unless expressly stated otherwise in the Termination Notice, also terminate all Contract Orders. Where either Party terminates a Contract Order as permitted in accordance with the terms of the Contract this will only terminate the Contract Order to which the Termination Notice relates and the Contract and all other Contract Orders will continue in full force and effect.

#### 14.4 When the Supplier can end the contract

- 14.4.1 The Supplier can issue a notice that payment has not been received on time if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate the Contract and/or any Contract Order(s) if the Buyer fails to pay an undisputed invoiced sum within thirty days of the date of such notice.
- 14.4.2 The Supplier also has the right to terminate the Contract and/or any Contract Order(s) in accordance with Clauses 24.3 and 27.4.
- 14.4.3 If the Supplier terminates the Contract and/or any Contract Order(s) under Clause 14.4.1 or 27.4:
- a) the Buyer must promptly pay all outstanding Charges incurred to the Supplier;
  - b) the Buyer shall pay to the Supplier the costs that the Supplier has incurred directly as a result of the early termination of the Contract and/or the Contract Order(s) (as applicable) which are unavoidable, reasonable and not capable of recovery as long as the Supplier provides a fully itemised and costed schedule with evidence and takes all reasonable steps to mitigate the same. The maximum value of this payment is limited to the total sum payable to the Supplier if the Contract and/or the Contract Order(s) (as applicable) had not been terminated; and
  - c) Clauses 14.3.1c) to 14.3.1g) apply.

#### 14.5 Partially ending and suspending the contract

- 14.5.1 Where the Buyer has the right to terminate the Contract and/or any Contract Order it can terminate or suspend (for any period), all or part of it. If the Buyer suspends the Contract and/or any Contract Order(s) it can provide the Deliverables itself or buy them from a third party.
- 14.5.2 The Buyer can only partially terminate or suspend the Contract and/or any Contract Order(s) if the remaining parts of the Contract and/or Contract Order(s) (as applicable) can still be used to effectively deliver the intended purpose.
- 14.5.3 The Parties must agree (in accordance with Clause 28) any necessary Variation required by this Clause 14.5, but the Supplier may not either:
- a) reject the Variation; or
  - b) increase the Charges, except where the right to partial termination is under Clause 14.1.
- 14.5.4 The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under this Clause 14.5.

### 15. How much you can be held responsible for?

- 15.1 Except for liability as referred to in Clauses 15.3 and 15.4, each Party's total aggregate liability under the Contract (whether in tort, contract or otherwise) is as specified in the Key Contract Information.
- 15.2 Neither Party is liable to the other for:
- 15.2.1 any indirect or consequential Losses; and/or
  - 15.2.2 loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct, indirect or consequential).
- 15.3 In spite of Clause 15.1, neither Party limits or excludes any of the following:
- 15.3.1 its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors;

- 15.3.2 its liability for bribery or fraud or fraudulent misrepresentation by it or its employees; and
- 15.3.3 any liability that cannot be excluded or limited by Law.
- 15.4 In spite of Clause 15.1, the Supplier's total aggregate liability under the Contract (whether in tort, contract or otherwise) for any indemnity given under Clauses 9, 10.3, 11.10 or 18.22.5 is as specified in the Key Contract Information.
- 15.5 The financial limits referred to in Clauses 15.1 and 15.4 are separate and any liability of the Supplier which falls within one of those clauses shall not be taken into account in assessing whether the financial limit in the other such clause has been reached.
- 15.6 The Supplier shall be liable to the Buyer in respect of all loss, damage, cost, expense, liability, claims and proceedings whatsoever in respect of:
  - 15.6.1 any personal injury to or death of any person; and
  - 15.6.2 any loss of or damage to any property;due to the acts, neglect, error, or omission by the Supplier or any of its employees, agents or representatives in the course of the provision of the Deliverables whilst on or around the Buyer's property or other site or premises relevant to the provision of the Deliverables.

## 16. Obeying the law

- 16.1 The Supplier shall comply with the provisions of Schedule 3 (Corporate Social Responsibility).
- 16.2 The Supplier shall comply with all Laws applicable to the Contract.

## 17. Insurance

### 17.1 The insurance you need to have:

- 17.1.1 The Supplier shall maintain the insurances specified in the Key Contract Information.
- 17.1.2 The insurances shall be:
  - a) maintained in accordance with Good Industry Practice;
  - b) (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent supplier in respect of risks insured in the international insurance market from time to time;
  - c) taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and
  - d) maintained for at least six years after the Expiry Date.

### 17.2 How to manage the insurance:

The Supplier shall:

- 17.2.1 take all reasonable risk management and risk control measures;
- 17.2.2 promptly notify the insurers in writing of any relevant material fact of which the Supplier is or becomes aware; and
- 17.2.3 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 refuse to pay any claim under any of the insurances.

### 17.3 Evidence of insurance you must provide:



The Supplier shall upon request from the Buyer provide evidence as soon as reasonably practicable, in a form of an insurance certificate, that the insurances are in force and effect and meet in full the requirements of this Clause.

## **18. Data protection**

- 18.1 The Buyer is the Controller and the Supplier is the Processor for the purposes of the Data Protection Legislation unless stated otherwise in Annex 1 – Protection of Personal Data to Schedule 1 (Specification) or the applicable Contract Order.
- 18.2 The Supplier must process Personal Data and ensure the Supplier Staff process Personal Data in accordance with the Contract.
- 18.3 The Parties agree and acknowledge that if Annex 1 – Protection of Personal Data to Schedule 1 (Specification) is blank and the applicable Contract Order does not provide for the processing of personal data, then no Personal Data shall be processed under the Contract.
- 18.4 The Supplier must not remove any ownership or security notices in or relating to the Buyer Data.
- 18.5 The Supplier must ensure that any Supplier, Subcontractor and Subprocessor system (including any cloud services or end user devices used by the Supplier, Subcontractor and Subprocessor) holding any Buyer Data, including back-up data, is a secure system that complies with the requirements specified in the Specification and any other security requirements specified in the Contract, and otherwise as required by Data Protection Legislation.
- 18.6 If at any time the Supplier suspects or has reason to believe that the Buyer Data is corrupted, lost or sufficiently degraded so as to be unusable, then the Supplier must immediately notify the Buyer and suggest remedial action.
- 18.7 If the Buyer Data is corrupted, lost or sufficiently degraded so as to be unusable the Buyer may either or both:
- 18.7.1 tell the Supplier to restore or get restored Buyer Data as soon as practical but no later than five Working Days from the date that the Buyer receives notice, or the Supplier finds out about the issue, whichever is earlier; and
  - 18.7.2 restore the Buyer Data itself or using a third party.
- 18.8 The Supplier must pay each Party's reasonable costs of complying with Clause 18.7 unless the Buyer is at fault.
- 18.9 The Supplier must only process Personal Data if authorised to do so, and to the extent set out, in the Annex 1 – Protection of Personal Data to Schedule 1 (Specification) and the Contract Order by the Buyer. Any further written instructions relating to the processing of Personal Data are incorporated into Annex 1 - Protection of Personal Data to Schedule 1 (Specification) and/or the Contract Order (as applicable).
- 18.10 The Supplier must give all reasonable assistance to the Buyer in the preparation of any Data Protection Impact Assessment before starting any processing, including:
- 18.10.1 a systematic description of the expected processing and its purpose;
  - 18.10.2 the necessity and proportionality of the processing operations;
  - 18.10.3 the risks to the rights and freedoms of Data Subjects; and
  - 18.10.4 the intended measures to address the risks, including safeguards, security measures and mechanisms to protect Personal Data.
- 18.11 The Supplier must notify the Buyer as soon as reasonably practicable if it thinks the Buyer's instructions breach the Data Protection Legislation.

- 18.12 The Supplier must put in place appropriate Protective Measures to protect against a Data Loss Event which must be approved by the Buyer.
- 18.13 If lawful to notify the Buyer, the Supplier must notify it if the Supplier is required to process Personal Data by Law promptly and before processing it.
- 18.14 The Supplier must take all reasonable steps to ensure the reliability and integrity of any Supplier Staff who have access to the Personal Data and ensure that they:
- 18.14.1 are aware of and comply with the Supplier's duties under this Clause 18;
  - 18.14.2 are subject to appropriate confidentiality undertakings with the Supplier or any Subprocessor;
  - 18.14.3 are informed of the confidential nature of the Personal Data and do not provide any of the Personal Data to any third party unless directed in writing to do so by the Buyer or as otherwise allowed by the Contract; and
  - 18.14.4 have undergone adequate training in the use, care, protection and handling of Personal Data.
- 18.15 The Supplier must not make a Restricted Transfer unless all of the following are true:
- 18.15.1 it has obtained prior written consent of the Buyer;
  - 18.15.2 the Buyer has decided that there are appropriate safeguards in accordance with Data Protection Legislation;
  - 18.15.3 the Data Subject has enforceable rights and effective legal remedies when transferred;
  - 18.15.4 the Supplier meets its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
  - 18.15.5 where the Supplier is not bound by Data Protection Legislation it must use all reasonable endeavours to help the Buyer meet its own obligations under Data Protection Legislation;
  - 18.15.6 the Supplier complies with the Buyer's reasonable prior instructions about the processing of the Personal Data.
- 18.16 The Supplier must notify the Buyer immediately (including the provision of further information as details become available) if it:
- 18.16.1 receives a Data Subject Request (or purported Data Subject Request);
  - 18.16.2 receives a request to rectify, block or erase any Personal Data;
  - 18.16.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 18.16.4 receives any communication from the UK information commissioner or any other regulatory authority in connection with Personal Data processed under the Contract;
  - 18.16.5 receives a request from any third party for disclosure of Personal Data where compliance with the request is required or claims to be required by Law;
  - 18.16.6 becomes aware of a Data Loss Event.
- 18.17 The Supplier must provide the Buyer with all reasonable assistance in relation to any Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 18.16 so as to enable compliance with the relevant timescales in Data Protection Legislation. This includes giving the Buyer:
- 18.17.1 full details and copies of the complaint, communication or request;

- 18.17.2 reasonably requested assistance so that it can comply with a Data Subject Request;
  - 18.17.3 any Personal Data it holds in relation to a Data Subject on request;
  - 18.17.4 assistance that it requests following any Data Loss Event;
  - 18.17.5 assistance that it requests relating to a consultation with, or request from, the UK information commissioner's office.
- 18.18 The Supplier must maintain full, accurate records and information to show it complies with this Clause 18.
- 18.19 Before allowing any Subprocessor to process any Personal Data, the Supplier must:
- 18.19.1 notify the Buyer in writing of the intended Subprocessor and processing;
  - 18.19.2 obtain the written consent of the Buyer;
  - 18.19.3 enter into a written contract with the Subprocessor so that this Clause 18 applies to the Subprocessor;
  - 18.19.4 provide the Buyer with any information about the Subprocessor that the Buyer reasonably requires.
- 18.20 The Supplier remains fully liable for all acts or omissions of any Subprocessor.
- 18.21 The Parties agree to take account of any non-mandatory guidance issued by the UK information commissioner's Office.
- 18.22 The Supplier:
- 18.22.1 must provide the Buyer with all Buyer Data in an agreed format (provided it is secure and readable) within ten Working Days of a written request;
  - 18.22.2 must have documented processes to guarantee prompt availability of Buyer Data if the Supplier stops trading;
  - 18.22.3 must securely destroy all storage media that has held Buyer Data at the end of life of that media using Good Industry Practice, other than in relation to Buyer Data which is owned or licenced by the Supplier or in respect of which the Parties are either Independent Controllers or Joint Controllers;
  - 18.22.4 securely erase all Buyer Data and any copies it holds when asked to do so by the Buyer (and certify to the Buyer that it has done so) unless and to the extent required by Law to retain it other than in relation to Buyer Data which is owned or licenced by the Supplier or in respect of which the Parties are either Independent Controllers or Joint Controllers; and
  - 18.22.5 indemnifies the Buyer against any and all Losses incurred if the Supplier breaches Clause 18 and any Data Protection Legislation.
- 18.23 Joint Controllers:
- 18.23.1 Where the Parties include two or more Joint Controllers as identified in Annex 1 – Protection of Personal Data to Schedule 1 (Specification) and/or the applicable Contract Order, those Parties shall comply with the terms outlined in Annex 2 – Joint Controller Agreement to Schedule 1 (Specification) and the applicable Contract Order.
- 18.24 Independent Controllers:
- 18.24.1 Where the Parties are acting as Independent Controllers as identified in Annex 1 – Protection of Personal Data to Schedule 1 (Specification) each Party shall:

- a) comply with its obligations under Data Protection Legislation;
  - b) be responsible for dealing with and responding to Data Subject Requests, enquiries or complaints (including any request by a data subject to exercise their rights under Data Protection Legislation) it receives, unless otherwise agreed between the Parties;
  - c) promptly notify the other Party in writing of each Security Incident of which it becomes aware relating to the Personal Data to the extent the Security Incident is likely to affect the other Party; and
  - d) warrant that it is not subject to any restriction which would prevent or restrict it from disclosing or transferring Personal Data to the other Party in accordance with the terms of the Contract.
- 18.24.2 Without prejudice to sub-Clause 18.24.1a), each Party (the disclosing party) agrees that if it provides Personal Data to the other Party (the receiving party), it shall ensure that it has provided all necessary information to, and obtained all necessary consents from, the data subjects of the Personal Data, in each case to enable the disclosing party to disclose the Personal Data to the receiving party and for the receiving party to use that Personal Data for the Permitted Purposes, in each case in accordance with Data Protection Legislation.
- 18.24.3 In relation to the Personal Data it receives from the disclosing party, each Party shall:
- a) at all times process the Personal Data in a manner that ensures appropriate security of the Personal Data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical and organisational measures; and
  - b) ensure that, at a minimum, the measures required under sub-Clause 18.24.3 a) meet the standard required by Data Protection Legislation.
- 18.24.4 If there is still also a controller-to-processor relationship under the Contract or any Contract Order, Clauses 18.1 to 18.22 shall apply to that relationship.

## 19. What you must keep confidential

- 19.1 Each Party must:
- 19.1.1 keep all Confidential Information it receives confidential and secure;
  - 19.1.2 not disclose, use or exploit the disclosing party's Confidential Information without the disclosing party's prior written consent, except for the purposes anticipated under the Contract; and
  - 19.1.3 immediately notify the disclosing party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.
- 19.2 In spite of Clause 19.1, a Party may disclose Confidential Information which it receives from the disclosing party in any of the following instances:
- 19.2.1 where disclosure is required by applicable Law, a regulatory body or a court with the relevant jurisdiction if the recipient party notifies the disclosing party of the full circumstances, the affected Confidential Information and extent of the disclosure;
  - 19.2.2 if the recipient party already had the information without obligation of confidentiality before it was disclosed by the disclosing party;
  - 19.2.3 if the information was given to it by a third party without obligation of confidentiality;
  - 19.2.4 if the information was in the public domain at the time of the disclosure;

- 19.2.5 if the information was independently developed without access to the disclosing party's Confidential Information;
  - 19.2.6 on a confidential basis, to its auditors or for the purpose of regulatory requirements;
  - 19.2.7 on a confidential basis, to its professional advisers on a need-to-know basis; and
  - 19.2.8 to the UK's Serious Fraud Office where the recipient party has reasonable grounds to believe that the disclosing party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 19.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier Staff shall remain responsible at all times for compliance with the confidentiality obligations set out in the Contract by the persons to whom disclosure has been made.
- 19.4 The Buyer may disclose Confidential Information in any of the following cases:
- 19.4.1 on a confidential basis to the employees, agents, consultants and contractors of the Buyer;
  - 19.4.2 on a confidential basis to any Crown Body, any successor body to a Crown Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to;
  - 19.4.3 if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
  - 19.4.4 where requested by Parliament;
  - 19.4.5 on a confidential basis to an actual or prospective supplier of Replacement Deliverables, such information as the Buyer shall reasonably require in order to facilitate the preparation by the Buyer of any invitation to tender and/or to facilitate any potential replacement suppliers preparing or submitting tenders or undertaking due diligence in respect of Replacement Deliverables, to the extent that such disclosure is necessary in connection therewith;
  - 19.4.6 under Clauses 4.6 and 20.
- 19.5 For the purposes of Clauses 19.2 to 19.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 19.
- 19.6 The Supplier must not make any press announcement or publicise the Contract or any part of it in any way, without the prior written consent of the Buyer and must use all reasonable endeavours to ensure that Supplier Staff do not either.
- 19.7 The Supplier acknowledges that Publishable Performance Information (if applicable) and any information which is exempt from disclosure by Clause 20 is not Confidential Information.

## **20. When you can share information**

- 20.1 The Supplier must tell the Buyer within forty-eight hours if it receives a Request For Information.
- 20.2 In accordance with a reasonable timetable and in any event within five Working Days of a request from the Buyer, the Supplier must give the Buyer full co-operation and information needed so the Buyer can comply with any Request for Information.
- 20.3 To the extent that it is allowed and practical to do so, the Buyer will use reasonable endeavours to notify the Supplier of a FOIA request and may talk to the Supplier to help

it decide whether to publish information under Clause 20.1. However, the extent, content and format of the disclosure is at the Buyer's absolute discretion.

- 20.4 The provisions of Clause 20 shall apply equally to the Buyer when the Supplier is subject to FOIA and EIR.

## **21. Invalid parts of the contract**

If any provision or part provision of the Contract is or becomes invalid, illegal or unenforceable for any reason, such provision or part-provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.

## **22. No other terms apply**

The provisions incorporated into the Contract are the entire agreement between the Parties. The Contract replaces all previous negotiations, arrangements, statements, understandings, course of dealings or agreements made between the Parties in relation to its subject matter whether written or oral. No other provisions apply and neither Party has entered into the Contract in reliance on any warranty, statement, promise or representation other than the ones set out in the Contract.

## **23. Other people's rights in the Contract**

- 23.1 The provisions of Clause 9 and of the Exit Management Schedule (if used) confer benefits on persons named or identified in such provisions other than the Parties and are intended to be enforceable by such persons by virtue of the Contracts (Rights of Third Parties) Act 1999 ("CRTPA").
- 23.2 Subject to Clause 23.1, no third parties may use the CRTPA to enforce any term of the Contract unless stated (referring to CRTPA) in the Contract. This does not affect third party rights and remedies that exist independently from CRTPA.

## **24. Circumstances beyond your control**

- 24.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under the Contract while the inability to perform continues, if it both:
- 24.1.1 provides notice of the same to the other Party; and
  - 24.1.2 uses all reasonable measures practical to reduce the impact of the Force Majeure Event.
- 24.2 Any failure or delay by the Supplier to perform its obligations under the Contract that is due to a failure or delay by an agent, Subcontractor or supplier will only be considered a Force Majeure Event if that third party is itself prevented from complying with an obligation to the Supplier due to a Force Majeure Event.
- 24.3 Either party can partially or fully terminate the Contract and/or any Contract Order(s) if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for ninety days continuously.

## **25. Relationships created by the contract**

The Contract does not create a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.

## **26. Giving up contract rights**

A partial or full waiver or relaxation of the terms of the Contract is only valid if it is stated to be a waiver in writing to the other Party.

## 27. Transferring responsibilities

- 27.1 The Supplier cannot assign, novate or in any other way dispose of the Contract or any part of it without the Buyer's written consent (not to be unreasonably withheld or delayed).
- 27.2 The Buyer can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Buyer.
- 27.3 When the Buyer uses its rights under Clause 27.2 the Supplier must enter into a novation agreement in the form that the Buyer reasonably specifies.
- 27.4 If the Contract is novated under Clause 27.2 to a private sector body ("**Transferee**") the Supplier has the right to terminate the Contract by issuing a Termination Notice to the Transferee if the Transferee is experiencing an Insolvency Event.
- 27.5 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.
- 27.6 If at any time the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:
- 27.6.1 their name;
  - 27.6.2 the scope of their appointment;
  - 27.6.3 the duration of their appointment; and
  - 27.6.4 a copy of the Sub-Contract (with any information identified as commercially sensitive in accordance with such Sub-Contract redacted)
- and comply with the requirements in Schedule 5 (Supply Chain Visibility).

## 28. Changing the contract

- 28.1 Either Party can request a Variation to the Contract which is only effective if agreed in writing and signed by both Parties (acting reasonably and without undue delay). The Supplier shall provide an Impact Assessment when requested by the Buyer which shall be calculated on the basis of the charges and rates specified in Schedule 2 (Charges) or as otherwise specified in the Contract Order.
- 28.2 If the Variation to the Contract cannot be agreed or resolved by the Parties in accordance with the provisions of this Clause 28, the Buyer can either:
- 28.2.1 agree that the Contract continues without the Variation; or
  - 28.2.2 refer the dispute to be resolved using Clause 32 (Resolving Disputes).
- 28.3 The Buyer is not required to accept a Variation request made by the Supplier.
- 28.4 The Supplier may only reject a Variation requested by the Buyer if the Supplier:
- 28.4.1 reasonably believes that the Variation would materially and adversely affect the risks to the health and safety of any person or that it would result in the Deliverables being provided in a way that infringes any Law; or
  - 28.4.2 demonstrates to the Buyer's reasonable satisfaction that the Variation is technically impossible to implement.
- 28.5 If there is a General Change in Law, the Supplier must bear the risk of the change and is not entitled to ask for an increase to the Charges.
- 28.6 If there is a Specific Change in Law or one is likely to happen during the Contract Period the Supplier must give the Buyer notice of the likely effects of the changes as soon as reasonably practical. They must also say if they think any Variation is needed either to the Deliverables, the Charges or the Contract and provide evidence:

- 28.6.1 that the Supplier has kept costs as low as possible, including in Subcontractor costs; and
  - 28.6.2 of how it has affected the Supplier's costs.
- 28.7 Any change in the Charges or relief from the Supplier's obligations because of a Specific Change in Law must be implemented using Clauses 28.1 to 28.3.

## **29. How to communicate about the contract**

- 29.1 All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective at 9:00 am on the first Working Day after sending unless an error message is received.
- 29.2 Except as provided under Clause 29.3, notices the must be sent to the Parties' contact and address or email address in the Key Contract Information.
- 29.3 Service of legal proceedings or any documents in any legal action, arbitration or dispute resolution, must be served as specified in the Key Contract Information.

## **30. Health, safety and environment**

- 30.1 The Supplier must perform its obligations meeting the requirements of:
- 30.1.1 the Contract Requirements HSEA Conditions in Schedule 4 (Contract Requirements HSEA Conditions);
  - 30.1.2 all applicable Law regarding health, safety and the environment; and
  - 30.1.3 the Buyer's current health and safety policies while at the Buyer's Premises, as made available to the Supplier from time to time.
- 30.2 Each Party must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of at the Buyer Premises that relate to the performance of the Contract.
- 30.3 The Supplier must ensure that Supplier Staff are aware of the Buyer's requirements in respect to this Clause 30.

## **31. Further Assurances**

Each Party will, at the request and cost of the other Party, do all things which may be reasonably necessary to give effect to the meaning of the Contract.

## **32. Resolving disputes**

- 32.1 If there is a dispute between the Parties, their senior representatives who have authority to settle the dispute will, within twenty-eight days of a written request from the other Party, meet in good faith to resolve the dispute by commercial negotiation.
- 32.2 If the Parties cannot resolve the dispute via commercial negotiation, they can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, the dispute must be resolved using Clauses 32.3 to 32.5.
- 32.3 Unless the Buyer refers the dispute to arbitration using Clause 32.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
- 32.3.1 determine the dispute;



- 32.3.2 grant interim remedies; and
- 32.3.3 grant any other provisional or protective relief.
- 32.4 The Supplier agrees that the Buyer has the exclusive right to refer any dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.
- 32.5 The Buyer has the right to refer a dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under Clause 32.3, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 32.4.
- 32.6 The Supplier cannot suspend the performance of the Contract during any dispute.

### **33. Performance Security**

- 33.1 Where specified in the Key Contract Information the Supplier shall deliver to the Buyer, on or prior to the execution of the Contract, a parent company guarantee in the form specified by the Buyer from the Supplier's ultimate holding company. For these purposes "ultimate holding company" shall mean the holding company (within the meaning of sections 1159 and 1160 of the Companies Act 2006) of the Supplier which is not itself a subsidiary of another company.
- 33.2 The Supplier's compliance with this Clause shall be a condition precedent to any obligation on the part of the Buyer to make any payment that may otherwise be due under the Contract.

### **34. Dealing with claims**

- 34.1 If the Buyer is notified of a Claim then it must notify the Supplier as soon as reasonably practicable and no later than ten Working Days from receipt of notification of the Claim .
- 34.2 At the Supplier's cost the Buyer must both:
  - 34.2.1 allow the Supplier to conduct all negotiations and proceedings to do with a Claim; and
  - 34.2.2 give the Supplier reasonable assistance with the Claim if requested.
- 34.3 The Buyer must use all reasonable endeavours to minimise and mitigate any losses that it suffers because of the Claim.

### **35. Contract Orders**

- 35.1 When the Buyer requires the Supplier to provide Deliverables pursuant to the Contract, it shall issue to the Supplier a single Contract Order or multiple Contract Orders (as applicable) in accordance with the process described in Schedule 6 (Process for Issuing Contract Orders) stating:
  - 35.1.1 the deliverables to be provided pursuant to the Contract Order and the Other Suppliers applicable to such Contract Order;
  - 35.1.2 key dates for the provision of such deliverables;
  - 35.1.3 any updates required to Annex 1 – Protection of Personal Data to Schedule 1 (Specification) in respect of Personal Data to be processed pursuant to the Contract Order;

- 35.1.4 the lump sum charges or other method of reimbursement for the provision of such deliverables calculated on a fair and reasonable basis having regard to the rates and prices included in Schedule 2 (Charges); and
  - 35.1.5 the method for calculating instalment payments in respect of such charges.
- 35.2 When all of the elements of the Contract Order have been accepted or agreed pursuant to Clause 35.1, it shall be final and binding on the Parties and:
- 35.2.1 the deliverables provided under that Contract Order shall form part of the Deliverables;
  - 35.2.2 the price shall form part of the Charges;
  - 35.2.3 Annex 1 – Protection of Personal Data to Schedule 1 (Specification) shall be updated accordingly; and
  - 35.2.4 the Supplier shall proceed to provide the Deliverables under that Contract Order and in accordance with the provisions of the Contract.
- 35.3 The Buyer does not warrant the volume of Deliverables to be instructed during the Contract Period except where otherwise stated in the Key Contract Information and/or the Contract Order. The Buyer reserves the right to procure any Deliverables described in the Contract from other contractors or using its own labour.

## **36. Which law applies**

The Contract and any issues or disputes arising out of, or connected to it, are governed by the laws of England and Wales.

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## SCHEDULE 1: SPECIFICATION

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This Schedule sets out what the Buyer wants.

Insert the specifications and statement of requirements, to include:

- description of the Goods;
- description of the Services and required outcomes;
- description of any other Deliverables, e.g. Documentation;
- whether provision of progress reports and attendance at progress meetings is required; and
- reference to applicable Network Rail policies and standards.

Note: Include Annex 1 – Protection of Personal Data if processing of Personal Data is required and Annex 2 if there is a Joint Controller relationship (templates can be found on the Procurement Operations Hub).

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## SCHEDULE 2: CHARGES

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### Insert

- the amount of the Charges or how these are calculated;
- when Charges are to be invoiced / are payable;
- invoicing arrangements;
- indexation or other price review mechanisms, if applicable; and
- rate card information

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## SCHEDULE 3: CORPORATE SOCIAL RESPONSIBILITY

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The Mandatory Corporate Social Responsibility Schedule can be found on the Procurement Operations Hub site

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## SCHEDULE 4: CONTRACT REQUIREMENTS HSEA CONDITIONS

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The Mandatory Contract Requirements HSEA - Services version can be found on the Procurement Operations Hub site

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## SCHEDULE 5: SUPPLY CHAIN VISIBILITY

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The Supply Chain Visibility Schedule can be found on the Procurement Operations Hub site.

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**SCHEDULE 6: PROCESS FOR ISSUING CONTRACT ORDERS**

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Contract Orders shall be awarded < through a mini tendering process and/or by direct award> *(amend to suit requirements, but this must reflect what has been stated in the procurement notice published on the Find a Tender (FTSUK e-notification service), other notifications to the supplier base and Gateway Strategy Papers. If direct award is allowed describe here the circumstances when this option will be utilised)*

**Mini Tendering *(delete if not used)***

All the Suppliers shall be invited to submit a tender. *(if this is not true define how it will work-rotation, lots etc)*

The Buyer shall issue the mini tender documentation in a format as directed by the Buyer's Authorised Representative. *(amend as appropriate—include in additional appendix if available)*

The Suppliers shall submit their tenders in a format as directed by the Buyer's Authorised Representative. *(amend as appropriate—include in additional appendix if available)*

The Buyer shall assess the tenders and select the most economically advantageous tender. *(amend as appropriate)*

The award criteria shall be *<insert details including a reasonable range in weightings that may be applied to each criteria>*

The successful Supplier shall be awarded the service through a Contract Order as shown in Appendix 1 to this Schedule. *(amend as appropriate)*

**Direct Award *(delete if not used)***

The Buyer may elect to direct award to one or more suppliers under the Contract without a call for mini-competition. These services shall be priced using the rates and prices in Schedule 2 (Charges). *(amend as appropriate)*

The issue of the single source tender documentation, tender submissions and awards shall follow the same process as for mini tendering. *(amend as appropriate)*

***Use of a Purchase Order in lieu of a Contract Order***

*For simple low value service requirements where the service is called off using contract rates and prices, a Purchase Order can be issued in lieu of a formal Contract Order. The agreement should describe when this approach will be taken and specifically state that a Purchase Order is deemed to be a Contract Order for the purposes of the Contract.*

*The Purchase Order can include specific service requirements that require no further direction (e.g. provide 3 training courses of type x at location y and on z dates) or call off levels of service over a period of time for which the Buyer's Authorised Representative or their assistants will provide details (e.g. provide training courses x and xx over the next three months as directed by a n other).*

*All Purchase Orders are still required to be logged against the Contract Purchase Agreement (CPA).*

*If the service is to be called off using a catalogue provide details.*



## SCHEDULE 6 – APPENDIX 1

## NR1 (MT) CONTRACT ORDER FORM

<b>Contract Title:</b>	<b>CPA Ref:</b>
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**To:** **From:**  
Network Rail Infrastructure Ltd (the “Buyer”)

<b>Contract Order</b>	<b>Title:</b>
	<b>Ref No:</b>
	<b>Purchase Order No:</b>
	<b>Date of Issue:</b>

<b>Key dates for performance of Services</b>	<i>Link to the Implementation Plan and Testing Schedule if applicable to the Contract and/or Contract Order, otherwise insert details</i>
<b>Payment instalment method:</b>	
<b>Buyer’s Authorised Representative Assistants:</b>	Name: <i>Delegated all duties save for those in Clauses 4.5 &amp; 14. (add others or describe the duties as appropriate)</i>
<b>Delivery address and Delivery Date for the Goods:</b>	
<b>Additional delivery instructions:</b>	
<b>Warranty Period for the Goods:</b>	90 days
<b>Other Supplier</b>	<i>Specify name and role</i>
<b>Data Protection:</b>	Updated Annex 1 – Protection of Personal Data to Schedule 1 (Specification) attached / Not applicable

In accordance with Clause 35 of the Contract you are hereby instructed to provide the following Deliverables:

<i>Add details of the Goods and/or Services (including Contract Order specific volumes), and pricing together with any additional requirements relating to the Specifications and standards; and for the processing of personal data, record keeping and reporting</i>	
Lump Sum (if applicable) £	
<b>For the Supplier</b>	<b>For the Buyer (with Authority to Contract)</b>
Signature:.....	Signature:.....
Printed Name: .....	Printed Name: .....
Date:.....	Date:.....