

NETWORK RAIL 6

Network Rail Framework Agreement

for the

Hire of Plant

[Brief description]

Agreement No.: [Insert]

NETWORK RAIL 6

CONTRACT AGREEMENT

This Agreement is made the day of 20

between:

- (1) 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 (referred to as the “Hirer”); and
- (2) [NAME OF SUPPLIER]:** (a company registered in under number) whose registered office is at [Supplier Address] (referred to as the “Owner” or “Supplier”).

Whereas

Now it is hereby agreed in consideration of £1 paid by the Hirer to the Supplier (receipt of which the Supplier acknowledges), that:

- 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 This Contract Agreement
 - 1.2 Schedule of Post Tender Amendments;
 - 1.3 Appendix;
 - 1.4 Contract Specific Conditions
 - 1.5 CPA Model Conditions for the Hiring of Plant (with effect from July 2011) “CPA Conditions”, as amended and supplemented by the NR6 Schedule of Amendments;
 - 1.6 Schedule 1 – Call-Off Order Procedure;
 - 1.7 Schedule 2- Technical Workscope;
 - 1.8 Schedule 3 - Contract Requirements - HSEA;
 - 1.9 Schedule 4 - Preliminaries; and
 - 1.10 Schedule 5 - Pricing Document.
- 2 Defined terms used in this Agreement have the meanings set out in the terms and conditions unless otherwise specified.
- 3 The Hirer hereby appoints the Supplier and the Supplier hereby accepts the appointment to supply the Plant in accordance with this Agreement.
- 4 The Hirer hereby covenants to pay to the Supplier in consideration of the supply of the Plant the

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remuneration in the manner prescribed by this Agreement.

- 5 The Hirer and the Supplier agree that the Agreement Duration is, subject to the provisions of this Agreement, until oryears/months from the date of this Contract Agreement. The Agreement shall automatically expire at the end of the Agreement Duration, but may be extended prior to its end, at the Hirer's sole discretion, by the Hirer issuing written notices of extension to the Supplier, provided such notices do not extend the Agreement Duration beyondinsert date.

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

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

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

Authorised signatory

Printed Name:.....

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

Director

Printed Name:.....

Director/Company Secretary

Printed Name:.....

SCHEDULE OF POST TENDER AMENDMENTS

None

APPENDIX

- 1 The Hirer's Representative (clause 1):
Name [Insert]
Position [Insert]
Address [Insert]
Telephone [Insert] Email [Insert]

- 2 Supplier's Representative (clause 1):
Name [Insert]
Position [Insert]
Address [Insert]
Telephone [Insert] Email [Insert]

- 3 Breakdown, Repairs and Adjustment (clause 9(e)): Excess = £[Insert]

- 4 Liquidated damages (clause 12(d)):
(a) Unavailable time [One hour]
(b) Rate [£ per hour]

- 5 Information Security (clause 52) [Not applicable / Applicable (Supplier is connecting into the Hirer's network or has access to the Hirer's information classified as Internal or above)]

- 6 Intermediaries Legislation (clause 59) [Does not apply / Applies / As detailed in Call-Off Order]

- 7 Call Off Order Management (COOM) (clause 60) [Applicable / Not Applicable]

CONTRACT SPECIFIC CONDITIONS

None

NR6 SCHEDULE OF AMENDMENTS TO THE CPA MODEL CONDITIONS FOR THE HIRING OF PLANT (WITH EFFECT FROM JULY 2011) (“CPA CONDITIONS”)

The CPA Supplementary Conditions shall not apply.

AMENDMENTS TO
CPA CONDITIONS

The CPA Conditions shall be amended as follows:

CLAUSE 1: DEFINITIONS

This clause to be deleted in its entirety and replaced with the following definitions:

Unless the Agreement otherwise requires, the following expressions shall have the meanings hereby assigned to them.

“**Access Point**” means an entry point to the Hirer’s infrastructure from the public highway. Such entry point to be detailed in the Call-Off Order;

“**Agreed Rail Industry Period**” means each or any of the Hirer’s thirteen accounting periods in its financial year beginning 1st April;

“**Appendix**” means the Appendix referred to in the Agreement;

“**Call-Off Order**” means a call-off order from the Hirer in accordance with the procedure contained in Schedule 1 of this Agreement;

“**Confidential Information**” means information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person and Intellectual Property Rights and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 and the General Data Protection Regulation (EU) 2016/679 once in force;

“**Agreement Duration**” means the period set out in clause 5 of the Agreement;

“**Contract**” has the same meaning as “Agreement” where referenced in the CPA Conditions;

“**Contract Requirements - HSEA**” means the requirements referred to in Schedule 3 of this Agreement;

“**Contracting Authority**” means any contracting authority as defined in Regulation 4 of The Utilities Contracts Regulations 2016;

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

“**Electronic Purchase Order**” means an electronic Call-Off Order in a format determined by the Hirer;

“**Greater London Area**” means the area administered by the Greater London Authority or any relevant person or body which replaces the Greater London Authority;

“**Group Standard**” means the Railway Group Standards issued by Railway Safety and Standards Board and sets out safety, technical and operational requirements, and good practice affecting railway system safety or the safety or interworking between Railway Group Members;

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“**Hire Period**” means the period, which shall apply to each item of Plant on an individual basis and shall commence from the time specified in the Call-Off Order and shall continue until the Hirer makes the Plant available for collection at the Site as stated in the relevant Call-Off Order;

“**Hirer’s Representative**” means the person named in the Appendix;

“**The Hirer’s Representative Assistants**” means the persons notified by the Hirer’s Representative to the Supplier from time to time to assist the Hirer’s Representative carry out the duties defined in this Agreement;

“**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;

“**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;

“**Network Rail Standards**” are the Network Rail Standards published by the Hirer;

“**Operator**” means the person or persons employed by the Supplier to operate, drive, service, maintain and /or repair the Plant and where required other personnel requested in the Call-Off Order”;

“**Plant**” means on track machines, plant, machinery, vehicles, equipment and accessories thereof which the Supplier agrees to supply to the Hirer as detailed in the Call-Off Order;

“**Preliminaries**” means the requirements referred to in Schedule 4 of this Agreement;

“**Price**” means the price for the Plant determined in accordance with the Pricing Document;

“**Pricing Document**” means the pricing document referred to in Schedule 5 of this Agreement;

“**Services**” means the services, duties and responsibilities to be provided, performed and observed by the Supplier pursuant to this Agreement and in particular the supply and operation of Plant together with all necessary equipment, facilities and Operator required by Call-Off Orders;

“**Shift**” means the period stated in the Call-Off Order and shall be Access Point to Access Point unless otherwise stated in the Call-Off Order;

“**Site**” means the places specified by the Hirer and stated in the Call-Off Order where the Plant is to be delivered to or collected from;

“**Sub-Contractor**” means any person, firm or company approved by the Hirer’s Representative pursuant to clause 39 who enters into an agreement with the Supplier to provide goods or services to enable the Supplier to meet his obligations under this Agreement;

“**Supplier’s Documentation**” means all bills, calculations, designs, drawings, maps, models, plans, programmes, reports, specifications, data, software, working papers and other documents, matters or things required to be provided by the Supplier in connection with the provision of the Plant;

“**Supplier’s Representative**” means the person named in the Appendix; and

“**Technical Workslope**” means the requirements referred to in Schedule 2 of this Agreement.

CLAUSE 2: EXTENT OF CONTRACT

Delete clause 2 of the CPA Conditions and substitute:

- “2.1 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.

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- 2.2 No term of this Agreement is intended by the parties to be enforceable by a third party.
- 2.3 No waiver by either party or any other default by the other in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of other or further default, whether of a like or different character.”

CLAUSE 4: UNLOADING AND LOADING

Delete clause 4 of the CPA Conditions and substitute the following:

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

CLAUSE 5: DELIVERY IN GOOD ORDER AND MAINTENANCE: INSPECTION REPORTS

Add the following sentence to the beginning of clause 5 of the CPA Conditions:

“The Supplier will supply the Plant to the Hirer in good order in conformity with the Technical Workslope, the manufacturer’s specifications, Group Standards and Network Rail Standards and in compliance with the provisions of this Agreement.”

In clause 5 (a) add the following text:

In line 2 after the word “Hirer”, insert “or by the Hirer to the Owner”

In line 4 after the word “site,”, insert “or returned to the Owner”

In line 6 after the word “Hirer’s”, insert “or Owner’s”

CLAUSE 6: SERVICING AND INSPECTION

At the end of the last sentence add:

“..and, where necessary, replacement Plant items shall be provided to the Hirer at no additional cost. The Supplier shall provide written reports and digital photographic evidence of any new damage.”

CLAUSE 8: HANDLING OF PLANT

In clause 8 of CPA Conditions: After first sentence delete remainder of clause.

CLAUSE 9: BREAKDOWN, REPAIRS AND ADJUSTMENT

Delete clause 9(a) of the CPA Conditions and substitute the following:

- “9(a) When the Plant is hired without the Supplier’s driver or operator any breakdown or the unsatisfactory working of or damage to any part of the Plant must be notified immediately to the Supplier, and confirmed in writing. Any claim for breakdown time will only be considered from the time and date first notification is received by the Supplier.”

Delete clause 9(c) of CPA Conditions, and substitute:

- “9(c) The Hirer shall not repair, modify or alter the Plant without the prior written permission of the Supplier. The changing of any hydraulic hoses and tyres, and repair of punctures, is the responsibility of the Supplier. The Supplier is responsible for all costs incurred in the changing of any hydraulic hoses and tyres, and repair of punctures, unless the damage has been caused by the Hirer’s misuse.

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Delete clause 9(d) of CPA Conditions , and substitute:

- "9(d) Where Plant is operated by the Supplier's Operators, the Supplier shall be responsible for the safe operation of the Plant.
- 9(e) Subject to clause 9(d) and the excess detailed in the Appendix which shall be the responsibility of the Supplier, the Hirer shall indemnify the Supplier for either the reasonable net cost of any repair or up to the net replacement cost of the Plant, whichever is the lower, arising from any breakdown, loss or damage incurred by the Supplier due to the Hirer's negligence or misuse, or due to any theft or vandalism of the Plant during the Hire Period. The Supplier shall provide written reports, quotations and digital photographic evidence of any such damage. The net replacement cost will be calculated in accordance with the following formula:

capital cost (new) x %age of write down period remaining

The Hirer shall not be responsible for any loss or damage caused by theft or vandalism of the Plant outside of the Hire Period, and in particular, but without limitation, between the time of delivery and the start of the Hire Period and between the end of the Hire Period and the time of collection."

CLAUSE 12: LIMITATION OF LIABILITY AND DAMAGES FOR DELAY

Delete clause 12 of CPA Conditions and replace with:

- "12(a) The Supplier accepts liability for death or other personal injury or damage to property howsoever resulting from the Supplier's negligence, breach of statutory duty or breach of this Agreement where such negligence or breach has arisen or arises in connection with the provision of the Services, except to the extent that the same is due to any act or neglect of the Hirer or the Hirer's Representative.
- 12(b) The Supplier hereby agrees to indemnify the Hirer against any and all loss, damage, liability, claims, proceedings, legal costs and professional and other expenses of any nature whatsoever incurred or suffered by the Hirer in connection with any claims made or proceedings brought by reason of any such death, personal injury or damage to property as described in clause 12(a).
- 12(c) Notwithstanding their respective liabilities arising under or in connection with this Agreement, and without prejudice to clause 12(d), neither the Hirer nor the Supplier shall be liable to the other for loss of profit, loss of revenue, loss of use, loss of production, business interruption or for any indirect losses of any other kind.
- 12(d) In the event that Plant or Operators are unavailable for more than the time stated in the Appendix due to a failure of the Supplier then the Supplier shall pay the Hirer liquidated damages at the rate stated in the Appendix.

CLAUSE 13: HIRER'S RESPONSIBILITY FOR LOSS AND DAMAGE

Delete clause 13(b) of CPA Conditions.

In clause 13(c) of the CPA Conditions, delete "Notwithstanding the above" in line 1.

CLAUSE 17: RETURN OF PLANT FOR REPAIRS

Delete from 3rd sentence commencing "In the event of the Owner..." of clause 17 of the CPA Conditions to the end of the clause and substitute:

"In the event of the Supplier being unable to replace the Plant, the hire of such Plant will immediately terminate."

CLAUSE 18: BASIS OF CHARGING

Delete clause 18 of the CPA Conditions and substitute:

- "18.1 The Plant shall be paid for at the rates set out and in accordance with the requirements detailed in the Pricing Document for the agreed Hire Periods unless

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otherwise amended in accordance with this Agreement.

CLAUSE 19: PLANT HIRED ON A DAILY BASIS WITHOUT QUALIFICATION AS TO HOURS

Delete clause 19 of the CPA Conditions.

CLAUSE 20: PLANT HIRED BY THE WEEK OR MONTH WITHOUT QUALIFICATION AS TO HOURS

Delete clause 20 of the CPA Conditions.

CLAUSE 21: PLANT HIRED BY THE WEEK OR THE HOUR FOR A MINIMUM OF 39 HOURS PER WEEK

Delete clause 21 of the CPA Conditions.

CLAUSE 22: "ALL IN" RATES

Delete clause 22 of the CPA Conditions.

CLAUSE 23: COMMENCEMENT AND TERMINATION OF HIRE (TRANSPORTATION OF PLANT)

Delete clause 23 of the CPA Conditions.

CLAUSE 24: NOTICE OF TERMINATION OF CONTRACT

Delete clause 24 of the CPA Conditions and substitute:

- 24.1 Either party shall have the right to terminate the Supply of Plant forthwith by notice in writing to the other party if the other party:
- (a) commits a material breach of this Agreement; or
 - (b) is unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purposes of effecting a reconstruction or amalgamation in such manner that the company resulting from such reconstruction or amalgamation if a different legal entity shall agree to be bound by and assume the obligations of the relevant party under this Agreement) or compounds with or convenes a meeting of its creditors or has a receiver or manager or an administrator appointed or ceases for any reason to carry on business or takes or suffers any similar action which in the opinion of the party giving notice means that the other may be unable to pay its debts.
- 24.2 On receipt of a notice of termination, the Supplier shall ensure that expenditure under this Agreement is reduced as rapidly as possible and the Supplier shall take immediate steps to bring an end to the provision of the Plant in an orderly manner. The Supplier shall ensure that the Hirer has a full and complete set of any documents, or other information which the Hirer may require for any purpose in connection with the provision of the Plant which the Supplier was providing under this Agreement.
- 24.3 The party terminating the Agreement, without prejudice to any other claims which it might have, shall be entitled to claim from the other party the additional costs, expenses and/or damages sustained by it arising from such termination.

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- 24.4 The Hirer may, in addition to any other power it may have, with 30 days written notice to the Supplier forthwith terminate this Agreement and/or Call-Off Orders. The Supplier shall be entitled to such proportion of the Price as represents a fair and reasonable value of that part of the Call-Off Orders carried out at the date of termination and a sum being the amount of any expenditure reasonably incurred by the Supplier in the expectation of completing the Call-Off Orders not then completed insofar as such expenditure has not been recovered by any other payments under this Agreement, provided always that the Supplier shall not be entitled to recover any loss of anticipated profit as a result of such termination.
- 24.5 The Hirer may terminate this Agreement in the event that it considers any of the circumstances set out in regulations 89(1)(a) or (c) of the Utilities Contracts Regulations 2016 SI 2016/274 ("UCR") or regulations 73(1)(a) or (c) of the Public Contracts Regulations 2015 SI 2015/102 ("PCR") as amended from time to time as applicable have arisen. This shall be treated as termination pursuant to clause 24.4.
- 24.6 The Hirer 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 the Hirer pursuant to this clause 24.6 shall be deemed to be a material breach under clause 24.1(a) which the Supplier has failed to remedy.
- 24.7 The Supplier shall notify the Hirer in writing immediately upon becoming aware of the circumstances referred to in clause 24.6 applying.
- 24.8 The Supplier may terminate this Agreement by written notice to the Hirer if the Hirer has not paid any undisputed amounts within 90 days of them falling due.

CLAUSE 26: WAGES AND OTHER CHARGEABLE ITEMS RELATING TO DRIVERS AND OPERATORS OF PLANT

Delete clause 26 of the CPA Conditions.

CLAUSE 27: TRAVELLING TIME AND FARES

Delete clause 27 of the CPA Conditions and substitute

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

CLAUSE 28: FUEL, OIL AND GREASE

Delete clause 28 of the CPA Conditions.

CLAUSE 29: SHARPENING OF DRILLS/STEELS ETC.

At the end of clause 29 of the CPA Conditions add the words "unless the Plant requires sharpening or such other items when delivered to Site."

CLAUSE 31: TRANSPORT

Delete clause 31 of the CPA Conditions.

CLAUSE 32: GOVERNMENT REGULATIONS

Delete clause 32 of the CPA Conditions and substitute:

- "32.1 The Supplier shall comply with all statutory legislation, codes of practice, Group Standards, Network Rail Standards and British Standards as regards health and safety including but not limited to the Contract Requirements – HSEA and the Hirer's drugs and alcohol policy.

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- 32.2 The Supplier shall provide with each item of Plant, the safety and operating information required by this Agreement.”

CLAUSE 33: PROTECTION OF OWNER’S RIGHTS

Delete clause 33 of the CPA Conditions and substitute:

- “33 The Hirer shall not sell, mortgage, charge, pledge, part with possession of, or otherwise deal with the Plant.”

CLAUSE 34: CHANGES IN NORMAL WORKING WEEK

Delete clause 34 of the CPA Conditions.

CLAUSE 35: DISPUTE RESOLUTION

Delete clause 35(a) and substitute:

- “35(a) 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.”

In clause 35(c), in lines 2, 3 and 4, delete the words “(and/or, under Scots law, shall consent to a motion for summary decree and submit to enforcement)” and delete the last sentence beginning “Where, under ...” And ending “....a witness.”

CLAUSE 36: LATE PAYMENTS

Delete clause 36 of the CPA Conditions.

INSERT NEW CLAUSES AS FOLLOWS:

CLAUSE 38: CALL-OFF ORDERS

38. The Supplier shall provide Plant to the Hirer as required by Call-Off Orders issued in accordance with the requirements of Schedule 1 by the Hirer’s Representative. The Hirer shall only be liable to the Supplier for the Price in respect of Plant requested in a Call-Off Order. The Hirer is not bound to issue a Call-Off Order for any Plant whatsoever.

CLAUSE 39: SUPPLIER’S OBLIGATIONS

39. The Supplier shall:
- (a) 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.
 - (b) provide the Plant and perform the Services in accordance with the requirements of this Agreement;
 - (c) take instructions and all directions and, where appropriate, receive the Hirer’s decisions only through the Hirer’s Representative;
 - (d) act in accordance with all reasonable instructions and directions of the Hirer or the Hirer’s Representative in providing the Plant (including without limitation, Call-Off Orders);
 - (e) answer all reasonable enquiries received from the Hirer’s Representative;
 - (f) immediately request an instruction from the Hirer’s Representative upon receipt of revised editions of the Group Standards or Network Rail Standards referred to in this Agreement. The Supplier shall not action the implementation of such Group Standard

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or Network Rail Standards until such instruction to do so is received from the Hirer's Representative. The Price shall be adjusted to take account of such instruction;

- (g) provide Supplier's Documentation in such format as may reasonably be specified upon the written request of the Hirer's Representative;
- (h) provide such suitably qualified and competent personnel including Operators as is necessary for the performance by the Supplier of the Services and provide the Hirer's Representative with details of the qualifications and experience of such personnel as and when required; and
- (i) cease to employ in connection with this Agreement, and to replace, any employee of the Supplier whose continued employment thereon is, in the written opinion of the Hirer's Representative, undesirable.

CLAUSE 40: CONSENTS

- 40. The Supplier shall use his reasonable endeavours to obtain and maintain all necessary consents required by the Supplier to perform the Services, for which purposes the Hirer shall provide such assistance as the Supplier may reasonably require.

CLAUSE 41: ASSIGNMENT AND SUB-CONTRACTING

- 41. The Supplier shall not assign, transfer, sub-contract or in any other manner make over to any third party the benefit of this Agreement without the prior written consent of the Hirer (such consent not to be unreasonably withheld or delayed). Where the Supplier is otherwise unable to fulfil a Call-Off Order and is given written permission to cross hire, only similarly approved alternative suppliers and machines as covered by the scope of this Agreement shall be used.

CLAUSE 42: REPRESENTATIVES

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

CLAUSE 43: DUTIES OF THE HIRER

- 43.1 The Hirer's Representative shall give to the Supplier, subject to reasonable notification, such instructions and / or decisions pursuant to this Agreement as are required at such a time and in such a manner as shall enable the Supplier properly to perform the Services.
- 43.2 The Hirer shall make available all data and information in its possession, which the Supplier reasonably requires to perform the Services, provided always that the Supplier requests such information a reasonable time before it is required.

CLAUSE 44: INSURANCES

- 44.1 Other than as specifically stated herein, without prejudice to the Supplier's obligations to indemnify the Hirer under clause 12 and any other obligations and responsibilities of the Supplier hereunder, the Hirer shall take out and maintain:
 - 44.1.1 a policy in the joint names of the Supplier, Sub-Contractors and the Hirer against liabilities for death of or injury to any person (other than any person in the employment of the Hirer or of the Supplier where and to the extent that any such liabilities should reasonably be covered by the insurance

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maintained by the Supplier pursuant to clause 44.3) or loss of or damage to any property (other than the Plant or other property of the Hirer or the Supplier) arising out of the performance of the Services, for a sum not less than £155,000,000 (one hundred and fifty five million pounds) for any one occurrence or series of occurrences arising out of one event

- 44.1.2 a policy or policies of insurance (or self-insurance arrangements) in respect of loss or damage to property of the Hirer arising out of or in connection with the performance of the Services, with a waiver of subrogation in favour of the Supplier and Sub-Contractors. The Supplier's liability under clause 12 shall exclude loss or damage to such property of the Hirer to the extent of the insurance (or self-insurance) provided for in this sub-clause 44.1.2 except for the first £10,000 of each and every occurrence of such loss or damage. The Hirer shall not be responsible for any amounts in excess of the limits of indemnity and sums insured or any excess or retained liability or risks not insured or excluded by the terms, exceptions or conditions of such insurance policies.
- 44.2 As and when it is reasonably required to do so by the Supplier, the Hirer shall produce for inspection by the Supplier documentary evidence that the insurance required by clause 44.1 is properly maintained.
- 44.3 Without prejudice to the Supplier's obligations to indemnify the Hirer under clause 12 and any other obligations and responsibilities of the Supplier hereunder, the Supplier shall maintain and cause any Sub-Contractors to maintain insurance in respect of claims for personal injury and death of any person under a contract of service or apprenticeship with the Supplier or such Sub-Contractor as the case may be arising out of or in the course of such person's employment. Such insurance shall comply with the Employer's Liability (Compulsory Insurance) Act 1969 and any statutory orders made thereunder or any amendment or re-enactment thereof and shall be for the sum of not less than £5,000,000 (five million pounds) for any one occurrence or series of occurrences arising out of one event.
- 44.4 The insurance policy referred to in clause 44.3 shall indemnify the Hirer in the like manner to the Supplier but only to the extent that the Supplier may be liable to indemnify the Hirer under the terms of this Agreement.
- 44.5 As and when it is reasonably required to do so by the Hirer, the Supplier shall produce and shall cause any Sub-Contractors to produce for inspection by the Hirer documentary evidence that the insurance required by clause 44.3 is properly maintained.

CLAUSE 45: PAYMENT

- 45.1 In consideration of the supply of Plant, the Hirer shall pay to the Supplier the Price determined in accordance with the Pricing Document.
- 45.2 Not less than 7 days after the end of each Agreed Rail Industry Period, the Supplier shall present to the Hirer an application stating the total amount due to the Supplier calculated in accordance with the provisions of and with such supporting documents as may be required by the Pricing Document.
- 45.3 On or before the expiry of 14 days from the date of submission of the Supplier's application under clause 45.2, the Hirer shall issue a notice stating the amount of the payment proposed to be made in respect of the application, to what the amount of the payment relates and the basis on which that amount is calculated.
- 45.4 The Supplier shall issue a VAT invoice in the amount stated in the Hirer's notice under clause 45.3 and which includes the correct Agreement and purchase order number and is addressed to "Network Rail, Accounts Payable, P.O. Box 4145, Manchester M60 7WZ" or original computer-generated pdf invoices can be emailed to invoices@networkrail.co.uk. The Hirer shall issue payment to the Supplier of the amount properly due to the Supplier together with VAT thereon on or before the final date for payment which shall be the expiry of 7 days from the date of receipt of the Supplier's VAT invoice. If the Supplier's invoice does not comply with the requirements of this clause 45.4, the Hirer shall be under no obligation to pay the same.

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- 45.5 If the Hirer fails to pay the Supplier any sum properly payable under this Agreement on or before the final date for payment of it, the Hirer shall pay to the Supplier simple interest on that sum from the relevant final date for payment until the actual date or payment calculated at a rate of 4% above the Bank of England Base Rate. It is agreed that this provision constitutes a substantial remedy for the purposes of Section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 45.6 Payment hereunder does not signify and is not evidence that the Supplier has provided or is providing the Plant in accordance with this Agreement.

CLAUSE 46: SET-OFF

- 46 Whenever under this Agreement any sum of money shall be recoverable from or payable by the Supplier the same may be deducted from any sum then due or that at any time thereafter may become due to the Supplier under this Agreement or any other agreement between the Supplier and the Hirer. Any exercise by the Hirer of its rights under this clause shall be without prejudice to any other rights or remedies available to the Hirer under this Agreement or otherwise.

CLAUSE 47: MITIGATION OF LOSS

47. In all cases the party claiming a breach of this Agreement or a right to be indemnified in accordance with this Agreement shall use reasonable endeavours to mitigate the loss or damage that has occurred or may occur.

CLAUSE 48: CONFIDENTIALITY AND COMPTROLLER AND AUDITOR GENERAL

- 48.1 All information obtained by the Parties in the course or conduct of this Agreement shall be held confidential and shall not be divulged by the Parties to any third party save to the extent necessary to effect the execution of the Services and then only on the basis that the recipient of such information shall be bound by similar confidentiality obligations to those undertaken by the Parties. The Supplier shall not issue any press release or other public document containing or make any public statement containing or otherwise disclose to any other person who is not a party information that relates to or is connected with or arises out of this Agreement or the matters contained in it without the prior written approval of the Hirer as to its content and the manner and extent of its publication.
- 48.2 Nothing in this Agreement shall prevent the Hirer disclosing the Supplier's Confidential Information:
- (a) 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.
 - (b) for the purpose of the examination and certification of the Hirer's accounts; or
 - (c) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Hirer has used its resources.
- 48.3 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.

CLAUSE 49: EMPLOYMENT PROTECTION AND TUPE

- 49.1 Notwithstanding anything to the contrary elsewhere in this Agreement:-
- (a) the Supplier shall be responsible for and shall indemnify and keep indemnified the

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Hirer from and against all and any costs, claims, expenses, damages, demands, actions, losses and liabilities arising out of or in connection with any claim in respect of any person which arises or is alleged to arise by reason of the operation of, and/or for failure to inform and consult under, the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or re-enacted from time to time ("TUPE");

- (b) in the last 12 months prior to completion of the Services under the last Call-off Order within 28 days of the Hirer's request, the Supplier shall, where TUPE is likely to apply, provide the Hirer 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, period of continuous employment, the percentage of the time that they have worked under 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 the Hirer may reasonably require (altogether the "Employee Data"). The Hirer 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;
- (c) in the last 12 months prior to completion of the Services under the last Call-off Order, the Supplier shall (and shall procure that any Sub-Contractor shall) provide to the people engaged in the performance of this Agreement, written contracts of employment or statements of terms of employment, in either case complying with the requirements of Section 1 of the Employment Rights Act 1996, and retain copies of such documents together with such other documentation and PAYE records as may reasonably be required by the Hirer ("Personnel Records") and shall, where TUPE is likely to apply, within 28 days of the Hirer's request, whether during the performance of this Agreement or following the end of this Agreement (whether lawfully or otherwise) deliver up to the Hirer or to such person as the Hirer may nominate the Employee Data, such copies of the Personnel Records as may be required by the Hirer and to the extent not otherwise provided, any employee liability information pursuant to and in accordance with Regulation 11 of TUPE. The Hirer may communicate such information to persons intending to tender to execute works of the nature of the Services;
- (d) 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 the Hirer, vary or purport or promise to vary (in the employee's favour), the terms of the contracts of employment of any person engaged wholly or principally in the execution of the Services;
- (e) the Supplier shall not (and shall procure that any Sub-Contractor shall not) (where TUPE is likely to apply), without the prior written consent of the Hirer create or grant, or promise to create or grant, terms or conditions of employment for any new employee engaged wholly or principally in the execution of the Services if and to the extent that such terms or conditions are materially different to the terms or conditions of employment of equivalent or nearest equivalent existing employees (which themselves comply with clause 49.1(d)) at the date of commencement of employment of such new employee; and
- (f) 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.
- (g) the Supplier shall indemnify and keep indemnified the Hirer and any successor supplier against all costs, claims, expenses, damages, demands, actions, losses and liabilities arising out of or in connection with any claim or demand arising out of or in connection with any act or omission of the Supplier or any Sub-Contractor and which the Hirer 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 the Hirer and/or a successor supplier pursuant to TUPE and/or this Agreement; and/or

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- (ii) as a result of the Supplier's breach of clauses 49.1(d), 49.1(e) and/or 49.1(f);
and, despite anything else in this Agreement, such a successor supplier can directly enforce the indemnity in its favour provided for by this clause 49.1(g).

CLAUSE 50: CLAIMS HANDLING PROVISIONS

- 50.1 In these provisions, "The 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 the expressions defined in the Claims Allocation and Handling Agreement shall have the same meanings in this clause 50. The Hirer shall supply the Supplier with a copy of each amendment thereto as and when it is made.
- 50.2 These provisions shall apply:
 - 50.2.1 if this Agreement is in connection with the maintenance or operation of the Hirer's Railway Assets; and
 - 50.2.2 in respect of the period (if any) while the Supplier is an Independent Contractor; and
 - 50.2.3 where a claim, which arises out of or is connected with this Agreement, is made by a third party who does not have an agreement with the Supplier:
 - (i) against the Hirer or the Agency, which may result in a claim being made against the Supplier; or
 - (ii) against the Supplier, which may result in a claim being made against the Hirer or the Agency (whether by the Supplier or otherwise).
- 50.3 In relation to clause 17 of the Claims Allocation and Handling Agreement this Agreement does hereby permit the recovery by the Hirer of loss of revenue or other consequential losses that are direct and foreseeable.
- 50.4 The Supplier irrevocably appoints the Hirer as its agent to authorise the Agency (in consultation, where necessary, with Industry Parties and their insurers) to defend such a claim on behalf of the Supplier and the Industry Parties, in accordance with the Claims Allocation and Handling Agreement. In relation to such a claim, the Supplier shall be bound by the terms of that Agreement as if the Supplier were a party to it.
- 50.5 Where such a claim results in a payment to the third party, the Supplier agrees that liability for such payment, and the costs of handling and defending the claim, shall be allocated in accordance with the Claims Allocation and Handling Agreement. The Supplier agrees to participate in the procedure for allocating liability set out in the Dispute Resolution Rules; and to be bound by the result as if the Supplier were party to those Rules, and such matters shall not be referable to adjudication or litigation in accordance with this Agreement.
- 50.6 Clauses 50.4 and 50.5 shall not apply to any claim in respect of which the Supplier admits that it is liable and that no Industry Party is liable. In such a case, the Supplier itself may defend the claim.
- 50.7 Without prejudice and in addition to any other rights and remedies of the Hirer under this Agreement, the Supplier shall indemnify the Hirer against all losses, claims, liabilities, costs and expenses which are borne by the Hirer under the Claims Allocation and Handling Agreement, and which arise out of either a breach of contract by the Supplier or a breach of a duty of care owed to a third party, which is the subject of a claim under the Claims Allocation and Handling Agreement.

CLAUSE 51: FREEDOM OF INFORMATION

- 51.1 The Supplier acknowledges that:
 - 51.1.1 The Hirer may be required, under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 (collectively, the "**Information Acts**"), to disclose information relating to the subject matter of this Agreement; and

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- 51.1.2 notwithstanding any other provision in this Agreement, the Hirer shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the Information Acts.
- 51.2 The Supplier shall provide all necessary assistance and cooperation as reasonably requested by the Hirer to enable it to comply with its obligations under the Information Acts.

CLAUSE 52 INFORMATION SECURITY

- 52 The Supplier shall comply with the Hirer's Security Principles for Supplier Selection and Management Standard when stated as being applicable in the Appendix.

CLAUSE 53 EQUALITY AND DIVERSITY

- 53.1 The Supplier shall perform its obligations under this Agreement in accordance with:
 - 53.1.1 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);
 - 53.1.2 The Hirer's equality, diversity and inclusion policy as published by the Hirer from time to time; and
 - 53.1.3 any other requirements and instructions which the Hirer reasonably imposes in connection with any equality obligations imposed on the Hirer at any time under applicable equality Law.
- 53.2 The Supplier shall take all reasonable steps to secure the observance of clause 53.1 above by its employees, agents, representatives and Sub-Contractors.
- 53.3 The Supplier acknowledges that the Hirer 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 the Hirer where possible in satisfying this duty.

CLAUSE 54 LONDON LIVING WAGE

- 54.1 The Supplier shall and shall also procure that its relevant sub-contractors (if any) shall:
 - 54.1.1 ensure that none of its workers or its subcontractor's workers engaged in the performance of this 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
 - 54.1.2 co-operate and provide all reasonable assistance to the Hirer in monitoring the effect of the London Living Wage.
- 54.2 If the London Living Wage increases during the term of this Agreement, the Supplier shall not be entitled to adjust the hire rates 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 hire rates.
- 54.3 Any failure by the Supplier to comply with the provisions of clause 54.1 shall be treated as a material breach under this Agreement.

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CLAUSE 55 COMPLIANCE

General

- 55.1 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.
- 55.2 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

- 55.3 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).
- 55.4 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

- 55.5 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.
- 55.6 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

- 55.7 Any breach of this clause shall be deemed a material breach under this Agreement.

CLAUSE 56: INSPECTION OF PLANT

- 56.1 The Supplier shall permit the Hirer to undertake detailed inspections of any maintenance records and the Plant as and when necessary to ascertain compliance with the requirements of the Technical Workslope.
- 56.2 Where such inspection identifies a non-conformance with the Technical Workslope either in the condition of an item of Plant or in its maintenance, then the Supplier shall produce and implement an action plan to rectify such non-conformance without delay.
- 56.3 Until rectification of the non-conformance has been accepted by the Hirer's Representative, the Hirer's Representative may issue a notice restricting (including, if appropriate, suspending) the use of the item of Plant.
- 56.4 Any Services lost as a result of restrictions arising under clause 56.3, unless due to the Hirer's acts or omissions, shall be deemed to be due to the default of the Supplier for the purposes of calculating payments in accordance with the Pricing Document.

CLAUSE 57: SUSPENSION OF THE SERVICES

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

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- 57.2 Where the performance of the Services or any part thereof has been suspended under clause 57.1 and the Services are to be resumed, the Hirer's Representative shall grant the Supplier a reasonable period of time in order to resume performance of such Services.
- 57.3 Unless the suspension is due to the default or a breach by the Supplier of any provision of this Agreement, the Supplier shall be entitled to reimbursement of the sums which would otherwise have fallen due under the Pricing Document less a reasonable deduction for the cost of fuel, consumables, discretionary overtime and other avoidable costs assessed by the Hirer's Representative to be fair and reasonable. The Supplier shall take all reasonable steps to reduce avoidable costs during any suspension.
- 57.4 In the event of suspension, the Supplier shall:
- 57.4.1 comply with the Hirer's Representative's instructions with regard to the stabling of Plant;
 - 57.4.2 not remove any Plant from the Site or other location without the written permission of the Hirer's Representative. Such permission shall not be unreasonably withheld.

CLAUSE 58: HIRER'S REPRESENTATIVE INSTRUCTIONS

- 58.1 The Hirer's Representative shall be authorised to issue Instructions to the Supplier under this Agreement from time to time.
- 58.2 If any Hirer's Representative Instruction issued under this Agreement shall:
- 58.2.1 require the Supplier to undertake Services not provided for in, or to be reasonably inferred from, this Agreement;
 - 58.2.2 impose any additional obligation or restriction or shall require the omission of any Services or of any obligation or restriction;
- then provided that the Hirer's Representative Instruction has not arisen from any default or a breach by the Supplier of any provision of this Agreement, the Price shall be adjusted and the provisions of clause 58.3 and 58.4 shall apply.
- 58.3 The Hirer's Representative shall, after consultation with the Supplier and within a reasonable time after the issue of such Hirer's Representative Instruction, ascertain a fair and reasonable adjustment to the Price based on prices or rates analogous to those included in the Pricing Document.
- 58.4 If there are no analogous prices or rates in the Pricing Document the Hirer's Representative shall determine fair rates and prices.
- 58.5 Verbal instructions shall be of no effect unless confirmed in writing by the Hirer's Representative.

CLAUSE 59: 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 the Hirer to fall under the Intermediaries Legislation then:

- 59.1 The Supplier shall comply with the Intermediaries Legislation and all reasonable instructions and requests for information from the Hirer in respect thereof.
- 59.2 The Supplier shall supply all the information required, and to any specified time, for the Hirer to report to the Department for Transport and HM Treasury as to compliance with the Intermediaries Legislation including the number of workers affected.
- 59.3 The Supplier shall be liable for and shall indemnify the Hirer 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 59.

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- 59.4 The Hirer shall provide all reasonably requested information within a reasonable timescale to support the Supplier in its compliance with the Intermediaries Legislation.
- 59.5 Failure by the Supplier to comply with this clause 59 shall be deemed to be a material breach of this Agreement.

CLAUSE 60: USE OF THE CALL OFF ORDER MANAGEMENT SYSTEM

If stated in the Appendix that the Call Off Order Management (COOM) system is to be used on this Agreement, the following amendments to the above terms and conditions shall apply:

Clause 24: Notice of Termination of Contract

- 24.1(c) Add a new clause 24.1(c):

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

- 24.9 Add a new clause 24.9:

“The Hirer shall issue a self billing invoice or receipt in accordance with the appropriate requirements of the clause 45 payment provisions stating the amount due to the Supplier which shall be calculated in accordance with the provisions of clause 24.4”

Clause 38: Call Off Orders

Delete the existing clause 38 and replace with:

- 38.1 Add a new clause 38.1:

“Each Call-Off Order shall be a binding agreement for the supply of the Services which shall be the relevant Electronic Purchase Order in accordance with clause 38.3 and which shall incorporate the terms of this Agreement.”

- 38.2 Add a new clause 38.2:

“Each Call-Off Order will incorporate the terms and conditions set out in this Agreement, together with:

38.2.1 The Plant to be supplied pursuant to the Call-Off Order

38.2.2 The Site in respect of such Plant

38.2.3 The Hire Period

38.3.4 The Price respect of the Plant calculated by the Hirer on a fair and reasonable basis having regard to the rates and prices included in the Pricing Document, or where a mini competition has been carried out for the particular requirement, the price agreed for the respective Call-Off Order.”

- 38.3 Add a new clause 38.3:

“Each Call-Off Orders shall be formed on the issuing of Electronic Purchase Order by the Hirer to the Supplier and acceptance by the Supplier thereof. No Call-Off Order will come into existence until an Electronic Purchase Order is issued by the Hirer to the Supplier”

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- 38.4 Add a new clause 38.4:
“Subject to clause 38.5 the Supplier shall not commence the Hire without a Call-Off Order being formed in accordance with clause 38.3 and that the terms of the Call-Off Order are complied with.”
- 38.5 Add a new clause 38.5:
“Where the Hirer at his sole discretion declares an emergency requirement for the supply of Plant without an Electronic Purchase Order being in place, the Hirer's Representative may make such requirement known to the Supplier by electronic mail, who will supply such Plant to the Hirer under the terms of this Agreement. The parties agree that in such circumstances they will work together to put in place a Electronic Purchase Order, for the relevant Plant as soon as possible.”
- 38.6 Add a new clause 38.6:
“The Hirer shall order the Plant using Call-Off Orders (Electronic Purchase Order) which will be sent to the Supplier in an electronic format. Notifications will be sent electronically to the Supplier to alert them that an order requires acknowledgment within 48 hours. On receipt of the Electronic Purchase Order, the Supplier will either accept or reject a Electronic Purchase Order and, where rejected, notify the Hirer that it does not accept the Electronic Purchase Order in which case it shall state in detail what element of the Electronic Purchase Order it does not accept and the reasons therefore. Electronic Purchase Orders that are not accepted by the Supplier will be recorded as part of the contract management. Accepted Electronic Purchase Orders will be final and binding on the parties. The Supplier shall provide the Hirer with an email address to be used for all i-Supplier notifications.”
- 38.7 Add a new clause 38.7:
“The Supplier shall immediately notify the Hirer if the Supplier is at any time unable to supply the Plant requested by the Hirer for any Electronic Purchase Order that has been accepted pursuant to clause 38.6. Nothing in this clause shall relieve the Supplier of its obligations under this Agreement or the relevant Call-Off Order or otherwise prejudice the rights and remedies of the Hirer.”
- 38.8 Add a new clause 38.8:
“The Hirer's requirements may vary and this Agreement shall not place the Hirer under any obligation to procure the Plant from the Supplier at a particular time or at all. This Agreement is not an exclusive arrangement and nothing in this Agreement shall operate to prevent the Hirer from engaging any other organisations or persons to provide Plant similar to or the same as the Plant.”

Clause 45: Payment

- 45.2 Delete existing clause 45.2 and replace with:
“For work ordered on a lump sum or measured work rate basis, every third week of each Agreed Rail Industry Period a period progress meeting will be held. Valuation of such work properly done for the first three weeks of the period and the final week of the previous period will be calculated and agreed with a signed valuation form. The Hirer shall operate a Self Billing process by receipting the Plant and raising a self billing invoice on behalf of the Supplier. This information shall then be available for the Supplier to view and extract on i-Supplier. The Supplier shall be paid the amount properly due together with VAT thereon on or before the final date for payment which shall be 28 days from the date of the self billing invoice”

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45.3 Delete existing clause 45.3 and replace with:

"Invoices and receipts posted on i-Supplier shall be treated as notices for the purposes of 110A of the Housing Grants, Construction and Regeneration Act 1996 of the payment proposed to be made by the Hirer to the Supplier"

45.4 Delete existing clause 45.4 and replace with:

"The Hirer may on any payment delete, correct or modify any sum previously paid by it. No payment issued or made by or on behalf of the Hirer under this Agreement shall relieve the Supplier from any liability arising out of or in connection with this Agreement"

45.6 Delete this existing clause 45.6.

Clause 46: Set Off

46.1 Delete existing clause 46.1 and replace with:

"Without prejudice to the Hirer's other rights and remedies, the Hirer may deduct from any sums due to the Supplier under this Agreement an amount equivalent to any sums due from the Supplier to the Hirer (whether such sums are due to the Hirer under this Agreement or under any other agreement between the Supplier and the Hirer) and may also deduct any sum of money that is recoverable or payable by the Supplier under this Agreement from any sum then due or which at any time thereafter become due under any other agreement between the Supplier and the Hirer. The Hirer shall give to the Supplier written notice of any such deductions or set-off and such notice shall specify:

46.1.1 the amount proposed to be withheld and the ground for withholding payment; or

46.1.2 if there is more than one ground, each ground and the amount attributable to it.

Such notice shall be given not later than five days before the final date for payment of each self billing receipt/invoice."

SCHEDULE 1 – CALL-OFF ORDER PROCEDURE

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

State whether the Intermediaries Legislation (clause 59) applies or not

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SCHEDULE 2 - TECHNICAL WORKSCOPE

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

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

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SCHEDULE 3 - CONTRACT REQUIREMENTS - HSEA

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SCHEDULE 4 - PRELIMINARIES

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SCHEDULE 5 - PRICING DOCUMENT