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Purchase Order Conditions for Works of Simple Content Without Design

(only to be used as attachment to Purchase Order)

[Insert Contract Title]

Not to be used for works:

- 1. greater than £250,000**
- 2. in possessions where the Contractor is providing the person in charge**
- 3. requiring Contractor design**
- 4. if Intermediaries Legislation applies**

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CONDITIONS

1 Definitions

Defined
Terms

In this Agreement:

“Adjudicator” means a person nominated by the President or Vice-President for the time being of the Technology and Construction Bar Association to act as Adjudicator under this Agreement;

“Agreed Rail Industry Period” means each or any of the Client’s thirteen accounting periods in a Contract Year;

“Codes” means the British Standard Codes of Practice, regulations and guidance notes issued by the Health and Safety Executive (as amended or replaced from time to time) and any other regulations, codes or notes issued by relevant authorities and bodies;

“Contractor” means the party named in the Purchase Order and its permitted assignees and whose tender is accepted by the Client;

“Contract Year” means the period from 00.00 hours on 1 April until 24.00 hours on 31 March;

“Client” means Network Rail Infrastructure Limited and its permitted assignees;

“Client’s Facilities” means the accommodation and equipment to be made available by the Client to the Contractor as described in the Purchase Order Requirements;

“Client’s Instructions” means any written instructions issued to the Contractor by or on behalf of the Client;

“Client’s Representative” means the person notified by the Client to the Contractor as having authority to issue Client’s Instructions and otherwise to act on the Client’s behalf under this Agreement to the extent so notified;

“Defect” means any fault in the Works that arises as a consequence of a failure by the Contractor to comply with its obligations under this Agreement;

“Defects Rectification Period” means the 6 month period commencing on the date of Practical Completion;

“Documents” means all plans, drawings, specifications, schedules, reports, records calculations, correspondence and other documents (including any computer software developed by the Contractor to generate them) prepared or provided by the Contractor in connection with this Agreement;

“Excepted Risks” means loss or damage to the extent that it is due to:

- (i) the use or occupation by the Client, its agents, servants or other contractors (not being employed by the Contractor) of any part of the Works;
- (ii) any fault, defect, error or omission in the design of the Works (other than a design provided by the Contractor pursuant to its obligations under this

Agreement);

- (iii) war, invasion, act of foreign enemies or hostilities (whether war be declared or not);
- (iv) civil war, rebellion, revolution, insurrection or military or usurped power;
- (v) ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; and
- (vi) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

“Intellectual Property” means all intellectual and industrial property and all rights therein in any part of the world including, without limiting the generality of the foregoing, any patent, patent application, trade mark, trade mark application, registered design, registered design application, trade name, trade secret, business name, discovery, invention, process, formula, know-how, specification, improvement, technique, copyright, unregistered design right, technical information or drawing including rights in computer software, database rights, topography rights;

“Period for Completion” means the period for completion of the Works as stated in the Purchase Order Requirements;

“Practical Completion” means the date stated in the certificate issued by the Client’s Representative under Clause 12;

“Real Living Wage” means the separate basic hourly rates for London and the rest of the UK, as applicable, as set by the Living Wage Commission (before tax, other deductions and any increase for overtime), as may be revised from time to time;

“Scope” means the Scope referred to in the Purchase Order Requirements;

“Site” means the area where the Works are to be carried out as described in the Purchase Order Requirements;

“Sub-Contractor” means any sub-contractor of the Contractor including any sub-contractors of any such sub-contractors;

“Works” means the works to be constructed and completed in accordance with this Agreement.

2 Contractor’s Obligations

Quality and Standards

2.1 The Contractor shall carry out and complete the Works:

2.1.1 with the reasonable skill, care and diligence to be expected of a contractor holding itself out as having the competence, expertise and resources necessary for the proper performance of the Works;

2.1.2 to the quality and standards required by the Scope or, where no quality or standard is so specified, to a good quality;

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- 2.1.3 so as to comply with all applicable laws and the Codes;
- 2.1.4 without compromising the safety of anyone on or about or using the Client's property and/or railway infrastructure; and
- Remedy for failure to perform 2.2 If the Contractor fails to perform the Works in accordance with this Agreement, then the Client shall be entitled, in addition to any other remedy available to it, by notice to the Contractor to require the Contractor, at no additional cost to the Client, to remedy such breach within the reasonable time stipulated in such notice, and if the Contractor fails to comply with such notice within the period specified by the Client's Representative, the Client may at its sole discretion employ another person to remedy such breach and the Client may recover the reasonable additional costs incurred by it in so doing from the Contractor (provided that, in an emergency affecting safety, this provision shall apply without the requirement to give prior notice).

3 The Site

- Access to the Site 3.1 The Contractor shall not have possession of the Site, but the Client shall provide reasonable access to it for the purposes of this Agreement. The Site shall only be used by the Contractor for the purpose of carrying out the Works.
- Compliance with Client's regulations 3.2 The Contractor and its employees, the Sub-Contractors and other persons engaged by it in relation to this Agreement within the boundaries of the Site, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel at the Site and/or the Client's property including:
- 3.2.1 Contractor staff that have access to Client infrastructure, premises, government classified information or computer systems undertake Baseline Personnel Security Standard (BPSS) pre-employment checks, as stated in the HMG Personnel Security Controls.
- 3.2.2 To control risk to the railway associated with government classified information (official-sensitive or above), important sites or critical equipment, certain Contractor staff will be required to complete additional security checks as outlined in HMG Personnel Security Controls. Roles that require additional security checks and the level to be attained will be notified to the Contractor by the Client.
- 3.2.3 The Contractor prevents Contractor Personnel who are unable to obtain the required security clearances from carrying out specified roles and accessing Client infrastructure, premises, government classified information or computer systems.
- 3.2.4 Contractor staff that have access to Client infrastructure, premises, government classified information or computer systems are required to undergo railway security induction

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training. Additionally, Contractor staff carrying out line management or supervisory duties must undergo biennial security training. Records of training completion are kept by the Contractor for five years and made available to the Client on request. Training material will be provided by the Client at no additional cost to the Contractor..

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|--------------------------------|-----|--|
| Obstruction prohibited | 3.3 | The Contractor shall not interfere with or obstruct any public or private rights or property including, without limitation, the Client's property, the Client's neighbours' property, railway operations and traffic, road traffic and highways. |
| State of the Client's property | 3.4 | The Contractor shall make every reasonable effort to be aware of the state and condition of the Client's property and the railway infrastructure. The Contractor shall immediately notify the Client's Representative of any defect in the Client's property or railway infrastructure which it discovers in the course of performing the Works which might compromise the safety of anyone on or about or using the Client's property and/or railway infrastructure. |
| Execution of the Works | 3.5 | The Contractor shall submit at such times and in such detail as the Client's Representative may reasonably require for full consideration to be given and, if necessary, for revised proposals to be considered such information pertaining to the execution of the Works (including temporary works and the use of the Contractor's equipment) which the Contractor proposes to adopt or use and, if requested by the Client's Representative, such calculations of stresses, strains and deflections that will arise in the Works and any parts thereof during their execution from the use of such methods as are sufficient to demonstrate to the Client's Representative that, if these methods are adhered to, the Works can be executed in accordance with this Agreement and without detriment to the safe working of the railway or the property of the Client and others or to the Works when completed. |
| Health & Safety | 3.6 | The Contractor shall strictly comply with the Client's health and safety requirements. In particular, but without limitation, the Contractor shall ensure that all the Contractor's employees, the Sub-Contractors and other persons engaged by it in relation to this Agreement receive safety and skills training in accordance with the requirements of the Client and the Client may instruct the immediate replacement, at the Contractor's cost, of any person on the Site who is not so trained. |
| Unsuitable employees | 3.7 | The Client reserves the right under this Agreement to refuse to allow on to the Site or to permit to be used in connection with the Works any person employed or engaged by the Contractor, or by a Sub-Contractor, whose use would be, in the reasonable opinion of the Client, undesirable. The decision of the Client as to whether any person is to be allowed on to the Site shall be final and conclusive. |

4 Client's Instructions

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| Client's Representative | 4.1 | The Client's Representative shall have full authority to act on behalf of the Client for all purposes under this Agreement and shall be authorised to |
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issue Client's Instructions and notices to the Contractor under this Agreement on behalf of the Client, unless otherwise expressly notified to the Contractor by the Client from time to time.

4.2 If any Client's Instruction issued under this Agreement:

4.2.1 shall require the Contractor to undertake work not provided for in, or to be reasonably inferred from, this Agreement; or

4.2.2 shall impose any additional obligation or restriction or shall require the omission of any work or of any obligation or restriction,

and provided that such instruction has not arisen from, and compliance with it does not reveal, any negligence, omission or default of the Contractor, its employees, the Sub-Contractors or other persons engaged by it in relation to this Agreement, the Purchase Order value shall be adjusted. Otherwise, the Contractor shall not be entitled to any addition to the Purchase Order value nor to claim, whether as damages or otherwise, any additional payment in respect of compliance by the Contractor with any such instruction.

5 Payment

Payment

5.1 In consideration of the proper performance of the Works, the Client shall pay to the Contractor in accordance with the Payment Schedule included in the Purchase Order Requirements

5.2 After the end of each Agreed Rail Industry Period, the Contractor shall present to the Client's Representative an application stating the total amount due calculated in accordance with the provisions of Clause 5.1 and with such supporting documents as may be reasonably required by the Client's Representative, including a statement of the basis of calculation of the application. Provided the Contractor complies with this Clause, payment shall be due 14 days after the submission of the Contractor's application (the "Due Date").

Client's
Notice of
Payment

5.3 Not later than the Due Date, the Client's Representative shall issue a written notice stating the amount that the Client's Representative considers to be due on the Due Date (which shall be calculated in accordance with the provisions of Clause 5.1) to what the amount relates and the basis on which the amount is calculated, less any amount which may become due to the Client or recoverable by the Client from the Contractor. Such certificate shall be treated as a notice for the purposes of s110A of the Housing Grants, Construction and Regeneration Act 1996 and shall be given even if the amount that the Client's Representative considers to be due on the Due Date is zero.

Payment by
the Client -
VAT Invoice

5.4 If a payment is due from the Client to the Contractor, the Contractor shall render a valid VAT invoice to the Client, either in the amount stated in the Client's Representative's notice under Clause 5.3, or in the absence of such notice, in the sum stated in the Contractor's application under Clause 5.2; and which includes the correct contract and purchase order number and is addressed to "Network Rail, Accounts Payable, P.O. Box 4145,

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Manchester M60 7WZ" or original computer-generated pdf invoices can be emailed to invoices@networkrail.co.uk.

Final Date for Payment	5.5	Provided that the Contractor renders a valid VAT invoice to the Client, the final date for payment shall be 7 days from the Due Date or 7 days from the Client's receipt of the Contractor's valid invoice, whichever is the later.
Client's Pay Less Notice	5.6	<p>If a payment is due from the Client to the Contractor, the Client may pay to the Contractor less than the sum stated in the certificate or notice issued in accordance with Clause 5.3 or in the absence of such certificate or notice, the sum stated in the Contractor's application under Clause 5.2 provided that not later than 1 day before the final date for payment the Client's Representative has given a Pay Less Notice to the Contractor which specifies:</p> <p>5.6.1 the sum that the Client considers to be due on the date the notice is served having taken account of any amount to be withheld from the payment; and</p> <p>5.6.2 the basis on which that sum is calculated including grounds for any sums withheld.</p>
Payment from the Contractor to the Client	5.7	If the application of Clauses 5.1, 5.2 and 5.3 results in a payment being due from the Contractor to the Client, the Contractor shall issue a valid credit note to the Client within 5 days of the issue of the certificate or notice in accordance with Clause 5.3 and the final date for payment of this sum shall be 30 days after the certificate or notice under Clause 5.3 is issued, whether or not a credit note has been issued by the Contractor.
Amount Due	5.8	The amount due shall be the amount assessed in accordance with this Agreement less any sums deductible from the Contractor or payable from the Contractor to the Client for any reason (including without limitation for losses arising from the Contractor's breach of contract).
Property in goods and materials	5.9	The property in any goods, materials, equipment or plant intended for the Works shall vest in the Client when they have been incorporated into the Works or when the Contractor has received payment for them pursuant to this Clause 5 whichever is the earlier. Where the value of any goods, materials, equipment or plant is included in an application under Clause 5.2, the Contractor shall ensure that such goods, materials, equipment or plant are not removed from the places where they are situated at the date of such application except for delivery to the Site.
Correction of errors	5.10	All certificates or notices issued under this Agreement shall be issued by the Client or Client's Representative with a copy to the Contractor. The Client may on any payment certificate or notice delete, correct or modify any sum previously paid by it. No certificate or notice or payment issued or made by or on behalf of the Client under this Agreement shall relieve the Contractor from any liability arising out of or in connection with this Agreement.
Interest on late payment	5.11	If the Client fails to pay the Contractor any sum properly payable under this Agreement on or before the final date for payment of it, the Client shall pay the Contractor simple interest on that sum from the relevant final date for

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payment until the actual date of payment calculated at a rate of 4% above the Bank of England Base Rate. It is agreed that this provision constitutes a substantial remedy for the purposes of Section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.

VAT reverse charge 5.12 The Client is an end user for the purposes of section 55A VAT Act 1994 reverse charge for building and construction services. The Contractor shall Issue the Client with a normal VAT invoice, with VAT charged at the appropriate rate. The Client will not account for the reverse charge.

6 Guarantees

Warranties and guarantees 6.1 The Contractor shall ensure that the benefit of any warranty or guarantee in respect of goods, materials, equipment or plant supplied or procured by it shall extend to the Client. The Contractor shall not invalidate such warranties and/or guarantees by its actions.

7 Indemnities and Insurance

Indemnity 7.1 The Contractor shall indemnify the Client and keep the Client indemnified against each and every liability which the Client may incur to any person whatsoever and against all damage, expense, loss, cost, claim or proceedings suffered or incurred by the Client to the extent that the same relates to personal injury or death of any person whomsoever or loss or injury or damage to any property real or personal (other than the Works, works executed or Site Materials) arising out of or in the course of or caused by the carrying out of the Works, except to the extent that the same is due to any act or neglect of the Client or the Client's Representative.

Contractor's Client's Liability Insurance 7.2 7.2.1 Without prejudice to the Contractor's obligation to indemnify the Client under Clause 7.1, the Contractor shall maintain and cause the Sub-Contractors to maintain insurance in respect of claims for personal injury and death of any person under a contract of service or apprenticeship with the Contractor or such Sub-Contractor as the case may be arising out of or in the course of such person's employment. Such insurance shall comply with the Client's Liability (Compulsory Insurance) Act 1969 and any statutory orders made thereunder or any amendment or re-enactment thereof and shall be for the sum of £5,000,000 (five million pounds) for any one occurrence or series of occurrences arising out of one event.

7.2.2 The insurance policy referred to in Clause 7.2.1 shall indemnify the Client in the like manner to the Contractor but only to the extent that the Contractor may be liable to indemnify the Client under the terms of this Agreement.

7.2.3 As and when it is reasonably required to do so by the Client, the Contractor shall produce and shall cause any Sub-Contractors to produce for inspection by the Client documentary evidence that the insurance required by this Clause 7.2 is properly maintained.

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Client's Third Party Insurance and Insurance of the Client's Property

7.3 Other than as specifically stated herein without prejudice to the Contractor's obligations to indemnify the Client under Clause 7.1, the Client shall take out and maintain:

7.3.1 a policy in the joint names of the Contractor, Sub-Contractors and the Client against liabilities for death of or injury to any person (other than any person in the employment of the Client or the Contractor where and to the extent that any such liabilities should reasonably be covered by the insurance maintained by the Contractor pursuant to Clause 7.2) or loss of or damage to any property (other than the Works, work executed, Site Materials or other property of the Client or the Contractor) arising out of the performance of the Contract, for a sum of £155,000,000 (one hundred and fifty five million pounds) for any one occurrence or series of occurrences arising out of one event

7.3.2 a policy or policies of insurance (or self-insurance arrangements) in respect of loss or damage to property of the Client (other than work executed and Site Materials but including work executed after practical completion thereof) arising out of or in connection with the Works and business interruption costs consequent upon such loss or damage, with a waiver of subrogation in favour of the Contractor and Sub-Contractors. The Contractor's liability under Clause 7.1 shall exclude loss or damage to such property of the Client and business interruption costs consequent thereon, to the extent of the insurance (or self-insurance) provided for in this Clause 7.3.2 except for the insurance policies excesses.

The Client shall not be responsible for any amounts in excess of the limits of indemnity and sums insured or retained liability or risks not insured or excluded by the terms, exceptions or conditions of such insurance policies.

Client's Insurance of the Works

7.4 Without prejudice to the Contractor's obligations under this Agreement, the Client shall insure in the joint names of the Contractor Sub-Contractors and the Client, the Works together with materials (including free issue materials) and plant and equipment for incorporation therein, such insurance to include a reasonable amount to cover additional costs that may arise incidental to the rectification of any loss or damage in respect of professional fees, cost of demolition and removal of debris. The insurance referred to in this Clause 7.4 shall provide cover against all loss or damage from whatsoever cause arising other than the Excepted Risks but including, without limitation, the Specified Perils, from commencement of the Works on the Site until the date of Practical Completion. Nothing shall render the Client liable to insure against the necessity for the repair or reconstruction of any work constructed with materials or workmanship not in accordance with the requirements of this Agreement. Any amounts not insured or not recovered from insurers whether as excesses carried under the policy or otherwise shall be borne by the Contractor.

Evidence of the Client's

7.5 A summary of the insurance policies taken out and maintained by the Client under Clause 7.3 and Clause 7.4 is included in section 2 of the

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Insurance		Project Insurance Manual and further details of the Client's insurance policies may be provided to the Contractor on request.
Notification of Claims	7.6	The Contractor shall immediately notify any occurrence that may result in a claim under the Client's insurance policies in accordance and in compliance with the provisions of the procedures detailed in section 3 of the Project Insurance Manual.
Breach by Contractor	7.7	Should the Contractor or any Sub-Contractor be in breach of any of their respective obligations under this Clause 7, the Client may itself insure against any risk in respect of which the default shall have occurred and may deduct a sum or sums equivalent to the amount paid or payable in respect of the premiums from any monies due or become due to the Contractor under this Agreement, or, if none are due, may recover the amount paid from the Contractor as a debt.

8 Claims Handling Provisions

Claims Handling Agreement	8.1	Subject to Clause 8.2, the provisions of the Claims Allocation and Handling Agreement shall apply to the Contractor and the Contractor shall provide its insurers with a copy of the Claims Allocation and Handling Agreement.
Application of CAHA	8.2	The parties agree that Clause 17 of the Claims Allocation and Handling Agreement shall not apply to this Contract

9 Copyright, Intellectual Property, Confidentiality and Photographs

Copyright licence	9.1	The legal and beneficial ownership of all Intellectual Property which the Contractor has supplied to the Client in accordance with this Agreement and which the Contractor has created and/or developed for the purposes of performing its obligations under this Agreement shall belong to the Contractor. The Contractor hereby grants to the Client an irrevocable, royalty-free, non-exclusive licence to use all rights, titles and interest in any such Intellectual Property for any purposes whatsoever in connection with the Client's permitted business provided that the Contractor shall have no liability for any use of the Intellectual Property other than for the purposes for which it was originally intended. The Client may assign the said licence and/or grant sub-licences out of the licence.
Sub-Contractors	9.2	The Contractor shall use reasonable endeavours to procure that the Sub-Contractors shall grant a licence to the Client in terms identical to Clause 9.1.
Confidentiality	9.3	All information obtained by the Parties in the course or conduct of this Agreement shall be held confidential and shall not be divulged by the Parties to any third party save to the extent necessary to effect the execution of the Works and then only on the basis that the recipient of such information shall be bound by similar confidentiality obligations to those undertaken by the Parties. The Contractor shall not issue any press release or other public document containing or make any public statement containing or otherwise disclose to any other person who is not a party to this Agreement information that relates to or is connected with or arises out of this Agreement or the matters contained in it without the prior written

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approval of the Client as to its content and the manner and extent of its publication.

Photographs 9.4 Except as required to record the condition of or activities on the Site, the Contractor shall not at any time take any photograph of the Site or the Works or any part of them, and shall take all reasonable steps to ensure that no such photographs shall at any time be taken or published or otherwise circulated by any person employed by it, unless the Contractor has obtained the prior written consent of the Client.

Comptroller and Auditor General (C&AG) 9.5 The Contractor shall and shall procure that its subcontractors shall provide such access to its or their books and records as may be required from time to time by the Comptroller and Auditor General of the National Audit Office for the purpose of their audit and examination of the accounts of Network Rail and its group companies, the Department for Transport and the consolidated set of financial statements for the UK public sector.

10 Assignment and Sub-Contracting

Assignment by parties 10.1 The Client shall not assign charge or transfer this Agreement or any of its rights under it without the prior written consent of the Contractor (such consent not to be unreasonably withheld or delayed), provided that the Contractor's consent shall not be required where it is between the Client and its direct or indirect holding companies and its direct or indirect subsidiaries (within the meaning of s1159 Companies Act 2006).

10.2 The Contractor shall not assign charge or transfer this Agreement or any of its rights under it without the prior written consent of the Client (such consent not to be unreasonably withheld or delayed).

Sub-Contracting by Contractor 10.3 The Contractor shall not sub-contract any part of the Works (including without limitation, the supply of goods and materials) or their design without the prior written consent of the Client's Representative, which consent shall not be unreasonably withheld or delayed.

Sub-letting does not relieve Contractor 10.4 No sub-letting by the Contractor and no consent of the Client and nothing contained in this Agreement requiring the Contractor to sub-let any work to or obtain any materials and/or goods from any person or persons named therein shall in any way relieve the Contractor from its responsibility for the due execution and completion of the Works in accordance with this Agreement.

11 Commencement and delays in the execution of the Works

Time for completion 11.1 The Contractor shall commence the Works on the Site on the date shown on the Purchase Order. The Contractor shall thereafter proceed with the Works regularly and diligently so that the Works are completed on or before the expiry of the Period for Completion stated in the Purchase Order Requirements.

12 Practical Completion of the Works

Certificate of 12.1 When, in the reasonable opinion of the Client's Representative, the Works

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Practical Completion		are practically complete, the Client's Representative shall issue a certificate to that effect and Practical Completion of the Works shall occur on the day named in such certificate. Such certificate may also be accompanied by a list of items of work which are, in the Client's Representative's opinion, required to render the Works entirely completed. The Contractor shall with all due diligence complete any such items of work.
Remedying of Defects	12.2	During the Defects Rectification Period the Client's Representative may instruct the Contractor to remedy any Defect. The Contractor shall comply with such instructions as soon as reasonably practicable and at no cost to the Client.
Certificate that Defects Remedied	12.3	After the expiry of the Defects Rectification Period and when all Defects that the Contractor has been instructed to remedy under Clause 12.2 have been remedied, the Client's Representative shall issue a certificate to that effect.
Defects not remedied	12.4	Where there are Defects that the Contractor has been instructed to remedy under Clause 12.2 but which have not been remedied within a reasonable period of the expiry of the Defects Rectification Period, the Client's Representative shall issue a statement identifying: 12.4.1 those Defects that it intends to engage others to rectify, together with a proper estimate of the cost of undertaking those rectification works; and 12.4.2 those Defects that it does not intend to rectify, together with particulars of the appropriate deduction it intends to make in the calculation of the amount due to the Contractor
Other Rights	12.5	The provisions of Clause 12 are without prejudice to any other rights or remedies the parties may possess.

13 CDM Regulations

CDM Duties	13.1	The Principal Contractor for the Project is as stated in the Purchase Order Requirements or, if not stated, the Contractor. Where this role is fulfilled by the Contractor, the Contractor warrants that it is competent to accept this appointment and that it will properly perform all the duties required of a principal contractor under CDM 2015.
	13.2	The "Principal Designer" (for the purposes of and as defined in CDM 2015) for the Project is as stated in the Purchase Order Requirements or, if not stated, the Client.

14 Client's Facilities and Free Issue Materials

Property in Facilities	14.1	All of the Client's Facilities or other property issued or supplied in connection with this Agreement by or on behalf of the Client shall remain the property of the Client and shall only be used by the Contractor for the purposes of this Agreement.
Availability of	14.2	The Client shall make available to the Contractor the Client's Facilities at

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- Facilities the times and subject to the conditions set out in the Purchase Order Requirements and subject to any temporary disrepair or mechanical breakdown. The Contractor shall return the same to the Client in the condition in which they were supplied (fair wear and tear excepted).
- No liens 14.3 Neither the Contractor, any Sub-Contractor or any other person, shall have a lien on any of the Client's Facilities or on any other property and the Contractor shall take all necessary steps to ensure that the title of the Client and the exclusion of any such lien are brought to the notice of all Sub-Contractors and other persons dealing with the same.
- Free Issue Materials 14.4 The Client shall make available to the Contractor at the Site free of charge to the Contractor the goods and materials described in the Purchase Order Requirements. Upon completion of delivery such goods and materials shall stand at the risk of the Contractor. Immediately upon the same being made available to it, the Contractor shall carry out a detailed inspection of such goods and materials and shall use its reasonable endeavours to advise the Client's Representative on or before the expiry of 24 hours and no later than 7 days or before being taken into operational use (whichever is the sooner) if any of such goods and materials are damaged or defective. The Client shall then secure the repair, replacement and/or reissue of any such goods or materials. If the Contractor does not so notify the Client's Representative, the Contractor shall not be entitled subsequently to claim that any such goods or materials are damaged or defective to the extent that the same could have been identified by detailed inspection within such period. The Contractor shall dispose of any packaging and/or waste arising.

15 Termination

- Contract or breach/ insolvency 15.1 If the Contractor:
- 15.1.1 shall be in material breach of any of the provisions of this Agreement; or
 - 15.1.2 becomes Insolvent;
- then the Client may, in addition to any other power enabling it to terminate this Agreement, by notice terminate forthwith the employment of the Contractor under this Agreement.
- Termination at will 15.2 The Client may terminate this Agreement at any time subject to giving 30 days written notice to the Contractor.
- 15.3 The Contractor may terminate this Agreement by written notice to the Client if the Client has not paid any undisputed amounts within 90 days of them falling due.

16 Consequences of Termination

- Payment following breach/ 16.1 If the Client, in exercise of the powers contained in Clause 15.1 shall terminate the Contractor's employment under this Agreement the following provisions shall take effect:

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- insolvency
- 16.1.1 the payment of any sum of money that may then be due or accruing from the Client to the Contractor shall be suspended;
- 16.1.2 the Contractor shall pay to the Client the Client's reasonable losses and expenses due to termination, but the Contractor shall receive credit for any sum the payment of which is suspended under Clause 16.1.1 or 16.1.4;
- 16.1.3 the Client may hire any persons in the employment of the Contractor and the Client may enter upon the Site and take possession of all goods, materials, plant and equipment (whether or not for incorporation in the Works) which are on the Site, or in storage or lying or in the course of preparation or manufacture off the Site, and may purchase or do anything requisite for the further execution of the Works, or may employ other contractors to do the same; and furthermore
- 16.1.4 where the Contractor becomes insolvent within the meaning of Section 113(2) of the Housing Grants, Construction and Regeneration Act 1996 after the last date for the Client to issue a Pay Less Notice in respect of any amount under Clause 5.6 such amount shall be immediately suspended.
- Payment following termination at will
- 16.2 If the Client, in the exercise of the powers contained in Clause 15.2, shall terminate the Contractor's employment under this Agreement, the following provisions shall take effect:
- 16.2.1 the Client shall issue a notice under Clause 5.3 stating the amount due to the Contractor which shall be calculated in accordance with the provisions of Clause 16.2.2; and
- 16.2.2 the amount payable on any termination pursuant to Clause 15.2 shall be calculated as follows:
- (i) the value of work executed up to the date of termination calculated in accordance with the provisions of the Purchase Order Requirements;
 - (ii) the cost of materials or goods reasonably ordered for the Works which have been delivered to the Contractor or for which the Contractor is legally liable to accept delivery (such materials or goods becoming the property of the Client upon such payment being made to the Contractor);
 - (iii) a sum being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the Works insofar as such expenditure has not been recovered by any other payments referred to above; and
 - (iv) the reasonable costs of removal of all the Contractor's plant, tools, equipment, goods and materials from the Site.

The Contractor shall not be entitled to payment of any other loss and/or damage arising from such termination including but not limited to loss of profit.

17 Notices

Service The addresses for service of the parties shall be the relevant Addresses for Service set out in the Purchase Order Requirements. Any notice required to be given by a party shall be in writing and service shall be effected either:

- 17.1 personally, in which case service shall be deemed effective on delivery; or
- 17.2 by prepaid recorded delivery post, in which case service shall be deemed effective two working days after the day after posting.

18 Dispute Resolution

Adjudicator 18.1 Any dispute or difference arising under or in connection with this Agreement may be referred to adjudication by the Adjudicator in accordance with the following provisions:

- 18.1.1 the Scheme for Construction Contracts SI No. 649 of 1998 shall apply; and
- 18.1.2 the Adjudicator's decision is binding until the dispute or difference is finally determined by the Courts as provided in Clause 18.3.

Adjudicator not liable 18.2 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith, and any employee or agent of the Adjudicator is similarly protected.

Courts and Jurisdiction 18.3 Disputes and differences between the parties arising out of or in relation to this Agreement shall, subject to Clause 18.1, be referred to the exclusive jurisdiction of the Courts of England and Wales. This Agreement shall be governed by and construed in accordance with the laws of England and Wales.

19 Site Security

Unauthorised persons 19.1 The Contractor shall take all reasonable steps and all steps required by this Agreement to prevent unauthorised persons being admitted to the Site. If the Client's Representative gives the Contractor notice that any person is not to be admitted to the Site, the Contractor shall take all practicable steps to prevent that person being admitted.

19.2 Where access to the Site is required by way of the Client's land, the route of such access shall be approved by the Client's Representative. The Contractor shall be responsible for ensuring that no person employed on its behalf trespasses beyond the agreed limits of the working area or access route and shall, if required so to do, provide and maintain to the satisfaction of the Client's Representative temporary fencing of an approved type to prevent trespass on the railway or neighbouring land.

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- Passes 19.3 When passes are required for admission to the Site the Client shall either issue them to the Contractor or arrange for their issue by the Contractor. The Contractor shall submit to the Client a list of the names of the relevant employees and other persons issued or to be issued with passes, and any other information which the Client's Representative reasonably requires. The passes shall be returned at any time on the demand of the Client's Representative and in any case on the completion of the Works.
- Records 19.4 The Contractor shall maintain a record of all visitors to the Site and shall, if and when instructed by the Client's Representative, give to the Client a list of names and addresses of all persons who are or may be at any time concerned with the Works or any part thereof, specifying the capacities in which they are so concerned, and giving such other particulars as the Client's Representative may reasonably require.

20 Not Used

21 Unforeseen Conditions

- Unforeseen Conditions 21.1 If the Client's Representative decides that physical conditions or artificial obstructions are encountered that could not reasonably have been foreseen it shall issue an Client's Instruction it considers desirable to complete such work. In the event that any part of the Works is, in the Client's Representative's opinion, impossible, impracticable or undesirable to complete as a result of the conditions or obstructions encountered, it shall notify the Contractor accordingly.
- Contamination and Pollution 21.2 If the Contractor encounters contamination or hazardous conditions which could not in its opinion reasonably have been foreseen it shall immediately:
- (a) inform the Client's Representative;
 - (b) take whatever steps if considers necessary to protect its staff and other persons and property and to secure the Site insofar as is possible or safe;
 - (c) notify any local or other authority of any potential risk to public health or safety;
 - (d) notify the Client's Representative of the Contractor's assessment of the nature of the contamination or hazard.
- If as a result of encountering such conditions, it is, in the Contractor's opinion, necessary whether for reasons of safety or protection of persons and property or otherwise to suspend the Works or part of the Works, it shall do so forthwith taking whatever steps may be necessary to secure the Site and exclude access by unauthorised persons.
- Hazardous Investigations 21.3 If on considering the circumstances, the Client's Representative considers that the Contractor encountered contamination or hazardous conditions which could not reasonably have been foreseen it shall:

- (a) after discussion with the Contractor and any local or other authority confirm or amend the steps taken by the Contractor under Clause 21.2(b);
- (b) confirm or amend any suspension of the Works;

22 Compliance

General

- 22.1 The Contractor shall comply with all applicable anti-bribery, anti-corruption and anti-slavery legislation including, without limitation, the Bribery Act 2010 and Modern Slavery Act 2015.
- 22.2 The Contractor shall comply with the Client's Code of Business Ethics and Code of Conduct, corporate hospitality, conflicts of interests and speak out (whistleblowing) policies and any updates thereof.

Bribery Act Compliance

- 22.3 The Contractor shall maintain and enforce its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with all applicable anti-bribery and anti-corruption legislation. Adequate procedures shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of the Act).
- 22.4 The Contractor shall use reasonable endeavours to ensure that all persons associated with the Contractor (as defined by section 8 of the Bribery Act 2010) including any subcontractors and suppliers comply with this Clause.

Modern Slavery Act Requirements

- 22.5 The Contractor shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- 22.6 The Contractor shall use reasonable endeavours not to purchase any raw materials, resources or products from any country that has been sourced from producers or manufacturers using forced labour in its operations or practice.

Remedies

- 22.7 Any breach of this Clause shall be deemed a material breach under this Agreement.

23 Freedom of Information

- 23.1 The Contractor acknowledges that:
 - 23.1.1 The Client may be required, under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 (collectively, the "**Information Acts**"), to disclose information relating to the subject matter of this Agreement; and

23.1.2 notwithstanding any other provision in this Agreement, the Client shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the Information Acts.

23.2 The Contractor shall provide all necessary assistance and cooperation as reasonably requested by the Client to enable it to comply with its obligations under the Information Acts.

24 Real Living Wage

24.1 The Contractor shall and shall also use reasonable endeavours to procure that its relevant sub-contractors (if any) shall:

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

24.1.2 co-operate and provide all reasonable assistance to the Client in monitoring the effect of the Real Living Wage.

24.2 If the Real Living Wage increases during the term of this Agreement, the Contractor shall not be entitled to adjust the Contract sum and the Parties agree and acknowledge that any increases in the Real Living Wage anticipated during the term of this Agreement have been factored into the Contract sum.

24.3 Any failure by the Contractor to comply with the provisions of Clause 24.1 shall be treated as a material breach under this Agreement.

25 Limits of Liability

Aggregate Liability Cap	25.1	Subject to Clause 25.2, the aggregate limit of liability of the Contractor under this Agreement (whether arising in contract, tort (including negligence) or otherwise at law) shall be the amount stated in the Purchase Order Requirements (the "Aggregate Liability Cap").
Exclusions from Limits of Liability	25.2	No limit of liability in this Agreement shall apply to: (a) any liability in respect of death or personal injury resulting from a negligent act or omission or breach of statutory duty by the Contractor or any person for whom the Contractor is responsible; and (b) any losses directly caused by the fraud of the Contractor.
Indirect and Consequential Losses	25.3	Indirect and Consequential Losses; Subject to the exclusions in Clause 25.2, in no event shall the Contractor be liable to the Client, including by way of indemnity, for any: (a) loss of profits;

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- (b) loss of business or production;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or
- (f) any indirect, special or consequential loss or damage.

Mitigation	25.4	Mitigation; Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement, including any losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Agreement.
Notice of third party claims	25.5	Notice of third party claims; The Client shall, as soon as reasonably practicable after receiving notice of a third party claim qualifying for an indemnity under this Agreement, give written notice to the Contractor specifying details of the third party claim.

PURCHASE ORDER REQUIREMENTS

Purchase Order Ref. **insert PO number**, the NR04(S) Conditions and these requirements together constitute a contract (hereafter referred to as 'the Contract') between the Client and the Contractor.

The Client and the Contractor agree as follows:

1 Works

1.1 The Works to be delivered by the Contractor comprise

insert details...

2 Safety Requirements

2.1 **insert relevant Clauses from the Contract Requirements HSEA.**

3 Key Dates

3.1 **The execution of the Works shall commence on ...insert date...and shall be completed by**

4 Client's and Contractor's Representatives

4.1 In accordance with Clause 1 of NR04(S) the Client's Representative is:

Name **insert details**
Position **insert details**
Address **insert details**

4.2 The Contractor's Representative is:

Name **insert details**
Position **insert details**
Address **insert details**

5 Contact and address for Notices

5.1 In accordance with Clause 17 of NR04(S) notices to the Client in relation to Clause 18 Dispute Resolution shall be delivered to:

Company Secretary
Network Rail
Waterloo General Office
London SE1 8SW,

copied to notices@networkrail.co.uk and the Client's Representative

5.2 In accordance with Clause 17 of NR04(S) notices to the Contractor shall be delivered to:

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insert details

6 CDM Regulations (Clause 13)

6.1 The Principal Contractor is:

6.2 The Principal Designer is:

7 Aggregate Liability Cap (Clause 25.1)

£5,000,000 (five million pounds)

8 Client's Facilities and Free Issue Materials

Insert details.

9 Other Client Requirements

Insert details.

10 Payment Schedule

10.1 Upon completion and delivery of the Works the Contractor shall be paid the fixed lump sums detailed on the Purchase Order

Or

10.2 Upon completion and delivery of each part of the Works the Contractor shall be paid the fixed lump sums (or rates) detailed on the Purchase Order

Or

10.3 The Contractor shall be paid for the Works carried out during the previous 4 weeks on a pro-rata basis using the fixed lump sums (or rates) detailed on the Purchase Order???

11 Pricing Document

Insert details.

12 Amendments and additions to the NR04(S) conditions

None.