

NETWORK RAIL 16

Network Rail Conditions of Contract

for the

Provision of Labour Services

[brief description]

Agreement No. [Insert]

NETWORK RAIL 16

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

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

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

Signature

Print name and position

Date:

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

Signature

Print name and position

Date:

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SCHEDULE OF POST TENDER AMENDMENTS

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

None

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APPENDIX

- 1 **Agreement Commencement Date:** [INSERT]
- 2 **Initial Term:** A period of [INSERT] from the Agreement Commencement Date.
- 3 **Contracting Units:**
- 4 **Details of Network Rail's Representative**
Name:
Address:
Tel:
Email:
- 5 **Details of the Supplier's Services Manager**
Name:
Address:
Tel:
Email:
- 6 **Insurance Cover:** The minimum insurance cover that the Supplier shall maintain on a per incident basis shall be:
 - 6.1 Employers Liability Cover: £5,000,000 (five million pounds sterling).
 - 6.2 Professional Indemnity Cover: £1,000,000 (one million pounds sterling, subject to any customary terms, exclusions and excesses prevailing in the insurance market and which may be subject to an annual aggregate limit).
 - 6.3 Additional Cover: Not Applicable
- 7 **Address for service of notices and other documents in accordance with Clause 40:**

For Network Rail:

For the attention of: General Counsel

Address: 1 Eversholt Street, London, NW1 2DN

With a copy to:

1. notices@networkrail.co.uk; and
2. Network Rail's Representative by email.

For the Supplier:

For the attention of:

Address:

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CONDITIONS

DEFINITIONS AND INTERPRETATION

In this Agreement (including the Recitals):

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

"Agency Workers Regulations"	the Agency Workers Regulations 2010;
"Agreed Rail Industry Period"	means each or any of the thirteen periods as published by the Office of Passenger Rail Franchising;
"Agreement"	means this agreement, including the Schedules and all other documents referred to in this agreement;
"Agreement Commencement Date"	means the date for commencement of this Agreement specified in the Appendix;
"Appendix"	means the information set out in the section of this Agreement entitled Appendix;
"Business Day"	means any day excluding Saturdays, Sundays or public or bank holidays in England;
"Call-Off Order"	means a binding agreement for the supply of Contingent Labour Workers which is the relevant COOM Electronic Purchase Orders that shall be submitted in respect of the relevant Contracting Unit, and Contract Lot in accordance with Clause 2.3 , and which shall incorporate the terms of this Agreement;
"Charges"	means the charges payable by Network Rail, in consideration of the due and proper performance of the Services under a Call-Off Order as calculated in accordance with the rates set out in Schedule [2] ;

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"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;
"Contingent Labour Worker"	means a person who is supplied by the Supplier to Network Rail in accordance with a COOM Electronic Purchase Order for the purpose of carrying out the Services;
"Contingent Labour Booking Process"	means the ordering procedures for the Services as set out in Clause 2.6 ;
"Contracting Authority"	means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015;
"Contracting Unit"	the geographic area(s) specified in the Appendix (which may be updated by Network Rail from time to time upon written notice to the Supplier) in respect of which a Call-Off Order may be entered into by Network Rail for the provision of the Services for that geographic area;
"Contract Lot"	Contingent Labour Discipline within a Contracting Unit;
"COOM Electronic Purchase Order"	means a form for the supply of Contingent Labour Workers (in a format identified by Network Rail from time to time);
"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
"Employment Claims and Liabilities"	means all losses, damages, costs, actions, awards, penalties, fines, proceedings, claims, demands, liabilities (including without limitation any liability to tax and any liability to pay a redundancy payment), and expenses (including, without limitation, legal and other professional fees and expenses) in connection with employment or termination of employment or in connection with any breach or alleged breach of TUPE;

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"Force Majeure Event"	means any of the following: riot, civil unrest, war, act of terrorism, threat or perceived threat of act of terrorism, fire, earthquake, extraordinary storm, flood, abnormal weather conditions or other natural catastrophe or strikes, lock-outs or other industrial disputes (in each case excluding the workforce of the Supplier) to the extent that such event has materially affected the ability of the Party relying on the Force Majeure Event ("Affected Party") to perform its obligations in accordance with the terms of this Agreement but excluding any such event insofar as it arises from or is attributable to the wilful act, omission or negligence of the Affected Party or the failure on the part of the Affected Party to take reasonable precautions to prevent such Force Majeure Event or its impact;
"Greater London Area"	means the area administered by the Greater London Authority or any relevant person or body which replaces the Greater London Authority;
"Holding Company"	means any company which from time to time directly or indirectly controls the Supplier where "control" is as defined by section 1124 of the Corporations Tax Act 2010;
"Industry Regulator"	means any statutory or non statutory body with responsibility for regulating (or promoting self regulation of) the provision of the type of services being offered by the Supplier;
"Initial Term"	means the initial term as set out in the Appendix;
"Insolvency Event"	means any of the following: (a) the Supplier and/or the Holding Company making any voluntary arrangement with its creditors; (b) a receiver, administrative receiver or manager, being appointed over all or part of the business of the Supplier and/or the Holding Company; (c) an administrator being appointed in respect of the Supplier and/or the Holding Company of the Supplier and/or the Holding Company becoming subject to an application for administration; (d) being a company, the Supplier and/or the Holding Company having passed a resolution for its winding-up or being subject to a petition for its winding-up (except for the purposes of a voluntary amalgamation, reconstruction or other re-organisation without insolvency); (e) the Supplier and/or the Holding Company ceasing or threatening to cease to carry on its business for any reason and/or being unable to pay its debts within the meaning of the Insolvency Act 1986;

(f) any similar event to those in (a) to (e) above occurring in relation to the Supplier and/or the Holding Company under the law of any applicable jurisdiction for those purposes;

"Intellectual Property Rights"

means any patent, know-how, trade mark or name, service mark, design right (in each case whether registered or unregistered), copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;

"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;

"Losses"

means all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and judgments;

"Management Information"

means the management information set out in **Schedule [3]**, including real time management information on usage and spend;

"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;

"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;

"Parties"

means Network Rail and the Supplier (including their successors and permitted assignees) and **"Party"** shall mean either of them as the case may be;

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"Premises"	means any land or premises (including temporary buildings) owned or occupied by or on behalf of Network Rail;
"Principal Contractor(s)"	means any third party contractor who provides construction services to Network Rail;
"Qualifying Period"	means the 12-week qualifying period as defined in regulation 7 of the Agency Workers Regulations, subject always to regulations 8 and 9 of the Agency Workers Regulations;
"Qualifying Personnel"	any Supplier's Personnel who at the relevant time is entitled to the rights conferred by regulation 5 of the Agency Workers Regulations and in particular has been provided to Network Rail (whether by the Supplier or any third party) for the Qualifying Period;
"Records"	means records pertaining to all activities relating to the performance of the Services and the Supplier's obligations under this Agreement and all Call-Off Orders and all transactions entered into by the Supplier for the purposes of this Agreement (including time-sheets for the Contingent Labour Workers);
"Regulatory Bodies"	means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of Network Rail and " Regulatory Body " shall be construed accordingly;
"Relevant Terms and Conditions"	the relevant terms and conditions for any particular Qualifying Personnel as defined in regulation 6 of the Agency Workers Regulations;
"Replacement Supplier"	any replacement supplier or provider appointed (or proposed to be appointed) by Network Rail to provide services the same as or substantially similar to the Services (or any part of them) or which will, or may, be received in place of or in substitution for the Services (or any part of them);
"Service Credits"	means the sums set out in Schedule [3] for failure to meet the Service Levels;
"Service Levels"	means the standards of performance (including KPIs or similar) to which the Services are to be provided by the Supplier to Network Rail as set out in Schedule [3] and elsewhere in this Agreement as the same may be varied, added to or replaced from time to time by the written agreement of the Parties during the continuance in force of this Agreement;

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"Supplier's Personnel"	means all such employees, officers, suppliers, sub-contractors and agents of the Supplier and including the Contingent Labour Workers;
"Services"	means: (a) subject to Clause 31.6 all or any part of the services to be provided to, or activities to be undertaken and completed for, Network Rail by the Supplier under this Agreement as detailed in the Specification including any variations to such services and/or activities pursuant to Clause 17 ; and (b) any services, functions or responsibilities which may be reasonably regarded as incidental to the foregoing services or activities and which may be reasonably inferred from this Agreement;
"Services Commencement Date"	means the date for commencement of the Services as set out in each Call-Off Order;
"Services Manager"	means the person named as such in the Appendix or such other person notified to Network Rail from time to time who shall represent the Supplier in respect of the Services provided under this Agreement;
"Specification"	means the specification and other requirements set out in Schedule [1] for the Services;
"Term"	means the Initial Term and any period in which this Agreement continues in force pursuant to a further extension in accordance with Clause 3.2 ;
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006; and
"VAT"	means value added tax as provided for in the Value Added Tax Act 1994 and any tax replacing the same or of a similar nature.

2 Agreement

2.1 The purpose of this Agreement is to:

- 2.1.1 confirm the Services to be provided by the Supplier;
- 2.1.2 confirm the mechanism and procedures for ordering the Services, including a mechanism whereby Network Rail may, from time to time, enter into a Call-Off Order with the Supplier with regards to the provision of Services for a particular Contracting Unit and Contract Lot utilising COOM Electronic Purchase Orders; and
- 2.1.3 set out the obligations of the Parties.

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- 2.2** Network Rail's requirements may vary and this Agreement shall not place Network Rail under any obligation to procure the Services from the Supplier at a particular time or at all. This Agreement is not an exclusive arrangement and nothing in this Agreement shall operate to prevent Network Rail from engaging any other organisations or persons to provide services similar to or the same as the Services.
- 2.3** Each Call-Off Order will incorporate the terms and conditions set out in this Agreement, together with the information and any additional special conditions set out in the relevant COOM Electronic Purchase Order, to the exclusion of all other terms and conditions. Each Call-Off Order shall be formed on the issuing of a COOM Electronic Purchase Order by Network Rail to the Supplier and acceptance by the Supplier in accordance with this **Clause 2.3**, **Clause 2.6** and **Clause 7**. No Call-Off Order will come into existence until a COOM Electronic Purchase Order is issued by Network Rail to the Supplier.
- 2.4** Subject to **Clause 2.5**, the Supplier shall procure that the Services must not commence without a Call-Off Order being formed in accordance with **Clause 2.3** and that the terms of the Call-Off Order are complied with. All Charges in respect of a Call-Off Order shall be set out in the relevant COOM Electronic Purchase Order and shall not exceed the rates set out in **Schedule [2]**.
- 2.5** Where Network Rail has an emergency requirement for Contingent Labour Workers without a COOM Electronic Purchase Order being in place Network Rail's Representative may make such requirement known to the Supplier who will supply such Contingent Labour Works to Network Rail under the terms of this Agreement. The parties agree that in such circumstances they will work together to put in place a COOM Electronic Purchase Order, for the relevant Contingent Labour Workers as soon as possible.
- 2.6** Network Rail shall make labour booking using Call Off Order Management (COOM) which is an electronic booking system. A COOM Electronic Purchase Order will be sent to the Supplier via i-Supplier. Notifications will be sent electronically to the Supplier via the i-Supplier Portal to alert them that an order requires acknowledgment within 48 hours. On receipt of the COOM Electronic Purchase Order, the Supplier will either accept or reject a COOM Purchase Order and, where rejected, notify Network Rail that it does not accept the COOM Electronic Purchase Order in which case it shall state in detail what element of the COOM Electronic Purchase Order it does not accept and the reasons therefore. COOM Electronic Purchase Orders that are not accepted by the Supplier will be recorded as part of the Service Levels. Accepted COOM Electronic Purchase Orders will be final and binding on the parties, and the Supplier will provide the required personnel at the rates agreed in **Schedule [2]**. The Supplier shall provide Network Rail with an email address to be used for all i-Supplier notifications.
- 2.7** The Supplier shall immediately notify Network Rail if the Supplier is at any time unable to supply Contingent Labour Workers requested by Network Rail for any COOM Electronic Purchase Order that has been accepted pursuant to **Clause 2.6**. Nothing in this **Clause 2.7** shall relieve the Supplier of its obligations under this Agreement or the relevant Call-Off Order or otherwise prejudice the rights and remedies of Network Rail.

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3 Commencement and Duration

- 3.1** This Agreement (but not a Call-Off Order) commences on the Agreement Commencement Date and continues in force for the Initial Term (and thereafter for a further twelve (12) months if extended by Network Rail pursuant to **Clause 3.2**).
- 3.2** Network Rail may, in its sole discretion, elect to extend the Term for a further twelve (12) months commencing from the end of the Initial Term by providing the Supplier with notice no less than thirty (30) days prior to the expiry of the Initial Term.
- 3.3** Each Call-Off Order shall commence on the Services Commencement Date and continue for the term set out in the relevant Call-Off Order. Unless stated otherwise in a Call-Off Order, the term of the Call-Off Order may extend beyond the termination or expiry of this Agreement, in which case the provisions of this Agreement shall survive such expiry or termination to the extent that such provisions are relevant to any such Call-Off Order.
- 3.4** A Call-Off Order may expire or be terminated in accordance with its terms or **Clause 31** but such expiry or termination shall not, in and of itself, give rise to an expiry or termination of any other Call-Off Order or this Agreement.

4 Appointment of Supplier

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

5 The Services

5.1 The Supplier:

- 5.1.1** shall provide or procure that the Services provided pursuant to each Call-Off Order are provided in accordance with this Agreement and the terms of the relevant Call-Off Order;
- 5.1.2** acknowledges that it has sufficient information about Network Rail, the Specification and the Service Levels and that it has made all appropriate and necessary enquiries to enable it to perform the Services in accordance with this Agreement and the terms of the relevant Call-Off Order;
- 5.1.3** shall neither be entitled to any additional payment nor excused from any obligation or liability under this Agreement or the relevant Call-Off Order due to any misinterpretation or misunderstanding by the Supplier of any fact relating to the Specification, Service Levels or otherwise to this Agreement; and
- 5.1.4** shall comply with all lawful and/or reasonable directions of Network Rail relating to its performance of the Services.

5.2 The Supplier shall provide the Services under each Call-Off Order

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- 5.2.1** with all due skill, care and diligence normally exercised by recognised professional firms or by highly skilled and experienced service providers providing services of a similar scope, type and complexity to the Services and with sufficient resources;
 - 5.2.2** in conformance in all respects with the Specification and so that they fulfil the purpose indicated by or to be reasonably inferred from the Specification; and
 - 5.2.3** in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner.
- 5.3** In entering into this Agreement, Network Rail has relied upon the Supplier's representation that it is an independent company, business or partnership carrying on a business on its own account and that it has the skills, experience and qualifications to enable it to perform the Services to the standards specified and required by Network Rail.
- 5.4** Where reasonably requested to do so by Network Rail, and with agreement from the Supplier, the Supplier shall enter into an agreement with any Principal Contractor or Network Rail preferred service provider that is identified in writing by Network Rail for the provision of Contingent Labour Workers on terms and conditions (including as to price) that are substantially the same as those set out in this Agreement. For the avoidance of doubt, Network Rail shall have no liability to the Supplier in respect of any agreement entered into by the Supplier and any Principal Contractors or Network Rail preferred service providers pursuant to this **Clause 5.4**.

6 Contingent Labour Workers

- 6.1** The Supplier shall supply Contingent Labour Workers to Network Rail in accordance with the Contingent Labour Booking Process. The Supplier shall be responsible for the employment of Contingent Labour Workers or the engagement of the Contingent Labour Workers.
- 6.2** The Supplier shall only supply Contingent Labour Workers who meet any minimum criteria specified by Network Rail in respect of the relevant Call-Off Order and who have the right to work in the UK. In particular, the Supplier shall comply with the Immigration Asylum and Nationality Act 2006 and other relevant UK legislation as well as any regulations regarding the reporting of labour movements, concealed employment and the employment of foreign workers.
- 6.3** Prior to proposing a Contingent Labour Worker for a potential Call-Off Order, the Supplier shall:
 - 6.3.1** carry out the following verification checks:
 - 6.3.1.1** 'Sentinel' accreditation check;
 - 6.3.1.2** an identity check to confirm the identity and status of the proposed Contingent Labour Worker;
 - 6.3.1.3** a work status check to confirm that the proposed Contingent Labour Worker has all of the necessary administrative authorisations, including entry visas, residence permits and work

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permits for the United Kingdom;

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

6.3.1.5 review of the proposed Contingent Labour Worker's previous work history for Network Rail. The Supplier shall not supply any Contingent Labour Workers that are prohibited under the Specification;

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

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

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

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

6.4 In relation to checks carried out by the Supplier pursuant to **Clause 6.3.1.3**, the Supplier acknowledges that Network Rail may request that such checks be repeated from time to time in respect of Contingent Labour Workers. On receipt of such requests from Network Rail, the Supplier shall carry out such repeat checks and make available the results to Network Rail.

6.5 The Supplier shall ensure that the Contingent Labour Workers:

6.5.1 possess all of the qualifications, experience and skills required by Network Rail to carry out the Services provided under the Call-Off Order in question;

6.5.2 comply at all times with all relevant statutes, laws, regulations and codes of practice from time to time in force and applicable to Network Rail's business and operation;

6.5.3 are informed of and comply with Network Rail's working practices and requirements, including policies usually supplied to Network Rail's employees relating to health and safety, security, business and operational ethics, drugs and alcohol and personal conduct and any other on site regulations specified by Network Rail for personnel working at the Premises or accessing any computer systems, including policies for email and internet use; and

6.5.4 perform the Services with all due skill, care and diligence and in accordance with good industry practices and at all times in an honest and professional manner.

6.6 The Supplier shall:

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6.6.1 observe all reasonable directions and instructions given by Network Rail in relation to the finding, evaluation and selection of Contingent Labour Workers; and

6.6.2 be available to Network Rail upon reasonable request for the purposes of consultation and advice relating to the Services and the Contingent Labour Workers from time to time.

6.7 Any changes made to the criteria for Contingent Labour Workers by Network Rail or as a result of any changes in applicable legislation, regulations or codes of practice shall be considered as a variation of the services and shall be dealt with in accordance with the provisions of Clause 17.

7 COOM Electronic Purchase Orders

7.1 The Supplier shall ensure that all proposed Contingent Labour Workers match the requirements set out in the accepted COOM Electronic Purchase Order.

7.2 Each COOM Electronic Purchase Order shall specify the relevant Contracting Unit and Contract Lot to which the Services will be provided.

7.3 The Supplier shall not (and does not have any authority to) enter into a contract with a Contingent Labour Worker on behalf of Network Rail or in Network Rail's name.

8 Charges

8.1 The Supplier shall submit timesheets in accordance with the procedures set out in **Clause 9** and in consideration of, and subject to the due performance of the Services by the Supplier, Network Rail shall pay the Supplier the Charges in accordance with those procedures and any other terms and conditions of the Agreement.

8.2 The Supplier shall not be entitled to reimbursement for expenses (including any expenses of the Contingent Labour Workers). For the avoidance of doubt, the Supplier acknowledges that it shall be responsible for the Supplier's Personnel's costs of travel.

8.3 All Charges exclude VAT which may be chargeable at the rate applicable at the time of self-billing.

9 Timesheets, Payment Procedures and Approvals

9.1 The hours worked by each Contingent Labour Worker will be notified to the Supplier on timesheets completed as required by Network Rail by the relevant Contingent Labour Worker and, where reasonably possible, duly authorised by a Network Rail representative on site. Timesheets will be in line with the Network Rail Template an example of which is included in Appendix D to Schedule 2.

9.2 Network Rail and the Supplier agree to act in good faith to agree a timesheet in the event that there is any dispute by Network Rail in respect of the number of hours worked by a Contingent Labour Worker.

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- 9.3** Within 14 days of receipt of a properly presented and signed timesheet in accordance with **Clause 9.1**, Network Rail shall operate a self-billing process for the Services properly delivered by receipting the Services and raising a self-billing invoice on behalf of the Supplier in accordance with the procedure set out in Schedule 6 of this Agreement, which procedure constitutes a self-billing agreement between Network Rail and the Supplier for the purposes of Regulation 13 of the Value Added Tax Regulations 1995 . This information shall be available for the Supplier to view on i-Supplier. The Supplier shall then be paid within 21 days from the date of the self-billing invoice and the Supplier shall not make any separate charge for submitting any timesheets. Network Rail and the Supplier hereby agree to comply with the self billing procedure set out in Schedule 6 of this Agreement.
- 9.4** The Supplier shall submit timesheets in line with the agreed central receipting process detailed in Appendix C to Schedule 2 and shall ensure that each timesheet contains all information required by Network Rail including the Supplier's name and address, the Agreement Number, the applicable purchase order number, signed and dated showing the hours and the type of work that the Contingent Labour Workers have completed for Network Rail, whether the Contingent Labour Workers have taken meal breaks (and, if so, for how long) and the Supplier's VAT number.
- 9.5** No payment made by Network Rail (including any final payment) or act or omission or approval by Network Rail or Network Rail's Representative (whether related to payment or otherwise) shall:
- 9.5.1** indicate or be taken to indicate Network Rail's acceptance or approval of the Services or any part of them or any act or omission of the Supplier, or otherwise prejudice any rights, powers or remedies which Network Rail may have against the Supplier, or absolve the Supplier from any obligation or liability imposed on the Supplier under this Agreement or a Call-Off Order; or
- 9.5.2** prevent Network Rail from recovering any amount overpaid or wrongfully paid including payments made to the Supplier by mistake of law or fact. Without prejudice to **Clause 23**, Network Rail shall be entitled to withhold such amount from any sums due or which may become due to the Supplier or Network Rail may recover such amount as a debt under this Agreement or a Call-Off Order.
- 9.6** If the Services are not supplied in accordance with the Service Levels the Supplier will credit Network Rail with appropriate Service Credits calculated in accordance with **Schedule 2** (which will take effect as an adjustment to the Charges). The Service Credits due will be recovered by Network Rail as credits against invoices for the Services, or if no such invoices are due, as debts due from the Supplier within thirty (30) days of the Service Credit becoming payable. This right shall be without prejudice to any other rights and remedies of Network Rail under the Call-Off Order.
- 9.7** If any sum payable by Network Rail under the Call-Off Order is not paid when properly due then the Supplier shall be entitled to recover interest on that sum from the due date until payment is made in full, both before and after any

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judgment, at the rate of 4% per annum over the Bank of England base rate from time to time.

10 Remuneration of Contingent Labour Workers

10.1 The Supplier shall pay, or shall procure that any other sub-contractor pays, each Contingent Labour Worker for the performance Services under a Call-Off Order, including without limitation, the payment of any fees or hourly rates and any other payments and disbursements to which the Contingent Labour Worker is entitled to, including but not limited to any holiday pay and any sick pay.

10.2 The Supplier shall and shall also procure that its relevant sub-contractors (if any) shall:

10.2.1 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

10.2.2 co-operate and provide all reasonable assistance to Network Rail in monitoring the effect of the London Living Wage.

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

Any failure by the Supplier to comply with the provisions of clause 10.2 shall be treated as a material breach under this Agreement.

10.3 The Intermediaries Legislation applies and the Supplier shall, or shall procure that any other sub-contractor shall:

10.3.1 make deductions and accounts to HM Revenue & Customs for PAYE income tax and any other tax due in respect of the remuneration of each Contingent Labour Worker;

10.3.2 make deductions and account for all necessary national insurance contributions relevant to the remuneration of each Contingent Labour Worker; and

10.3.3 be responsible for any and all pension related obligations in respect of each Contingent Labour Worker.

10.4 Upon request, the Supplier shall inform Network Rail of the rate that the Supplier, or any other sub-contractor, is paying to the Contingent Labour Worker. The Supplier shall provide, or procure the provision of, such additional evidence to allow Network Rail to verify the rates paid to Contingent Labour Workers as Network Rail may reasonably request.

10.5 The Supplier shall not, and shall procure that and any other sub-contractors shall not, withhold any payment due to a Contingent Labour Worker because

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of any failure by Network Rail to pay the Supplier.

- 10.6** For the avoidance of doubt, Network Rail shall have no liability to any sub-contractor arising out of or in connection with the supply of Contingent Labour Workers, including in respect of payments due to any sub-contractor.

11 Warranties and Obligations

- 11.1** Without prejudice to any other warranties or obligations expressed elsewhere in this Agreement or the Call-Off Order or implied by law, the Supplier warrants, represents and undertakes to Network Rail that:

11.1.1 the Supplier:

11.1.1.1 has full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so require, the consent of its holding company) to enter into and to perform the Call-Off Order

11.1.1.2 the Contingent Labour Workers have full capacity to perform their Services and all necessary authorisations, licences and permits to work in the United Kingdom and perform their Services;

11.1.1.3 is aware of the purposes for which the Services are required and acknowledges that Network Rail is reliant upon the Supplier's expertise and knowledge in the provision of the Services;

11.1.1.4 has made its own investigations and research in relation to and has fully satisfied itself of the nature of the Services so as to assess the full scope and volume of the work involved in performing the Services to the standard of performance specified in the Service Levels, this Agreement and the Call-Off Order;

11.1.1.5 is entering into this Agreement and will enter into each Call-Off Contract as principal and not as agent for any person and that it will act as an independent contractor in carrying out its obligations under this Agreement and each Call-Off Order; and

11.1.1.6 shall at all times employ or engage sufficient numbers of trained, skilled and competent Contingent Labour Workers to ensure that it can provide the Services and that it has sufficient resources of such Contingent Labour Workers to cover absences, including holidays or illness;

11.1.2 all information contained in the Supplier's tender for the Services is and remains true, accurate and not misleading, save as may have been specifically disclosed to and acknowledged in writing by Network Rail prior to the execution of this Agreement;

11.1.3 all information provided to Network Rail in respect of each Contingent Labour Worker shall be true, complete and accurate in all material respects;

11.1.4 it is of sound financial standing and the Supplier is not aware of

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any circumstances prior to the Agreement Commencement Date which may adversely affect such financial standing in the future;

11.1.5 it has obtained or has made arrangements to ensure that it will obtain all necessary registrations, consents, licences, approvals and permissions to enable it to carry out the Services and will throughout the Term (and the term of any Call-Off Order) obtain and maintain all further and other necessary consents, licences and permissions to enable it to carry out the Services;

11.1.6 without prejudice to **Clause 11.1.5**, it has and shall maintain throughout the Term (and the term of any Call-Off Contract) all necessary permits, licences and permissions required by any Regulatory Bodies and/or Industry Regulators; and

11.1.7 this Agreement is and each Call-Off Order will be executed by a duly authorised representative of the Supplier.

11.2 Each warranty and obligation in this **Clause 11** shall be construed as a separate warranty or obligation (as the case may be) and shall not be limited or restricted by reference to, or reference from, the terms of any other such warranty or obligation or any other term of this Agreement or the Call-Off Order

11.3 The Supplier shall remedy any breach of the warranties or obligations in this **Clause 11** in accordance with **Clause 31.4**. Any failure to remedy the breach shall be deemed to be a material breach not capable of remedy and shall entitle Network Rail to terminate the Call-Off Order in accordance with **Clause 31.3**.

12 Contract Management

12.1 Network Rail authorises Network Rail's Representative to act on its behalf for all purposes of this Agreement and the Supplier shall deal with Network Rail's Representative (or his or her nominated assistants) in respect of all matters arising under this Agreement, unless notified otherwise.

12.2 The Services Manager shall act as the Supplier's representative for all purposes of this Agreement. The Supplier shall ensure that the Services Manager:

12.2.1 attends all relevant meetings with Network Rail (the location, frequency and time of which shall be specified by Network Rail's Representative from time to time); and

12.2.2 is available to Network Rail to resolve any issues arising in connection with this Agreement or Call-Off Order at such time periods as are specified in the relevant Call-Off Order.

12.3 No act of or omission by or approval from either Network Rail or Network Rail's Representative, in performing any of their respective duties under or in connection with this Agreement or the relevant Call-Off Order shall in any way operate to relieve the Supplier of any its duties, responsibilities, obligations or

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liabilities under this Agreement and relevant Call-Off Order.

13 Service Levels

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

13.2 If at any time the Supplier fails to achieve any or all of the Service Levels and/or perform to at least the requirements of any other relevant terms of the Call-Off Order then without prejudice to Network Rail's other rights and remedies under the Call-Off Order or otherwise (including the payment of Service Credits pursuant to **Clause 9.6**), the Supplier will, without cost to Network Rail and immediately upon becoming aware of such failure:

13.2.1 notify Network Rail in writing and if required by Network Rail discuss with Network Rail (at Network Rail's convenience) the reason for the failure to achieve the Service Levels and its proposed method of remedy;

13.2.2 remedy such failure (provided the failure in question is remediable) to the reasonable satisfaction of Network Rail; and

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

14 Replacement of Contingent Labour Workers

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

14.1.1 Network Rail, in its absolute discretion, decides that a Contingent Labour Worker is unsatisfactory to perform Services under a Call-Off Order or

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

in each case an "Unsuitable Worker", then Network Rail's Representative shall notify the Supplier of that fact detailing the grounds of its dissatisfaction with the Unsuitable Worker ("**Dissatisfaction Notice**") and requiring the Supplier to provide a suitable replacement.

14.2 The Supplier is responsible for the re-deployment or discipline of any Unsuitable Worker in accordance with all applicable statutory procedures and shall indemnify and keep Network Rail indemnified in respect of any claims arising out of or in connection with the re-deployment or discipline of an Unsuitable Worker.

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

14.3.1 if instructed, provide a suitable replacement for the Unsuitable Worker (at the same or a lower cost as the Unsuitable Worker) at

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no additional cost to Network Rail; or

14.3.2 if no such suitable replacement is available, inform Network Rail in writing of that fact, in which case Network Rail:

14.3.2.1 shall not be charged for, or shall be entitled to a pro rata refund of all fees paid in relation to the Unsuitable Worker; and

14.3.2.2 shall have no further liability in relation to the Unsuitable Worker in relation to the Call Off Order.

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

15 Employment Status

15.1 The Supplier warrants that the Contingent Labour Workers are employees of the Supplier or are individuals retained by the Supplier on contracts for services.

15.2 The Parties acknowledge and agree that any applicable employment contract or contract for services between the Supplier and such Contingent Labour Workers shall remain in force during any Call-Off Order and that the Supplier shall comply with the terms of such contract during any Call-Off Order. The Supplier shall make the necessary changes to the terms of any applicable employment contract or contract for services so that it can supply the Contingent Labour Workers to Network Rail in accordance with the terms of this Agreement.

15.3 The Supplier warrants and undertakes that it will not do anything, or allow to occur any event or circumstance, that might lead to the Supplier's Personnel having any claim to being, or entitlement to become, an employee of Network Rail.

15.4 The Supplier shall maintain a level of communication with and supervision and control over the Contingent Labour Workers that is appropriate including, but not limited to, dealing with any of the following management issues (to the extent applicable):

15.4.1 periods of annual, sick or other leave;

15.4.2 absence of the Contingent Labour Workers for any other reason;

15.4.3 any complaint about the Contingent Labour Workers; and

15.4.4 any complaint or grievance raised by the Contingent Labour Workers.

15.5 Nothing in this Agreement or a Call-Off Order will render the Contingent Labour Workers or any Supplier's Personnel, an employee, agent or partner of Network Rail by virtue of the supply of Contingent Labour Workers or the provision of the Services. The Supplier shall indemnify Network Rail against all liabilities, assessments or claims arising from any Supplier's Personnel

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having at any time claimed or being held or deemed to have been an employee of Network Rail or otherwise engaged directly by Network Rail.

- 15.6** The Supplier and its sub-contractors shall be responsible for the deduction and payment of all tax, national insurance contributions and other taxes and levies in respect of Supplier's Personnel and shall keep Network Rail indemnified against all liability to make such statutory payments that may be suffered or incurred by Network Rail.

16 Agency Workers Regulations

- 16.1** The Supplier shall at all times comply with its obligations under the Agency Workers Regulations (where applicable), including but not limited to providing any Qualifying Personnel with the Relevant Terms and Conditions in accordance with regulation 5 of the Agency Workers Regulations.

- 16.2** The Supplier shall indemnify Network Rail in full against any and all liability, cost, claim, award or any other expense incurred by Network Rail arising out of a breach or alleged breach of the Agency Workers Regulations.

- 16.3** In the event that either party receives an allegation by any Supplier's Personnel that there has been a breach of the Agency Workers Regulations in relation to the supply of that person to Network Rail by the Supplier (whether that allegation has been made as a request for information under regulation 16 of the Agency Workers Regulations or otherwise), the party in receipt of the allegation shall provide a copy of that allegation to the other party within five (5) Business Days of receipt of the allegation. The parties shall co-operate with each other in relation to responding to that allegation, which shall include supplying any information which may be reasonably requested by the other party, and complying with any reasonable requests in relation to the contents of any response.

- 16.4** The Supplier will within five (5) Business Days of receiving a written request from Network Rail provide to Network Rail:

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

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

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

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

- 16.5** Network Rail shall provide the Supplier with all information reasonably required by the Supplier to enable it to comply with **Clause 16.1** and the Supplier shall have no liability to Network Rail pursuant to **Clause 16.2** or any other provision of this Agreement or any Call-Off Order to the extent such liability, cost, claim, award or any other expense has arisen from a breach by Network Rail of this **Clause**.

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17 Variation of Services

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

17.2 Within five (5) Business Days (or such longer period as may be agreed) of receipt of a Change Request, the Supplier shall notify Network Rail in writing of any time required to investigate the effect upon this Agreement of implementing such Change Request. If Network Rail instructs the Supplier to proceed with such investigation, the parties will follow the procedure set out in the remaining provisions of this Clause. For the avoidance of doubt, the Supplier will not be entitled to any fees or expenses for investigating the effect of implementing such Change Request.

17.3 Notwithstanding **Clause 17.2**, the Supplier will submit to Network Rail as soon as reasonably practicable a full written quotation for such Change Request specifying the increase or decrease (if any) which will be required to the Charges and the changes (if any) which will be required to this Agreement, together with such other information as Network Rail may reasonably request.

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

17.4.1 request such amendments to the change to which such quotation relates as it may require, in which case the Supplier will amend the quotation accordingly (including any consequential amendment to the Charges) and will resubmit such amended quotation to Network Rail in accordance with **Clause 17.3**; or

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

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

17.5 Until such time as any change is formally agreed between the parties in accordance with this Clause, the Supplier shall, unless otherwise agreed in writing, continue to perform and be paid as if such change had not been requested or recommended. For the avoidance of doubt, the Supplier agrees that any investigation under **Clause 17.2** or the preparation of a quotation under **Clause 17.3** will not cause any delay in the provision of the Services.

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

18 Access to Premises

18.1 Subject to **Clause 18.4** any access to the Premises made available to the Supplier in connection with the proper performance of a Call-Off Order shall be free of charge and shall be used by the Supplier solely for the purpose of performing the Services during the term of a Call-Off Order. The Supplier shall:

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- 18.1.1** have the use of such Premises as licensee and shall not have or purport to claim any sole or exclusive right to possession or to possession of any particular part of such Premises;
 - 18.1.2** vacate the Premises upon the termination or expiry of the relevant Call-Off Order or at such earlier date as Network Rail may determine;
 - 18.1.3** not exercise or purport to exercise any rights in respect of the Premises in excess of those granted under **Clause 18.1**;
 - 18.1.4** ensure that the Supplier's Personnel carry any identity passes issued to them by Network Rail at all relevant times and comply with Network Rail's security procedures as may be notified by Network Rail from time to time; and
 - 18.1.5** not damage the Premises or any assets or equipment on the Premises or any assets or equipment of Network Rail.
- 18.2** Nothing in this **Clause 18** shall create or be deemed to create the relationship of landlord and tenant in respect of the Premises between the Supplier and Network Rail.
- 18.3** Network Rail shall be under no obligation to provide office or other accommodation or facilities or services (including telephony and IT services) to the Supplier.
- 18.4** Without prejudice to any of Network Rail's other rights, powers or remedies, Network Rail may (without liability to the Supplier) deny access to any Supplier's Personnel to, or remove any of the Supplier's Personnel from, the Premises if such Supplier's Personnel in Network Rail's view does not comply with Network Rail's requirements or has not been properly verified in accordance with Network Rail's applicable security policy or trained in any way required by a relevant Call-Off Order and/or is otherwise incompetent, negligent, and/or guilty of misconduct and/or who could be a danger to any person and shall notify the Supplier of such denial or removal in writing; the Supplier shall immediately remove such Supplier's Personnel from performing the Services and provide a suitable replacement.

19 Policies and Law

- 19.1** The Supplier, at no additional cost to Network Rail:
- 19.1.1** undertakes to procure that all the Supplier's Personnel comply with all of Network Rail's policies and standards that are relevant to the performance of the Services, including the provisions set out in **Schedule [5]**;
 - 19.1.2** shall provide the Services, and ensure that the Supplier's Personnel act, in compliance with all requirements of all Acts of Parliament, statutory instruments, court orders, regulations, directives, European Community decisions (insofar as legally binding), bye-laws, treaties and other regulatory requirements relevant to the Supplier's business and/or Network Rail's business or operations, from time to time in force which are or may become applicable to the Services.

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The Supplier shall promptly notify Network Rail if the Supplier is required to make any change to the Services for the purposes of complying with its obligations under this **Clause 19.1.2**;

19.1.3 without limiting the generality of **Clause 19.1.2**, shall comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities and shall procure the observance of the provisions of this sub-clause by any sub-contractors;

19.1.4 shall promptly notify the Supplier's Personnel and Network Rail of any health and safety hazards that exist or may arise in connection with the performance of the Services.

In all cases, the costs of compliance with this **Clause 19.1** shall be borne by the Supplier.

20 Compliance

General

20.1 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.

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

Bribery Act Compliance

20.3 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).

20.4 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

20.5 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.

20.6 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

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

21 Management Information

21.1 The Supplier shall throughout the Term (and thereafter in respect of any extant Call-Off Contract) provide to Network Rail (and upon Network Rail's request):

21.1.1 the Management Information in accordance with the provisions of **Schedule [3]**; and

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

21.2 The Supplier shall:

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

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

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

21.3 The Supplier will maintain a comprehensive, accurate and up to date database of Contingent Labour Workers, including job/role descriptions, employment terms, benefits, and all such information in respect of the Contingent Labour Workers as shall reasonably be requested by Network Rail.

21.4 The Supplier shall make the information set out in this **Clause 21** available to Network Rail (or a third party nominated by Network Rail, including a regulator) at Network Rail's request (Network Rail giving the Supplier thirty (30) days notice) and shall provide all information and assistance regarding Contingent Labour Workers as Network Rail may reasonably require on thirty (30) days notice.

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

22 Records, Audit and Inspection

22.1 The Supplier shall:

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

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

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

23 Set-Off

Network Rail will be entitled but not obliged at any time or times to set off any liability of the Supplier to Network Rail against any liability of Network Rail to the Supplier.

24 Indemnity

24.1 Subject to **Clause 24.2**, the Supplier is responsible for and shall indemnify, keep indemnified and hold harmless Network Rail (including their respective employees, sub-contractors and agents) (the "**Indemnified Party**") against all Losses which the Indemnified Party incurs or suffers as a:

24.1.1 consequence of any breach or any negligent performance of this Agreement or the relevant Call-Off Order by the Supplier (or any of the Supplier's Personnel), including in each case any non-performance or delay in performance of the Agreement or a Call-Off Order, or of any breach of statutory duty, misrepresentation or misstatement by the Supplier (or any of the Supplier's Personnel); or

24.1.2 result of any claim made against Network Rail by a Contingent Labour Worker arising out of or in connection with the supply of Contingent Labour Workers under the relevant Call-Off Order.

24.2 The Supplier is not responsible for and shall not indemnify Network Rail for any Losses to the extent that such Losses are caused by any breach or negligent performance by Network Rail of any of its obligations under this Agreement.

24.3 The Parties do not intend that TUPE should apply on the commencement or termination of this Agreement (or a Call-Off Order entered into pursuant to this Agreement). If any member of the Supplier's Personnel claims that his contract of employment has transferred to Network Rail or a Replacement Supplier pursuant to TUPE:

24.3.1 Network Rail shall (or shall use its reasonable endeavours to procure that the Replacement Supplier shall) notify the Supplier as soon as reasonably practicable after becoming aware of such claim; and

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24.3.2 Network Rail (or Replacement Supplier) may terminate the employment of such person and the Supplier will indemnify, keep indemnified and hold harmless Network Rail and any Replacement Supplier from and against all Employment Claims and Liabilities which Network Rail or a Replacement Supplier incurs or suffers in relation to such person arising out of or in connection with their employment and such termination or purported termination, in connection with any breach or alleged breach of TUPE, and against any sums payable to or in relation to such person in connection with their employment up to the date of termination provided such termination takes place within one (1) month of the notification as referred to in **Clause 24.3.1**.

25 Exclusions and Limitations of Liability

25.1 Subject to **Clauses 25.3** and **25.4**, the Supplier's maximum aggregate liability arising out of or in connection with each Call-Off Order whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including by negligence and/or arising from a breach of, or a failure to perform or defect or delay in performance of the Supplier's obligations under a Call-Off Order shall be limited to £250,000.00 (two hundred and fifty thousand).

25.2 Subject to **Clauses 25.3**, the maximum aggregate liability of Network Rail arising out of or in connection with this Agreement or Call-Off Orders whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including by negligence and/or arising from a breach of, or a failure to perform or defect or delay in performance of Network Rail's obligations under this Agreement and Call-Off Orders shall be limited to £250,000.00 (two hundred and fifty thousand). This **Clause 25.3** shall not affect any Charges that Network Rail is expressly required to pay under any Call-Off Order.

25.3 Neither party excludes or limits its liability (if any):

25.3.1 for personal injury or death caused by its negligence or by a person for whom it is vicariously liable;

25.3.2 for fraud or fraudulent misrepresentation or the fraud or fraudulent misrepresentation by a person from whom it is vicariously liable.

25.3.3 for any indemnity provided in this Agreement; or

25.3.4 for any matter for which it would be illegal to exclude or limit or to attempt to exclude or limit its liability.

25.4 The Supplier does not exclude or limit its liability:

25.4.1 for any breach of **Clause 10** (Remuneration of Contingent Labour Workers);

25.4.2 for any breach of **Clause 28** (Data Protection); or

25.4.3 for any breach of **Clause 29** (Confidentiality and Announcements).

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26 Insurance

- 26.1** The Supplier will at its sole cost maintain insurance cover as required by law and shall maintain the type and amounts of insurance cover as set out in the Appendix in respect of the Services (the "**Insurances**").
- 26.2** The insurance cover will be maintained with a reputable insurer and on terms approved by Network Rail.
- 26.3** The Supplier will produce evidence to Network Rail on reasonable request of the insurance policies set out in **Clause 26.1** and payment of all premiums due on each policy.
- 26.4** The Supplier warrants that nothing has or will be done or be omitted to be done which may result in any of the insurance policies set out in **Clause 26.1** being or becoming void, voidable or unenforceable.

27 Intellectual Property Rights

- 27.1** The Supplier agrees and acknowledges that all Intellectual Property Rights created or developed in the provision of the Services or otherwise arising from or in connection with the Services, this Agreement or a Call-Off Order, including all Intellectual Property Rights created or developed by or on behalf of the Supplier or the Contingent Labour Workers, shall vest in and belong absolutely and exclusively to Network Rail. The Supplier hereby assigns, or shall procure the assignment of, with full title guarantee and at no charge or royalty all such Intellectual Property Rights capable of present assignment to Network Rail together with the right to sue for past infringement. Where such future rights cannot be assigned by present assignment the Supplier agrees to take all such steps and do all such things, including executing all documents, as may be necessary to vest such Intellectual Property Rights in Network Rail on their creation.
- 27.2** The Supplier shall provide Network Rail with copies of all work and materials relied upon or referred to in the creation or development of the Intellectual Property Rights referred to in **Clause 27.1** and with a perpetual, irrevocable, royalty-free and transferable licence free of charge to use such work and materials in connection with the use of such Intellectual Property Rights.
- 27.3** Pursuant to **Clause 27.1**, the Supplier undertakes that it:
- 27.3.1** has (or that it will have in place prior to the commencement of a Call-Off Order, or will procure that sub-contractors have, contracts with the Contingent Labour Workers such that any Intellectual Property Rights arising out of or in connection with a Call-Off Order shall (subject to the **Clause 27.3.2**) vest in the Supplier or sub-contractor, as applicable, and that each Contingent Labour Worker is obliged to waive all moral rights and rights of a like nature in such Intellectual Property Rights. Network Rail may on demand at any time require the Supplier to produce all and any Contingent Labour Worker contracts for inspection by Network Rail; and
- 27.3.2** will, or will procure that the Contingent Labour Workers will, execute such further documents and do such acts as may be necessary for

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securing, confirming or vesting absolutely Network Rail's full rights, title and interest in the Intellectual Property Rights referred to in **Clause 27.1** and for conferring on Network Rail all rights of action in respect of any claim for infringement by third parties.

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

27.5 The Supplier shall indemnify, keep indemnified and hold harmless Network Rail (including its sub-contractors and agents) against all Losses incurred or suffered that arise from or are incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights of a third party resulting from Network Rail's use of Intellectual Property Rights assigned or licensed, created, developed or provided by or on behalf of the Supplier or the Contingent Labour Workers.

28 Data Protection

28.1 The Supplier shall take all necessary steps under the General Data Protection Regulation (EU) 2016/679 (including, where appropriate, the procurement of any consent) to allow for disclosure to appropriate Network Rail personnel of all information required by this Agreement.

If the Supplier is required to handle Personal Data the following Clauses 28.2 – 28.11 shall apply.

28.2 For the purposes of Clause 28 the following definitions apply:

"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.

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

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

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

"GDPR" means the General Data Protection Regulation (Regulation (EU) 2016/679).

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

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- 28.3** With respect to the Parties' rights and obligations under this Agreement, the Parties acknowledge that for the purposes of the Data Protection Legislation, Network Rail is the Controller and the Supplier is the Processor.
- 28.4** The only processing that the Supplier is authorised to do is listed in this Agreement and may not be determined by the Supplier.
- 28.5** The Supplier shall provide all reasonable assistance to Network Rail in the preparation of any Data Protection Impact Assessment prior to commencing any processing.
- 28.6** The Supplier shall:
- 28.6.1** only process Personal Data to the extent strictly necessary and listed in this Agreement to perform its obligations under this Agreement;
 - 28.6.2** ensure that it has in place protective measures which are appropriate to protect against a Data Loss Event. Network Rail may reasonably reject such measures, but failure to reject shall not amount to approval by Network Rail;
 - 28.6.3** take all reasonable steps to ensure the Supplier's personnel who have access to the Personal Data;;
 - 28.6.3.1** are aware of and comply with the Supplier's duties under this Clause 28;
 - 28.6.3.2** are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - 28.6.3.3** have undergone adequate training in the use, care, protection and handling of Personal Data;
 - 28.6.4** not transfer Personal Data outside of the EU unless the prior written consent of Network Rail has been obtained and the following conditions met;
 - 28.6.4.1** Network Rail or the Supplier has provided appropriate safeguards in relation to the transfer as determined by Network Rail;
 - 28.6.4.2** the Data Subject has enforceable rights and effective legal remedies;
 - 28.6.4.3** the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist Network Rail in meeting its obligations); and

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- 28.6.5** at the written direction of Network Rail, delete or return Personal Data (and any copies of it) to Network Rail on termination of the Agreement unless the Supplier is required by law to retain the Personal Data
- 28.7** The Supplier shall notify Network Rail immediately if it;
- 28.7.1** receives a Data Subject Request (or purported Data Subject Request);
 - 28.7.2** receives a request to rectify, block or erase any Personal Data;
 - 28.7.3** receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 28.7.4** receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 28.7.5** receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law; or
 - 28.7.6** becomes aware of a Data Loss Event.
- 28.8** Taking into account the nature of the processing, the Supplier shall provide Network Rail with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made (and insofar as possible within the timescales reasonably required by Network Rail) including by promptly providing;
- 28.8.1** full details and copies of the complaint, communication or request;
 - 28.8.2** such assistance as is reasonably requested by Network Rail to enable Network Rail to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 28.8.3** Network Rail, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 28.8.4** assistance as requested by Network Rail following any Data Loss Event; and
 - 28.8.5** assistance as requested by Network Rail with respect to any request from the Information Commissioner's Office, or any consultation by Network Rail with the Information Commissioner's Office.
- 28.9** The Supplier shall maintain complete and accurate records to demonstrate its compliance with this Clause 28 and shall upon reasonable request, promptly make them available to Network Rail.

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28.10 The Supplier shall allow for audits of its Data Processing activity by Network Rail or Network Rail designated auditor.

28.11 Before allowing any Sub-processor to process any Personal Data, the Supplier must obtain the written approval of Network Rail and enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Clause 28 such that they apply to the Sub-processor.

29 Confidentiality and Comptroller and Auditor General

29.1 Each Party will keep confidential:

29.1.1 the terms of this Agreement and all Call-Off Orders; and

29.1.2 any and all Confidential Information that it may acquire in relation to the other party.

29.2 Neither Party will use the other Party's Confidential Information for any purpose other than to perform its obligations under this Agreement. Each Party will ensure that its officers and employees, and in the case of the Supplier, the Supplier's Personnel, comply with the provisions of **Clause 29.1**.

29.3 The Supplier warrants and undertakes to, and will procure that all of the Supplier's Personnel shall keep confidential any and all Confidential Information that they may acquire in relation to Network Rail and shall not use such Confidential Information for any purpose other than to perform their obligations under a Call-Off Order. The Supplier shall be liable for any breach of this Clause committed by any of the Supplier's Personnel.

29.4 The obligations on a Party set out in **Clause 29.1** will not apply to any Confidential Information which:

29.4.1 either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this **Clause 29**); or

29.4.2 is disclosed with the prior written consent of the other Party; or

29.4.3 is disclosed by Network Rail to ensure compliance by Network Rail with any of its statutory duties and all applicable laws and regulations; or

29.4.4 a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure.

29.5 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.

29.6 The provisions of this **Clause 29** will survive any termination of this Agreement or Call-Off Order for a period of five (5) years from termination.

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29.7 The Supplier shall not without the prior written consent of Network Rail's Representative advertise or announce that it is carrying out work for Network Rail.

30 Dispute Resolution

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

31 Breach and Termination

31.1 Network Rail shall be entitled, for whatever reason, to terminate this Agreement by giving the Supplier at least 30 days' prior written notice of termination and or any one or more Call-Off Order(s) or part of any Call-Off Order(s) (including without limitation a Contract Lot) by giving to the Supplier at least 24 hours' prior written notice of termination.

31.2 Network Rail shall be entitled, for whatever reason, to suspend for an indefinite period any or all Call-Off Orders or part of any Call-Off Order(s) (including without limitation a Contract Lot) that have been entered by Network Rail upon giving to the Supplier at least 24 hours' notice of such suspension. Network Rail shall be entitled to reactivate a Call-Off Order upon giving to the Supplier at least 24 hours notice of the requirement to reactivate and this shall re-activate the provision of all Services.

31.3 Without prejudice to Network Rail's right to terminate at common law, Network Rail may terminate this Agreement immediately upon giving notice to the Supplier if the Supplier:

31.3.1 has committed any material or persistent breach of this Agreement and in the case of such a breach that is capable of remedy fails to remedy that breach within ten (10) Business Days from the date of written notice to the Supplier giving details of the breach and requiring it to be remedied; or

31.3.2 is subject to an Insolvency Event; or

31.3.3 provides Network Rail with any false or misleading information with regard to its ability to perform the Services; or

31.3.4 is prevented, restricted or prohibited from carrying out the Services for whatever reason; or

31.3.5 undergoes a change in ownership or control in breach of **Clause 33**;
or

31.3.6 commits any of the money laundering related offence.

31.4 Without prejudice to any of Network Rail's other rights, powers or remedies (whether under the Call-Off Order or otherwise) if the Supplier is in breach of any of its warranties and/or obligations under **Clause 11** and/or any of its other obligations in respect of the Services under the Call-Off Order, the Supplier shall, if required to do so by Network Rail, promptly remedy and/or re-perform the Services or part of them at its own expense to ensure compliance with such warranties and/or obligations. Nothing in this **Clause 31.4** shall prevent

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

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

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

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

If a Force Majeure Event has continued for more than eight (8) weeks from the date on which that Force Majeure Event first arose and is having a material adverse effect on the Affected Party's performance of its obligations under the Call-Off Order, then for as long as such Force Majeure Event continues and has that effect, the Party not affected by such Force Majeure Event ("**Innocent Party**") may terminate this Agreement or the Call-Off Order immediately upon giving notice to the Affected Party. If this Agreement or the Call-Off Order is terminated in accordance with this **Clause 31.5** then without prejudice to any rights and liabilities which accrued prior to termination the Affected Party shall not be liable to the Innocent Party by reason of such termination.

31.6 To the extent that Network Rail has a right to terminate this Agreement or Network Rail has a right to terminate a Call-Off Order under this **Clause 31** then, as an alternative to termination, Network Rail may by giving notice to the Supplier require the Supplier to provide part only of the Services with effect from the date specified in Network Rail's notice ("**Change Date**") whereupon the provision of the remainder of the Services will cease and the definition of "the Services" shall be construed accordingly. The Charges applicable with effect from the Change Date will be adjusted proportionately or if in Network Rail's opinion a proportionate adjustment would not be reasonable in such manner as Network Rail may determine.

31.7 For the purpose of **Clause 31.3.1**, a persistent or a material breach that is not capable of remedy, includes if Network Rail forms the view that as a result of such breach there is a significant risk that the Supplier has or will compromise Network Rail's performance of its statutory functions, or any statutory duties to which Network Rail may become subject from time to time, or, if the Services were to continue, would be likely to compromise such performance in the future.

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- 31.8** Network Rail may terminate this Agreement in the event that it considers any of the circumstances set out in regulations 89(1)(a) or (c) of the Utilities Contracts Regulations 2016 SI 2016/274 (“UCR”) or regulations 73(1)(a) or (c) of the Public Contracts Regulations 2015 SI 2015/102 (“PCR”) as amended from time to time as applicable have arisen.
- 31.9** Network Rail may terminate this Agreement in the event that it considers any of the circumstances set out in regulation 89(1)(b) of UCR or regulation 73(1)(b) of PCR as applicable have arisen. Termination of this Agreement by Network Rail pursuant to this clause 31.9 shall be deemed to be a material breach which the Supplier has failed to remedy and the provisions of clause 31.3 shall apply.
- 31.10** The Supplier shall notify Network Rail in writing immediately upon becoming aware of the circumstances referred to in clause 31.9 applying.

32 Consequences of Termination or Expiry

- 32.1** Notwithstanding the provisions of **Clause 29**, wherever Network Rail chooses to issue a tender for a replacement service provider in respect of some or all of the Services, the Supplier shall disclose to tenderers such information concerning the Services as Network Rail may require for the purposes of such tender. The Supplier may impose upon any recipient of such information such obligations of confidentiality as it may reasonably require.
- 32.2** The termination or expiry of this Agreement shall not prejudice or affect any right, power or remedy which has accrued or shall accrue to either Party prior to or after such termination or expiry.
- 32.3** Upon expiry or termination of this Agreement or a Call-Off Order (howsoever caused):
- 32.3.1** the Supplier shall, at no further cost to Network Rail:
 - 32.3.1.1** take all steps as necessary to implement the orderly handover of the Services to Network Rail or a replacement service provider, such that the Services can be carried on with the minimum of interruption and inconvenience and to effect such handover, which shall include an obligation to promptly provide a copy of all relevant records in whatever format Network Rail or a replacement service provider may reasonably require and any information Network Rail or a replacement service provider may require;
 - 32.3.1.2** on receipt of Network Rail’s written instructions to do so (but not otherwise), arrange to remove all electronically held information by a mutually agreed date, including the purging of all disk-based information and the reformatting of all disks; and
 - 32.3.2.3** promptly deliver up to Network Rail all documents and records relating to or otherwise in connection with the Call-Off Order including a copy of all relevant records in whatever format Network Rail may reasonably require and all property and materials supplied by or on behalf of Network Rail, including any Confidential Information and Intellectual Property Rights of Network Rail;
 - 32.3.2** with effect from the date of termination, the Supplier agrees to

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

32.3.3 Network Rail shall (subject to **Clauses 23, 32.3.4** and **32.4**) pay the Supplier any Charges remaining due in relation to any Services properly performed in accordance with this Agreement and a Call-Off Order up to the date of termination; and

32.3.4 Network Rail shall not be liable to the Supplier for any loss of profit, loss of Call-Off Order or any other losses and/or expenses of whatsoever nature arising out of or in connection with any expiry or termination or as a result of a reduction of Services under **Clause 31.6**.

32.4 On termination of this Agreement under **Clause 31.3** or a cessation of any Services under **Clause 31.6** (but in the case of the latter only insofar as the right to cease any Services arises as a result of a right for Network Rail to terminate under **Clause 31.3**), Network Rail may enter into any agreement with any third party or parties as Network Rail thinks fit to provide any or all of the Services and the Supplier shall be liable for all additional expenditure reasonably incurred by Network Rail in having such services carried out and all other costs and damages reasonably incurred by Network Rail in consequence of such termination. Network Rail may deduct such costs from the Charges or otherwise recover such costs from the Supplier as a debt.

33 Change of Ownership

33.1 The Supplier shall:

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

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

34 Survival

The provisions of **Clauses 1, 5, 8 - 11** (inclusive), **22 - 30** (inclusive), **34 - 43** (inclusive) and any other Clauses or Schedules that are necessary to give effect to those Clauses shall survive termination or expiry of this Agreement or a Call-Off Order. In addition, any other provision of this Agreement which by its nature or implication is required to survive the termination or expiry of this Agreement or relevant Call-Off Order shall do so.

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35 The Contracts (Rights of Third Parties) Act 1999

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

36 Not Used

37 Assignment and Sub-contracting

37.1 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).

37.2 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).

37.3 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.

38 Waiver of Rights

No waiver of any of the provisions of this Agreement or any relevant Call-Off Order is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of **Clause 40**. The single or partial exercise of any right, power or remedy under this Agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

39 Illegality and Severability

If any provision of this Agreement (in whole or in part) is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed from this Agreement and the remaining provisions shall continue in full force and effect as if this Agreement had been executed without the invalid, illegal, or unenforceable provision. In the event that in Network Rail's reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of this Agreement, Network Rail and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

40 Notices

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

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- 40.1.1** if delivered personally at the time of delivery;
- 40.1.2** if pre-paid recorded delivery or registered post 48 hours from the date of posting; and
- 40.1.3** if registered airmail 5 days from the date of posting.

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

41 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.

42 Relationship of the Parties

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

43 Governing Law

The Agreement shall be governed by and construed in accordance with the laws of England and Wales. Without prejudice to **Clause 30**, the courts of England will have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement provided that Network Rail has the right in its absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the Supplier is incorporated or in which any assets of the Supplier may be situated. The Parties agree irrevocably to submit to that jurisdiction.

44 Equality and Diversity

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

- 44.1.1** 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);
- 44.1.2** Network Rail's equality, diversity and inclusion policy as published by Network Rail from time to time; and
- 44.1.3** 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.

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44.2 The Supplier shall take all reasonable steps to secure the observance of this clause by its employees, agents, representatives and Sub-Contractors.

44.3 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

45 Freedom of Information

45.1 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.

45.2 The Supplier shall (and shall procure that its Sub-Contractors shall):

45.2.1 provide all necessary assistance and cooperation as reasonably requested by Network Rail to enable it to comply with its obligations under the Information Acts;

45.2.2 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;

45.2.3 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

45.2.4 not respond directly to a request for information unless authorised in writing to do so by Network Rail.

45.3 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.

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- 45.4** Network Rail shall take reasonable steps to notify the Supplier of a request for Confidential Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000) to the extent that it is permissible and reasonably practical for it to do so and shall consider any reasonable and timely representations made by the other Party regarding the application of exemptions to the requested information.
- 45.5** 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.
- 46** **Claims Handling Agreement**
- 46.1** In these provisions, where the context admits, "Claims Allocation and Handling Agreement" means the Agreement so entitled dated 1 November 2015 and made between the several parties whose names are contained in Schedule 6 thereof (the "Industry Parties") and Railway Claims Limited (the "Agency") (as amended from time to time in accordance with its terms) and terms and expressions defined in the Claims Allocation and Handling Agreement, and Network Rail shall supply the Supplier with a copy of each amendment thereto, as and when it is made.
- 46.2** These provisions shall apply:
- 46.2.1** if the Agreement is in connection with the maintenance or operation of Network Rail's Railway Assets; and
 - 46.2.2** in respect of the period (if any) while the Supplier is an Independent Supplier; and
 - 46.2.3** where a claim, which arises out of or is connected with the Agreement, is made by a third party who does not have an agreement with the Supplier:
 - (i) against Network Rail or the Agency, which may result in a claim being made against the Supplier; or
 - (ii) against the Supplier, which may result in a claim being made against Network Rail or the Agency (whether by the Supplier or otherwise).
- 46.3** In relation to clause 17 of the Claims Allocation and Handling Agreement this Agreement does hereby permit the recovery by Network Rail of loss of revenue or other consequential losses that are direct and foreseeable.
- 46.4** The Supplier irrevocably appoints Network Rail as its agent to authorise the Agency (in consultation, where necessary, with Industry Parties and their Insurers) to defend such claim on behalf of the Supplier and Industry Parties, in accordance with the Claims Allocation and Handling Agreement. In relation to such a claim, the Supplier shall be bound by the terms of that Agreement as if the Supplier were a party to it.

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- 46.5** Where such a claim results in a payment to the third party, the Supplier agrees that liability for such payment and the costs of handling and defending the claim, shall be allocated in accordance with the Claims Allocation and Handling Agreement. The Supplier agrees to participate in the procedure for allocating liability set out in the Dispute Resolution Rules; and to be bound by the result as if the Supplier were party to those Rules; and such matters shall not be referable to adjudication or arbitration in accordance with the Agreement.
- 46.6** Provided that sub-clauses 46.4 and 46.5 of this clause shall not apply to any claim in respect of which the Supplier admits that he is liable, and that no Industry Party is liable. In such a case, the Supplier himself may defend the claim.
- 46.7** Without prejudice, and in addition, to any rights and remedies of Network Rail, the Supplier shall indemnify Network Rail against all losses, claims, liability, costs and expenses which are borne by Network Rail under the Claims Allocation and Handling Agreement and which arise out of either a breach of contract by the Supplier or a breach of duty of care owed to a third party which is the subject of a claim under the Claims Allocation and Handling Agreement.

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SCHEDULE 1 - SERVICES

1. The Scheme

- 1.1. This Schedule 1 [Services] sets out the services which shall be included as part of this Agreement.
- 1.2. The Services comprises the hiring of Contingent Labour resource.
- 1.3. Contingent Labour refers to the provision of workers hired on a labour only basis to work under the hirer's management and direction on Network Rail's infrastructure or a Network Rail construction site. Workers are brought in to supplement the Network Rail workforce and will be hired against specific competencies. All workers will have relevant certification and be engaged through the Sentinel programme, as appropriate. For the avoidance of doubt, contingent labour does not include office workers/staff.
- 1.4. The Agreement is made on the understanding that the Supplier will have the capability to provide local labour for each of the geographic areas of operations for which they are contractually committed.

2. The Services

- 2.1. The Supplier shall react to the Call off Orders and provide staff with the qualifications requested on those orders as required by all of the provisions of this Agreement.
- 2.2. The Supplier shall provide a 24 hour service cover for 365 days of the year and use their best endeavours to supply emergency requirements within 4 hours.

3. Product Groups

- 3.1. The Supplier shall be qualified under the relevant RISQS category codes listed in Appendix B to this Schedule.

4. Tools, Equipment and Personal Protective Equipment (PPE)

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

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5. **Driving and Vehicle**

- 5.1. The Supplier shall provide suitable and sufficient transport to provide the Services to the Contracting Unit in accordance with the Code of Conduct.

6. **Delivery**

- 6.1. All travel time and any necessary accommodation arrangements shall be in accordance with Network Rails fatigue policies and the Code of Conduct, all costs shall be included in the contracted rate.
- 6.2. The Supplier shall have the capability to provide local labour for each of the lots for which they have tendered, and contractually committed.

7. **Areas of Operation**

- 7.1. The Supplier is appointed as a labour only supplier for specific Network Rail Lots as detailed in Appendix D to Schedule1- The Scheme & Services –Supplier Lots.
- 7.2. Where Primary Supplier status has been declared this has been marked as 'Primary Core'.
- 7.3. Primary supplier status means the Supplier shall be given first refusal for the supply of labour for the locations detailed in Appendix D to Schedule1- The Scheme & Services – Supplier Lots. The Supplier will be given 48 hours to respond to a labour enquiry failing which Network Rail will be entitled to enquire of an alternative (secondary) Supplier marked 'Secondary Core'.

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APPENDIX A TO SCHEDULE 1- SERVICES– CONTRACTING UNITS

1. Contracting Units

1.1. A contracting unit as a grouping of roles within a geographical area taking into account existing administrative constraints and potential magnitude of disruption to the supply market.

Delivery Unit	Contracting Unit Split
Ipswich	Anglia
Romford	Anglia
Tottenham	Anglia
Ashford	Kent & Sussex
Brighton	Kent & Sussex
Croydon	Kent & Sussex
London Bridge	Kent & Sussex
Orpington	Kent & Sussex
Derby	LNE & LNW Middle
Saltley (Birmingham)	LNE & LNW Middle
Sandwell & Dudley (Birmingham)	LNE & LNW Middle
Stafford	LNE & LNW Middle
Bedford	LNE & LNW South
Hitchin	LNE & LNW South
Bletchley	LNE & LNW South
London Euston	LNE & LNW South
Leeds	LNE North
Newcastle	LNE North
Sheffield	LNE North
York	LNE North
Doncaster	LNE North
Lancs. & Cumbria	LNW North
Liverpool	LNW North
Manchester	LNW North
Edinburgh	Scotland
Glasgow	Scotland
Motherwell	Scotland
Perth	Scotland
Shrewsbury	Wales
Cardiff	Wales
Clapham	Wessex & Western
Eastleigh	Wessex & Western
Woking	Wessex & Western
Bristol	Wessex & Western
Plymouth	Wessex & Western
Reading	Wessex & Western
Swindon	Wessex & Western

APPENDIX B TO SCHEDULE 1- SERVICES–JOB ROLES

1. Job Roles – Descriptions and Competencies

- 1.2. All Contingent Labour Workers shall work under the Code of Conduct and be certified as competent to carry out the activities as detailed in the Call-Off Order.

- 1.3. Network Rail has used its best endeavours to compile a comprehensive list of job descriptions and the relevant competencies related to those roles, however due to regional variance etc., these descriptions act as a minimum guide and from time to time these roles may require additional competencies or skills and should not affect the contract rate

CORE

Job Title	Job Description	Competencies
Multi -Skilled Operative	To carry out Concrete Works; Shuttering; Drainage; Groundworking; Structural Works (Concrete & Steel); Brickwork; Masonry Work.	PTS ACDC - CSCS Level 2
General Labourer	To assist in at least one of the following: Concrete Works; Shuttering; Drainage; Groundworking; Structural Works (Concrete & Steel); Brickwork; Masonry Work.	PTS, CSCS Card
Semi-Skilled Operative	To assist Concrete Works; Shuttering; Drainage; Groundworking; Structural Works (Concrete & Steel); Brickwork; Masonry Work.	PTS ACDC - CSCS Level 1
Team Leader - Multi Skilled Operative	To assist with Concrete Works; Shuttering; Drainage; Groundworking; Structural Works (Concrete & Steel); Brickwork; Masonry Work.	PTS, ACDC - CSCS Level 3
Bricklayer	Measuring the work area, setting out the first courses, mixing mortar, building up the courses, shaping and trimming bricks, checking courses are straight, reading technical drawings, awareness of working at heights, carrying loads, structural refurbishment, breaking out and replacing, setting ironwork into brickwork.	PTS, CSCS Card, City & Guilds Qualified or equivalent
Electrician (Domestic)	Reading plans, carrying out both first and second fix electrical installation, renewal and repair of existing systems, testing and certifying.	PTS, CSCS Card , 17th Edition IET Qualified ,City & Guilds Qualified or equivalent ,Level C Competency
Electrician (Industrial)	Reading plans, carrying out both first and second fix electrical installation, installation of electrical plant LV and HV.	PTS, CSCS Card , 17th Edition Qualified, Level C Competency , City & Guilds Qualified or equivalent
Glazer	Reading plans, selecting glass fit for the application, shaping and cutting glass, removing old/broken panes using tools, cleaning out beading/putty, fitting new glass and making watertight with sealants, rubber strips or aluminium flashing, capable of installation and maintaining of patent glazing systems, fitting glass stairs and floors, security glazing, shop fronts and overhead installations.	PTS, CSCS Card, City & Guilds Qualified or equivalent
Heating & Ventilation Fitter -	Reading plans, carrying out both first and second fix heating and ventilation installation.	PTS, CSCS Card, City & Guilds Qualified or equivalent , Gas Safe registered
Joiner	Working under the Code of Conduct and certified as competent to carry out the following activities in a railway environment - Reading plans, erection of formwork, machining, bench joinery, first fix, second fix, shop fitting.	PTS, CSCS Card, City & Guilds Qualified or equivalent
Shuttering Joiner	Reading plans, carry out formwork construction and shuttering works	PTS
Painter & Decorator	Stripping old covering, crack filling and levelling, priming and undercoating, mixing paint, hanging wallpaper, refurbishment works.	PTS, CSCS Card, City & Guilds Qualified or equivalent
Plasterer	New and reconstructive solid plastering, fibrous plastering, dry lining	PTS, CSCS Card, City & Guilds Qualified or equivalent
Plumber	Reading plans, installing and repairing water supplies, heating systems and drainage, servicing gas and oil-fired central heating systems, boilers, installing and fixing domestic appliances, fitting weather-proof materials, joints and flashings.	PTS, CSCS Card, City & Guilds Qualified or equivalent
Flat Roofer	Reading plans, stripping existing flat roofs, repairing broken slates and tiles, attaching slates to battens, checking soundness of roof timbers, fitting insulating materials between joists, lying felt on flat roof trusses and subsequently battening, installing lead flashing, topping off with ridge tiles and sealing joints and pointing.	PTS, CSCS Card, City & Guilds Qualified or equivalent
Roofer	Reading plans, stripping existing roofs, repairing broken slates and tiles, attaching slates to battens, checking soundness of roof timbers, fitting insulating materials between joists, laying felt on roof trusses and subsequently battening, installing lead flashing, topping off with ridge tiles and sealing joints and pointing.	PTS, CSCS Card, City & Guilds Qualified or equivalent
Scaffolder	Reading plans, tube and clip systems, capable of unloading, base plate setting, erecting standards and attaching couples, using tie tubes, laying walkways, dismantling, fixing guard rails and safety netting and other scaffolding system types.	PTS, CSCS Card ,CISRS
Litter Picker	General work site activities. Knowledge of Health and Safety legislation. Knowledge of COSHH assessments.	PTS
Team Leader - Steelwork & Structural On-Site Fabrication & Fitters	To Supervise Structural Steel Works; Read Drawings, Undertake Surveys; Produce Templates; Fabricate and Install; Assist with Technical Queries.	PTS ACDC - CSCS Level 3
Tradesman - Steelwork & Structural On-Site Fabricators & Fitters	To Install Structural Steel Works; Read Drawings, Undertake Surveys; Produce Templates; Fabricate and Install.	PTS ACDC - CSCS Level 2
Multi -Skilled Operative - High Street Environment	To carry out Concrete Works; Shuttering; Drainage; Groundworking; Structural Works (Concrete & Steel); Brickwork; Masonry Work.	CSCS Card, PTS (where appropriate)
General Labourer - High Street Environment	To assist in at least one of the following: Concrete Works; Shuttering; Drainage; Groundworking; Structural Works (Concrete & Steel); Brickwork; Masonry Work.	CSCS Card, PTS (where appropriate)
Team Leader - Multi Skilled - High Street Environment	To assist with Concrete Works; Shuttering; Drainage; Groundworking; Structural Works (Concrete & Steel); Brickwork; Masonry Work.	CSCS Card, PTS (where appropriate)
Bricklayer - High Street Environment	Measuring the work area, setting out the first courses, mixing mortar, building up the courses, shaping and trimming bricks, checking courses are straight, reading technical drawings, awareness of working at heights and carrying loads.	CSCS Card, PTS (where appropriate), City & Guilds Qualified or equivalent
Electrician (Domestic) - High Street Environment	Reading plans, carrying out both first and second fix electrical installation.	CSCS Card, PTS (where appropriate), 17th Edition Qualified, Level C Competency
Electrician (Industrial) - High Street Environment	Reading plans, carrying out both first and second fix electrical installation.	CSCS Card, PTS (where appropriate), 17th Edition Qualified, Level C Competency
Glazier - High Street Environment	Reading plans, selecting glass fit for the application, shaping and cutting glass, removing old/broken panes using tools, cleaning out beading/putty, fitting new glass and making watertight with sealants, rubber strips or aluminium flashing, capable of installation and maintaining of patent glazing systems, fitting glass stairs and floors, security glazing, shop fronts and overhead installations.	CSCS Card, PTS (where appropriate)
Heating & Ventilation Fitter - High Street Environment	Reading plans, carrying out both first and second fix heating and ventilation installation, servicing air-conditioning and ventilation units.	CSCS Card, PTS (where appropriate)
Joiner - High Street Environment	Reading plans, erection of formwork, machining, bench joinery, first fix, second fix, shop fitting.	CSCS Card, PTS (where appropriate)
Painter & Decorator - High Street Environment	Stripping old covering, crack filling and levelling, priming and undercoating, mixing paint, hanging wallpaper.	CSCS Card, PTS (where appropriate)
Plasterer - High Street Environment	New and reconstructive solid plastering, fibrous plastering, dry lining	CSCS Card, PTS (where appropriate)
Plumber - High Street Environment	Reading plans, installing and repairing water supplies, heating systems and drainage, servicing gas and oil-fired central heating systems, boilers, installing and fixing domestic appliances, servicing air-conditioning and ventilation units, fitting weather-proof materials, joints and flashings.	CSCS Card, PTS (where appropriate)
Roofer- High Street Environment	Reading plans, stripping existing roofs, repairing broken slates and tiles, attaching slates to battens, checking soundness of roof timbers, fitting insulating materials between joists, laying felt on roof trusses and subsequently battening, installing lead flashing, topping off with ridge tiles and	CSCS Card, PTS (where appropriate)

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	sealing joints and pointing.	
Scaffolder - High Street Environment	Reading plans, capable of unloading, base plate setting, erecting standards and attaching couples, using tie tubes, laying walkways, fixing guard rails and safety netting.	CSCS Card, PTS (where appropriate), CISRS
Controller of Site Safety (COSS)	Railway work site safety activities. Location competence specific.	Controller of Site Safety, PTS
Engineering Supervisor (ES)	Railway work site safety activities.	Engineering Supervisor, PTS
Lookout	Railway work site safety activities.	PTS, lookout
Operative - Track Maintenance – Worker Under Mentorship	Railway work site activities including track renewals.	PTS
Operative - Track Maintenance	Railway work site activities.	PTS, Lookout, Track Induction (Tr 00), Safe use of portable & transportable plant (PTMP 00)
Team Leader - Track Maintenance	Railway work site activities.	PTS, COSS, Tr 00, Tr 01, Tr 04, Tr 08, Tr 11
Senior Technical Officer (STO)	Undertake Stressing of Plain Line. Confirm the track is fit for operational purposes following maintenance repair. Maintain permanent way assets. Restore track geometry by Manual Repair. Safe use of portable & transportable plant	PTS
Technical Officer (TO)	Railway work site activities.	PTS
Technician - Track Maintenance	Railway work site activities. Maintain permanent way assets, Restore track geometry by Manual Repair, Safe use of portable & transportable plant	PTS, Lookout
Team Leader - Track Inspection	Railway track inspection activities. Maintain permanent way assets. Restore track geometry by Manual Repair. Inspect the Permanent Way infrastructure. Confirm the track is fit for operational purposes following maintenance repair	PTS, Controller of Site Safety
Technician - Track Inspection - PTS	Railway track inspection activities. Maintain permanent way assets, Restore track geometry by Manual Repair, Inspect the Permanent Way infrastructure	PTS, Lookout
Operative - Track Inspection	Railway track inspection activities.	PTS, Lookout
Hot Weather Patroller	Railway track patrolling and inspection activities.	PTS, Individual Working Alone
Trackside - Watchman/Scarecrow	Railway track patrolling and protection activities.	PTS
Stressing Operative (Level 1 and 2 only)	Railway work site activities.	PTS, Restore Original Stress in Rails Undertake Stressing of Plain Line
Lubrication Technician	Railway work site activities. Inspect and Maintain Traction Gel Applicators. Undertake routine maintenance of rail lubricator and friction modifier systems	PTS
Machine Controller - Maintenance Machine	Railway work site machine control activities.	PTS, Machine Controller - Material Handler
Machine Controller - Materials Handler	Railway work site machine control activities.	PTS, Machine Controller - Maintenance Machine (MCM)
Machine Controller - MEWP	Railway work site machine control activities.	Machine Controller - MEWP
Crane Controller	Railway work site machine control activities.	CC Exc, or CC KBC, or CC OTP TL, or CC OTM GPC, or CC OTM KIROW, or CC OTM TRAMM & MPV, or CC OTM TRM, or CC OTM TL GPC, or CC OTM TL KIROW, PTS
Banksman	Railway work site machine control activities.	PTS
RMMM Operator	Railway work site machine operation activities.	Machine Operator - Motorised Trolley, PTS
Driver HGV	Railway work site machine operation activities.	PTS, HGV
Driver HGV –Non PTS	General work site machine operation activities.	HGV
Hand Signal Man	Railway protection work site activities.	Auxiliary operating duties Handsignaller (AOD(HS))
Level Crossing Attendant	Railway protection work site activities.	Auxiliary operating duties Level Crossing Attendant (AOD(LXA))
Protection Controller	Railway protection work site activities.	Protection Controller
Possession Support	Railway protection work site activities.	Undertake Possession Support duties within a possession
Points Operator	Railway protection work site activities.	Auxiliary operating duties Points Operator (AOD(PO))
Site Access Controller	Railway protection work site activities.	
Rail Safety Supervisor	The monitoring of Outside Parties / Customers activities to ensure Network rail's predetermined controls and consents are adhered too. The role will cover both types of Asset Protection works where the works are on the outside parties land under their safe systems of work and where the outside party is working on or directly adjacent to NR infrastructure and we are providing a higher level of monitoring mainly around advising on the planning of the works and monitoring that the 3rd party is following said plans. A sound background in construction is required. Note individuals will be working unsupervised in the vast majority of situations so they will be vetted and assessed prior to commencing works by the ASPRO Project Manager.	COSS / Lookout / Site Warden, PTS
Operative - Off Track	Railway off-track work site activities.	PTS, Safe use of portable & transportable plant (PTMP 00) Basic chainsaw operation and maintenance (LM 30), Safe Use of Pesticides (NPTC PA1), Handheld Application (NPTC PA6)
Team Leader - Off Track	Railway off-track work site activities.	PTS, Controller of Site Safety, Maintain "off track" assets (Tr 02), Safe Use of Pesticides (NPTC PA1), Handheld Application (NPTC PA6), Basic chainsaw operation and maintenance (LM 30), Fell and process small trees (LM 31) Fell and process medium sized trees (LM 32), May Need Process individual windblown trees (LM 34)
Technician - Off Track	Railway off-track work site activities.	PTS, Lookout, Maintain "off track" assets (Tr 02), Safe use of portable & transportable plant (PTMP 00), Safe Use of Pesticides (NPTC PA1), Handheld Application (NPTC PA6) Basic chainsaw operation and maintenance (LM 30), Fell and process small trees (LM 31)
Chainsaw Operative	Railway off-track work site activities.	CS30: Maintain and Operate the Chainsaw, PTS, CS31: Felling and processing of small trees whose effective diameter at felling height is between 200 mm and 380 mm, Brushcutter & Strimmer, PTS
Chipper Operator	Railway off-track work site activities.	CS30: Maintain and Operate the Chainsaw, PTS, CS31: Felling and processing of small trees whose effective diameter at felling height is between 200 mm and 380 mm, Brushcutter & Strimmer, PTS

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Tree Surgeon	Railway off-track work site activities.	CS30: Maintain and Operate the Chainsaw, PTS, CS31: Felling and processing of small trees whose effective diameter at felling height is between 200 mm and 380 mm, Brushcutter & Strimmer
Fencing Operative	Railway off-track work site activities.	PTS
Weedsprayer	Weed spraying activities	PA1 & PA6 Certificate of Competence In Safe Use of Pesticides. Brushcutter & Strimmer, PTS

Electrification & Plant (E&P)

Job Title	Job Description	Competencies
Authorised Person OLE	Switching, testing and earthing of 25kV Overhead Line Equipment to RT/E/S/29987	PTS (PTS AC) Controller of Site Safety (COSS OLP) Authorised Person OLE AC Isolation (AP OLE/AC-i) Authorised Person OLE Auto Transformer Isolation (AP OLE/AT-i) First Aid for Electrical Accidents (HSE T32)
Authorised Person DCCR	Specific duties in relation to the requirements of GE/RT/8000, RT/E/S/29987 and RT/E/P24001. Minimum 6 months continual experience as COSS and 6 Months continual experience as Earthing Assistant required.	PTS (PTS DCCR) Controller of Site Safety (COSS CRP) Level A - Procedure A (LA 3rd-R PA-I) Level A - Procedure B (LA 3rd-R PB-I)
Nominated Person OLE	Switching, testing and earthing of 25kV Overhead Line Equipment and issuing and cancelling Form "B" and Form "C" to RT/E/S/29987.	PTS (PTS) Controller of Site Safety (COSS OLP) Authorised Person OLE A.C. Isolation (NP OLE/AC-i) Authorised Person OLE Auto Transformer Isolation (NP OLE/AT-i) First Aid for Electrical Accidents (HSE T32)
Nominated Person DCCR	Achieved the requirements of the Network Rail Specification RT/E/S/21070, RT/E/S/29987 and NR/SP/ELP/24001 and Sentinel requirements. Requirements: minimum 2 years continual experience as Authorised Person, NP status completed.	PTS (PTS DCCR) Controller of Site Safety (COSS CRP) Level B - Strapping (inc testing) (LB 3rd R St-I) Level B - Switching (LB 3rd R Sw-i)
Earthing Assistant	Earthing Assistant Duties.	PTS
OHL Team Leader	Understanding of the specification for the overhead line equipment being worked on, including relevant campaign changes and safety instructions. Minimum 5 years continual experience working as an Operative on Network Rail overhead line equipment required.	PTS (PTS AC)
OHL Senior Supervisor	Thorough knowledge of the specification for the overhead line equipment being worked on, including design parameters, relevant campaign changes and safety instructions, able to understand cross section and layout plan details and material allocation. Competency implements changes to earthing and bonding. Minimum of 2 years continual experience as OHL Team Leader required.	PTS (PTS AC)
OHL Supervisor	Managing OHL site works and compiling reports on work carried out of maintenance, testing and commissioning. Understanding the Network Rail's Materials Ordering system and capability in calling off materials. Minimum of 2 years continual experience as an OHL Team Leader required.	PTS (PTS AC) COSS OLP
Operative - Conductor Rail Equipment (CRE)	Specialist trained in conductor rail maintenance	PTS (PTS DCCR) Lookout (LKT) Undertake corrective maintenance of the DC Conductor Rail (DCCR01) Safe use of portable & transportable plant (PTMP 00)
Operative - Overhead Line Equipment (OLE)	Use of lifting equipment to safely control loads, harness training, use of hand tools, and use of standard OLE power tools, including rail drills and presses, ability to work at heights on ladders and on track plant.	PTS (PTS AC) Undertake preventive maintenance of OLE Assets (OLE 01) Non-intrusive inspection of the OLE infrastructure (OLE 03)
Senior Technical Officer - Conductor Rail Equipment (CRE)	Demonstrating a thorough knowledge of the specification for the conductor rail equipment being worked on, including design parameters, relevant campaign changes and safety instructions, able to understand layout plan details and material allocation. Able to identify design issues and using the Network Rail processes progress the allocation change needed to develop an appropriate solution. Able to produce reports and provide accurate records, update as fitted documentation. Able to implement changes to earthing and bonding.	PTS (PTS DCCR)
Senior Technical Officer - Overhead Line Equipment (OLE)	Demonstrate thorough knowledge of the specification for the overhead line equipment being worked on, including design parameters, relevant campaign changes and safety instructions, able to understand cross section and layout plan details and material allocation. Able to identify design issues and using the Network Rail processes progress the allocation change needed to develop an appropriate solution. Produce reports and provide accurate records, update as fitted documentation. Able to implement changes to earthing and bonding.	PTS (PTS AC) OLE 12
Team Leader - Conductor Rail Equipment (CRE)	Demonstrate thorough knowledge of the specification for the conductor rail equipment being worked on, including design parameters, relevant campaign changes and safety instructions, able to understand layout plan details and material allocation. Able to identify design issues and using the Network Rail processes progress the allocation change needed to develop an appropriate solution. Able to produce reports and provide accurate records, update as fitted documentation, and able to implement changes to earthing and bonding.	PTS (PTS DCCR) Controller of Site Safety (COSS CRP) Level A - Procedure A (LA 3rd-R PA-i) Level A - Procedure B (LA 3rd R PB-i) Undertake corrective maintenance of the DC Conductor Rail (DCCR 01) Undertake corrective maintenance of the DC Conductor Rail's Associated Components (DCCR 02) Undertake corrective maintenance of the DC Conductor Rail's Associated Components (DCCR 03) Undertake corrective maintenance on Traction Cable & Bonding Systems (DCCR 04) Inspect the DC Conductor Rail Infrastructure (DCCR 05) Inspect Traction Cables and Bond Systems (DCCR 06)
Working Supervisor - Overhead Line Equipment (OLE)	Must have an understanding of the specification for the overhead line equipment being worked on, including relevant campaign changes and safety instructions. Minimum 5 years continual experience working as an Operative on Network Rail overhead line equipment required.	PTS (PTS AC) Controller of Site Safety (COSS OLP) Authorised Person OLE AC Isolation (AP OLE/AC-i) Authorised Person OLE Auto Transformer Isolation (AP OLE/AT-i) Undertake preventive maintenance of OLE Assets (OLE 01) Undertake corrective maintenance of OLE Assets (OLE 02) Non-intrusive inspection of the OLE infrastructure (OLE 03) Establish the operational condition of the OLE by high level intrusive inspection (OLE 04) Undertake preventive & corrective maintenance of OLE Earthing / Bonding (OLD 05) PTMP 00

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Team Leader - Overhead Line Equipment (OLE)	Must have an understanding of the specification for the overhead line equipment being worked on, including relevant campaign changes and safety instructions. Minimum 5 years continual experience working as an Operative on Network Rail overhead line equipment required.	PTS (PTS AC) Controller of Site Safety (COSS OLP) Authorised Person OLE AC Isolation (AP OLE/AC-I) Authorised Person OLE Auto Transformer Isolation (AP OLE/AT-I) Undertake preventive maintenance of OLE Assets (OLE 01) Undertake corrective maintenance of OLE Assets (OLE 02) Non-intrusive inspection of the OLE infrastructure (OLE 03) Establish the operational condition of the OLE by high level intrusive inspection (OLE 04) Undertake preventive & corrective maintenance of OLE Earthing / Bonding (OLE 05)
Technical Officer - Conductor Rail Equipment (CRE)	Demonstrate thorough knowledge of the specification for the conductor rail equipment being worked on, including design parameters, relevant campaign changes and safety instructions, able to understand layout plan details and material allocation. Able to identify design issues and using the Network Rail processes progress the allocation change needed to develop an appropriate solution. Able to produce reports and provide accurate records, update as fitted documentation, and implement changes to earthing and bonding.	PTS (PTS DCCR)
Technical Officer - Overhead Line Equipment (OLE)	Working under the Code of Conduct and certified as competent for the following activities in a railway environment - Demonstrate a thorough knowledge of the specification for the overhead line equipment being worked on, including design parameters, relevant campaign changes and safety instructions, able to understand cross section and layout plan details and material allocation. Able to produce reports and provide accurate records and implement changes to earthing and bonding.	PTS (PTS AC)
Technician - Conductor Rail Equipment (CRE)	Demonstrate thorough knowledge of the specification for the conductor rail equipment being worked on, including design parameters, relevant campaign changes and safety instructions, able to understand layout plan details and material allocation. Able to identify design issues and using the Network Rail processes progress the allocation change needed to develop an appropriate solution. Able to produce reports and provide accurate records, update as fitted documentation and implement changes to earthing and bonding.	PTS (PTS) Lookout (LKT) Level B - Strapping (inc testing) (LB 3rd-R St-I) Level B - Switching (LB 3rd R Sw-i) Undertake corrective maintenance of the DC Conductor Rail (DCCR 01) Undertake corrective maintenance of the DC Conductor Rail's Associated Components (DCCR 02) Undertake corrective maintenance (DCCR 03) PTMP 00
Technician - Overhead Line Equipment (OLE)	A competent linesman trained in the following skills: - Use of lifting equipment to safely control loads Harness training Use of hand tools Use of standard OLE power tools, including rail drills and presses Able to work at heights on ladders and on track plant	PTS (PTS AC) Undertake preventive maintenance of OLE Assets (OLE 01) Non-intrusive inspection of the OLE infrastructure (OLE 03) Undertake preventive & corrective maintenance of OLE Earthing / Bonding (OLE 05) May also hold Nominated Person OLE competences
Wiring Engineer (OLE)	Must have OHL design experience inc 25kv Minimum of 5 years continual OHL experience required.	PTS (PTS AC)
Multi Skilled Linesman LE3	Minimum of 5 years continual OHL experience required.	PTS
High Voltage (HV) Assessor	Minimum of 5 years continual OHL experience required.	Undertake technical assessment of OLE assets (OLE 12), PTS
High Voltage (HV) Cable Joints	Minimum of 5 years continual OHL experience required.	PTS

Signalling & Telecomms (S&T)

Job Title	Job Description	Competencies
G110/SIG5 - Installation Supervisor	IRSE licensed at Team Leader level. Assist in works planning, raise Method Statements and other documentation.	PTS Controller of Site Safety
MOD1 - Tester in Charge (Complex or Major)	Will be qualified to Signal Works Testing Module 1 and IRSE Licence Category 1.3.190 (Tester in Charge (S)). Will be an experienced Tester in Charge, with proven ability to lead Testing on a complex or major project. Capable of defining and controlling the testing and commissioning of the Signalling System.	SWT Mod 1 Sig 24 Ensure effective progression of work and use of resources during signalling testing, maintenance and installation activities Sig 25 Take and relinquish responsibility for Signalling equipment Sig 26 Implement and monitor safe working systems for signal engineering maintenance and renewal activities PTS
MOD2 - Signalling Principle Tester	Will be competent in Aspect Sequence, Control Table, Principles, Functional, Correspondence, Dynamic and System Integration Testing. Will be qualified to Signal Works Testing Module 2 and IRSE Licence Category 1.3.180 (Principles Tester (S)). Responsible for specific Principles Testing activities, independent of design and collating evidence to confirm the operational, technical and safety principles being demanded are validated.	SWT Mod 2 Sig 24 Ensure effective progression of work and use of resources during signalling testing, maintenance and installation activities Sig 25 Take and relinquish responsibility for Signalling equipment Sig 26 Implement and monitor safe working systems for signal engineering maintenance and renewal activities PTS
MOD3BL/4 -Signalling Functional Tester	Qualified to Signal Works Testing Module 3B/4 and IRSE Licence Category 1.3.170 (Signalling Functional Tester (S)). Will be competent in Inspection, Wire Count, Continuity, Correlation, Labelling, Physical Condition, Conformity to Diagram, Systems and equipment, collating evidence to confirm compliance with design and suitability of application and are fit for service. Carry out dynamic tests on new or altered equipment in line with testing procedures appropriate to the equipment type.	PTS SWT Mod 3BL SWT Mod 4 Sig 24 Ensure effective progression of work and use of resources during signalling testing, maintenance and installation activities Sig 25 Take and relinquish responsibility for Signalling equipment Sig 26 Implement and monitor safe working systems for signal engineering maintenance and renewal activities
MOD3C - Signal Verification Tester Operational	Qualified to Signal Works Testing Module 3C and IRSE Licence Category 1.3.155 (Verification Tester (S) Module X). Will be competent in Inspection, Wire Count, Continuity, Security, Profile, Labelling, Correlation, Cables, Use of Test Straps, and Compliance to Diagram, Insulation and Earth Continuity Testing. Responsible for undertaking static tests on operational new or altered Signalling Equipment and Components in accordance with test specifications in preparation for Functional Test. Capable of leading a testing team.	PTS
MOD3D - Verification Tester Cables	Qualified to Signal Works Testing Module 3D and IRSE Licence Category 1.3.155. Will be competent in Inspection, Wire Count, Continuity, Security, Profile, Labelling, Correlation, Cables, Compliance to Diagram and Insulation Testing. Responsible for undertaking tests on operational new or altered Signalling Equipment and Components in accordance with test specifications and plans.	PTS
SIG4 - Installation Team Leader	IRSE licensed at Installer Level 1.8.100. Must have held Installers licence for at least 12 months operational service. Lead and direct Installation Team, working to known and identified technical and quality standards, having Basic Diagram Reading, EISS, Basic Signalling 1&2 HW2000, Point Machines (or equiv. Point or Clamp Lock Course) HVI Track Circuits and TI21 Track Circuits (or equivalent Track Circuit Course), SSI (or equivalent TC course) and Axle Counter skills. Will organise daily work and admin to inc Timesheets, Work Reports etc. Will also have Manual Handling and First Aid training.	PTS (PTS) Controller of Site Safety (COSS) Assemble system and sub system component parts (Sig 27) Install and terminate Wires and Cables (Sig 28) Install and configure Track Circuits (Sig 29) Install and configure Signalling Power Supply Systems (Sig 35) Control planned and staged alt (Sig 36) (SIG31) Point Operating Systems (SIG34) Install and adjust Rail Clamp Point LocksC
Cable Joiner		Joint and Terminate Cables and Wires (Sig 43) PTS
MOD1 - Tester In Charge (Simple)	Qualified to Signal Works Testing Module 1 and IRSE Licence Category 1.3.190 (Tester in Charge (S)). Will be an experienced Tester in Charge, with proven ability to lead Testing on a minor/simple project. Capable of defining and controlling the testing activities and collating suitable evidence to ensure the Testing is appropriate and fit for service. Capable of planning, controlling and co-ordinating testing and commissioning of the Signalling System.	SWT Mod 1 Sig 24 Ensure effective progression of work and use of resources during signalling testing, maintenance and installation activities Sig 25 Take and relinquish responsibility for Signalling equipment Sig 26 Implement and monitor safe working systems for signal engineering maintenance and renewal activities PTS
MOD5 - Assistant Tester	Qualified to Signal Works Testing Module 5 and IRSE Licence Category 1.3.150 (Test Assistant). Responsible for undertaking tests under supervision on Signalling Equipment and Components in accordance with test specifications and plans.	PTS (PTS) SWT Mod 5
SIG2 - Assistant Installer	IRSE licensed at Assistant Installer Level. 1.2.100 and Performing Operations Level 2: NVQ 500/1448/1. Assist with the installation of signalling equipment (thus having basic diagram reading, EISS and Basic Signalling 1 skills) under supervision to known	PTS (PTS) Lookout (LKT) Assemble system and sub system component parts (Sig 27) Install and terminate Wires and Cables (Sig 28) Safe use of portable & transportable plant (PTMP 00)
SIG2 - Operative - Signalling Maintenance	Working under the Code of Conduct and certified as competent to carry out the following activities in a railway environment - Manual handling and Working at Heights certified. Capable of maintaining signalling equipment under supervision to known and identified quality standards, having equipment specific competences in Electrical Signals, TPWS & AWS, power supplies, cables, 3 types of point operating equipment, 5 types of track circuit or axle counter and 1 type of barriers.	PTS COSS Sig 01 Sig 02 Sig 03 Sig 04 Sig 05

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		<p>Sig 05.01 AC Type Sig 05.04 DC Type Sig 05.05 FS2600 Sig 05.06 HVI Sig 05.08 Reed Jointed Sig 05.12 VT1(SP) Sig 05.15 TI 21 Single Rail Sig 05.16 TI 21 Double Rail Sig 05.17 TI 21 Digital RX Sig 06 Sig 06.04 AzLM Sig 06.07 Frauscher Sig 07 Sig 7.01 Ancillary Signals Sig 7.05 AWS Equipment Sig 07.09 TPWS Sig 10 Sig 10.02 HW Machines Sig 10.04 HPSS Sig 10.10 M3 Machines Sig 12 Sig 12.01 In Bearer Sig 12.02 Rail Mounted Sig 13 Sig 14 Sig 15 Sig 15.04 AHB Barriers Sig 15.10 MCB Barriers Sig 39 Sig 39.01 Point Fittings Sig 39.02 Schwihag rollers SMTH (or IRSE Licence 1.4.230)</p>
SIG3 - Installer	IRSE licensed at Installer level 1.2.110 plus SMTH. Must have held Assistant Installers licence for at least 9 months operational service. Capable of installing signalling equipment under supervision to known and identified quality standards, having basic Diagram Reading, EISS, Basic Signalling 1&2, HW2000, Point Machines (or equiv. Point or Clamp Lock Course) HVI Track Circuits and TI21 Track Circuits (or equivalent Track Circuit Course). Will also have Manual Handling and First Aid training.	<p>PTS (PTS) Lookout (LKT) Assemble system and sub system component parts (Sig 27) Install and terminate Wires and Cables (Sig 28) Install and configure Track Circuits (Sig 29) Safe use of portable & transportable plant (PTMP 00)</p>
SIG3 - Technician - Signalling Maintenance	Undertake corrective and preventative maintenance of Track Circuits Undertake corrective and preventative maintenance of; Track circuits, Electrical Signals including AWS and TPWS, Electro Mechanical Point machines, Cables, Power Supplies	<p>PTS (PTS) LKT Controller of Site Safety</p>
SIG3 - Telecoms Installer	IRSE licensed at Telecoms Installer level. Capable of installing telecoms equipment (under supervision) to identified technical & quality standards. Specific skills to inc knowledge & experience of Fibre termination, splicing, Copper termination & jointing. Capable of managing the installing of Telecomms equipment to identify technical and quality standards, the organisation of daily work and admin. of an installation team inc Timesheets.	<p>PTS, COSS,</p>
SIG4 - Points Fitter	Qualified as IRSE Points Fitter 1.2.105. Will have worked for a minimum of 3 years as an IRSE Assistant Installer.	<p>PTS Safe use of portable & transportable plant Install and adjust Electro-mechanical (SIG31) Point Operating Systems (SIG34) Install and adjust Rail Clamp Point Locks</p>
SIG4 - Signal Maintenance Tester	Will hold IRSE Licence 1.4.160	<p>Signal Maintenance Testing Maintenance Tester (S) PTS</p>
SIG4 - Team Leader - Signalling Maintenance	Undertake corrective and preventative maintenance of Track Circuits. Undertake corrective and preventative maintenance of ; Track circuits, Electrical Signals including AWS and TPWS, Cables, Power Supplies, Electro Mechanical Point machines, Signal Maintenance Testing	<p>PTS Controller of Site Safety</p>

Protection

Job Title	Job Description	Competencies
PM - Authorised Person (AP)	Switching, testing and earthing of 25kV Overhead Line Equipment to RT/E/S/29987 Requirements: current certificate in First Aid for Electrical Accidents and an adequate written and verbal	PTS (PTS AC) Controller of Site Safety (COSS OLP) Authorised Person OLE AC Isolation (AP OLE/AC-i) Authorised Person OLE Auto Transformer Isolation (AP OLE/AT-i) First Aid for Electrical Accidents (HSE T32) AC/DC Possession Support Competency NR/L2/CTM/021
PM - Nominated Person (NP)	Achieved the requirements of the Network Rail Specification RT/E/S/21070, RT/E/S/29987 and NR/SP/ELP/24001 and Sentinel requirements. Requirements: minimum 2 years continual experience as Authorised Person, NP status completed.	PTS (PTS DCCR) Controller of Site Safety (COSS CRP) Level B - Strapping (inc testing) (LB 3rd R St-I) Level B - Switching (LB 3rd R Sw-i) Possession Support Competency NR/L2/CTM/021
PM - DC Strap Man	Achieved the requirements of the Network Rail Specification RT/E/S/21070, RT/E/S/29987 and NR/SP/ELP/24001 and Sentinel requirements. Requirements: minimum 2 years continual experience as Authorised Person, NP status completed.	PTS (PTS DCCR) Controller of Site Safety (COSS CRP) Level B - Strapping (inc testing) (LB 3rd R St-I) Level B - Switching (LB 3rd R Sw-i) Possession Support Competency NR/L2/CTM/021
PM - Controller of Site Safety (COSS)	Railway work site safety activities. Location competence specific.	Controller of Site Safety Possession Support Competency NR/L2/CTM/021
PM - Possession Support	Undertake Possession/Worksite Support duties within a possession	PS Possession Support Competency NR/L2/CTM/021
PM - Protection Controller (PC)	Railway protection work site activities.	Protection Controller Possession Support Competency NR/L2/CTM/021
PM - Level Crossing Barrier Man	Railway protection work site activities.	Possession Support Competency NR/L2/CTM/021
PM - Point Operator	Railway protection work site activities.	Possession Support Competency NR/L2/CTM/021 Auxiliary operating duties Points Operator AOD(PO)
PM - Hand Signal Man	Railway protection work site activities.	Possession Support Competency NR/L2/CTM/021 Auxiliary operating duties Handsignaller (AOD(HS))
PM - Lookout	Railway work site safety activities.	PTS Lookout Possession Support Competency NR/L2/CTM/021

Welding & Grinding

Job Title	Job Description	Competencies
Aluminothermic Welder	Suitable to act as Track Welders in accordance with RT/CE/S/032 Issue 2 dated February 2003. Are medically fit in compliance with RGS/GO/RT/3353 and have been assessed as having normal colour vision. Have been screened for drugs and alcohol in accordance with RGS/GH/RT/4000. Have been assessed and certified as competent in accordance with RT/CE/S/032. Issue 2 dated February 2003.	PTS
Assistant Welder - Railtech	Must have a Trainee Welder Certificate and one years' track experience. Suitable to act as Track Welders in accordance with RT/CE/S/032 Issue 2 dated February 2003. Are medically fit in compliance with RGS/GO/RT/3353 and have been assessed as having normal colour vision. Have been screened for drugs and alcohol in accordance with RGS/GH/RT/4000. Have been assessed and certified as competent in accordance with RT/CE/S/032. Issue 2 dated February 2003.	PTS Assistant Welder Railtech
Assistant Welder - Thermit	Must have a Trainee Welder Certificate and one years' track experience. Suitable to act as Track Welders in accordance with RT/CE/S/032 Issue 2 dated February 2003. Are medically fit in compliance with RGS/GO/RT/3353 and have been assessed as having normal colour vision. Have been screened for drugs and alcohol in accordance with RGS/GH/RT/4000. Have been assessed and certified as competent in accordance with RT/CE/S/032. Issue 2 dated February 2003.	PTS Assistant Welder Thermit
Welder	-Must be qualified to TW2 or RT2 & have a minimum of 2 years' track experience Suitable to act as Track Welders in accordance with RT/CE/S/032 Issue 2 dated February 2003. Are medically fit in compliance with RGS/GO/RT/3353 and have been assessed as having normal colour vision. Have been screened for drugs and alcohol in accordance with RGS/GH/RT/4000. Have been assessed and certified as competent in accordance with RT/CE/S/032. Issue 2 dated February 2003.	PTS PLA felt, sand mould systems and gap 68 wide gap welds, rail profiles, grades, rail wear combinations SkV-L80 wide gap process - all rail profiles / grades rail wear combinations - oxy-propane preheat
Burner	Are suitable to act as Oxyflame Gas Cutters in accordance with AR/CE/CSE/007. Are medically fit in compliance with RGS/GO/RT/3353 and have been assessed as having normal colour vision. Have been screened for drugs and alcohol in accordance with RGS/GH/RT/4000. Have been assessed and certified as competent in accordance with AR/CE/CSE/007 and that their competence is maintained and fitness for work monitored.	Undertake Oxy Gas Cutting PTS
Grinder	Assisting Network Rail team	PTS

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APPENDIX C TO SCHEDULE 1- SERVICES–PRODUCT CODES

1. Product Groups

1.4. The Supplier shall be qualified under the following product codes for the relevant Lots

Lot	Link-Up Codes Required
Core	07.06.02 - Contingent Labour (Track) 07.06.03 - Contingent Labour (Building) 07.06.04 - Contingent Labour (Civils) 07.09.01 - On Track Protection & Warning Services (PC, ES, COSS, Site Warden, Auxiliary Staff, ATWS Operator, Lookout & Temporary Automatic Warning Systems) 07.09.02 - Machine/Crane Controllers 07.05.04 - Rail Stressing
Electrification & Plant (E&P)	0707.06.06 - Contingent Labour (Electrification) 07.09.03 - Electrical Isolation Staff (DC Conductors) 07.09.04 - Electrical Isolation Staff (OHLE)
Signalling & Telecomms (S&T)	07.06.01 - Contingent Labour (Signalling) 07.06.05 - Contingent Labour (Telecoms)
Protection	07.08.01 - Possession Management (SPICOP, PICOP & Possession Support Staff) 07.09.01 - On Track Protection & Warning Services (PC, ES, COSS, Site Warden, Auxiliary Staff, ATWS Operator, Lookout & Temporary Automatic Warning Systems)
Welding & Grinding	07.05.01 - Thermic Welding

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APPENDIX D TO SCHEDULE 1- SERVICES –SUPPLIER LOTS

1. Supplier Lots

1.5. Under this Agreement the Supplier has been awarded the following Lots as detailed within this Appendix

1.6. From time to time, Network Rail may require the Supplier to supply labour to other Lots than those listed, this shall only be following the written consent of Network Rail's Representative.

Contracting Unit	Lot	Status

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APPENDIX E TO SCHEDULE 1- SERVICES –WORKERS UNDER MENTORSHIP GUIDELINES

1. Introduction

- 1.1. Network Rail supports the development of people as part of creating a sustainable workforce. We require Suppliers to work with us to best utilise and up-skill Workers under Mentorship. This Mentorship will enable them to develop the necessary safety awareness and experience without exposing themselves inadvertently to risk.

2. Definition

- 2.1. All staff who are new or inexperienced Contingent Labour Workers on the Railway Infrastructure, who are normally required to wear blue safety helmets.
- 2.2. They will continue to be under Mentorship until the Supplier believes they have demonstrated sufficient competence to be signed off for normal working

3. Process

- 3.1. Safety is our paramount concern and unless specifically agreed otherwise Workers under Mentorship should be supplied at a ratio of no more than 1 in 5 so that they can be guided, advised and mentored by experienced Operatives.
- 3.2. Workers under Mentorship shall identify themselves to the supervisor at the start of each track side shift. They should be accompanied by an experienced person at all times whilst on or near the line.
- 3.3. Network Rail or the Supplier may choose not to utilise this resource on certain projects due to criticality or complexity risk.
- 3.4. If a Supplier provides more than the specified ratio or in situations where Network Rail has requested that no Workers Under Mentorship shall be supplied, the Workers Under Mentorship shall not be allowed to work, the Supplier shall be responsible for the payment of the Contingent Labour Worker. Network Rail will not pay for the Worker Under Mentorship and the poor behaviour of the Supplier in creating this situation will be recorded.
- 3.5. Network Rail will work with the Suppliers to monitor this ratio and re-align it if appropriate.

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SCHEDULE 2: CHARGES

1. Introduction

1.1. This Schedule 2 [Charges] sets out the rates and prices associated with the delivery of the Services by the Supplier to Network Rail, under the Conditions of this Agreement

2. Rates and Prices

2.1. The rates and prices shall include everything necessary to carry out the Services including but not limited to, the following:

2.1.1. The cost of employing personnel including overheads, on call, profit, expenses, transport, mobile phones, travel time (to and from the work site and home), subsistence, lodgings, disbursements, taxation, insurances, fuel, supervision, training, medical costs, PPE, small hand tools, establishment charges, periods of absence for whatever reason (i.e. sickness, holidays, competency training, med- screening, suspension for poor performance, Suppliers internal matters and the like), protection operatives equipment, and sundry consumables necessary to carry out the works and pre-site familiarisation.

2.1.2. The provision of a single point of contact to administer the contract and attend meetings with Network Rail.

2.1.3. The rates and prices shall be in pounds sterling and shall be exclusive of all discounts and VAT.

2.1.4. A single hourly rate for the grades of personnel in the following time categories:

2.1.4.1. Weekday – shall be any day shift from Monday to Friday where the shift starts at or after 07.00 hours to 18.59 hours or for the duration specified by Network Rail.

2.1.4.2. Weeknight – shall be any night shift from Monday to Friday where the shift starts at or after 19.00 hours to 06.59 hours or for the duration specified by Network Rail.

2.1.4.3. Weekend – shall be where the shift starts at or after 19.00 hours on Friday to 06.59 hours Monday or a Bank Holiday or for the duration specified by Network Rail.

3. Premium Hours and Bank Holidays

3.1. Bank Holidays

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

3.2. Premium Hours

3.2.1. A premium hourly rate for Contingent Labour Workers working on:

3.2.1.1. Christmas Day and Boxing Day, from 22.00 hours on 24th December until 06.59 hours on 27th December

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3.2.1.2. In England, Scotland and Wales: New Year's Day, from 22.00 hours on 31st December until 06.59 hours on 2nd January

3.2.2. Premium hours will be paid as a percentage in addition to the single hourly rate that applies to the time of day and time of week.

3.2.3. A letter detailing the Premium hour's payment will be issued each year by Network Rail detailing what this increase shall be. Note there will be a separate letter for Scotland.

4. Annual Price Reviews

4.1. All rates shall remain fixed for the five year duration of this Agreement except as amended by any rebates or discounts as detailed within the Appendices to this Schedule.

5. Call Off Orders

5.1. The Call Off Order shall require Network Rail to pay the Supplier at the applicable rates set out in the Schedule for a minimum shift of seven (7) hours, this full Contingent Labour Workers hourly rate payment shall be passed to the Contingent Labour Worker from the Supplier, unless 5.2 or 5.5 applies.

5.2. If the Supplier's Contingent Labour Worker leaves the site early of their own accord (or the Supplier releases the Contingent Labour Worker early), then they shall forfeit this minimum allowance and be paid only for the hours worked (and Network Rail shall only be required to pay the Supplier at the applicable rates set out in this Schedule for the actual number of hours worked by the Contingent Labour Worker).

5.3. Where Contingent Labour Workers work across the different role categories in one shift, they shall be paid at the rate that applies to the largest proportion of the shift worked.

5.4. Where Contingent Labour Workers work across the different time categories (Week Day, Week Night or Weekend) in one shift, they shall be paid at the rate that applies to the largest proportion of the shift worked.

5.5. Where timesheets fail to record whether or not an operative has taken a meal break, a nominal half-hour meal-break deduction shall be automatically made.

5.6. Where Contingent Labour Workers are required to attend planning or other such meetings this time shall be recorded and paid for in addition. The minimum shift length above does not apply.

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6. Cancellation Fees

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

Notice of cancellation prior to attendance at worksite	Percentage Cancellation Fee of Call Off Order
More than 72 hours	0%
More than 48 hours but not exceeding 72hours	25%
More than 12 hours but not exceeding 48hours	50%
12 hours or less	100%

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

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

Notice of cancellation prior to attendance at worksite	Percentage Cancellation Fee of Call Off Order
More than 72 hours	0%
More than 48 hours but not exceeding 72hours	25%
More than 12 hours but not exceeding 48hours	50%
12 hours or less	100%

7. Volume Discount

7.1. The following volume discounts shall apply to the annual spend in relation to the thresholds as stated in the table below. This spend is based on the total spend by Network Rail over any grouped Agreed Rail Industry Periods identified as periods '1' through to '13' in Appendix F to Schedule 2 – Charges – Agreed Railway Industry Periods

7.2. The Supplier shall credit Network Rail centrally any volume discount sum accrued on Call Off Orders at the end of each relevant Agreed Railway Industry Period identified as period '13' in Appendix F to Schedule 2 – Charges – Agreed Railway Industry Periods. Note the credit is only applied to the fees paid during the relevant 52 week period and that there is no future impact.

7.3. Paid proportionately if terminated early.

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7.4. The Volume Discount calculations are calculated based on the full annual spends regardless of any Commitment discounts which have already been given following Clause 8 of this schedule.

7.5. The Volume Discount's shall be as the below tables and fixed for the duration of the Agreement.

7.5.1. Core and Protection:

Threshold (£) total annual	Discount (%)
0 - £5m	
£5m – £10m	
£10m - £15m	
£15m - £20m	
£20m – £25m	
£25m - £30m	
£30m- £35m	
£35m +	

7.5.2. Specialist Lots:

Threshold (£) total annual	Discount (%)
0 - £1m	
£1m – £3m	
£3m - £5m	
£5m - £7m	
£7m – £10m	
£10m - £13m	
£13m- £15m	
£15m +	

7.6. A worked example is detailed below

Example	
Threshold (£) total annual spend	Discount (%)
0 - £5m	2%
£5m – £10m	3%
£10m - £15m	4%
£15m - £20m	5%
£20m – £25m	6%
£25m - £30m	7%
£30m- £35m	8%
£35m +	9%

Example Supplier full annual spends for relevant lots;

- Scotland - £10m
- Anglia - £3m
- Wales - £4m

Total full annual spends total: £17m

Calculation:

£0 - £5m at 2% =	£5m*2% =	£100k
£5m - £10m at 3% =	£5m*3% =	£150k
£10m - £15m at 4% =	£5m*4% =	£250k
£15m - £20m at 5% =	£2m*5% =	£100k

Total volume rebate: **£600k**

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8. Minimum Annual Spend

- 8.1. For the purposes of this Clause a “Contract Year” shall mean any grouped Agreed Rail Industry Periods identified as periods ‘1’ through to ‘13’ in Appendix F to Schedule 2 – Charges – Agreed Railway Industry Periods.
- 8.2. Where a Minimum Annual Spend amount is expressly specified as being applicable as detailed in Appendix C to Schedule 2 for one or more Contract Lots that have been awarded to the Supplier (each a “Minimum Annual Spend”), then in respect of each relevant Contract Year (or part Contract Year where applicable):
- 8.2.1. the Supplier shall reduce their total hourly rate by the relevant Commitment Rebate as detailed within Appendix B to Schedule 2.
 - 8.2.2. the Supplier commits to the supply of Contingent Labour Workers in respect of COOM Electronic Purchase Orders issued by Network Rail for that Contract Lot up to the value of the Minimum Annual Spend; and
 - 8.2.3. Network Rail commits to issue COOM Electronic Purchase Orders up to the value of the aggregate of all Minimum Annual Spend amounts across all Contract Lots that have been awarded to the Supplier including both those that have a Minimum Annual Spend allocated and those that do not have a Minimum Annual Spend allocated to them.
- 8.3. Network Rail may, in its sole discretion, vary any Minimum Annual Spend amount that applies for a Contract Year (or part Contract Year) for a particular Contract Lot on notice to the Supplier, provided that any reduction to a Minimum Annual Spend amount for a Contract Year for that Contract Lot shall not represent more than a 15% reduction to the Minimum Annual Spend amount that is detailed within or amended in the preceding Contract Year for that Contract Lot (unless a varied percentage is agreed by both Network Rail and the Supplier) and except in the case of pre agreed Minimum Annual Spend amounts as detailed within Appendix C to Schedule 2 – Charges which may exceed 15% if unchanged by further variance in commitment.
- 8.4. Where a period is only part of a Contract Year, the Minimum Annual Spend shall be reduced pro rata as calculated below:

$$\frac{\text{Minimum Annual Spend}}{52 \text{ weeks}} \times \text{Number of weeks in the part Contract Year} = \text{Revised Minimum Annual Spend}$$

- 8.5. To the extent that the Supplier fails to supply Contingent Labour Workers in accordance with issued COOM Electronic Purchase Orders in respect of a Contract Lot, then for the purposes of Network Rail’s spend commitment pursuant to paragraph 8.2.2 and for the operation of paragraph 8.6, the relevant Minimum Annual Spend amount for that Contract Lot shall be adjusted by deducting the value of all unfulfilled COOM Electronic Purchase Orders without having regard to whether such COOM Electronic Purchase Orders were actually accepted or rejected by the Supplier. The discounted rates shall still apply.
- 8.6. To the extent that Network Rail does not meet its agreed stated Minimum Annual Spend aggregated across all Contract Lots for a Contract Year (or part Contract Year where applicable), then subject to first applying deductions to the Minimum Annual Spend

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amounts in accordance with paragraph 8.5, the Supplier shall be entitled to claim payment from Network Rail for unused value (being the difference between the actual aggregate spend across all Contract Lots and the aggregate Minimum Annual Spend amounts at the end of the relevant Contract Year (or part Contract Year)).

- 8.7. This section and each Minimum Annual Spend shall only apply and operate in respect of the Term and no adjustment or payments will operate in respect of any period after the date of termination.

APPENDIX A TO SCHEDULE 2 – CHARGES-PRICING SCHEDULE

APPENDIX B TO SCHEDULE 2 – CHARGES – COMMITMENT REBATE

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APPENDIX C TO SCHEDULE 2 – CHARGES – COMMITMENT LEVELS

Year 1 - 01/04/15 – 31/03/16

Contracting Unit	Lot	Minimum Annual Spend Level
Year 1 Minimum Annual Spend		

Year 2 - 01/04/16 – 31/03/17

Contracting Unit	Lot	Minimum Annual Spend Level
Year 2 Minimum Annual Spend		

Year 3 - 01/04/17 – 31/03/18

Contracting Unit	Lot	Minimum Annual Spend Level
Year 3 Minimum Annual Spend		

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Year 4 - 01/04/18 – 31/03/19

Contracting Unit	Lot	Minimum Annual Spend Level
Year 4 Minimum Annual Spend		

Year 5 - 01/04/19 – 31/03/20

Contracting Unit	Lot	Minimum Annual Spend Level
Year 5 Minimum Annual Spend		

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APPENDIX D TO SCHEDULE 2 – CHARGES –TIME SHEET AND RECEIPTING PROCESS

1. Timesheet process

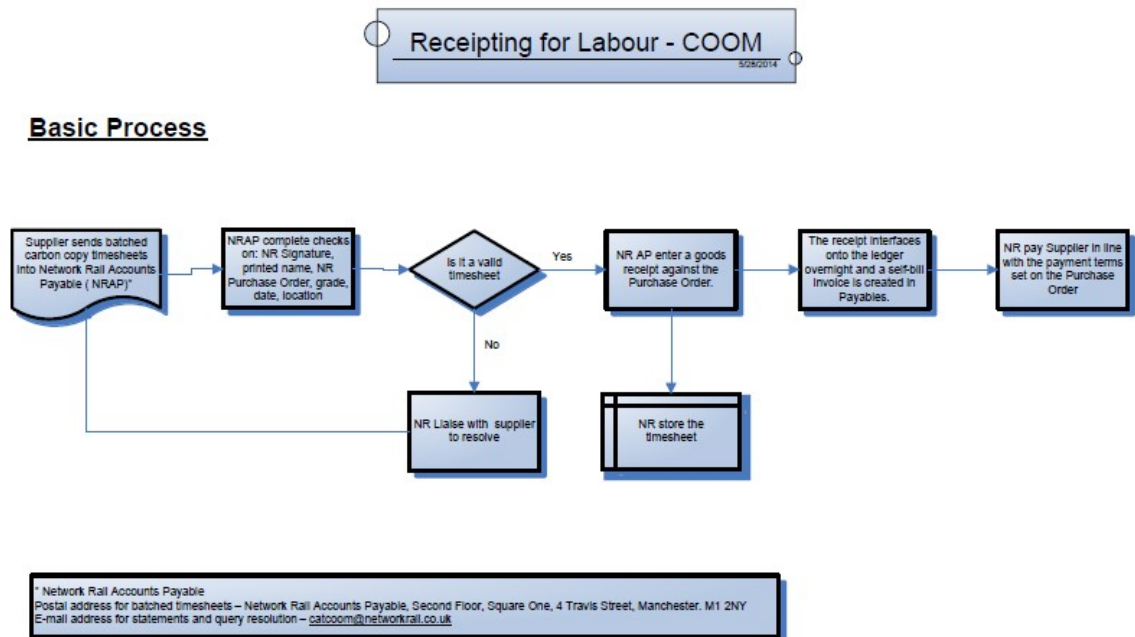
- 1.1. At the end of the shift/period of hire, the Contingent Labour Worker is to present a timesheet to Network Rail for signature.
- 1.2. The original timesheet is to be retained by Network Rail for audit purposes and the Contingent Labour Worker is to retain carbon copy which is to be processed for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

2. Future Innovations

- 2.1. Network Rail is looking to replace the current timesheet process with an electronic system, which we expect the Supplier to encourage and assist in.

3. Receipting Process

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



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APPENDIX E TO SCHEDULE 2 – CHARGES –TIME SHEET TEMPLATE

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

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APPENDIX F TO SCHEDULE 2 – CHARGES – AGREED RAILWAY INDUSTRY PERIODS

Year Range	Period Number	Start Date	End Date
2014-2015	1	06-APR-14	26-APR-14
2014-2015	2	27-APR-14	24-MAY-14
2014-2015	3	25-MAY-14	21-JUN-14
2014-2015	4	22-JUN-14	19-JUL-14
2014-2015	5	20-JUL-14	16-AUG-14
2014-2015	6	17-AUG-14	13-SEP-14
2014-2015	7	14-SEP-14	11-OCT-14
2014-2015	8	12-OCT-14	08-NOV-14
2014-2015	9	09-NOV-14	06-DEC-14
2014-2015	10	07-DEC-14	03-JAN-15
2014-2015	11	04-JAN-15	31-JAN-15
2014-2015	12	01-FEB-15	28-FEB-15
2014-2015	13	01-MAR-15	31-MAR-15
2015-2016	1	01-APR-15	02-MAY-15
2015-2016	2	03-MAY-15	30-MAY-15
2015-2016	3	31-MAY-15	27-JUN-15
2015-2016	4	28-JUN-15	25-JUL-15
2015-2016	5	26-JUL-15	22-AUG-15
2015-2016	6	23-AUG-15	19-SEP-15
2015-2016	7	20-SEP-15	17-OCT-15
2015-2016	8	18-OCT-15	14-NOV-15
2015-2016	9	15-NOV-15	12-DEC-15
2015-2016	10	13-DEC-15	09-JAN-16
2015-2016	11	10-JAN-16	06-FEB-16
2015-2016	12	07-FEB-16	05-MAR-16
2015-2016	13	06-MAR-16	31-MAR-16
2016-2017	1	01-APR-16	30-APR-16
2016-2017	2	01-MAY-16	28-MAY-16
2016-2017	3	29-MAY-16	25-JUN-16
2016-2017	4	26-JUN-16	23-JUL-16
2016-2017	5	24-JUL-16	20-AUG-16
2016-2017	6	21-AUG-16	17-SEP-16
2016-2017	7	18-SEP-16	15-OCT-16
2016-2017	8	16-OCT-16	12-NOV-16
2016-2017	9	13-NOV-16	10-DEC-16
2016-2017	10	11-DEC-16	07-JAN-17
2016-2017	11	08-JAN-17	04-FEB-17
2016-2017	12	05-FEB-17	04-MAR-17
2016-2017	13	05-MAR-17	31-MAR-17
2017-2018	1	01-APR-17	29-APR-17
2017-2018	2	30-APR-17	27-MAY-17
2017-2018	3	28-MAY-17	24-JUN-17
2017-2018	4	25-JUN-17	22-JUL-17
2017-2018	5	23-JUL-17	19-AUG-17
2017-2018	6	20-AUG-17	16-SEP-17
2017-2018	7	17-SEP-17	14-OCT-17

Year Range	Period Number	Start Date	End Date
2017-2018	8	15-OCT-17	11-NOV-17
2017-2018	9	12-NOV-17	09-DEC-17
2017-2018	10	10-DEC-17	06-JAN-18
2017-2018	11	07-JAN-18	03-FEB-18
2017-2018	12	04-FEB-18	03-MAR-18
2017-2018	13	04-MAR-18	31-MAR-18
2018-2019	1	01-APR-18	28-APR-18
2018-2019	2	29-APR-18	26-MAY-18
2018-2019	3	27-MAY-18	23-JUN-18
2018-2019	4	24-JUN-18	21-JUL-18
2018-2019	5	22-JUL-18	18-AUG-18
2018-2019	6	19-AUG-18	15-SEP-18
2018-2019	7	16-SEP-18	13-OCT-18
2018-2019	8	14-OCT-18	10-NOV-18
2018-2019	9	11-NOV-18	08-DEC-18
2018-2019	10	09-DEC-18	05-JAN-19
2018-2019	11	06-JAN-19	02-FEB-19
2018-2019	12	03-FEB-19	02-MAR-19
2018-2019	13	03-MAR-19	31-MAR-19
2019-2020	1	01-APR-19	27-APR-19
2019-2020	2	28-APR-19	25-MAY-19
2019-2020	3	26-MAY-19	22-JUN-19
2019-2020	4	23-JUN-19	20-JUL-19
2019-2020	5	21-JUL-19	17-AUG-19
2019-2020	6	18-AUG-19	14-SEP-19
2019-2020	7	15-SEP-19	12-OCT-19
2019-2020	8	13-OCT-19	09-NOV-19
2019-2020	9	10-NOV-19	07-DEC-19
2019-2020	10	08-DEC-19	04-JAN-20
2019-2020	11	05-JAN-20	01-FEB-20
2019-2020	12	02-FEB-20	29-FEB-20
2019-2020	13	01-MAR-20	31-MAR-20
2020-2021	1	01-APR-20	02-MAY-20
2020-2021	2	03-MAY-20	30-MAY-20
2020-2021	3	31-MAY-20	27-JUN-20
2020-2021	4	28-JUN-20	25-JUL-20
2020-2021	5	26-JUL-20	22-AUG-20
2020-2021	6	23-AUG-20	19-SEP-20
2020-2021	7	20-SEP-20	17-OCT-20
2020-2021	8	18-OCT-20	14-NOV-20
2020-2021	9	15-NOV-20	12-DEC-20
2020-2021	10	13-DEC-20	09-JAN-21
2020-2021	11	10-JAN-21	06-FEB-21
2020-2021	12	07-FEB-21	06-MAR-21
2020-2021	13	07-MAR-21	31-MAR-21

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

1. Worked Vs Ordered Scenarios

1.1. Network Rail shall issue the Supplier with a Call-Off Order for a predicted number of hours work required, Network Rail shall pay the hours in accordance with the following scenarios.

1.2. A Call-Off Order is raised and accepted by the Supplier for 10 hours

1.2.1. If the Contingent Labour works 10 hours they shall be paid 10 hours. If the Contingent Labour Worker works 8 hours and are then sent home by an appropriate Network Rail representative, they shall be paid 10 hours.

1.2.2. If the Contingent Labour Worker works 8 hours and they then decide to leave site of their own accord (or the Supplier releases the Contingent Labour Worker early), they shall be paid 8 hours.

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SCHEDULE 3 – MANAGEMENT INFORMATION AND PERFORMANCE

1. Introduction

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

2. The Performance Monitoring mechanism incorporates;

- 2.1. A range of performance measures that define required performance in respect to the Services.
- 2.2. An assessment of performance against Key Performance Indicators (KPI's) and Behavioural Measures
- 2.3. Remedies in respect of a failure to meet KPI's.

3. Data Sources

- 3.1. It is envisaged that the majority of the data used in the measurement of the KPI's will be produced from:
 - 3.1.1. The COOM system
 - 3.1.2. User feedback
 - 3.1.3. Supplier data
 - 3.1.4. Supplier feedback

4. Additional Targets

- 4.1. At specific points during the Agreement it may be appropriate to add additional indicators and target measures. Any additional targets will be agreed with the Supplier prior to adding them to the Agreement.

5. Performance Measuring Process

- 5.1. As part of the obligations of the Agreement Network Rail has developed Key Performance Indicators (KPI's) against which the Supplier will be measured throughout the term of the Agreement.
- 5.2. The objectives of the monitoring is as follows:
 - 5.2.1. To assist in the development and management of a continuous improvement culture across the Agreement.
 - 5.2.2. Means of monitoring Supplier performance with a view to confirming that
 - 5.2.3. required standards are met and levels of service are satisfactory.
 - 5.2.4. Provide measurement that will enable focused areas of over/under performance to be targeted and managed accordingly
 - 5.2.5. Supply a baseline which can be used to compare performance across Network Rail's supply base.
 - 5.2.6. Provide a basis upon which the performance of the Supplier can be linked to the commercial elements of the Agreement.

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6. Measurement Process

6.1. Measurement Time Period

6.1.1. The Supplier performance against the KPI's will be reviewed after each three Agreed Industry Rail Periods. The Supplier will be given one Agreed Industry Rail Period to collate all the necessary data and submit to Network Rail's Representative prior to the review.

6.2. Supplier Feedback

6.2.1. During a review, if outstanding actions are discovered against Network Rail, or Network Rail is perceived as having hindered the ability of the Supplier to deliver against the performance measures.

6.3. Annual Reviews

6.3.1. The final review will form the annual review at the end of 13 consecutive Agreed Industry Rail Periods. The review will be adjusted to ensure that performance is considered over the complete period and not just the final three Agreed Industry Rail Periods.

6.4. .Scale

6.4.1. Each KPI will contain three target measures with a corresponding Red, Amber or Green (RAG) status.

6.5. Remedies

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

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

6.5.3. If a Supplier is showing Red for more than six continuous Average Industry Rail Periods for a particular lot without agreed resolutions, Network Rail reserves the right to terminate the Supplier at lot level. .

7. Supplier Relationship Management

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

7.2. The purpose of monitoring these behaviours is to:

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

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

7.2.3. Mitigate and manage risk

7.2.4. Facilitate effective relationships between Network Rail and the Supplier

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

7.2.6. Ensure openness and transparency

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8. Supplier Relationship Management (SRM) Values

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

- 8.1.1. be open, honest and transparent with each other,
- 8.1.2. ensure information is shared and is transparent,
- 8.1.3. recognise the accountabilities that each of us have to the other and to those to whom the services are actually provided,
- 8.1.4. communicate effectively, consistently, openly, honestly and in a responsive manner,
- 8.1.5. listen effectively, respecting each other's opinions,
- 8.1.6. encourage new and creative ways to achieve the most appropriate outcomes for each other,
- 8.1.7. work in partnership to drive improvements and innovation,
- 8.1.8. 'confess' (early) about problems, and,
- 8.1.9. create success together for our companies.

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APPENDIX A TO SCHEDULE 3 – MANAGEMENT INFORMATION AND PERFORMANCE – KEY PERFORMANCE INDICATORS (KPI)

1. KPIs 1-5 Behavioural Measures

- 1.1. A diagnostics tool will measure key behaviours based upon the Code of Conduct for Labour and the Contract Management of the Contingent Labour Agreements. This will be a two way process to enable the customer and Supplier to provide feedback.
- 1.2. A scorecard format will be completed by a cross section of users and all suppliers on a quarterly basis throughout the year. This will consist of 5 questions based upon the following behaviours:
 - 1.2.1. Challenging
 - 1.2.2. Collaborative
 - 1.2.3. Accountable
 - 1.2.4. Customer Driven
 - 1.2.5. Contract Management

2. Safety Information

- 2.1. Suppliers will populate a template supplying safety information to a safety e-mail (to be provided) on a periodic basis. These will include, as a minimum:
 - 2.1.1. Total hours worked on site, including site office hours;
 - 2.1.2. Number of Major RIDDOR reportable accidents;
 - 2.1.3. Number of Minor RIDDOR reportable accidents;
 - 2.1.4. Number of personal accidents which informs Fatality Weighted Index.
- 2.2. A 'red' status will be generated should a report not be provided for that period and will be 'green' if the template is submitted per period as required. The details will be discussed at quarterly reviews.

3. Safety Assurance

- 3.1. The Safety Assurance KPI is to monitor the Supplier's safety initiatives that inform and assign accountability to the Contingent Labour workforce via Safety Talks and Briefings. This will be measured as the percentage of Workers who have undertaken talks out of the overall Contingent Labour Suppliers workforce who work on Network Rail infrastructure each period.

4. Workers under Mentorship

- 4.1. This KPI enables an overview of the Workers under Mentorship process which can be tracked as a result of Supplier reporting to determine whether the process is enabling the up-skilling of the workforce.
- 4.2. The Supplier will use a rostering system to provide data on Workers under Mentorship and Supplier meetings will address the area of up-skilling.

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5. **Provision of PPE**

5.1. A culture of openness and honesty regarding safety is central to Network Rail. The measurement for PPE is 'Red' or 'Green' to reflect that all Contingent Labour are required to adhere to correct PPE requirements. However, the instances with feedback on inadequate PPE should be encouraged. Spot checks will be performed to support this KPI, as well as feedback from Network Rail customers.

6. **Non-attendance**

6.1. Acts as a national and Supplier indicator of non-attendance. The Supplier is to report periodically as per the metric provided and the central contract management team will match against the COOM data.

7. **Timely Acceptance of Orders**

7.1. Acts as a National and Supplier indicator regarding the effectiveness of the Planning Process. The Supplier is to report periodically as per the metric provided and the central contract management team are to match against COOM data.

8. **Orders accepted then cancelled by Supplier**

8.1. Acts as a national and Supplier indicator of cancellations and effective rostering of staff. The Supplier is report periodically as per the metric provided and the central contract management team are to match against COOM data.

9. **Timesheet Compliance**

9.1. Indicator of Administrative effectiveness. The Supplier is to report periodically as per the metric provided and the central contract management team are to match against the central accounting team data.

10. **Additional KPIs**

10.1. To be arranged between Network Rail and Supplier on an on-going basis, based on key areas to both parties

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	Note	Area	Breakdown	Measures	Red	Amber	Green	Frequency	Information Source
1 to 5	Behaviours	Behaviours	Consists of 5 Behavioural Areas: Challenging/ Collaborative/ Accountable/ Customer Driven/ Contract Management	<p>The measures are areas for consideration based on the Code of Conduct, these should be reviewed bi-annually to ensure they are still relevant and linked to the behaviours within the Code</p> <p>Even though not linked to pain-gain mechanism, and adherence to the Code of Conduct is a minimum contractual requirement. If a Supplier is ranked 'red' for any area this must be investigated fully. Encourages feedback/conversations from the operatives on site on safety and from co-workers and line managers to find ways of enhancing innovation, safety and their performance. Manages safety risk openly and honestly, Identifies health risks and provides suitable training and equipment to manage those risks</p>	To be measured via Diagnostic Tool. Behaviour rating scorecard to be used online survey with Q (Low) 1 - Q (High) 6 structure in relation to the 4 areas of the Code of Conduct. Information to be filled out by DU users periodically regarding supplier performance and supplier to fill out online survey periodically on NR performance. Two way Diagnostic Tool based upon best practice in Contract Management.			Quarterly	Diagnostic Tool
6	Safety Information	Health & Safety	Safety Information	Periodic Reporting of Safety Statistics to include 1. Total hours worked on site, including site office hours; 2. Number of Major RIDDOR reportable accidents; 3. Number of Minor RIDDOR reportable accidents; and 4. Number of personal accidents which informs Fatality Weighted Index	Status Red if no submission of info from the Supplier	Status is Green if periodic report supplied (NO Amber)		Periodic	Central Safety Team to collate and generate periodic reports
7	Safety Assurance	Health & Safety	Safety Assurance	Period reporting on the number of CL workforce who have received and signed that they have taken part in a director safety tour and/or undertaken a safety talk/briefing.	Less than 90% of workforce on NR CL contracts	Between 90.01% and 95% of workforce on NR CL contracts	Greater than 95% of workforce on NR CL contracts	Periodic	Supplier to provide periodic report and keep copies of signed forms/electronic signatures to confirm attendance
8	Workers under Mentorship Process	Health & Safety	Workers under Mentorship Process	Workers under Mentorship should be supplied at a ratio of no more than 1 in 5 so that they can be guided, advised and mentored by experienced Operatives. Supplier to provide a periodic report regarding workers under mentorship supplied to NR	Greater than 5% of NR CL jobs supplied with more than 1 in 5 ratio	0 - 5% of NR CL jobs supplied more than 1 in 5 ratio	Full compliance with the process	Periodic	Supplier to report instances of where there are insufficient experienced Operators to support the 1 in 5 ratio
9	Provision of PPE	Tools & Equipment	Provision of PPE	Provision of PPE in line with the Sentinel Guidelines and adhering to the Code of Conduct section Tools & Equipment	Green (NO Amber)		Any instance of inadequate or missing PPE is a RED	Periodic	Supplier to report on any cases where PPE not fully provided and reasoning why Sources: DU Resource Planners and Supplier
10	Non-attendance (Percentage of Workers who do not show up for a shift)	Ability to Supply	National and Supplier indicator of Non attendance	Contract operates cancellation charges. The non-attendance monitoring per period enables problem areas to be identified	greater than 3.01% of Workers ordered	between 1% and 3% of Workers ordered	less than 1% of Workers ordered	Periodic	COOM
11	Timely Acceptance of Orders	Administration	National and Supplier indicator of the effectiveness of Planning Processes	Enables monitoring of potential for suppliers to sit on orders	greater than 3.01% of orders	between 1% and 3% of orders	less than 1% of orders	Periodic	COOM
12	Orders accepted then cancelled by supplier	Ability to Supply	National and Supplier indicator of cancellations	Deals with issue of suppliers accepting all orders some of which they cannot fulfil	greater than 3.01% of orders	between 1% and 3% of orders	less than 1% of orders	Periodic	COOM
13	Timesheet Compliance	Administration	Indicator of Administrative effectiveness	Timesheets unsigned/incorrect PO etc. are sent back to supplier by FSS. Identifies areas of excess admin which can be reduced	greater than 3.01% of orders	between 1% and 3% of orders	less than 1% of orders	Periodic	CAT - NR Central Accounting Team in Manchester
14	Additional KPIs	To be agreed between Network Rail and Supplier							

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SCHEDULE 4 - DISPUTE RESOLUTION

1. Network Rail and the Supplier shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to this Agreement ("Dispute") before resorting to litigation.
2. If the Dispute is not settled through discussion between Network Rail's Representative and a representative of the Supplier within a period of seven Business Days of the date on which the Dispute arose the Parties may refer the Dispute in writing to a director or chief executive (or equivalent) ("Senior Personnel") of each of the Parties for resolution.
3. If the Dispute is not resolved within fourteen (14) Business Days of referral to the Senior Personnel, either Party may propose by notice to the other Party ("Notice") that a structured mediation or negotiation be entered into with the assistance of a mediator.
4. If the Parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within twenty-eight (28) Business Days of the service of the Notice, either Party may apply to the Centre for Effective Dispute Resolution ("CEDR") in London to appoint a mediator. The costs of that mediator shall be divided equally between the Parties or as the Parties may otherwise agree in writing.
5. Where a dispute is referred to mediation under paragraph 3 above, the Parties will attempt to settle such Dispute by mediation in accordance with the model mediation procedures published by CEDR or such other procedures as the mediator may recommend.
6. If the Parties reach agreement on the resolution of the Dispute, such agreement shall be recorded in writing and once signed by the Parties' authorised representatives, shall be final and binding on the Parties.
7. If either Party refuses at any time to participate in the mediation procedure and in any event if the Parties fail to reach agreement on the Dispute within forty (40) Business Days of the service of the Notice either Party may commence proceedings in accordance with Clause 43
8. For the avoidance of doubt, the Supplier shall continue to provide the Services in accordance with this Agreement and without delay or disruption while the Dispute is being resolved pursuant to this Schedule 4.
9. Neither Party shall be prevented from, or delayed in; seeking any order for specific performance or for interim or final injunctive relief as a result of the provisions of this Schedule and this Schedule shall not apply in respect of any circumstances where such remedies are sought.

SCHEDULE 5 - NETWORK RAIL'S POLICIES

1.0 Health and Safety

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SCHEDULE 6 – SELF-BILLING AGREEMENT

- 1.1 This Schedule 6 sets out the self-billing procedure that applies between Network Rail and the Supplier in respect to all Services under this Agreement and the Parties hereby enter into a self-billing agreement for the purposes of Regulation 13 of the Value Added Tax Regulations 1995.
- 1.2 For the purpose of self-billing the VAT Numbers set out below shall apply:
- 1.2.1 Network Rail: VAT Number 2987563980
 - 1.2.2 The Supplier: VAT Number 732 4476 36
- 1.3 Network Rail agrees to:
- 1.3.1 issue self-billed invoices for all supplies and services made to them by the Supplier under this Agreement during the Term;
 - 1.3.2 complete self-billed invoices marked: “SELF BILLING – THE VAT SHOWN IS YOUR OUTPUT TAX DUE TO HMRC” and showing the Supplier’s name, address and VAT registration number, together with all the other details which constitute a full VAT invoice in accordance with the Value Added Tax Regulations 1995;
 - 1.3.3 make the Supplier aware in the event that Network Rail’s VAT registration number changes; and
 - 1.3.4 inform the Supplier if the issue of self-billing invoices will be outsourced by Network Rail to a third party.
- 1.4 The Supplier agrees to:
- 1.4.1 accept self-billed invoices raised by Network Rail under this Agreement during the Term;
 - 1.4.2 not issue VAT invoices for the Services provided under this Agreement; and
 - 1.4.3 notify Network Rail immediately if the Supplier:
 - 1.4.3.1 changes its VAT registration number;
 - 1.4.3.2 ceases to be VAT registered; or
 - 1.4.3.1 sells or otherwise transfers to the third party its business or part of its business.