

# **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]

## FORM OF 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 “Client”); and
2. **[NAME OF CONTRACTOR]**: [a company registered in England under number ..... whose registered office is at .....] (the “Supplier”).

### Background

The Client 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 Form of Agreement;
  - 1.2 Contract Data
  - 1.3 Contract Specific Conditions (if any);
  - 1.4 Conditions;
  - 1.5 Corporate Social Responsibility Schedule;
  - 1.6 Scope;
  - 1.7 Contract Requirements HSEA;
  - 1.8 Preliminaries;
  - 1.9 Pricing Document; and
  - 1.10 Key Performance Indicators

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 For the purposes of section 45 of the Procurement Act 2023, and without limiting clause 3 (Contract Orders) of this Agreement, the estimated value of this Agreement over its duration is [£insert], covering all Contract Orders awarded to all suppliers on this Agreement.
- 4 The Client and the Supplier agree that the Term is, subject to the provisions of this Agreement, until ..... or .....years/months from the date of this Form of Agreement.  
[Term clause [5A or 5B] applies] / [Term clauses 5A and 5B do not apply].
- 5A This clause 5A applies if stated above. This Agreement expires at the end of the Term provided that, without limiting clause 19.2 of this Agreement, the Client may break the Term on a Break Date by notifying the Supplier not less than [three] months prior to the relevant Break Date. After the Client

has notified a break, references in this Agreement to the "Term" are deemed to be references to the period ending on the relevant Break Date.

- 5B This clause 5B applies if stated above. This Agreement automatically expires at the end of the Term, but may be extended prior to its end, at the Client's sole discretion, by the Client issuing written notices of extension to the Supplier, provided such notices do not extend the Term beyond [insert date][not applicable].
- 6 In consideration of the payments to be made by the Client to the Supplier the Supplier hereby covenants with the Client to provide the Services in conformity in all respects with the provisions of this Agreement.
- 7 The Client 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.

**In witness** whereof the Client 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

**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:.....

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

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**CONTRACT DATA****(Note: Relevant Clause numbers are shown in brackets)**

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

12     The commercially sensitive information which is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA, the EIRs or under any Procurement Policy Notes or would be considered sensitive commercial information under section 94 of the Procurement Act 2023 is

<u>Date</u>	<u>Items</u>	<u>Duration</u> <u>of</u> <u>Confidentiality</u>
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

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**CONTRACT SPECIFIC CONDITIONS**

[None]

## 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;

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

**“Break Date”** means the date(s) set out in the Contract Data;

**“Client”** means the first Party named in the Form of Agreement and its permitted assignees;

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

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

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

**“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 Contract Data;

**“Commercially Sensitive Information”** means the information identified in the Contract Data (if any) comprising information that is genuinely commercially sensitive in nature relating to:

- (i) the pricing of the Services;
- (ii) details of the Supplier’s intellectual property rights; and
- (iii) the Supplier’s business and investment plans,

the disclosure of which would be the subject of an exemption under the FOIA, the EIRs or under any Procurement Policy Notes or would be considered sensitive commercial information under section 94 of the Procurement Act 2023 which the Supplier has indicated to the Client that, if disclosed by the Client, would cause the Supplier significant commercial disadvantage or material financial loss;

**“Confidential Information”** means any information of the Client or the Supplier, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel, suppliers and contractors of the Client 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 Client, includes Personal Data and, in the case of information of the Supplier, includes Commercial Sensitive Information;

**"Contract Area"** means the area where the Services are to be carried out as described in the Scope;

**"Contract Data"** means the Contract Data referred to in the Form of Agreement;

**"Contract Order"** means any order issued to the Supplier by the Client pursuant to Clause 3 in respect of any of the Services;

**"Contract Price"** means the amount to be paid by the Client 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;

**"Corporate Social Responsibility Schedule"** means the Corporate Social Responsibility Schedule referred to in the Form of Agreement;

**"Crown"** means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Government and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies;

**"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 Scope to be completed by the Client 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;

**"EIRs"** 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 Client 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 its estate under the Bankruptcy (Scotland) Act 2016 or when he grants a trust deed for its 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;

**“Key Performance Indicators”** means the Key Performance Indicators referred to in the Form of Agreement;

**“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 Client'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 Scope and pursuant to each Contract Order;

**“Party”** means the Supplier or the Client (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 Client or the Supplier as described in the Scope, to be used by the Supplier to perform the Services in accordance with this Agreement;

**“Preliminaries”** means the preliminaries referred to in the Form of Agreement;

**“Pricing Documents”** means the Pricing Documents referred to in the Form of 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 EIRs;

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

**“Scope”** means the Scope referred to in the Form of Agreement;

**“Services”** means all of the Services required to be provided by the Supplier pursuant to this Agreement as described in the Scope 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 Scope;

**“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 Client or provided by the Supplier as described in the Scope 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 Form of 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 Contract Data employed by the Supplier with overall responsibility for the performance of the Services under this Agreement, or any replacement of it agreed by the Client from time to time;

**“Term”** means the period specified in the Form of 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 Form of Agreement by lawful termination or otherwise;

**“Transparency Information”** means:

- (i) any information which is published in accordance with guidance issued by His Majesty's Government, from time to time;
- (ii) any information or notices, permitted or required to be published by the Procurement Act 2023, any regulations published under it, and any Procurement Policy Notes, subject to any exemptions set out in sections 94 and 99 of the Procurement Act 2023, which is Commercially Sensitive Information; and
- (iii) any information about this Agreement, including the content of this Agreement, and any changes to this Agreement agreed from time to time, as well as any information relating to the Services and performance pursuant to this Agreement required to be disclosed under FOIA or the EIRs, subject to any exemptions, which will be determined by the Client, taking into consideration any information which is Commercially Sensitive Information; 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

- 2.1 The Client shall, in accordance with the requirements of the Scope:
- 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 Client 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 Scope.
- 2.3 The Client shall be responsible for, in accordance with the requirements of the Scope:
- 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

Contract  
Orders  
for  
Routes or  
Sites

- 3.1 In accordance with the requirements of the Preliminaries or the Scope, at the Commencement Date or shortly thereafter, the Client's Representative shall issue a Contract Order regarding the quantity and type of Plant to be provided (whether by the Client or by the Supplier) and maintained. The Client'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 Scope.
- 3.2 No less than the time period specified in the Preliminaries or the Scope in advance of the Services being required for any Route or at any Site, the Client 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 Client on a fair and reasonable basis having regard to any indicative periods stated in the Preliminaries or the Scope 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 Scope.

Acceptance

3.3 Within seven days of receipt of the Client's draft Contract Order pursuant to Clause 3.2, the Supplier shall either accept the same or shall notify the Client 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, and subject to clause 3.5, 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.

Volume  
Commitment

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

3.6 The Client may may exclude the Supplier from participating in the Contract Order process if, in accordance with section 48 of the Procurement Act 2023, the Supplier is an excluded supplier or has, since the award of this Agreement, become an excludable supplier (including by reference to an associated person) and provided that the requirements of section 48(3) of the Procurement Act 2023 have been met.

3.7 After the expiry of the Term, the Client will not issue a Contract Order and the Supplier completes the work under Contract Orders issued before the expiry of the Term.

#### **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 Scope, 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 Client's property and/or railway infrastructure;

4.1.6 to comply with the Preliminaries; and

	4.1.7	using suitably qualified and competent Supplier Personnel in accordance with the requirements of the Scope, and the Supplier shall provide the Client with details of the qualifications and experience of such personnel as and when requested.
Operating Licence	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 Client'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 Scope and so as to be fully available to undertake the Services envisaged by the Client's overall plans issued under Clause 2.1 and specified in Contract Orders.
Inspection of Plant	4.5	The Supplier shall permit the Client to undertake detailed inspections of any maintenance records and the Plant, as provided for in the Scope, as and when necessary to ascertain compliance with the requirements of the Scope. Where such inspection identifies non-conformance with the Scope 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 Client'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 Client or any other contractor or supplier of the Client shall be deemed to be due to the default of the Supplier for the purposes of calculating payments in accordance with the Pricing Documents.
Use of Client's Plant	4.6	The Supplier shall use the Client's Plant solely in connection with the Services and may not use the Client's Plant for any other purposes without the prior written consent of the Client. The Supplier shall not remove, deface or cover up any name-plate or identification mark or number on the Client's Plant nor shall it attempt to sell, mortgage, charge or otherwise deal with the Client's Plant.
Data from Plant	4.7	Following delivery of each Shift and within the timescales stated in the Scope, the Supplier shall transfer to the Client, in electronic form, all data required by the Daily Work Returns and the Scope. The Supplier shall at all times work with the Client 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 Client's Representative as required by the Preliminaries and in accordance with the Client'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 Client or any other contractor or supplier of the Client, then the Client 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 Client, 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 Client, the Client may at its sole discretion employ another person to remedy such breach and the Client 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 Client 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 Client which shall cover the provision of the Services.
- 4.12 The Supplier shall promptly request an instruction from the Client'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 Client's Representative. The Price shall be adjusted to take account of such instruction.

## 5 The Route / Site

Access to  
the Routes,  
Sites and  
Client's  
property

- 5.1 The Supplier shall not have possession of any of the Routes, Sites or the Client's Stabling Points, but the Client shall (subject to any restriction included in the Scope or the Preliminaries) provide non-exclusive reasonable access to them for the purposes of this Agreement. Each of the Routes, Sites and the Client's Stabling Points shall only be used by the Supplier for the purpose of carrying out the Services.

Compliance  
with Client's  
regulations

- 5.2 The Supplier shall comply with the security vetting procedures below:
- 5.2.1 The Supplier shall assure the Client 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 Client;
- 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 Client's infrastructure and premises shall complete Railway Counter Terrorism training;
  - (ii) that are given a log in to the Client'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 Client on request. The training material will be provided by the Client 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 Client and with reasonable mitigation measures in place, the Supplier shall

not interfere with or obstruct any public or private rights or property (including, without limitation, the Client's property, the Client's neighbours' property, railway operations and traffic, road traffic and highways).

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| Health & Safety      | 5.4 | The Supplier shall comply with the Client'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 Client may instruct the immediate replacement, at the Supplier's cost, of any person on and off the Routes, Sites or Client'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 Scope. If any Maintainer/Operator does not have such knowledge, the Client may instruct the Supplier to employ at the Supplier's cost a conductor in relation to any Services.   |
| Unsuitable employees | 5.6 | The Client reserves the right under this Agreement to refuse to allow to use the Plant or to allow onto any of the Routes, Sites or Client'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 Client, undesirable. The decision of the Client as to whether any person is to be allowed onto a Route, Site or the Client's property shall be final and conclusive. |

## 6 Client's Instructions and Contract Orders

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|-----------------------------|-----|--|
| Client'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 Client delegates to the Client's Representative all actions of the Client under this Agreement, including issuing Client's Instructions, Contract Orders and notices to the Supplier. The Client may amend or cancel this delegation or replace the Client's Representative by notice to the Supplier.  |
| Adjustment for instructions | 6.2 | <p>If any Client's Instruction or Contract Order issued under this Agreement:</p> <p>6.2.1 shall require the Supplier to undertake services not provided for in, or to be reasonably inferred from, this Agreement; or</p> <p>6.2.2 shall impose any additional obligation or restriction or shall require the omission of any services or of any obligation or restriction,</p> <p>and provided that such Client'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 Client's Instruction or Contract Order.</p> |
| Calculation of adjustment   | 6.3 | The Client's Representative shall, after consultation with the Supplier and within a reasonable time after the issue of such Client'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 Client's Instruction or Contract Order.  |

## 7 Payment

Contact Price	7.1	In consideration of the proper performance of the Services, the Client 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 Client'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 Client or recoverable by the Client 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 Client, the amount which the Client considers is to be paid.
	7.3	The date which is <b>[7]</b> 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 <b>[14]</b> days after the relevant payment due date.
	7.4	If the Supplier makes an application for payment before the relevant Assessment Day but the Client or the Client'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 Client's Representative shall issue a notice stating the amount that the Client 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 Client considers to be due is zero.
	7.6	The Supplier shall issue a VAT invoice in the amount stated in the Client'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 <a href="mailto:invoices@networkrail.co.uk">invoices@networkrail.co.uk</a> , and the Client 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 Client shall be under no obligation to pay the same.
Correction of errors	7.7	All certificates/notices issued under this Agreement shall be issued by the Client with a copy to the Supplier. The Client 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 Client 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 Client's other rights and remedies, the Client may deduct from any sums due to the Supplier under this Agreement an amount equivalent to any sum due from the Supplier to the Client (whether such sums are due to the Client under this Agreement or under any other agreement between the Supplier and the Client) 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 Client.

- Interest on late payment
- 7.10 If the Client fails to pay the Supplier any sum properly payable under this Agreement on or before the final date for payment of it, the Client 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 5% 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.

## 8 Guarantees

- Warranties and guarantees
- 8.1 The Supplier shall ensure that the benefit of any warranty or guarantee in respect of the Client's Plant shall not be invalidated by its actions.
- Parent Company Guarantee
- 8.2 If stated to be required in the Contract Data, the Supplier shall obtain and provide to the Client, 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 Client's consent an alternative guarantor who is also owned by the ultimate holding company of the Supplier. The reasons for which the Client 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 Client 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 Client and keep the Client indemnified against each and every liability which the Client may incur to any person whatsoever and against all damage, expense, loss, cost, claim or proceedings suffered or incurred by the Client to the extent that the same relates to personal injury or death of any person whomsoever or loss or injury or damage to any property real or personal 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 Client or the Client's Representative.
- Supplier's Employer's Liability Insurance
- 9.2 Without prejudice to the Supplier's obligation to indemnify the Client 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 Contract Data 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 Client in the like manner to the Supplier but only to the extent that the Supplier may be liable to indemnify the Client under the terms of this Agreement;
- 9.2.3 as and when it is reasonably required to do so by the Client, the Supplier shall produce and shall cause any Sub-Suppliers to produce for inspection by the Client documentary evidence that the insurance required by this Clause 9.2 is properly maintained.

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

- 9.3.1 a policy in the joint names of the Supplier, Sub-Suppliers and the Client against liabilities for death of or injury to any person (other than any person in the employment of the Client or the 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 Client 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 Client (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 Client 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 excesses stated in Project Insurance Manual for each and every occurrence of such loss or damage.

The Client 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 Client the Supplier's Plant against all risk of loss or damage howsoever caused. Such insurance shall cover the replacement value of the Plant. The Client shall effect a self-insurance arrangement in respect of all risk of loss or damage to the Client's Plant. The Supplier shall be responsible for any loss or damage to the Client's Plant for the first amount of any claim up to the value of the excess stated in the Contract Data unless such claim shall have been caused by the negligent act or omission of the Client, or the Client's servants, agents, suppliers or sub-suppliers. The Client 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

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

Insurance of  
Plant

amount stated in the Contract Data, whichever is the least, where such claim shall have been caused by the negligent act or omission of the Client, or the Client's servants, agents, suppliers or sub-suppliers.

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|------------------------------------|-----|--|
| Evidence of the Client's Insurance | 9.5 | As and when it is reasonably required to do so by the Supplier, the Client shall produce for inspection by the Supplier documentary evidence that the insurance required by Clause 9.3 is properly maintained.   |
| Breach by Supplier                 | 9.6 | Should the Supplier or any Sub-Supplier be in breach of any of their respective obligations under this Clause 9, the Client may itself insure against any risk in respect of which the default shall have occurred and may deduct a sum or sums equivalent to the amount paid or payable in respect of the premiums from any monies due or 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. |

## 10 Claims Handling Provisions

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|---------------------------|------|---|
| 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 Client shall supply the Supplier with a copy of each amendment thereto as and when it is made.  |
| Application of CAHA       | 10.2 | <p>These provisions shall apply:</p> <p>10.2.1 if this Agreement is in connection with the maintenance or operation of the Client's Railway Assets; and</p> <p>10.2.2 in respect of the period (if any) while the Supplier is an Independent Supplier; and</p> <p>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:</p> <ul style="list-style-type: none"> <li>(i) against the Client or the Agency, which may result in a claim being made against the Supplier; or</li> <li>(ii) against the Supplier, which may result in a claim being made against the Client or the Agency (whether by the Supplier or otherwise).</li> </ul> |
|                           | 10.3 | The Supplier irrevocably appoints the Client 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 <i>Supplier</i> 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 Client, the Supplier shall indemnify the Client and keep the Client indemnified against all losses, claims, liabilities, costs and expenses which are borne by the Client 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 Client 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 Client 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 Client's permitted business. The Supplier further agrees:
- (i) that the Client may grant sub-licences to other persons for the purposes stated in the licence granted above;
  - (ii) that the Client 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 Client; 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 Client, 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 Client a licence in accordance with the foregoing the Supplier shall procure that the third party grants a direct licence to the Client on industry acceptable terms.
- 11.2 The Supplier shall supply copies of the Documents to the Client and to the Client'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.
- 11.3 After the termination of the employment of the Supplier under this Agreement or expiry of the Term, the Supplier shall supply the Client with copies of such of the Documents as the Client may from time to time request (such copies to be in the form required by the Client, including hard copies and electronic copies) and the Client shall pay the Supplier's reasonable costs for producing such copies.
- 11.4 In performing the Services, the Supplier shall not infringe the Intellectual Property Rights of any third party. The Supplier shall indemnify the Client against all loss damage costs and

expenses for which the Client is or becomes liable as a result of any infringement or alleged infringement by the Supplier of any third party's Intellectual Property Rights.

11.5 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.

11.6 Notwithstanding Clause 11.1, the Client shall have no right to:

11.6.1 decompile any computer software which forms part of the Documents licensed to the Client in this Clause 11 nor shall the Client 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

11.6.2 manufacture any products in part or whole which are protected by Intellectual Property Rights licensed to the Client 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 Client in accordance with Clause 11.1 shall similarly apply these prohibitions to the sub-licensee of that computer software.

Confidentiality

11.7 For the purposes of this clause 11, the term "Disclosing Party" means a Party which discloses or makes available directly or indirectly its Confidential Information and "Recipient" means a Party which receives or obtains directly or indirectly Confidential Information.

11.8 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient:

11.8.1 treats the Disclosing Party's Confidential Information as confidential and keeps it in safe custody (which is appropriate depending on the form in which such materials are stored and the nature of the Confidential Information contained in those materials);

11.8.2 does not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;

11.8.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and

11.8.4 immediately notifies the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Disclosing Party's Confidential Information.

11.9 The Recipient is entitled to disclose the Confidential Information of the Disclosing Party where:

11.9.1 disclosure is a requirement of applicable law, including any requirements for disclosure of Transparency Information;

11.9.2 the information is already in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;

11.9.3 the information is given to the Recipient by a third party without obligation of confidentiality;

11.9.4 the information is already in the public domain at the time of disclosure otherwise than by a breach of this Agreement;

- 11.9.5 the information is independently developed without access to the other Party's Confidential Information; or
- 11.9.6 the information is disclosed to the Serious Fraud Office where the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 11.10 The Supplier may disclose Confidential Information to the people who are directly involved in providing the Services and who need to know the information, and ensures that such people are aware of and comply with these obligations as to confidentiality.
- 11.11 In the event that any default, act or omission of any Supplier's 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:
  - 11.11.1 the Supplier takes such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases; and
  - 11.11.2 to the fullest extent permitted by its own obligations of confidentiality to any Supplier's Personnel, the Supplier provides such evidence to the Client as the Client 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, including copies of any written communications to and/or from Supplier's Personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Supplier's Personnel in connection with obligations as to confidentiality.
- 11.12 At the written request of the Client, the Supplier procures that those members of the Supplier's Personnel identified in the Client's request signs a confidentiality undertaking prior to commencing any services in accordance with this Agreement.
- 11.13 Nothing in this Agreement prevents the Client from disclosing the Supplier's Confidential Information:
  - 11.13.1 on a confidential basis to any Crown Body for any proper purpose of the Client or of the relevant Crown Body;
  - 11.13.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
  - 11.13.3 to the extent that the Client (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - 11.13.4 on a confidential basis to a professional adviser, contractor, consultant, supplier or other person engaged by the Client or any Crown Body (including any benchmarking organisation) for any purpose connected with this Agreement,and for the purposes of the foregoing, references to disclosure is on a confidential basis means disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Client under this clause 11.
- 11.14 Nothing in this clause 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 Client's Plant or the condition or activities on the Route, Site or Client's property for the purposes of delivering the Services the Supplier shall not at any time take any photograph of the Client's Plant or infrastructure, and shall take 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 Client. 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 Client 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 Client and the Client'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.
	<b>12</b>	<b>Assignment and Sub-Contracting</b>
Assignment by Parties	12.1	The Client shall not assign charge or transfer this Agreement or any of its rights under it without the prior written consent of the 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 Client and: <ul style="list-style-type: none"> <li>12.1.1 any other body which substantially performs any of the functions that previously had been performed by the Client; or</li> <li>12.1.2 its direct or indirect holding companies and its direct or indirect subsidiaries (within the meaning of s1159 Companies Act 2006).</li> </ul>
	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 Client (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 Client'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.
	12.3A	The Supplier ensures that during the carrying out of the Services, it does not enter a sub-contract with: <ul style="list-style-type: none"> <li>12.3A.1 any sub-supplier that is on the debarment list on the basis of a mandatory exclusion ground within the meaning of the Procurement Act 2023 and associated regulations; or</li> <li>12.3A.2 any sub-supplier that is on the debarment list on the basis of a discretionary exclusion ground within the meaning of the Procurement Act 2023 and associated regulations, unless the Supplier has obtained the Client's prior written consent to the appointment of the relevant proposed sub-supplier.</li> </ul>

12.3B Unless agreed otherwise by the Client in writing, the Supplier includes in its subcontract with each Sub-Supplier provisions which:

12.3B.1 specify a period for payment of amounts due to the Sub-Supplier not greater than seven days after the final date for payment in this Agreement;

12.3B.2 include in the amount due to the Sub-Supplier payment for work which the Sub-Supplier has completed from the previous Assessment Day up to the current Assessment Day for which an application has been submitted by the Supplier; and

12.3B.3 allows the Client to publish the details of a late payment or non-payment if the time limits for payment in this clause 12.3B is exceeded.

12.3C The Supplier ensures that all Sub-Supplier are paid in accordance with these payment terms. If this does not happen, the Client can publish details of the late payment or non-payment.

12.3D The Supplier ensures that a term equivalent to clause 12.3B is included in each subcontract in its supply chain, such that each Sub-Supplier is obliged to include those terms in any of its own subcontracts in the supply chain for the delivery of this Agreement. References to the "Supplier" and "Sub-Supplier" in clause 12.3B are to be replaced with references to the respective sub-supplier who are parties to the relevant subcontract.

12.3E If requested by the Client, the Supplier provides a report to the Client setting out a summary of its compliance with clause 12.3B, such report to be certified by the Supplier's authorised representative as being accurate and not misleading.

Sub-letting  
does not  
relieve  
Supplier

12.4 No sub-contracting by the Supplier and no consent of the Client 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.

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 Client 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 Sub-Supplier 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 Client 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 Client, the Supplier shall provide reasonable documentary evidence to the Client that it is in compliance with its payment obligations under this Clause 12.6.

- 12.7 If the Supplier notifies the Client that the Supplier has failed to comply with its obligations under Clause 12.6.1, the Client can publish the details of the details of the non-compliance (including on government websites and in the press).

### 13 Protection of Personal Data

Data  
Protection

- 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).

- 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 this Agreement including without limitation for the purposes of Clause 11.15 (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 11.15 (Copyright, Intellectual Property, Confidentiality, Photographs and C&AG).

## 14 Employment Protection and TUPE

Notwithstanding anything to the contrary elsewhere in this Agreement:

- TUPE Indemnity
- 14.1 the Supplier shall be responsible for and shall indemnify and keep indemnified the Client 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**");
- Employee Data
- 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 Client's request, the Supplier shall (where TUPE is likely to apply) provide the Client 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 Client may reasonably require

(altogether the “**Employee Data**”). The Client 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-suppliers;

- 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 Client (“**Personnel Records**”) and shall (where TUPE is likely to apply) within 28 days of the Client’s request, whether during the performance of this Agreement or following the end of this Agreement (whether lawfully or otherwise) deliver up to the Client or to such person as the Client may nominate, the Employee Data, such copies of the Personnel Records as may be required by the Client and, to the extent not otherwise provided, any employee liability information pursuant to and in accordance with Regulation 11 of TUPE. The Client may communicate such information to persons intending to tender to execute services of the nature of the Services;

- 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 Client:

- 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;

Personnel  
Records

Contracts:  
Variation

- 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 Client, 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

TUPE  
indemnity

- 14.7 the Supplier shall indemnify and keep indemnified the Client 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 Client 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 Client's Facilities

Property in  
Facilities

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

Availability  
of Facilities

- 15.2 The Client shall make available to the Supplier the Client'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 Client 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 Client's Facilities or on any other property and the Supplier shall take all necessary steps to ensure that the title of the Client and the exclusion of any such lien are brought to the notice of all Sub-Suppliers and other persons dealing with the same.

## 16 Breakdowns and notice of accidents

- Breakdowns 16.1 If the Plant breaks down on the Client'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 Client'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 Client without the Supplier's consent in writing.

- 16.3 The Supplier shall, at its own cost, support and participate in any incident or accident investigation initiated by the Client, 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 Client 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 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 Client's Representative, suspend the performance of the Services or any part thereof for such time and in such manner as the Client'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 Client'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 Client's Representative following the principles set out in Clause 6. The Supplier shall take reasonable steps to reduce avoidable costs during any suspension.
- 18.4 In the event of suspension, the Supplier:
- 18.4.1 shall comply with the Client'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 Client'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**Supplier's  
breach/insolvency

- 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 Client 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 Client may, by notice to terminate forthwith the employment of the Supplier under this Agreement.

Termination for  
Procurement  
Act breaches

- 19.1A The Client may, by notice to terminate forthwith the employment of the Supplier under this Agreement if:

- 19.1A.1 in accordance with section 78, and/or section 79 (where applicable), of the Procurement Act 2023, and provided that the requirements of section 78(7) of the Procurement Act 2023 have been met:
- 19.1A.1.1 the Client considers that this Agreement was awarded or modified in material breach of the Procurement Act 2023 or regulations made under it;
  - 19.1A.1.2 the Supplier has, since the award of this Agreement, become an excluded supplier or excludable supplier (including by reference to an associated person) and provided that the conditions in sections 78(8) (where applicable) of the Procurement Act 2023 have been met;
  - 19.1A.1.2 any Sub-Supplier has, since the award of this Agreement, become an excluded supplier or excludable supplier as set out in section 57 of the Procurement Act 2023 and provided that the conditions in section 78(3) to 78(8) of the Procurement Act 2023 have been met,
- 19.1A.2 any Sub-Supplier has, since the award of this Agreement, become an excluded supplier or excludable supplier as defined in section 57 of the Procurement Act 2023, provided that prior to exercising its right of termination under this clause 19 the Client:
- 19.1A.2.1 has notified the Supplier of its intention to terminate under this clause 19, and why the Client has decided to terminate this Agreement;
  - 19.1A.2.2 has given the Supplier reasonable opportunity to make representations about whether this clause 19.1A.2 applies and the Client's decision to terminate and has given the Supplier a reasonable opportunity to end its subcontract with the excluded or excludable supplier, and if necessary, find an alternative Sub-Supplier,
- 19.1A.3 the Supplier has failed to provide notification under clause 38.1 as soon as reasonably practicable after the Supplier becomes aware that an exclusion ground within the Procurement Act 2023 and any associated regulations does or may apply to the Supplier;
- 19.1A.4 the Supplier has failed to provide notification under clause 38.1 as soon as reasonably practicable after the Supplier becoming aware of any changes to the Supplier's associated persons within the meaning of the Procurement Act 2023; and/or
- 19.1A.5 any notification or information provided by the Supplier under clause 38.1, 38.2 and/or 38.3 is incomplete, inaccurate or misleading.

Termination at  
will

- 19.2 The Client 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 Client if the Client 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 Client's rights, if the Client is entitled to terminate the employment of the Supplier under this Agreement for a reason stated in this Clause 19, the Client 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.

## 20 Consequences of Termination

- 20.1 If the Client, in exercise of the powers contained in Clause 19.1 (Termination) or 19.1A (Termination for Procurement Act breaches) 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 Client to the Supplier shall be suspended;
- 20.1.2 the Supplier shall pay to the Client the Client'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 Client may hire any persons in the employment of the Supplier and the Client may enter upon any premises under the control of the Supplier and take possession of all Client's Plant and equipment which are on 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 reasonable support to the Client to facilitate such further execution of the Services; and
- 20.1.4 if the Client (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 Client at a reasonable price.

- 20.2 If the Client, 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 Client upon such payment being made to the Supplier);

Payment  
following  
breach/insolve  
ncy

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 Client's property.

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 Client 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 Client's termination notice, and the Insolvency occurred after the last date on which the Client could have notified the Supplier in accordance with this Agreement that it intends to pay less than the notified sum, the Client shall not be required to make the payment.

20.6 Within [13] weeks after any termination, the Client carries out an assessment of the amount due from the Supplier to the Client, or due from the Client 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 Client 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

Each communication under these Conditions is sent by e-mail unless it is not practicable to do so. Each communication which the Agreement requires has effect when it is 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 to break the Term on a Break Date, notice of termination, a notice of suspension or a notice to refer a dispute, in respect of which the following table sets out the method by which such communications may be served under this Agreement and the respective deemed time and proof of service:

No Third Party  
Rights Service

Notices

<u>MANNER OF DELIVERY</u>	<u>DEEMED TIME OF SERVICE</u>	<u>PROOF OF SERVICE</u>
Email	9.00am on the first working day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a working day. Otherwise, delivery will occur at 9.00am on the next working day.	Properly addressed and delivered as evidenced by signature of a delivery receipt
Prepaid, Royal Mail Signed For™ 1st Class or other prepaid, next working day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a working day. Otherwise, delivery will occur at 9.00am on the same working day (if delivery before 9.00am) or on the next working day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

This clause does not apply to the service of legal proceedings or any documents in any legal action which is subject to the rules of a tribunal.

Adjudicator

## 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 its 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.

Adjudicator not liable

Courts & jurisdiction

## 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 Client and any other party and incorporating the Network Code.

Railway Costs

- 24.2 “Freight Access Agreement” means any agreement (excluding Track Access Agreements) entered into between the Client 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 Client in respect of any sums payable by the Client 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 Contract Data (the “**Railway Costs Cap**”).

## 25 Security

Security

- 25.1 The Supplier shall take reasonable steps and all steps required by the Agreement to prevent unauthorised persons being admitted to the Routes, Sites and the Client’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 Client’s pass whilst they are on the parts of the Client’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 Client’s Representative for acceptance, giving such other particulars as the Client’s Representative may reasonably require. On acceptance, the Client shall issue the passes to the Supplier. Each pass shall be returned to the Client when the person no longer requires access to that part of the Client’s property affected by the Services or after the Client has given notice under Clause 5.6 that the person is not to be allowed onto a Route, Site or the Client’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

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

Relief from Actions

The Supplier shall not be able to claim any relief from the Client 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

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 Client).

### 31 Compliance

The Supplier shall comply with the Corporate Social Responsibility Schedule.

### 32 Sharing of Information

32.1 The Supplier acknowledges that the Client is subject to the requirements of the FOIA, the EIRs, the Procurement Act 2023 and Procurement Policy Note. The Supplier:

32.1.1 provides all necessary assistance and cooperation as reasonably requested by the Client's Representative to enable the Client to comply with its obligations under the FOIA, EIRs and the Procurement Act 2023;

32.1.2 transfers to the Client's Representative all Requests for Information that it receives as soon as practicable and in any event within two working days of receiving the Request for Information;

32.1.3 provides the Client's Representative with a copy of all information in its possession or power (in a form specified by the Client's Representative) which is needed so the Client can:

- (i) publish the Transparency Information; and
- (ii) comply with any Request for Information,

within a reasonable timetable specified by the Client's Representative and in any event, in the case of a Request for Information, to enable the Client to respond to the Request for Information within five working days (or such other period as the Client's Representative may specify) and procures that its Sub-Suppliers do likewise.

32.2 The Supplier does not respond directly to a Request for Information unless authorised to do so by the Client's Representative.

32.3 The Client:

32.3.1 takes reasonable steps to notify the Supplier of a Request for Information 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 to the extent that it is permissible and reasonably practical for it to do so; and

32.3.2 acting reasonably seeks to apply the relevant exemption set out in the FOIA, the EIRs, any Procurement Policy Note or section 94 of the Procurement Act 2023 and any regulations published under it, to any Commercially Sensitive Information,

but (notwithstanding any other provision in this Agreement) the Client is responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure

### **33 Information Security**

- 33.1 The Supplier shall comply with the Client'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 Contract Data (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:

- (a) 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;
- (b) any losses directly caused by the fraud of the Supplier;
- (c) any liability of the Supplier under:
  - (i) Clause 11.1 to 11.6 (Copyright, Intellectual Property, Confidentiality, Photographs and C&AG);
  - (ii) Clause 11.7 to 11.16 (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 Other Losses;

Subject to Clause 37.2, in no event shall the Supplier be liable to the Client, 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 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 Client shall, as soon as reasonably practicable after receiving notice of a third party claim qualifying for an indemnity under this Agreement, give written notice to the Supplier specifying details of the third party claim.

## 38 Procurement Act exclusions

### 38.1 During the course of the Services the Supplier shall notify the Client as soon as reasonably practicable if:

38.1.1 the Supplier considers that an exclusion ground within the Procurement Act 2023 and any associated regulations applies to the Supplier, including where the Supplier is put on the debarment list or becomes an excluded or excludable supplier by virtue of any associated persons or sub-supplier where information relating to such was provided under section 28 of the Procurement Act 2023;

38.1.2 there are any changes to the Supplier's associated persons within the meaning of the Procurement Act 2023.

### 38.2 If the Supplier notifies the Client in accordance with clause 38.1 that it considers an exclusion ground applies to the Supplier, then the Supplier must promptly provide any information the Client reasonably requests in relation to the notification, including information to support an assessment of whether the circumstances giving rise to the exclusion event are continuing or likely to occur again.

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- 38.3 If the Supplier notifies the Client in accordance with clause 38.1 that there are any changes to the Supplier's associated persons, the Supplier must promptly provide any information reasonably requested by the Client in relation to the change to the Client's associated persons, including any information set out in the Procurement Regulations 2024.

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**CORPORATE SOCIAL RESPONSIBILITY SCHEDULE**

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

## SCOPE

### *Matters to consider when drafting the Scope*

- 1 The requirements for the Client 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 Client 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 Client'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 Client 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 Client's Facilities to be provided by the Client.
- 11 Daily Work Returns information which is required to be provided by the Supplier.
- 12 Any required qualifications and competency requirements for Supplier Personnel.

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- 13** Any specific restrictions on the Supplier's having possession of any of the Routes, Sites or the Client'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.
- 16** Project Insurance Manual.

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**CONTRACT REQUIREMENTS: HSEA**

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

**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 Client 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 Client
- 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 Client 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 Client.
  - (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 Scope and identify any that are publishable under the Procurement Act 2023 or PPNs)*

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 Client may give notice to the Supplier requiring the enhanced servicing of the relevant item of Plant.
- 2 The Client 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 Client 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**

[•]