

NETWORK RAIL 2

Network Rail Agreement
for
Non Construction Services
[brief description]

Agreement No:[Insert]

NETWORK RAIL 2

CONTRACT AGREEMENT

This Agreement is made the day of 20.....

Between

NETWORK RAIL INFRASTRUCTURE LIMITED a company registered in England and Wales under number 2904587 whose registered office is at 1 Eversholt St, London, NW1 2DN (**“Network Rail”**)

and

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

Whereas

Network Rail wishes to confirm the appointment of the Supplier to perform the services in relation to [Insert] as described in Schedule 1 to this Agreement.

Now this Agreement witnesseth as follows:

- 1 In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions hereinafter referred to.
- 2 The following documents shall form and 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:
 - 2.1 this Contract Agreement;
 - 2.2 Schedule of Post Tender Amendments;
 - 2.3 Appendix;
 - 2.4 Contract Specific Conditions;
 - 2.5 Conditions;
 - 2.6 Schedule 1: The Project and Services;
 - 2.7 Schedule 2: Contract Requirements HSEA Conditions;
 - 2.8 Schedule 3: Personnel; and
 - 2.9 Schedule 4: Pricing Document,all of which are annexed hereto and together form the Agreement.
- 3 In consideration of the payments to be made by Network Rail to the Supplier as hereinafter mentioned the Supplier hereby covenants with Network Rail to provide services in conformity in all respects with the provisions of the Agreement.

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- 4 The Parties hereby agree that the Contract Price shall be Insert amount in words (£Insert) or such other sum as shall become payable in accordance with this Agreement.
- 5 Network Rail hereby covenants to pay to the Supplier in consideration of the provision of Services the Contract Price at the times and in the manner prescribed by the Agreement.

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

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

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

By:

Authorised signatory

Printed Name

SIGNED for and on behalf of)
.....)

By

Director

Printed Name

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SCHEDULE OF POST TENDER AMENDMENTS

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

[None]

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APPENDIX

(Note: Relevant Clause numbers are shown in brackets)

1	Network Rail's Representative (Clause 1.1.10)	[Insert Name] [Insert Position] [Insert Address]
2	Public Liability Insurance (Clause 8.2.1)	£5,000,000 (five million pounds)
3	Professional Indemnity Insurance (Clause 8.2.2)	£5,000,000 (five million pounds), subject to any customary terms, exclusions and excesses prevailing in the insurance market and which may be subject to an annual aggregate limit.
4	Commencement date (Clause 9.1) Completion date (Clause 9.1)	[Insert Date] [Completion of the Services or Insert Date]
5	Liability (Clause 10.2)	£5,000,000 (five million pounds)
6	Key dates for performance of Services (Clause 10.4)	

Deliverables

Completion dates

[Insert]

[Insert Date]

[Insert]

[Insert Date]

[Insert]

[Insert Date]

[Insert]

[Insert Date]

[Insert]

[Insert Date]

7 Addresses for Notices (Clause 20)

Network Rail:

Company Secretary

Network Rail

1 Eversholt St

London NW1 2DN

With a copy to:

1. notices@networkrail.co.uk;
and

2. Network Rail's
Representative by email

The Supplier:

[Insert Name]

[Insert Position]

[Insert Address]

8 Confidential Information (Clauses 1.1.1 & 25);

Commercially Sensitive Material

[Insert details and include end dates for when the material would no longer be Commercially Sensitive]

9 Information Security (Clause 26)

[Not applicable / Applicable (Supplier is connecting into Network Rail's network or has access to Network Rail's information classified as Internal or above)]

10 London Living Wage (Clause 28)

[No adjustment to the Contract Price / Annual

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adjustment as described in Schedule 4 Pricing Document]

11 Intermediaries Legislation (Clause 30)

[Does not apply / Applies]

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CONTRACT SPECIFIC CONDITIONS

[None]

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CONDITIONS

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CONDITIONS

1. Definitions and Interpretation

1.1 In this Agreement:

- 1.1.1 “**Confidential Information**” means any information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential, however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel, affiliates and suppliers (including Sub-contractors) of either Party, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential;
- 1.1.2 “**Contract Price**” means the sum specified in Schedule 4, as adjusted from time to time in accordance with this Agreement, to be paid by Network Rail to the Supplier in consideration for the Supplier’s performance of the Services;
- 1.1.3 “**Contract Requirements HSEA Conditions**” means the document described as such and referred to in the Agreement;
- 1.1.4 “**Contracting Authority**” means any contracting authority as defined in Regulation 4 of The Utilities Contracts Regulations 2016;
- 1.1.5 “**Crown**” means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Government and the National Assembly for Wales), including government ministers, government departments, government and particular bodies and government agencies;
- 1.1.6 “**Greater London Area**” means the area administered by the Greater London Authority or any relevant person or body which replaces the Greater London Authority;
- 1.1.7 “**Guarantor**” means the Guarantor under the Parent Company Guarantee provided in accordance with Clause 31;
- 1.1.8 “**Intellectual Property**” means all intellectual and industrial property and all rights therein in any part of the world including any patent, patent application, trade mark, trade mark application, registered design, registered design application, trade name, trade secret, business name, discovery, invention, process, formula, know-how, specification, improvement, technique, copyright, unregistered design right, technical information or drawing including rights in computer software, database rights, topography rights;
- 1.1.9 “**Intermediaries Legislation**” 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;

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- 1.1.10 “**London Living Wage**” means the basic hourly rate which is set as the London Living Wage by the Mayor of London and/or the Greater London Authority and/or another relevant person, body or agency (before tax, other deductions and any increase for overtime), as may be revised from time to time by the Mayor of London, the Greater London Authority or another relevant person, body or agency;
- 1.1.11 “**Network Rail’s Representative**” means the person designated as such in the Appendix or as notified by Network Rail to the Supplier from time to time;
- 1.1.12 “**Network Rail’s Representative Assistants**” 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. Such delegation shall not include duties in relation to Clauses 5 and 15;
- 1.1.13 “**Party**” means the Supplier or Network Rail (as appropriate) and “**Parties**” shall mean both of them;
- 1.1.14 “**Post Tender Amendments**” means the Conditions specific to this Agreement which are set out in the attached Schedule of Post Tender Amendments;
- 1.1.15 “**Pricing Document**” means Schedule 4;
- 1.1.16 “**Services**” means the services to be performed by the Supplier as specified in Schedule 1 or as may be varied by Network Rail’s Representative from time to time in accordance with this Agreement;
- 1.1.17 “**Sub-Contractor**” means any sub-contractor of the Supplier including sub-contractors of any such sub-contractors;
- 1.1.18 “**Variation of Services**” means variations additions or other amendments to the Services provided they fall within the competency and control of the Supplier.
- 1.2 Any reference to Appendix or Clause or Schedule is to the relevant Clause of these Conditions or the relevant Appendix or Schedule to this Agreement.
- 1.3 The headings are included for convenience only and shall not affect interpretation of this Agreement.
- 1.4 Use of the singular includes the plural and vice versa.
- 1.5 Any reference to a statute or statutory instrument shall be construed as referring to any modification extension or re-enactment thereof from time to time.
- 1.6 Any phrase introduced by the term “including” shall be construed as illustrative and without limitation.

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2. Duties of the Supplier

- 2.1 The Supplier shall provide the Services with the reasonable skill care and diligence normally exercised by recognised professional firms or by highly skilled and experienced service providers providing services of a similar scope, type and complexity to the Services.
- 2.2 The Supplier shall comply with all statutory legislation, Network Rail Standards and Railway Group Standards and observe Network Rail's policies in Contract Requirements HSEA Conditions (as set out in Schedule 2) notified to the Supplier prior to the performance of the Services.
- 2.3 The Supplier shall exercise the standard of skill, care and diligence referred to in Clause 2.1 in it's compliance with any codes of practice and British Standards.
- 2.4 The Supplier shall be responsible for the accuracy of documents prepared by it or on its behalf. Neither Network Rail's approval of any such documents nor its failure to discern any defect in or omission from any such documents shall absolve or relieve the Supplier from any of its responsibilities duties and obligations under this Agreement.
- 2.5 If there is a change in law, Railway Group Standards or Network Rail Standards affecting the Services after the date of this Agreement which necessitates a variation of the Services, such variation shall be treated as if it were a Variation of Services pursuant to Clause 7.

3. Network Rail's Obligations

Network Rail's Representative on the request of the Supplier shall supply in such time as may be reasonable any data and information in its possession necessary and relevant to the performance of the Services.

4. Contract Price and Payment

- 4.1 Sums contained in invoices shall be calculated in accordance with Schedule 4. Invoices must include the correct purchase order number and be addressed to "Network Rail, Accounts Payable, P.O. Box 4145, Manchester M60 7WZ" or, if no supporting documentation is attached, original computer-generated pdf invoices can be emailed to invoices@networkrail.co.uk.
- 4.2 Invoices shall be issued either on completion of Service deliverables or as otherwise described in Schedule 4. The invoices shall be supported by documentation required by Network Rail including a statement of the basis of calculation and the supporting documentation shall be forwarded as directed by Network Rail's Representative.
- 4.3 Provided that the Supplier submits a valid invoice, Network Rail shall issue payment to the Supplier of the amount properly due together with VAT thereon no later than 28 days from receipt (the final date for payment). If the Supplier's invoice does not comply with the requirements of Clause 4.1, Network Rail shall be under no obligation to pay the same.
- 4.4 Payment by Network Rail shall be without prejudice to any claims or rights which Network Rail may have against the Supplier and shall not constitute any admission by Network Rail as to the performance by the Supplier of its obligations hereunder.
- 4.5 If any sum under the Agreement is not paid by the final date for payment then, without prejudice to the Parties' other rights under the Contract, that sum shall bear simple interest

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from the final date for payment until payment is made in full at a rate of 4% per annum above the Bank of England Base Rate current at the date that a payment under this Agreement becomes overdue. The Supplier is not entitled to suspend performance of the Services as a result of any sums being outstanding.

- 4.6 All prices indicated shall be exclusive of Value Added Tax (VAT). The Supplier shall, if registered for VAT, supply a valid VAT invoice. The Supplier shall provide further information as may reasonably be required in relation to any such invoice.

5. Set-off

Without prejudice to Network Rail's other rights and remedies, Network Rail may deduct from any sums payable to the Supplier under the Contract 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 the 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.

6. Supply of Information

The Supplier shall at all times keep Network Rail's Representative fully informed on the performance of the Services and shall further provide from time to time all such information as Network Rail's Representative may reasonably require.

7. Variation of Services

7.1 Network Rail's Representative may by written notice to the Supplier at any time request a variation to the Services. In the event that the Supplier agrees to any variation to the Services, the Contract Price shall be subject to fair and reasonable adjustment (based on the rates as set out in Schedule 4, if applicable) and shall be agreed in writing by Network Rail's Representative and the Supplier.

7.2 No additional sum shall be payable to the extent that any of the Variation of Services are necessitated in whole or in part by any negligence omission or default on the Supplier's part.

8. Indemnity and Insurance

8.1 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:

8.1.1 any personal injury to or death of any person; and

8.1.2 any loss of or damage to any property

due to the acts, neglect, error, or omission by the Supplier or any of its employees, agents or representatives in the course of the performance of the Services whilst on or around Network Rail's property or other site or premises relevant to the Services.

8.2 The Supplier shall:

8.2.1 maintain at its own cost public liability insurance for an amount not less than the sum stated in the Appendix for any one occurrence or series of occurrences arising out of one event;

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- 8.2.2 maintain at its own cost professional indemnity insurance to ensure that its activities under this Agreement are insured and remain insured for an amount not less than the sum stated in the Appendix for any one claim or series of claims arising out of any one event, provided always that such insurance is available at commercially reasonable rates (with any increased or additional premium required by insurers by reason of the Supplier's insurance record or other matters particular to the Supplier being considered to be within commercially reasonable rates);
 - 8.2.3 ensure that the foregoing insurance policy or policies shall be or are effected with reputable and established insurers upon customary and usual terms and conditions prevailing for the time being in the insurance market; and
 - 8.2.4 from time to time on request produce evidence that the Supplier is insured in accordance with the requirements of this Clause and immediately notify Network Rail of the cancellation or withdrawal of any such insurance.
- 8.3 The terms and conditions of the Supplier's insurance effected in accordance with this Clause shall not include any term or condition that excludes the Third Parties (Rights Against Insurers) Act 2010.
- 8.4 Nothing in this Agreement is intended to be construed as creating an employee – employer relationship between Network Rail and any worker, operative or other employee of the Supplier. In the event that Her Majesty's Revenue and Customs make an assessment that Network Rail is liable for any income tax, PAYE, National Insurance Contributions, interest or penalties in respect of the Supplier's workers, operatives or other employees the Supplier will indemnify Network Rail in full in respect of such assessment.
- 8.5 The obligations under this Clause shall continue notwithstanding termination of this Agreement for any reason whatsoever including breach by Network Rail.

9. Duration of the Agreement

- 9.1 This Agreement shall be effective from the commencement date stated in the Appendix until either the completion of the Services or until the completion date stated in the Appendix.
- 9.2 Notwithstanding completion of the performance of the Services or suspension and/or termination in accordance with Clause 15 both Parties shall remain bound by this Agreement insofar as and for so long as may be necessary to give effect to the Parties' respective rights and obligations hereunder subject to the relevant periods of statutory liability under the Limitation Act 1980.

10. Liability

- 10.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by Network Rail if and to the extent that it is caused by the negligence or wilful misconduct of Network Rail or by breach by Network Rail of its obligations under this Agreement.
- 10.2 Subject always to Clauses 10.3 and 10.4:
 - 10.2.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of this Agreement, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed the sum stated in the Appendix; and

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- 10.2.2 except in the case of claims arising under Clauses 12, 14 and 17, in no event shall the Supplier be liable to Network Rail, including by way of indemnity, for any:
- (a) loss of profits;
 - (b) loss of business or production;
 - (c) loss of revenue;
 - (d) loss of or damage to goodwill;
 - (e) loss of savings (whether anticipated or otherwise); and/or
 - (f) any indirect, special or consequential loss or damage.
- 10.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
- (a) death or personal injury caused by its negligence or that of its staff;
 - (b) fraud or fraudulent misrepresentation by it or that of its staff; or
 - (c) any other matter which, by law, may not be excluded or limited.
- 10.4 The Supplier warrants and undertakes to Network Rail to progress the Services with due diligence having regard to any key dates for performance of the Services set out in the Appendix or as otherwise agreed by the Parties. The Supplier's liability under this Clause 10.4 shall not exceed the Contract Price.

11. Assignment and Sub-contracting

- 11.1 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).
- 11.2 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).
- 11.3 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 the performance of any services so sub-contracted as if the sub-contracting had not occurred.
- 11.4 The Supplier must ensure that all sub-contractors are paid, in full, within 28 days of receipt of a valid, undisputed invoice. If this does not happen, notwithstanding Clause 14, Network Rail can publish the details of the late payment or non-payment.

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12. Intellectual Property

- 12.1 The Intellectual Property which the Supplier has supplied to Network Rail in accordance with this Agreement and which the Supplier has created and/or developed for the purposes of performing its obligation under this Agreement shall remain vested in the Supplier but the Supplier hereby grants to Network Rail an irrevocable royalty free non-exclusive licence to copy use adapt and reproduce the Intellectual Property for any purpose whatsoever in connection with Network Rail's permitted business. Such licence shall carry with it the right to grant sub-licences and shall be transferable to third parties.
- 12.2 The Supplier shall indemnify Network Rail against all loss damage costs and expenses for which Network Rail is or becomes liable as a result of any infringement or alleged infringement by the Supplier of any third party's intellectual property rights.
- 12.3 The Supplier shall not be liable for any use of the Intellectual Property for any purpose other than that for which it was originally prepared or supplied by the Supplier.
- 12.4 Network Rail shall have no right to decompile any computer software which forms part of the Intellectual Property licensed to Network Rail in this Clause 12 nor shall Network Rail attempt to derive any algorithms, techniques or other features of the software or modify or attempt to create any derivative works from the software and any sub-licence granted by Network Rail shall similarly apply these prohibitions to the sub-licensee of that computer software.

13. Personnel

- 13.1 The Supplier's personnel listed in Schedule 3 shall carry out the Services unless otherwise agreed with Network Rail's Representative (whose agreement shall not be unreasonably withheld or delayed).
- 13.2 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.

14. Confidentiality and Comptroller and Auditor General

- 14.1 Save to the extent that it is necessary in order to comply with any obligations under this Agreement, the Parties acknowledge 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:
- 14.1.1 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

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- 14.1.2 in response to an enquiry or order issued by a government or supra-governmental agency of competent jurisdiction; and/or
 - 14.1.3 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
 - 14.1.4 to the Parties' respective accountants, legal advisers and insurers; and/or
 - 14.1.5 in connection with any litigation between the Parties relating to this Agreement; and/or
 - 14.1.6 to the extent required in order to comply with applicable laws and/or regulations.
- 14.2 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 law or by any legal or regulatory authority.
- 14.3 Nothing in this Agreement shall prevent Network Rail disclosing the Supplier's Confidential Information:
- 14.3.1 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.
 - 14.3.2 for the purpose of the examination and certification of Network Rail's accounts; or
 - 14.3.3 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.
- 14.4 The Supplier shall and shall procure that its subcontractors shall provide such access to its or their books and records as may be required from time to time by the Comptroller and Auditor General of the National Audit Office for the purpose of their audit and examination of the accounts of Network Rail and its group companies, the Department for Transport and the consolidated set of financial statements for the UK public sector.
- 14.5 The restrictions contained in this Clause shall survive the termination of this Agreement and shall continue without limit of time.

15. Termination and Suspension

- 15.1 Network Rail may terminate this Agreement at any time subject to giving 30 days written notice to the Supplier.
- 15.2 Network Rail's Representative may suspend the performance of any or all of the Services by giving reasonable written notice to the Supplier.

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- 15.3 The Supplier shall resume the performance of the Services on reasonable written notice from Network Rail's Representative. If Network Rail's Representative has not served such notice within 12 months of suspension under Clause 15.2 then this Agreement shall terminate.
- 15.4 If notice of resumption of the Services is served in accordance with Clause 15.3 this Agreement will continue.
- 15.5 Upon termination of this Agreement under Clause 15.1, 15.3 or 15.7 and subject to Clause 15.6 the Supplier shall be entitled to such proportion of the Contract Price as represents a fair and reasonable value of that part of the Services carried out at the date of termination and a sum being the amount of any expenditure reasonably incurred by the Supplier in the expectation of completing the whole Services insofar as such expenditure has not been recovered by any other payments under this Agreement, provided always that the Supplier shall not be entitled to recover any loss of anticipated profit as a result of such termination.
- 15.6 Network Rail may terminate this Agreement by reason of material breach by the Supplier, which breach the Supplier has failed to remedy within 14 days of being given written notice to do so by Network Rail's Representative, or where the Supplier or the Guarantor or, where the Supplier is made up of more than one entity or a joint venture, one of the relevant companies (if unincorporated) or of one the joint venture shareholders (if incorporated):
- 15.6.1 becomes bankrupt or insolvent, including: (i) suspending or threatening to suspend payment of its debts or being unable to pay its debts as they fall due or admitting inability to pay its debts or being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; (ii) being the subject of a petition presented (which is not dismissed within fourteen (14) days of its service), a notice given, or a resolution passed for or in connection with winding up other than for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or solvent reconstruction; (iii) being the subject of an application to court for the appointment of an administrator or a notice of intention to appoint an administrator filed at court, going into liquidation, having a receiving or administration order made against him, compounding with creditors, carrying on business under a receiver, trustee or manager for the benefit of creditors or any order, act or event which under applicable laws has effect substantially similar to these orders, acts or events; or
- 15.6.2 being an individual or if the partnership or any partner (where the Supplier is a partnership) shall become bankrupt or in Scotland have its estates sequestrated or shall become apparently insolvent as defined in the Bankruptcy (Scotland) Act 1985 or shall enter into a trust deed for its creditors, or make a composition or arrangement with its creditors;

then Network Rail without prejudice to any other claims that it may have shall be entitled to claim from the Supplier all reasonable costs expenses and damages arising from such termination including all such costs expenses and damages arising from employing and paying other persons to carry out and complete the Services and to make good defects.

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- 15.7 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.
- 15.8 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 15.8 shall be deemed to be a material breach which the Supplier has failed to remedy and the provisions of Clause 15.6 shall apply.
- 15.9 The Supplier shall give written notice to Network Rail immediately upon becoming aware of the circumstances referred to in Clause 15.8 applying.
- 15.10 The Supplier may terminate this Agreement by written notice to Network Rail if Network Rail has not paid any undisputed amounts within 90 days of them falling due.

16. Waiver

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

17. Data Protection

- 17.1 For the purposes of this Clause 17 the following definitions apply;
- 17.1.1 **“Data Protection Legislation”** means (i) the GDPR, and any applicable national implementing laws as amended from time to time (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable laws about the processing of personal data and privacy.
- 17.1.2 **“Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer, Data Protection Impact Assessment”** take the meaning given in the GDPR.
- 17.1.3 **“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.
- 17.1.4 **“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.
- 17.1.5 **“GDPR”** means the General Data Protection Regulation (*Regulation (EU) 2016/679*).
- 17.1.6 **“Sub-processor”** means any third Party appointed to process Personal Data on behalf of the Supplier.

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- 17.2 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.
- 17.3 The only processing that the Supplier is authorised to do is listed in this Agreement and may not be determined by the Supplier.
- 17.4 The Supplier shall provide all reasonable assistance to Network Rail in the preparation of any Data Protection Impact Assessment prior to commencing any processing.
- 17.5 The Supplier shall:
- 17.5.1 only process Personal Data to the extent strictly necessary and listed in this Agreement to perform its obligations under this Agreement;
 - 17.5.2 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;
 - 17.5.3 take all reasonable steps to ensure the Supplier's personnel who have access to the Personal Data;;
 - 17.5.3.1 are aware of and comply with the Supplier's duties under this Clause 17;
 - 17.5.3.2 are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - 17.5.3.3 have undergone adequate training in the use, care, protection and handling of Personal Data;
 - 17.5.4 not transfer Personal Data outside of the EU unless the prior written consent of Network Rail has been obtained and the following conditions met;
 - 17.5.4.1 Network Rail or the Supplier has provided appropriate safeguards in relation to the transfer as determined by Network Rail;
 - 17.5.4.2 the Data Subject has enforceable rights and effective legal remedies;
 - 17.5.4.3 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
 - 17.5.5 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
- 17.6 The Supplier shall notify Network Rail immediately if it;
- 17.6.1 receives a Data Subject Request (or purported Data Subject Request);
 - 17.6.2 receives a request to rectify, block or erase any Personal Data;

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- 17.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 17.6.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 17.6.5 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
 - 17.6.6 becomes aware of a Data Loss Event.
- 17.7 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;
- 17.7.1 full details and copies of the complaint, communication or request;
 - 17.7.2 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;
 - 17.7.3 Network Rail, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 17.7.4 assistance as requested by Network Rail following any Data Loss Event; and
 - 17.7.5 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.
- 17.8 The Supplier shall maintain complete and accurate records to demonstrate its compliance with this Clause 17 and shall upon reasonable request, promptly make them available to Network Rail.
- 17.9 The Supplier shall allow for audits of its Data Processing activity by Network Rail or Network Rail designated auditor.
- 17.10 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 17 such that they apply to the Sub-processor.

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18. The Contracts (Rights of Third Parties) Act 1999

Without prejudice to Clause 19.7, no term of this Agreement is intended by the Parties to be enforceable by a third party.

19. TUPE AND AWR

Notwithstanding anything to the contrary elsewhere in this Agreement:

- 19.1 the Supplier shall be responsible for and shall indemnify and keep indemnified Network Rail from and against all and any costs claims expenses damages demands actions losses and liabilities arising out of or in connection with any claim in respect of any person which arises or is alleged to arise by reason of the operation of and/or failure of the Supplier to comply with the Agency Workers Regulations 2010 or by reason of the operation of and/or failure of the Supplier to inform and consult under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") (as either Regulation may be amended or re-enacted from time to time), save to the extent that such liability arises due to the failure of Network Rail to comply with its obligations under the Regulations;
- 19.2 in the last 12 months prior to completion of the Services, within 28 days of Network Rail's request, the Supplier shall, where TUPE is likely to apply, provide Network Rail with a list of names ages addresses and national insurance numbers of all persons who are who have been or who may be at any time concerned with the Services or any part thereof specifying their job title job description basic salary bonus and all other emoluments and benefits periods of continuous employment the percentage of the time that they have worked on this Agreement details of any agreements entered into with employee representative bodies in relation to such persons, details of all training and competency courses attended and certificates or qualifications obtained and such other requirements as Network Rail may reasonably require (altogether the "Employee Data"). Network Rail will, subject to compliance with any laws relating to data protection, be permitted to disclose any information provided to it under this Clause in summary and/or anonymised form to any person who has been invited to tender for the provision of the Services (or similar services) and to any replacement supplier and replacement supplier's sub-contractors;
- 19.3 in the last 12 months prior to completion of the Services, the Supplier shall (and shall procure that any Sub-Contractor shall) provide to the people engaged in the performance of this Agreement written contracts of employment or statements of terms of employment in either case complying with the requirements of Section 1 of the Employment Rights Act 1996 and retain copies of such documents together with such other documentation and PAYE records as may reasonably be required by Network Rail ("Personnel Records") and shall where TUPE is likely to apply within 28 days of Network Rail's request whether during the performance of the Services or following the end of this Agreement (whether lawfully or otherwise) deliver up to Network Rail or to such person as Network Rail may nominate the Employee Data such copies of the Personnel Records as may be required by Network Rail and to the extent not otherwise provided any employee liability information pursuant to and in accordance with Regulation 11 of TUPE. Network Rail may communicate such information to persons intending to tender to execute works of the nature of the Services;

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- 19.4 the Supplier shall not (and shall procure that any Sub-Contractor shall not) (where TUPE is likely to apply) in the last 6 months prior to completion of the Services without the prior written permission of Network Rail vary or purport or promise to vary (in the employee's favour) the terms of the contract of employment of any person engaged wholly or principally in the execution of the Services;
- 19.5 the Supplier shall not (and shall procure that any Sub-Contractor shall not) (where TUPE is likely to apply) without the prior written consent of Network Rail create or grant or promise to create or grant terms or conditions of employment for any new employee engaged wholly or principally in the execution of the Services if and to the extent that such terms or conditions are materially different to the terms or conditions of employment of equivalent or nearest equivalent existing employees (which themselves comply with Clause 19.4) at the date of commencement of employment of such new employee;
- 19.6 the Supplier shall (and shall procure that any Sub-Contractor shall) (where TUPE is likely to apply) at all times comply with its information and consultation obligations under Regulation 13 of TUPE; and
- 19.7 the Supplier shall indemnify and keep indemnified Network Rail and any successor supplier against all costs claims expenses damages demands actions losses and liabilities arising out of or in connection with any claim or demand arising out of or in connection with any act or omission of the Supplier or any Sub-Contractor and which Network Rail or the successor supplier incurs:
- (i) in relation to any one or more employees whose employment has transferred or is alleged to have transferred to Network Rail and/or a successor supplier pursuant to TUPE and/or this Agreement; and/or
 - (ii) as a result of the Supplier's breach of these Clauses 19.4, 19.5 and/or 19.6;
- and such a successor supplier can directly enforce the indemnity in its favour provided for by this Clause 19.7.

20. Notices

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:

- 20.1 if delivered personally at the time of delivery;
- 20.2 if pre-paid recorded delivery or registered post 48 hours from the date of posting; and
- 20.3 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. For the purpose of this Clause "business day" means any day that is not a Saturday, a Sunday or a public holiday in the place at or to which the notice is left or sent.

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21. 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.

22. Changes

No change to this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the Parties.

23. Governing Law Jurisdiction and Limitations

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 English Courts.

24. Compliance

General

24.1 The Supplier shall comply with all applicable anti-bribery, anti-corruption and anti-slavery legislation including the Bribery Act 2010 and Modern Slavery Act 2015.

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

Bribery Act Compliance

24.3 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).

24.4 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

24.5 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.

24.6 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

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

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25. Freedom of Information

- 25.1 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.
- 25.2 The Supplier shall (and shall procure that its Sub-Contractors shall):
- 25.2.1 provide all necessary assistance and cooperation as reasonably requested by Network Rail to enable it to comply with its obligations under the Information Acts;
 - 25.2.2 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;
 - 25.2.3 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
 - 25.2.4 not respond directly to a request for information unless authorised in writing to do so by Network Rail.
- 25.3 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.
- 25.4 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 Supplier regarding the application of exemptions to the requested information.
- 25.5 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.
- 25.6 The provisions of this Clause 25 shall apply equally to Network Rail when the Supplier is subject to the Information Acts.

26. Information Security

The Supplier shall comply with Network Rail’s Security Principles for Supplier Selection and Management Standard when stated as being applicable in the Appendix.

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27. Equality and Diversity

- 27.1 The Supplier shall perform its obligations under this Agreement in accordance with:
- 27.1.1 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);
 - 27.1.2 Network Rail's equality, diversity and inclusion policy as published by Network Rail from time to time; and
 - 27.1.3 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.
- 27.2 The Supplier shall take all reasonable steps to secure the observance of Clause 27.1 above by its employees, agents, representatives and Sub-Contractors.
- 27.3 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.

28. London Living Wage

- 28.1 The Supplier shall and shall also procure that its relevant sub-contractors (if any) shall:
- 28.1.1 ensure that none of its workers or its subcontractor's workers engaged in the performance of the Agreement_in the Greater London Area (but not otherwise) 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 London Living Wage; and
 - 28.1.2 co-operate and provide all reasonable assistance to Network Rail in monitoring the effect of the London Living Wage.
- 28.2 Unless stated otherwise in the Appendix, if the London Living Wage increases during the term of this Agreement, the Supplier shall not be entitled to adjust the Contract Price and the Parties agree and acknowledge that any increases in the London Living Wage anticipated during the term of this Agreement have been factored into the Contract Price.
- 28.3 Any failure by the Supplier to comply with the provisions of Clause 28.1 shall be treated as a material breach under this Agreement.

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29. Force Majeure

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party

30. Intermediaries Legislation - Engagement of Off-Payroll service providers through the Supplier

If stated in the Appendix, that the services provided through this Agreement are assessed by Network Rail to fall under the Intermediaries Legislation then:

- 30.1 The Supplier shall comply with the Intermediaries Legislation and all reasonable instructions and requests for information from Network Rail in respect thereof.
- 30.2 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.
- 30.3 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 30.
- 30.4 Network Rail shall provide all reasonably requested information within a reasonable timescale to support the Supplier in its compliance with the Intermediaries Legislation.
- 30.5 Failure by the Supplier to comply with this Clause 30 shall be deemed to be a material breach of this Agreement.

31. Performance Security

- 31.1 Where specified in the Appendix the Supplier shall obtain and provide to Network Rail, forthwith upon entry into this Agreement, a parent company guarantee in the form annexed in the Contract Specific Conditions from the Supplier's ultimate holding company. For these purposes "ultimate holding company" shall mean the parent company of the group of companies of which the Supplier is a member (as each of those terms is defined in s.170 of the Taxation of Chargeable Gains Act 1992).
- 31.2 The Supplier's compliance with Clause 31.1 shall be a condition precedent to any obligation on the part of Network Rail to make any payment that may otherwise be due under this Agreement and the Supplier acknowledges that it has no entitlement either to receive payment or to exercise any rights in respect of non-payment arising under this Agreement unless and until the Supplier has provided a parent company guarantee or collateral warranty in accordance with Clause 31.1 if so required.

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SCHEDULES

Schedule 1. Project and Services

Schedule 2. Contract Requirements HSEA Conditions

Schedule 3. Personnel

Schedule 4 Pricing Documents

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SCHEDULE 1: THE PROJECT AND SERVICES

NETWORK RAIL 2

SCHEDULE 2: CONTRACT REQUIREMENTS HSEA CONDITIONS

NETWORK RAIL 2

SCHEDULE 3: PERSONNEL

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SCHEDULE 4: PRICING DOCUMENT