

# NR6(MT)

## Network Rail Framework Agreement

for the

**Hire of Plant**

[Brief description]

Agreement No.: [Insert]



**In witness** whereof the Hirer and the Supplier have caused this Agreement to be executed in duplicate on the date first stated above, as follows:

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

SIGNED for and on behalf of )  
**NETWORK RAIL INFRASTRUCTURE** )  
**LIMITED** )  
by:

Authorised signatory .....

Printed Name:.....

SIGNED for and on behalf of )  
[Insert] )  
by: )

Authorised signatory .....

Printed Name:.....

**APPENDIX**

- 1 The Hirer's Representative (clause 1):  
 Name [Insert]  
 Position [Insert]  
 Address [Insert]  
 Telephone [Insert] Email [Insert]
- 2 Supplier's Representative (clause 1):  
 Name [Insert]  
 Position [Insert]  
 Address [Insert]  
 Telephone [Insert] Email [Insert]
- 3 Breakdown, Repairs and Adjustment Excess = £[Insert]  
 (clause 10.5):
- 4 Liquidated damages (clause 16):  
 (a) Unavailable time [One hour]  
 (b) Rate [£ per hour]  
 (c) Cancellation or failure to arrive [Insert % of order value]
- 5 IR35 (clause 35 Schedule 4 - Corporate Social [applies (within IR35) / does not apply - add CEST  
 Responsibility) - Where the intermediaries legislation determination reference number and attach as an  
 applies the Hirer deems that ITEPA 2003 Part 2 Ch10 Appendix at the end of the Contract.]  
 s61M 1(d):
- 6 Warranty as to the quantity of work under the contract [Does not apply / Applies (insert details)]  
 (clause 38):
- 7 The use of self-billing for VAT purposes (clause 39): [Applicable / Not Applicable]

**CONTRACT SPECIFIC CONDITIONS**

None

# NR6(MT)

## CONDITIONS OF CONTRACT

### Contents

<b>1</b>	<b>Definitions and Interpretation</b>
<b>2</b>	<b>Duties of the Supplier</b>
<b>3</b>	<b>Duties of the Hirer</b>
<b>4</b>	<b>Representatives</b>
<b>5</b>	<b>Hirer's Representative Instructions</b>
<b>6</b>	<b>Unloading and Loading</b>
<b>7</b>	<b>Delivery in Good Order</b>
<b>8</b>	<b>Ground and Site Conditions</b>
<b>9</b>	<b>Handling of Plant</b>
<b>10</b>	<b>Breakdown, Repairs and Adjustment</b>
<b>11</b>	<b>Other Stoppages</b>
<b>12</b>	<b>Loss of Other Plant Due to Breakdown</b>
<b>13</b>	<b>Inspection of Plant</b>
<b>14</b>	<b>Return of Plant for Repairs</b>
<b>15</b>	<b>Supplier's Name Plates</b>
<b>16</b>	<b>Limitation of Liability and Damages for Delay</b>
<b>17</b>	<b>Hirer's Responsibility for Loss and Damage</b>
<b>18</b>	<b>Cancelling Orders for Plant</b>
<b>19</b>	<b>Suspension of the Services</b>
<b>20</b>	<b>Notice and Consequences of Termination</b>
<b>21</b>	<b>Government Regulations</b>
<b>22</b>	<b>Adjudication</b>
<b>23</b>	<b>Governing Law and Jurisdiction</b>
<b>24</b>	<b>Assignment and Sub-Contracting</b>
<b>25</b>	<b>Insurances</b>
<b>26</b>	<b>Payment</b>
<b>27</b>	<b>Set-Off</b>
<b>28</b>	<b>Confidentiality</b>
<b>29</b>	<b>Employment Protection and TUPE</b>
<b>30</b>	<b>Claims Handling Provisions</b>
<b>31</b>	<b>Freedom of Information</b>
<b>32</b>	<b>Information Security</b>
<b>33</b>	<b>Not Used</b>
<b>34</b>	<b>Not Used</b>
<b>35</b>	<b>Compliance</b>

## NR6(MT)

- 36 Not Used**
- 37 Entire Agreement**
- 38 Call-Off Orders**
- 39 Use Of Self-Billing For Vat Purposes**

**Schedule 1 – Technical Workslope**

**Schedule 2 – Contract Requirements – HSEA**

**Schedule 3 – Preliminaries**

**Schedule 4 – Corporate Social Responsibility**

**Schedule 5 – Pricing Document**

**Schedule 6 - Call-Off Order Procedure**

## CONDITIONS OF CONTRACT

### 1 Definitions and Interpretation

#### 1.1 In this Agreement:

- 1.1.1 **“Access Point”** means an entry point to the Hirer’s infrastructure from the public highway. Such entry point to be detailed in the Call-Off Order;
- 1.1.2 **“Agreed Rail Industry Period”** means each or any of the Hirer’s thirteen accounting periods in its financial year beginning 1<sup>st</sup> April;
- 1.1.3 **“Appendix”** means the Appendix referred to in this Agreement;
- 1.1.4 **“Bank Holiday”** means Public holidays other than Christmas Day, Boxing Day or New Year’s day (or additional public holidays associated with Christmas Day, Boxing Day or New Year’s day), where the majority of the shift takes place between 19:00 hours on the day before the Bank Holiday and 06:59 on the day following the Bank Holiday;
- 1.1.5 **“Call-Off Order”** means a call-off order from the Hirer in accordance with the procedure contained in Schedule 6 of this Agreement;
- 1.1.6 **“Confidential Information”** means any information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential, however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel, affiliates and suppliers (including Sub-contractors) of either Party, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential;
- 1.1.7 **“Agreement Duration”** means the period set out in the Contract Agreement;
- 1.1.8 **“Contract Requirements - HSEA”** means the requirements referred to in Schedule 2 of this Agreement;
- 1.1.9 **“Contracting Authority”** means any contracting authority as defined in Regulation 4 of The Utilities Contracts Regulations 2016;
- 1.1.10 **“Corporate Social Responsibility”** means the requirements referred to in Schedule 4 of this Agreement;
- 1.1.11 **“Crown”** means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Government and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies;
- 1.1.12 **“Electronic Purchase Order”** means an electronic Call-Off Order in a format determined by the Hirer;
- 1.1.13 **“Group Standard”** means the Railway Group Standards issued by Railway Safety and Standards Board and sets out safety, technical and operational requirements, and good practice affecting railway system safety or the safety or interworking between Railway Group Members;
- 1.1.14 **“Hire Period”** means the period, which shall apply to each item of Plant on an individual basis and shall commence from the time specified in the Call-Off Order and shall continue until the Hirer makes the Plant available for collection at the Site as stated in the relevant Call-Off Order;
- 1.1.15 **“Hirer’s Representative”** means the person named in the Appendix;



## NR6(MT)

- 1.1.16 **“The Hirer’s Representative Assistants”** means the persons notified by the Hirer’s Representative to the Supplier from time to time to assist the Hirer’s Representative carry out the duties defined in this Agreement;
- 1.1.17 **“Intermediaries Legislation”** IR35 means Income Tax (Earnings and Pensions) Act 2003 (ITEPA), Social Security Contributions and Benefits Act 1992 (SSCBA) and all other related statutes and regulations including the Finance Act 2017;
- 1.1.18 **“Network Rail Standards”** are the Network Rail Standards published by the Hirer;
- 1.1.19 **“Operator”** means the person or persons employed by the Supplier to operate, drive, service, maintain and /or repair the Plant and where required other personnel requested in the Call-Off Order”;
- 1.1.20 **“Plant”** means on track machines, plant, machinery, vehicles, equipment and accessories thereof which the Supplier agrees to supply to the Hirer as detailed in the Call-Off Order;
- 1.1.21 **“Preliminaries”** means the requirements referred to in Schedule 3 of this Agreement;
- 1.1.22 **“Price”** means the price for the Plant determined in accordance with Schedule 5 of this Agreement;
- 1.1.23 **“Pricing Document”** means the pricing document referred to in Schedule 5 of this Agreement;
- 1.1.24 **“Services”** means the services, duties and responsibilities to be provided, performed and observed by the Supplier pursuant to this Agreement and in particular the supply and operation of Plant together with all necessary equipment, facilities and Operator required by Call-Off Orders;
- 1.1.25 **“Shift”** means the period stated in the Call-Off Order and shall be Access Point to Access Point unless otherwise stated in the Call-Off Order;
- 1.1.26 **“Site”** means the places specified by the Hirer and stated in the Call-Off Order where the Plant is to be delivered to or collected from;
- 1.1.27 **“Sub-Contractor”** means any person, firm or company approved by the Hirer’s Representative pursuant to clause 39 who enters into an agreement with the Supplier to provide goods or services to enable the Supplier to meet its obligations under this Agreement;
- 1.1.28 **“Supplier’s Documentation”** means all bills, calculations, designs, drawings, maps, models, plans, programmes, reports, specifications, data, software, working papers and other documents, matters or things required to be provided by the Supplier in connection with the provision of the Plant;
- 1.1.29 **“Supplier Personnel”** means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier’s obligations under this Agreement;
- 1.1.30 **“Supplier’s Representative”** means the person named in the Appendix; and
- 1.1.31 **“Technical Worksopce”** means the requirements referred to in Schedule 1 of this Agreement.
- 1.1.32 **“Weekday”** means any day Shift from Monday to Friday where the majority of the Shift takes place between 07.00 hours and 18.59 hours and does not take place on a Bank Holiday, Christmas Day, Boxing Day or New Year’s Day;
- 1.1.33 **“Weekend”** means where the majority of the Shift takes place between 19.00 hours on Friday and 06.59 Monday and does not take place on a Bank Holiday, Christmas Day, Boxing Day or New Year’s Day (or additional public holidays associated with Christmas

## NR6(MT)

Day, Boxing Day or New Year's Day);

- 1.1.34 **“Weeknight”** means any night Shift from Monday to Thursday where the majority of the Shift takes place between 19.00 hours and 06.59 hours and does not take place on a Bank Holiday, Christmas Day, Boxing Day or New Year's Day.

## 2 Duties of the Supplier

The Supplier shall:

- 2.1 provide the Services with the reasonable skill care and diligence normally exercised by recognised professional firms or by highly skilled and experienced service providers providing services of a similar scope, type and complexity to the Services;
- 2.2 provide the Plant in good working order and perform the Services in accordance with the requirements of this Agreement so that the Plant can be used safely and without risk to health;
- 2.3 take instructions and all directions and, where appropriate, receive the Hirer's decisions only through the Hirer's Representative;
- 2.4 act in accordance with all reasonable instructions and directions of the Hirer or the Hirer's Representative in providing the Plant (including without limitation, Call-Off Orders);
- 2.5 answer all reasonable enquiries received from the Hirer's Representative;
- 2.6 comply with the Preliminaries;
- 2.7 immediately request an instruction from the Hirer's Representative upon receipt of revised editions of the Group Standards or Network Rail Standards referred to in this Agreement. The Supplier shall not action the implementation of such Group Standard or Network Rail Standards until such instruction to do so is received from the Hirer's Representative. The Price shall be adjusted to take account of such instruction;
- 2.8 provide Supplier's Documentation in such format as may reasonably be specified upon the written request of the Hirer's Representative;
- 2.9 use reasonable endeavours to obtain and maintain all necessary consents required by the Supplier to perform the Services, for which purposes the Hirer shall provide such assistance as the Supplier may reasonably require;
- 2.10 provide such suitably qualified and competent personnel including Operators as is necessary for the performance by the Supplier of the Services and shall:
- 2.10.1 provide the Hirer's Representative with details of the qualifications and experience of such personnel as and when required;
- 2.10.2 cease to employ in connection with this Agreement, and to replace, any employee of the Supplier whose continued employment thereon is, in the written opinion of the Hirer's Representative, undesirable: and
- 2.11 comply with the security vetting procedures below:
- 2.11.1 The Supplier assures the Hirer that Supplier Personnel have been subject to legally required pre-employment screening. As a minimum this includes identity verification and UK right to work checks.
- 2.11.2 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 Personnel 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 are notified to the Supplier by the Hirer.

## NR6(MT)

2.11.3 The Supplier does not use Supplier Personnel who are unable to comply with sub-clauses 2.11.1 & 2.

2.11.4 Supplier Personnel;

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

both renewed biennially with training records kept by the Supplier for five years and made available to the Hirer on request. The Hirer provides the training material at no additional cost to the Supplier.

### 3 Duties of the Hirer

- 3.1 The Hirer's Representative shall give to the Supplier, subject to reasonable notification, such instructions and / or decisions pursuant to this Agreement as are required at such a time and in such a manner as shall enable the Supplier properly to perform the Services.
- 3.2 The Hirer shall make available all data and information in its possession, which the Supplier reasonably requires to perform the Services, provided always that the Supplier requests such information a reasonable time before it is required.
- 3.3 The Hirer shall not re-hire, sub-let, or lend the Plant nor any part thereof to any third party without the prior written permission of the Supplier.
- 3.4 The Hirer shall not move the Plant from the site to which it was delivered or consigned without the prior written permission of the Supplier.
- 3.5 If the Plant is involved in any accident resulting in injury to persons or damage to property, immediate notification must be given by the Hirer to the Supplier by telephone and confirmed in writing to the Supplier no later than 24 hours after such telephone notification. In relation to any claim in respect of which the Hirer is not bound to fully indemnify the Supplier, no admission of liability, offer, promise of payment or indemnity shall be made by the Hirer without the Supplier's prior written permission.
- 3.6 The Hirer shall not sell, mortgage, charge, pledge, part with possession of, or otherwise deal with the Plant.

### 4 Representatives

- 4.1 The Hirer's Representative may from time to time delegate any of its duties and it may at any time revoke such delegation. Any delegation or revocation shall be in writing and can be contained in a Call-Off Order. No such delegation or revocation shall have effect until a copy thereof has been delivered to the Supplier.
- 4.2 The Supplier's Representative may from time to time delegate any of its duties and it may at any time revoke such delegation. Any delegation or revocation shall be in writing. No such delegation or revocation shall have effect until a copy thereof has been delivered to the Hirer's Representative.

### 5 Hirer's Representative Instructions

- 5.1 The Hirer's Representative shall be authorised to issue Instructions to the Supplier under this Agreement from time to time.
- 5.2 If any Hirer's Representative Instruction issued under this Agreement shall:

## NR6(MT)

- 5.2.1 require the Supplier to undertake Services not provided for in, or to be reasonably inferred from, this Agreement; or
- 5.2.2 impose any additional obligation or restriction or shall require the omission of any Services or of any obligation or restriction;

then provided that the Hirer's Representative Instruction has not arisen from any default or a breach by the Supplier of any provision of this Agreement, the Price shall be adjusted and the provisions of clauses 5.3 and 5.4 shall apply.

- 5.3 The Hirer's Representative shall, after consultation with the Supplier and within a reasonable time after the issue of such Hirer's Representative Instruction, ascertain a fair and reasonable adjustment to the Price based on prices or rates analogous to those included in the Pricing Document.
- 5.4 If there are no analogous prices or rates in the Pricing Document the Hirer's Representative shall determine fair rates and prices.
- 5.5 Verbal instructions shall be of no effect unless confirmed in writing by the Hirer's Representative.

## 6 Unloading and Loading

The Supplier shall obtain permission from the Hirer's Site representative before entering a Site and shall comply with the Contract Requirements - HSEA and any requirements in the Call-off Order regarding access to the Site. The Hirer shall otherwise be responsible for providing reasonable Site access and a safe area for unloading and loading to allow the Supplier to deliver and collect Plant. The Supplier shall be responsible for all unloading and loading of Plant and shall not interfere with or obstruct any public or private rights of way or property.

## 7 Delivery in Good Order

- 7.1 The Supplier shall supply the Plant to the Hirer in good order in conformity with the Technical Worksopce, the manufacturer's specifications, Group Standards and Network Rail Standards and in compliance with the provisions of this Agreement.
- 7.2 The Plant shall be deemed to be in good order in accordance with the terms of this Agreement, save for either an inherent fault or a fault not ascertainable by reasonable examination, unless written notification is provided within four working days from delivery to site. Where the Plant is required to be erected on site, the period shall be calculated from the date of the completed erection of the Plant.
- 7.3 The Hirer shall be responsible for the safe keeping of the Plant, its use in a workmanlike manner within the manufacturer's rated capacity and in accordance with the manufacturer's and/or the Supplier's recommendations, and making it available for collection on completion of the Hire Period in equal good order (fair wear and tear excepted).
- 7.4 The Hirer shall at all times when hiring Plant without the Supplier's operator or driver take all reasonable steps to keep itself acquainted with the state and condition of the Plant. If such Plant is continued at work or in use in an unsafe and unsatisfactory state or environment, the Hirer shall be solely responsible for any damage, loss, cost, expense or accidents whether directly or indirectly arising therefrom.

## 8 Ground and Site Conditions

- 8.1 The Hirer is deemed to have knowledge of the site or the property or land where the Plant is to be delivered and the Hirer warrants that the condition of the site or place of delivery of the Plant is suitable for the use of such Plant.
- 8.2 If, in the reasonable opinion of the Hirer, the ground (including any private access road or track) is soft or unsuitable for the Plant to work on, travel over, be transported over, be erected or dismantled on without timbers or equivalent support, the Hirer shall supply and lay suitable

## NR6(MT)

timbers or equivalent support in a suitable position for the Plant to travel over, work on, be transported over, be erected or dismantled on, including for the purpose of delivery and collection.

- 8.3 Any timber or other material supplied by the Supplier is provided solely to assist the Hirer under their duties within clause 8.2 and expressly not to relieve it of its legal, regulatory or contractual obligations to ensure adequate stability of the Plant.
- 8.4 The Hirer is responsible for the protection of, and liable for any damage to, any underground, surface or above ground services and utilities including, but not limited to cables, ducts, water pipes and gas lines, and any pavements, bridges, tunnels and roadways on or adjacent to the site and the Hirer shall liaise as necessary and comply with all requirements of the relevant statutory authority or similar body.

## 9 Handling of Plant

The Supplier shall ensure that any driver, operator or person supplied with the Plant is competent in operating such Plant or providing such service as is required and the parties acknowledge that such persons shall be under the control and direction of the Hirer.

## 10 Breakdown, Repairs and Adjustment

- 10.1 When the Plant is hired without the Supplier's driver or operator any breakdown or the unsatisfactory working of or damage to any part of the Plant must be notified as soon as reasonably practical to the Supplier and confirmed in writing. Any claim for breakdown time will only be considered from the time and date that the first notification is received by the Supplier.
- 10.2 The Hirer shall not incur any hire charges:
- 10.2.1 where any stoppage has been incurred due to the breakdown of the Plant caused by the development of either an inherent fault or a fault not ascertainable by reasonable examination of fair wear and tear; and
- 10.2.2 for all stoppages for normal running repairs in accordance with the terms of this Agreement.
- 10.3 The Hirer shall not repair, modify or alter the Plant without the prior written permission of the Supplier. The changing of any hydraulic hoses and tyres, and repair of punctures, is the responsibility of the Supplier. The Supplier is responsible for all costs incurred in the changing of any hydraulic hoses and tyres, and repair of punctures, unless the damage has been caused by the Hirer's misuse.
- 10.4 Where Plant is operated by the Supplier's Operators, the Supplier shall be responsible for the safe operation of the Plant.
- 10.5 Subject to clause 10.4 and the excess detailed in the Appendix which shall be the responsibility of the Supplier, the Hirer shall indemnify the Supplier for either the reasonable net cost of any repair or up to the net replacement cost of the Plant, whichever is the lower, arising from any breakdown, loss or damage incurred by the Supplier due to the Hirer's negligence or misuse, or due to any theft or vandalism of the Plant during the Hire Period. The Supplier shall provide written reports, quotations and digital photographic evidence of any such damage. The net replacement cost will be calculated in accordance with the following formula:
- $$\text{capital cost (new)} \times \% \text{age of write down period remaining.}$$
- 10.6 The Hirer shall not be responsible for any loss or damage caused by theft or vandalism of the Plant outside of the Hire Period, and in particular, but without limitation, between the time of delivery and the start of the Hire Period and between the end of the Hire Period and the time of collection.

## NR6(MT)

### 11 Other Stoppages

No claims will be admitted (other than those allowed for under "Breakdown" (clause 10) or for any idle time defined in the Pricing Document), for stoppages through causes outside the Supplier's control, including but not limited to bad weather and / or ground conditions nor shall the Supplier be responsible for the cost or expense of recovering any Plant from soft or unsuitable ground, or a hazardous environment.

### 12 Loss of Other Plant Due to Breakdown

Each item of Plant specified in this Agreement is hired as a separate unit and the breakdown or stoppage of one or more units or vehicles (whether the property of the Supplier or otherwise) through any cause whatsoever, shall not entitle the Hirer to compensation or allowance for the loss of working time by any other unit or units of Plant working in conjunction therewith, provided that where two or more items of Plant are expressly hired together as a unit, such items shall be deemed to be one unit for the purpose of breakdown.

### 13 Inspection of Plant

- 13.1 The Supplier shall permit the Hirer to undertake detailed inspections of any maintenance records, inspection reports and the Plant as and when necessary to ascertain compliance with the requirements of the Technical Workslope and relevant legislation.
- 13.2 Where such inspection identifies a non-conformance with the Technical Workslope either in the condition of an item of Plant or in its maintenance, then the Supplier shall produce and implement an action plan to rectify such non-conformance without delay.
- 13.3 Until rectification of the non-conformance has been accepted by the Hirer's Representative, the Hirer's Representative may issue a notice restricting (including, if appropriate, suspending) the use of the item of Plant.
- 13.4 Any Services lost as a result of restrictions arising under clause 13.3, unless due to the Hirer's acts or omissions, shall be deemed to be due to the default of the Supplier for the purposes of calculating payments in accordance with the Pricing Document.
- 13.5 The Hirer shall at all reasonable times allow the Supplier, its agents or its insurers to have access to the Plant to inspect, test, adjust, repair or replace the same. So far as reasonably practicable the Hirer shall allow such access during the Working Day and, where necessary, replacement Plant items shall be provided to the Hirer at no additional cost. The Supplier shall provide written reports and digital photographic evidence of any new damage.

### 14 Return of Plant for Repairs

If during the Hire Period the Supplier decides that urgent repairs to the Plant are necessary then the Supplier may arrange for such repairs to be carried out on site or at any location of its nomination. In the event that urgent repairs to the Plant are necessary the Supplier shall be obliged to replace the Plant with similar Plant if available, the Supplier (but without prejudice to any of the provisions of clauses 10 and / or 17) paying all transport charges involved. In the event of the Supplier being unable to replace the Plant, the hire of such Plant will immediately terminate.

### 15 Supplier's Name Plates

The Hirer shall not remove, deface or cover up the Supplier's name plate or mark on the Plant indicating that it is the Supplier's property, without the prior written permission of the Supplier.

### 16 Limitation of Liability and Damages for Delay

- 16.1 The Supplier accepts liability for death or other personal injury or damage to property howsoever resulting from the Supplier's negligence, breach of statutory duty or breach of this Agreement where such negligence or breach has arisen or arises in connection with the provision of the

## NR6(MT)

Services, except to the extent that the same is due to any act or neglect of the Hirer.

- 16.2 The Supplier hereby agrees to indemnify the Hirer against any and all loss, damage, liability, claims, proceedings, legal costs and professional and other expenses of any nature whatsoever incurred or suffered by the Hirer in connection with any claims made or proceedings brought by reason of any such death, personal injury or damage to property as described in clause 16.1.
- 16.3 In no event shall the Supplier be liable to the Hirer, including by way of indemnity, for any:
- (a) loss of profits;
  - (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.
- 16.4 In the event that Plant or Operators are unavailable for more than the time stated in the Appendix due to a failure of the Supplier then the Supplier shall pay the Hirer liquidated damages at the rate stated in the Appendix.
- 16.5 In the event that the provision of Plant or Operators is cancelled by the Supplier or the Plant or Operators fail to arrive for the Shift, then the Supplier shall pay the Hirer liquidated damages at the rate stated in the Appendix.
- 16.6 In all cases the party claiming a breach of this Agreement or a right to be indemnified in accordance with this Agreement shall use reasonable endeavours to mitigate the loss or damage that has occurred or may occur.

## 17 Hirer's Responsibility for Loss and Damage

Without prejudice to clauses 6, 7, 9 and 10 the Hirer shall not be responsible for damage, loss or injury:

- 17.1 prior to delivery of any Plant to the site (or, where the site is not immediately adjacent to a highway maintainable at the public expense, prior to it leaving such highway) where the Plant is in transit by transport of the Supplier or as otherwise arranged by the Supplier;
- 17.2 during the erection and / or dismantling of any Plant where such Plant requires to be completely erected / dismantled on site, provided always that such erection / dismantling is under the exclusive control of the Supplier or its agent;
- 17.3 after the Plant has been removed from the site and is in transit on a highway maintainable at the public expense (or where the site is not immediately adjacent to a highway maintainable at the public expense after it has joined such highway) to the Supplier by transport of the Supplier or as otherwise arranged by the Supplier; or
- 17.4 where the Plant is travelling to or from a site on a highway maintainable at the public expense (or, where the site is not immediately adjacent to a highway maintainable at the public expense, prior to its leaving or after it joining such highway) under its own power with a driver supplied by the Supplier.

## 18 Cancelling Orders for Plant

The Hirer shall have the right to cancel any order for Plant at its sole discretion and the Supplier shall only be reimbursed costs as provided for in the Pricing Document.

## 19 Suspension of the Services

- 19.1 The Supplier shall, on the written instruction of the Hirer's Representative, suspend the performance of the Services or any part thereof for such time and in such manner as the Hirer's

## NR6(MT)

Representative may require.

- 19.2 Where the performance of the Services or any part thereof has been suspended under clause 19.1 and the Services are to be resumed, the Hirer's Representative shall grant the Supplier a reasonable period of time in order to resume performance of such Services.
- 19.3 Unless the suspension is due to the default or a breach by the Supplier of any provision of this Agreement, the Supplier shall be entitled to reimbursement of the sums which would otherwise have fallen due under the Pricing Document less a reasonable deduction for the cost of fuel, consumables, discretionary overtime and other avoidable costs assessed by the Hirer's Representative to be fair and reasonable. The Supplier shall take all reasonable steps to reduce avoidable costs during any suspension.
- 19.4 In the event of suspension, the Supplier shall:
- 19.4.1 comply with the Hirer's Representative's instructions with regard to the stabling of Plant;
- 19.4.2 not remove any Plant from the Site or other location without the written permission of the Hirer's Representative. Such permission shall not be unreasonably withheld.

## 20 Notice and Consequences of Termination

- 20.1 Either party shall have the right to terminate the Supply of Plant forthwith by notice in writing to the other party if the other party:
- 20.1.1 commits a material breach of this Agreement; or
- 20.1.2 is unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purposes of effecting a reconstruction or amalgamation in such manner that the company resulting from such reconstruction or amalgamation if a different legal entity shall agree to be bound by and assume the obligations of the relevant party under this Agreement) or compounds with or convenes a meeting of its creditors or has a receiver or manager or an administrator appointed or ceases for any reason to carry on business or takes or suffers any similar action which in the opinion of the party giving notice means that the other may be unable to pay its debts.
- 20.2 On receipt of a notice of termination, the Supplier shall ensure that expenditure under this Agreement is reduced as rapidly as possible and the Supplier shall take immediate steps to bring an end to the provision of the Plant in an orderly manner. The Supplier shall ensure that the Hirer has a full and complete set of any documents, or other information which the Hirer may require for any purpose in connection with the provision of the Plant which the Supplier was providing under this Agreement.
- 20.3 The party terminating this Agreement, without prejudice to any other claims which it might have, shall be entitled to claim from the other party the additional costs, expenses and/or damages sustained by it arising from such termination.
- 20.4 The Hirer may, in addition to any other power it may have, with 30 days written notice to the Supplier forthwith terminate this Agreement and/or Call-Off Orders. The Supplier shall be entitled to such proportion of the Price as represents a fair and reasonable value of that part of the Call-Off Orders carried out at the date of termination and a sum being the amount of any expenditure reasonably incurred by the Supplier in the expectation of completing the Call-Off Orders not then completed insofar as such expenditure has not been recovered by any other payments under this Agreement, provided always that the Supplier shall not be entitled to recover any loss of anticipated profit as a result of such termination.
- 20.5 The Hirer may terminate this Agreement in the event that it considers any of the circumstances set out in regulations 89(1)(a) or (c) of the Utilities Contracts Regulations 2016 SI 2016/274 ("UCR") or regulations 73(1)(a) or (c) of the Public Contracts Regulations 2015 SI 2015/102



## NR6(MT)

("PCR") as amended from time to time as applicable have arisen. This shall be treated as termination pursuant to clause 20.4.

- 20.6 The Hirer may terminate this Agreement if it considers any of the circumstances set out in regulation 89(1)(b) of UCR or regulation 73(1)(b) of PCR as applicable have arisen. Termination of this Agreement by the Hirer pursuant to this clause 20.6 shall be deemed to be a material breach under clause 20.1.1 which the Supplier has failed to remedy.
- 20.7 The Supplier shall notify the Hirer in writing immediately upon becoming aware of the circumstances referred to in clause 20.6 applying.
- 20.8 The Supplier may terminate this Agreement by written notice to the Hirer if the Hirer has not paid any undisputed amounts within 90 days of them falling due.

## 21 Government Regulations

- 21.1 The Supplier shall comply with all statutory legislation, codes of practice, Group Standards, Network Rail Standards and British Standards as regards health and safety including but not limited to the Contract Requirements – HSEA and the Hirer's drugs and alcohol policy.
- 21.2 The Supplier shall provide with each item of Plant, the safety and operating information required by this Agreement.

## 22 Adjudication

- 22.1 Both parties to the Agreement have a right to refer any difference or dispute arising under or in connection with the Agreement to adjudication and the procedure set out in Part 1 of the Scheme for Construction Contracts (England and Wales) Regulations 1998 (or any amendment or re-enactment thereof for the time being in force) will apply. The specified nominating body to select adjudicators shall be the Construction Plant-hire Association acting by its President or Chief Executive for the time being.
- 22.2 The Supplier and the Hirer shall comply forthwith with any decision of the adjudicator; and shall submit to summary judgment and enforcement in respect of all such decisions; in each case, without any defence, set-off, counterclaim, abatement or deduction.

## 23 Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and subject to Clause 22 the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

## 24 Assignment and Sub-Contracting

The Supplier shall not assign, transfer, sub-contract or in any other manner make over to any third party the benefit of this Agreement without the prior written consent of the Hirer (such consent not to be unreasonably withheld or delayed). Where the Supplier is otherwise unable to fulfil a Call-Off Order and is given written permission to cross hire, only similarly approved alternative suppliers and machines as covered by the scope of this Agreement shall be used. Any restriction on assignment will not apply to the extent that it would have no effect under The Business Contract Terms (Assignment of Receivables) Regulations 2018.

## 25 Insurances

- 25.1 Other than as specifically stated herein and without prejudice to the Supplier's obligations hereunder, the Hirer shall take out and maintain:
- 25.1.1 a policy in the joint names of the Supplier, Sub-Contractors and the Hirer against liabilities for death of or injury to any person (other than any person in the employment of the Hirer or of the Supplier where and to the extent that any such liabilities should reasonably be covered by the insurance maintained by the Supplier pursuant to clause 25.3) or loss of or damage to any property (other than the Plant or other property of the Hirer or the Supplier) arising out of the performance of the Services, for a sum not less

## NR6(MT)

than £155,000,000 (one hundred and fifty five million pounds) for any one occurrence or series of occurrences arising out of one event;

- 25.1.2 a policy or policies of insurance (or self-insurance arrangements) in respect of loss or damage to property of the Hirer arising out of or in connection with the performance of the Services, with a waiver of subrogation in favour of the Supplier and Sub-Contractors. The Supplier's liability under clause 16 shall exclude loss or damage to such property of the Hirer to the extent of the insurance (or self-insurance) provided for in this sub-clause 25.1.2 except for the first £75,000 of each and every occurrence of such loss or damage. The Hirer shall not be responsible for any amounts in excess of the limits of indemnity and sums insured or any excess or retained liability or risks not insured or excluded by the terms, exceptions or conditions of such insurance policies.
- 25.2 As and when it is reasonably required to do so by the Supplier, the Hirer shall produce for inspection by the Supplier documentary evidence that the insurance required by clause 25.1 is properly maintained.
- 25.3 Without prejudice to the Supplier's obligations to indemnify the Hirer under clause 16 and any other obligations and responsibilities of the Supplier hereunder, the Supplier shall maintain and cause any 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 Supplier 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 Employer'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 not less than £5,000,000 (five million pounds) for any one occurrence or series of occurrences arising out of one event.
- 25.4 The insurance policy referred to in clause 25.3 shall indemnify the Hirer in the like manner to the Supplier but only to the extent that the Supplier may be liable to indemnify the Hirer under the terms of this Agreement.
- 25.5 As and when it is reasonably required to do so by the Hirer, the Supplier shall produce and shall cause any Sub-Contractors to produce for inspection by the Hirer documentary evidence that the insurance required by clause 25.3 is properly maintained.

## 26 Payment

- 26.1 In consideration of the supply of Plant, the Hirer shall pay to the Supplier the Price determined in accordance with the Pricing Document.
- 26.2 Not less than 7 days after the end of each Agreed Rail Industry Period, the Supplier shall present to the Hirer an application stating the total amount due to the Supplier calculated in accordance with the provisions of and with such supporting documents as may be required by this Agreement.
- 26.3 On or before the expiry of 14 days from the date of submission of the Supplier's application under clause 26.2, the Hirer shall issue a notice stating the amount of the payment proposed to be made in respect of the application, to what the amount of the payment relates and the basis on which that amount is calculated.
- 26.4 The Supplier shall issue a VAT invoice in the amount stated in the Hirer's notice under clause 26.3 and which includes the correct Agreement and purchase order number and is addressed to "Network Rail, Accounts Payable, P.O. Box 4145, Manchester M60 7WZ" or original computer-generated pdf invoices can be emailed to [invoices@networkrail.co.uk](mailto:invoices@networkrail.co.uk). The Hirer shall issue payment to the Supplier of the amount properly due to the Supplier together with VAT thereon on or before the final date for payment which shall be the expiry of 7 days from the date of receipt of the Supplier's VAT invoice. If the Supplier's invoice does not comply with the requirements of this clause 26.4, the Hirer shall be under no obligation to pay the same.

## NR6(MT)

26.5 If the Hirer fails to pay the Supplier any sum properly payable under this Agreement on or before the final date for payment of it, the Hirer shall pay to the Supplier simple interest on that sum from the relevant final date for payment until the actual date of payment calculated at a rate of 4% above the Bank of England Base Rate.

26.6 Payment hereunder does not signify and is not evidence that the Supplier has provided or is providing the Plant in accordance with this Agreement.

## 27 Set-Off

Without prejudice to the Hirer's other rights and remedies, the Hirer may deduct from any sums payable to the Supplier under this Agreement an amount equivalent to any sum payable by or recoverable from the Supplier to the Hirer (whether such sums are payable by or recoverable from the Supplier under this Agreement or under any other agreement between the Supplier and the Hirer) and may also deduct any sum then payable by or recoverable from the Supplier or which at any time thereafter may be payable by or recoverable from the Supplier under any other agreement between the Supplier and the Hirer. The Hirer shall give to the Supplier notice of any such deduction or set-off five days before the final date for payment and such notice shall specify:

27.1 the sum that the Hirer considers to be due on the date the notice is served having taken account of any amount to be withheld from the payment; and

27.2 the basis on which that sum is calculated including the grounds for any sums withheld.

## 28 Confidentiality

28.1 Each Party must:

- (i) keep all Confidential Information it receives confidential and secure;
- (ii) 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 Agreement; and
- (iii) immediately notify the disclosing party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.

28.2 In spite of Clause 0, a Party may disclose Confidential Information which it receives from the disclosing party in any of the following instances:

- (i) 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;
- (ii) if the recipient party already had the information without obligation of confidentiality before it was disclosed by the disclosing party;
- (iii) if the information was given to it by a third party without obligation of confidentiality;
- (iv) if the information was in the public domain at the time of the disclosure;
- (v) if the information was independently developed without access to the disclosing party's Confidential Information;
- (vi) on a confidential basis, to its auditors;
- (vii) on a confidential basis, to its professional advisers on a need-to-know basis; and

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.

28.3 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 Agreement.

## NR6(MT)

- 28.4 The Hirer may disclose Confidential Information in any of the following cases:
- (i) on a confidential basis to the employees, agents, consultants and contractors of the Hirer;
  - (ii) on a confidential basis to any Central Government Body, any successor body to a Central Government Body or any company that the Hirer transfers or proposes to transfer all or any part of its business to;
  - (iii) if the Hirer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
  - (iv) where requested by Parliament;
  - (v) on a confidential basis to an actual or prospective supplier of replacement services, such information as the Hirer shall reasonably require in order to facilitate the preparation by the Hirer 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 services, to the extent that such disclosure is necessary in connection therewith; and
  - (vi) under Clause 31.
- 28.5 For the purposes of Clauses 28.2 to 28.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 28.
- 28.6 The Supplier must not make any press announcement or publicise the Agreement or any part of them in any way, without the prior written consent of the Hirer and must use all reasonable endeavours to ensure that Supplier staff do not either.

**29 Employment Protection and TUPE**

Notwithstanding anything to the contrary elsewhere in this Agreement:

- 29.1 the Supplier shall be responsible for and shall indemnify and keep indemnified the Hirer and any successor supplier 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 Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or re-enacted from time to time ("TUPE");
- 29.2 in the last 12 months prior to completion of the Services or after notice of termination has been given in accordance with clause 20, within 28 days of the Hirer's request, the Supplier shall (where TUPE is likely to apply) provide the Hirer 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, 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 this Agreement, 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 2 years, information about any tribunal claims in the preceding 2 years or whether there are reasonable grounds to believe a claim may be brought and such other requirements as the Hirer may reasonably require (altogether the "Employee Data"). The Hirer 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 successor supplier and successor supplier's sub-contractors;

## NR6(MT)

- 29.3 in the last 12 months prior to completion of the Services or after notice of termination has been given in accordance with clause 20, the Supplier shall (and shall procure that any Sub-Contractor shall) provide to the people engaged in the performance of this Agreement, 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 Hirer ("Personnel Records") and shall (where TUPE is likely to apply) within 28 days of the Hirer's request, whether during the performance of this Agreement or following the end of this Agreement (whether lawfully or otherwise) deliver up to the Hirer or to such person as the Hirer may nominate, the Employee Data, such copies of the Personnel Records as may be required by the Hirer and, to the extent not otherwise provided, any employee liability information pursuant to and in accordance with Regulation 11 of TUPE. The Hirer may communicate such information to persons intending to tender to execute services of the nature of the Services;
- 29.4 the Supplier shall not (and shall procure that any Sub-Contractor shall not) (where TUPE is likely to apply) in the last six months prior to completion of the Services or after notice of termination has been given in accordance with clause 20, without the prior written permission of the Hirer:
- (i) 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;
  - (ii) terminate or give notice to terminate the employment or engagement of any person engaged wholly or principally in the execution of the Services;
  - (iii) 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;
  - (iv) 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
  - (v) 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;
- 29.5 the Supplier shall not (and shall procure that any Sub-Contractor shall not) (where TUPE is likely to apply), without the prior written consent of the Hirer 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 sub-clause 29.4) at the date of commencement of employment of such new employee;
- 29.6 the Supplier shall (and shall procure that any Sub-Contractor shall) (where TUPE is likely to apply) at all times comply with its information and consultation obligations under Regulation 13 of TUPE; and
- 29.7 the Supplier shall indemnify and keep indemnified the Hirer and any successor supplier against all costs, claims, expenses, damages, demands, actions, losses and liabilities arising out of or in connection with:
- (i) any act, default or omission of the Supplier or any Sub-Contractor in respect of any person who was or is employed or engaged by the Supplier or any Sub-Contractor;
  - (ii) the employment or termination of employment of any person engaged wholly or principally in the execution of the Services up to and including the date of completion of the Services or expiry or termination of this Agreement;

## NR6(MT)

(iii) any breach by the Supplier or any Sub-Contractor of its obligation to provide employee liability information to the Hirer or any successor supplier in accordance with Regulation 11 of TUPE; and/or

(iv) any breach by the Supplier of sub-clauses 29.4, 29.5 and/or 29.6;

and, despite anything else in this Agreement, such a successor supplier can directly enforce the indemnity in its favour provided for by sub-clauses 29.1 and 29.7.

### 30 Claims Handling Provisions

- 30.1 In these provisions, "The Claims Allocation and Handling Agreement" means the Agreement so entitled dated 1 March 2019 and made between the several parties whose names are contained in Schedule 6 thereof (the "Industry Parties") and Railway Claims Limited (the "Agency"), as amended from time to time in accordance with its terms and the expressions defined in the Claims Allocation and Handling Agreement shall have the same meanings in this Clause 30. The Hirer shall supply the Supplier with a copy of each amendment thereto as and when it is made.
- 30.2 These provisions shall apply:
- 30.2.1 if this Agreement is in connection with the maintenance or operation of the Hirer's Railway Assets; and
- 30.2.2 in respect of the period (if any) while the Supplier is an Independent Contractor; and
- 30.2.3 where a claim, which arises out of or is connected with this Agreement, is made by a third party who does not have an agreement with the Supplier:
- against the Hirer or the Agency, which may result in a claim being made against the Supplier; or
- against the Supplier, which may result in a claim being made against the Hirer or the Agency (whether by the Supplier or otherwise).
- 30.3 In relation to clause 17 of the Claims Allocation and Handling Agreement this Agreement does hereby permit the recovery by the Hirer of loss of revenue or other consequential losses that are direct and foreseeable.
- 30.4 The Supplier irrevocably appoints the Hirer as its agent to authorise the Agency (in consultation, where necessary, with Industry Parties and their insurers) to defend such a claim on behalf of the Supplier and the Industry Parties, in accordance with the Claims Allocation and Handling Agreement. In relation to such a claim, the Supplier shall be bound by the terms of that Agreement as if the Supplier were a party to it.
- 30.5 Where such a claim results in a payment to the third party, the Supplier agrees that liability for such payment, and the costs of handling and defending the claim, shall be allocated in accordance with the Claims Allocation and Handling Agreement. The Supplier agrees to participate in the procedure for allocating liability set out in the Dispute Resolution Rules; and to be bound by the result as if the Supplier were party to those Rules, and such matters shall not be referable to adjudication or litigation in accordance with this Agreement.
- 30.6 Clauses 30.4 and 30.5 shall not apply to any claim in respect of which the Supplier admits that it is liable and that no Industry Party is liable. In such a case, the Supplier itself may defend the claim.
- 30.7 Without prejudice and in addition to any other rights and remedies of the Hirer under this Agreement, the Supplier shall indemnify the Hirer against all losses, claims, liabilities, costs and expenses which are borne by the Hirer under the Claims Allocation and Handling Agreement, and which arise out of either a breach of contract by the Supplier or a breach of a duty of care owed to a third party, which is the subject of a claim under the Claims Allocation and Handling Agreement.

## NR6(MT)

**31 Freedom of Information**

31.1 The Supplier acknowledges that:

31.1.1 The Hirer 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

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

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

**32 Information Security**

The Supplier shall comply with the Hirer’s security policies and procedures including

- NR/L1/SCT/002 Cyber security and resilience for digital systems; and
- Supplier (Supply Chain) Security Policy.

**33 Not Used****34 Not Used****35 Compliance**

The Supplier shall comply with Schedule 4 – Corporate Social Responsibility.

**36 Not Used****37 Entire Agreement**

This Agreement is the entire agreement between the Parties.

**38 Call-Off Orders**

The Supplier shall provide Plant to the Hirer as required by Call-Off Orders issued in accordance with the requirements of Schedule 6 by the Hirer’s Representative. The Hirer shall only be liable to the Supplier for the Price in respect of Plant requested in a Call-Off Order.

The Hirer’s requirements may vary and this Agreement shall not place the Hirer under any obligation to procure the Plant from the Supplier at a particular time or at all except where stated otherwise in the Appendix.. This Agreement is not an exclusive arrangement and nothing in this Agreement shall operate to prevent the Hirer from engaging any other organisations or persons to provide Plant similar to or the same as the Plant.

**39 Use Of Self-Billing For Vat Purposes**

If stated in the Appendix that a self-billing system for VAT purposes is to be used on this Agreement, the following amendments to the above terms and conditions shall apply:

***Clause 20: Notice and Consequences of Termination***

Add a new clause 20.1.3:

“20.1.3 “Fail to hold the necessary tax exemption certificates or comply with such HRMC requirements or the like that are required to allow self-billing to operate.”

Add a new clause 20.9:

## NR6(MT)

- "20.9 The Hirer shall issue a self-billing invoice or receipt in accordance with the appropriate requirements of the clause 26 payment provisions stating the amount due to the Supplier which shall be calculated in accordance with the provisions of clause 20.4."

**Clause 26: Payment**

Delete clauses 26.2, 26.3, 26.4 and 26.6 and replace with;

- "26.2 The Hirer shall operate a self-billing process for the Services properly delivered by receipting the Services and raising a self-billing invoice on behalf of the Supplier in accordance with the procedures set out in this Agreement, which procedures constitutes a self-billing agreement between the Hirer and the Supplier for the purposes of Regulation 13 of the Value Added Tax Regulations 1995.
- 26.3 Within 14 days of an application made in accordance with clause 26.4 the Hirer shall receipt the Services generating a self-billing invoice. This information shall be available for the Supplier to view on i-Supplier. The Supplier shall then be paid within 7 days from the date of the self-billing invoice. Invoices and receipts posted on i-Supplier shall be treated as notices for the purposes of 110A of the Housing Grants, Construction and Regeneration Act 1996 of the payment proposed to be made by the Hirer to the Supplier.
- 26.4 **Delete and/or amend as appropriate**
- (Applications shall be made not less than 7 days after the end of each Agreed Rail Industry Period with properly presented and signed records).
- (Applications shall be made with properly presented and signed records).
- (Applications shall be made every Monday with properly presented and signed records).
- 26.6 The Hirer may on any payment delete, correct or modify any sum previously paid by it. No payment issued or made by or on behalf of the Hirer under this Agreement shall relieve the Supplier from any liability arising out of or in connection with this Agreement."



## **SCHEDULE 1 - TECHNICAL WORKSCOPE**

*When drafting the Technical Workscope consideration shall be given as to the need to obtain records of maintenance and/or alteration to the equipment/plant to be supplied.*

*The records shall be provided on a periodic basis or as and when required. the Hirer may use these records for any purpose in the course of its business.*

# NR6(MT)

## **SCHEDULE 2 - CONTRACT REQUIREMENTS - HSEA**

*Mandatory schedule published on the Procurement Operations NR Suite Hub page*

# NR6(MT)

## SCHEDULE 3 - PRELIMINARIES

### *Add to and amend as required*

#### **1. Delivery and Maintenance of Plant**

The Supplier shall;

- 1.1 provide or make available for inspection at the commencement of the Hire Period, full particulars of the last and next services dates for the Plant together with the type and schedule of maintenance required to be carried out during the Hire Period.
- 1.2 ensure operations and safety checks have been carried out on the Plant supplied before delivery, in order to ensure that the Plant is in safe working order and that all statutory requirements have been complied with, including without limitation, any requirements under the Health and Safety at Work etc. Act 1974 and any regulations issued thereunder.
- 1.3 ensure all Statutory certificates and inspection reports relating to the Plant are either provided to the Hirer or made available for inspection at the commencement of the Hire Period.
- 1.4 ensure the Plant supplied is maintained, tested and examined within the Hire Period in accordance with the maintenance schedule.
- 1.5 ensure where the Plant supplied is fitted with radiators, that adequate anti-freeze mixture is contained in the radiators to protect them from damage due to low temperatures.
- 1.6 ensure where applicable, that the Plant supplied shall have a recognised Certificate of Engineering Acceptance and / or compliance certificate for design of On- Track Plant. Copies of such certificates shall be provided to the Hirer and / or made available for inspection at the commencement of the Hire Period.
- 1.7 warrant that the Plant will be supplied with a full tank of fuel, engine sump oil and hydraulic oil and that the tyres are maintained to a reasonable and satisfactory condition and to the specified pressures. For Plant supplied with an Operator the Supplier shall be responsible for fuelling and re-fuelling.
- 1.8 ensure that no Plant will encroach upon the railway unless the Hirer so authorizes.

The Supplier and Hirer shall determine a designated time and place;

- 1.9 for the delivery of the Plant prior to the commencement of the Hire Period.
- 1.10 for collection of the Plant on completion of the Hire Period.

The Hirer shall;

- 1.11 ensure that Plant supplied without an Operator is returned with a full tank of fuel.

#### **2. Handling of Plant**

The Supplier shall be responsible for ensuring that, where supplied by the Supplier;

- 2.1 The operator or driver of the Plant is fully competent to a recognised standard and deemed to be so by a qualified assessor. The operator or driver must have PTS including AC/DC electrified lines unless the Contract specifically states PTS is not required.
- 2.2 The operator or driver is authorised by the Supplier to operate the type of Plant for the purposes for which the Plant is to be used. The operator or driver must carry the appropriate proficiency certificate whilst operating the Plant.

## NR6(MT)

- 2.3 The operator or driver complies with current standards relating to hours of work and all records relating to the operator's or driver's working hours are kept and made available for inspection at the request of the Hirer.
- 2.4 A Drugs and Alcohol policy compatible with current railway standards is maintained and that records of testing and screening is kept for a minimum 3 years and is available for inspection by the Hirer.
- 2.5 Where requested, a fully qualified and competent emergency fitter who holds a current PTS certificate is available to attend the site at any reasonable time.
- 2.6 At the commencement of the Hire Period, an "emergency arrangements" information sheet is supplied to the Hirer which lists, for example, but without limitation, the location of stop controls and fire extinguishers together with emergency contact telephone numbers.
- 2.7 Any operator, driver or emergency fitter supplied by the Supplier shall be provided with suitable protective equipment for use on site.
- 2.8 Any operator, driver or emergency fitter supplied by the Supplier shall have agreed to be screened for the use of alcohol and drugs in accordance with the current standards for the application of "for cause" alcohol and drugs screening when requested to do so by the Hirer.
- 2.9 The operator or driver is informed of the name of the Hirer's authorised representative who shall brief the operator or driver as to the tasks the operator or driver is to undertake to ensure that they fully understand any hazards to theirs or others health, safety and welfare on site.

The Hirer shall not allow any other person to operate such Plant without the Supplier's prior written consent.

### 3.0 Supplier default

If the services cannot be carried out due to any default of the Supplier then the Hirer shall incur no charge for the specific item of Plant the subject of such default.

### 4.0. Payment

- 4.1 As a pre-requisite for payment, the Hire Period of each Shift will be substantiated by the following documentation;
  - a valid purchase order detailing the Plant and Operators required by the Hirer; and
  - a unique and numbered timesheet in hard copy or an electronic format which is incapable of later modification, clearly recording the numbers and durations of Plant and Operators provided by the Supplier in relation to the Hirer's purchase order, together with details of any incidents or breakdowns.
- 4.2 Each timesheet shall be agreed by the Hirer's Representative Assistant at the end of each Shift for record purposes by inserting the printed name and signature of the Hirer's Representative Assistant.
- 4.3 If the Hirer's Representative Assistant is unavailable at the end of the Shift, then the timesheets shall be submitted to the Hirer's Representative Assistant for agreement on the next business day.

# NR6(MT)

## **SCHEDULE 4 – CORPORATE SOCIAL RESPONSIBILITY**

*Mandatory schedule published on the Procurement Operations NR Suite Hub page*

## NR6(MT)

**SCHEDULE 5 - PRICING DOCUMENT**

*Add to and amend as required*

**PRICING PREAMBLES****1. Travelling Time and Fares**

No charge shall be made by the Supplier for any expenses incurred by employees of the Supplier for the purpose of driving, operating, servicing, repair and maintenance of Plant.

**2. Sharpening of Drills/Steels**

The cost of re-sharpening or replacement of drill bits, blades and other ancillary items shall be borne by the Hirer, unless the Plant requires sharpening or such other items when delivered to Site.

**3. Reimbursement for cancelled orders for Plant**

If the Hirer cancels any order to the Supplier, the Supplier shall be reimbursed as follows;

When any Hire Period cancelled includes weekday and weeknight rates then:

- a) Provided the Hirer informs the Supplier of their intention to cancel at least 24 hours before the commencement of the Hire Period the Hirer shall incur no charges.
- b) If the Hirer informs the Supplier of their intention to cancel less than 24 hours before the commencement of the Hire Period, the Hirer shall incur full transportation charges where the Plant has left the Supplier's premises together with standing time to include costs of all attachments and accessories. A reasonable reduction to these charges shall be made if the Supplier is able to re-hire the Plant within the cancellation period.

When the Hire Period cancelled includes weekend rates then:

- c) Providing the Hirer informs the Supplier of their intention to cancel prior to 17:00 on the Thursday prior to the Hire Period commencing the Hirer shall incur no charge.
- d) If the Hirer informs the Supplier of their intention to cancel between Thursday 17:00 and Friday 12:00 the Hirer shall incur full transportation charges where the Plant has left the Supplier's premises together with standing time to include costs of all attachments and accessories. A reasonable reduction to these charges shall be made if the Supplier is able to re-hire the Plant within the cancellation period.
- e) If the Hirer informs the Supplier of their intention to cancel after Friday 12:00, the Hirer shall incur full charges. A reasonable reduction to these charges shall be made if the Supplier is able to re-hire the Plant within the cancellation period.

**4. Idle Time**

When the Plant is prevented from working for a complete Shift, the hire charges shall be two thirds of the hire rate or such other idle time rate as is agreed in writing by the Supplier for the period during which the Plant is not in use.

If the Plant works for any time during the Shift then the whole of that Shift shall be charged as working time.

## NR6(MT)

**SCHEDULE 6 – CALL-OFF ORDER PROCEDURE**

*Insert details of the call-off process for spot hire, core agreements etc.*

*Make any appropriate determinations if the Intermediaries Legislation (clause 36) applies.*

**Call-Off Order Procedure for Operating “Use Of Self-Billing For Vat Purposes” (clause 39) *(Delete if not using self-billing option)***

- 1.0 A Call-Off Order shall be formed upon the issuing of an Electronic Purchase Order by the Hirer to the Supplier and the acceptance by the Supplier thereof.
- 2.0 Each Call-Off Order will incorporate the terms and conditions set out in this Agreement, together with:
  - 2.1 the Plant to be supplied pursuant to the Call-Off Order;
  - 2.2 the Site in respect of such Plant;
  - 2.3 the Hire Period; and
  - 2.4 the Price in respect of the Plant calculated by the Hirer on a fair and reasonable basis having regard to the rates and prices included in the Pricing Document, or where a mini competition has been carried out for the particular requirement, the price agreed for the respective Call-Off Order.
- 3.0 Subject to clause 4.0 below the Supplier shall not commence the Hire without a Call-Off Order being formed in accordance with this procedure and that the terms of the Call-Off Order are complied with.
- 4.0 Where the Hirer at its sole discretion declares an emergency requirement for the supply of Plant without an Electronic Purchase Order being in place, the Hirer’s Representative may make such requirement known to the Supplier by electronic mail, who will supply such Plant to the Hirer under the terms of this Agreement. The parties agree that in such circumstances they will work together to put in place an Electronic Purchase Order, for the relevant Plant as soon as possible.
- 5.0 The Hirer shall order the Plant using Call-Off Orders (Electronic Purchase Order) which will be sent to the Supplier in an electronic format. Notifications will be sent electronically to the Supplier to alert them that an order requires acknowledgment within 48 hours. On receipt of the Electronic Purchase Order, the Supplier will either accept or reject a Electronic Purchase Order and, where rejected, notify the Hirer that it does not accept the Electronic Purchase Order in which case it shall state in detail what element of the Electronic Purchase Order it does not accept and the reasons therefore. Electronic Purchase Orders that are not accepted by the Supplier will be recorded as part of the contract management. Accepted Electronic Purchase Orders will be final and binding on the parties. The Supplier shall provide the Hirer with an email address to be used for all i-Supplier notifications.
- 6.0 The Supplier shall immediately notify the Hirer if the Supplier is at any time unable to supply the Plant requested by the Hirer for any Electronic Purchase Order that has been accepted pursuant to this Procedure.