

NR7(MT)

Network Rail Framework Agreement
for the
Provision, Operation and Maintenance *(delete Provision if not relevant)*
of
[Insert on-track plant details]

Agreement No.: [Insert]

CONTRACT AGREEMENT

This Agreement is made *INSERT DATE*

between:

1. **NETWORK RAIL INFRASTRUCTURE LIMITED** (a company registered in England and Wales under number 02904587) whose registered office is at Waterloo General Office, London, SE1 8SW (the “**Employer**”); and
2. **[NAME OF SUPPLIER]**: [a company registered in England under number whose registered office is at] (the “**Supplier**”).

Background

The Employer wishes to have the following services provided: []

Now it is hereby agreed as follows:

- 1 Defined terms used in this Agreement have the meanings set out in the Conditions (as defined below) unless otherwise specified.
- 2 This Agreement comprises:
 - 1.1 this Contract Agreement;
 - 1.2 Appendix
 - 1.3 Contract Specific Conditions (if any);
 - 1.4 Conditions;
 - 1.5 Corporate Social Responsibility Schedule;
 - 1.6 Technical Workslope;
 - 1.7 Contract Requirements HSEA;
 - 1.8 Preliminaries; and
 - 1.9 Pricing Document.

Any discrepancy or ambiguity between any of the above documents shall be resolved by construing those documents in the descending order of priority shown above.

- 3 The Parties agree that the Term is, subject to the provisions of this Agreement, until oryears/months from the Commencement Date. The Agreement shall automatically expire at the end of the Term, but may be extended annually at the Employer’s sole discretion by no more than [Insert] annual extensions issued at least two months before the end of the Term.
- 4 In consideration of the payments to be made by the Employer to the Supplier the Supplier hereby covenants with the Employer to provide the Services in conformity in all respects with the provisions of this Agreement.
- 5 The Employer hereby covenants to pay to the Supplier in consideration of the provision of the Services the Contract Price at the times and in the manner prescribed by this Agreement.

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

EXECUTED AS A DEED by **NETWORK RAIL INFRASTRUCTURE LIMITED**

acting by its attorney.....

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

Signature of witness

Name of witness

Address of witness

I confirm that I was physically present when signed this deed

..... [signature of witness]

OR

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

by:

Authorised signatory

Printed Name:.....

THE COMMON SEAL of

.....
was affixed to this DEED in the presence of:

Director

Printed Name:.....

Director/Company Secretary

Printed Name:.....

OR

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SIGNED AS A DEED for and on behalf of

.....
By

Director

Printed Name:.....

Director/Company Secretary

Printed Name:.....

OR

SIGNED for and on behalf of

.....

By

Authorised signatory

Printed Name:.....

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

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1	<u>Employer's Representative (Clause 1)</u>	[Name] [Address] [] []
2	<u>Commencement Date (Clause 1)</u>	[the date of execution of the Contract Agreement]/[insert other date]
3	<u>Volume of Services committed (Clause 3.5)</u>	[Nil [or insert volume]]
4	<u>Parent company guarantee (Clause 8.2)</u>	[Required/Not Required]
5	<u>Insurance</u> Employer's liability insurance (Clause 9.2) Loss or damage excess for any Employer's Plant or Supplier's Plant (Clause 9.4)	£5,000,000 (five million pounds) £100,000 (one hundred thousand pounds)
6	<u>Addresses for Service (Clause 22)</u> The addresses for service of the Parties under Clause 22 are as follows: (i) The Employer: the address stated in the Contract Agreement marked for the attention of: (ii) The Supplier: the address stated in the Contract Agreement marked for the attention of:	The Company Secretary With a copy to; 1. notices@networkrail.co.uk and 2. Employer's Representative by email. [Insert]
7	<u>Liability for Railway Costs (Clause 24)</u>	[15% of the Contract Price]
8	<u>Aggregate Liability Cap (Clause 37.1)</u>	£5,000,000 (five million pounds)
9	<u>IR35 (Corporate Social Responsibility Schedule)</u> - Where the intermediaries legislation applies the Employer deems that ITEPA 2003 Part 2 Ch10 s61M 1(d) applies to Services carried out under the Agreement (within IR35) as follows:	[Applies (within IR35) / Does not apply- add CEST determination reference number and attach as an Annex at the end of the Agreement and/or any Contract Order.]

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CONTRACT SPECIFIC CONDITIONS

[Insert Contract Specific Conditions, if there are any]

CONDITIONS

1 Definitions and Interpretation

Defined
Terms

1.1 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;

“Aggregate Liability Cap” has the meaning given to it in Clause 37.1 (Limits of Liability).

“Agreed Rail Industry Period” means each four week consecutive accounting period commencing on 1 April in each calendar year;

“Appendix” means the appendix referred to in the Contract Agreement;

“Assessment Day” means the day which is the tenth day after the end of each Agreed Rail Industry Period;

“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;

“Commencement Date” means the date referred to as such in the Appendix;

“Confidential Information” means any information of the Employer or the Supplier, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel, suppliers and contractors of the Employer or the Supplier (as the case may be), including Intellectual Property Rights, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, and, in the case of information of the Employer, includes Personal Data;

“Contract Area” means the area where the Services are to be carried out as described in the Technical Workslope;

“Contract Order” means any order issued to the Supplier by the Employer pursuant to Clause 3 in respect of any of the Services;

“Contract Price” means the amount to be paid by the Employer to the Supplier in full consideration for the provision of the Services by the Supplier and the performance by it of its other obligations under this Agreement calculated in accordance with the provisions of the Pricing Documents;

“Contracting Body” means any Contracting Body as defined in Regulation 5(2) of the Public Contracts (Works, Service and Supply) (Amendment) Regulations 2000 other than the Employer;

“Corporate Social Responsibility Schedule” means the Corporate Social Responsibility Schedule referred to in the Contract Agreement;

“Crown Body” means any department, office or agency of the Crown;

“Daily Work Returns” means the forms (sometimes also known as PHIRES forms) in the format specified in the Technical Workslope to be completed by the Employer and Supplier in relation to the ordering of Plant and/or recording of Services carried out;

“Data Protection Legislation” has the meaning given to it in Clause 13.1;

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

“Employer” means the first Party named in the Contract Agreement and its permitted assignees;

“Employer’s Facilities” means any accommodation, Stabling Points, equipment and Plant to be made available by the Employer to the Supplier, as described in the Technical Workscope;

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

“Employer’s Representative” means the person identified in the Appendix as having authority to act on the Employer’s behalf under this Agreement to the extent provided in clause 6.1 (Employer’s Instructions and Contract Orders) and any replacement for that person notified by the Employer to the Supplier under that clause;

“Environmental Information Regulations” means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations;

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

“Force Majeure” means any event, circumstance, matter or cause affecting the performance by either the Employer or the Supplier of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control which prevent or materially delay it from performing its obligations under the Agreement and which is not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, but excluding;

- (i) any industrial dispute relating to the Supplier, the Supplier’s staff (including any subsets of them) or any other failure in the Supplier’s ‘supply chain’;
- (ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and
- (iii) any failure or delay caused by a lack of funds;

“Guarantor” means the Guarantor under the Parent Company Guarantee provided in accordance with Clause 8;

“Insolvent” has the meaning set out below:

- (i) a company becomes insolvent:
 - (A) when it enters administration within the meaning of Schedule B1 to the Insolvency Act 1986;

- (B) on the appointment of an administrative receiver or a receiver or manager of its property under Chapter I of Part III of that Act, or the appointment of a receiver under Chapter II of that Part;
- (C) on the passing of a resolution for voluntary winding-up without a declaration of solvency under section 89 of that Act; or
- (D) on the making of a winding-up order under Part IV or V of that Act;
- (ii) a partnership becomes insolvent:
 - (A) on the making of a winding-up order against it under any provision of the Insolvency Act 1986 as applied by an order under section 420 of that Act; or
 - (B) when sequestration is awarded on the estate of the partnership under section 22 of the Bankruptcy (Scotland) Act 2016 or the partnership grants a trust deed for its creditors;
- (iii) an individual becomes insolvent:
 - (A) on the making of a bankruptcy order against him under Part IX of the Insolvency Act 1986; or
 - (B) on the sequestration of his estate under the Bankruptcy (Scotland) Act 2016 or when he grants a trust deed for his creditors; and
- (iv) a company, partnership or individual shall also be treated as insolvent on the occurrence of any event corresponding to those specified in sub-paragraph (i), (ii) or (iii) above under the law of Northern Ireland or of a country outside the United Kingdom;

“Intellectual Property Rights” or “IPRs” means:

- (i) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
- (ii) applications for registration, and the right to apply for registration, for any of the rights listed in the sub-paragraph (i) above that are capable of being registered in any country or jurisdiction;
- (iii) all other rights having equivalent or similar effect in any country or jurisdiction; and
- (iv) all or any goodwill relating or attached thereto;

“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;

“Know-How” means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but

excluding know how already in the Supplier's or the Employer's possession prior to entering into this Agreement;

"Law" means any Act of Parliament or subordinate legislation within the meaning of Section 2(1) or the Interpretation Acts 1978 or any exercise of the Royal Prerogative and any enforceable Community right within the meaning of the European Communities Act 1972;

"Maintainer/Operator" means the person or persons employed by the Supplier to maintain, service, operate and drive the Plant as required by the Technical Workslope and pursuant to each Contract Order;

"Party" means the Supplier or the Employer (as appropriate) and "Parties" shall mean both of them;

"Personal Data" has the meaning given to it in Clause 13 (Protection of Personal Data);

"Plant" means the machines owned by the Employer or the Supplier as described in the Technical Workslope, to be used by the Supplier to perform the Services in accordance with this Agreement;

"Preliminaries" means the preliminaries referred to in the Contract Agreement;

"Pricing Documents" means the Pricing Documents referred to in the Contract Agreement;

"Railway Costs" has the meaning given to it in Clause 24.4 (Railway Costs);

"Railway Costs Cap" has the meaning given to it in Clause 24.4 (Railway Costs);

"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;

"Request for Information" means a request for information or an apparent request under the Code of Practice on Access to government Information, FOIA or the Environmental Information Regulations;

"Route" means the route in the Contract Area where the Services pursuant to each Contract Order are to be carried out;

"Services" means all of the Services required to be provided by the Supplier pursuant to this Agreement as described in the Technical Workslope and in accordance with the Contract Orders;

"Shifts" means the shifts for operation of the Plant as part of the execution of the Services as defined in the Technical Workslope;

"Site" means the area in the Contract Area where the Services pursuant to each Contract Order are to be carried out;

"Stabling Point" means the stabling points for the Plant made available by the Employer or provided by the Supplier as described in the Technical Workslope or such other stabling points as may be made available from time to time;

"Sub-Supplier" means any sub-supplier of the Supplier including any sub-suppliers of any such sub-suppliers;

“Supplier” means the second Party named in the Contract Agreement and its permitted assignees, otherwise also referred to as the “Supplier”;

“Supplier Personnel” means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Supplier engaged in the performance of the Supplier’s obligations under this Agreement;

“Supplier’s Representative” means the representative named in the Pricing Documents employed by the Supplier with overall responsibility for the performance of the Services under this Agreement, or any replacement of him agreed by the Employer from time to time;

“Technical Workslope” means the technical workslope referred to in the Contract Agreement;

“Term” means the period specified in the Contract Agreement, as the same may be adjusted under this Agreement and the expiry of the Term shall mean the expiry of the Term for any reason, whether pursuant to the Contract Agreement by lawful termination or otherwise; and

“Variation of Services” means variations, additions or other amendments to the Services.

- 1.2 Any reference to clause or sub-clause is to the relevant clause or sub-clause of these conditions of contract.
- 1.3 The headings are included for convenience only and shall not affect interpretation of this Agreement.
- 1.4 Use of the singular includes the plural and vice versa.
- 1.5 Any reference to a statute or statutory instrument shall be construed as referring to any modification extension or re-enactment thereof from time to time.
- 1.6 Any phrase introduced by the term “including” shall be construed as illustrative and without limitation.
- 1.7 Except where the context otherwise requires, any reference to a “person” includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organisation or other entity, in each case whether or not having separate legal personality.

2 Planning

Planning
of
Services:
Employer

- 2.1 The Employer shall, in accordance with the requirements of the Technical Workslope:
 - 2.1.1 devise the overall plans for carrying out and completing the Services; and
 - 2.1.2 progressively issue more detailed plans to the Supplier.
- 2.2 Within the overall plans established by the Employer pursuant to Clause 2.1, the Supplier shall provide a detailed plan for the carrying out of the Services in the Contract Area in accordance with the requirements of the Technical Workslope.
- 2.3 The Employer shall be responsible for, in accordance with the requirements of the Technical Workslope:

- 2.3.1 making any site management arrangements that are necessary for the Plant to be operated within any Sites;
- 2.3.2 the cost and provision of possession arrangements and possession management staff required for the safe operation of the Plant within any Sites;
- 2.3.3 recording the arrival and departure of the Supplier Personnel from any Sites;
- 2.3.4 specifying if the Plant is required to enter or leave any Routes or Sites in a particular orientation or direction; and
- 2.3.5 ensuring that static, kinematic and passing clearances are such as to avoid damage to the Plant.

3 Contract Orders

- Quantity of Plant 3.1 In accordance with the requirements of the Preliminaries or the Technical Workslope, at the Commencement Date or shortly thereafter, the Employer's Representative shall issue a Contract Order regarding the quantity and type of Plant to be provided (whether by the Employer or by the Supplier) and maintained. The Employer's Representative may vary the quantity and type of Plant to be provided and maintained to the extent and frequency detailed in the Preliminaries or the Technical Workslope.
- Contract Orders for Routes or Sites 3.2 No less than the time period specified in the Preliminaries or the Technical Workslope in advance of the Services being required for any Route or at any Site, the Employer shall issue to the Supplier a draft Contract Order stating:
 - 3.2.1 the Services to be executed pursuant to the Contract Order;
 - 3.2.2 the Route or Site in respect of such Services;
 - 3.2.3 the duration of the Shift which shall be ascertained by the Employer on a fair and reasonable basis having regard to any indicative periods stated in the Preliminaries or the Technical Workslope in relation to the relevant Service to be executed;
 - 3.2.4 any necessary working direction for the Route or Site;
 - 3.2.5 any necessary Site possession entry and exit directions; and
 - 3.2.6 any other information required for completion of the Daily Work Returns or as required by the Preliminaries or the Technical Workslope.
- Acceptance 3.3 Within seven days of receipt of the Employer's draft Contract Order pursuant to Clause 3.2, the Supplier shall either accept the same or shall notify the Employer that it does not accept the Contract Order, in which case it shall state in detail what element of the draft Contract Order it does not accept and its reasons therefor. Any dispute in respect of any element of the draft Contract Order which cannot be agreed shall be referred for determination by the Adjudicator under Clause 23.1 and the Adjudicator's decision shall be final and conclusive in relation to the elements to which it relates.
- Confirmation of Contract Order 3.4 When all of the elements of the draft Contract Order have been accepted, agreed or determined pursuant to Clause 3.3, it shall be final and binding on the Parties and:
 - 3.4.1 the services under that Contract Order shall form part of the Services; and
 - 3.4.2 the Supplier shall proceed to deliver the Services under that Contract Order in accordance with the provisions of this Agreement.

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- 3.5 The Employer does not warrant the volume of Services to be instructed during the Term except where otherwise stated in the Appendix and/or the Contract Order. The Employer reserves the right to procure any Services described in the Agreement from other suppliers or using its own labour.

4 Supplier's Obligations

Quality and Standards

- 4.1 The Supplier shall provide the Services and fulfil its obligations under this Agreement from the Commencement Date until the expiry of the Term:

4.1.1 with the reasonable skill and care to be expected of highly skilled and experienced service providers providing services of a similar scope, type and complexity to the Services;

4.1.2 to the quality and standards required by the Technical Workslope, or where no quality or standard is so specified, to a good quality;

4.1.3 to comply with all applicable Law and the Codes;

4.1.4 to comply with all consents which apply to the performance of the Services;

4.1.5 without compromising the safety of anyone on or about or using the Employer's property and/or railway infrastructure;

4.1.6 to comply with the Preliminaries; and

Operating Licence

4.1.7 using suitably qualified and competent Supplier Personnel in accordance with the requirements of the Technical Workslope, and the Supplier shall provide the Employer with details of the qualifications and experience of such personnel as and when requested.

- 4.2 The Supplier shall hold an appropriate operating licence as issued by the Office of the Rail and Road relating to the provision of the Services.

Compliance with Instructions and Orders

- 4.3 The Supplier shall perform the Services in accordance with the Employer's Instructions and Contract Orders.

Maintenance of Plant

- 4.4 The Supplier shall ensure the Plant is maintained, calibrated and supplied in accordance with the requirements of the Technical Workslope and so as to be fully available to undertake the Services envisaged by the Employer's overall plans issued under Clause 2.1 and specified in Contract Orders.

Inspection of Plant

- 4.5 The Supplier shall permit the Employer to undertake detailed inspections of any maintenance records and the Plant, as provided for in the Technical Workslope, as and when necessary to ascertain compliance with the requirements of the Technical Workslope. Where such inspection identifies 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-conformances without delay. Until rectification of the non-conformances has been accepted by the Employer's Representative, he may issue a notice restricting (including, if appropriate, suspending) the use of the item of Plant. Any Services lost as a result of such restrictions unless due to the acts or omissions of the Employer or any other contractor or supplier of the Employer shall be deemed to be due to the default of the Supplier for the purposes of calculating payments in accordance with the Pricing Documents.

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- Use of Employer's Plant
- 4.6 The Supplier shall use the Employer's Plant solely in connection with the Services and may not use the Employer's Plant for any other purposes without the prior written consent of the Employer. The Supplier shall not remove, deface or cover up any name-plate or identification mark or number on the Employer's Plant nor shall it attempt to sell, mortgage, charge or otherwise deal with the Employer's Plant.
- Data from Plant
- 4.7 Following delivery of each Shift and within the timescales stated in the Technical Workslope, the Supplier shall transfer to the Employer, in electronic form, all data required by the Daily Work Returns and the Technical Workslope. The Supplier shall at all times work with the Employer to assist in the development of data capture and transfer.
- Reports and meetings
- 4.8 The Supplier shall provide progress reports and attend meetings with the Employer's Representative as required by the Preliminaries and in accordance with the Employer's Instructions.
- Remedy for failure to comply with Instructions
- 4.9 If the Supplier fails to perform the Services in accordance with this Agreement and the failure is due to the Supplier and not due to any act or omission of the Employer or any other contractor or supplier of the Employer, then the Employer shall be entitled, in addition to any other remedy available to it, by notice to the Supplier to require the Supplier, at no additional cost to the Employer, to remedy such breach within the time stipulated in such notice, and if the Supplier fails to comply with such notice within the period specified by the Employer, the Employer may at its sole discretion employ another person to remedy such breach and the Employer may recover the additional costs incurred by it in so doing from the Supplier (provided that, in an emergency affecting safety, this provision shall apply without the requirement to give prior notice).
- Indemnity for breach
- 4.10 The Supplier shall indemnify the Employer and shall keep it indemnified against each and every liability which it may incur to any person whatsoever and against all damage, loss, expense, cost, claims or proceedings suffered or incurred by it to the extent that the same arises out of or in connection with any negligence or breach of duty by the Supplier, its employees, the Sub-Suppliers or other persons engaged by it in relation to this Agreement or any breach by the Supplier of its obligations under this Agreement.
- 4.11 The Supplier shall have and maintain for the duration of the Term a separate Track Access Agreement with the Employer which shall cover the provision of the Services.
- 4.12 The Supplier shall promptly request an instruction from the Employer'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 Employer's Representative. The Price shall be adjusted to take account of such instruction.
- 5 The Route / Site**
- Access to the Routes, Sites and Employer's property
- 5.1 The Supplier shall not have possession of any of the Routes, Sites or the Employer's Stabling Points, but the Employer shall (subject to any restriction included in the Technical Workslope or the Preliminaries) provide non-exclusive reasonable access to them for the purposes of this Agreement. Each of the Routes, Sites and the Employer's Stabling Points shall only be used by the Supplier for the purpose of carrying out the Services.
- Compliance with Employer's regulations
- 5.2 The Supplier shall comply with the security vetting procedures below:

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- 5.2.1 The Supplier shall assure the Employer that Supplier Personnel have been subject to legally required pre-employment screening. As a minimum this shall include identity verification and UK right to work checks;
- 5.2.2 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 security checks such as employment history check, confirmation of UK residency, disclosure of unspent convictions and National Security Vetting (NSV). Roles that require additional security checks will be notified to the Supplier by the Employer;
- 5.2.3 The Supplier shall not use Supplier Personnel who are unable to comply with Clauses 5.2.1 and 5.2.2.
- 5.2.4 Supplier Personnel:
- (i) that have access to the Employer's infrastructure and premises shall complete Railway Counter Terrorism training;
 - (ii) that are given a log in to the Employer's corporate IT system shall complete Security on the Railway training,
- both renewed biennially. Records of training completion shall be kept by the Supplier for five years and made available to the Employer on request. The training material will be provided by the Employer at no additional cost to the Supplier.

Obstruction prohibited

- 5.3 Save to the extent reasonably required in the performance of the Services or expressly agreed by the Employer and with all reasonable mitigation measures in place, the Supplier shall not interfere with or obstruct any public or private rights or property (including, without limitation, the Employer's property, the Employer's neighbours' property, railway operations and traffic, road traffic and highways).

Health & Safety

- 5.4 The Supplier shall comply with the Employer's health and safety requirements as set out in the Contract Requirements HSEA. In particular, but without limitation, the Supplier shall ensure that all Supplier Personnel receive safety and skills training in accordance with the requirements of the Contract Requirements HSEA and the Employer may instruct the immediate replacement, at the Supplier's cost, of any person on and off the Routes, Sites or Employer's property who is not so trained.

Operators

- 5.5 The Supplier shall ensure that the Maintainer/Operators have the requisite route knowledge to carry out the Services on each Route or Site in the Contract Area in accordance with the requirements of the Technical Worksopce. If any Maintainer/Operator does not have such knowledge, the Employer may instruct the Supplier to employ at the Supplier's cost a conductor in relation to any Services.

Unsuitable employees

- 5.6 The Employer reserves the right under this Agreement to refuse to allow to use the Plant or to allow onto any of the Routes, Sites or Employer's property or to permit to be used in connection with the Services any person employed or engaged by the Supplier, or by a Sub-Supplier, whose use would be, in the reasonable opinion of the Employer, undesirable. The decision of the Employer as to whether any person is to be allowed onto a Route, Site or the Employer's property shall be final and conclusive.

6 Employer's Instructions and Contract Orders

Employer's
Representative

6.1 Save for any actions relation to termination of the employment of the Supplier under this Agreement, termination of any Contract Order, or any dispute arising under or in connection with this Agreement, the Employer delegates to the Employer's Representative all actions of the Employer under this Agreement, including issuing Employer's Instructions, Contract Orders and notices to the Supplier. The Employer may amend or cancel this delegation or replace the Employer's Representative by notice to the Supplier.

Adjustment
for
instructions

6.2 If any Employer's Instruction or Contract Order issued under this Agreement:

6.2.1 shall require the Supplier to undertake services not provided for in, or to be reasonably inferred from, this Agreement; or

6.2.2 shall impose any additional obligation or restriction or shall require the omission of any services or of any obligation or restriction,

and provided that such Employer's Instruction or Contract Order has not arisen from, and compliance with it does not reveal, any negligence, breach of this Agreement, omission or default of the Supplier, any Sub-Suppliers or any Supplier Personnel, the Contract Price shall be adjusted and the provisions of Clause 6.3 shall apply. Otherwise, the Supplier shall not be entitled to any addition to the Contract Price nor to claim, whether as damages or otherwise, any additional payment in respect of compliance by the Supplier with any such Employer's Instruction or Contract Order.

Calculation
of
adjustment

6.3 The Employer's Representative shall, after consultation with the Supplier and within a reasonable time after the issue of such Employer's Instruction or Contract Order, ascertain a fair and reasonable adjustment to the Contract Price based on prices or rates included in the Pricing Documents in respect of compliance by the Supplier with such Employer's Instruction or Contract Order.

7 Payment

Contact
Price

7.1 In consideration of the proper performance of the Services, the Employer shall pay to the Supplier the Contract Price in accordance with the Pricing Documents.

Supplier's
Applications

7.2 Not less than seven days after the end of each Agreed Rail Industry Period and before the relevant Assessment Day, the Supplier shall present to the Employer's Representative an application for payment stating the sum which the Supplier considers will be due on the payment due date and the basis on which that sum is calculated. Such sum shall be calculated on the basis of the total amount due to the Supplier for the performance of the Services, as calculated in accordance with the provisions of the Pricing Documents, (with such supporting documents as may be required by the Pricing Documents) less any amount which may become due to the Employer or recoverable by the Employer from the Supplier, whether by deduction from the Contract Price under the provisions of this Agreement or otherwise. If the Supplier does not submit such an application for payment before the relevant Assessment Day, the notified sum shall be zero or, if an amount is to be paid to the Employer, the amount which the Employer considers is to be paid.

7.3 The date which is seven days after the relevant Assessment Day shall be the payment due date for the relevant payment. The final date for payment of the relevant payment shall be fourteen days after the relevant payment due date.

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- 7.4 If the Supplier makes an application for payment before the relevant Assessment Day but the Employer or the Employer's Representative does not issue a notice of payment in accordance with clause 7.5, the application for payment shall constitute the notice of payment specifying the sum that the Supplier considers to be due at the relevant payment due date (the notified sum).
- 7.5 Not later than 5 days after the relevant payment due date, the Employer's Representative shall issue a notice stating the amount that the Employer considers due on the payment due date and the basis on which that sum is calculated (the notified sum). Such notice shall be given even if the amount that the Employer considers to be due is zero.
- 7.6 The Supplier shall issue a VAT invoice in the amount stated in the Employer's Representative's notice under Clause 7.5 within 2 days of such notice 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, and the Employer shall then 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. If the Supplier's invoice does not comply with the requirements of this Clause 7,6 the Employer shall be under no obligation to pay the same.
- 7.7 All certificates/notices issued under this Agreement shall be issued by the Employer with a copy to the Supplier. The Employer may, on any payment delete, correct or modify any sum previously paid by it. No certificate/notice or payment issued or made by or on behalf of the Employer under this Agreement shall relieve the Supplier from any liability arising out of or in connection with this Agreement.
- 7.8 If a Party intends to pay less than the notified sum, it shall notify the other Party of its assessment of the amount due not later than one day (the prescribed period) before the final date for payment. The notification shall state the basis on which the amount due has been calculated and shall include details of the calculation. A Party shall pay the notified sum unless it has notified its intention to pay less than the notified sum.
- 7.9 Without prejudice to the Employer's other rights and remedies, the Employer may deduct from any sums due to the Supplier under this Agreement an amount equivalent to any sum due from the Supplier to the Employer (whether such sums are due to the Employer under this Agreement or under any other agreement between the Supplier and the Employer) and may also deduct any sum of money that is recoverable from or payable by the Supplier under this Agreement from any sum then due or which at any time thereafter may become due under any other agreement between the Supplier and the Employer.
- 7.10 If the Employer fails to pay the Supplier any sum properly payable under this Agreement on or before the final date for payment of it, the Employer shall pay 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 base lending rate of the Bank of England. 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.
- 7.11 In this clause 7, time periods stated in days exclude Christmas Day, Good Friday and bank holidays.

Correction
of errors

Interest on
late
payment

8 Guarantees

Warranties and guarantees

8.1 The Supplier shall ensure that the benefit of any warranty or guarantee in respect of the Employer's Plant shall not be invalidated by its actions.

Parent Company Guarantee

8.2 If stated to be required in the Appendix, the Supplier shall obtain and provide to the Employer, forthwith upon entry into this Agreement, a parent company guarantee in the form appended to the Preliminaries from the Supplier's ultimate holding company. For these purposes "ultimate holding company" shall mean the parent company of the group of companies of which the Supplier is a member (as each of those terms is defined in s.170 Taxation of Chargeable Gains Act 1992).

8.3 The Supplier may propose for the Employer's consent an alternative guarantor who is also owned by the ultimate holding company of the Supplier. The reasons for which the Employer may withhold such consent include that such guarantor's commercial position is not strong enough to carry the guarantee.

Failure to provide guarantee

8.4 The Supplier's compliance with the provisions of Clause 8.2 shall be a condition precedent to any obligation on the part of the Employer to make any payment that might otherwise be due under this Agreement, and the Supplier acknowledges that it has no entitlement either to receive payment or to exercise any rights in respect of non-payment arising under this Agreement unless and until the Supplier has provided any parent company guarantee so required.

9 Indemnities and Insurance

Indemnity

9.1 The Supplier shall indemnify the Employer and keep the Employer indemnified against each and every liability which the Employer may incur to any person whatsoever and against all damage, expense, loss, cost, claim or proceedings suffered or incurred by the Employer 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 arising out of the or in the course of or caused by the carrying out of the Services, except to the extent that the same is due to any act or neglect of the Employer or the Employer's Representative.

Supplier's Employer's Liability Insurance

9.2 Without prejudice to the Supplier's obligation to indemnify the Employer under Clause 9.1:

9.2.1 the Supplier shall maintain and cause the Sub-Suppliers 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-Supplier 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 specified in the Appendix for any one occurrence or series of occurrences arising out of one event;

9.2.2 the insurance policy referred to in Clause 9.2.1 shall indemnify the Employer in the like manner to the Supplier but only to the extent that the Supplier may be liable to indemnify the Employer under the terms of this Agreement;

9.2.3 as and when it is reasonably required to do so by the Employer, the Supplier shall produce and shall cause any Sub-Suppliers to produce for inspection by the Employer documentary evidence that the insurance required by this Clause 9.2 is properly maintained.

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9.3 Other than as specifically stated herein, without prejudice to the Supplier's obligations to indemnify the Employer under Clause 9.1, the Employer shall take out and maintain:

9.3.1 a policy in the joint names of the Supplier, Sub-Suppliers and the Employer against liabilities for death of or injury to any person (other than any person in the employment of the Employer or 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 9.2) or loss of or damage to any property (other than the Plant or other property of the Employer or the Supplier) arising out of the performance of the Services, for a sum not less than £155,000,000 (one hundred and fifty five million pounds) for any one occurrence or series of occurrences arising out of one event;

9.3.2 a policy or policies of insurance (or self-insurance arrangements) in respect of loss or damage to property of the Employer (other than the Plant) arising out of or in connection with the performance of the Services and business interruption costs consequent upon such loss or damage, with a waiver of subrogation in favour of the Supplier and Sub-Suppliers. The Supplier's liability under Clause 9.1 shall exclude loss or damage to such property of the Employer and business interruption costs consequent thereon, to the extent of the insurance (or self-insurance) provided for in this Clause 9.3.2 except for the first £75,000 of each and every occurrence of such loss or damage.

The Employer 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.

9.4 The Supplier shall each insure in the joint names of itself and the Employer the Supplier's Plant against all risk of loss or damage howsoever caused. Such insurance shall cover the replacement value of the Plant. The Employer shall effect a self-insurance arrangement in respect of all risk of loss or damage to the Employer's Plant. The Supplier shall be responsible for any loss or damage to the Employer's Plant for the first amount of any claim up to the value of the excess stated in the Appendix unless such claim shall have been caused by the negligent act or omission of the Employer, or the Employer's servants, agents, suppliers or sub-suppliers. The Employer shall be responsible for any loss or damage to the Supplier's Plant for the first amount of any claim up to the value of the Supplier's insurance policy excess or the amount stated in the Appendix, whichever is the least, where such claim shall have been caused by the negligent act or omission of the Employer, or the Employer's servants, agents, suppliers or sub-suppliers.

9.5 As and when it is reasonably required to do so by the Supplier, the Employer shall produce for inspection by the Supplier documentary evidence that the insurance required by Clause 9.3 is properly maintained.

9.6 Should the Supplier or any Sub-Supplier be in breach of any of their respective obligations under this Clause 9, the Employer 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 to become due to the Supplier under this Agreement, or, if none are due, may recover the amount paid from the Supplier as a debt.

Employer's
Third Party
Insurance
and
Insurance of
the
Employer's
Property
other than
the Plant

Insurance of
Plant

Evidence of
the
Employer's
Insurance

Breach by
Supplier

10 Claims Handling Provisions

Claims
Handling
Agreement

10.1 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 10. The Employer shall supply the Supplier with a copy of each amendment thereto as and when it is made.

Application
of CAHA

10.2 These provisions shall apply:

10.2.1 if this Agreement is in connection with the maintenance or operation of the Employer’s Railway Assets; and

10.2.2 in respect of the period (if any) while the Supplier is an Independent Supplier; and

10.2.3 where a claim, which arises out of or is connected with this Agreement, is made by a third party who does not have a contract with the Supplier:

(i) against the Employer or the Agency, which may result in a claim being made against the Supplier; or

(ii) against the Supplier, which may result in a claim being made against the Employer or the Agency (whether by the Supplier or otherwise).

10.3 The Supplier irrevocably appoints the Employer 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 is bound by the terms of that agreement as if the Supplier were a party to it.

Payments
under CAHA

10.4 Where such a claim results in a payment to the third party, the Supplier agrees that liability for such payment, and the costs of handing 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 Railway Industry 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.

10.5 Clauses 10.3 and 10.4 do 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.

10.6 Without limiting and in addition to any other rights and remedies of the Employer, the Supplier shall indemnify the Employer and keep the Employer indemnified against all losses, claims, liabilities, costs and expenses which are borne by the Employer under the Claims Allocation and Handling Agreement, and which arise out of either a breach of this Agreement 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.

11 Copyright, Intellectual Property, Confidentiality, Photographs and C&AG

11.1 The Intellectual Property Rights in all designs, drawings, specifications, software, electronic data, photographs, plans, surveys, reports, and all other documents_which the

Supplier has supplied to the Employer in accordance with this Agreement and which the Supplier has created and/or developed for the purposes of performing its obligations under this Agreement (whether created before or during the term of this Agreement, including, without limitation any and all information subsisting or referred to within any technical, operation and/or maintenance manuals) ("**Documents**") shall remain vested in the Supplier but the Supplier hereby grants to the Employer an irrevocable, perpetual, royalty free, non-exclusive licence to copy disclose use adapt and reproduce the Documents for any purpose whatsoever in connection with the Employer's permitted business. The Supplier further agrees:

- (i) that the Employer may grant sub-licences to other persons for the purposes stated in the licence granted above;
- (ii) that the Employer may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to this Clause 11.1 to a Crown Body or to anybody (including any private sector body) which performs or carries on any functions and/or activities that previously had been performed and/or carried on by the Employer; and
- (iii) to the extent that the Supplier does not have ownership of the Intellectual Property Rights in any of the Documents supplied to the Employer, use reasonable endeavours to procure from the Intellectual Property Rights holder a licence in the form set out in the licence above. In the event that the Supplier is unable to procure the right to grant to the Employer a licence in accordance with the foregoing the Supplier shall procure that the third party grants a direct licence to the Employer on industry acceptable terms.

- 11.2 The Supplier waives any moral right to be identified as author of the Documents in accordance with Section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Documents subjected to derogatory treatment in accordance with Section 8 of that Act as against the Employer or any licensee or assignee of the Employer.
- 11.3 In the event that any act unauthorised by the Employer infringes a moral right of the Supplier in relation to the Documents, the Supplier undertakes, if the Employer so requests and at the Employer's expense, to institute proceedings for infringement of the moral rights.
- 11.4 The Supplier shall supply copies of the Documents to the Employer and to the Employer's other contractors and consultants for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to this Agreement or related works or services.
- 11.5 After the termination of the employment of the Supplier under this Agreement or expiry of the Term, the Supplier shall supply the Employer with copies of such of the Documents as the Employer may from time to time request (such copies to be in the form required by the Employer, including hard copies and electronic copies) and the Employer shall pay the Supplier's reasonable costs for producing such copies.
- 11.6 In performing the Services, the Supplier shall not infringe the Intellectual Property Rights of any third party. The Supplier shall indemnify the Employer against all loss damage costs and expenses for which the Employer is or becomes liable as a result of any infringement or alleged infringement by the Supplier of any third party's Intellectual Property Rights.

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11.7 The Supplier shall not be liable for any use of the Intellectual Property Rights for any purpose other than that for which it was originally prepared or supplied by the Supplier.

11.8 Notwithstanding Clause 11.1, the Employer shall have no right to:

11.8.1 decompile any computer software which forms part of the Documents licensed to the Employer in this Clause 11 nor shall the Employer attempt to derive any algorithms, techniques or other features of the software or modify or attempt to create any derivative works from the software; or

11.8.2 manufacture any products in part or whole which are protected by Intellectual Property Rights licensed to the Employer in Clause 11.1 for any purposes (other than as may be strictly necessary for the maintenance, running or repair of the work carried out as part of the Services,

any sub-licence granted by the Employer in accordance with Clause 11.1 shall similarly apply these prohibitions to the sub-licensee of that computer software.

Confidentiality

11.9 Save to the extent expressly provided for in this Clause 11, each Party :

11.9.1 shall treat the other Party's Confidential Information as confidential and shall safeguard it accordingly;

11.9.2 shall not disclose the other Party's Confidential Information to any other person without prior written consent;

11.9.3 shall immediately notify the other Party if it suspects unauthorised access, copying, use or disclosure of the other Party's Confidential Information; and

11.9.4 shall notify the Serious Fraud Office where it has reasonable grounds to believe that the other Party is involved in activity that may be a criminal offence under the Bribery Act 2010.

11.10 Clause 11.9 shall not apply to the extent that:

11.10.1 such disclosure is a requirement of the law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to this Clause 11 and Clause 32 (Freedom of Information);

11.10.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

11.10.3 such information was obtained from a third party without obligation of confidentiality;

11.10.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or

11.10.5 such information is independently developed without access to the other Party's Confidential Information.

11.11 The Supplier may only disclose the Employer's Confidential Information to the Supplier Personnel who are directly involved in performing the Services and who need to know the information, and shall ensure that such personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. The Supplier shall not, and shall procure that its people do not, use any of the Employer's Confidential Information other than for the purposes of this Agreement. In the event that any default, act

or omission of any the Supplier Personnel causes or contributes (or could cause or contribute) to the Supplier breaching its obligations as to confidentiality under or in connection with this Agreement, the Supplier shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Supplier Personnel, the Supplier shall provide such evidence to the Employer as the Employer may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the Supplier is taking appropriate steps to comply with this Clause 11, including copies of any written communications to and/or from the Supplier Personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with the Supplier Personnel in connection with obligations as to confidentiality.

11.12 Nothing in this Agreement prevents the Employer disclosing the Supplier's Confidential Information in any of the following cases:

11.12.1 to any Crown Body or any other Contracting Bodies. All Crown Bodies or Contracting Bodies receiving such Confidential Information are entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Body;

11.12.2 to a professional adviser, contractor, consultant, supplier or other person engaged by the Employer or any Crown Body (including any benchmarking organisation) for any purpose connected with this Agreement, or any person conducting an Office of Government Commerce Gateway Review;

11.12.3 for the purpose of the examination and certification of the Employer's accounts;

11.12.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Employer has used its resources;

11.12.5 to internal or external auditors in accordance with Clauses 11.16 and 11.17;

11.12.6 for the purpose of the exercise of its rights under this Agreement (including for the purposes of using the Supplier's Intellectual Property Rights in accordance with the licence granted under Clause 11.1 and for the purposes of granting sub-licences to other persons in relation to the same);

11.12.7 to a proposed successor body of the Employer in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement; and

11.12.8 under Clause 12.7 (Assignment and Sub-Contracting),

and for the purposes of the foregoing, disclosure of the Supplier's Confidential Information shall be on a confidential basis and subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Employer under this Clause 11.

11.13 The Employer shall use all reasonable endeavours to ensure that any government department, Contracting Body, people, third party or contractor to whom the Supplier's Confidential Information is disclosed pursuant to Clause 11.12 is made aware of the Employer's obligations of confidentiality.

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11.14 Nothing in this Clause 11 prevents either Party from using any techniques, ideas or Know-How gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.

Photographs

11.15 Except as required to record the condition of the Employer's Plant or the condition or activities on the Route, Site or Employer's property for the purposes of delivering the Services the Supplier shall not at any time take any photograph of the Employer's Plant or infrastructure, 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 Supplier has obtained the prior written consent of the Employer. The Supplier shall take all necessary measures to prevent Supplier Personnel taking, publishing, releasing or otherwise circulating any photographs.

Comptroller &
Auditor
General

11.16 The Supplier shall and shall procure that its Sub-Suppliers 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 the Employer and its group companies, the Department for Transport and the consolidated set of financial statements for the UK public sector.

11.17 The Supplier shall allow the Employer and the Employer's internal and external auditors to inspect at any time within working hours, having given reasonable notice, the accounts and records which the Supplier is required to keep in accordance with this Agreement in order to assess compliance by the Supplier and/or its Sub-Suppliers with the Supplier's obligations under this Agreement.

12 Assignment and Sub-Contracting

Assignment
by Parties

12.1 The Employer shall not assign charge or transfer this Agreement or any of its rights under it without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed), provided that the Supplier's consent shall not be required where it is between the Employer and:

12.1.1 any other body which substantially performs any of the functions that previously had been performed by the Employer; or

12.1.2 its direct or indirect holding companies and its direct or indirect subsidiaries (within the meaning of s1159 Companies Act 2006).

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

Sub-
Contracting
by Supplier

12.3 The Supplier shall not sub-contract any part of the Services without the prior written consent of the Employer's Representative, which consent shall not be unreasonably withheld or delayed. If the Supplier sub-contracts any part of the Services, it is responsible for the performance of the Services as if it had not subcontracted such part of the Services.

Sub-letting
does not
relieve
Supplier

12.4 No sub-contracting by the Supplier and no consent of the Employer and nothing contained in this Agreement requiring the Supplier to sub-contract any work to or obtain any Plant from any person or persons named therein shall in any way relieve the Supplier from its responsibility for the due execution and completion of the Services in accordance with this Agreement.

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- 12.5 The Supplier shall assess the amount due to a Sub-Supplier without taking into account the amount due to the Supplier under the notice issued by the Employer under Clause 7.5 (Payment).
- 12.6 The Supplier shall include in the contract with each Sub-Supplier:
- 12.6.1 a period for payment of the amount due to the Subcontractor which is not greater than 28 days. The amount due shall include, but not be limited to, payment for work which the Sub-Supplier has completed from the previous assessment date up to the current assessment date in the contract;
 - 12.6.2 a provision which does not allow the Supplier to withhold retention or alternatively has a retention rate of 0%;
 - 12.6.3 a provision giving the Employer a right to publish the Supplier's compliance with its obligations in Clause 12.6.1;
 - 12.6.4 insurance provisions that properly flow-down from Clause 9 (Indemnities and Insurance) and thereby do not provide for duplication of insurance cover; and
 - 12.6.5 a provision requiring the Sub-Supplier to include a clause to the same effect as this Clause 12.6 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of its subcontract with the Supplier; and
- when requested by the Employer, the Supplier shall provide reasonable documentary evidence to the Employer that it is in compliance with its payment obligations under this Clause 12.6.
- 12.7 If the Supplier notifies the Employer that the Supplier has failed to comply with its obligations under Clause 12.6.1, the Employer can publish the details of the details of the non-compliance (including on government websites and in the press).

13 Protection of Personal Data

- 13.1 Unless the context otherwise requires, for the purposes of this Clause 13 the following definitions apply;
- 13.1.1 "Data Protection Legislation" means all applicable laws relating to data protection, the processing of personal data, privacy and/or electronic communications in force from time to time shall be interpreted and construed by reference to Data Protection Act 2018.
 - 13.1.2 The terms controller, processor, processing/ process/ processed/ processes, data subject, and personal data shall be interpreted and construed by reference to Data Protection Act 2018.
 - 13.1.3 Permitted Purpose means, with respect to a Party, the purposes of: (i) carrying out its obligations under this Agreement; (ii) exercising its rights under this Agreement; and (iii) complying with its obligations under applicable law (including Data Protection Act 2018).
 - 13.1.4 "Security Incident" means (i) the unlawful or unauthorised processing of personal data; or (ii) any security incident affecting the personal data (including (without limitation) a personal data breach as defined in the Data Protection Act 2018).

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- 13.2 The Parties agree that, for the purposes of Data Protection Legislation, each Party (to the extent it processes personal data) processes personal data as an independent controller in its own right. Nothing in this Agreement is intended to construe either Party as the processor of the other Party or as joint controllers with one another with respect to personal data.
- 13.3 Each Party:
- 13.3.1 shall comply with its obligations under Data Protection Legislation;
 - 13.3.2 shall be responsible for dealing with and responding to data subject requests, enquiries or complaints (including any request by a data subject to exercise their rights under Data Protection Legislation) it receives, unless otherwise agreed between the Parties; and
 - 13.3.3 shall promptly notify the other Party in writing of each Security Incident of which it becomes aware relating to the personal data to the extent the Security Incident is likely to affect the other Party.
- 13.4 Each Party warrants that it is not subject to any restriction (with the exception of those set out under Data Protection Legislation) which would prevent or restrict it from disclosing or transferring personal data to the other Party in accordance with the terms of the contract including without limitation for the purposes of Clause 11.12 (Copyright, Intellectual Property, Confidentiality, Photographs and C&AG).
- 13.5 Without limiting Clause 13.3.1, if a Party (the Disclosing Party) provides personal data to the other Party (the Receiving Party), it shall ensure that it has provided all necessary information to, and obtained all necessary consents from, the data subjects of the personal data, in each case to enable the Disclosing Party to disclose the personal data to the Receiving Party and for the Receiving Party to use that personal data for the Permitted Purposes, in each case in accordance with Data Protection Legislation.
- 13.6 In relation to the personal data it receives from the Disclosing Party, each Party:
- 13.6.1 at all times shall process the personal data in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical and organisational measures; and
 - 13.6.2 shall ensure that, at a minimum, the measures required under Clause 13.6.1 meet the standard required by Data Protection Legislation.
- 13.7 The Supplier shall complete any action required under Data Protection Legislation (including identifying appropriate lawful bases for the required processing of personal data and providing the subjects of personal data with appropriate fair processing information) to ensure that it can disclose and transfer personal data to and allow and facilitate access to personal data for the purposes of Clause 11.12 (Copyright, Intellectual Property, Confidentiality, Photographs and C&AG).

14 Employment Protection and TUPE

Notwithstanding anything to the contrary elsewhere in this Agreement:

- 14.1 the Supplier shall be responsible for and shall indemnify and keep indemnified the Employer 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 operation of 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**”);

14.2 in the last 12 months prior to completion of the Services under the last Contract Order or after notice of termination of the employment of the Supplier under this Agreement has been given in accordance with Clause 19, within 28 days of the Employer’s request, the Supplier shall (where TUPE is likely to apply) provide the Employer with such information as the *Client* may reasonably require for all persons who are, who have been, or who may be at any time concerned with the Services or any part of them in a suitably anonymised format in order to comply with Data Protection Legislation including:

- 14.2.1 their job title;
- 14.2.2 job description;
- 14.2.3 basic salary, bonus and all other emoluments and benefits;
- 14.2.4 period of continuous employment;
- 14.2.5 the percentage of the time that they have worked on this Agreement;
- 14.2.6 details of any agreements entered into with employee representative bodies in relation to such persons;
- 14.2.7 details of all training and competency courses attended and certificates or qualifications obtained;
- 14.2.8 place of work;
- 14.2.9 all relevant contractual and non-contractual termination or severance arrangements;
- 14.2.10 notice periods;
- 14.2.11 contractual holiday entitlements;
- 14.2.12 copy of employment contract or applicable standard terms and employee handbook;
- 14.2.13 immigrant status and right to work documentation;
- 14.2.14 information on any disciplinary or grievance procedure taken against or by any person within the preceding 2 years;
- 14.2.15 information about any tribunal claims in the preceding 2 years or whether there are reasonable grounds to believe a claim may be brought; and
- 14.2.16 such other requirements as the Employer may reasonably require

(altogether the “**Employee Data**”). The Employer 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;

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Personnel
Records

14.3 in the last 12 months prior to completion of the Services under the last Contract Order or after notice of termination of the employment of the Supplier under this Agreement has been given in accordance with Clause 19 (Termination), the Supplier shall (and shall procure that any Sub-Supplier 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 Employer (“**Personnel Records**”) and shall (where TUPE is likely to apply) within 28 days of the Employer’s request, whether during the performance of this Agreement or following the end of this Agreement (whether lawfully or otherwise) deliver up to the Employer or to such person as the Employer may nominate, the Employee Data, such copies of the Personnel Records as may be required by the Employer and, to the extent not otherwise provided, any employee liability information pursuant to and in accordance with Regulation 11 of TUPE. The Employer may communicate such information to persons intending to tender to execute services of the nature of the Services;

Contracts:
Variation

14.4 the Supplier shall not (and shall procure that any Sub-Supplier shall not) (where TUPE is likely to apply) in the last six months prior to completion of the Services under the last Contract Order or after notice of termination of the employment of the Supplier under this Agreement has been given in accordance with Clause 19, without the prior written permission of the Employer:

14.4.1 vary or purport or promise to vary (in the employee’s favour), the terms of the contract of employment of any person engaged wholly or principally in the execution of the Services;

14.4.2 terminate or give notice to terminate the employment or engagement of any person engaged wholly or principally in the execution of the Services;

14.4.3 deploy or assign any person to perform the Services who is not already doing so with the effect that the number of persons engaged wholly or principally in the execution of the Services increases;

14.4.4 increase or reduce to any significant degree the proportion of working time spent on the Services by any person engaged wholly or principally in the execution of the Services; or

14.4.5 introduce any new contractual or customary practice (including any payments on termination of employment) applicable to any person engaged wholly or principally in the execution of the Services;

New
employees

14.5 the Supplier shall not (and shall procure that any Sub-Supplier shall not) (where TUPE is likely to apply), without the prior written consent of the Employer, 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 14.4) at the date of commencement of employment of such new employee;

Regulation
13

14.6 the Supplier shall (and shall procure that any Sub-Supplier shall) (where TUPE is likely to apply) at all times comply with its information and consultation obligations under Regulation 13 of TUPE; and

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TUPE
indemnity

14.7 the Supplier shall indemnify and keep indemnified the Employer and any successor supplier against all costs, claims, expenses, damages, demands, actions, losses and liabilities arising out of or in connection with:

14.7.1 any act, default or omission of the Supplier or any Sub-Supplier in respect of any person who was or is employed or engaged by the Supplier or any Sub-Supplier;

14.7.2 the employment or termination of employment of any person engaged wholly or principally in the execution of the Services up to and including the date of completion of the Services under the last Contract Order or termination of the employment of the Supplier under this Agreement,

14.7.3 any breach by the Supplier or any Sub-Supplier of its obligation to provide employee liability information to the Employer or any successor supplier in accordance with Regulation 11 of TUPE; and/or

14.7.4 any breach by the Supplier of sub-clauses 14.4, 14.5 and/or 14.6;

and, despite anything else in this Agreement, such a successor supplier can directly enforce the indemnity in its favour provided for by sub-clauses 14.1 and 14.7.

15 Employer's Facilities

Property in
Facilities

15.1 All of the Employer's Facilities or other property issued or supplied in connection with this Agreement by, or on behalf of the Employer, shall remain the property of the Employer and subject to Clause 4.6 shall only be used by the Supplier for the purposes of this Agreement.

Availability
of Facilities

15.2 The Employer shall make available to the Supplier the Employer's Facilities at the times and subject to the conditions set out in the Preliminaries and subject to any temporary disrepair or mechanical breakdown. The Supplier shall return the same to the Employer in the condition in which it was supplied (fair wear and tear excepted).

No liens

15.3 Neither the Supplier, any Sub-Supplier or any other person, shall have a lien on any of the Employer's Facilities or on any other property and the Supplier shall take all necessary steps to ensure that the title of the Employer and the exclusion of any such lien are brought to the notice of all Sub-Suppliers and other persons dealing with the same.

16 Breakdowns and notice of accidents

Breakdowns

16.1 If the Plant breaks down on the Employer's rail network and requires haulage to remove it to an appropriate Stabling Point, the Supplier shall be responsible for removing the Plant at all times.

If the Plant breakdown is due to the Supplier's negligence the Supplier shall be responsible for all such costs. If the Plant breakdown is not due to the Supplier's negligence the Supplier shall claim for all costs incurred for removing the Plant from the rail network.

Accidents

16.2 If the Plant is involved in any accident resulting in injury to persons or damage to property, immediate notice must be given to the Employer's Representative by telephone and confirmed in writing. In respect of any claim, no admission, offer, promise of payment or indemnity, shall be made by the Employer without the Supplier's consent in writing.

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- 16.3 The Supplier shall, at its own cost, support and participate in any incident or accident investigation initiated by the Employer, HMRI or any other regulatory body. The Supplier shall provide reasonable access to all internal documents relating to such incidents.

17 Force Majeure

- Force Majeure
- 17.1 If either Party to the Agreement is prevented from or delayed in performing any of its obligations under the Contract by Force Majeure, that Party may notify the other Party in writing forthwith of the circumstances constituting the cause of delay and specify the obligations, the performance of which is thereby delayed or prevented. Notification shall be made within seven days of the commencement of the relevant event constituting the cause of the delay. Failure by the Supplier to give the requisite notice shall preclude him from claiming at any subsequent stage relief from their obligations under the Agreement. The Parties shall agree the date of cessation and any subsequent resumption of the affected part of the Agreement.
- 17.2 If such notice under Clause 17.1 is given by the Supplier by reason of Force Majeure, the Employer shall not be liable to make any payment to the Supplier for the relevant Services in respect of the period during which the Supplier is unable to perform its obligations except as may be specified in the Pricing Document.
- 17.3 The Supplier shall at all times use all reasonable endeavours at its own cost to minimise any delay in the performance of its obligations under the Contract whatever may be the cause of such delay.
- 17.4 If performance of the Services is substantially prevented for more than sixty (60) days by virtue of any event of Force Majeure which has been notified in accordance with Clause 17.1 (Force Majeure), then either Party may terminate the employment of the Supplier under this Agreement under Clause 19.4 (Termination).

18 Suspension

- Suspension
- 18.1 The Supplier shall, on the written instructions of the Employer's Representative, suspend the performance of the Services or any part thereof for such time and in such manner as the Employer's Representative may require.
- 18.2 Where the performance of the Services or any part thereof has been suspended under Clause 18.1 and the Services are to be resumed, the Employer's Representative shall grant the Supplier a reasonable period of time in order to resume performance of such Services.
- 18.3 Unless any suspension is:
- 18.3.1 provided for in any provision of this Agreement other than Clause 18.1, or
 - 18.3.2 a consequence of some default of, or 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 Employer's Representative following the principles set out in Clause 6. The Supplier shall take all reasonable steps to reduce avoidable costs during any suspension.

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18.4 In the event of suspension, the Supplier:

18.4.1 shall comply with the Employer's Representative's instructions with regard to stabling of Plant; and

18.4.2 shall not remove any Plant from the Contract Area or from any Stabling Point or other location without the written permission of the Employer's Representative. Such permission shall not be unreasonably withheld.

18.5 If the Supplier exercises its right under section 112 of the Housing Grants, Construction and Regeneration Act 1996, as amended by the Local Democracy, Economic Development and Construction Act 2009, (if applicable) to suspend performance of its obligations under this Agreement, the Supplier shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by it as a result of the exercise of that right.

19 Termination

19.1 If the Supplier:

19.1.1 shall be in material breach of any of the provisions of this Agreement;

19.1.2 becomes liable to the Employer for amounts under this Agreement which in total equal or exceed the Aggregate Liability Cap;

19.1.3 or the Guarantor becomes Insolvent; or

19.1.4 is deemed to have committed a material breach of this Agreement that is not capable of correction as described in the Corporate Social Responsibility Schedule, then the Employer may, by notice terminate forthwith the employment of the Supplier under this Agreement.

19.2 The Employer may, in addition to any other right it may have, with 30 days notice to the Supplier forthwith terminate the employment of the Supplier under this Agreement.

19.3 The Supplier may terminate its employment under this Agreement by written notice to the Employer if the Employer has not paid any undisputed amounts within 90 days of them falling due.

19.4 If each Party becomes entitled to terminate the employment of the Supplier under this Agreement under Clause 17.4 in relation to Force Majeure, then either Party may, by notice to the other, forthwith terminate the employment of the Supplier under this Agreement.

19.5 Without limiting the Employer's rights, if the Employer is entitled to terminate the employment of the Supplier under this Agreement for a reason stated in this Clause 19, the Employer may in its discretion opt to terminate one or more Contract Orders for the same reason (whether or not the reason relates to the Contract Order which is proposed to be terminated) without terminating the employment of the Supplier under this Agreement. After a notification to terminate a Contract Order has been issued, the Supplier shall not perform any Services in respect of that Contract Order but shall otherwise continue to perform the Services.

Supplier's
breach/insolve
ncy

Termination at
will

20 Consequences of Termination

20.1 If the Employer, in exercise of the powers contained in Clause 19.1 (Termination) shall terminate the Supplier's employment under this Agreement the following provisions shall take effect:

20.1.1 the payment of any sum of money that may then be due or accruing due from the Employer to the Supplier shall be suspended;

20.1.2 the Supplier shall pay to the Employer the Employer's reasonable losses and expenses due to the termination, but the Supplier shall receive credit for any sum the payment of which is suspended under Clause 20.1.1;

20.1.3 the Employer may hire any persons in the employment of the Supplier and the Employer may enter upon any premises under the control of the Supplier and take possession of all Employer's Plant and equipment which are such premises, and may purchase or do anything requisite for the further execution of the Services, or may employ other suppliers to do the same, and the Supplier shall at its cost provide all reasonable support to the Employer to facilitate such further execution of the Services; and

20.1.4 if the Employer (acting reasonably) expresses a wish to the Supplier to purchase any of the Supplier's Plant (whether or not used in the performance of the Services) the Supplier shall offer such Plant for sale to the Employer at a reasonable price.

20.2 If the Employer, in the exercise of the powers contained in Clause 19.2 (Termination), or the Supplier, in the exercise the powers contained in Clause 19.3 (Termination), shall terminate the Supplier's employment under this Agreement, the amount due to the Supplier shall be calculated by including:

20.2.1 the value of work executed up to the date of termination calculated in accordance with the provisions of the Pricing Documents and relevant Contract Orders;

20.2.2 the amounts payable in accordance with the provisions of the Pricing Documents in respect of the Services so far as the work or service comprised therein has been carried out or performed and a proper proportion of any such items which have been partially carried out or performed;

20.2.3 the cost of any Plant or equipment reasonably ordered specifically for the Services, which were not intended to be used by the Supplier on any contracts other than this Agreement and which have been delivered to the Supplier or of which the Supplier is legally liable to accept delivery (such Plant or equipment becoming the property of the Employer upon such payment being made to the Supplier);

20.2.4 a sum being the amount of any expenditure reasonably incurred by the Supplier in the expectation of completing the whole of the Services in any Contract Order and/or Services not then completed insofar as such expenditure has not been recovered by any other payments referred to above; and

20.2.5 the reasonable cost of removal of all Supplier's Plant and equipment from the Routes, Sites or Employer's property.

Payment following breach/insolvency

Payment where termination at will or breach of the Regulations by the Employer

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- 20.3 If either Party, in the exercise of the powers contained in Clause 19.4, shall terminate the Supplier's employment under this Agreement, the Supplier shall be paid in accordance with Clauses 20.2.1, 20.2.2 and 20.2.3.
- 20.4 The Supplier shall not be entitled to payment of any other loss which is not provided for in this Clause 20 (including, without limitation, loss of profit) and/or damage arising from such termination.
- 20.5 If the Employer terminates the employment of the Supplier under this Agreement because the Supplier becomes Insolvent, and a notified sum or amount due under a pay less notice has not been made at the date of the Employer's termination notice, and the Insolvency occurred after the last date on which the Employer could have notified the Supplier in accordance with this Agreement that it intends to pay less than the notified sum, the Employer shall not be required to make the payment.
- 20.6 Within [13] weeks after any termination, the Employer carries out an assessment of the amount due from the Supplier to the Employer, or due from the Employer to the Supplier (as the case may be), and provides the Supplier with details of the assessment. The payment due date for such amount is [21] days after the date of such assessment. The final date for payment of such amount is [7] days after the payment due date. The Employer shall issue to the Supplier a notice stating the sum which it considers to be due to the Supplier and the basis of the calculation of that sum (even if that sum is zero) on or before 5 days after the payment due date.

21 Third Party Rights

- 21.1 Subject to Clauses 14.1 and 14.7 (Employment Protection and TUPE) but otherwise notwithstanding anything to the contrary contained elsewhere in this Agreement, nothing in this Agreement is intended to confer on any person any right to enforce any term of this Agreement which that person would not have had but for the provisions of the Contracts (Rights of Third Parties) Act 1999.

22 Notices and other Communications

Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and other communications, all such communications shall have effect when received in a form that can be read, copied and recorded at the last address notified by the recipient for receiving communications.

Provided that the preceding paragraph shall not apply to a notice of termination, a notice of suspension or a notice to refer a dispute. A notice of termination, a notice of suspension or a notice to refer a dispute shall be delivered by hand or by pre-paid first class post or other next working day delivery service at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Appendix and shall be deemed to have been received:

- 22.1 if delivered by hand, on signature of a delivery receipt; or
- 22.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting or at the time recorded by the delivery service.

23 Dispute Resolution

23.1 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:

23.1.1 the Scheme for Construction Contracts SI No. 649 of 1998 shall apply; and

23.1.2 subject to Clause 3.3 (Contract Orders) the Adjudicator's decision is binding until the dispute or difference is finally determined by the Courts as provided in Clause 23.3.

23.2 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.

23.3 Disputes and differences between the Parties arising out of or in relation to this Agreement shall, subject to Clause 23.1, 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.

24 Liability for Railway Costs

For the purposes of this paragraph:

24.1 "Track Access Agreement" means any agreement (excluding Freight Access Agreements) entered into between the Employer and any other party and incorporating the Network Code.

24.2 "Freight Access Agreement" means any agreement (excluding Track Access Agreements) entered into between the Employer and any other party for non-passenger services and incorporating the Network Code.

24.3 "Network Code" means the document entitled "Network Code" dated 12 July 2017, as amended and modified from time to time.

24.4 Notwithstanding any other provision of this Agreement, the liability of the Supplier to compensate the Employer in respect of any sums payable by the Employer pursuant to Schedules 4 and 8 of any Track Access Agreement or the equivalent provisions of any Freight Access Agreement ("**Railway Costs**") arising under or in connection with this Agreement (whether arising in contract, tort (including negligence), delict or otherwise at law), to the extent permitted by law, shall not exceed in aggregate the sum stated in the Appendix (the "**Railway Costs Cap**").

25 Security

25.1 The Supplier shall take all reasonable steps and all steps required by the Agreement to prevent unauthorised persons being admitted to the Routes, Sites and the Employer's Facilities. The Supplier shall be responsible for ensuring that no person employed on its behalf trespasses beyond the agreed limits of any specified working areas or access routes.

25.2 Supplier Personnel shall carry an Employer's pass whilst they are on the parts of the Employer's property affected by the Services. The Supplier shall maintain a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part thereof, specifying the capacities in which they are so concerned, and shall supply such list to the Employer's Representative for acceptance, giving such other

particulars as the Employer's Representative may reasonably require. On acceptance, the Employer shall issue the passes to the Supplier. Each pass shall be returned to the Employer when the person no longer requires access to that part of the Employer's property affected by the Services or after the Employer has given notice under Clause 5.6 that the person is not to be allowed onto a Route, Site or the Employer's property.

26 Variations to this Agreement

No variation to the terms of this Agreement shall be effective unless it is made in writing and has been signed on behalf of each Party by its duly authorised representative.

27 Entire Agreement

This Agreement and the documents referred to in it constitute the entire agreement and understanding of the Parties and supersede any previous agreement between the Parties relating to the subject matter of this Agreement.

28 Relief from Actions by the Supplier's Group

The Supplier shall not be able to claim any relief from the Employer to the extent that the Supplier is prevented from delivering its obligations under this Agreement by any action or inaction of the Supplier or any of the companies within the Supplier's group of companies.

29 Waiver

The failure or delay by any Party to enforce at any time or for any period any of the terms and conditions of the Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of the Agreement.

30 Consents

The Supplier shall obtain and maintain all necessary consents required to perform the Services at the cost of the Supplier. Consents shall include those necessary for depots, sidings and other facilities required for the provision of the Services (other than Stabling Points owned by the Employer).

31 Compliance

The Supplier shall comply with the Corporate Social Responsibility Schedule.

32 Freedom of Information

32.1 The Supplier acknowledges that the Employer is subject to the requirements of the Code of Practice on Government Information, the FOIA and the Environmental Information Regulations (together the "Information Acts"). The Supplier shall provide all necessary assistance and cooperation as reasonably requested by the Employer to enable it to comply with its obligations under the Information Acts.

32.2 The Supplier shall:

32.2.1 transfers to the Employer all Requests for Information that it receives as soon as practicable and in any event within two working days of receiving a Request for Information;

Entire Agreement

Relief from Actions

Waiver

Consents

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- 32.2.2 provide to the Employer with a copy of all information in its possession or power in respect of the Request for Information in the form that the Employer requires within five working days (or such other period as the Employer may specify) of the Employer's request;
- 32.2.3 provide all necessary assistance as reasonably requested by the Employer to enable it to respond to the Request for Information within five working days (or such other period as the Employer may reasonably specify); and
- 32.2.4 procure that its Sub-Suppliers do likewise.
- 32.3 Notwithstanding any other provision in this Agreement, the Employer shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the Information Acts.
- 32.4 The Supplier shall not respond directly to a Request for Information unless authorised to do so by the Employer.
- 32.5 The Supplier acknowledges that the Employer may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA, be obliged to disclose information without consulting or obtaining consent from the Supplier or despite the Supplier having expressed negative views when consulted.

33 Information Security

- 33.1 The Supplier shall comply with the Employer's security policies and procedures including
- NR/L1/SCT/002 Cyber security and resilience for digital systems policy; and
 - Supplier (Supply Chain) Security Policy.

34 Not Used

35 Not Used

36 Not Used

37 Limits of Liability

- 37.1 Subject to Clause 37.2, the aggregate liability of the Supplier under or connection with this Agreement (whether arising in contract, tort (including negligence) delict or otherwise at law), to the extent permitted by law, shall be limited to the amount stated in the Appendix (the "**Aggregate Liability Cap**"). The Railway Costs Cap is a sub-cap to the Aggregate Liability Cap.
- 37.2 No exclusion or limit of liability in this Agreement shall apply to:
- any liability in respect of death or personal injury resulting from a negligent act or omission or breach of statutory duty by the Supplier or any person for whom the Supplier is responsible;
 - any losses directly caused by the fraud of the Supplier;
 - any liability of the Supplier under:

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- (i) Clause 11.1 to 11.8 (Copyright, Intellectual Property, Confidentiality, Photographs and C&AG);
 - (ii) Clause 11.9 to 11.14 (Copyright, Intellectual Property, Confidentiality, Photographs and C&AG);
 - (iii) Clause 13 (Protection of Personal Data); or
 - (iv) Clause 14 (Employment Protection and TUPE);
- (d) any liability in respect of which the Supplier is entitled to recovery (or would be entitled to recovery but for its own default) under the terms of insurances required to be maintained in accordance with this Agreement, which shall be subject to the limit of liability in Clause 37.3.

37.3 Insured losses;

The aggregate liability of the Supplier under this Agreement (whether arising in contract, tort (including negligence) or otherwise at law) in respect of which the Supplier is entitled to recovery (or would be entitled to recovery but for its own default) under the terms of insurances required to be maintained in accordance with this Agreement shall be limited to the minimum amount of the relevant insurance required to be maintained in accordance with the terms of this Agreement.

37.4 Indirect and Consequential Losses;

Subject to Clause 37.2, in no event shall the Supplier be liable to the Employer, 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,

Provided that nothing in this Clause 37.4 shall exclude the Supplier's liability for Railway Costs or the Supplier's liability under Clause 10 (Claims Handling Provisions).

37.5 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.

37.6 Notice of third party claims;

With the exception of any third party claim arising in relation to the indemnity in Clause 9.1, the Employer 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 Supplier specifying details of the third party claim.

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CORPORATE SOCIAL RESPONSIBILITY SCHEDULE

MANDATORY – *Insert Schedule found on Procurement Operations Sharepoint site*

TECHNICAL WORKSCOPE

Matters to consider when drafting the Technical Workslope

- 1** The requirements for the Employer to devise the overall plans for carrying out and completing the Services, and progressively to issue more detailed plans to the Supplier which cover:
 - (1) Long term plans of proposed quantities of Shifts and Services;
 - (2) Outline plans. This stage covers the securing of adequate possession arrangements and where necessary seeks to balance Plant availability against demand;
 - (3) Provisional plans. This stage covers the confirmation of Shifts, Routes or Sites, train paths and detailed support arrangements; and
 - (4) Confirmed plans. This covers the detailed planning for the Services delivery.
- 2** The requirements for the Supplier, within the overall plans established by the Employer referred to above, to provide a detailed plan for the carrying out of the Services in the Contract Area to include (inter alia):
 - (1) Identification and arranging train paths in accordance with the Employer's current procedures;
 - (2) rostering staff and arrangements for transport and accommodation;
 - (3) arrangements for Plant orientation, access and egress to and from Stabling Points;
 - (4) arrangements for re-fuelling, maintaining, servicing and loading the Plant;
 - (5) arrangements for all movements of Plant between Stabling Points (or other locations) and possession entry and exit points and Plant orientation at Sites; and
 - (6) proposals for the timely ordering and delivery of any equipment required, including having regard to quantities and logistics.
- 3** Site management arrangements by the Employer that are necessary for the Plant to be operated within any Sites including, but without limitation, disconnection/reconnection of signalling equipment, removal/reinstatement of level crossings and foot crossings, road closures, marking up of track geometry, marking of cables and removal/reinstatement of point heating equipment.
- 4** Required Plant and how this may be varied during the Agreement.
- 5** The Services specification, standards, maintenance requirements and any relevant drawings.
- 6** Process for ordering
- 7** Shifts.
- 8** Details of Contract Areas.
- 9** Details of Stabling Points.
- 10** Employer's Facilities to be provided by the Employer..

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- 11** Daily Work Returns information which is required to be provided by the Supplier.
- 12** Any required qualifications and competency requirements for Supplier Personnel.
- 13** Any specific restrictions on the Supplier's having possession of any of the Routes, Sites or the Employer's Stabling Points, unless the relevant restrictions are already covered in the Preliminaries.
- 14** Specify the route knowledge which Maintainer/Operators must have in order to carry out the Services on each Route or Site in the Contract Area.
- 15** Requirements for obtaining records of maintenance and/or alteration to Plant being operated and maintained including frequency.

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CONTRACT REQUIREMENTS: HSEA

MANDATORY - *Insert Requirements found on Procurement Operations Sharepoint site*

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PRELIMINARIES

Reports and meetings shall be provided and held in accordance with Clause 4.8 and as follows:

PRICING DOCUMENT

The following is for guidance only and shall be changed to suit each contract

Contract Area

[Insert description of area in which Services to be carried out]

Pricing Matters

1 The payment application shall include the value of the Services carried out during that period calculated as follows:

(a) *Provision of Plant.* One thirteenth of the annual cost for each Package listed in [●].

(b) *Additional Payments.* Additional payments due in accordance with [●]

(c) *Additional Shifts.* Payments for additional Shifts worked due in accordance with [●].

LESS

(d) *Abatement.* Amounts due to the Employer in accordance with [●].

LESS

(e) *Poor Performance Adjustments.* Adjustments to the above in respect of poorly performing items of Plant calculated in accordance with [●].

PLUS

(f) *Variations.* The total cost of any Variations issued under Clause [●] carried out during the period and not included in the above items.

PLUS

(g) *Other monies due.* The net total of any other monies due to the Supplier less any monies due to the Employer

2 The payment application shall include all necessary supporting documentation including all counter-signed Daily Work Returns and any relevant certificates issued under [●] and any other information as may be required by this Agreement. The Employer shall be entitled to:

(a) Withhold payment for any shift for which a Daily Work Return signed by both Parties is not submitted except where the absence of the signed form is due to late cancellation by the Employer.

(b) Withhold any adjustment to deductions for Abatement under [●] if the Supplier does not submit the certificate referred to in [●].

[Consider whether to provide for any price indexation.]

Key Performance Indicators [KPI] *(align with the details in the Technical Workslope)*

If any KPI for an item of Plant falls below 0.935 within any Agreed Rail Industry Period due to any matters which are the responsibility of the Supplier:

1 The Employer may give notice to the Supplier requiring the enhanced servicing of the relevant item of Plant.

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- 2** The Employer may give notice to the Supplier requiring the replacement or retraining of the relevant Maintainer/Operators.
- 3** The Supplier shall comply with the requirements of any such notice as quickly as possible at its own cost.
- 4** If any KPI for an item of Plant remains below 0.935 for any two consecutive Agreed Rail Industry Periods due to any matters which are the responsibility of the Supplier then:
 - 4.1** the Employer may give notice to the Supplier requiring the immediate removal of the relevant item of Plant from this Agreement.
 - 4.2** If the item of Plant is removed then the Supplier shall not be entitled to any further payment in respect of that item or to any compensation for loss of income.

Shifts

[•]