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**Network Rail Conditions of Contract**

**for the**

**Provision of Labour Services**

The NR16 has been amended into two versions to ensure it aligns with the sourcing activity for a national solution for the below job roles.

| Sub-category                   | Strategy Group |
|--------------------------------|----------------|
| Track (Core)                   | Lots 1 - 11    |
| Civils (Core)                  |                |
| Trackworker Protection         |                |
| Semi Professional Grades (SPG) |                |
| Electrification (E&P)          | Lots 12 & 13   |
| Signalling (S&T)               |                |

The two strategy groups are sourced differently so each version of the contract has slightly different terms and KPIs to ensure the contract aligns with the sourcing approach.

The strategy for approach 1 (Lots 1-11) is based on a principle vendor approach where a single supplier is appointed for a geographic area. The principle vendor will be 100% accountable for delivering supply either directly or via a pre-approved list of sub-contractors.

The strategy for approach 2 (Lots 12 & 13) is based on multiple frameworks being awarded to a list of suppliers who are then ordered against via either a direct award or a mini competition depending on order value.

Prior to creating or awarding any versions of these contracts, please contact Route Services Supplier Management Team to ensure your requirements cannot be covered against the existing frameworks already in place.

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## **Network Rail Conditions of Contract**

**for the**

## **Provision of Labour Services**

[brief description]

Agreement No. [Insert]

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**THIS CONTRACT AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 20..

BETWEEN:

Network Rail Infrastructure Limited, a company registered in England and Wales (Company Registration Number 02904587) whose registered office is at Waterloo General Office, London, SE1 8SW ("**Network Rail**");

AND

[**NAME OF SUPPLIER**] a [company registered in ..... under number ..... whose registered] office is at [Supplier's Address] ("**the Supplier**").

## RECITALS:

Network Rail wishes to confirm the appointment of the Supplier to provide the Services and the Supplier is willing to provide the Services to Network Rail on the terms and conditions set out in this Agreement.

**Now this Agreement** witnesseth as follows:

- 1 This Agreement comprises this Contract Agreement together with the following documents which shall be read and construed as part of this Agreement and in the case of any ambiguity or discrepancy shall have the following order of priority:
  - 1.1 the Schedule of Post Tender Amendments;
  - 1.2 the Appendix;
  - 1.3 the relevant Call-Off Order;
  - 1.4 the Conditions; and
  - 1.5 the Schedules.
  
- 2 This Agreement commences on the Agreement Commencement Date and the Initial Term shall continue in force for a period of five years from the Agreement Commencement Date (and thereafter if extended by Network Rail pursuant to **Clause 3.2**).

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**THIS CONTRACT AGREEMENT** has been signed for and on behalf of the Parties the day and year written above.

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

Signed by )  
for and on behalf of )  
Network Rail )

Signature

Print name and position

Date:

Signed by )  
for and on behalf of )  
[Supplier] )

Signature

Print name and position

Date:

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**SCHEDULE OF POST TENDER AMENDMENTS**

The following documents comprise the post tender amendments expressly agreed between Network Rail and the Supplier and form part of the Agreement:

**None**

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- 1 **Agreement Commencement Date:**
- 2 **Contracting Units:**
- 3 **Details of Network Rail's Representative**  
Name:  
Address:  
Tel:  
Email:
- 4 **Details of the Supplier's Services Manager**  
Name:  
Address:  
Tel:  
Email:
- 5 **Insurance Cover:** The minimum insurance cover that the Supplier shall maintain on a per incident basis shall be:
  - 5.1 Employers Liability Cover: £5,000,000 (five million pounds).
- 6 **Address for service of notices and other documents in accordance with Clause 41:**

For Network Rail:

For the attention of: General Counsel

Address: Registered address as shown in Contract Agreement,

with a copy to:

1. [notices@networkrail.co.uk](mailto:notices@networkrail.co.uk); and
2. Network Rail's Representative by email.

For the Supplier:

For the attention of:

Address:

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**CONDITIONS****DEFINITIONS AND INTERPRETATION**

In this Agreement:

- 1.1** a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
- 1.2** a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to it whether replaced before or after the date of this Agreement;
- 1.3** headings are included in this Agreement for ease of reference only and do not affect the interpretation or construction of this Agreement;
- 1.4** the expression "person" means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture;
- 1.5** the words "including", "includes" and "included" will be construed without limitation unless inconsistent with the context; and
- 1.6** unless the context indicates otherwise the following expressions shall have the following meanings:

|                                      |  |
|--------------------------------------|--|
| <b>“Actual Value”</b>                | has the meaning given to it in <b>Clause 2.10</b> ;  |
| <b>“Affiliate”</b>                   | means in relation to a body corporate, any other entity which directly or indirectly Controls, or is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time; |
| <b>“Agency Workers Regulations”</b>  | means the Agency Workers Regulations 2010;   |
| <b>"Agreement"</b>                   | means this agreement, including the Schedules and all other documents referred to in this agreement;   |
| <b>"Agreement Commencement Date"</b> | means the date for commencement of this Agreement specified in the Appendix;   |
| <b>“Amber Performance Level”</b>     | means the level of performance for a KPI which is specified as such against the relevant KPI in Appendix A (Service Levels) of Schedule 3 (Management Information and Performance)                             |
| <b>“Appendix”</b>                    | means the information set out in the section of this Agreement entitled Appendix;  |
| <b>“Bid”</b>                         | means all information submitted by a Procured Supplier to Network Rail in response to the ITT as part of the Procurement;  |
| <b>“BPSS”</b>                        | means the baseline personnel security standard pre-employment checks as stated in HMG Personnel Security Controls and as may be amended from time to time;   |

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|-----------------------------------|--|
| <b>"Business Day"</b>             | means any day excluding Saturdays, Sundays or public or bank holidays in England;  |
| <b>"Call-Off Order"</b>           | means a binding agreement for the supply of Frontline Labour Workers entered into pursuant to <b>Clause 2.3</b> ;  |
| <b>"Charges"</b>                  | means the charges payable by Network Rail, in consideration of the due and proper performance of the Relevant Services under a Call-Off Order;   |
| <b>"CNI"</b>                      | means critical national infrastructure;  |
| <b>"Code of Conduct"</b>          | means Suppliers code of conduct as may be amended from time to time, including as set out in <b>Appendix C to Schedule 5</b> ;   |
| <b>"Commitment Value"</b>         | has the meaning given to it in <b>Clause 2.11</b> ;  |
| <b>"Confidential Information"</b> | means any information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential, however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel, Affiliates and suppliers (including Sub-contractors) of either Party, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential; |
| <b>"Contingency Lot"</b>          | means the Contract Lot to which the Procured Suppliers have all been appointed under the Procurement as set out in <b>Appendix D (Services) to Schedule 1 (Supplier Lots)</b> ;  |
| <b>"Contingency Lot Services"</b> | means all or any parts of the Services that are identified as being required to be provided by and pursuant to a Call-Off Order awarded under the Contingency Lot in accordance with <b>Clause 18A</b> ;   |
| <b>"Contract Lot"</b>             | means the lots comprised within the Procurement;   |
| <b>"Contract Year"</b>            | means: <ul style="list-style-type: none"> <li>(a) the First Contract Year;</li> <li>(b) thereafter each subsequent period of twelve months commencing on 1 April and ending on 31 March,</li> </ul> provided that the final Contract Year shall end on the expiry or termination of the Term;  |
| <b>"Contracting Authority"</b>    | means any contracting authority as defined in Regulation 4 of The Utilities Contracts Regulation 2016;   |
| <b>"Contracting Unit"</b>         | means the geographic area(s) specified in the Appendix (which may be updated by Network Rail from time to time upon written notice to the Supplier) in respect of which a  |

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|  | Call-Off Order may be entered into by Network Rail for the provision of the Relevant Services for that geographic area;  |
| <b>“Control”</b>                           | means the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and <b>“Controls”</b> and <b>“Controlled”</b> shall be interpreted accordingly;  |
| <b>“COOM Electronic Purchase Order”</b>    | means a form for the supply of Frontline Labour Workers (in a format identified by Network Rail from time to time);  |
| <b>“Crown”</b>                             | 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   |
| <b>“Core Service Levels”</b>               | means those Service Levels specified as being as such in column entitled ‘Core Service Level (Y/N)’ set out in <b>Appendix A to Schedule 3</b> , as the same may be varied, added to or replaced from time to time by the written agreement of the Parties during the continuance in force of this Agreement;  |
| <b>“Critical Service Failure”</b>          | means: <ul style="list-style-type: none"> <li>(a) the Supplier accruing in aggregate Service Credits which meet or exceed £200,000.00 in any period of 12 months; or</li> <li>(b) the Supplier accruing Service Credits which meet or exceed the Service Credit Cap;</li> </ul>  |
| <b>“Crown”</b>                             | 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;  |
| <b>“Employment Claims and Liabilities”</b> | means all losses, damages, costs, actions, awards, penalties, fines, proceedings, payments due under any contract of employment, claims, demands, liabilities (including without limitation any liability to tax and/or national insurance and any liability to pay a redundancy payment), and expenses (including, without limitation, legal and other professional fees and expenses) in connection with employment or termination of employment and/or in connection with any breach or alleged breach of TUPE; |

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| “Estimated Year 1 Charges”         | means the estimated Charges payable by Network Rail during the period of 12 months from the Agreement Commencement Date;   |
| “Excluded Supplier”                | has the meaning given to it in <b>Schedule 9</b> (Mini-Competition Request);   |
| “First Contract Year”              | means the period from the Agreement Commencement Date until 31 March 2022;   |
| “Fixed Charges”                    | means the following charges in the Supplier’s Bid:<br><br>(a) [INSERT];<br><br>which will not be subject to change in the Mini-Competition Response;   |
| “Force Majeure Event”              | means any of the following: riot, civil unrest, war, act of terrorism, threat or perceived threat of act of terrorism, fire, earthquake, extraordinary storm, flood, abnormal weather conditions or other natural catastrophe or strikes, lock-outs or other industrial disputes (in each case excluding the workforce of the Supplier), epidemic or pandemic, to the extent that such event has materially affected the ability of the Party relying on the Force Majeure Event ("Affected Party") to perform its obligations in accordance with the terms of this Agreement but excluding any such event insofar as it arises from or is attributable to the wilful act, omission or negligence of the Affected Party or the failure on the part of the Affected Party to take reasonable precautions to prevent such Force Majeure Event or its impact; |
| “Forecast Value”                   | has the meaning given to it in <b>Clause 2.9</b> ;   |
| “Form of Tender”                   | means the form of tender set out in <b>Appendix B</b> (Form of Tender) to <b>Schedule 9</b> (Mini-Competition Request);  |
| “Frontline Labour Booking Process” | means the ordering procedures for the Relevant Services as set out in <b>Clause 2.6</b> ;  |
| “Frontline Labour Worker”          | means a person who is supplied by the Supplier to Network Rail in accordance with a COOM Electronic Purchase Order for the purpose of carrying out the Services;   |
| “Good Industry Practice”           | means at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like Network Rail, such supplier seeking to comply with the contractual obligations in full and complying with applicable Laws;   |
| “Green Performance Level”          | means the level of performance for a KPI which is specified as such against the relevant KPI in <b>Appendix A</b> (Service   |

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|  | Levels) of <b>Schedule 3</b> (Management Information and Performance);   |
| <b>"HMG Personnel Security Controls"</b> | means the relevant document setting out the government's personnel security and national security vetting policies, as amended from time to time;  |
| <b>"Holding Company"</b>                 | means any company which from time to time directly or indirectly controls the Supplier where "control" is as defined by section 1124 of the Corporations Tax Act 2010;   |
| <b>"Index"</b>                           | means the United Kingdom consumer prices index published by the Office for National Statistics;  |
| <b>"Industry Regulator"</b>              | means any statutory or non statutory body with responsibility for regulating (or promoting self regulation of) the provision of the type of services being offered by the Supplier;  |
| <b>"Initial Term"</b>                    | means the initial term as set out in the Contract Agreement;   |
| <b>"Insolvency Event"</b>                | means any of the following: <ul style="list-style-type: none"> <li>(a) the Supplier and/or the Holding Company making any voluntary arrangement with its creditors;</li> <li>(b) a receiver, administrative receiver or manager, being appointed over all or part of the business of the Supplier and/or the Holding Company;</li> <li>(c) an administrator being appointed in respect of the Supplier and/or the Holding Company of the Supplier and/or the Holding Company becoming subject to an application for administration;</li> <li>(d) being a company, the Supplier and/or the Holding Company having passed a resolution for its winding-up or being subject to a petition for its winding-up (except for the purposes of a voluntary amalgamation, reconstruction or other re-organisation without insolvency);</li> <li>(e) the Supplier and/or the Holding Company ceasing or threatening to cease to carry on its business for any reason and/or being unable to pay its debts within the meaning of the Insolvency Act 1986;</li> <li>(f) any similar event to those in (a) to (e) above occurring in relation to the Supplier and/or the Holding Company under the law of any applicable jurisdiction for those purposes;</li> </ul> |
| <b>"Intellectual Property Rights"</b>    | means any patent, know-how, trade mark or name, service mark, design right (in each case whether registered or unregistered), copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, whether registered or unregistered and including applications for the grant of any  |

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|   | such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;  |
| <b>“Intermediaries Legislation” (IR35)</b>    | means Income Tax (Earnings and Pensions) Act 2003 (ITEPA), Social Security Contributions and Benefits Act 1992 (SSCBA) and all other related statutes and regulations including the Finance Act 2017;   |
| <b>“ITT”</b>                                  | means the invitation to tender issued by Network Rail pursuant to the Procurement;  |
| <b>“Key Performance Indicators” or “KPIs”</b> | means the key performance indicators set out in section 1 of <b>Appendix A</b> (Service Levels) of <b>Schedule 3</b> (Management Information and Performance);  |
| <b>“KPI Failure”</b>                          | means achievement of the Red Performance Level in respect of a Key Performance Indicator;   |
| <b>“Law”</b>                                  | means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply; |
| <b>“Losses”</b>                               | means all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and judgments;   |
| <b>“Managed Stations”</b>                     | means any station in respect of which Network Rail is the facility owner as defined in section 17(6) of the Railways Act 1993;  |
| <b>“Management Information”</b>               | means the management information set out in paragraph 2 to <b>Appendix A</b> (Service Levels) of <b>Schedule 3</b> (Management Information and Performance), including real time management information on usage and spend;   |
| <b>“Mini-Competition Process”</b>             | means, in respect of the Contingency Lot, the process to be followed in compliance with the Mini-Competition Rules initiated by the issue of a Mini-Competition Request in accordance with <b>Schedule 10</b> provided that Network Rail reserves the right at its discretion from time to time to amend the process to reflect best practice and applicable Law;   |
| <b>“Mini-Competition Request”</b>             | means a request for a Mini-Competition Response from Network Rail to the Procured Suppliers in respect of the Contingency Lot;  |

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| <b>“Mini-Competition Response”</b>                | means a Procured Supplier’s response to a Mini-Competition Request in respect of the Contingency Lot;   |
| <b>“Mini-Competition Rules”</b>                   | <p>the procedural rules relating to the Contingency Lot pursuant to which:</p> <p>(a) each of the Procured Suppliers in respect of which a Mini-Competition Request may have been made from time to time, shall be required to submit Mini-Competition Response;</p> <p>(b) the Mini-Competition Response shall be evaluated; and</p> <p>(c) to the extent applicable a Call-Off Order may be awarded,</p> <p>being the rules set out in <b>Schedule 11</b> as may be extended, amplified or otherwise adjusted by the terms of a Mini-Competition Request;</p> |
| <b>“Network Rail’s Code of Business Ethics”</b>   | means Network Rail’s code of business ethics, including as set out in <b>Appendix B</b> to <b>Schedule 5</b> , and as may be amended from time to time;   |
| <b>“Network Rail’s Representative”</b>            | means the person designated as such in the Appendix or as notified by Network Rail to the Supplier from time to time;   |
| <b>“Network Rail’s Representative Assistants”</b> | means the persons notified by Network Rail’s Representative to the Supplier from time to time to assist Network Rail’s Representative carry out the duties defined in this Agreement;   |
| <b>“NRSP”</b>                                     | means the national railways security programme as amended from time to time;  |
| <b>“Other Supplier”</b>                           | <p>means a supplier appointed by Network Rail other than in accordance with this Agreement to provide services under a Contract Lot being, as at the date of this Agreement (as amended, replaced or superseded from time to time):</p> <p>(a) [INSERT];</p> <p>(b) [INSERT];</p> <p>(c) [INSERT];</p> <p>(d) [INSERT];</p> <p>(e) [INSERT];</p> <p>(f) [INSERT];</p> <p>(g) [INSERT];</p> <p>(h) [INSERT];</p> <p>(i) [INSERT]; and</p> <p>(j) [INSERT];</p>   |

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|                                  |   |
|----------------------------------|---|
| <b>“Other Supplier Contract”</b> | means any contract between Network Rail and an Other Supplier on similar terms to this Agreement;   |
| <b>"Parties"</b>                 | means Network Rail and the Supplier (including their successors and permitted assignees) and <b>"Party"</b> shall mean either of them as the case may be;   |
| <b>“Performance Failure”</b>     | means any failure to achieve a Green Performance Level in respect of any Service Level;   |
| <b>“Planned Services”</b>        | means any planned maintenance services which are planned by Network Rail to be delivered in accordance with its planned work bank but excluding any unplanned or ad hoc services;   |
| <b>"Premises"</b>                | means any land or premises (including temporary buildings) owned or occupied by or on behalf of Network Rail;   |
| <b>“Principal Contractor(s)”</b> | means any third party contractor who provides construction services to Network Rail;  |
| <b>“Procured Suppliers”</b>      | means the Supplier and the Other Suppliers;   |
| <b>“Procurement”</b>             | means the procurement undertaken by Network Rail pursuant to <b>[INSERT OJEU NUMBER]</b> comprising the Contract Lots;  |
| <b>“Qualifying Period”</b>       | means the 12-week qualifying period as defined in regulation 7 of the Agency Workers Regulations, subject always to regulations 8 and 9 of the Agency Workers Regulations;  |
| <b>“Qualifying Personnel”</b>    | means any Supplier’s Personnel who at the relevant time is entitled to the rights conferred by regulation 5 of the Agency Workers Regulations and in particular has been provided to Network Rail (whether by the Supplier or any third party) for the Qualifying Period;   |
| <b>“Real Living Wage”</b>        | 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;   |
| <b>“Records”</b>                 | means records pertaining to all activities relating to the performance of the Services and the Supplier's obligations under this Agreement and all Call-Off Orders and all transactions entered into by the Supplier for the purposes of this Agreement (including time-sheets for the Frontline Labour Workers); |
| <b>“Red Performance Level”</b>   | means the level of performance for a KPI which is specified as such against the relevant KPI in <b>Appendix A</b> (Service Levels) of <b>Schedule 3</b> (Management Information and Performance);   |



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| <b>"Regulatory Bodies"</b>             | means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of Network Rail and <b>"Regulatory Body"</b> shall be construed accordingly;                                     |
| <b>"Relevant Services"</b>             | means the particular Services that are identified as being required to be provided by and pursuant to a Call-Off Order;   |
| <b>"Relevant Terms and Conditions"</b> | means the relevant terms and conditions for any particular Qualifying Personnel as defined in regulation 6 of the Agency Workers Regulations;   |
| <b>"Repeat KPI Failure"</b>            | has the meaning given to it in paragraph 3.4 to <b>Schedule 3</b> (Management Information and Performance);   |
| <b>"Replacement Supplier"</b>          | any replacement supplier or provider appointed (or proposed to be appointed) by Network Rail to provide services the same as or substantially similar to the Services (or any part of them) or which will, or may, be received in place of or in substitution for the Services (or any part of them);   |
| <b>"Sentinel"</b>                      | means the Sentinel safety system in use across the rail industry;   |
| <b>"Service Credit Cap"</b>            | means: <ul style="list-style-type: none"> <li>(a) in the period of 12 months from the Agreement Commencement Date, 4% of the Estimated Year 1 Charges; and</li> <li>(b) during the remainder of the Term, 4% of the Charges paid and/or due to be paid to the Supplier under this Agreement in the period of 12 months immediately preceding the Service Period in respect of which Service Credits are accrued;</li> </ul> |
| <b>"Service Credits"</b>               | means credits payable by the Supplier due to the occurrence of one or more KPI Failures calculated in accordance with <b>paragraph 3</b> of <b>Schedule 3</b> ;   |
| <b>"Service Levels"</b>                | means the standards of performance (including KPIs and Subsidiary Performance Indicators) to which the Services are to be provided by the Supplier to Network Rail as set out in <b>Schedule 3</b> and elsewhere in this Agreement as the same may be varied, added to or replaced from time to time by the written agreement of the Parties during the continuance in force of this Agreement;                             |
| <b>"Service Period"</b>                | means the periodicity over which a Service Level is measured as set out against the relevant Service Level in <b>Appendix A</b> (Service Levels) of <b>Schedule 3</b> (Management Information and Performance);   |

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| <b>"Services"</b>                          | <p>means:</p> <p>(a) subject to <b>Clause 32.6</b> all or any part of the services to be provided to, or activities to be undertaken and completed for, Network Rail by the Supplier under this Agreement and forming part of a Call-Off Order (including the Relevant Services) for the time being as detailed in the Specification (including the Planned Services) including any variations to such services and/or activities pursuant to <b>Clause 18</b>; and</p> <p>(b) any services, functions or responsibilities which may be reasonably regarded as incidental to the foregoing services or activities and which may be reasonably inferred from this Agreement;</p> |
| <b>"Services Commencement Date"</b>        | means the date for commencement of the Relevant Services as set out in each Call-Off Order;   |
| <b>"Services Manager"</b>                  | means the person named as such in the Appendix or such other person notified to Network Rail from time to time who shall represent the Supplier in respect of the Services provided under this Agreement;   |
| <b>"Specification"</b>                     | means the specification and other requirements set out in <b>Schedule 1</b> for the Services;   |
| <b>"Subsidiary Performance Indicators"</b> | means the subsidiary performance indicators set out in section 2 of <b>Appendix A</b> (Service Levels) of <b>Schedule 3</b> (Management Information and Performance)  |
| <b>"Sub-contract"</b>                      | means any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;   |
| <b>"Sub-contractor"</b>                    | <p>means any third party with whom:</p> <p>(a) the Supplier enters into a Sub-contract; or</p> <p>(b) a third party under (a) above enters into a Sub-contract, or the servants or agents of that third party;</p>  |
| <b>"Supplier's Key Personnel"</b>          | means the individuals listed in <b>Schedule 8</b> , as may be amended from time to time in accordance with <b>Clause 6.1</b> ;  |
| <b>"Supplier's Personnel"</b>              | means any employees, officers, suppliers, sub-contractors and agents of the Supplier and including the Frontline Labour Workers;  |

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|                           |  |
|---------------------------|--|
| <b>"Term"</b>             | means the Initial Term and any period in which this Agreement continues in force pursuant to a further extension in accordance with <b>Clause 3.2</b> ;  |
| <b>"TUPE"</b>             | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 or any successor legislation;   |
| <b>"Variable Charges"</b> | means the following charges in the Supplier's Bid:<br><br>(a) [INSERT];<br><br>which may be subject to change in a Mini-Competition Response only in accordance with the Mini-Competition Rules; and |
| <b>"VAT"</b>              | means value added tax as provided for in the Value Added Tax Act 1994 and any tax replacing the same or of a similar nature.   |

**2 Agreement**

**2.1** The purpose of this Agreement is to:

**2.1.1** confirm the Services to be provided by the Supplier;

**2.1.2** confirm the mechanism and procedures for ordering the Services, including a mechanism whereby Network Rail may, from time to time, enter into a Call-Off Order with the Supplier with regards to the provision of the Relevant Services for a particular Contracting Unit and Contract Lot utilising COOM Electronic Purchase Orders; and

**2.1.3** set out the obligations of the Parties.

**2.2** Network Rail's requirements may vary and this Agreement shall not place Network Rail under any obligation to procure the Services from the Supplier at a particular time or at all. This Agreement is not an exclusive arrangement and nothing in this Agreement shall operate to prevent Network Rail from engaging any other organisations or persons to provide services similar to or the same as the Services.

**2.3** Each Call-Off Order will incorporate the terms and conditions set out in this Agreement, together with the information and any additional special conditions set out in the relevant COOM Electronic Purchase Order, to the exclusion of all other terms and conditions. Each Call-Off Order shall be formed on the issuing of a COOM Electronic Purchase Order by Network Rail to the Supplier and acceptance by the Supplier in accordance with this **Clause 2.3, Clause 2.6** and **Clause 7**. No Call-Off Order will come into existence until a COOM Electronic Purchase Order is issued by Network Rail to the Supplier.

**2.4** Subject to **Clause 2.5**, the Supplier shall procure that the Services must not commence without a Call-Off Order being formed in accordance with **Clause 2.3** and that the terms of the Call-Off Order are complied with. All Charges in respect of a Call-Off Order shall be set out in the relevant COOM Electronic Purchase Order and shall not exceed the rates set out in **Schedule 2**.

**2.5** Where Network Rail has an emergency requirement for Frontline Labour Workers without a COOM Electronic Purchase Order being in place Network Rail's Representative may make

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such requirement known to the Supplier who will supply such Frontline Labour Workers to Network Rail under the terms of this Agreement. The parties agree that in such circumstances they will work together to put in place a COOM Electronic Purchase Order, for the relevant Frontline Labour Workers as soon as possible.

- 2.6** Network Rail shall make labour booking using Call Off Order Management (COOM) which is an electronic booking system. A COOM Electronic Purchase Order will be sent to the Supplier via i-Supplier. Notifications will be sent electronically to the Supplier via the i-Supplier Portal to alert them that an order requires acknowledgment within 48 hours. Without prejudice to **Clause 18A.2**, on receipt of the COOM Electronic Purchase Order, the Supplier may, in circumstances where Network Rail has sent the COOM Electronic Purchase Order less than 48 hours' prior to when the Frontline Labour Workers are required only, reject a COOM Electronic Purchase Order and in all other circumstances will accept a COOM Electronic Purchase Order. COOM Electronic Purchase Orders that are not accepted by the Supplier will be recorded as part of the Service Levels. Accepted COOM Electronic Purchase Orders will be final and binding on the parties, and the Supplier will provide the required personnel at the rates agreed in **Schedule 2**. The Supplier shall provide Network Rail with an email address to be used for all i-Supplier notifications.
- 2.7** The Supplier shall immediately notify Network Rail if the Supplier is at any time unable to supply Frontline Labour Workers requested by Network Rail for any COOM Electronic Purchase Order that has been accepted pursuant to **Clause 2.6**. Nothing in this **Clause 2.7** shall relieve the Supplier of its obligations under this Agreement or the relevant Call-Off Order or otherwise prejudice the rights and remedies of Network Rail.
- 2.8** Without prejudice to **Clause 2.2**, in the event of the Supplier either rejecting a COOM Electronic Purchase Order under **Clause 2.6** or notifying Network Rail that it is unable to supply Frontline Labour Workers:
- 2.8.1** Network Rail may engage any other organisations or persons to provide such services (including, for the avoidance of doubt, any Other Supplier); and
- 2.8.2** the Forecast Value for the relevant Contract Year will be reduced by the volume of Services that the Supplier has either rejected under the relevant COOM Electronic Purchase Order under **Clause 2.6** and/or notified Network Rail that it is unable to supply.

### Forecasting

- 2.9** Subject to **Clause 2.8**, at least ten Business Days prior to the commencement of each Contract Year, Network Rail will provide the Supplier with a forecast of the Services to be provided by the Supplier under and in accordance with the Agreement (including all Call-Off Orders) for the next Contract Year, which may include details of the forecasted:
- 2.9.1** volume of work (by time);
- 2.9.2** personnel requirements (by grade);
- 2.9.3** locations where the Services will be performed; and
- 2.9.4** timescales for the provision of the Services,
- and Network Rail will also provide the Supplier with a forecast of the aggregate monetary value of the Planned Services to be provided by the Supplier under and in accordance with the Agreement (including all Call-Off Orders) for the next Contract Year (the "**Forecast Value**").

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- 2.10** Within twenty Business Days following the end of each Contract Year, the Supplier will indicate to Network Rail (for Network Rail's review and approval) the actual aggregate monetary value of the Services provided by the Supplier under and in accordance with the Agreement (including all Call-Off Orders) for the preceding Contract Year (the "**Actual Value**").
- 2.11** Subject to **Clause 2.12** and **Clause 2.13**, in the event that the Actual Value is less than 80% of the Forecast Value ("**Commitment Value**"), Network Rail will pay to the Supplier the difference between the Actual Value and the Commitment Value in accordance with **Clause 10**.
- 2.12** Network Rail reserves the right to amend the Forecast Value and/or the Commitment Value in the event of the occurrence of unforeseen events which are beyond the reasonable control of either party.
- 2.13** **Clause 2.11** will not apply:
- 2.12.1** where, in the relevant Contract Year, the Supplier fails to achieve any of the Core Service Levels on one or more occasions; and/or
  - 2.12.2** in respect of the First Contract Year or final Contract Year (where no such payment will apply); and/or
  - 2.12.3** where the Supplier reaches the Service Credit Cap.

### **3 Commencement and Duration**

- 3.1** This Agreement (but not a Call-Off Order) commences on the Agreement Commencement Date and continues in force for the Initial Term (and thereafter if extended by Network Rail pursuant to **Clause 3.2**).
- 3.2** Network Rail may, in its sole discretion and on one or more occasions, elect to extend the Initial Term for any period (provided always that the maximum aggregate period of extension shall not exceed three years) by giving a minimum of thirty days' written notice to that effect to the Supplier prior to the date on which this Agreement would otherwise have expired.
- 3.3** Each Call-Off Order shall commence on the Services Commencement Date and continue for the term set out in the relevant Call-Off Order, provided that the term of the Call-Off Order may not extend beyond the termination or expiry of this Agreement.

### **4 Appointment of Supplier**

Network Rail hereby appoints the Supplier to provide and the Supplier agrees that it shall provide the Services with effect from the Agreement Commencement Date, subject to and in accordance with the terms of this Agreement.

### **5 The Services**

- 5.1** The Supplier:
- 5.1.1** shall provide or procure that the Relevant Services provided pursuant to each Call-Off Order are provided in accordance with this Agreement and the terms of the relevant Call-Off Order;
  - 5.1.2** acknowledges that it has sufficient information about Network Rail, the Specification and the Service Levels and that it has made all appropriate and necessary enquiries to enable it to perform the Services in accordance with this Agreement and the terms of the relevant Call-Off Order;

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- 5.1.3** shall neither be entitled to any additional payment nor excused from any obligation or liability under this Agreement or the relevant Call-Off Order due to any misinterpretation or misunderstanding by the Supplier of any fact relating to the Specification, Service Levels or otherwise to this Agreement; and
- 5.1.4** shall comply with all lawful and/or reasonable directions of Network Rail relating to its performance of the Services.
- 5.2** The Supplier shall provide the Relevant Services under each Call-Off Order:
- 5.2.1** with all due skill, care and diligence normally exercised by recognised professional firms or by highly skilled and experienced service providers providing services of a similar scope, type and complexity to the Services and with sufficient resources;
- 5.2.2** in conformance in all respects with the Specification and so that they fulfil the purpose indicated by or to be reasonably inferred from the Specification;
- 5.2.3** in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner; and
- 5.2.4** on the basis of providing continuous improvement and innovation in the delivery of the Services, including attendance to at least one supplier management innovation forum as specified by Network Rail from time to time,
- and the Supplier shall ensure that any Sub-contractor appointed to provide the Services meets the competency requirements as set out in this Agreement and/or the relevant Call-Off Order.
- 5.3** In entering into this Agreement, Network Rail has relied upon the Supplier's representation that it is an independent company, business or partnership carrying on a business on its own account and that it has the skills, experience and qualifications to enable it to perform the Services to the standards specified and required by Network Rail.
- 5.4** Where reasonably requested to do so by Network Rail, and with agreement from the Supplier, the Supplier shall enter into an agreement with any Principal Contractor or Network Rail preferred service provider that is identified in writing by Network Rail for the provision of Frontline Labour Workers on terms and conditions (including as to price) that are substantially the same as those set out in this Agreement. For the avoidance of doubt, Network Rail shall have no liability to the Supplier in respect of any agreement entered into by the Supplier and any Principal Contractors or Network Rail preferred service providers pursuant to this **Clause 5.4**.
- 6 Supplier's Personnel**
- 6.1** The Supplier's Key Personnel shall carry out the Services unless otherwise agreed with Network Rail's Representative (whose agreement shall not be unreasonably withheld or delayed).
- 6.2** Network Rail's Representative shall be entitled on written notice to require the Supplier to terminate immediately any person's involvement with the provision of the Services when, in the reasonable opinion of Network Rail's Representative, it considers it undesirable and/or unnecessary for them to continue. The Supplier shall, if so required by Network Rail's Representative, as soon as reasonably practicable replace any person so removed with a suitable person to be agreed by Network Rail's Representative.
- 6.3** The Supplier shall undertake BPSS pre-employment checks for all of the Supplier's Personnel that have access to any of Network Rail's premises and/or IT networks.

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- 6.4** Under the NRSP, some of the Supplier's Personnel will be required to complete additional security checks as outlined in HMG Personnel Security Controls. This applies to CNI sites and Managed Stations and those with access to CNI systems and information on sensitive train movements. Network Rail's Representative may, at any time, designate other roles requiring these additional security checks.
- 6.5** The Supplier shall prevent the Supplier's Personnel who are unable to obtain the required security clearances from accessing any of Network Rail's premises and/or IT networks.
- 6.6** Under the NRSP, all of the Supplier's Personnel are required to undergo biennial statutory security training. These training records shall be kept for five years and be available on request. The training material will be provided by Network Rail through e-learning at no additional cost to the Supplier.

## **7 Frontline Labour Workers**

- 7.1** The Supplier shall supply Frontline Labour Workers to Network Rail in accordance with the Frontline Labour Booking Process. The Supplier shall be responsible for the employment of Frontline Labour Workers or the engagement of the Frontline Labour Workers.
- 7.2** The Supplier shall only supply Frontline Labour Workers who meet any minimum criteria specified by Network Rail in respect of the relevant Call-Off Order and who have the right to work in the UK.
- 7.3** Prior to proposing a Frontline Labour Worker for a potential Call-Off Order, the Supplier shall:

**7.3.1** carry out the following verification checks:

**7.3.1.1** 'Sentinel' accreditation check;

**7.3.1.2** an identity check to confirm the identity and status of the proposed Frontline Labour Worker;

**7.3.1.3** a work status check to confirm that the proposed Frontline Labour Worker has all of the necessary administrative authorisations, including entry visas, residence permits and work permits for the United Kingdom;

**7.3.1.4** such further checks and clearances as Network Rail may require, including criminal records and security clearance checks; and

**7.3.1.5** review the proposed Frontline Labour Worker's previous work history for Network Rail. The Supplier shall not supply any Frontline Labour Workers that are prohibited under the Specification,

and the Supplier shall make available full details of the results of such checks and references (including copies of the actual results and references) to Network Rail upon request;

**7.3.2** ensure and obtain written evidence that the proposed Frontline Labour Worker has the experience, training, qualifications and any authorisation which Network Rail considers necessary or which are required by any applicable law or professional body;

**7.3.3** ensure that all Frontline Labour Workers whose duties make it necessary pursuant to Network Rail's drugs and alcohol policies have a certificate of compliance and agree to comply with all applicable screening arrangements; and

**7.3.4** ensure that the proposed Frontline Labour Worker has taken and passed a medical assessment, where deemed necessary by Network Rail.

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- 7.4** In relation to checks carried out by the Supplier pursuant to **Clause 7.3.1.3**, the Supplier acknowledges that Network Rail may request that such checks be repeated from time to time in respect of Frontline Labour Workers. On receipt of such requests from Network Rail, the Supplier shall carry out such repeat checks and make available the results to Network Rail.
- 7.5** The Supplier shall ensure that the Frontline Labour Workers:
- 7.5.1** possess all of the qualifications, experience and skills required by Network Rail to carry out the Relevant Services provided under the Call-Off Order in question;
  - 7.5.2** comply at all times with all relevant statutes, laws, regulations and codes of practice from time to time in force and applicable to Network Rail's business and operation;
  - 7.5.3** are informed of and comply with Network Rail's working practices and requirements, including policies usually supplied to Network Rail's employees relating to health and safety, security, business and operational ethics, drugs and alcohol and personal conduct and any other on site regulations specified by Network Rail for personnel working at the Premises or accessing any computer systems, including policies for email and internet use; and
  - 7.5.4** perform the Services with all due skill, care and diligence and in accordance with good industry practices and at all times in an honest and professional manner.
- 7.6** The Supplier shall:
- 7.6.1** observe all reasonable directions and instructions given by Network Rail in relation to the finding, evaluation and selection of Frontline Labour Workers; and
  - 7.6.2** be available to Network Rail upon reasonable request for the purposes of consultation and advice relating to the Services and the Frontline Labour Workers from time to time.
- 7.7** Any changes made to the criteria for Frontline Labour Workers by Network Rail or as a result of any changes in applicable legislation, regulations or codes of practice shall be considered as a variation of the services and shall be dealt with in accordance with the provisions of **Clause 18**.
- 8 COOM Electronic Purchase Orders**
- 8.1** The Supplier shall ensure that all proposed Frontline Labour Workers match the requirements set out in the accepted COOM Electronic Purchase Order.
- 8.2** Each COOM Electronic Purchase Order shall specify the relevant Contracting Unit and Contract Lot to which the Relevant Services will be provided, which, for the avoidance of doubt, will be a Contracting Unit and Contract Lot which the Supplier has been appointed to pursuant to the Procurement.
- 8.3** The Supplier shall not (and does not have any authority to) enter into a contract with a Frontline Labour Worker on behalf of Network Rail or in Network Rail's name.
- 9 Charges**
- 9.1** The Supplier shall submit timesheets in accordance with the procedures set out in **Clause 10** and in consideration of, and subject to the due performance of the Services by the Supplier, Network Rail shall pay the Supplier the Charges in accordance with those procedures and any other terms and conditions of this Agreement.



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- 9.2** The Supplier shall not be entitled to reimbursement for expenses (including any expenses of the Frontline Labour Workers). For the avoidance of doubt, the Supplier acknowledges that it shall be responsible for the Supplier's Personnel's costs of travel.
- 9.3** All Charges exclude VAT which may be chargeable at the rate applicable at the time of self-billing.
- 10 Timesheets, Payment Procedures and Approvals**
- 10.1** The hours worked by each Frontline Labour Worker will be notified to the Supplier on timesheets completed as required by Network Rail by the relevant Frontline Labour Worker and, where reasonably possible, duly authorised by a Network Rail representative on site. Timesheets will be in line with the Network Rail Template an example of which is included in Appendix D to **Schedule 2**.
- 10.2** Network Rail and the Supplier agree to act in good faith to agree a timesheet in the event that there is any dispute by Network Rail in respect of the number of hours worked by a Frontline Labour Worker.
- 10.3** Within 14 days of receipt of a properly presented and signed timesheet in accordance with **Clause 10.1**, Network Rail shall operate a self-billing process for the Services properly delivered by receipting the Services and raising a self-billing invoice on behalf of the Supplier in accordance with the procedure set out in **Schedule 6** of this Agreement, which procedure constitutes a self-billing agreement between Network Rail and the Supplier for the purposes of Regulation 13 of the Value Added Tax Regulations 1995. This information shall be available for the Supplier to view on i-Supplier. The Supplier shall then be paid within 21 days from the date of the self-billing invoice and the Supplier shall not make any separate charge for submitting any timesheets.
- 10.4** The Supplier shall submit timesheets in line with the agreed central receipting process detailed in Appendix C to **Schedule 2** and shall ensure that each timesheet contains all information required by Network Rail including the Supplier's name and address, the Agreement Number, the applicable purchase order number, signed and dated showing the hours and the type of work that the Frontline Labour Workers have completed for Network Rail, whether the Frontline Labour Workers have taken meal breaks (and, if so, for how long) and the Supplier's VAT number.
- 10.5** No payment made by Network Rail (including any final payment) or act or omission or approval by Network Rail or Network Rail's Representative (whether related to payment or otherwise) shall:
- 10.5.1** indicate or be taken to indicate Network Rail's acceptance or approval of the Services or any part of them or any act or omission of the Supplier, or otherwise prejudice any rights, powers or remedies which Network Rail may have against the Supplier, or absolve the Supplier from any obligation or liability imposed on the Supplier under this Agreement or a Call-Off Order; or
- 10.5.2** prevent Network Rail from recovering any amount overpaid or wrongfully paid including payments made to the Supplier by mistake of law or fact. Without prejudice to **Clause 24**, Network Rail shall be entitled to withhold such amount from any sums due or which may become due to the Supplier or Network Rail may recover such amount as a debt under this Agreement or a Call-Off Order.
- 10.6** If in any Service Period a Service Level Failure occurs, the Supplier will credit Network Rail with Service Credits calculated in accordance with **Schedule 3** (which will take effect as an adjustment to the Charges). The Service Credits due will be recovered by Network Rail as

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credits against invoices for the Services, or if no such invoices are due, as debts due from the Supplier within thirty days of the Service Credit becoming payable. This right shall be without prejudice to any other rights and remedies of Network Rail under the Call-Off Order.

- 10.7** If any sum payable by Network Rail under the Call-Off Order is not paid when properly due then the Supplier shall be entitled to recover interest on that sum from the due date until payment is made in full, both before and after any judgment, at the rate of 4% per annum over the Bank of England base rate from time to time.
- 10.8** If a payment is due from Network Rail to the Supplier in accordance with **Clause 2.11**, Network Rail shall operate a self-billing process for such payment by raising a self-billing invoice on behalf of the Supplier in accordance with the procedure set out in **Schedule 6** of this Agreement, which procedure constitutes a self-billing agreement between Network Rail and the Supplier for the purposes of Regulation 13 of the Value Added Tax Regulations 1995. This information shall be available for the Supplier to view on i-Supplier.
- 10.9** Provided that the provisions of **Schedule 6** of this Agreement are complied with, Network Rail shall pay such self-billing invoice within 21 days from the date of issue of the self-billing invoice.

## **11 Remuneration of Frontline Labour Workers**

- 11.1** The Supplier shall pay, or shall procure that any other sub-contractor pays, each Frontline Labour Worker for the performance of Relevant Services under a Call-Off Order, including without limitation, the payment of any fees or hourly rates and any other payments and disbursements to which the Frontline Labour Worker is entitled to, including but not limited to any holiday pay and any sick pay.
- 11.2** The Supplier shall and shall also use reasonable endeavours to procure that its relevant sub-contractors (if any) shall:
- 11.2.1 ensure that none of its workers or its subcontractor's workers engaged in the performance of this Agreement in London and the rest of the UK and who would also satisfy the eligibility criteria set by the Living Wage Foundation (or any replacement thereof) is paid an hourly wage (or equivalent of an hourly wage) less than the Real Living Wage; and
- 11.2.2 co-operate and provide all reasonable assistance to Network Rail in monitoring the effect of the Real Living Wage.

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

Any failure by the Supplier to comply with the provisions of **Clause 11.2** shall be treated as a material breach under this Agreement.

- 11.3** The Services provided through this Agreement are assessed by Network Rail to fall under the Intermediaries Legislation and:
- 11.3.1 the Supplier shall comply with the Intermediaries Legislation and all reasonable instructions and requests for information from Network Rail in respect thereof;
- 11.3.2 the Supplier shall advise Network Rail of any relevant changes in the status of each Frontline Labour Worker;

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- 11.3.3 the Supplier shall supply all the information required, and to any specified time, for Network Rail to report to the Department for Transport and HM Treasury as to compliance with the Intermediaries Legislation including the number of workers affected;
- 11.3.4 the Supplier shall be liable for and shall indemnify Network Rail against all and any loss, damage, cost, expense, liability, claims and proceedings whatsoever in respect of a failure of the Supplier to comply with this **Clause 11.3**;
- 11.3.5 Network Rail shall provide all reasonably requested information within a reasonable timescale to support the Supplier in its compliance with the Intermediaries Legislation; and
- 11.3.6 failure by the Supplier to comply with this **Clause 11.3** shall be deemed to be a material breach of this Agreement.
- 11.4** Upon request, the Supplier shall inform Network Rail of the rate that the Supplier, or any other sub-contractor, is paying to the Frontline Labour Worker. The Supplier shall provide, or procure the provision of, such additional evidence to allow Network Rail to verify the rates paid to Frontline Labour Workers as Network Rail may reasonably request.
- 11.5** The Supplier shall not, and shall procure that any other sub-contractors shall not, withhold any payment due to a Frontline Labour Worker because of any failure by Network Rail to pay the Supplier.

## **12 Warranties and Obligations**

- 12.1** Without prejudice to any other warranties or obligations expressed elsewhere in this Agreement or the Call-Off Order or implied by law, the Supplier warrants, represents and undertakes to Network Rail that:
- 12.1.1** the Supplier:
- 12.1.1.1** has full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so require, the consent of its holding company) to enter into and to perform the Call-Off Order
- 12.1.1.2** the Frontline Labour Workers have full capacity to perform their Services and all necessary authorisations, licences and permits to work in the United Kingdom and perform their Services;
- 12.1.1.3** is aware of the purposes for which the Services are required and acknowledges that Network Rail is reliant upon the Supplier's expertise and knowledge in the provision of the Services;
- 12.1.1.4** has made its own investigations and research in relation to and has fully satisfied itself of the nature of the Services so as to assess the full scope and volume of the work involved in performing the Services to the standard of performance specified in the Service Levels, this Agreement and the Call-Off Order;
- 12.1.1.5** is entering into this Agreement and will enter into each Call-Off Contract as principal and not as agent for any person and that it will act as an independent contractor in carrying out its obligations under this Agreement and each Call-Off Order; and

- 12.1.1.6** shall at all times employ or engage sufficient numbers of trained, skilled and competent Frontline Labour Workers to ensure that it can provide the Services and that it has sufficient resources of such Frontline Labour Workers to cover absences, including holidays or illness;
- 12.1.2** all information contained in the Supplier's tender for the Services is and remains true, accurate and not misleading, save as may have been specifically disclosed to and acknowledged in writing by Network Rail prior to the execution of this Agreement;
- 12.1.3** all information provided to Network Rail in respect of each Frontline Labour Worker shall be true, complete and accurate in all material respects;
- 12.1.4** it has obtained or has made arrangements to ensure that it will obtain all necessary registrations, consents, licences, approvals and permissions to enable it to carry out the Services and will throughout the Term (and the term of any Call-Off Order) obtain and maintain all further and other necessary consents, licences and permissions to enable it to carry out the Services; and
- 12.1.5** without prejudice to **Clause 12.1.4**, it has and shall maintain throughout the Term (and the term of any Call-Off Contract) all necessary permits, licences and permissions required by any Regulatory Bodies and/or Industry Regulators.
- 12.2** Each warranty and obligation in this **Clause 12** shall be construed as a separate warranty or obligation (as the case may be) and shall not be limited or restricted by reference to, or reference from, the terms of any other such warranty or obligation or any other term of this Agreement or the Call-Off Order.
- 12.3** The Supplier shall remedy any breach of the warranties or obligations in this **Clause 12** in accordance with **Clause 32.4**. Any failure to remedy the breach shall be deemed to be a material breach not capable of remedy and shall entitle Network Rail to terminate the Call-Off Order in accordance with **Clause 32.3**.
- 13 Contract Management**
- 13.1** Network Rail authorises Network Rail's Representative to act on its behalf for all purposes of this Agreement and the Supplier shall deal with Network Rail's Representative (or his or her nominated assistants) in respect of all matters arising under this Agreement, unless notified otherwise.
- 13.2** The Services Manager shall act as the Supplier's representative for all purposes of this Agreement. The Supplier shall ensure that the Services Manager:
- 13.2.1** attends all relevant meetings with Network Rail (the location, frequency and time of which shall be specified by Network Rail's Representative from time to time); and
- 13.2.2** is available to Network Rail to resolve any issues arising in connection with this Agreement or Call-Off Order at such time periods as are specified in the relevant Call-Off Order.
- 13.3** No act of or omission by or approval from either Network Rail or Network Rail's Representative, in performing any of their respective duties under or in connection with this Agreement or the relevant Call-Off Order shall in any way operate to relieve the Supplier of

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any of its duties, responsibilities, obligations or liabilities under this Agreement and relevant Call-Off Order.

#### **14 Service Levels**

**14.1** The Supplier shall provide the Services in accordance with the Service Levels and shall ensure that it maintains the requisite technical, operational and specialist abilities and capacity to provide the Services in accordance with the Call-Off Order and Network Rail's requests for Frontline Labour Workers from time to time.

**14.2** If at any time the Supplier fails to achieve any or all of the Green Performance Levels in respect of any Service Levels and/or perform to at least the requirements of any other relevant terms of the Call-Off Order then without prejudice to Network Rail's other rights and remedies under the Call-Off Order or otherwise (including the payment of Service Credits pursuant to **Clause 10.6**), the Supplier will, without cost to Network Rail and immediately upon becoming aware of such failure:

**14.2.1** notify Network Rail in writing and if required by Network Rail discuss with Network Rail (at Network Rail's convenience) the reason for the failure to achieve the Green Performance Level in respect of any Service Levels and its proposed method of remedy;

**14.2.2** remedy such failure as soon as is reasonably practicable (provided the failure in question is remediable) to the reasonable satisfaction of Network Rail; and

**14.2.3** ensure that such a failure to achieve the Service Levels or failure to carry out its obligations under or in connection with the Call-Off Order is not repeated during the continuance in force of the Call-Off Order.

#### **15 Replacement of Frontline Labour Workers**

**15.1** Without prejudice to any other rights and remedies of Network Rail, if:

**15.1.1** Network Rail, in its absolute discretion, decides that a Frontline Labour Worker is unsatisfactory to perform the Relevant Services under a Call-Off Order or

**15.1.2** Frontline Labour Worker is not acting in accordance with the terms of the Call-Off Order or the requirements of Network Rail,

then Network Rail's Representative shall notify the Supplier of that fact detailing the grounds of its dissatisfaction and requiring the Supplier to provide a suitable replacement.

**15.2** Without prejudice to Network Rail's other rights and remedies under the Call-Off Order or otherwise, the Supplier shall either:

**15.2.1** if instructed, provide a suitable replacement Worker at no additional cost to Network Rail; or

**15.2.2** if no such suitable replacement is available, inform Network Rail in writing of that fact, in which case Network Rail shall not be charged for, or shall be entitled to a pro rata refund of all fees paid in relation to the unsuitable Worker.

**15.3** The Supplier shall immediately notify Network Rail if any of the information provided to Network Rail by the Supplier in respect of a Frontline Labour Worker is or becomes incorrect or inaccurate. Where Network Rail considers, in its absolute discretion, that the inaccuracy means the Frontline Labour Worker is unsuitable to perform the Relevant Services in accordance with the terms of the Call-Off Order and Network Rail's requirements, the Supplier shall provide an equivalent replacement Frontline Labour Worker.

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**16 Employment Status**

- 16.1** The Supplier warrants that the Frontline Labour Workers are employees of the Supplier or are individuals retained by the Supplier on contracts for services.
- 16.2** The Parties acknowledge and agree that any applicable employment contract or contract for services between the Supplier and such Frontline Labour Workers shall remain in force during any Call-Off Order and that the Supplier shall comply with the terms of such contract during any Call-Off Order. The Supplier shall make the necessary changes to the terms of any applicable employment contract or contract for services so that it can supply the Frontline Labour Workers to Network Rail in accordance with the terms of this Agreement.
- 16.3** The Supplier warrants and undertakes that it will not do anything, or allow to occur any event or circumstance, that might lead to the Supplier's Personnel having any claim to being, or entitlement to become, an employee of Network Rail.
- 16.4** The Supplier shall maintain a level of communication with and supervision and control over the Frontline Labour Workers that is appropriate including, but not limited to, dealing with any of the following management issues (to the extent applicable):
- 16.4.1** periods of annual, sick or other leave;
  - 16.4.2** absence of the Frontline Labour Workers for any other reason;
  - 16.4.3** any complaint about the Frontline Labour Workers; and
  - 16.4.4** any complaint or grievance raised by the Frontline Labour Workers.
- 16.5** Nothing in this Agreement or a Call-Off Order will render the Frontline Labour Workers or any Supplier's Personnel, an employee, agent or partner of Network Rail by virtue of the supply of Frontline Labour Workers or the provision of the Services. The Supplier shall indemnify Network Rail against all liabilities, assessments or claims arising from any Supplier's Personnel having at any time claimed or being held or deemed to have been an employee of Network Rail or otherwise engaged directly by Network Rail.
- 16.6** The Supplier and its sub-contractors shall be responsible for the deduction and payment of all tax, national insurance contributions and other taxes and levies in respect of Supplier's Personnel and shall keep Network Rail indemnified against all liability to make such statutory payments that may be suffered or incurred by Network Rail.

**17 Agency Workers Regulations**

- 17.1** The Supplier shall at all times comply with its obligations under the Agency Workers Regulations (where applicable), including but not limited to providing any Qualifying Personnel with the Relevant Terms and Conditions in accordance with regulation 5 of the Agency Workers Regulations.
- 17.2** The Supplier shall indemnify Network Rail in full against any and all liability, cost, claim, award or any other expense incurred by Network Rail arising out of a breach or alleged breach of the Agency Workers Regulations.
- 17.3** In the event that either party receives an allegation by any Supplier's Personnel that there has been a breach of the Agency Workers Regulations in relation to the supply of that person to Network Rail by the Supplier (whether that allegation has been made as a request for information under regulation 16 of the Agency Workers Regulations or otherwise), the party in receipt of the allegation shall provide a copy of that allegation to the other party within five Business Days of receipt of the allegation. The parties shall co-operate with each other in relation to responding to that allegation, which shall include supplying any information which

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may be reasonably requested by the other party, and complying with any reasonable requests in relation to the contents of any response.

**17.4** The Supplier shall within five Business Days of receiving a written request from Network Rail provide to Network Rail:

**17.4.1** the number of the Supplier's Personnel currently being supplied to Network Rail;

**17.4.2** the parts of Network Rail's business in which those Supplier's Personnel are working; and

**17.4.3** the type of work those Supplier's Personnel are carrying out,

together with any other information which Network Rail may reasonably request in relation to any payments made by the Supplier to any of the Supplier's Personnel, in order to ensure compliance with the Agency Workers Regulations.

**17.5** Network Rail shall provide the Supplier with all information reasonably required by the Supplier to enable it to comply with **Clause 17.1** and the Supplier shall have no liability to Network Rail pursuant to **Clause 17.2** or any other provision of this Agreement or any Call-Off Order to the extent such liability, cost, claim, award or any other expense has arisen from a breach by Network Rail of this **Clause**.

## **18 Variation of Services**

**18.1** At any time during the Term, Network Rail may request and the Supplier may recommend changes to any part or parts of the Services ("**Change Request**").

**18.2** Within five Business Days (or such longer period as may be agreed) of receipt of a Change Request, the Supplier shall notify Network Rail in writing of any time required to investigate the effect upon this Agreement of implementing such Change Request. If Network Rail instructs the Supplier to proceed with such investigation, the parties will follow the procedure set out in the remaining provisions of this Clause. The Supplier will not be entitled to any fees or expenses for investigating the effect of implementing such Change Request.

**18.3** Notwithstanding **Clause 18.2**, the Supplier will submit to Network Rail as soon as reasonably practicable a full written quotation for such Change Request specifying the increase or decrease (if any) which will be required to the Charges and the changes (if any) which will be required to this Agreement, together with such other information as Network Rail may reasonably request.

**18.4** Upon receipt of such quotation, Network Rail may elect either to:

**18.4.1** request such amendments to the change to which such quotation relates as it may require, in which case the Supplier will amend the quotation accordingly (including any consequential amendment to the Charges) and will resubmit such amended quotation to Network Rail in accordance with **Clause 18.3**; or

**18.4.2** accept such quotation, in which case this Agreement will be amended accordingly; or

**18.4.3** withdraw the proposed change, in which case this Agreement will continue in force unchanged.

**18.5** No change made necessary directly or indirectly by any default, defect, act or omission of the Supplier will constitute a formal change under this Clause or will justify an increase in the Charges or vary any programme or schedule of the Services.

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**18A Failure of Other Supplier**

**18A.1** The Supplier and the Other Suppliers have been appointed to the Contingency Lot.

**18A.2** In the event that Network Rail terminates an Other Supplier Contract or notifies an Other Supplier of its intention to terminate an Other Supplier Contract, Network Rail shall, at its sole discretion, be entitled to award one or more Call-Off Orders under the Contingency Lot in respect of the Contingency Lot Services (which had previously been provided under the Other Supplier Contract) in accordance with the following principles (which may, at Network Rail's sole discretion, be subject to change from time to time):

**18A.2.1** where Network Rail has an immediate and/or critical requirement for the Contingency Lot Services, Network Rail will award a direct Call-Off Order under the Contingency Lot to a single Procured Supplier (without undertaking a mini-competition), for such duration as may be specified by Network Rail (provided that this does not exceed the earlier to occur of the anticipated expiry date of the relevant Other Supplier Contract or the end of the Term), and:

**18A.2.1.1** the Supplier will meet the timescales reasonably specified by Network Rail for the commencement of the Contingency Lot Services under the Call-Off Order;

**18A.2.1.2** the Supplier will provide the Contingency Lot Services under the Call-Off Order in accordance with the Fixed Charges and the parties will work together in good faith to agree the Variable Charges (recognising that there may be differences in labour rates between the Services under the Contract Lot to which the Supplier was originally appointed and the Contingency Lot Services);

**18A.2.1.3** the parties acknowledge and agree that this may constitute an emergency requirement for Frontline Labour Workers in accordance with **Clause 2.5**; and

**18A.2.1.4** the Supplier will not be entitled to reject a COOM Electronic Purchase Order in accordance with **Clause 2.6**; and/or

**18A.2.2** where Network Rail has a less immediate and/or critical requirement for the Contingency Lot Services, Network Rail will undertake a mini-competition in accordance with the terms of **Schedules 10, 11 and 12**.

**18A.3** Any Call-Off Order for the Contingency Lot Services awarded in accordance with either **Clause 18A.2.1** or **Clause 18A.2.2** will be subject to the terms and conditions of this Agreement, (and any reference to the "Services" shall include the "Contingency Lot Services" for the purposes of that Call-Off Order).

**19 Access to Premises**

**19.1** Subject to **Clause 19.4** any access to the Premises made available to the Supplier in connection with the proper performance of a Call-Off Order shall be free of charge and shall be used by the Supplier solely for the purpose of performing the Services during the term of a Call-Off Order. The Supplier shall:

**19.1.1** have the use of such Premises as licensee and shall not have or purport to claim any sole or exclusive right to possession or to possession of any particular part of such Premises;



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- 19.1.2** vacate the Premises upon the termination or expiry of the relevant Call-Off Order or at such earlier date as Network Rail may determine;
  - 19.1.3** not exercise or purport to exercise any rights in respect of the Premises in excess of those granted under **Clause 19.1**;
  - 19.1.4** ensure that the Supplier's Personnel carry any identity passes issued to them by Network Rail at all relevant times and comply with Network Rail's security procedures as may be notified by Network Rail from time to time; and
  - 19.1.5** not damage the Premises or any assets or equipment on the Premises or any assets or equipment of Network Rail.
- 19.2** Nothing in this **Clause 19** shall create or be deemed to create the relationship of landlord and tenant in respect of the Premises between the Supplier and Network Rail.
- 19.3** Network Rail shall be under no obligation to provide office or other accommodation or facilities or services (including telephony and IT services) to the Supplier.
- 19.4** Without prejudice to any of Network Rail's other rights, powers or remedies, Network Rail may (without liability to the Supplier) deny access to any Supplier's Personnel to, or remove any of the Supplier's Personnel from, the Premises if such Supplier's Personnel in Network Rail's view does not comply with Network Rail's requirements or has not been properly verified in accordance with Network Rail's applicable security policy or trained in any way required by a relevant Call-Off Order and/or is otherwise incompetent, negligent, and/or guilty of misconduct and/or who could be a danger to any person and shall notify the Supplier of such denial or removal in writing; the Supplier shall immediately remove such Supplier's Personnel from performing the Services and provide a suitable replacement.

**20 Policies and Law**

- 20.1** The Supplier:
- 20.1.1** undertakes to procure that all the Supplier's Personnel comply with all of Network Rail's policies and standards that are relevant to the performance of the Services, including the provisions set out in **Schedule 5**;
  - 20.1.2** shall provide the Services, and ensure that the Supplier's Personnel act, in compliance with all requirements of all Acts of Parliament, statutory instruments, court orders, regulations, directives, European Community decisions (insofar as legally binding), bye-laws, treaties and other regulatory requirements relevant to the Supplier's business and/or Network Rail's business or operations, from time to time in force which are or may become applicable to the Services. The Supplier shall promptly notify Network Rail if the Supplier is required to make any change to the Services for the purposes of complying with its obligations under this **Clause 20.1.2**;
  - 20.1.3** without limiting the generality of **Clause 20.1.2**, shall comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities and shall procure the observance of the provisions of this sub-clause by any sub-contractors; and
  - 20.1.4** shall promptly notify the Supplier's Personnel and Network Rail of any health and safety hazards that exist or may arise in connection with the performance of the Services.

In all cases, the costs of compliance with this **Clause 20.1** shall be borne by the Supplier.

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**21 Compliance****General**

**21.1** The Supplier shall comply with all applicable anti-bribery, anti-corruption and anti-slavery legislation including, without limitation, the Bribery Act 2010 and Modern Slavery Act 2015.

**21.2** The Supplier shall comply with Network Rail's Code of Business Ethics and Code of Conduct and corporate hospitality, conflicts of interests and speak out (whistleblowing) policies and any updates thereof.

**Bribery Act Compliance**

**21.3** The Supplier shall maintain and enforce its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with all applicable anti-bribery and anti-corruption legislation. Adequate procedures shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of the Act).

**21.4** The Supplier shall use reasonable endeavours to ensure that all persons associated with the Supplier (as defined by section 8 of the Bribery Act 2010) including any subcontractors and suppliers comply with this clause.

**Modern Slavery Act Requirements**

**21.5** The Supplier shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

**21.6** The Supplier shall use reasonable endeavours not to purchase any raw materials, resources or products from any country that has been sourced from producers or manufacturers using forced labour in its operations or practice.

**Remedies**

**21.7** Any breach of this clause shall be deemed a material breach under this Agreement.

**22 Management Information**

**22.1** The Supplier shall throughout the Term provide to Network Rail (and upon Network Rail's request):

**22.1.1** the Management Information in accordance with the provisions of **Schedule 3**; and

**22.1.2** the reports listed in **Schedule 3** in accordance with the provision of **Schedule 3** and such other reports (in a format and within the timescales set by Network Rail) in respect of the Services as requested by Network Rail from time to time.

**22.2** The Supplier shall:

**22.2.1** operate and maintain such systems so as to enable it to identify, process and track all requests from Network Rail and the supply of Frontline Labour Workers to Network Rail at any time;

**22.2.2** provide Network Rail with such reports and records as requested by Network Rail from time to time detailing the status of a request or the supply of Frontline Labour Workers; and

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**22.2.3** maintain "Records" of all Call-Off Orders entered into by the Supplier and Network Rail. Such Records shall enable the Supplier to track all requests and Call-Off Orders and ascertain their status at any time.

**22.3** The Supplier will maintain a comprehensive, accurate and up to date database of the Supplier's Personnel, including job/role descriptions, employment terms, benefits, percentage of overall working time spent by each of the Supplier's Personnel in providing the Services (including details of time spent on each Call-Off Order) as compared to other duties not carried out for Network Rail and all such information in respect of the Supplier's Personnel as shall reasonably be requested by Network Rail.

**22.4** The Supplier shall (subject to compliance with any relevant data privacy obligations) make the information set out in this **Clause 22** available to Network Rail (or a third party nominated by Network Rail, including a regulator) at Network Rail's request (Network Rail giving the Supplier thirty days' notice) and shall provide all information and assistance regarding Frontline Labour Workers as Network Rail may reasonably require on thirty days' notice.

**22.5** The Supplier shall implement a system to monitor the quality of Frontline Labour Workers provided to Network Rail and to facilitate feedback.

## **23 Records, Audit and Inspection**

**23.1** The Supplier shall:

**23.1.1** maintain a complete and correct set of records pertaining to all activities relating to the performance of the Services and the Supplier's obligations under this Agreement and the relevant Call-Off Order and all transactions entered into by the Supplier for the purposes of this Agreement (including time-sheets for the Frontline Labour Workers); and

**23.1.2** retain all Records during the Term (and for the duration of a Call-Off Order) and for a period of not less than 6 years (or such longer period as may be required by law) following termination or expiry of this Agreement or a Call-Off Contract ("**Retention Period**").

**23.2** Network Rail and any person nominated by Network Rail (including a regulator) has the right to audit any and all Records at any time during the Retention Period on giving to the Supplier what Network Rail considers to be reasonable notice (whether in writing or verbally) and at any reasonable time to inspect any aspect of the Supplier's performance of the Services and the Supplier shall give all reasonable assistance to Network Rail or its nominee in conducting such inspection, including making available documents and staff for consultation, including Records and staff of any sub-contractors.

## **24 Set-Off**

Without prejudice to Network Rail's other rights and remedies, Network Rail may deduct from any sums payable to the Supplier under this Agreement an amount equivalent to any sum payable by or recoverable from the Supplier to Network Rail (whether such sums are payable by or recoverable from the Supplier under this Agreement or under any other agreement between the Supplier and Network Rail) and may also deduct any sum then payable by or recoverable from the Supplier or which at any time thereafter may be payable by or recoverable from the Supplier under any other agreement between the Supplier and Network Rail. If Network Rail wishes to exercise its right of set off, then Network Rail shall give notice to the Supplier not less than seven days' prior to exercising such right.

## **25 Indemnity**

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- 25.1** Subject to **Clause 25.2**, the Supplier is responsible for and shall indemnify Network Rail against all Losses which Network Rail incurs or suffers as a result of any claim made against Network Rail by a Frontline Labour Worker arising out of or in connection with the supply of Frontline Labour Workers under the relevant Call-Off Order.
- 25.2** The Supplier is not responsible for and shall not indemnify Network Rail for any Losses to the extent that such Losses are caused by any breach or negligent performance by Network Rail of any of its obligations under this Agreement.
- 25.3** The Parties do not intend that TUPE should apply on the commencement or termination of this Agreement (or a Call-Off Order entered into pursuant to this Agreement) and accept and agree that the Supplier shall remain responsible for the employment of the Supplier's Personnel at all times. To that end, if any member of the Supplier's Personnel claims that his or her contract of employment has transferred or should have transferred to Network Rail or a Replacement Supplier or any other third party engaged by Network Rail in respect of the Services pursuant to TUPE or otherwise at any time:
- 25.3.1** Network Rail shall (or shall use its reasonable endeavours to procure that the Replacement Supplier or other relevant third party shall) notify the Supplier as soon as reasonably practicable after becoming aware of such claim; and
- 25.3.2** Network Rail (or Replacement Supplier or other relevant third party) may terminate the employment of such person (if required) and the Supplier will indemnify, keep indemnified and hold harmless Network Rail and/or any Replacement Supplier and/or any other relevant third party (irrespective of whether a termination of employment is required to be effected) from and against all Employment Claims and Liabilities which Network Rail and/or a Replacement Supplier and/or any other relevant third party incurs or suffers in relation to such person arising out of or in connection with their employment and any termination or purported termination, in connection with any breach or alleged breach of TUPE irrespective of where fault lies in respect of such breach or alleged breach, and/or in respect of any court process and/or decision and against any sums payable to or in relation to such person in connection with their employment up to the date of termination (if required) provided that where a termination of employment is required that this takes place within one (1) month of the notification as referred to in **Clause 25.3.1**.
- 26 Exclusions and Limitations of Liability**
- 26.1** Subject to **Clauses 26.3** and **26.4**, the Supplier's maximum aggregate liability arising out of or in connection with each Call-Off Order whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including by negligence and/or arising from a breach of, or a failure to perform or defect or delay in performance of the Supplier's obligations under a Call-Off Order shall be limited to £250,000.00 (two hundred and fifty thousand).
- 26.2** Subject to **Clauses 26.3**, the maximum aggregate liability of Network Rail arising out of or in connection with this Agreement or Call-Off Orders whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including by negligence and/or arising from a breach of, or a failure to perform or defect or delay in performance of Network Rail's obligations under this Agreement and Call-Off Orders shall be limited to £250,000.00 (two hundred and fifty thousand). This **Clause 26.3** shall not affect any Charges that Network Rail is expressly required to pay under any Call-Off Order.
- 26.3** Neither party excludes or limits its liability (if any):

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- 26.3.1** for personal injury or death caused by its negligence or by a person for whom it is vicariously liable;
  - 26.3.2** for fraud or fraudulent misrepresentation or the fraud or fraudulent misrepresentation by a person from whom it is vicariously liable; or
  - 26.3.3** for any matter for which it would be illegal to exclude or limit or to attempt to exclude or limit its liability.
- 26.4** The Supplier does not exclude or limit its liability:
- 26.4.1** for any breach of **Clause 11** (Remuneration of Frontline Labour Workers);
  - 26.4.2** for any breach of **Clause 29** (Data Protection); or
  - 26.4.3** for any breach of **Clause 30** (Confidentiality and Announcements).
- 27 Insurance**
- 27.1** The Supplier will at its sole cost maintain insurance cover as required by law and shall maintain the type and amounts of insurance cover as set out in the Appendix in respect of the Services (the "**Insurances**").
- 27.2** The insurance cover will be maintained with a reputable insurer and on terms approved by Network Rail.
- 27.3** The Supplier will produce evidence to Network Rail on reasonable request of the insurance policies set out in **Clause 27.1** and payment of all premiums due on each policy.
- 27.4** The Supplier warrants that nothing has or will be done or be omitted to be done which may result in any of the insurance policies set out in **Clause 27.1** being or becoming void, voidable or unenforceable.
- 28 Intellectual Property Rights**
- 28.1** The Supplier agrees and acknowledges that all Intellectual Property Rights created or developed in the provision of the Services or otherwise arising from or in connection with the Services, this Agreement or a Call-Off Order, including all Intellectual Property Rights created or developed by or on behalf of the Supplier or the Frontline Labour Workers, shall vest in and belong absolutely and exclusively to Network Rail. The Supplier hereby assigns, or shall procure the assignment of, with full title guarantee and at no charge or royalty all such Intellectual Property Rights capable of present assignment to Network Rail together with the right to sue for past infringement. Where such future rights cannot be assigned by present assignment the Supplier agrees to take all such steps and do all such things, including executing all documents, as may be necessary to vest such Intellectual Property Rights in Network Rail on their creation.
- 28.2** The Supplier shall provide Network Rail with copies of all work and materials relied upon or referred to in the creation or development of the Intellectual Property Rights referred to in **Clause 28.1** and with a perpetual, irrevocable, royalty-free and transferable licence free of charge to use such work and materials in connection with the use of such Intellectual Property Rights.
- 28.3** Pursuant to **Clause 28.1**, the Supplier undertakes that it:
- 28.3.1** has (or that it will have in place prior to the commencement of a Call-Off Order, or will procure that sub-contractors have, contracts with the Frontline Labour Workers such that any Intellectual Property Rights arising out of or in connection with a Call-Off Order shall (subject to the **Clause 28.3.2**) vest in the Supplier or sub-

contractor, as applicable, and that each Frontline Labour Worker is obliged to waive all moral rights and rights of a like nature in such Intellectual Property Rights. Network Rail may on demand at any time require the Supplier to produce all and any Frontline Labour Worker contracts for inspection by Network Rail; and

**28.3.2** will, or will procure that the Frontline Labour Workers will, execute such further documents and do such acts as may be necessary for securing, confirming or vesting absolutely Network Rail's full rights, title and interest in the Intellectual Property Rights referred to in **Clause 28.1** and for conferring on Network Rail all rights of action in respect of any claim for infringement by third parties.

**28.4** The Supplier shall have no right (save where expressly permitted under this Agreement or with Network Rail's prior written consent) to use any trade marks, trade names, logos or other Intellectual Property Rights of Network Rail.

**28.5** The Supplier shall indemnify Network Rail against all Losses incurred or suffered that arise from or are incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights of a third party resulting from Network Rail's use of Intellectual Property Rights assigned or licensed, created, developed or provided by or on behalf of the Supplier or the Frontline Labour Workers or that should have been so assigned had the Supplier fully complied with its obligations under this **Clause 28**.

## **29 Protection of Personal Data**

**29.1** The Supplier shall take all necessary steps under the Data Protection Legislation (including, where appropriate, the procurement of any consent) to allow for disclosure to appropriate Network Rail personnel of all information required by this Agreement.

If the Supplier is required to handle Personal Data the following **Clauses 29.2 to 29.12** shall apply.

**29.2** For the purposes of **Clause 29** the following definitions apply:

**"Data Protection Legislation"** means (i) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (ii) all applicable laws about the processing of personal data and privacy.

**"Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer, Data Protection Impact Assessment"** take the meaning given in the Data Protection Act 2018.

**"Data Loss Event"** means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

**"Data Subject Request"** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**"Sub-processor"** means any third Party appointed to process Personal Data on behalf of the Supplier.

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- 29.3** With respect to the Parties' rights and obligations under this Agreement, the Parties acknowledge that for the purposes of the Data Protection Legislation, Network Rail is the Controller and the Supplier is the Processor.
- 29.4** The only processing that the Supplier is authorised to do is listed in this Agreement or as advised by Network Rail and may not be determined by the Supplier.
- 29.5** The Supplier shall provide all reasonable assistance to Network Rail in the preparation of any Data Protection Impact Assessment prior to commencing any processing.
- 29.6** The Supplier shall:
- 29.6.1** only process Personal Data to the extent strictly necessary and listed in this Agreement to perform its obligations under this Agreement;
  - 29.6.2** ensure that it has in place protective measures which are appropriate to protect against a Data Loss Event. Network Rail may reasonably reject such measures, but failure to reject shall not amount to approval by Network Rail;
  - 29.6.3** take all reasonable steps to ensure the Supplier's personnel who have access to the Personal Data:
    - 29.6.3.1** are aware of and comply with the Supplier's duties under this Clause 28;
    - 29.6.3.2** are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
    - 29.6.3.3** have undergone adequate training in the use, care, protection and handling of Personal Data;
  - 29.6.4** not transfer Personal Data outside of the EU unless the prior written consent of Network Rail has been obtained and the following conditions met:
    - 29.6.4.1** Network Rail or the Supplier has provided appropriate safeguards in relation to the transfer as determined by Network Rail;
    - 29.6.4.2** the Data Subject has enforceable rights and effective legal remedies;
    - 29.6.4.3** the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist Network Rail in meeting its obligations); and
  - 29.6.5** at the written direction of Network Rail, delete or return Personal Data (and any copies of it) to Network Rail on termination of the Agreement unless the Supplier is required by law to retain the Personal Data
- 29.7** The Supplier shall notify Network Rail immediately if it:
- 29.7.1** receives a Data Subject Request (or purported Data Subject Request);

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- 29.7.2 receives a request to rectify, block or erase any Personal Data;
  - 29.7.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 29.7.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
  - 29.7.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law; or
  - 29.7.6 becomes aware of a Data Loss Event.
- 29.8 Taking into account the nature of the processing, the Supplier shall provide Network Rail with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made (and insofar as possible within the timescales reasonably required by Network Rail) including by promptly providing:
- 29.8.1 full details and copies of the complaint, communication or request;
  - 29.8.2 such assistance as is reasonably requested by Network Rail to enable Network Rail to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - 29.8.3 Network Rail, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 29.8.4 assistance as requested by Network Rail following any Data Loss Event; and
  - 29.8.5 assistance as requested by Network Rail with respect to any request from the Information Commissioner's Office, or any consultation by Network Rail with the Information Commissioner's Office.
- 29.9 The Supplier shall maintain complete and accurate records to demonstrate its compliance with this **Clause 29** and shall upon reasonable request, promptly make them available to Network Rail.
- 29.10 The Supplier shall allow for audits of its Data Processing activity by Network Rail or Network Rail designated auditor.
- 29.11 Before allowing any Sub-processor to process any Personal Data, the Supplier must obtain the written approval of Network Rail and enter into a written agreement with the Sub-processor which gives effect to the terms set out in this **Clause 29** such that they apply to the Sub-processor.
- 29.12 The Supplier shall notify Network Rail as soon as is reasonably practical if it considers that any of Network Rail's instructions infringe the Data Protection Legislation.
- 30 Confidentiality and Comptroller and Auditor General**
- 30.1 Save to the extent that it is necessary in order to comply with any obligations under this Agreement, or as otherwise expressly provided for in this **Clause 30**, the Parties acknowledge



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and agree that neither they nor their respective accountants, legal advisers and insurers shall make use of or provide a copy of this Agreement or information passed under this Agreement or disclose disseminate and/or publicise or cause or permit to be disclosed disseminated and/or publicised any of the terms and conditions of this Agreement or information passed under this Agreement in whole or in part to any individual and/or entity not a Party to this Agreement except as follows:

- 30.1.1** in response to an order of a court of competent jurisdiction, or in response to an appropriate subpoena or discovery request issued in the course of litigation; and/or
  - 30.1.2** in response to an enquiry or order issued by a government or supra-governmental agency of competent jurisdiction; and/or
  - 30.1.3** to the extent necessary to report income to appropriate taxing authorities and/or to contest the imposition of any tax by appropriate taxing authorities; and/or
  - 30.1.4** to the Parties' respective accountants, legal advisers and insurers; and/or
  - 30.1.5** in connection with any litigation between the Parties relating to this Agreement; and/or
  - 30.1.6** to the extent required in order to comply with applicable laws and/or regulations.
- 30.2** The Supplier shall not make any announcement relating to this Agreement or its subject matter without the prior written approval of Network Rail's Representative except as required by applicable laws or by any legal or regulatory authority.
- 30.3** Nothing in this Agreement shall prevent Network Rail disclosing the Supplier's Confidential Information:
- 30.3.1** to the Crown, any other Contracting Authority or any government department. All government departments receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments on the basis that the information is confidential and is not disclosed to a third party which is not part of the Crown, any Contracting Authority or any government department;
  - 30.3.2** for the purpose of the examination and certification of Network Rail's accounts;
  - 30.3.3** for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which Network Rail has used its resources; or
  - 30.3.4** for the purpose of using the Supplier's Intellectual Property in accordance with the licence granted to Network Rail under Clause 27 and/or for the purpose of granting sub-licences to other persons in relation to the same.
- 30.4** The Supplier shall and shall procure that its subcontractors shall provide such access to its or their books and records as may be reasonably required from time to time by the Comptroller and Auditor General of the National Audit Office for the purpose of their audit and examination of the accounts of Network Rail and its group companies, the Department for Transport and the consolidated set of financial statements for the UK public sector.
- 30.5** Confidential Information shall not include information which:
- 30.5.1** was public knowledge at the time of disclosure;

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- 30.5.2** was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- 30.5.3** is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- 30.5.4** is independently developed without access to the Confidential Information.

**31 Dispute Resolution**

Network Rail, as applicable, and the Supplier shall use reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to this Agreement or a Call-Off Order ("**Dispute**") in accordance with **Schedule 4** before resorting to litigation.

**32 Breach and Termination**

- 32.1** Network Rail shall be entitled, for whatever reason, to terminate this Agreement by giving the Supplier at least 30 days' prior written notice of termination and or any one or more Call-Off Order(s) or part of any Call-Off Order(s) (including without limitation a Contract Lot) by giving to the Supplier at least 24 hours' prior written notice of termination.
- 32.2** Network Rail shall be entitled, for whatever reason, to suspend for an indefinite period any or all Call-Off Orders or part of any Call-Off Order(s) (including without limitation a Contract Lot) that have been entered by Network Rail upon giving to the Supplier at least 24 hours' notice of such suspension. Network Rail shall be entitled to reactivate a Call-Off Order upon giving to the Supplier at least 24 hours' notice of the requirement to reactivate and this shall reactivate the provision of all Services.
- 32.3** Without prejudice to Network Rail's right to terminate at common law, Network Rail may terminate this Agreement immediately upon giving notice to the Supplier if the Supplier:
  - 32.3.1** has committed any material or persistent breach of this Agreement and in the case of such a breach that is capable of remedy fails to remedy that breach within ten (10) Business Days from the date of written notice to the Supplier giving details of the breach and requiring it to be remedied; or
  - 32.3.2** is subject to an Insolvency Event; or
  - 32.3.3** provides Network Rail with any false or misleading information with regard to its ability to perform the Services; or
  - 32.3.4** is prevented, restricted or prohibited from carrying out the Services for whatever reason; or
  - 32.3.5** undergoes a change in ownership or control in breach of **Clause 34**; or
  - 32.3.6** commits any of the money laundering related offence; or
  - 32.3.7** commits a Critical Service Failure.
- 32.4** Without prejudice to any of Network Rail's other rights, powers or remedies (whether under the Call-Off Order or otherwise) if the Supplier is in breach of any of its warranties and/or obligations under **Clause 12** and/or any of its other obligations in respect of the Services or the Relevant Services under the Call-Off Order, the Supplier shall, if required to do so by Network Rail, promptly remedy and/or re-perform the Services or part of them at its own expense to ensure compliance with such warranties and/or obligations. Nothing in this **Clause 32.4** shall prevent Network Rail from itself performing or procuring the provision of any Services or any remedial action in respect of any Services from an alternative contractor and,

where Network Rail so performs or procures any Services or any remedial action, Network Rail shall be entitled to recover from the Supplier all additional cost, loss and expense incurred by Network Rail and attributable to Network Rail performing or procuring such Services or remedial action from such alternative contractor.

**32.5** Neither Party shall be deemed to be in breach of this Agreement or a Call-Off Order, or otherwise liable to the other Party in any manner whatsoever, for any failure or delay in performing its obligations to the extent that such failure or delay is due to a Force Majeure Event. If a Party is affected by a Force Majeure Event ("**Affected Party**"), it will:

**32.5.1** give written notice to the other Party, specifying the nature and extent of the Force Majeure Event, immediately on becoming aware of the Force Majeure Event and will at all times use all reasonable endeavours to bring the Force Majeure Event to an end and, whilst the Force Majeure Event is continuing, to mitigate its severity; and

**32.5.2** not be entitled to payment from the other Party in respect of extra costs and expenses incurred by virtue of the Force Majeure Event.

If a Force Majeure Event has continued for more than eight (8) weeks from the date on which that Force Majeure Event first arose and is having a material adverse effect on the Affected Party's performance of its obligations under the Call-Off Order, then for as long as such Force Majeure Event continues and has that effect, the Party not affected by such Force Majeure Event ("**Innocent Party**") may terminate this Agreement or the Call-Off Order immediately upon giving notice to the Affected Party. If this Agreement or the Call-Off Order is terminated in accordance with this **Clause 32.5** then without prejudice to any rights and liabilities which accrued prior to termination the Affected Party shall not be liable to the Innocent Party by reason of such termination.

**32.6** To the extent that Network Rail has a right to terminate this Agreement or Network Rail has a right to terminate a Call-Off Order under this **Clause 32** then, as an alternative to termination, Network Rail may by giving notice to the Supplier require the Supplier to provide part only of the Services and/or reduce, modify or remove those services comprised within a Contract Lot for which the Supplier is eligible to receive a direct award or be included in a mini-competition under **Clause 18A** with effect from the date specified in Network Rail's notice ("**Change Date**") whereupon the provision of the remainder of the Services will cease and the definition of "the Services" shall be construed accordingly. The Charges applicable with effect from the Change Date will be adjusted proportionately or if in Network Rail's opinion a proportionate adjustment would not be reasonable in such manner as Network Rail may determine.

**32.7** For the purpose of **Clause 32.3.1**, a persistent or a material breach that is not capable of remedy, includes if Network Rail forms the view that as a result of such breach there is a significant risk that the Supplier has or will compromise Network Rail's performance of its statutory functions, or any statutory duties to which Network Rail may become subject from time to time, or, if the Services were to continue, would be likely to compromise such performance in the future.

**32.8** Network Rail may terminate this Agreement in the event that it considers any of the circumstances set out in regulations 89(1)(a) or (c) of the Utilities Contracts Regulations 2016 SI 2016/274 ("UCR") or regulations 73(1)(a) or (c) of the Public Contracts Regulations 2015 SI 2015/102 ("PCR") as amended from time to time as applicable have arisen.

**32.9** Network Rail may terminate this Agreement in the event that it considers any of the circumstances set out in regulation 89(1)(b) of UCR or regulation 73(1)(b) of PCR as applicable have arisen. Termination of this Agreement by Network Rail pursuant to this

**Clause 31.9** shall be deemed to be a material breach which the Supplier has failed to remedy and the provisions of **Clause 31.3** shall apply.

**32.10** The Supplier shall notify Network Rail in writing immediately upon becoming aware of the circumstances referred to in **Clause 31.9** applying.

### **33 Consequences of Termination or Expiry**

**33.1** Notwithstanding the provisions of **Clause 30**, wherever Network Rail chooses to issue a tender for a replacement service provider in respect of some or all of the Services, the Supplier shall disclose to tenderers such information concerning the Services as Network Rail may require for the purposes of such tender. The Supplier may impose upon any recipient of such information such obligations of confidentiality as it may reasonably require.

**33.2** The termination or expiry of this Agreement shall not prejudice or affect any right, power or remedy which has accrued or shall accrue to either Party prior to or after such termination or expiry.

**33.3** Upon expiry or termination of this Agreement or a Call-Off Order (howsoever caused):

**33.3.1** the Supplier shall, at no further cost to Network Rail:

**33.3.1.1** take all steps as necessary to implement the orderly handover of the Services to Network Rail or a replacement service provider, such that the Services can be carried on with the minimum of interruption and inconvenience and to effect such handover, which shall include an obligation to promptly provide a copy of all relevant records in whatever format Network Rail or a replacement service provider may reasonably require and any information Network Rail or a replacement service provider may require;

**33.3.1.2** on receipt of Network Rail's written instructions to do so (but not otherwise), arrange to remove all electronically held information by a mutually agreed date, including the purging of all disk-based information and the reformatting of all disks; and

**33.3.1.3** promptly deliver up to Network Rail all documents and records relating to or otherwise in connection with the Call-Off Order including a copy of all relevant records in whatever format Network Rail may reasonably require and all property and materials supplied by or on behalf of Network Rail, including any Confidential Information and Intellectual Property Rights of Network Rail;

**33.3.2** with effect from the date of termination, the Supplier agrees to continue the provision of the Services to Network Rail as Network Rail may require in accordance with the terms and conditions of this Agreement or a Call-Off Order, except that it will be entitled to be paid for such Services and all other actions necessary to implement this Clause at the Charges that were in force on or immediately prior to termination or, where the Charges do not apply to such Services, at such other charges as pre-agreed with Network Rail;

**33.3.3** Network Rail shall (subject to **Clauses 24, 33.3.4** and **33.4**) pay the Supplier any Charges remaining due in relation to any Services properly performed in accordance with this Agreement and a Call-Off Order up to the date of termination; and

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**33.3.4** Network Rail shall not be liable to the Supplier for any loss of profit, loss of Call-Off Order or any other losses and/or expenses of whatsoever nature arising out of or in connection with any expiry or termination or as a result of a reduction of Services under **Clause 32.6**.

**33.4** On termination of this Agreement under **Clause 32.3** or a cessation of any Services under **Clause 32.6** (but in the case of the latter only insofar as the right to cease any Services arises as a result of a right for Network Rail to terminate under **Clause 32.3**), Network Rail may enter into any agreement with any third party or parties as Network Rail thinks fit to provide any or all of the Services and the Supplier shall be liable for all additional expenditure reasonably incurred by Network Rail in having such services carried out and all other costs and damages reasonably incurred by Network Rail in consequence of such termination. Network Rail may deduct such costs from the Charges or otherwise recover such costs from the Supplier as a debt.

### **34 Change of Ownership**

**34.1** The Supplier shall:

**34.1.1** not without the prior written consent of Network Rail, such consent not to be unreasonably withheld, undergo any change in the ownership or control of the Supplier where such change relates to 50% or more of the issued share capital or voting rights of the Supplier; and

**34.1.2** give notice to Network Rail in the event that there is any change in the ownership or control of the Holding Company where such change relates to 50% or more of the issued share capital or voting rights of the Holding Company, such notice to be given within ten (10) Business Days of the date on which such change takes effect.

### **35 Survival**

The provisions of **Clauses 1, 5, 9 - 12 (inclusive), 23 - 31 (inclusive), 35 - 44 (inclusive)** and any other Clauses or Schedules that are necessary to give effect to those Clauses shall survive termination or expiry of this Agreement or a Call-Off Order. In addition, any other provision of this Agreement which by its nature or implication is required to survive the termination or expiry of this Agreement or relevant Call-Off Order shall do so.

### **36 The Contracts (Rights of Third Parties) Act 1999**

No term of this Agreement and/or Call-Off Orders is intended by the Parties to be enforceable by a third party.

### **37 Not Used**

### **38 Assignment and Sub-contracting**

**38.1** Network Rail 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 Network Rail and its direct or indirect holding companies and its direct or indirect subsidiaries (within the meaning of s1159 Companies Act 2006).

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

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- 38.3** The Supplier shall not sub-contract to or allow any other person to perform any of the Services without Network Rail's Representative's prior written consent (such consent not to be unreasonably withheld or delayed). The Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the performance of any services so sub-contracted as if the sub-contracting had not occurred. Network Rail hereby consents to the sub-contracting of the Supplier's obligations to any of the persons listed in Schedule 7 (Notified Sub-contractors).

**Appointment of Sub-contractors**

- 38.4** The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:
- 38.4.1** manage any Sub-contractors in accordance with Good Industry Practice;
  - 38.4.2** comply with its obligations under this Agreement and/or any relevant Call-Off Order in the delivery of the Services; and
  - 38.4.3** assign, novate or otherwise transfer to Network Rail any of its rights and/or obligations under each Sub-contract that relates exclusively to this Agreement and/or any relevant Call-Off Order.
- 38.5** Prior to requesting Network Rail's Representative's prior written consent to sub-contract any of its obligations under this Agreement and/or any Call-Off Order in accordance with **Clause 38.3**, the Supplier shall notify Network Rail in writing of:
- 38.5.1** the proposed Sub-contractor's name, registered office and company registration number;
  - 38.5.2** the scope of any Services to be provided by the proposed Sub-contractor; and
  - 38.5.3** where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of Network Rail that the proposed sub-contract has been agreed on "arm's-length" terms.
- 38.6** If requested by Network Rail within ten Business Days of receipt of the Supplier's notice issued pursuant to **Clause 38.5**, the Supplier shall also provide:
- 38.6.1** a copy of the proposed Sub-contract; and
  - 38.6.2** any further information reasonably requested by Network Rail.
- 38.7** Network Rail may object to the appointment of the relevant Sub-contractor if it considers that:
- 38.7.1** the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of Network Rail;
  - 38.7.2** the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
  - 38.7.3** the proposed Sub-contractor employs unfit persons; and/or
  - 38.7.4** the proposed Sub-contractor should be excluded in accordance with **Clause 38.15**.
- 38.8** The Supplier shall ensure that each Sub-contract shall include:
- 38.8.1** provisions which will enable the Supplier to discharge its obligations under this Agreement;

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- 38.8.2** a right under the Contracts (Rights of Third Parties) Act 1999 for Network Rail to enforce any provisions under the Sub-contract which are capable of conferring a benefit upon Network Rail;
  - 38.8.3** a provision enabling Network Rail to enforce the Sub-contract as if it were the Supplier;
  - 38.8.4** a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-contract to Network Rail without restriction (including any need to obtain any consent or approval) or payment by Network Rail;
  - 38.8.5** obligations no less onerous on the Sub-contractor than those imposed on the Supplier under this Agreement in respect of:
    - (a) the requirements set out in **Clause 22**;
    - (b) the requirements set out in **Clause 29**; and
    - (c) the requirements set out in **Clause 46**;
  - 38.8.6** provisions enabling the Supplier to terminate the Sub-contract on notice on terms no more onerous on the Supplier than those imposed on Network Rail under **Clause 32**;
  - 38.8.7** provisions enabling the Sub-contract to be terminated in the circumstances set out in **Clause 38.14**;
  - 38.8.8** a provision restricting the ability of the Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Sub-contract without first seeking the written consent of Network Rail;
  - 38.8.9** provisions which require the Sub-contractor to notify Network Rail promptly in writing of any material non-payment or late payment of any sums properly due to the Sub-contractor from the Supplier under the Sub-contract, under a specified valid invoice and not subject to a genuine dispute;
  - 38.8.10** a provision requiring the Sub-contractor to have in place an appropriate exit and migration plan which enables it to comply (and will enable the Supplier to comply) with the requirements of this Agreement, to put such plan into effect on any termination (however arising) or expiry of the Sub-contract, and otherwise to ensure that any such termination or expiry will not affect the continuity of the Services;
  - 38.8.11** a provision confirming that the labour rates to be paid to the Sub-contractor by the Supplier will be, as a minimum, in accordance with the pricing information submitted as part of the Supplier's Bid; [and]
  - 38.8.12** [INSERT RELEVANT PROVISIONS FROM SUPPLIER'S BID THAT ARE TO BE CONTRACTUALISED].
- 38.9** The Supplier shall not terminate or materially amend the terms of any Sub-contract without Network Rail's prior written consent, which shall not be unreasonably withheld or delayed.

**Supply chain protection**

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- 38.10** The Supplier shall ensure that all Sub-contracts (which in this sub-clause includes any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement, and Sub-contractor shall be construed accordingly) contain provisions:
- 38.10.1** requiring the Supplier or other party receiving goods or services under the Sub-contract to consider and verify invoices under that Sub-contract in a timely fashion;
  - 38.10.2** stating that if the Supplier or other party fails to consider and verify an invoice in accordance with **Clause 38.10.1**, the invoice shall be regarded as valid and undisputed for the purpose of **Clause 38.10.3** after a reasonable time has passed;
  - 38.10.3** requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty days from verifying that the invoice is valid and undisputed;
  - 38.10.4** giving Network Rail a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
  - 38.10.5** requiring the Sub-contractor to include a clause to the same effect as this **Clause 38.10.5** 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 the Sub-contract.
- 38.11** The Supplier shall pay any undisputed sums which are due from it to a Sub-contractor within thirty days from verifying that an invoice is valid and undisputed.
- 38.12** Notwithstanding any provision of **Clause 30**, if the Supplier notifies Network Rail that the Supplier has failed to pay a Sub-contractor's undisputed invoice within thirty days of receipt, or Network Rail otherwise discovers the same, Network Rail shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).
- 38.13** In accordance with **Clause 38.3**, the Supplier will remain primarily liable to Network Rail for the delivery of its obligations under this Agreement, notwithstanding any Sub-contracts that the Supplier may enter into with Sub-contractors, and with regards to any safety incidents in particular:
- 38.13.1** the Supplier is and will remain responsible and liable to Network Rail for rectifying any safety incidents which arise due to any act or omission of the Supplier or any Sub-contractor in the provision of the Services;
  - 38.13.2** each Sub-contract shall include obligations no less onerous on the Sub-contractor than those imposed on the Supplier under this **Clause 38.13** and provide Network Rail with a right under the Contracts (Rights of Third Parties) Act 1999 to enforce this provision directly against the Sub-contractor; and
  - 38.13.3** the Supplier and the Sub-contractor(s) will work together to rectify the relevant safety incident as soon as reasonably practicable on a no-blame basis, and thereafter agree between themselves the responsibility for the accrual of any such liability.

**Termination of Sub-contracts**

- 38.14** Network Rail may require the Supplier to terminate:
- 38.14.1** a Sub-contract where:



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- (a) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to Network Rail's right of termination pursuant to **Clause 32**; and/or
- (b) the relevant Sub-contractor or any of its Affiliates have embarrassed Network Rail or otherwise brought Network Rail into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in Network Rail, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;
- (d) Network Rail has found grounds for exclusion of the Sub-contractor in accordance with **Clause 38.15**; and/or
- (e) there is a change of Control of the relevant Sub-contractor, unless:
  - (i) Network Rail has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
  - (ii) Network Rail has not served its notice of objection within six months of the later of the date the change of Control took place or the date on which Network Rail was given notice of the change of Control.

**Exclusion of Sub-contractors**

**38.15** Where Network Rail considers there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations (by application of Regulation 80(2) of the Utilities Contracts Regulations), then:

**38.15.1** if Network Rail finds there are mandatory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor; and

**38.15.2** if Network Rail finds there are discretionary grounds for exclusion, Network Rail may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

**Data processing supply chain**

**38.16** The provisions of this **Clause 38** are subject to **Clause 29** in respect of any Sub-contracts relating to data processing.

**39 Waiver of Rights**

No waiver of any of the provisions of this Agreement or any relevant Call-Off Order is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of **Clause 41**. The single or partial exercise of any right, power or remedy under this Agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

**40 Illegality and Severability**

If any provision of this Agreement (in whole or in part) is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed from this Agreement and the remaining provisions shall continue in full force and effect as if this

Agreement had been executed without the invalid, illegal, or unenforceable provision. In the event that in Network Rail's reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of this Agreement, Network Rail and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

#### **41 Notices**

**41.1** All notices given under this Agreement shall be in writing and shall be served by personal delivery by pre-paid registered or recorded delivery post (or registered airmail in the case of an address for service outside the United Kingdom) to the persons and the addresses set out in the Appendix (or as otherwise notified by the relevant Party hereunder). A notice shall be deemed to have been received:

**41.1.1** if delivered personally at the time of delivery;

**41.1.2** if pre-paid recorded delivery or registered post 48 hours from the date of posting; and

**41.1.3** if registered airmail 5 days from the date of posting.

Provided that if deemed receipt occurs before 9am on a Business Day the notice shall be deemed to have been received at 9am on that day and if deemed receipt occurs after 5pm on a Business Day or on any day that is not a Business Day the notice shall be deemed to have been received at 9am on the next Business Day.

#### **42 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.

#### **43 Relationship of the Parties**

Nothing in this Agreement or any relevant Call-Off Order constitutes, or shall be deemed to constitute, a partnership between the Parties or a relationship or employer and employee or principal and agent. Except as expressly provided in this Agreement or any relevant Call-Off Order, neither Party shall be deemed to be the agent of the other, nor shall either Party hold itself out as the agent of the other.

#### **44 Governing Law and Jurisdiction**

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

#### **45 Equality and Diversity**

**45.1** The Supplier shall perform its obligations under this Agreement in accordance with:

**45.1.1** all applicable equality Law (whether in relation to age, disability, gender reassignment, marriage or civil partnership status, pregnancy or maternity, race, religion or belief, sex or sexual orientation (each a "Relevant Protected Characteristic") or otherwise);

**45.1.2** Network Rail's equality, diversity and inclusion policy as published by Network Rail from time to time; and

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- 45.1.3** any other requirements and instructions which Network Rail reasonably imposes in connection with any equality obligations imposed on Network Rail at any time under applicable equality Law.
- 45.2** The Supplier shall take all reasonable steps to secure the observance of this clause by its employees, agents, representatives and Sub-Contractors.
- 45.3** The Supplier acknowledges that Network Rail is under a duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination (on the grounds of a Relevant Protected Characteristic); to advance equality of opportunity, and to foster good relations, between persons who share a Relevant Protected Characteristic and persons who do not share it. In performing its obligations under this Agreement, the Supplier shall assist and co-operate with Network Rail where possible in satisfying this duty
- 46 Freedom of Information**
- 46.1** The Supplier acknowledges that Network Rail may be required, under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 (collectively, the “**Information Acts**”) to respond to requests for information relating to the subject matter of this Agreement.
- 46.2** The Supplier shall (and shall procure that its Sub-Contractors shall):
- 46.2.1** provide all necessary assistance and cooperation as reasonably requested by Network Rail to enable it to comply with its obligations under the Information Acts;
  - 46.2.2** transfer to Network Rail all requests for information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
  - 46.2.3** provide Network Rail with a copy of all information belonging to Network Rail requested in the request for information which is in its possession or control in the form that Network Rail requires within five (5) Working Days (or such other period as Network Rail may reasonably specify) of Network Rail requesting such information; and
  - 46.2.4** not respond directly to a request for information unless authorised in writing to do so by Network Rail.
- 46.3** The Supplier acknowledges that Network Rail may be required under the Information Acts to disclose information (including Confidential Information) without consulting or obtaining consent from the Supplier.
- 46.4** Network Rail shall take reasonable steps to notify the Supplier of a request for Confidential Information (in accordance with the Secretary of State’s section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000) to the extent that it is permissible and reasonably practical for it to do so and shall consider any reasonable and timely representations made by the other Party regarding the application of exemptions to the requested information.
- 46.5** Notwithstanding any other provision in this Agreement, Network Rail shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the Information Acts.
- 47 Claims Handling Agreement**

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- 47.1** In these provisions, where the context admits, “Claims Allocation and Handling Agreement” means the Agreement so entitled dated 1 November 2015 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 terms and expressions defined in the Claims Allocation and Handling Agreement, and Network Rail shall supply the Supplier with a copy of each amendment thereto, as and when it is made.
- 47.2** These provisions shall apply:
- 47.2.1** if the Agreement is in connection with the maintenance or operation of Network Rail’s Railway Assets; and
  - 47.2.2** in respect of the period (if any) while the Supplier is an Independent Supplier; and
  - 47.2.3** where a claim, which arises out of or is connected with the Agreement, is made by a third party who does not have an agreement with the Supplier:
    - (i) against Network Rail or the Agency, which may result in a claim being made against the Supplier; or
    - (ii) against the Supplier, which may result in a claim being made against Network Rail or the Agency (whether by the Supplier or otherwise).
- 47.3** In relation to clause 17 of the Claims Allocation and Handling Agreement this Agreement does hereby permit the recovery by Network Rail of loss of revenue or other consequential losses that are direct and foreseeable.
- 47.4** The Supplier irrevocably appoints Network Rail as its agent to authorise the Agency (in consultation, where necessary, with Industry Parties and their Insurers) to defend such claim on behalf of the Supplier and Industry Parties, in accordance with the Claims Allocation and Handling Agreement. In relation to such a claim, the Supplier shall be bound by the terms of that Agreement as if the Supplier were a party to it.
- 47.5** Where such a claim results in a payment to the third party, the Supplier agrees that liability for such payment and the costs of handling and defending the claim, shall be allocated in accordance with the Claims Allocation and Handling Agreement. The Supplier agrees to participate in the procedure for allocating liability set out in the Dispute Resolution Rules; and to be bound by the result as if the Supplier were party to those Rules; and such matters shall not be referable to adjudication or arbitration in accordance with the Agreement.
- 47.6** Provided that **Clauses 47.4** and **47.5** shall not apply to any claim in respect of which the Supplier admits that he is liable, and that no Industry Party is liable. In such a case, the Supplier himself may defend the claim.
- 47.7** Without prejudice, and in addition, to any rights and remedies of Network Rail, the Supplier shall indemnify Network Rail against all losses, claims, liability, costs and expenses which are borne by Network Rail under the Claims Allocation and Handling Agreement and which arise out of either a breach of contract by the Supplier or a breach of duty of care owed to a third party which is the subject of a claim under the Claims Allocation and Handling Agreement.

**SCHEDULE 1 - SERVICES****1. The Scheme**

- 1.1. This Schedule 1 (Services) sets out the scope of the Services which shall be provided by the Supplier in accordance with this Agreement.
- 1.2. The Services include the hiring and provision of Frontline Labour Workers on an ongoing basis for the provision of the Services under and in accordance with the terms of this Agreement.
- 1.3. Frontline Labour Workers are workers hired on a labour only basis to work under the management and direction of the Supplier and/or any Sub-contractor, as may be applicable under the terms of this Agreement, on Network Rail's infrastructure or a Network Rail construction site. Frontline Labour Workers will supplement the Network Rail workforce and will be hired against specific competencies. All Frontline Labour Workers shall meet the relevant job description and competencies set out in the COOM Electronic Purchase Order in accordance with Appendices B (Job Roles) and C (Products Codes) to Schedule 1 (Services) and be engaged through the Sentinel programme, as appropriate. For the avoidance of doubt, Frontline Labour Workers do not include office workers/staff.
- 1.4. Network Rail's requirements with regards to Frontline Labour Workers are split by Contract Lot, which are split geographically by region in accordance with Appendix A (Contracting Lots and Suppliers) to Schedule 1 (Services).

**2. The Services**

- 2.1. The Supplier shall respond to COOM Electronic Purchase Orders and provide Frontline Labour Workers who meet the relevant job description and competencies requested on those COOM Electronic Purchase Orders in accordance with Appendices B (Job Roles) and C (Product Codes) to Schedule 1 (Services) as required by all of the provisions of this Agreement.
- 2.2. The Supplier shall provide Frontline Labour Workers as requested under a COOM Electronic Purchase Order in accordance with the scope of this Agreement and shall provide Frontline Labour Workers in respect of the full list of job roles set out in Appendix B (Job Roles) to Schedule 1 (Services).
- 2.3. The Supplier shall provide Frontline Labour Workers at any time and on any day (i.e. on a 24 hours per day, seven days per week basis) as requested by Network Rail under a COOM Electronic Purchase Order for the Term and where Network Rail has an emergency requirement for Frontline Labour Workers, the Supplier shall use all reasonable endeavours to provide such supply within 4 hours of receiving a written request from Network Rail.

**3. Product Groups**

- 3.1. The Supplier shall be qualified under the relevant RISQS category codes listed in Appendix C (Product Codes) to Schedule 1 (Services).

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### 4. Tools, Equipment and Personal Protective Equipment

- 4.1. The Supplier shall provide, free of charge, to all Frontline Labour Workers all normal and wet weather personal protective equipment, mobile phones (where appropriate), small hand tools and other equipment appropriate to the competency of the grade requested by Network Rail, in accordance with Network Rail's Code of Business Ethics and the Code of Conduct and to the standards as detailed in the Sentinel guidelines.

### 5. Transport and Accommodation

- 5.1. The Supplier shall provide suitable and sufficient transport for Frontline Labour Workers to provide the Services on Network Rail's infrastructure and/or a Network Rail construction site in accordance with the relevant COOM Electronic Purchase Order and in accordance with the Code of Conduct.
- 5.2. The Supplier shall provide all travel and any necessary accommodation arrangements in accordance with Network Rail's health and safety policies, fatigue policies and the Code of Conduct.

### 6. New Starters Mentoring

- 6.1. The Supplier shall comply with Network Rail Standard NR/L3/MTC/SE0089 and Appendix E (Mentoring Guidelines) to Schedule 1 (Services) for Frontline Labour Workers who are either new starters or inexperienced Frontline Labour Workers (as set out in Network Rail Standard NR/L3/MTC/SE0089) on Network Rail's infrastructure or a Network Rail construction site.

**APPENDIX A TO SCHEDULE 1- SERVICES– CONTRACTING LOTS AND SUPPLIERS****1. Contracting Lots and Supplier**

- 1.1. The table below sets out the Contract Lots for which Network Rail requires Frontline Labour Workers and details the Contract Lot or Lots for which the Supplier shall provide the Services under this Agreement.
- 1.2. In accordance with clause 18A of the Agreement, the Supplier should note that from time to time, Network Rail may require the Supplier to provide the scope of services formerly provided under an Other Supplier Contract, for Contract Lots other than those which it has been contracted to deliver as at the Agreement Commencement Date under this Agreement.
- 1.3. For the avoidance of doubt, the applicable rates to be applied by the Supplier in accordance with Schedule 2 will be those applicable to the delivery unit (as set out in the table below) in respect of which the Call-Off Order is placed.

| Lot Number | Region               | Scope & Route                              | Delivery Units  | Contracted Supplier                      |
|------------|----------------------|--|---|--|
| 1          | Eastern              | Core – Anglia                              | Ipswich<br>Romford<br>Tottenham                                 | <i>[Insert successful supplier name]</i> |
| 2          | Eastern              | Core – East Midlands                       | Peterborough<br>Bedford<br>Derby                                | <i>[Insert successful supplier name]</i> |
| 3          | Eastern              | Core – North & East                        | Leeds<br>Sheffield<br>Doncaster<br>Newcastle<br>York            | <i>[Insert successful supplier name]</i> |
| 4          | North West & Central | Core – North West                          | Lancs&Cumbria<br>Liverpool<br>Manchester                        | <i>[Insert successful supplier name]</i> |
| 5          | North West & Central | Core – Central & West Coast Mainline South | Saltley<br>Sandwell & Dudley<br>Bletchley<br>Euston<br>Stafford | <i>[Insert successful supplier name]</i> |
| 6          | Scotland             | Core – Scotland                            | Edinburgh<br>Glasgow<br>Motherwell<br>Perth                     | <i>[Insert successful supplier name]</i> |
| 7          | Southern             | Core – Kent                                | Ashford<br>London Bridge<br>Orpington                           | <i>[Insert successful supplier name]</i> |
| 8          | Southern             | Core – Sussex                              | Brighton<br>Croydon   | <i>[Insert successful supplier name]</i> |
| 9          | Southern             | Core – Wessex                              | Inner<br>Outer  | <i>[Insert successful supplier name]</i> |
| 10         | Wales & Western      | Core – Wales                               | Cardiff<br>Shrewsbury   | <i>[Insert successful supplier name]</i> |

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|    |                 |                       |                              |  |
|----|-----------------|-----------------------|------------------------------|--|
| 11 | Wales & Western | Core – Western        | Bristol<br>Exeter<br>Reading | <i>[Insert successful supplier name]</i> |
| 12 | National        | Electrification (E&P) | National                     | <i>[Insert successful</i>                |
| 13 | National        | Signalling (S&T)      | National                     | <i>[Insert successful</i>                |



**APPENDIX B TO SCHEDULE 1- SERVICES–JOB ROLES****1. Job Roles – Descriptions and Competencies**

- 1.1. All Frontline Labour Workers shall work in compliance with the Code of Conduct and be certified as competent to carry out the activities that are detailed in the Call-Off Order in accordance with this Appendix B (Job Roles) to Schedule 1 (Services).
- 1.2. Whilst Network Rail has used its reasonable endeavours to compile a comprehensive list of job descriptions and the relevant competencies related to those job roles in this Appendix B, due to differences which may arise across Contract Lots and over the Term of the Agreement, these descriptions act as a minimum guide and Network Rail may from time to time supplement these with additional or ancillary competencies or skills, which the Supplier acknowledges and agrees will be met without change to the Charges.
- 1.3. The grades and capabilities of staff contemplated as being required in the provision of the Services are defined below. These describe the expectation in terms of skills, experience, competence and ability required of a person charged against the rate provided for that descriptor in the pricing templates. For the avoidance of doubt, each of the criteria listed under a grade is indicative and an equivalent can be proposed for pre-approval



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|                              |                      |    |             |   |   |   |
|------------------------------|----------------------|----|-------------|---|---|---|
| 1-<br>1<br>1<br>L<br>ot<br>s | Track<br>&<br>Civils | No | Core<br>011 | Shuttering Joiner   | Reading plans, carry out formwork construction and shuttering works   | PTS   |
| 1-<br>1<br>1<br>L<br>ot<br>s | Track<br>&<br>Civils | No | Core<br>012 | Painter &<br>Decorator  | Stripping old covering, crack filling and levelling, priming and undercoating, mixing paint, hanging wallpaper, refurbishment works.  | PTS, CSCS Card, City & Guilds Qualified or equivalent |
| 1-<br>1<br>1<br>L<br>ot<br>s | Track<br>&<br>Civils | No | Core<br>013 | Plasterer   | New and reconstructive solid plastering, fibrous plastering, dry lining   | PTS, CSCS Card, City & Guilds Qualified or equivalent |
| 1-<br>1<br>1<br>L<br>ot<br>s | Track<br>&<br>Civils | No | Core<br>014 | Plumber   | Reading plans, installing and repairing water supplies, heating systems and drainage, servicing gas and oil-fired central heating systems, boilers, installing and fixing domestic appliances, fitting weather-proof materials, joints and flashings.   | PTS, CSCS Card, City & Guilds Qualified or equivalent |
| 1-<br>1<br>1<br>L<br>ot<br>s | Track<br>&<br>Civils | No | Core<br>015 | Flat Roofer   | Reading plans, stripping existing flat roofs, repairing broken slates and tiles, attaching slates to battens, checking soundness of roof timbers, fitting insulating materials between joists, laying felt on flat roof trusses and subsequently battening, installing lead flashing, topping off with ridge tiles and sealing joints and pointing. | PTS, CSCS Card, City & Guilds Qualified or equivalent |
| 1-<br>1<br>1<br>L<br>ot<br>s | Track<br>&<br>Civils | No | Core<br>016 | Roofer  | Reading plans, stripping existing roofs, repairing broken slates and tiles, attaching slates to battens, checking soundness of roof timbers, fitting insulating materials between joists, laying felt on roof trusses and subsequently battening, installing lead flashing, topping off with ridge tiles and sealing joints and pointing.           | PTS, CSCS Card, City & Guilds Qualified or equivalent |
| 1-<br>1<br>1<br>L<br>ot<br>s | Track<br>&<br>Civils | No | Core<br>017 | Scaffolder  | Reading plans, tube and clip systems, capable of unloading, base plate setting, erecting standards and attaching couples, using tie tubes, laying walkways, dismantling, fixing guard rails and safety netting and other scaffolding system types.  | PTS, CSCS Card, CISRS                                 |
| 1-<br>1<br>1<br>L<br>ot<br>s | Track<br>&<br>Civils | No | Core<br>018 | Litter Picker   | General work site activities. Knowledge of Health and Safety legislation. Knowledge of COSHH assessments.   | PTS   |
| 1-<br>1<br>1<br>L<br>ot<br>s | Track<br>&<br>Civils | No | Core<br>019 | Team Leader -<br>Steelwork &<br>Structural On-<br>Site Fabrication<br>& Fitters | To Supervise Structural Steel Works; Read Drawings, Undertake Surveys; Produce Templates; Fabricate and Install; Assist with Technical Queries.   | PTS ACDC - CSCS Level 3                               |
| 1-<br>1<br>1<br>L<br>ot<br>s | Track<br>&<br>Civils | No | Core<br>020 | Tradesman -<br>Steelwork &<br>Structural On-<br>Site Fabricators<br>& Fitters   | To Install Structural Steel Works; Read Drawings, Undertake Surveys; Produce Templates; Fabricate and Install.  | PTS ACDC - CSCS Level 2                               |

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| 1  |                |    |          |  |   |  |
| 1  |                |    |          |  |   |  |
| L  | Track & Civils | No | Core 021 | Multi -Skilled Operative - High Street Environment     | To carry out Concrete Works; Shuttering; Drainage; Groundworking; Structural Works (Concrete & Steel); Brickwork; Masonry Work.   | CSCS Card, PTS (where appropriate)   |
| 1- |                |    |          |  |   |  |
| 1  |                |    |          |  |   |  |
| 1  |                |    |          |  |   |  |
| L  | Track & Civils | No | Core 022 | General Labourer - High Street Environment             | To assist in at least one of the following: Concrete Works; Shuttering; Drainage; Groundworking; Structural Works (Concrete & Steel); Brickwork; Masonry Work.  | CSCS Card, PTS (where appropriate)   |
| 1- |                |    |          |  |   |  |
| 1  |                |    |          |  |   |  |
| 1  |                |    |          |  |   |  |
| L  | Track & Civils | No | Core 023 | Team Leader - Multi Skilled - High Street Environment  | To assist with Concrete Works; Shuttering; Drainage; Groundworking; Structural Works (Concrete & Steel); Brickwork; Masonry Work.   | CSCS Card, PTS (where appropriate)   |
| 1- |                |    |          |  |   |  |
| 1  |                |    |          |  |   |  |
| 1  |                |    |          |  |   |  |
| L  | Track & Civils | No | Core 024 | Bricklayer - High Street Environment                   | Measuring the work area, setting out the first courses, mixing mortar, building up the courses, shaping and trimming bricks, checking courses are straight, reading technical drawings, awareness of working at heights and carrying loads.   | CSCS Card, PTS (where appropriate), City & Guilds Qualified or equivalent      |
| 1- |                |    |          |  |   |  |
| 1  |                |    |          |  |   |  |
| 1  |                |    |          |  |   |  |
| L  | Track & Civils | No | Core 025 | Electrician (Domestic) - High Street Environment       | Reading plans, carrying out both first and second fix electrical installation.  | CSCS Card, PTS (where appropriate), 17th Edition Qualified, Level C Competency |
| 1- |                |    |          |  |   |  |
| 1  |                |    |          |  |   |  |
| 1  |                |    |          |  |   |  |
| L  | Track & Civils | No | Core 026 | Electrician (Industrial) - High Street Environment     | Reading plans, carrying out both first and second fix electrical installation.  | CSCS Card, PTS (where appropriate), 17th Edition Qualified, Level C Competency |
| 1- |                |    |          |  |   |  |
| 1  |                |    |          |  |   |  |
| 1  |                |    |          |  |   |  |
| L  | Track & Civils | No | Core 027 | Glazier - High Street Environment                      | Reading plans, selecting glass fit for the application, shaping and cutting glass, removing old/broken panes using tools, cleaning out beading/putty, fitting new glass and making watertight with sealants, rubber strips or aluminium flashing, capable of installation and maintaining of patent glazing systems, fitting glass stairs and floors, security glazing, shop fronts and overhead installations. | CSCS Card, PTS (where appropriate)   |
| 1- |                |    |          |  |   |  |
| 1  |                |    |          |  |   |  |
| 1  |                |    |          |  |   |  |
| L  | Track & Civils | No | Core 028 | Heating & Ventilation Fitter - High Street Environment | Reading plans, carrying out both first and second fix heating and ventilation installation, servicing air-conditioning and ventilation units.   | CSCS Card, PTS (where appropriate)   |
| 1- |                |    |          |  |   |  |
| 1  |                |    |          |  |   |  |
| 1  |                |    |          |  |   |  |
| L  | Track & Civils | No | Core 029 | Joiner - High Street Environment                       | Reading plans, erection of formwork, machining, bench joinery, first fix, second fix, shop fitting.   | CSCS Card, PTS (where appropriate)   |
| 1- |                |    |          |  |   |  |
| 1  |                |    |          |  |   |  |
| 1  |                |    |          |  |   |  |
| L  | Track & Civils | No | Core 030 | Painter & Decorator - High Street Environment          | Stripping old covering, crack filling and levelling, priming and undercoating, mixing paint, hanging wallpaper.   | CSCS Card, PTS (where appropriate)   |
| 1- |                |    |          |  |   |  |
| 1  |                |    |          |  |   |  |
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| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No  | Core<br>031 | Plasterer - High<br>Street<br>Environment                           | New and reconstructive solid plastering, fibrous plastering, dry lining   | CSCS Card, PTS (where appropriate)   |
| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No  | Core<br>032 | Plumber - High<br>Street<br>Environment                             | Reading plans, installing and repairing water supplies, heating systems and drainage, servicing gas and oil-fired central heating systems, boilers, installing and fixing domestic appliances, servicing air-conditioning and ventilation units, fitting weather-proof materials, joints and flashings.   | CSCS Card, PTS (where appropriate)   |
| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No  | Core<br>033 | Roofer- High<br>Street<br>Environment                               | Reading plans, stripping existing roofs, repairing broken slates and tiles, attaching slates to battens, checking soundness of roof timbers, fitting insulating materials between joists, laying felt on roof trusses and subsequently battening, installing lead flashing, topping off with ridge tiles and  | CSCS Card, PTS (where appropriate)   |
| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No  | Core<br>034 | Flat Roofer -<br>High Street<br>Environment                         | Reading plans, stripping existing flat roofs, repairing broken slates and tiles, attaching slates to battens, checking soundness of roof timbers, fitting insulating materials between joists, laying felt on flat roof trusses and subsequently battening, installing lead flashing, topping off with ridge tiles and sealing joints and pointing. | PTS, CSCS Card, City & Guilds Qualified or equivalent  |
| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No  | Core<br>035 | Scaffolder - High<br>Street<br>Environment                          | Reading plans, capable of unloading, base plate setting, erecting standards and attaching couples, using tie tubes, laying walkways, fixing guard rails and safety netting.   | CSCS Card, PTS (where appropriate), CISRS  |
| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | Yes | Core<br>036 | Controller of Site<br>Safety (COSS)                                 | Railway work site safety activities. Location competence specific.  | Controller of Site Safety, PTS   |
| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | Yes | Core<br>037 | Engineering<br>Supervisor (ES)                                      | Railway work site safety activities.  | Engineering Supervisor, PTS  |
| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No  | Core<br>038 | Lookout   | Railway work site safety activities.  | PTS, lookout   |
| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No  | Core<br>039 | Operative -<br>Track<br>Maintenance –<br>Worker Under<br>Mentorship | Railway work site activities including track renewals.  | PTS, Manual handling, Track induction (Tr00)   |
| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No  | Core<br>040 | Operative -<br>Track<br>Maintenance                                 | Railway track maintenance site work activities.   | PTS, Lookout (optional), Manual handling, Track Induction (Tr 00), Maintain permanent way assets - plain line (Tr01.01), Maintain permanent way assets - S&C, Safe use of portable & transportable plant (PTMP 00) |

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|                              |                      |    |             |   |   |   |
|------------------------------|----------------------|----|-------------|---|---|---|
| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No | Core<br>041 | Team Leader -<br>Track<br>Maintenance     | Lead a team in railway track maintenance site work activities.  | PTS, COSS, Manual handling, Track Induction (Tr 00), Maintain permanent way assets - plain line (Tr01.01), Maintain permanent way assets - S&C - TR01.02, Safe use of portable & transportable plant (PTMP 00), Restore track geometry by manual methods - Tr 04, Ensure the track is fit for operational purposes following maintenance repair - Tr 11, Restore original stress in rails - Tr08, Rail defect examiner            |
| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No | Core<br>042 | Senior Technical<br>Officer (STO)         | Provide technical support to the Maintenance Engineering team.  | PTS, NVQ level 2/3, Stressing L2, Stressing L3 (optional), Establish track geometry and restore to operational condition by mechanised repair - Tr05 suite (optional) Track maintenance design techniques (various), CDM Regulations Awareness, COSS (optional)   |
| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No | Core<br>043 | Technical Officer<br>(TO)                 | Assist with the provision of technical support to the Maintenance Engineering team.   | PTS, NVQ level 1/2, Stressing L2, Track maintenance design techniques (various), CDM Regulations Awareness,   |
| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No | Core<br>044 | Technician -<br>Track<br>Maintenance      | Railway track maintenance site work activities.   | PTS, COSS, Manual handling, Track Induction (Tr 00), Maintain permanent way assets - plain line (Tr01.01), Maintain permanent way assets - S&C - Tr01.02, Safe use of portable & transportable plant (PTMP 00), Restore track geometry by manual methods - Tr 04 (optional), Ensure the track is fit for operational purposes following maintenance repair - Tr 11 (optional), Restore original stress in rails - Tr08 (optional) |
| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No | Core<br>045 | Team Leader -<br>Track Inspection         | Lead the team carrying out permanent way inspection activities.   | PTS, COSS, Manual handling, Track Induction (Tr 00), Maintain permanent way assets - plain line (Tr01.01), Maintain permanent way assets - S&C - Tr01.02, Inspect the permanent way infrastructure - Tr06, Monitor permanent way infrastructure (hot weather) - Tr42, Rail defect examiner  |
| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No | Core<br>046 | Technician -<br>Track Inspection<br>- PTS | Railway site inspection activities.   | PTS, COSS, Manual handling, Track Induction (Tr 00), Maintain permanent way assets - plain line (Tr01.01), Maintain permanent way assets - S&C - Tr01.02, Inspect the permanent way infrastructure - Tr06, Monitor permanent way infrastructure (hot weather) - Tr42, Rail defect examiner  |
| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No | Core<br>047 | Operative -<br>Track Inspection           | Assist with site inspection activities.   | PTS, Lookout, Manual handling, Track Induction (Tr 00), Maintain permanent way assets - plain line (Tr01.01), Maintain permanent way assets - S&C - Tr01.02,  |
| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No | Core<br>048 | Hot Weather<br>Patroller                  | Patrolling and inspection activities of sites on the Critical Rail Temperature (CRT) register. Impose and remove heat speed restriction as required | PTS, Individual Working Alone, Tr42 (monitor permanent way infrastructure in hot weather)   |
| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No | Core<br>049 | Watchman                                  | Railway track protection activities.  | PTS, Track Induction (Tr 00), Maintain permanent way assets - plain line (Tr01.01), Maintain permanent way assets - S&C - Tr01.02   |
| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No | Core<br>050 | Stressing<br>Operative (Level<br>1)       | Carry out, and take responsibility for, restoring original stress   | PTS, Stress Restoration (Tr08), Manual handling   |

## NR16

|                                  |                      |     |             |   |  |   |
|----------------------------------|----------------------|-----|-------------|---|--|---|
| L<br>o<br>t<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No  | Core<br>051 | Stressing<br>Operative (Level<br>2)                               | Carry out, and take responsibility for, stressing of plain line  | PTS, Stressing, Plain Line L2 (TR09), Manual handling   |
| L<br>o<br>t<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No  | Core<br>052 | Lubrication<br>Technician   | work site inspection and maintenance activities on friction modifier systems.  | PTS, COSS, Inspect and Maintain Traction Gel Applicators - Tr30, Undertake routine maintenance of rail lubricator and friction modifier systems - Tr31, |
| L<br>o<br>t<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | Yes | Core<br>053 | Machine<br>Controller - Rail<br>Mounted<br>Maintenance<br>Machine | Railway work site machine controller activities.   | PTS, Machine Controller - Rail Mounted Maintenance Machine  |
| L<br>o<br>t<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | Yes | Core<br>054 | Machine<br>Controller -<br>Materials<br>Handler                   | Railway work site machine controller activities.   | PTS, Machine Controller - Materials Handler   |
| L<br>o<br>t<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | Yes | Core<br>055 | Machine<br>Controller -<br>MEWP                                   | Railway work site machine controller activities.   | Machine Controller - MEWP   |
| L<br>o<br>t<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | Yes | Core<br>056 | Crane Controller  | Railway work site crane controller activities. Exact competence required dependant on plant being used and activity being undertaken.  | CC Exc, or CC KBC, or CC OTP TL, or CC OTM GPC, or CC OTM KIROW, or CC OTM TRAMM & MPV, or CC OTM TRM, or CC OTM TL GPC, or CC OTM TL KIROW, PTS        |
| L<br>o<br>t<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No  | Core<br>057 | Banksman  | Railway work site machine control activities.  | PTS, CPCS Banksman competence   |
| L<br>o<br>t<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No  | Core<br>058 | RMMM<br>Operator  | Railway work site machine operation activities. Exact competence required dependant on plant being used and activity being undertaken. | Machine Operator - competence specific to plant being operated, PTS   |
| L<br>o<br>t<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No  | Core<br>059 | Driver HGV  | Railway work site machine operation activities.  | PTS, HGV  |
| L<br>o<br>t<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No  | Core<br>060 | Driver HGV –<br>Non PTS   | General work site machine operation activities.  | HGV   |

## NR16

|                              |                      |    |             |                          |  |  |
|------------------------------|----------------------|----|-------------|--------------------------|--|--|
| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No | Core<br>061 | Hand Signal Man          | Railway protection work site activities.   | Auxiliary operating duties Handsignaller (AOD(HS))   |
| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No | Core<br>062 | Level Crossing Attendant | Railway protection work site activities.   | PTS (PTS DCCR) Auxiliary operating duties Level Crossing Attendant (AOD(LXA))  |
| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No | Core<br>063 | Protection Controller    | Railway protection work site activities.   | Protection Controller  |
| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No | Core<br>064 | Possession Support       | Railway protection work site activities.   | Undertake Possession Support duties within a possession  |
| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No | Core<br>065 | Points Operator          | Railway protection work site activities.   | Auxiliary operating duties Points Operator (AOD(PO))   |
| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No | Core<br>066 | Site Access Controller   | Railway protection work site activities.   |  |
| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No | Core<br>067 | Rail Safety Supervisor   | The monitoring of Outside Parties / Customers activities to MAKE sure Network rail's predetermined controls and consents are adhered too. The role will cover both types of Asset Protection works where the works are on the outside parties land under their safe systems of work and where the outside party is working on or directly adjacent to NR infrastructure and we are providing a higher level of monitoring mainly around advising on the planning of the works and monitoring that the 3rd party is following said plans.<br>A sound background in construction is required. Note individuals will be working unsupervised in the vast majority of situations so they will be vetted and assessed prior to commencing works by the ASPRO Project Manager. | COSS / Lookout / Site Warden, PTS  |
| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No | Core<br>068 | Operative - Off Track    | Railway off-track work site activities.  | PTS, Safe use of portable & transportable plant (PTMP 00)<br>Basic chainsaw operation and maintenance (LM 30), Safe Use of Pesticides (NPTC PA1), Handheld Application (NPTC PA6)  |
| L<br>ot<br>s<br>1-<br>1<br>1 | Track<br>&<br>Civils | No | Core<br>069 | Team Leader - Off Track  | Railway off-track work site activities.  | PTS, Controller of Site Safety, Maintain "off track" assets (Tr 02), Safe Use of Pesticides (NPTC PA1), Handheld Application (NPTC PA6), Basic chainsaw operation and maintenance (LM 30), Fell and process small trees (LM 31)<br>Fell and process medium sized trees (LM 32), May Need<br>Process individual windblown trees (LM 34) |
| L<br>ot<br>s<br>1-           | Track<br>&<br>Civils | No | Core<br>070 | Technician - Off Track   | Railway off-track work site activities.  | PTS, Lookout, Maintain "off track" assets (Tr 02), Safe use of portable & transportable plant (PTMP 00), Safe Use of Pesticides (NPTC PA1), Handheld Application (NPTC PA6)<br>Basic chainsaw operation and maintenance (LM 30), Fell and process small trees (LM 31)  |



## NR16

|    |                |     |          |                                       |   |  |
|----|----------------|-----|----------|---------------------------------------|---|--|
| 1  |                |     |          |                                       |   |  |
| 1  |                |     |          |                                       |   |  |
| L  | Track & Civils | No  | Core 071 | Chainsaw Operative                    | Railway off-track work site activities.   | CS30: Maintain and Operate the Chainsaw, PTS, CS31: Felling and processing of small trees whose effective diameter at felling height is between 200 mm and 380 mm, Brushcutter & Strimmer, PTS   |
| 1- |                |     |          |                                       |   |  |
| 1  |                |     |          |                                       |   |  |
| 1  |                |     |          |                                       |   |  |
| L  | Track & Civils | No  | Core 072 | Chipper Operator                      | Railway off-track work site activities.   | CS30: Maintain and Operate the Chainsaw, PTS, CS31: Felling and processing of small trees whose effective diameter at felling height is between 200 mm and 380 mm, Brushcutter & Strimmer, PTS   |
| 1- |                |     |          |                                       |   |  |
| 1  |                |     |          |                                       |   |  |
| 1  |                |     |          |                                       |   |  |
| L  | Track & Civils | No  | Core 073 | Tree Surgeon                          | Railway off-track work site activities.   | CS30: Maintain and Operate the Chainsaw, PTS, CS31: Felling and processing of small trees whose effective diameter at felling height is between 200 mm and 380 mm, Brushcutter & Strimmer  |
| 1- |                |     |          |                                       |   |  |
| 1  |                |     |          |                                       |   |  |
| 1  |                |     |          |                                       |   |  |
| L  | Track & Civils | No  | Core 074 | Fencing Operative                     | Railway off-track work site activities.   | PTS  |
| 1- |                |     |          |                                       |   |  |
| 1  |                |     |          |                                       |   |  |
| 1  |                |     |          |                                       |   |  |
| L  | Track & Civils | No  | Core 075 | Weedsprayer                           | Weed spraying activities  | PA1 & PA6 Certificate of Competence In Safe Use of Pesticides. Brushcutter & Strimmer, PTS   |
| 1- |                |     |          |                                       |   |  |
| 1  |                |     |          |                                       |   |  |
| 1  |                |     |          |                                       |   |  |
| L  | Protection     | No  | Core 076 | PM - OLE a.c. Authorised Person (AP)  | Switching, testing and earthing of 25kV Overhead Line Equipment to RT/E/S/29987   | PTS (PTS AC)<br>Controller of Site Safety (COSS OLP)<br>Authorised Person OLE AC Isolation (AP OLE/AC-i)<br>Authorised Person OLE Auto Transformer Isolation (AP OLE/AT-i)<br>First Aid for Electrical Accidents (HSE T32)AC/DC<br>Possession Support Competency NR/L2/CTM/021 |
| 1- |                |     |          |                                       |   |  |
| 1  |                |     |          |                                       |   |  |
| 1  |                |     |          |                                       |   |  |
| L  | Protection     | No  | Core 077 | PM - OLE a.c. Nominated Person (NP)   | Achieved the requirements of the Network Rail Specification RT/E/S/21070, RT/E/S/29987 and NR/SP/ELP/24001  | PTS (PTS AC)<br>Controller of Site Safety (COSS OLP)<br>Nominated Person - OLE AC Isolation NP OLE/AC-i<br>Nominated Person – Autotransformer NP OLE/AT-i<br>First Aid for Electrical Accidents (HSE T32)AC/DC<br>Possession Support Competency NR/L2/CTM/021                  |
| 1- |                |     |          |                                       |   |  |
| 1  |                |     |          |                                       |   |  |
| 1  |                |     |          |                                       |   |  |
| L  | Protection     | No  | Core 078 | PM - DC Strapping                     | Achieved the requirements of the Network Rail Specification RT/E/S/21070, RT/E/S/29987 and NR/SP/ELP/24001 and Sentinel requirements. Requirements: minimum 2 years continual experience as Authorised Person, NP status completed. | PTS (PTS DCCR)<br>Controller of Site Safety (COSS CRP) Level B - Strapping (inc testing) (LB 3rd R St-I) Level B - Switching (LB 3rd R Sw-i)<br>Possession Support Competency NR/L2/CTM/021  |
| 1- |                |     |          |                                       |   |  |
| 1  |                |     |          |                                       |   |  |
| 1  |                |     |          |                                       |   |  |
| L  | Protection     | Yes | Core 079 | PM - Controller of Site Safety (COSS) | Railway work site safety activities. Location competence specific.  | Controller of Site Safety, Possession Support Competency NR/L2/CTM/021   |
| 1- |                |     |          |                                       |   |  |
| 1  |                |     |          |                                       |   |  |
| 1  |                |     |          |                                       |   |  |
| L  | Protection     | No  | Core 080 | PM - Possession Support               | Undertake Possession/Worksite Support duties within a possession  | PS<br>Possession Support Competency NR/L2/CTM/021  |
| 1- |                |     |          |                                       |   |  |

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| 1  |        |    |      |                  |   |   |
| 1  |        |    |      |                  |   |   |
| L  | Protec | Ye | Core | PM - Protection  | Railway protection work site activities.                                  | Protection Controller, Possession Support Competency NR/L2/CTM/021                      |
| ot | tion   | s  | 081  | Controller (PC)  |   |   |
| s  |        |    |      |                  |   |   |
| 1- |        |    |      |                  |   |   |
| 1  |        |    |      |                  |   |   |
| 1  |        |    |      |                  |   |   |
| L  | Protec | No | Core | PM - Level       | Railway protection work site activities.                                  | Possession Support Competency NR/L2/CTM/021, PTS (PTS DCCR) Auxiliary operating         |
| ot | tion   |    | 082  | Crossing Barrier |   | duties Level Crossing Attendant (AOD(LXA))  |
| s  |        |    |      | Attendant        |   |   |
| 1- |        |    |      |                  |   |   |
| 1  |        |    |      |                  |   |   |
| 1  |        |    |      |                  |   |   |
| L  | Protec | No | Core | PM - Point       | Railway protection work site activities.                                  | PTS (PTS DCCR) Possession Support Competency NR/L2/CTM/021 Auxiliary operating          |
| ot | tion   |    | 083  | Operator         |   | duties Points Operator AOD(PO), either a Controller of Site Safety (COSS) or Individual |
| s  |        |    |      |                  |   | working alone (IWA)   |
| 1- |        |    |      |                  |   |   |
| 1  |        |    |      |                  |   |   |
| 1  |        |    |      |                  |   |   |
| L  | Protec | No | Core | PM - Hand        | Railway protection work site activities.                                  | PTS (PTS DCCR) Possession Support Competency NR/L2/CTM/021 Auxiliary operating          |
| ot | tion   |    | 084  | Signaler         |   | duties Handsignaller (AOD(HS)), either a Controller of Site Safety (COSS) or Individual |
| s  |        |    |      |                  |   | working alone (IWA)   |
| 1- |        |    |      |                  |   |   |
| 1  |        |    |      |                  |   |   |
| 1  |        |    |      |                  |   |   |
| L  | Protec | No | Core | PM - Lookout     | Railway work site safety activities.                                      | PTS, Lookout, Possession Support Competency NR/L2/CTM/021                               |
| ot | tion   |    | 085  |                  |   |   |
| s  |        |    |      |                  |   |   |
| 1- |        |    |      |                  |   |   |
| 1  |        |    |      |                  |   |   |
| 1  |        |    |      |                  |   |   |
| L  | Semi-  | Ye | Core | Site Supervisor  | Site Supervisor   | PTS, SSSTS, SMSTS, NVQ/HNC Engineering Qual, First Aid, CSCS, Manual Handling,          |
| ot | Proffe | s  | 086  |                  |   | Small Tools, RD400, Asbestos Awareness, COSS  |
| s  | sional |    |      |                  |   |   |
| 1- | Grade  |    |      |                  |   |   |
| 1  | s      |    |      |                  |   |   |
| 1  |        |    |      |                  |   |   |
| L  | Semi-  | Ye | Core | Site Supervisor  | Site Supervisor civils  | PTS, SSSTS, SMSTS, NVQ/HNC Engineering Qual, First Aid, CSCS, Hanual handling,          |
| ot | Proffe | s  | 087  | civils           |   | RD400, Small Tools, Asbestos Awareness, COSS, SWL 1 & 2                                 |
| s  | sional |    |      |                  |   |   |
| 1- | Grade  |    |      |                  |   |   |
| 1  | s      |    |      |                  |   |   |
| 1  |        |    |      |                  |   |   |
| L  | Semi-  | Ye | Core | Site Supervisor  | Site Supervisor E&P   | PTS, COSS, SWL, NVQ/HNC Electrical Engineering, First Aid, CSCS, JIB, 2391              |
| ot | Proffe | s  | 088  | E&P              |   | T&I, IOSH, Substation Level C, HV comp and assessor, RD400, Manual Handling, Small      |
| s  | sional |    |      |                  |   | Tools, Asbestos Awareness, COSHH  |
| 1- | Grade  |    |      |                  |   |   |
| 1  | s      |    |      |                  |   |   |
| 1  |        |    |      |                  |   |   |
| L  | Semi-  | Ye | Core | Site Manager     | Site Manager Clerk of Work  | PTS, SMSTS, TWC, Min of NVQ in H&S, First Aid, 2D/3D AutoCAD, CSCS, Total               |
| ot | Proffe | s  | 089  | Clerk of Work    |   | Station, GPS, RD400, Manual Handling, Small Tools, Asbestos Awareness                   |
| s  | sional |    |      |                  |   |   |
| 1- | Grade  |    |      |                  |   |   |
| 1  | s      |    |      |                  |   |   |
| 1  |        |    |      |                  |   |   |
| L  | Semi-  | Ye | Core | Stressing        | Carry out, and take responsibility for, stressing in S&C.                 | PTS, Stressing L3 (TR10), Manual Handling   |
| ot | Proffe | s  | 090  | Operative (Level | Carry out, and take responsibility for natural stressing (plain line/S&C) |   |
| s  | sional |    |      | 3)               |   |   |
| 1- | Grade  |    |      |                  |   |   |
| 1  | s      |    |      |                  |   |   |
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|                              |   |         |             |  |   |  |
|------------------------------|---|---------|-------------|--|---|--|
| L<br>ot<br>s<br>1-<br>1<br>1 | Semi-<br>Proffe<br>sional<br>Grade<br>s | Ye<br>s | Core<br>091 | Principal<br>Technical Officer                   | Provide technical support to the Maintenance Engineering team.  | PTS, NVQ level 3/4, Stressing L3, Establish track geometry and restore to operational condition by mechanised repair - Tr05 suite (optional), Track maintenance design techniques (various), CDM Regulations Awareness, COSS (optional)  |
| L<br>ot<br>s<br>1-<br>1<br>1 | Semi-<br>Proffe<br>sional<br>Grade<br>s | Ye<br>s | Core<br>092 | Supervisor -<br>Drainage - off<br>track          | Supervisor - Drainage - off track   | PTS, SSTST or SMSTS, NVQ/HNC Engineering Qual or H&S, First Aid, RD400, Manual Handling, Small Tools, Asbestos Awareness, COSS   |
| L<br>ot<br>s<br>1-<br>1<br>1 | Semi-<br>Proffe<br>sional<br>Grade<br>s | Ye<br>s | Core<br>093 | Hand Back<br>Engineer; Heavy<br>Maintenance      | Multi-skilled Supervisor  | PTS, COSS (optional), IWA (optional), Hand Back (L2, L3 or L4) - TR12,   |
| L<br>ot<br>s<br>1-<br>1<br>1 | Semi-<br>Proffe<br>sional<br>Grade<br>s | Ye<br>s | Core<br>094 | Hand Back<br>Engineer -<br>Renewals/Project<br>s | Confirm the track is fit for operational purposes following Renewal/Project work.<br>Raising and removal of an ESR or TSR .   | PTS, COSS (optional), Hand Back (L2, L3 or L4) - TR13  |
| L<br>ot<br>s<br>1-<br>1<br>1 | Semi-<br>Proffe<br>sional<br>Grade<br>s | Ye<br>s | Core<br>095 | Multi-skilled<br>Supervisor                      | Multi-skilled Supervisor  | PTS, SSSTS, SMSTS, COSS, SWL, Hand Back L1-4, Track monitor, First Aid, RD400, Manual Handling, Small Tools, ES  |
| L<br>ot<br>s<br>1-<br>1<br>1 | Semi-<br>Proffe<br>sional<br>Grade<br>s | Ye<br>s | Core<br>096 | P-way<br>Supervisor                              | P-way Supervisor  | PTS, COSS, ES, Track Hand Back (L2, 3 or 4), First Aid, RD400, Manual Handling, Small Tools, (TGS - Although not common)   |
| L<br>ot<br>s<br>1-<br>1<br>1 | Semi-<br>Proffe<br>sional<br>Grade<br>s | Ye<br>s | Core<br>097 | Signalling &<br>Telecoms<br>Supervisor           | to lead, direct, supervise and check quality of work delivered to confirm assets are compliant to standards and work is delivered efficiently. Carry out end-product checks, staff surveillance and asset inspections in line with relevant standards, procedures and instructions. | PTS, SCC, COSS, SMTH (Signal Maintenance Testing Handbook) SFI Level 2 (Signal Failure Investigation to Level 2), IRSE Licensed in an appropriate category, Emergency First Aid (Minimum), Manual Handling, SSSTS or SMSTS, HNC in an engineering subject (Signal/Electrical/Mechanical), Basic Signalling courses e.g. BS1 & BS2 or equivalent. |
| L<br>ot<br>s<br>1-<br>1<br>1 | Semi-<br>Proffe<br>sional<br>Grade<br>s | Ye<br>s | Core<br>098 | Track Proposal<br>Engineer                       | Track Proposal Engineer   | PTS, Min HNC Civil Engineering, CDM Regulations Awareness  |
| L<br>ot<br>s<br>1-<br>1<br>1 | Semi-<br>Proffe<br>sional<br>Grade<br>s | Ye<br>s | Core<br>099 | Track Quality<br>Supervisor                      | Track Quality Supervisor  | PTS, IWA/COSS, Establish track geometry and restore to operational condition by mechanised repair - Tr05 suite, CDM Regulations Awareness, Track Engineering Cert.   |
| L<br>ot<br>s<br>1-<br>1<br>1 | Semi-<br>Proffe<br>sional<br>Grade<br>s | Ye<br>s | Core<br>100 | TSR<br>Management<br>Support Engineer            | TSR Management Support Engineer   | PTS, COSS, Track Hand Back (L2, 3 or 4)  |

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**APPENDIX C TO SCHEDULE 1- SERVICES–PRODUCT CODES****1. Product Groups**

The Supplier shall be qualified under the following RISQS codes for the Contract Lot(s) for which it is required to provide the Services under this Agreement.

| <b>Lot</b>                     | <b>RISQS Codes Required</b>   |
|--------------------------------|---|
| Core (Lots 1 to 11)            | A.A.1.5 - Temporary Labour (Track)<br>A.A.1.6 - Temporary Labour (Civils)<br>A.A.9.1 - Provision of Protection and Warning Staff (not including LOWS)<br>A.A.9.2 - Machine / Crane Controllers<br>07.09.02 - Machine/Crane Controllers<br>07.05.04 - Rail Stressing |
| Electrification (E&P) (Lot 12) | A.A.1.2 - Temporary Labour (Electrification)  |
| Signalling (S&T) (Lot 13)      | A.A.1.3 - Temporary Labour (Signalling)   |

APPENDIX D TO SCHEDULE 1- SERVICES –SUPPLIER LOTS

1. **Supplier Lots**

- 1.1. Under this Agreement the Supplier has been awarded the following Lots as detailed within this Appendix
  
- 1.2. From time to time, Network Rail may require the Supplier to supply labour to other Lots than those listed, this shall only be following the written consent of Network Rail's Representative.

| Contracting Unit | Lot | Status |
|------------------|-----|--------|
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**APPENDIX E TO SCHEDULE 1- SERVICES –MENTORING GUIDELINES****1. Introduction**

- 1.1. Network Rail supports the development of people as part of creating a sustainable workforce. Consequently, the Supplier shall work with Network Rail to best utilise and up-skill Frontline Labour Workers by mentoring new or inexperienced Frontline Labour Workers (as set out in Network Rail Standard NR/L3/MTC/SE0089). This mentorship will be provided by the Supplier so as to enable relevant Frontline Labour Workers to develop the necessary safety awareness and experience without exposing themselves inadvertently to risk.
- 1.2. All Frontline Labour Workers who are new or inexperienced Frontline Labour Workers (as set out in Network Rail Standard NR/L3/MTC/SE0089) on Network Rail's infrastructure or a Network Rail construction site, who are either (i) required to wear blue safety helmets, or (ii) required to wear white safety helmets and have less than six months' experience, will be provided with mentorship from the Supplier.
- 1.3. Frontline Labour Workers under mentorship will continue to be under mentorship until the Supplier believes they have demonstrated sufficient competence in accordance with Network Rail Standard NR/L3/MTC/SE0089) to be signed off for normal working.

**2. Process**

- 2.1. Safety is our paramount concern and unless specifically agreed otherwise Frontline Labour Workers under mentorship should be supplied at a ratio of no more than 1 in 5 so that they can be guided, advised and mentored by experienced operatives.
- 2.2. Network Rail or the Supplier may choose not to utilise Frontline Labour Workers under mentorship on certain projects due to criticality or complexity risk.
- 2.3. If a Supplier does not comply with the ratio specified in paragraph 2.1 or in situations where Network Rail has requested that no Frontline Labour Worker(s) under mentorship shall be supplied, the Frontline Labour Worker(s) under mentorship shall not be allowed to participate in the provision of such Services and the Supplier shall be responsible for the payment of such Frontline Labour Worker(s). In such situation, Network Rail will not pay the Supplier for the Frontline Labour Worker(s) under mentorship and the poor behaviour of the Supplier in creating this situation shall be recorded.
- 2.4. Network Rail and the Suppliers will periodically monitor and review the ratio specified in paragraph 2.1 and, where agreed between Network Rail and the Supplier, re-align it if appropriate.

**SCHEDULE 2: CHARGES****1. Introduction**

- 1.1. This Schedule 2 (Charges) sets out the rates and prices associated with the delivery of the Services by the Supplier to Network Rail, under the terms and conditions of this Agreement.

**2. Rates and Prices**

- 2.1. The rates and prices shall include everything necessary to carry out the Services including but not limited to, the following:
  - 2.1.1. The cost of employing personnel including overheads, on call, profit, expenses, transport, mobile phones, travel time (to and from the work site and home), subsistence, lodgings, disbursements, taxation, insurances, fuel, supervision, training, medical costs, PPE, small hand tools, establishment charges, periods of absence for whatever reason (i.e. sickness, holidays, competency training, med- screening, suspension for poor performance, Suppliers internal matters and the like), protection operatives equipment, and sundry consumables necessary to carry out the works and pre-site familiarisation.
  - 2.1.2. Any costs of managing the Sub-contractors or otherwise dealing with the supply chain, including any associated ancillary costs.
  - 2.1.3. The provision of a single point of contact to administer the contract and attend meetings with Network Rail.
  - 2.1.4. The rates and prices shall be in pounds sterling and shall be exclusive of all discounts and VAT.
  - 2.1.5. A single hourly rate for the grades of personnel in the following time categories:
    - 2.1.5.1. Weekday – shall be any day shift from Monday to Friday where the shift starts at or after 07.00 hours to 18.59 hours or for the duration specified by Network Rail.
    - 2.1.5.2. Weeknight – shall be any night shift from Monday to Friday where the shift starts at or after 19.00 hours to 06.59 hours or for the duration specified by Network Rail.
    - 2.1.5.3. Weekend – shall be where the shift starts at or after 19.00 hours on Friday to 06.59 hours Monday or a Bank Holiday or for the duration specified by Network Rail.

**3. Premium Hours and Bank Holidays****3.1. Bank Holidays**

- 3.1.1. Bank Holidays in England, Scotland and Wales shall be paid at the same rate as a Weekend.

**3.2. Premium Hours**

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- 3.2.1. A premium hourly rate for Frontline Labour Workers working on:
  - 3.2.1.1. Christmas Day and Boxing Day, from 22.00 hours on 24th December until 06.59 hours on 27th December
  - 3.2.1.2. In England, Scotland and Wales: New Year's Day, from 22.00 hours on 31st December until 06.59 hours on 2nd January
- 3.2.2. Premium hours will be paid as a percentage in addition to the single hourly rate that applies to the time of day and time of week.
- 3.2.3. A letter detailing the premium hour's payment will be issued each year by Network Rail detailing what this increase shall be. Note there will be a separate letter for Scotland.

#### 4. Annual Price Reviews

- 4.1. With effect from 1 April 2023 and each anniversary of that date, the Charges will be adjusted by a percentage equal to the percentage increase or decrease in the level of the Index calculated by comparing the Index figure last published on the preceding 1 February and the Index figure last published on the 1 February before that.
- 4.2. By way of a worked example for illustrative purposes only, if the Index figure published on the preceding 1 February is 110 and the Index figure published on the 1 February before that is 108, the Charges will be increased by 1.85%.

#### 5. Call-Off Orders

- 5.1. Where Network Rail chooses to award a direct Call-Off Order in accordance with the Agreement, that Call-Off Order shall require Network Rail to pay the Supplier at the applicable rates set out in Schedule 2 for a minimum shift of seven hours, the provisions of Appendix E to Schedule 2 shall apply.
- 5.2. Where Network Rail chooses to undertake a mini-competition in accordance with this Agreement, the Call-Off Order awarded under that mini-competition shall require Network Rail to pay the Supplier at the applicable rates set out in the relevant Mini-Competition Response for a minimum shift of seven hours, the provisions of Appendix E to Schedule 2 shall apply.
- 5.3. If the Supplier's Frontline Labour Worker leaves the site early of their own accord (or the Supplier releases the Frontline Labour Worker early), then they shall forfeit this minimum allowance and be paid only for the hours worked (and Network Rail shall only be required to pay the Supplier at the applicable rates set out in this Schedule for the actual number of hours worked by the Frontline Labour Worker).
- 5.4. Where Frontline Labour Workers work across the different role categories in one shift, they shall be paid at the rate that applies to the largest proportion of the shift worked.
- 5.5. Where Frontline Labour Workers work across the different time categories (Week Day, Week Night or Weekend) in one shift, they shall be paid at the rate that applies to the largest proportion of the shift worked.
- 5.6. Where timesheets fail to record whether or not an operative has taken a meal break, a nominal half-hour meal-break deduction shall be automatically made.



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5.7. Where Frontline Labour Workers are required to attend planning or other such meetings this time shall be recorded and paid for in accordance with the applicable rates for the actual number of hours worked. The minimum shift length above does not apply.

## 6. Cancellation Fees

6.1. Where Call Off Orders have been accepted by the Supplier and then cancelled by Network Rail, the cancellation charges payable by Network Rail shall apply in accordance with the following table:

| Notice of cancellation prior to attendance at worksite | Percentage Cancellation Fee of Call Off Order |
|--|---|
| More than 48 hours                                     | 0%  |
| More than 12 hours but not exceeding 48hours           | 50%   |
| 12 hours or less                                       | 100%  |

6.2. Any cancellation fee will only be paid subject to reasonable evidence being provided by the Supplier showing that they have undertaken all reasonable endeavours to utilise the Frontline Labour Worker on other activities and evidence of Frontline Labour Worker being actually paid.

**APPENDIX A TO SCHEDULE 2 – CHARGES–PRICING SCHEDULE**

**APPENDIX B TO SCHEDULE 2 – NOT USED**

**APPENDIX C TO SCHEDULE 2 – CHARGES –TIME SHEET AND RECEIPTING PROCESS**

**1. Timesheet process**

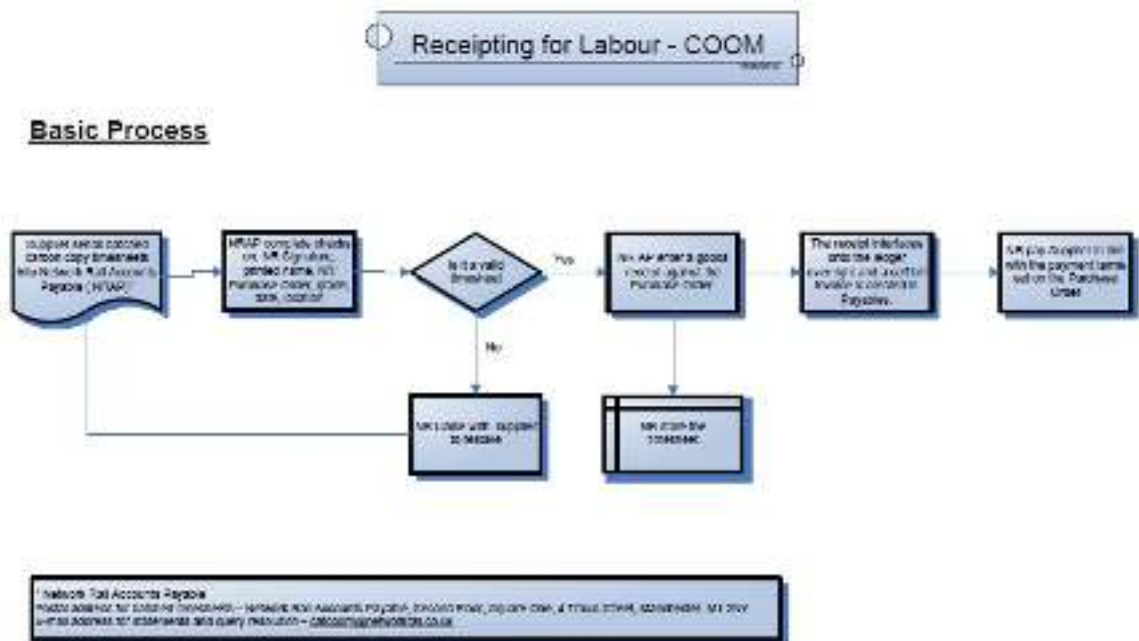
- 1.1. At the end of the shift/period of hire, the Frontline Labour Worker is to present a timesheet to Network Rail for signature.
- 1.2. The original timesheet is to be retained by Network Rail for audit purposes and the Frontline Labour Worker is to retain carbon copy which is to be processed for payment purposes.
- 1.3. The timesheet shall be of the format detailed in Appendix d to Schedule 2 – Charges –Time Sheet Template and shall be A4 Landscape.

**2. Future Innovations**

- 2.1. Network Rail is looking to replace the current timesheet process with an electronic system, the Supplier shall be required to support the implementation of said system.

**3. Receipting Process**

- 3.1. The receipting process shall be as detailed in the below flow chart;



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**APPENDIX D TO SCHEDULE 2 – CHARGES –TIME SHEET TEMPLATE**

|   |      |                                 |   |        |       |             |       |        |   |                                 |       |                            |       |        |       |        |  |
|---|------|---------------------------------|---|--------|-------|-------------|-------|--------|---|---------------------------------|-------|----------------------------|-------|--------|-------|--------|--|
| SUPPLIER NAME/LOGO HERE   |      |                                 | <b>RECORD OF HOURS WORKED</b>   |        |       |             |       |        |   |                                 |       |                            |       |        |       |        |  |
|   |      |                                 | TIMESHEET No.   |        |       |             |       |        |   |                                 |       |                            |       |        |       |        |  |
| CLIENT:<br>NETWORK RAIL   |      | CLIENT CONTACT<br>WORK LOCATION |   |        |       | WEEKENDING: |       |        |   |                                 |       | CLIENTS PURCHASE ORDER No. |       |        |       |        |  |
| TO ENSURE PROMPT PAYMENT THE PURCHASE ORDER NUMBER <u>MUST BE RECORDED.</u><br>ACTUAL ON SITE WORKING TIMES ONLY <u>MUST BE RECORDED.</u>   |      |                                 |   |        |       |             |       |        |   | SUPPLIER JOB REF (if required). |       |                            |       |        |       |        |  |
|   |      |                                 |   |        |       |             |       |        |   | CLIENT ISSUING DEPOT:           |       |                            |       |        |       |        |  |
|   |      |                                 | Sun   |        | Mon   |             | Tue   |        | Wed   |                                 | Thu   |                            | Fri   |        | Sat   |        |  |
| (Insert Date)   |      |                                 |   |        |       |             |       |        |   |                                 |       |                            |       |        |       |        |  |
| REF   | NAME | TRADE                           | START   | FINISH | START | FINISH      | START | FINISH | START   | FINISH                          | START | FINISH                     | START | FINISH | START | FINISH |  |
|   |      |                                 |   |        |       |             |       |        |   |                                 |       |                            |       |        |       |        |  |
|   |      |                                 |   |        |       |             |       |        |   |                                 |       |                            |       |        |       |        |  |
|   |      |                                 |   |        |       |             |       |        |   |                                 |       |                            |       |        |       |        |  |
|   |      |                                 |   |        |       |             |       |        |   |                                 |       |                            |       |        |       |        |  |
| 30 MINUTES MEAL BREAK TAKEN (Circle as appropriate)<br><b>Mandatory Requirement - Note if not circled will assume has taken place</b>   |      |                                 | Y   | N      | Y     | N           | Y     | N      | Y   | N                               | Y     | N                          | Y     | N      | Y     | N      |  |
|   |      |                                 | Y   | N      | Y     | N           | Y     | N      | Y   | N                               | Y     | N                          | Y     | N      | Y     | N      |  |
| CLIENT CONFIRMATION<br>ON SITE BRIEFINGS UNDERTAKEN<br><br><b>Rule Book Requirements</b><br>I certify that the above persons have been briefed in accordance with the relevant sections of the Modular Rule Book (A Safe System of Work Briefing and the relevant Health, Safety and Welfare arrangements have been briefed)<br><br>SIGNED.....<br>PRINT NAME.....<br>DATE..... |      |                                 | <b>RECORD OF HOURS ON SITE</b>  |        |       |             |       |        |   |                                 |       |                            |       |        |       |        |  |
|   |      |                                 | <b>SUPPLIER'S CONFIRMATION</b><br>SIGNED:<br><br>PRINT NAME:<br>DATE: |        |       |             |       |        |   |                                 |       |                            |       |        |       |        |  |
|   |      |                                 | <b>CLIENT CONFIRMATION</b><br>SIGNED:<br><br>PRINT NAME:<br>DATE:     |        |       |             |       |        | DISTRIBUTION<br><br>WHITE - CUSTOMER SITE COPY<br><br>COLOUR - SUPPLIER<br><br>COLOUR - SUPPLIER<br><br>COLOUR - SUPPLIER |                                 |       |                            |       |        |       |        |  |

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## APPENDIX E TO SCHEDULE 2 – CHARGES - WORKED VS. ORDERED SCENARIOS

## 1. Worked Vs Ordered Scenarios

- 1.1. Network Rail shall issue the Supplier with a Call-Off Order for a predicted number of hours work required and Network Rail shall pay the Supplier (who in turn shall pay the Frontline Labour Worker) for the predicted number of hours in the Call-Off Order (where accepted by the Supplier) where:
  - 1.1.1. the actual number of hours worked by the Frontline Labour Worker is the same as or more than the predicted hours in the Call-Off Order; or
  - 1.1.2. the actual number of hours worked by the Frontline Labour Worker is less than the predicted hours in the Call-Off Order but the Frontline Labour Worker was sent home by the appropriate Network Rail representative.
- 1.2. In all other circumstances, Network Rail shall only pay the Supplier for the actual number of hours worked by the Frontline Labour Worker pursuant to the Call-Off Order.
- 1.3. A worked example of this is set out below at paragraph 1.4 for illustrative purposes only.
- 1.4. A Call-Off Order is raised and accepted by the Supplier for 10 hours:
  - 1.4.1. If the Frontline Labour works 10 hours they shall be paid 10 hours. If the Frontline Labour Worker works 8 hours and are then sent home by an appropriate Network Rail representative, they shall be paid 10 hours.
  - 1.4.2. If the Frontline Labour Worker works 8 hours and they then decide to leave site of their own accord (or the Supplier releases the Frontline Labour Worker early), they shall be paid 8 hours.

**SCHEDULE 3 – MANAGEMENT INFORMATION AND PERFORMANCE****1. Introduction**

- 1.1. This Schedule 3 (Management Information and Performance) sets out the performance measurement mechanism that shall be applied to the Services within this Agreement.

**2. Service Levels**

- 2.1. Appendix A sets out the Service Levels.
- 2.2. The Supplier shall monitor its performance against each Service Level and send Network Rail a report detailing the level of service actually achieved in accordance with paragraph 4.
- 2.3. Service Credits, shall accrue for any KPI Failure and shall be calculated in accordance with paragraph 3.

**3. Service Credits**

- 3.1. If the level of performance of the Supplier during a Service Period achieves the Green or Amber Performance Level in respect of a Key Performance Indicator, no Service Credits shall accrue to the Supplier in respect of that Key Performance Indicator.
- 3.2. If the level of performance of the Supplier during a Service Period achieves the Red Performance Level in respect of a Key Performance Indicator, Service Credits shall accrue to the Supplier in respect of that Key Performance Indicator as specified in Appendix A, unless:
  - 3.2.1. the KPI Failure is a Repeat KPI Failure when the provisions of paragraphs 3.3 and 3.4 shall apply; or
  - 3.2.2. no Service Credits are specified for that Red Performance Level in Appendix A.
- 3.3. If a KPI Failure occurs in respect of the same Key Performance Indicator in any two (2) consecutive Measurement Periods, the second and any subsequent such KPI Failure shall be a "Repeat KPI Failure".
- 3.4. The amount of Service Credits that shall accrue to the Supplier in respect of a KPI Failure that is a Repeat KPI Failure shall be calculated as follows:
 
$$SC = C \times 2$$
 where:
  - SC = the number of Service Credits that shall accrue for the Repeat KPI Failure; and
  - C = the applicable number of Service Credits for that KPI Failure as set out in Appendix A.
- 3.5. The liability of the Supplier in respect of Service Credits shall be subject to the Service Credit Cap provided that, for the avoidance of doubt, the operation of the Service Credit Cap shall not affect the continued accrual of Service Credits in excess of such financial limit only for the purposes of determining whether a Critical Service Failure has occurred.

**4. Performance Monitoring**

- 4.1. Within five Business Days of the end of each Service Period, the Supplier shall provide a report to Network Rail which summarises the performance by the Supplier against each of the Service Levels, in such format as agreed between the Parties from time to time (including on Network Rail's Supplier Management System) and contains, as a minimum, the following information:
  - 4.1.1. for each Service Level, the actual performance achieved over the Service Period, and that achieved over all previous Service Periods;

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- 4.1.2. a summary of all Green Performance Levels, Amber Performance Levels and Red Performance Levels that were achieved during the Service Period;
- 4.1.3. which Performance Failures remain outstanding and progress in resolving them;
- 4.1.4. for any Repeat KPI Failures, actions taken to resolve the underlying cause and prevent recurrence;
- 4.1.5. the Service Credits to be applied in respect of each KPI Failure, including the KPI Failure(s) to which the Service Credits relate; and
- 4.1.6. such other details as Network Rail may reasonably require from time to time.

### 5. Additional Service Levels

- 5.1. At specific points during the Agreement it may be appropriate to add additional Service Levels. Any additional targets will be agreed with the Supplier prior to adding them to the Agreement and the Supplier will not unreasonably withhold or delay its acceptance of any additional Service Levels.

### 6. Performance Measuring Process

- 6.1. The objectives of the Service Level monitoring is as follows:
  - 6.1.1. To assist in the development and management of a continuous improvement culture across the Agreement.
  - 6.1.2. Means of monitoring Supplier performance with a view to confirming that required standards are met and levels of service are satisfactory.
  - 6.1.3. Provide measurement that will enable focused areas of over/under performance to be targeted and managed accordingly
  - 6.1.4. Supply a baseline which can be used to compare performance across Network Rail's supply base.
  - 6.1.5. Provide a basis upon which the performance of the Supplier can be linked to the commercial elements of the Agreement.

### 7. Measurement Process

- 7.1. Measurement Time Period
  - 7.1.1. The Supplier performance against the KPI's will be reviewed after each three Agreed Industry Rail Periods. The Supplier will be given one Agreed Industry Rail Period to collate all the necessary data and submit to Network Rail's Representative prior to the review.
- 7.2. Supplier Feedback
  - 7.2.1. During a review, if outstanding actions are discovered against Network Rail, or Network Rail is perceived as having hindered the ability of the Supplier to deliver against the performance measures it is essential that the actions required are reported along with owners from both parties and dates for completing the actions as necessary.
- 7.3. Annual Reviews
  - 7.3.1. The final review will form the annual review at the end of 13 consecutive Agreed Industry Rail Periods. The review will be adjusted to ensure that performance is considered over the complete period and not just the final three Agreed Industry Rail Periods.



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### 7.4. Remedies

7.4.1. Throughout the Term of the Agreement Network Rail and the Supplier will work together to continually innovate and improve performance in the delivery of the Services.

7.4.2. After each three Agreed Industry Rail Periods review the RAG status will be used to set the score against each KPI.

## 8. Supplier Relationship Management

8.1. Supplier Relationship Management Process sets out a process for monitoring that the right behaviours are being demonstrated by both parties

8.2. The purpose of monitoring these behaviours is to:

8.2.1. Provide a lead measure to give early indication of potential issues.

8.2.2. Pro-actively manage relationship and/or behavioural issues / concerns.

8.2.3. Mitigate and manage risk.

8.2.4. Facilitate effective relationships between Network Rail and the Supplier.

8.2.5. Ensure the relationship strategies for both parties are understood and aligned.

8.2.6. Ensure openness and transparency.

## 9. Supplier Relationship Management (SRM) Values

9.1. It is intended that during the review and discussions each party adopts and abides by the following values ensuring that maximum value can be obtained from the reviews:

9.1.1. be open, honest and transparent with each other;

9.1.2. ensure information is shared and is transparent;

9.1.3. recognise the accountabilities that each of us have to the other and to those to whom the services are actually provided;

9.1.4. communicate effectively, consistently, openly, honestly and in a responsive manner;

9.1.5. listen effectively, respecting each other's opinions;

9.1.6. encourage new and creative ways to achieve the most appropriate outcomes for each other;

9.1.7. work in partnership to drive improvements and innovation;

9.1.8. 'confess' (early) about problems; and

9.1.9. create success together for our companies.

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**APPENDIX A TO SCHEDULE 3 – MANAGEMENT INFORMATION AND PERFORMANCE –  
SERVICE LEVELS**

## 1. Table of Service Levels

| Theme   | KPI Title                  | Description  | Red Performance Level   | Amber Performance Level | Green Performance Level  | Service Credits for Red Performance Level | Service Period | Core Service Level (Y/N) |
|---|----------------------------|--|---|-------------------------|--|---|----------------|--------------------------|
| <b>Section 1 – Key Performance Indicators</b> |                            |  |   |                         |  |   |                |                          |
| Assurance of supply                           | KPI 1 - Request fulfilment | Percentage of Requests Fulfilled by the Supplier, provided that Network Rail provides the relevant COOM Electronic Purchas Order in accordance with the requirements of the Agreement. | Any of: <ul style="list-style-type: none"> <li>• &lt;100% of Requests Fulfilled within 48 hours.</li> <li>• &lt;95% of Requests Fulfilled within 24 hours.</li> <li>• &lt;75% of Requests Fulfilled within 4 hours.</li> <li>• The Supplier fails to use reasonable endeavours to Fulfil</li> </ul> | N/A                     | All of: <ul style="list-style-type: none"> <li>• 100% of Requests Fulfilled within 48 hours.</li> <li>• ≥95% of Requests Fulfilled within 24 hours.</li> <li>• ≥75% of Requests Fulfilled within 4 hours.</li> <li>• The Supplier uses reasonable endeavours to Fulfil Requests within 4 hours.</li> </ul> | £10,000 (Indexed) per Incident            | Quarterly      | Y                        |

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| Theme               | KPI Title                            | Description  | Red Performance Level    | Amber Performance Level   | Green Performance Level   | Service Credits for Red Performance Level | Service Period | Core Service Level (Y/N) |
|---------------------|--------------------------------------|--|--------------------------|---|---|---|----------------|--------------------------|
|                     |                                      |  | Requests within 4 hours. |   |   |   |                |                          |
| Assurance of supply | KPI 2 – Critical Grades No Shows     | Number of No Shows for Critical Grades   | >0 No Shows              | N/A   | 0 No Shows  | £40,000 (Indexed) per Incident            | Quarterly      | Y                        |
| Assurance of supply | KPI 3 – Non-Critical Grades No Shows | Number of No Shows for Non-Critical Grades   | >10 No Shows             | 1 – 10 No Shows   | 0 No Shows  | £10,000 (Indexed) per Incident            | Quarterly      | Y                        |
| Contract management | KPI 4 - Continuous Improvement       | Attendance at supplier management innovation forums in accordance with clause 5.2.4 of this Agreement. | N/A                      | No attendance per annum.  | Attendance on one or more occasions per annum.                              | N/A                                       | Annually       | N                        |
| Labour supplied     | KPI 5 - Employee Satisfaction        | Supplier conducts an Employee Satisfaction Survey.   | N/A                      | No Employee Satisfaction Survey carried out in the relevant year. | One or more Employee Satisfaction Surveys carried out in the relevant year. | N/A                                       | Annually       | N                        |

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| Theme           | KPI Title                           | Description   | Red Performance Level                                   | Amber Performance Level                          | Green Performance Level                                    | Service Credits for Red Performance Level | Service Period | Core Service Level (Y/N) |
|-----------------|-------------------------------------|---|---|--|--|---|----------------|--------------------------|
| Labour supplied | KPI 6 - Volume sub contracted       | % volume of Services sub-contracted to Sub-contractors, and the proportion sub-contracted to SMEs   | As per the Supplier's Bid                               | As per the Supplier's Bid                        | As per the Supplier's Bid                                  | £10,000 (Indexed) per Incident            | Quarterly      | Y                        |
| Safety          | KPI 7 - LTIFR                       | Lost Time Injury Frequency Rate, by reference to:<br>- the number of hours that should have been worked among staff and contractors of the Supplier involved in the management of the contract; and<br>- the number of hours not worked due to injuries at work leading to absence. | LTIFR of >1.50%   | LTIFR of 0.100% to 1.50%                         | LTIFR of <0.100%   | N/A                                       | Quarterly      | Y                        |
| Safety          | KPI 8 - Safety Visits (Audit Based) | Reporting on the number of Frontline Labour Workers who have received and signed that they have taken part in a director  | Less than 90% of workforce of Frontline Labour Workers. | Between 90.01% and 95% of workforce of Frontline | Greater than 95% of workforce of Frontline Labour Workers. | N/A                                       | Quarterly      | N                        |

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| Theme  | KPI Title                      | Description  | Red Performance Level   | Amber Performance Level | Green Performance Level   | Service Credits for Red Performance Level | Service Period | Core Service Level (Y/N) |
|--|--------------------------------|--|---|-------------------------|---|---|----------------|--------------------------|
|  |                                | safety tour and/or undertaken a safety talk/briefing.  |   | Labour Workers.         |   |   |                |                          |
| Contract management  | KPI 9 - Management information | Provision of all information required by paragraph 5 of Schedule 3.  | Any failure to provide all information required by paragraph 5 of Schedule 3. | N/A                     | Provision of all information required by paragraph 5 of Schedule 3. | £10,000 (Indexed) per Incident            | Quarterly      | N                        |
| <b>Section 2 – Subsidiary Performance Indicators<sup>1</sup></b> |                                |  |   |                         |   |   |                |                          |
| Safety   | SPI 1 - Fatigue Management     | In compliance with Network Rail's Fatigue Risk standard NR/L2/OHS/003, notify Network Rail of all instances of fatigue triggers being reached. | <100%   | N/A                     | 100%  | N/A                                       | Quarterly      | N                        |

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Please note that items marked 'TBC' may be populated by reference to the Supplier's Bid.

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| Theme           | KPI Title                         | Description   | Red Performance Level | Amber Performance Level | Green Performance Level | Service Credits for Red Performance Level | Service Period | Core Service Level (Y/N) |
|-----------------|-----------------------------------|---|-----------------------|-------------------------|-------------------------|---|----------------|--------------------------|
| Labour supplied | SPI 2 - Provision of Local Labour | Average Travel Time for Frontline Labour Workers  | >75 minutes           | 45 – 75 minutes         | <45 minutes             | N/A                                       | Quarterly      | N                        |
| Labour supplied | SPI 3 - PAYE vs non PAYE          | Percentage of shifts delivered by PAYE vs Non PAYE workers in the provision of the Services.  | TBC                   | TBC                     | TBC                     | N/A                                       | Quarterly      | N                        |
| Labour supplied | SPI 4 - Diversity & Inclusion     | % of female workers, % of BAME workers engaged in the provision of the Services.  | TBC                   | TBC                     | TBC                     | N/A                                       | Quarterly      | N                        |
| Labour supplied | SPI 5 - Apprentices               | Number of apprentices employed by either the Supplier or its Sub-contractors (guide 1 for every £3m of spend on contracts worth over £10m per annum). | TBC                   | TBC                     | TBC                     | N/A                                       | Quarterly      | N                        |

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| Theme           | KPI Title                                  | Description   | Red Performance Level   | Amber Performance Level | Green Performance Level   | Service Credits for Red Performance Level | Service Period | Core Service Level (Y/N) |
|-----------------|--|---|---|-------------------------|---|---|----------------|--------------------------|
| Safety          | SPI 6 - Competency Management (forecasted) | Number of Primary Sponsored Workers whose Core Training is due to expire within the next six months.  | TBC   | TBC                     | TBC   | N/A                                       | Quarterly      | N                        |
| Safety          | SPI 7 - Competency Management (expired)    | Number of Primary Sponsored Workers whose Core Training has expired.  | TBC   | TBC                     | TBC   | N/A                                       | Quarterly      | N                        |
| Safety          | SPI 8 – New Starters                       | Average number of new starters (blue hat Frontline Labour Workers) per five person team.  | >1 new starters (blue hat Frontline Labour Workers) per five person team. | N/A                     | <1 new starters (blue hat Frontline Labour Workers) per five person team. | N/A                                       | Quarterly      | N                        |
| Energy & Carbon | SPI 9 - Science Based Carbon               | Supplier agrees to and develops a plan to set Science Based Carbon Targets that must be internally approved and submitted to the Science Based Targets Initiative by 2025, that | No plan in place.   | Plan being developed.   | Plan in place.  | N/A                                       | Annually       | N                        |

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| Theme | KPI Title | Description   | Red Performance Level | Amber Performance Level | Green Performance Level | Service Credits for Red Performance Level | Service Period | Core Service Level (Y/N) |
|-------|-----------|---|-----------------------|-------------------------|-------------------------|---|----------------|--------------------------|
|       |           | specifically relate to the Supplier's Scope 1 and Scope 2 CO2e emissions that will therefore contribute to Network Rail's Scope 3 Science Based Targets for carbon reduction. |                       |                         |                         |   |                |                          |

## 2. Management Information

2.1 Provision of the following information:

2.2 PO Number

2.3 PO Line Number

2.4 Unique Shift Reference

2.5 PO Line Value

2.6 PO Line Paid Y/N

2.7 PO Retrospective Y/N

2.8 PO Lead Time (days)

2.9 Service Correction Order / Change Request Required Y/N



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- 2.10 MV or Sub-Contractor
- 2.11 Supplier Name
- 2.12 SME Y/N (Tier 2 Only)
- 2.13 Business Area
- 2.14 Delivery Unit (Maintenance)
- 2.15 Route / Lot
- 2.16 Region
- 2.17 Reporting Quarter
- 2.18 Week (1-52)
- 2.19 Rail Period (1-13)
- 2.20 Midweek/Weekend
- 2.21 Day/Night
- 2.22 Shift Start Date
- 2.23 Shift Start Time
- 2.24 Shift End Date
- 2.25 Shift End Time
- 2.26 Shift Length (Hours)
- 2.27 Contract Job Title
- 2.28 Critical Grade Y/N

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- 2.29 Competencies Required
- 2.30 All Training Up-to-Date Y/N
- 2.31 Number of Operatives with Expiring Training
- 2.32 All Training Renewals Booked Y/N
- 2.33 Number of Workers
- 2.34 Number of Workers on PAYE
- 2.35 Number of Workers not on PAYE
- 2.36 Min hourly rate for non-PAYE
- 2.37 Number of Blue Hat Workers
- 2.38 Blue to White Hat Ratio
- 2.39 Number of No Shows
- 2.40 Reason for No Show
- 2.41 No Show PAYE vs non PAYE
- 2.42 Total Hours Planned
- 2.43 Total Hours Worked
- 2.44 Planned Total Travel Time
- 2.45 Number of Door to Door Standard Exceedences
- 2.46 Exceedence Follow Up Report Provided Y/N
- 2.47 Accommodation Required Y/N

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2.48 Number of Workers Requiring Accommodation

2.49 All Workers had fit for purpose PPE Y/N

2.50 Number of Accidents

2.51 Number of Incidents

2.52 Number of Consequent Days Lost

### 3. **Performance Indicator Definitions**

3.1 For the purposes of KPI 1:

3.1.1 “Fulfil” or “Fulfilment” means the fulfilment by the Supplier of the relevant Request;

3.1.2 “Request” means the issue by Network Rail of a COOM Electronic Purchase Order in accordance with clause 2.3 of this Agreement; and

3.1.3 the time to calculate Fulfilment of the relevant COOM Electronic Purchase Order will commence on the time and date that the COOM Electronic Purchase Order is sent by Network Rail to the Supplier via i-Supplier and end on the time and date that the relevant Frontline Labour Workers commence provision of services in accordance with the relevant COOM Electronic Purchase Order.

3.2 For the purposes of KPI 2:

3.2.1 “Critical Grades” means the grades specified as such in Schedule 2; and

3.2.2 “No Shows” means non-attendance for provision of the relevant services by the applicable Frontline Labour Worker(s).

3.3 For the purposes of KPI 3:

3.3.1 “No Shows” has the meaning given in paragraph 3.2.2, above; and

3.3.2 “Non-Critical Grades” means the grades specified as such in Schedule 2.

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- 3.4 For the purposes of KPI 5, “Employee Satisfaction Survey” means a survey conducted by the Supplier with at least 50% of the Supplier’s Personnel to calculate employee satisfaction, containing as a minimum the following four questions:
- 3.4.1 How satisfied are you with your current workplace?
  - 3.4.2 How well does your current workplace meet your expectations?
  - 3.4.3 How close is your current workplace to the ideal one?
  - 3.4.4 Do you feel you are provided with appropriate PPE?
- 3.5 For the purposes of KPI 7, “LTIFR” means Lost Time Injury Frequency Rate.
- 3.6 For the purposes of KPIs 1, 2, 3, 6 and 9:
- 3.6.1 “Incident” means each occurrence when the Supplier achieves the Red Performance Level in respect of the Key Performance Indicator; and
  - 3.6.2 “Indexed” means indexation of the relevant amount in the same manner as the Charges are indexed in accordance with paragraph 4 (Annual Price Reviews) of Schedule 2 (Charges).
- 3.7 For the purposes of SPI 2, “Average Travel Time” is calculated in accordance with Network Rail’s Fatigue Risk standard NR/L2/OHS/003.
- 3.8 For the purposes of SPIs 6 and 7:
- 3.8.1 “Core Training” means the minimum training required by the Primary Sponsored Workers to fulfil the competencies set out in Schedule 2 for their delivery of the Services; and
  - 3.8.2 “Primary Sponsored Workers” means those Frontline Labour Workers registered as such in Network Rail’s Sentinel system.
- 3.9 For the purposes of SPI 9, “Science Based Carbon Targets”, “Science Based Targets Initiative”, “Scope 1”, “Scope 2” and “Scope 3 Science Based Targets” each have the meanings given to them at: <https://sciencebasedtargets.org/>.

**SCHEDULE 4 - DISPUTE RESOLUTION**

1. Network Rail and the Supplier shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to this Agreement ("Dispute") before resorting to litigation.
2. If the Dispute is not settled through discussion between Network Rail's Representative and a representative of the Supplier within a period of seven Business Days of the date on which the Dispute arose the Parties may refer the Dispute in writing to a director or chief executive (or equivalent) ("Senior Personnel") of each of the Parties for resolution.
3. If the Dispute is not resolved within fourteen (14) Business Days of referral to the Senior Personnel, either Party may propose by notice to the other Party ("Notice") that a structured mediation or negotiation be entered into with the assistance of a mediator.
4. If the Parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within twenty-eight (28) Business Days of the service of the Notice, either Party may apply to the Centre for Effective Dispute Resolution ("CEDR") in London to appoint a mediator. The costs of that mediator shall be divided equally between the Parties or as the Parties may otherwise agree in writing.
5. Where a dispute is referred to mediation under paragraph 3 above, the Parties will attempt to settle such Dispute by mediation in accordance with the model mediation procedures published by CEDR or such other procedures as the mediator may recommend.
6. If the Parties reach agreement on the resolution of the Dispute, such agreement shall be recorded in writing and once signed by the Parties' authorised representatives, shall be final and binding on the Parties.
7. If either Party refuses at any time to participate in the mediation procedure and in any event if the Parties fail to reach agreement on the Dispute within forty (40) Business Days of the service of the Notice either Party may commence proceedings in accordance with Clause 44
8. For the avoidance of doubt, the Supplier shall continue to provide the Services in accordance with this Agreement and without delay or disruption while the Dispute is being resolved pursuant to this Schedule 4.
9. Neither Party shall be prevented from, or delayed in; seeking any order for specific performance or for interim or final injunctive relief as a result of the provisions of this Schedule and this Schedule shall not apply in respect of any circumstances where such remedies are sought.

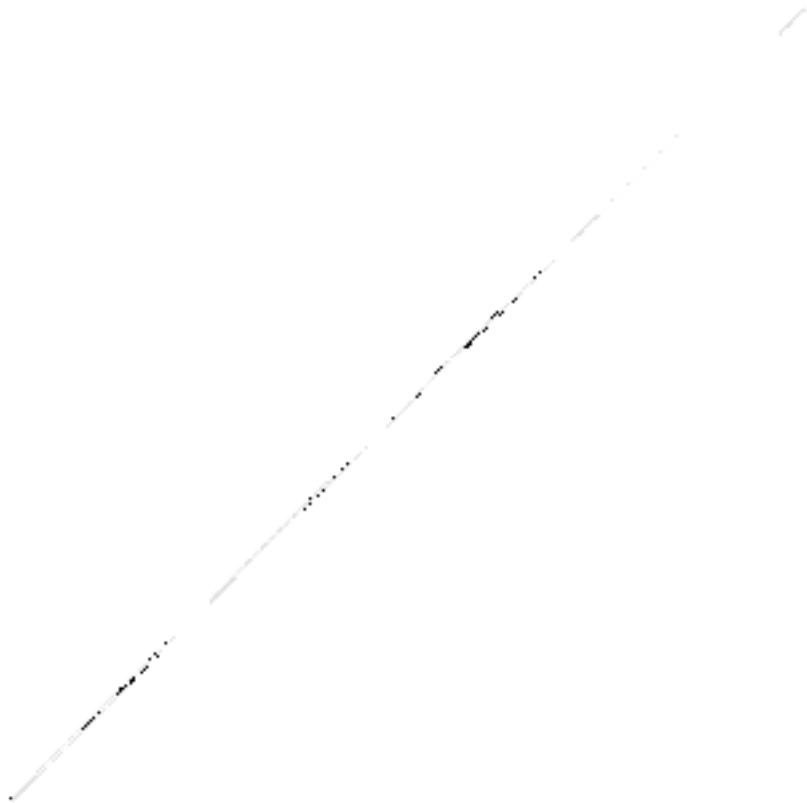
**SCHEDULE 5 - NETWORK RAIL POLICIES**

Contract Requirements HSEA (Works Version) as set out at Appendix A to this Schedule 5

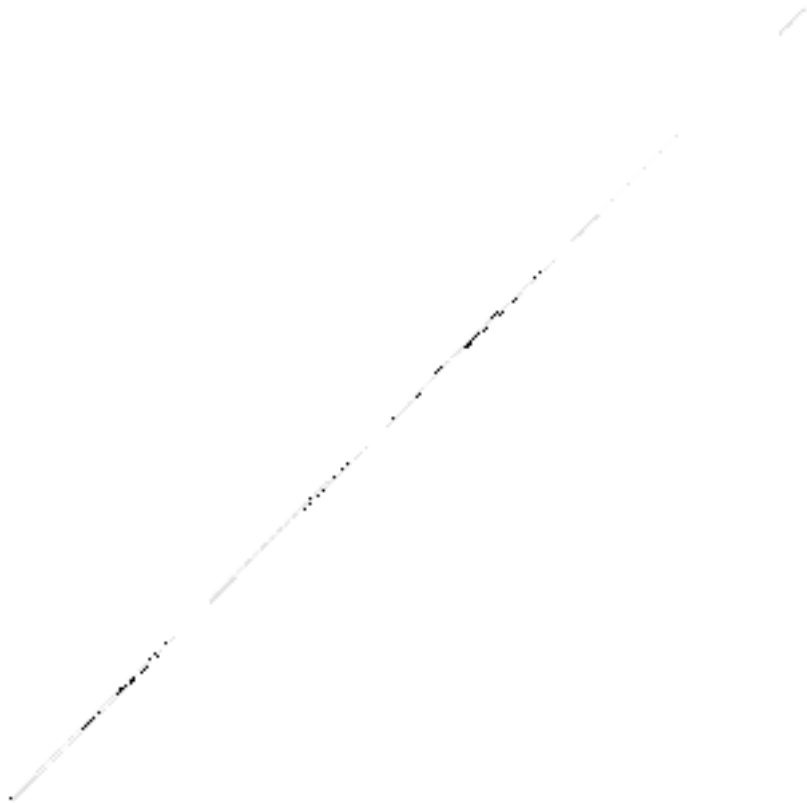
Network Rail Code of Business Ethics as set out at Appendix B to this Schedule 5

Code of Conduct as set out at Appendix C to this Schedule 5

**APPENDIX A TO SCHEDULE 5 – NETWORK RAIL POLICIES – CONTRACT REQUIREMENTS HSEA  
(WORKS VERSION)**

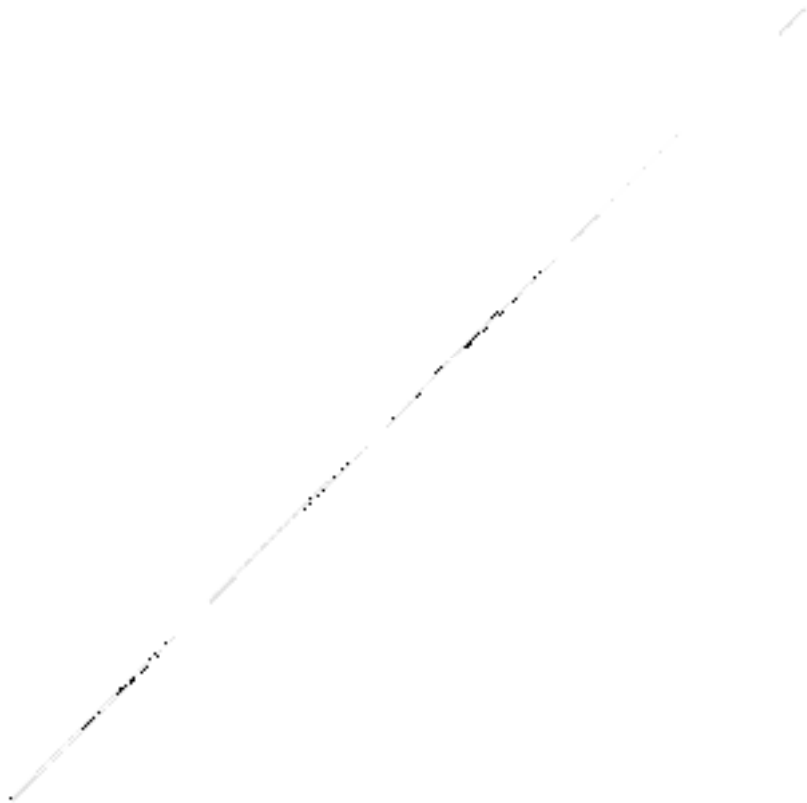


**APPENDIX B TO SCHEDULE 5 – NETWORK RAIL POLICIES – NETWORK RAIL CODE OF  
BUSINESS ETHICS**





**APPENDIX C TO SCHEDULE 5 – NETWORK RAIL POLICIES – CODE OF CONDUCT**



## **SCHEDULE 6 – SELF-BILLING AGREEMENT**

- 1.1 This Schedule 6 sets out the self-billing procedure that applies between Network Rail and the Supplier in respect to all Services under this Agreement and the Parties hereby enter into a self-billing agreement for the purposes of Regulation 13 of the Value Added Tax Regulations 1995.
- 1.2 For the purpose of self-billing the VAT Numbers set out below shall apply:
  - 1.2.1 Network Rail: VAT Number 2987563980
  - 1.2.2 The Supplier: VAT Number [INSERT]
- 1.3 Network Rail agrees to:
  - 1.3.1 issue self-billed invoices for all supplies and services made to them by the Supplier under this Agreement during the Term;
  - 1.3.2 complete self-billed invoices marked: “SELF BILLING – THE VAT SHOWN IS YOUR OUTPUT TAX DUE TO HMRC” and showing the Supplier’s name, address and VAT registration number, together with all the other details which constitute a full VAT invoice in accordance with the Value Added Tax Regulations 1995;
  - 1.3.3 make the Supplier aware in the event that Network Rail’s VAT registration number changes; and
  - 1.3.4 inform the Supplier if the issue of self-billing invoices will be outsourced by Network Rail to a third party.
- 1.4 The Supplier agrees to:
  - 1.4.1 accept self-billed invoices raised by Network Rail under this Agreement during the Term;
  - 1.4.2 not issue VAT invoices for the Services provided under this Agreement; and
  - 1.4.3 notify Network Rail immediately if the Supplier:
    - 1.4.3.1 changes its VAT registration number;
    - 1.4.3.2 ceases to be VAT registered; or
    - 1.4.3.1 sells or otherwise transfers to the third party its business or part of its business.

**SCHEDULE 7 – NOTIFIED SUB-CONTRACTORS**

1.1 [TO BE POPULATED BY REFERENCE TO SUPPLIER'S BID AND THE SUB-  
CONTRACTORS LISTED THEREIN]

## **SCHEDULE 8 – SUPPLIER’S KEY PERSONNEL**

- 1.1 [TO BE POPULATED BY REFERENCE TO SUPPLIER’S BID AND BY AGREEMENT WITH THE SUPPLIER]

## SCHEDULE 9 – MINI-COMPETITION REQUEST

### MINI-COMPETITION REQUEST FROM NETWORK RAIL UNDER THE CONTINGENCY LOT

#### 1. Opportunity

- 1.1 Network Rail (“**NR**”) procured and as a result set up agreements with the Procured Suppliers for the provision of various services across the Contract Lots (the “**Agreements**”). Due to the risk of a Procured Supplier’s agreement with NR being terminated before the expiry of the Initial Term (the “**Excluded Supplier**”) and the potential consequences for NR were it to not have a suitable alternative supplier able to provide such services in the event of such termination, NR also established an additional lot to which all of the Procured Suppliers would automatically be appointed (the “**Framework Agreement**”).
- 1.2 In accordance with Clause 18A of the Agreement, NR is seeking further information due to its requirement for [INSERT LOT-SPECIFIC SERVICES] for the period [DATE] to [DATE] in relation to Lot [INSERT LOT NUMBER] as a result of such termination of a Procured Supplier.
- 1.3 All eligible Procured Suppliers will receive a Mini-Competition Request relating to this Call-Off Order opportunity under the Contingency Lot. For the avoidance of doubt, the Excluded Supplier is not eligible to participate in this mini-competition and will not receive a Mini-Competition Request.
- 1.4 Words and phrases used in the Call-Off Order will have the same meaning given in the Agreement.
- 1.5 Procured Suppliers are reminded in that respect that they must submit their Mini-Competition Response in good faith in accordance with the Mini-Competition Process and the Mini-Competition Rules set out in Schedule 10 and Schedule 11 respectively of the Agreement and any instructions and guidance which may be or may have been issued to Procured Suppliers in respect of the Mini-Competition Request. **Procured Suppliers’ attention is specifically drawn to the rules in paragraph 2.1 of the Mini-Competition Rules.**
- 1.6 NR requires the following Services:
- [INSERT SERVICES WITH REFERENCE TO RELEVANT LOT SPECIFICATION]
- 1.7 Details of the above Services are set out in [INSERT].
- 1.8 Procured Suppliers are reminded that in any of the following events NR shall be entitled to exclude a Procured Supplier from participating in this Mini-Competition Request such that the Procured Supplier shall not be entitled to be awarded any further Call-Off Orders in the event of any of the following circumstances or events applying at any time in respect of the Procured Supplier:
- 1.8.1 [where the Procured Supplier commits a Critical Service Failure under any existing Agreement with NR];
  - 1.8.2 any grounds exist for the time being on which NR would be entitled to terminate any contract or arrangement between NR and the Procured Supplier; or
  - 1.8.3 it would put NR in breach of any Law to award a Call-Off Order to the Procured Supplier,
- provided that to the extent that any such circumstances or event and the cause of such circumstances ceases to apply and/or the Supplier provides evidence to the effect that the measures taken by it are sufficient to demonstrate its reliability despite the existence of any such circumstances or event (“self-cleaning”), and NR is reasonably satisfied for the time being that there is no further likelihood of such an event or circumstance re-occurring having regard to the actions

undertaken by the Procured Supplier to avoid such a repeat and steps taken to rectify any loss or damage which may have been suffered by others as a consequence, then NR shall cease to exclude the Procured Supplier from participating in any subsequent Mini-Competition Request.

**2. Indicative Timetable**

The indicative timings for this mini-competition are set out in the table below. NR reserves the right to alter these timings at its discretion.

| <b>Event</b>                                      | <b>Date</b> |
|---|-------------|
| Mini-competition documents issued                 |             |
| Procured Supplier submits any questions by COP    |             |
| Answers released to Procured Supplier questions   |             |
| Deadline for receipt of Mini-Competition Response |             |
| Mini-Competition Response evaluation completed    |             |
| Procured Suppliers notified of outcome            |             |
| Call-Off Order Commences                          |             |

**3. Tender Submission**

3.1 All Mini-Competition Responses must be submitted [SPECIFY FORMAT] to arrive no later than [TIME] on [DATE].

3.2 All Mini-Competition Responses must be submitted in a clear and unambiguous format in accordance with, and without amendment to, any documentation provided.

3.3 Any documents to be included are mandatory and must be completed where applicable in full. All the requirements for completing and submitting Mini-Competition Responses can be found in the enclosed Form of Tender. Failure to comply with these instructions may result in your Mini-Competition Response being rejected.

3.4 Procured Suppliers are required to submit [xxx] clearly labelled separate attachments as the Mini-Competition Response using [INSERT SUBMISSION DETAILS]. The [xxx] attachments are [DETAIL THE SEPARATE PARTS OF THE PROPOSAL REQUIRED HERE]:

The contents of each of the attachments required is as set out below.

**[To be inserted at time of Mini-Competition Request]**

**4. Award Criteria**

4.1 In evaluating the Mini-Competition Response, the following criteria, together with the following weightings, will be used to reach the successful Procured Supplier selection:

**[Table to be inserted based on Appendix A]**

4.2 NR reserves the right to cancel the Mini-Competition Request at any point or not to award a Call-Off Order resulting from the Mini-Competition Request. NR shall not accept any liability for any costs resulting from any cancellation of this process nor for any other costs incurred by those tendering, who do so at their own expense and risk.

**5. Further Information**

5.1 Should you require any further information please contact [name] [e-mail address].

5.2 Procured Suppliers are not to contact any other member of NR's staff or its advisers directly in connection with this Mini-Competition Request or anything related to it.

- 5.3 NR will respond in writing unless an alternative response is considered to be appropriate by NR in the circumstances.
- 5.4 Any information provided in response where not confidential will also be provided to all Procured Suppliers.
- 5.5 If a Procured Supplier considers that its request for clarification contains information that is confidential to the Procured Supplier and that the request or the answer should not be disclosed to other Procured Suppliers, this must be made clear at the time of asking the question. NR will determine if it accepts the confidential nature and if it does not will ask the Procured Supplier if it wishes to withdraw the request or if it agrees to the request being treated as non-confidential and accordingly the request and response being shared with all Procured Suppliers.
- 5.6 During the evaluation period, NR reserve the right to seek clarification in writing from the Procured Suppliers, to assist it in its consideration of the Mini-Competition Response.

6. **Right of cancellation**

6.1 NR reserve the right to cancel the mini-competition at any point or not to award a Call-Off Order resulting from the Mini-Competition Request. NR shall not accept any liability for any costs resulting from any cancellation of this process nor for any other costs incurred by those participating in the mini-competition. Each person participating does so at their own expense and risk.

7. **Supplier Tick List**

**With your bid, please check you have enclosed the following:**

| Document / Table to complete                            | Tick when completed |
|---|---------------------|
| <b>A completed Form of Tender</b>                       |                     |
| <b>The Mini-Competition Response</b>                    |                     |
| <b>A completed list of clearly labelled attachments</b> |                     |

## **APPENDIX A TO SCHEDULE 9 – EVALUATION CRITERIA**

1. The Procurement covers a range of services over a wide geographic area, with potentially different requirements for each Lot during the Term.
2. Although Network Rail has taken reasonable steps to provide as much guidance as possible as to the form that is currently expected to be adopted for mini-competitions and their evaluation, it is necessarily only a broad guide for Procured Suppliers for the purpose of informing the Procurement. It will in each case be necessary to adapt the evaluation of each mini-competition to suit the requirements of Network Rail at the time.
3. The right is therefore reserved to notify Procured Suppliers at the time of issuing a Mini-Competition Request of the precise information required to satisfy Network Rail's requirements for the services and the precise form of the evaluation criteria and marking scheme which will be used in assessing the Mini-Competition Responses received from Procured Suppliers for the purpose of determining the award of a Call-Off Order under the Framework Agreement.
4. In the table shown below Network Rail have suggested the range distribution of the weighting of the evaluation criteria between the different elements of the Mini-Competition Response. However, the weightings in relation to the sub-criteria are offered as no more than guidance as to the form of a possible scoring matrix that might be used in relation to a Mini-Competition Request and will depend on the requirements of Network Rail for any particular Mini-Competition Request.



## APPENDIX B TO SCHEDULE 9 – FORM OF TENDER

### FORM OF TENDER IN RESPONSE TO A MINI-COMPETITION REQUEST

Form of Tender under Framework Agreement: [Title of Tender]

**[Title of Contract]** (the “**Contract**”)

To: [NR DETAILS TO BE INSERTED]

For the Attention of: [Name]

I/We the undersigned, hereby tender and offer to provide the services as more particularly referred to in the Mini-Competition Request (the “**Contingency Lot Services**”) supplied to me/us for the purpose of tendering for the provision of the Call-Off Order and upon the terms thereof.

I/We confirm that if we are successful we will provide the Contingency Lot Services in accordance with the Call-Off Order which will consist of, in ascending order of precedence:

- (i) the Mini-Competition Request
- (ii) the Agreement; and
- (ii) the Mini-Competition Response submitted in response to the Mini-Competition Request by the Supplier (or such parts thereof as may be identified for inclusion in the Call-Off Order by NR),

which will be created by NR notifying the Supplier of the acceptance of its offer.

I/We undertake in the event of acceptance of our offer:

- (i) to supply the Contingency Lot Services in respect of which the offer is accepted to the exact requirements of NR in accordance with the Call-Off Order;
- (ii) that this offer is made in good faith and that the Supplier has not fixed or adjusted the amount of the offer by or in accordance with any agreement or arrangement with any other person.

The Supplier certifies that it has not and undertakes that it will not:

- (i) communicate to any person other than the person inviting these offers the amount or approximate amount of the offer, except where the disclosure, in confidence, of the approximate amount of the offer was necessary to obtain quotations required for the preparation of the offer or for insurance purposes;
- (ii) enter into any arrangement or agreement with any other person that he or the other person(s) shall refrain from making an offer or as to the amount of any offer to be submitted;
- (iii) canvass any member, director, employee or adviser of NR in connection with the proposed award of the Call-Off Order by NR, and that no person employed by me/us or acting on my/our behalf, or advising me/us, has done any such act.

I/we agree that NR may, in consideration of my/our offer, and in any subsequent actions, rely upon the statements made in this Form of Tender.

I/We confirm that the prices in our offer will remain firm for 90 Business Days.

I/We understand that NR reserves the right to accept or refuse this Mini-Competition Response, or any part of this Mini-Competition Response, whether it is lower, the same, or higher than any other Mini-Competition Response.

I/We confirm that the information supplied to you and forming part of this Mini-Competition Response, including (for the avoidance of doubt) any information supplied to you as part of the procurement for the Agreement, was true when made and remains true and accurate in all respects.

I/We confirm and undertake that if any of such information becomes untrue or misleading that I/we shall notify you immediately and update such information as required.

Signed by

Name..... Position.....

and

Name..... Position .....

for and on behalf of **[SUPPLIER]**

in the presence of:-

Witness signature

Name

Address

Occupation

Date: .....

## **SCHEDULE 10 – MINI-COMPETITION PROCESS**

### **1. Mini-Competition Request**

1.1 Each Mini-Competition Request in respect of the Contingency Lot will be issued by Network Rail to the Procured Suppliers for the Contingency Lot either by supplying:

1.1.1 the Mini-Competition Request (and all accompanying documentation); and/or

1.1.2 the web site address at which the Procured Supplier may access the Mini-Competition Request (and all accompanying documentation),

to the e-mail addresses set out in their respective Agreements or such other e-mail addresses as each respective Procured Supplier shall from time to time have notified in writing to Network Rail for such purposes.

1.2 A Mini-Competition Request shall be issued in a form based on the form set out in Schedule 9 as may be adapted, expanded, amended and completed by Network Rail in connection with its requirement for the Contingency Lot Services intended to be met through that Mini-Competition Request, which shall specify:

1.2.1 the Contingency Lot Services required to be provided;

1.2.2 the information and documentation to be supplied in the tender submitted in response to the Mini-Competition Request;

1.2.3 the evaluation criteria and scoring matrix to be used in awarding the Call-Off Order (based on the most economically advantageous and conforming to the indications given in Appendix A to Schedule 9 for the criteria and scoring to be used in the mini-competitions); and

1.2.4 the time limit for receipt by Network Rail of the Mini-Competition Response pursuant to the Mini-Competition Request and the format, means and other requirements with which Mini-Competition Response must comply.

1.3 In the event that the Procured Supplier receives such a Mini-Competition Request:

1.3.1 the Procured Supplier shall immediately confirm receipt of such Mini-Competition Request to Network Rail;

1.3.2 the Procured Supplier shall respond to a Mini-Competition Request by:

1.3.2.1 notifying Network Rail within 3 Business Days in writing that it does not intend to submit a Form of Tender or Mini-Competition Response; or

1.3.2.2 providing the Mini-Competition Response in a form based on the Form of Tender as adapted and/or expanded in accordance with (and together with all supporting information required by) the Mini-Competition Request. The Mini-Competition Response must be submitted in the form of an offer capable of acceptance;

1.3.3 the Procured Supplier shall respond to Network Rail in accordance with paragraph 1.3.2.2 by the date specified in the Mini-Competition Request or, if no such date is specified, within 10 Business Days of receiving the Mini-Competition Request. Mini-Competition Responses must remain valid for at least 90 Business Days from the date it is submitted to Network Rail; and

- 1.3.4 Mini-Competition Responses shall comply with the requirements of the Mini-Competition Rules as may be supplemented and/or expressly amended by the Mini-Competition Request.

**2. Evaluation**

- 2.1 Network Rail will evaluate the Mini-Competition Response submitted by each Procured Supplier in response to the Mini-Competition Request to determine which is the most economically advantageous using an evaluation methodology developed for the Contingency Lot Services in question on the basis of the methodology set out in Appendix A to Schedule 9 and more particularly set out in the Mini-Competition Request.
- 2.2 Network Rail will notify each Procured Supplier who submits a Mini-Competition Response of the outcome of the evaluation of the Mini-Competition Response in terms of whether it is intended to award the Call-Off Order to that Procured Supplier or providing such other information as may be appropriate to provide in respect of feedback on the reasons for their Mini-Competition Response being unsuccessful.

**3. Call-Off Contract**

- 3.1 In the event that Network Rail notifies a Procured Supplier that pursuant to the Procured Supplier's Mini-Competition Response it wishes to award a Call-Off Order to that Procured Supplier then Network Rail will send to that Procured Supplier a COOM Electronic Purchase Order and the Call-Off Order will be formed on acceptance by the Procured Supplier in accordance with Clause 2 of the Agreement.
- 3.2 The Procured Supplier shall perform the Contingency Lot Services in accordance with the terms of the Agreement and the Call-Off Order.

**4. Reservations**

- 4.1 A Mini-Competition Request and anything prepared or discussed by Network Rail shall constitute an invitation to treat and shall not constitute an offer capable of acceptance by a Procured Supplier.

**5. Network Rail's Rights**

- 5.1 Network Rail:
- 5.1.1 shall not be obliged to consider or accept any Mini-Competition Response submitted by a Procured Supplier;
  - 5.1.2 shall be entitled to discontinue any mini-competition initiated by a Mini-Competition Request at any stage; and
  - 5.1.3 may decide not to award a Call-Off Order (in which case it will notify all those who had been invited to submit a response to the relevant Mini-Competition Request of that fact and the mini-competition shall be discontinued).

**6. Preparation for Mini-Competition**

- 6.1 Network Rail reserve the right to engage with the Procured Suppliers to review potential packaging and structuring of Requests for Mini-Competition in order to maximise engagement, competitive pressure, efficiency and effectiveness of each mini-competition.
- 6.2 Network Rail will undertake such engagement in a fair and transparent way. Network Rail is not obliged to undertake any such engagement but may do so at any time during the Agreement.

- 6.3 Network Rail also reserves the right to undertake such other consultations with the Procured Suppliers to facilitate exchange of information concerning this and other projects and which would enable Network Rail to maximise the benefits of planning and conducting any mini-competition.
- 6.4 Without prejudice to the above, Network Rail may prior to issuing a Mini-Competition Request notify the Procured Suppliers of issues which Network Rail wishes to discuss with the intention of improving outcomes for Network Rail and the Procured Suppliers.

## **SCHEDULE 11 – MINI-COMPETITION RULES**

### **1. General Rules**

- 1.1 A Mini-Competition Response must be provided in the English language or a full English translation provided at no cost to Network Rail.
- 1.2 A Mini-Competition Response must provide full responses referring to the information required in the Mini-Competition Request.
- 1.3 The Excluded Supplier is not eligible to participate in the mini-competition.
- 1.4 Only one Mini-Competition Response document is permitted from each Procured Supplier in response to a Mini-Competition Request. In the event that more than one is submitted by a Procured Supplier, the one with the latest time of submission will be evaluated and the other(s) disregarded.
- 1.5 The Mini-Competition Response (including proposed Charges) should remain valid for a minimum period of 90 Business Days.
- 1.6 The Mini-Competition Response should not be qualified in any way.
- 1.7 Any signatures must be made by a person who is authorised to commit the Procured Supplier to the Call-Off Order.
- 1.8 The Procured Supplier's full registered business/name and main office address must also be provided on all documents.
- 1.9 All prices are to be in pounds sterling only.
- 1.10 This Mini-Competition Request and all documents associated with this procurement process are made available in good faith. No warranty is given as to the accuracy, reasonableness or completeness of such information and any liability for any inaccuracy or incompleteness is therefore expressly disclaimed by Network Rail and its advisers provided that nothing in this document seeks to exclude or limit the liability of any person for fraudulent misrepresentation. Any persons considering submitting a response to this Mini-Competition Request should make their own investigations and their own independent assessment of the Agreement requirements and should seek their own professional, technical, financial and legal advice. Network Rail reserves the right to cancel, amend or vary the procurement at any point prior to the award of the Call-Off Order and with no liability on its part.
- 1.11 Network Rail will not reimburse any costs incurred by Procured Suppliers in connection with preparation and submission of their responses to this Mini-Competition Request including if Network Rail cancels this or any other mini-competition conducted under the Agreement.
- 1.12 The contents of this Mini-Competition Request and that of any other documentation sent or provided to you in respect of this mini-competition are provided on the basis that they remain the property of Network Rail and must be treated as confidential. If any Procured Supplier is unable or unwilling to comply with this requirement you are required to destroy this Mini-Competition Request and all associated documents immediately and not to retain any electronic or paper copies.
- 1.13 No Procured Supplier will undertake any publicity activities with any part of the media in relation to the procurement process or this Mini-Competition Request without the prior written agreement of Network Rail, including agreement on the format and content of any publicity.
- 1.14 Network Rail reserves the right to reject a Mini-Competition Response which is not submitted in accordance with the instructions given including but not limited to where a Procured Supplier:

- 1.14.1 submits their Mini-Competition Response after the Mini-Competition Response submission deadline; or
  - 1.14.2 provides a submission that is incomplete; or
  - 1.14.3 fails to provide any of the required information or not in the specified format; or
  - 1.14.4 is guilty of a serious misrepresentation in supplying any information required in this Mini-Competition Request.
- 1.15 Nothing in this process is intended to form any express or implied contractual relationship between the parties unless and until the Call-Off Order has been awarded.
- 1.16 Network Rail reserves the right to issue supplementary documentation at any time during the mini-competition process to clarify any issue or amend any aspect of the Mini-Competition Request. All such further documentation that may be issued shall be deemed to form part of the Mini-Competition Request and shall supplement and/or supersede any part of the Mini-Competition Request to the extent indicated.
- 1.17 Network Rail may, at its absolute discretion, extend the mini-competition period and postpone or change the submission date for the Mini-Competition Response, for any reason.
- 1.18 Procured Suppliers are advised to satisfy themselves that they understand all of the requirements of the Call-Off Order before submitting their Mini-Competition Response.
- 1.19 Network Rail may exclude a Procured Supplier if there is a conflict of interest which cannot be effectively remedied. The concept of a conflict of interest includes without limit:
- 1.19.1 any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure; and
  - 1.19.2 any situation where a Procured Supplier submits more than one Mini-Competition Response document, for example, by submitting a Mini-Competition Response in its own right and as part of a consortium or supply chain. Note a Procured Supplier cannot submit more than one Mini-Competition Response document per Contingency Lot in its own right.
- 1.20 Where there is any indication that a conflict of interest exists or may arise then it is the responsibility of the Procured Supplier to inform Network Rail in writing and detailing the actual or potential conflict in a separate appendix and their proposed action to address this. Please note that participation in routine pre-market engagement carried out by Network Rail should not represent a conflict of interest for a Procured Supplier.
- 1.21 Please note that throughout the mini-competition process (including but not limited to prior to award of any Call-Off Order), Network Rail reserves the right to review its previous ITT assessment of the successful Procured Supplier to take into account any change of circumstances relating to the Procured Supplier and reserves the right not to award a Call-Off Order to a Procured Supplier in the event of any material change of circumstances affecting the previous ITT assessment of the Procured Supplier.
- 1.22 Subject as otherwise provided by this Mini-Competition Request, Network Rail will respect the confidentiality of the Mini-Competition Response and will not disclose any aspect of a Procured Supplier's Mini-Competition Response to another Procured Supplier, except to the extent that Network Rail reserves the right to inform all Procured Suppliers in identical terms if an issue of general application to the mini-competition emerges by way of clarification or otherwise.
- 1.23 Procured Suppliers are deemed to understand fully the processes that Network Rail is required to follow under relevant European and UK legislation, particularly in relation to the PCR.

1.24 Network Rail is subject to the Freedom of Information Act 2000 (“FOIA”) and the Environmental Information Regulations 2004 (“EIR”), as the same may be amended from time to time.

1.24.1 As part of Network Rail’s duties under the FOIA or EIR, it may be required to disclose information concerning mini-competition or the Call-Off Order to anyone who makes a request.

1.24.2 If a Procured Suppliers considers that any of the information provided in their Mini-Competition Response is commercially sensitive (meaning it could reasonably cause prejudice to the Procured Supplier if disclosed to a third party) then it should be clearly marked as "Not for disclosure to third parties" together with valid reasons in support of the information as being exempt from disclosure under the FOIA or EIR.

1.24.3 Network Rail will endeavour to consult with the Procured Supplier and have regard to comments and any objections before it releases any information to a third party under the FOIA or EIR. However Network Rail shall be entitled to determine in its absolute discretion whether any information is exempt from the FOIA or EIR, or is to be disclosed in response to a request of information. Network Rail must make its decision on disclosure in accordance with the provisions of the FOIA or EIR and can only withhold information if it is covered by an exemption from disclosure under the FOIA or EIR.

## 2. **Special Rules**

2.1 The Procured Supplier will submit its Mini-Competition Response in good faith on the following basis:

2.1.1 the Bid set out inter alia its proposed maximum Fixed Costs, strategies, policies and methodologies for delivering the Services;

2.1.2 the Procured Supplier may adjust the Variable Costs in its Mini-Competition Response to take account of differences in labour rates between the Contract Lots to which it was originally appointed and the Contingency Lot that forms the subject of this Mini-Competition Response;

2.1.3 in developing its Mini-Competition Response the Procured Supplier will seek to reflect the approach indicated in its Bid and shall endeavour to increase the value for money offered to Network Rail in respect of the Contingency Lot Services;

2.1.4 save as otherwise provided in this paragraph 2.1, the Procured Supplier will not include within its Mini-Competition Response anything which would be inconsistent with its Bid (provided that an improvement of the economic balance in favour of Network Rail shall not be regarded as inconsistent); and

2.1.5 without prejudice to the foregoing, the Fixed Costs submitted as part of the Bid shall not be exceeded in the Mini-Competition Response.

2.2 Network Rail does not undertake to accept the lowest or any Mini-Competition Response and reserves the right to accept the whole or any part of any Mini-Competition Response.

2.3 It is the sole responsibility of the Procured Supplier to ensure its Mini-Competition Response:

2.3.1 is fully complete;

2.3.2 complies with the requirements of the Mini-Competition Request; and

2.3.3 is received by Network Rail in accordance with the requirements contained in this Schedule and/or the Mini-Competition Request.



- 2.4 Procured Suppliers must ensure that all questions/requests for information are completed in full, and in the format requested. If a question does not apply to the Procured Supplier, the Mini-Competition Response should state clearly 'N/A' and provide an explanation (where relevant).
- 2.5 Network Rail may at any time and from time to time require evidence to verify:
- 2.5.1 any information provided in a Procured Supplier's Bid and/or in response to a Mini-Competition Request; and/or
- 2.5.2 that any information provided by the Procured Supplier remains true, reliable and accurate, including without limitation the absence of any mandatory grounds for exclusion or discretionary grounds for exclusion (as each of those phrases are used in the PCR ),
- and for the avoidance of doubt this shall include any information provided in respect of any subcontractor or other person or organisation in a Procured Supplier's Bid and/or Mini-Competition Response.
- 2.6 Procured Suppliers may be required to respond to questions which the Procured Supplier considers has already been addressed in its ITT. The Mini-Competition Response cannot, unless expressly provided in the Mini-Competition Request to the contrary, rely on any such information and must where appropriate provide a complete response to the question contained in the Mini-Competition Request as part of the Mini-Competition Response notwithstanding any repetition of an earlier response in the ITT.
- 2.7 All Mini-Competition Responses will be checked for compliance with all requirements of the Mini-Competition Request and this Schedule.
- 2.8 Network Rail shall have the right to exclude any Procured Supplier from participation in any mini-competition and/or to reject any Mini-Competition Response (and any such rejected Mini-Competition Response will not be evaluated) if:
- 2.8.1 the Mini-Competition Response is incomplete, does not comply with the requirements of this Schedule and/or the relevant Mini-Competition Request and/or is late;
- 2.8.2 the Procured Supplier does not provide all evidence properly requested pursuant to paragraph 2.5 reasonably promptly on request or discloses information which indicates that any mandatory grounds for exclusion or discretionary grounds for exclusion apply;
- 2.8.3 there is any change in information previously supplied by the Procured Supplier such that had such change occurred at the time of the Procured Supplier's Bid, other suppliers might have succeeded in place of the Procured Supplier to secure a place on the framework that was the subject of the Framework Procurement; and
- 2.8.4 any of the circumstances or events identified in Appendix 4 which entitle Network Rail to exclude a Procured Supplier from a mini-competition apply.
- 2.9 All Mini-Competition Response which pass the assessments at paragraphs 2.7 and 2.8 will then be evaluated in accordance with the relevant evaluation criteria set out in the Mini-Competition Request.
- 2.10 Where the pricing of Mini-Competition Response is abnormally low Network Rail shall have the right to reject the Mini-Competition Response in accordance with the requirements for further investigation under Regulation 69 of the PCR.
- 2.11 During the evaluation period, Network Rail shall have the right to seek clarification in writing from each Procured Supplier, at any stage in evaluation and up to award of the Call-Off Order

to assist it in its consideration of the Mini-Competition Response. Clarification responses will be used for review purposes.

- 2.12 [Without limitation to paragraph 2.11, each of the Procured Suppliers whose Mini-Competition Response is not rejected pursuant to the above, may be invited to an interview with Network Rail. The interviews will, if held, be used to clarify points that are relevant to the Mini-Competition Response and to verify information contained in the written Mini-Competition Response. Scores may be adjusted downwards only by applying the evaluation criteria and weighting as explained in Mini-Competition Request. A written record will be kept of the reasons for any such adjustment.]
- 2.13 If, at any point during a mini-competition process, a Procured Supplier has a query about any aspect of the mini-competition process or documentation and/or requires any further information or assistance, Procured Suppliers should contact Network Rail via the means of communication notified to Procured Suppliers in the Mini-Competition Request only. It is the Procured Supplier's responsibility to ask for clarification on any point that it does not understand or considers is unclear in the mini-competition process.
- 2.14 Procured Suppliers should note that during the mini-competition they, or their advisors, should not contact Network Rail or any of its employees or advisors or any third parties connected to Network Rail (but this shall not prevent or restrict any business as usual communications unconnected with this procurement) other than through the means of communication instructed in the Mini-Competition Request. Any information provided in response where it is not confidential will also be provided to the other Procured Suppliers as set out above.
- 2.15 If a Procured Supplier considers that its request for clarification contains information that is confidential to the Procured Supplier and that the request or the answer should not be disclosed to other Procured Suppliers, this must be made clear at the time of asking the clarification request. Network Rail will determine if it accepts the confidential nature and if it does not it will ask the Procured Supplier if it wishes to withdraw the request or if it agrees to the request being treated as non-confidential and accordingly the request and response being shared with all Procured Suppliers.

### 3. **Provisions of the Agreement**

- 3.1 The Proposal will be subject to the other provisions of this Agreement.