

NETWORK RAIL 18

**Network Rail Agreement for
the design, modification, manufacture, overhaul,
refurbishment and servicing¹ of Plant**

[Insert Contract Title]

**¹amend as appropriate to match clause 2 of the Contract
Agreement and the definition of Works**

Agreement No .:[Insert]

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This Contract Agreement is made the [Insert] day of [Insert] 20[Insert]

between:

- (1) **NETWORK RAIL INFRASTRUCTURE LIMITED** a company registered in England and Wales under number 2904587 whose registered office is at 1 Eversholt St, London NW1 2DN (“**the Employer**”); and
- (2) [**NAME OF SUPPLIER**]: a [company registered in under number whose registered] office is at [Insert] (“**the Supplier**”).

Now it is hereby agreed as follows:

- 1 This Agreement comprises this Contract Agreement together with the following documents which shall be read and construed as part of this Agreement and in the case of any ambiguity or discrepancy shall have the following order of priority:
 - 1.1 Schedule of Post Tender Amendments;
 - 1.2 Appendix;
 - 1.3 Contract Specific Conditions and annexed form of guarantee (if applicable);
 - 1.4 Conditions;
 - 1.5 Technical Workscope;
 - 1.6 Contract Requirements HSEA;
 - 1.7 Preliminaries; and
 - 1.8 Pricing Documents.

Defined terms used in this Agreement have the meanings set out in the Conditions unless otherwise specified.

- 2 In consideration of the payments to be made by the Employer to the Supplier the Supplier hereby covenants with the Employer to design, modify, manufacture, overhaul, refurbish and service - amend as appropriate the Plant together with the supply of any associated Spares and Special Tools in conformity in all respects with the provisions of this Agreement.
- 3 The Employer and the Supplier hereby agree that the Contract Price shall be Insert pounds and Insert pence (£Insert) or such other sum as shall become payable in accordance with this Agreement in respect of the Plant and any Spares and Special Tools and the prices, rates and percentages included in the Pricing Document shall form the basis for any other payment due to the Supplier in accordance with the Agreement.
- 4 The Employer hereby covenants to pay to the Supplier in consideration of the completion of the Works and the delivery of the Plant the Contract Price at the times and in the manner prescribed by this Agreement.

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

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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.

THE COMMON SEAL of)
NETWORK RAIL INFRASTRUCTURE)
LIMITED was affixed to this DEED in the)
presence of:)

Authorised signatory

OR

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

Authorised signatory

Printed Name:.....

THE COMMON SEAL of)
.....)
was affixed to this DEED in the presence of:)

Director

Printed Name:.....

Director/Company Secretary

Printed Name:.....

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OR

SIGNED as a DEED for and on behalf of)
.....)
By)

Director

Printed Name:.....

Director/Company Secretary

Printed Name:.....

OR

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

Director

Printed Name:.....

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SCHEDULE OF POST TENDER AMENDMENTS

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

None

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APPENDIX

(Note: Relevant clause numbers are shown in brackets)

1	<u>Definitions</u> (clause 1)	
	Defects Liability Period	Two years
	Endemic/Epidemic Defects Protection Period	Five years
	Epidemic Defects percentage	10%
	Employer's Representative	Name [Insert] Position [Insert] Address [Insert]
2	<u>Parent company guarantee</u> (clause 9.2)	Required/Not Required
3	<u>Insurance</u>	
	Public liability insurance (clause 10.2.1)	£5,000,000 (five million pounds)
	Employer's liability insurance (clause 10.2.2)	£5,000,000 (five million pounds)
4	<u>Professional indemnity insurance</u> (If required pursuant to clause 11.1)	£10,000,000 (ten million pounds) for any one claim or series of claims arising out of any one event and which may be subject to an annual aggregate limit.
5	<u>Dates for Completion</u> (clause 14)	
	The Supplier shall commence the execution of the Works within [Insert] days of the Employer's Instruction so to do.	
	The Periods for Completion of the Plant are as follows:	
	Plant Ref?	[Insert]
	Plant Ref?	[Insert]
	Plant Ref?	[Insert]
	Plant Ref?	[Insert]
	Plant Ref?	[Insert]
	Plant Ref?	[Insert]
	Plant Ref?	[Insert]
	Plant Ref?	[Insert]
	Plant Ref?	[Insert]

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	Plant Ref?	[Insert]
	Plant Ref?	[Insert]
6	<u>Liquidated damages</u> (clause 14) The rate of liquidated damages shall be:	
	Plant Ref?	£[Insert per day]
	Plant Ref?	£[Insert per day]
	Plant Ref?	£[Insert per day]
	Plant Ref?	£[Insert per day]
	Plant Ref?	£[Insert per day]
	Plant Ref?	£[Insert per day]
	Plant Ref?	£[Insert per day]
	Plant Ref?	£[Insert per day]
	Plant Ref?	£[Insert per day]
	Plant Ref?	£[Insert per day]
7	<u>Liquidated Damages</u> (clause 14.4)	The Contract Price
8	<u>Addresses for Service</u> (clause 20) The addresses for service of the parties are as follows:	
	(i) The Employer: the address stated in the Contract Agreement marked for the attention of:	The Company Secretary With a copy to: 1. notices@networkrail.co.uk : and 2. Employer's Representative by email.
	(ii) The Supplier: the address stated in the Contract Agreement marked for the attention of:	[Insert]
9	<u>Information Security</u> (clause 26)	[Not applicable / Applicable (Supplier is connecting into the Employer's network or has access to the Employer's information classified as Internal or above)]
10	<u>Intermediaries Legislation</u> (clause 29)	[Does not apply / Applies]

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CONDITIONS

1 Definitions

Defined Terms

In this Agreement:

“Acceptance” means acceptance of the Plant as evidenced by the issue of an Acceptance Certificate;

“Acceptance Certificate” means a certificate in the form set out in the Technical Worksopce issued in accordance with clause 5;

“Adjudicator” means a person nominated by the President or Vice-President for the time being of the Technology and Construction Bar Association to act as Adjudicator under this Agreement;

“Agreed Rail Industry Period” means each or any of the Employer’s thirteen accounting periods in a year commencing on 1st April;

“Applicable Requirements” means applicable Codes, Law, regulation, rule, Railway Group Standards and Network Rail Standards.

“Codes” means the British Standard Codes of Practice, regulations and guidance notes issued by the Health and Safety Executive (as amended or replaced from time to time) and any other regulations, codes or notes issued by relevant authorities and bodies;

“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;

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

“Contract Price” means the sum stated in the Contract Agreement as such sum may be adjusted from time to time in accordance with this Agreement;

“Contract Requirements HSEA” means the document described as such and referred to in the Contract Agreement;

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

“Defect” means any fault in any Plant for which Provisional Acceptance has occurred that arises as a consequence of a failure by the Supplier to comply with its obligations under this Agreement, together with the consequences of that fault;

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“Defects Liability Period” means for each item of Plant the period stated in the Appendix from Acceptance of that Plant;

“Delivery” means the receipt of the Plant by the Employer from the Supplier (and Delivered shall be construed accordingly);

“Depot” means a facility managed and operated by the Employer as specified in the Preliminaries;

“Design Life” means the period stated in the Technical Workslope;

“Documents” means all plans, drawings, specifications, schedules, reports, records calculations, correspondence and other documents (including any computer software developed by the Supplier to generate them and any design contained in them) prepared or provided by the Supplier in connection with this Agreement;

“Employer” means the first party named in the Contract Agreement and its permitted assignees;

“Employer’s Facilities” means those facilities identified in the Preliminaries which shall be provided to the Supplier by the Employer;

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

“Employer’s Representative” means the person notified by the Employer to the Supplier as having authority to issue Employer’s Instructions and otherwise to act on the Employer’s behalf under this Agreement to the extent so notified;

“Endemic Defect” means a Defect in a Major Component (as detailed in the Technical Specification) during its expected Design Life, irrespective of whether it has then become apparent in any item of Plant which the Employer’s Representative and the Supplier’s Representative, each acting reasonably, believe will thereafter become an Epidemic Defect;

“Endemic/Epidemic Defects Protection Period” means the period commencing on the date of Provisional Acceptance relating to the first item of Plant to be delivered under this Agreement and ending so many years after the date of Acceptance of the last item of Plant to be Delivered as stated in the Appendix;

“Epidemic Defects” means at any time, any Defect which affects more than the percentage of the Plant stated in the Appendix;

“Excepted Risks” means loss or damage to the extent that it is due to:

- (i) the use by the Employer, its agents, servants or other contractors (not being employed by the Supplier) of any part of the Works;
- (ii) any fault, defect, error or omission in the design of the Works (other than a design provided by the Supplier pursuant to its obligations under this Agreement);
- (iii) war, invasion, act of foreign enemies or hostilities (whether war be declared or not);
- (iv) civil war, rebellion, revolution, insurrection or military or usurped power;

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- (v) ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; and
- (vi) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;

“Fault Free Running Period” means the period specified in the Technical Workslope where the operation of the Plant is not interrupted by reason of a Defect;

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

“Guarantor” means the Guarantor under the Parent Company Guarantee provided in accordance with clause 9;

“Intellectual Property” means all intellectual and industrial property and all rights therein in any part of the world including, without limiting the generality of the foregoing, any patent, patent application, trade mark, trade mark application, registered design, registered design application, trade name, trade secret, business name, discovery, invention, process, formula, know-how, specification, improvement, technique, copyright, unregistered design right, technical information or drawing including rights in computer software, database rights, topography rights;

“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;

“Law” means any Act of Parliament or subordinate legislation within the meaning of Section 2(1) or the Interpretation Acts 1978 or any exercise of the Royal Prerogative and any enforceable Community right within the meaning of the European Communities Act 1972;

“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;

“Maintenance and Operating Instructions” means the documents specified in the Technical Workslope to be prepared by the Supplier for the purposes of performing all maintenance on the Plant over the Design Life of each item of Plant and describing the operation and cleaning of the Plant;

“Operator” means any party or sub-contractor employed by the Employer to maintain and/or operate the Plant;

“Periods for Completion” means the periods for completion of each of the items of Plant as stated in the Appendix or such periods as may be extended under clause 14.3;

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“**Plant**” means the vehicles, vehicle mounted modules, vehicle sub-assemblies or components as described in the Technical Workscope;

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

“**Pricing Document**” means the pricing document referred to in the Contract Agreement;

“**Provisional Acceptance**” means provisional acceptance of each of the items of Plant as evidenced by the issue of a Provisional Acceptance Certificate;

“**Provisional Acceptance Certificate**” means a certificate in the form set out in the Technical Workscope issued in accordance with clause 5;

“**Spares**” means the spares detailed in the Technical Workscope;

“**Special Tools**” means all special tools and test equipment required for the maintenance of the Plant detailed in the Technical Workscope;

“**Sub-Contractor**” means any sub-contractor of the Supplier including any sub-contractors of any such sub-contractors;

“**Supplier**” means the second party named in the Contract Agreement and its permitted assignees;

“**Technical Workscope**” means the technical workscope referred to in the Contract Agreement;

“**Works**” means the works and services to be performed by the Supplier in respect of any and all of the Plant, Spares and Special Tools to be designed, modified, manufactured, overhauled, refurbished and serviced - amend as appropriate to match clause 2 of the Contract Agreement in accordance with this Agreement.

2 Supplier’s Obligations

Quality and Standards

2.1 The Supplier shall carry out and complete the Works:

2.1.1 with the reasonable skill, care and diligence to be expected of a supplier holding itself out as having the competence, expertise and resources necessary for the proper performance of the Works;

2.1.2 to the quality and standards required by the Technical Workscope or, where no quality or standard is so specified, to a good quality;

2.1.3 so as to comply with the Applicable Requirements;

2.1.4 without compromising the safety of anyone on or about or using the Employer’s property and/or railway infrastructure and in compliance with the Contract Requirements HSEA; and

2.1.5 to comply with the Preliminaries.

Compliance with

2.2 The Supplier shall perform the Works in accordance with the Employer’s Instructions. If there is a change in the Applicable Requirements affecting the Works, the Plant, Spares or Special Tools after the date of this

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Instructions		Agreement which necessitates a variation to the Works, the Plant, Spares or Special Tools, such variation shall be treated as if it were an Employer's Instruction to which the provisions of clause 7 shall apply.
Remedy for failure to comply with Instructions	2.3	Without prejudice to clause 15, if the Supplier fails to perform the Works in accordance with this Agreement, then the Employer shall be entitled, in addition to any other remedy available to it, by notice to the Supplier to require the Supplier, at no additional cost to the Employer, to remedy such breach within the time stipulated in such notice, and if the Supplier fails to comply with such notice within the period specified by the Employer's Representative, the Employer may at its sole discretion employ another person to remedy such breach and the Employer may recover the additional costs incurred by it in so doing from the Supplier (provided that, in an emergency affecting safety, this provision shall apply without the requirement to give prior notice).
Route/Network Acceptance	2.4	To the extent identified in the Technical Workslope the Supplier shall demonstrate to the Employer's reasonable satisfaction compliance of the Plant with the Applicable Requirements and shall undertake all activities necessary to validate the safe operating performance of the Plant in order to obtain the relevant authorisation to operate on the network (details of which are identified in the Technical Workslope), if required.
Maintenance and Operation Instructions	2.5	To the extent identified in the Technical Workslope the Supplier shall supply to the Employer, no later than the date of issue of the Provisional Acceptance Certificate in respect of the first item of Plant to be Delivered, the relevant number of electronic and paper copies of each of the Maintenance Instruction and Operating Instructions.
Training	2.6	To the extent identified in the Technical Workslope the Supplier shall organise and provide training courses for the Employer's and Operator's employees at times and locations in Great Britain to be agreed between the Supplier's Representative and the Employer's Representative.
Special Tools and Spares	2.7	To the extent identified in the Technical Workslope the Supplier shall supply and the Employer shall purchase those Special Tools and Spares that the Employer confirms that it requires and the Employer shall pay for such Special Tools and Spares at the prices specified in the Pricing Document. Special Tools and/or Spares supplied under this clause 2.7 shall be delivered carriage paid to the Depot and payment for such tools shall be made in accordance with clause 8.
Changes to Spares	2.8	If at any time within the Design Life of an item of Plant, any Spare is redesigned the Supplier shall so notify the Employer giving the reasons for, and details of, the redesign and details of any necessary consequential modifications to other parts, components, assemblies and sub-assemblies incorporated in or fixed to any item of Plant.

3 Design of the Works

Inaccuracies in Specifications	3.1	The Supplier acknowledges that it has checked the documents forming part of this Agreement prior to entering into it and has informed the Employer of any inaccuracies, discrepancies or ambiguities in them of which it is aware. If
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the Supplier shall find any inaccuracy, discrepancy or ambiguity contained in or between any of the documents forming part of this Agreement, it shall immediately notify the Employer's Representative, who shall, on receipt of such notice, issue an Employer's Instruction as to how such inaccuracy, discrepancy or ambiguity shall be resolved. The Supplier shall not be entitled to an extension of time or to any additional payment in respect of compliance with such instruction to the extent that such inaccuracy, discrepancy or ambiguity could reasonably have been found or foreseen at the date of this Agreement by a supplier exercising the skill, care and diligence reasonably to be expected of a supplier experienced in projects of a similar nature to the Works.

Detailed
Design
Information

3.2 At such times as not to delay or disrupt the progress of the Works and Delivery, the Supplier, without further charge, shall provide the Employer (unless it shall have been previously so provided) with four reproducible copies (including in electronic format) true-to-scale of such of the Documents as is reasonably necessary to explain, amplify, show or describe the Works or to enable the Supplier to execute and complete the Works or to comply with any Employer's Instruction. The Supplier shall check and co-ordinate any such Documents submitted by it prior to submission of the same. The Supplier shall not commence implementation in accordance with such Documents until the Employer's Representative has consented thereto, and shall not be entitled to be paid for work or services executed other than in accordance with the Documents to which the Employer's Representative has consented.

Responsibility
for Detailed
Design

3.3 Neither the granting of any consent by the Employer nor any comment nor marking by or on behalf of the Employer on or in respect of any of the Documents submitted by the Supplier shall relieve the Supplier of any liability which it would otherwise have in relation thereto. If the Supplier considers that any comment on the Documents submitted under clause 3.2 amounts to an Employer's Instruction to which clause 7.3 applies, it shall so notify the Employer within 7 days of receipt of the same.

Supplier's
design
warranties

3.4 Insofar as the design of the Works is comprised in the Documents (including any further design which the Supplier is to carry out as a result of an Employer's Instruction), the Supplier warrants and undertakes to the Employer that:

3.4.1 it has exercised and will continue to exercise in the design of the Works all the skill, care and diligence to be expected of a professionally qualified and competent engineer or other appropriate consultant taking into account the size, scope, nature, type and complexity of the Works;

3.4.2 subject to clause 3.4.1, the Works will, when completed, comply with any performance specification or requirement included or referred to in the Technical Workslope; and

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3.4.3 except where this Agreement expressly provides for the use of used or reconditioned materials and goods, the Works comprise or will comprise only materials and goods which are of new and satisfactory quality.

The warranties and undertakings contained in clause 3.4 are without prejudice to any warranties implied by common law or statute.

Sub-Supplier's design 3.5 Any reference to the design which the Supplier has prepared or shall prepare or issue for the Works includes a reference to any design which the Supplier has caused or shall cause to be prepared or issued by others, whether before or after the date of this Agreement.

4 Rights of Access and Audit

Access and Audit The Employer's Representative shall at all times during working hours have access on reasonable notice to the premises of the Supplier, its Sub-Contractors or suppliers in order to inspect any work, carry out any quality surveillance, tests, inspections or controls, ascertain whether the Supplier's obligations under this Agreement are being complied with and otherwise for any purpose in connection with the Agreement. The Employer's Representative shall not visit the premises of any Sub-Contractor or supplier unless accompanied by the Supplier's Representative (and the Supplier shall procure that the Supplier's Representative shall, on reasonable notice by the Employer's Representative, be available for such visits).

5 Acceptance

Provisional Acceptance 5.1 Upon offer for acceptance at the Depot of any item of Plant the Employer's Representative shall, provided the Plant complies with this Agreement, accept it on behalf of the Employer and immediately thereafter the Employer's Representative shall countersign and issue a provisional acceptance certificate for that item of Plant in the form set out in the Preliminaries (a "Provisional Acceptance Certificate")

5.2 The Employer's Representative shall not be obliged to accept any item of Plant if a Defect which would adversely affect the Supplier's ability to comply with the Technical Workscope has become apparent in another item of Plant which has been delivered, until such time as the Employer's Representative is satisfied that the same Defect is not present in the Plant to be accepted, or has been remedied and the Employer shall not use such Plant other than for any purpose agreed between the Supplier's Representative and the Employer's Representative until issue of the Provisional Acceptance Certificate in respect of it.

Trial Running 5.3 Not Used

Acceptance 5.4 Without undue delay following the issue of the Provisional Acceptance Certificate in respect of each item of Plant the Employer shall operate or shall procure the operation of such Plant in service and upon completion of the Fault Free Running Period of such operation shall issue an acceptance certificate in the form set out in the Preliminaries (an "Acceptance Certificate")

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- Failure to issue Certificates
- 5.5 For the avoidance of doubt, the Employer shall not be precluded by acceptance of any item of Plant from rejecting any other item of Plant which does not satisfy the provision of clause 5.1 or clause 5.4.
 - 5.6 If by reason of any failure by the Employer's Representative to issue a Provisional Acceptance Certificate or an Acceptance Certificate in respect of any Plant or a Provisional Acceptance Certificate or an Acceptance Certificate is not issued in breach of this clause 5 then for the purposes of determining the Supplier's entitlement to payment under clause 8 of this Agreement such certificates shall be deemed to have been issued on the date on which the relevant certificate should have been issued but for such failure or breach.

6 Risk and Title

- 6.1 Until the issue of a Provisional Acceptance Certificate in respect of any particular item of Plant or the delivery of the Spares and Special Tools (as the case may be) the Supplier shall bear all risk of loss or of damage to such items of Plant or Spares or Special Tools or materials or parts which are, or are to be, incorporated into or fixed to such Plant
- 6.2 Immediately following the issuance of a Provisional Acceptance Certificate in respect of a new item of Plant title to and property in such Plant shall pass to the Employer on Delivery. Such Plant shall at all times thereafter as against the Supplier remain the property of the Employer. In the case of Spares or Special Tools title and property shall pass on delivery thereof. In the case of an existing Employer owned item of Plant, title to and property in such Plant shall remain with the Employer at all times.

7 Employer's Instructions

- Employer's Representative
- 7.1 The Employer's Representative shall have full authority to act on behalf of the Employer for all purposes under this Agreement and shall be authorised to issue Employer's Instructions and notices to the Supplier under this Agreement on behalf of the Employer, unless otherwise expressly notified to the Supplier by the Employer from time to time.
- Additional payment for instructions
- 7.2 If any Employer's Instruction issued under this Agreement:
 - 7.2.1 shall require the Supplier to undertake work not provided for in, or to be reasonably inferred from, this Agreement; or
 - 7.2.2 shall impose any additional obligation or restriction or shall require the omission of any work or of any obligation or restriction,
- and provided that such instruction has not arisen from, and compliance with it does not reveal, any negligence, omission or default of the Supplier, its employees, the Sub-Contractors or other persons engaged by it in relation to this Agreement, the Contract Price shall be adjusted and the provisions of clause 7.3 shall apply. Otherwise, the Supplier shall not be entitled to any addition to the Contract Price nor to claim, whether as damages or otherwise, any additional payment in respect of compliance by the Supplier with any such instruction.

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Calculation of additional payment 7.3 The Employer's Representative shall, after consultation with the Supplier and within a reasonable time after the issue of such instruction, ascertain a fair and reasonable adjustment to the Contract Price based on prices or rates included in the Pricing Document in respect of compliance by the Supplier with such instruction and a fair and reasonable extension of time may be granted under clause 14.3.

8 Payment

Contract Price 8.1 In consideration of the proper performance of the Works associated with each item of Plant and Delivery, the Employer shall pay to the Supplier the part of the Contract Price calculated as follows:

Supplier's Applications 8.1.1 the milestone price in respect of the Plant, Spares or Special Tools as identified in the Pricing Document;

8.1.2 the amount of any additions to the milestone price for the relevant Plant, Spares or Special Tools in accordance with this Agreement;

8.1.3 but less any deductions from the Contract Price in accordance with this Agreement.

8.2 After completion of each milestone identified in the Pricing Document, but not more than once per Agreed Rail Industry Period, the Supplier shall present to the Employer's Representative an application stating the total amount due to the Supplier calculated in accordance with the provisions of clause 8.1 and with such supporting documents as may be reasonably required by the Employer's Representative.

Employer's Notice of Payment 8.3 On or before the expiry of seven days from the date of submission of the Supplier's application under clause 8.2, the Employer's Representative shall issue a notice stating the amount due to the Supplier from the Employer which shall be calculated in accordance with the provisions of clause 8.1 less any amount which may become due to the Employer or recoverable by the Employer from the Supplier, whether by deduction from the milestone prices under the provisions of this Agreement or otherwise.

Payment by the Employer - VAT Invoice 8.4 The Supplier shall issue a VAT invoice in the amount stated in the Employer's Representative's notice under clause 8.3 and which includes the correct agreement and purchase order number and is addressed to "Network Rail, Accounts Payable, P.O. Box 4145, Manchester M60 7WZ" or original computer-generated pdf invoices can be emailed to invoices@networkrail.co.uk. The Employer shall issue payment to the Supplier of the amount properly due to the Supplier together with VAT thereon on or before the final date for payment which shall be the expiry twenty one days from the date of receipt of the Supplier's VAT invoice. If the Supplier's invoice does not comply with the requirements of this clause 8.4 the Employer shall be under no obligation to pay the same.

Set-off 8.5 Without prejudice to the Employer's other rights and remedies, the Employer may deduct from any sums due to the Supplier under this Agreement an amount equivalent to any sum due from the Supplier to the Employer (whether such sums are due to the Employer under this Agreement or under any other agreement between the Supplier and the Employer) and may also

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deduct any sum of money that is recoverable from or payable by the Supplier under this Agreement from any sum then due or which at any time thereafter may become due under any other agreement between the Supplier and the Employer. The Employer shall give to the Supplier notice of any such deduction or set-off and such notice shall specify:

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

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

Such notice shall be given not later than five days before the final date for payment of each certificate or invoice under clause 8.4.

Interest on late payment

8.6 If the Employer fails to pay the Supplier any sum properly payable under this Agreement on or before the final date for payment of it, the Employer shall pay the Supplier simple interest on that sum from the relevant final date for payment until the actual date of payment calculated at a rate of 4% per annum above the Bank of England Base Rate. It is agreed that this provision constitutes a substantial remedy for the purposes of Section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.

9 Guarantees

Warranties and guarantees

9.1 The Supplier shall ensure that the benefit of any warranty or guarantee in respect of goods, materials, equipment or plant supplied or procured by it in carrying out the Works shall extend to the Employer. The Supplier shall not invalidate such warranties and/or guarantees by its actions.

Parent Company Guarantee and Advance Payment Bonds

9.2 The Supplier shall obtain and provide to the Employer, forthwith upon entry into this Agreement, a parent company guarantee in the form appended to the Contract Specific Conditions from the Supplier's ultimate holding company. For these purposes "ultimate holding company" shall mean the parent company of the group of companies of which the Supplier is a member (as each of those terms is defined in Section 170 Taxation of Chargeable Gains Act 1992). Further where and on the occasions indicated in the Contract Specific Conditions the Supplier shall procure an Advance Payment Bond in the form appended to the Contract Specific Conditions in favour of the Employer.

Failure to provide guarantee and bond

9.3 The Supplier's compliance with the provisions of clause 9.2 shall be a condition precedent to any obligation on the part of the Employer to make any payment that might otherwise be due under this Agreement, and the Supplier acknowledges that it has no entitlement either to receive payment or to exercise any rights in respect of non-payment arising under this Agreement unless and until the Supplier has provided any parent company guarantee and bond so required.

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10 Indemnities and Insurance

Third Party
liability -
Indemnity

10.1 The Supplier shall indemnify the Employer and keep the Employer indemnified against each and every liability which the Employer may incur to any person whatsoever and against all damage, expense, loss, cost, claim or proceedings suffered or incurred by the Employer to the extent that the same relates to personal injury or death of any person whomsoever or loss or injury or damage to any property real or personal (other than the Plant to the extent insured by the Supplier under clause 10.3) arising out of or in the course of or caused by the carrying out of the Works or Delivery or delivery of the Spares and Special Tools, except to the extent that the same is due to any act or neglect of the Employer or the Employer's Representative.

Supplier's
Insurances

10.2 Without prejudice to the Supplier's obligation to indemnify the Employer under clause 10.1, the Supplier shall:

10.2.1 maintain such insurances as are necessary to cover its liability in respect of personal injury or death arising out of or in the course of or caused by the carrying out of the Works or Delivery or delivery of the Spares and Special Tools (other than injury or death to persons referred to in clause 10.2.2) and in respect of injury or damage to property, real or personal (other than the Plant to the extent insured by the Supplier under clause 10.3), arising out of or in the course of or by reason of the carrying out of the Works or Delivery or delivery of the Spares and Special Tools. The insurance cover shall be for the sum specified in the Appendix for any one occurrence or series of occurrences arising out of one event;

10.2.2 maintain and cause any Sub-Contractors to maintain insurance in respect of claims for personal injury to or the death of any person under a contract of service or apprenticeship with the Supplier or such Sub-Contractor as the case may be arising out of or in the course of such person's employment. Such insurance shall comply with the Employer's Liability (Compulsory Insurance) Act 1969 and any statutory orders made thereunder or any amendment or re-enactment thereof and shall be for sum specified in the Appendix for any occurrence or series of occurrences arising out of any one event;

10.2.3 The insurance policy referred to in clause 10.2.1 shall indemnify the Employer in the like manner to the Supplier but only to the extent that the Supplier may be liable to indemnify the Employer under the terms of this Agreement.

10.2.4 Both the Employer and the Supplier undertake to notify the other in writing of any claims which they receive in respect of any injury, loss or damage under this Agreement. Any such notification by the Supplier shall be sufficient if given to the Employer's Representative without delay.

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Supplier's Insurance of the Plant	10.3	Without prejudice to the Supplier's obligations under this Agreement, the Supplier shall insure any Employer owned Plant from the time the Supplier takes custody of the Plant until the Supplier has been issued with a Provisional Acceptance Certificate together with materials plant and equipment for incorporation therein and the Spares and Special Tools (save for those Spare and Special Tools which have been delivered) to the full replacement cost plus an additional 10% to cover any additional costs that may arise incidental to the rectification of any loss or damage including professional fees. This insurance shall cover all loss or damage from whatsoever cause arising other than the Excepted Risks. Any amounts not insured or not recovered from insurers whether as excesses carried under the policy or otherwise shall be borne by the Supplier.
Evidence of Insurance	10.4	As and when it is reasonably required to do so by the Employer, the Supplier shall produce and shall cause any Sub-Contractors to produce for inspection by the Employer documentary evidence that the insurances required by clause 10.2 are properly maintained.
Breach by Supplier	10.5	Should the Supplier or any Sub-Contractor be in breach of any of their respective obligations under this clause 10, the Employer may itself insure against any risk in respect of which the default shall have occurred and may deduct a sum or sums equivalent to the amount paid or payable in respect of the premiums from any monies due or become due to the Supplier under this Agreement, or, if none are due, may recover the amount paid from the Supplier as a debt.

11 Professional Indemnity Insurance

Supplier to insure	11.1	Insofar as the design of any part of the Works is carried out by the Supplier, the Supplier shall maintain professional indemnity insurance covering amongst other things, all its liability hereunder in respect of Defects or insufficiency in design, upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom (in an amount not less than the sum specified in the Appendix for a period beginning with the date of this Agreement and ending 6 years (12 years if the Agreement is executed as a deed) after Acceptance of the last item of Plant to be Delivered), provided always that such insurance is available at commercially reasonable rates. Any increased or additional premium required by insurers by reason of the Supplier's claims record or other matters particular to the Supplier shall be considered to be within commercially reasonable rates.
If insurance ceases to be available	11.2	The Supplier shall immediately inform the Employer if such insurance ceases to be available at commercially reasonable rates in order that the Employer and the Supplier can discuss means of best protecting the respective positions of the Employer and the Supplier in the absence of such insurance.
Terms of policy	11.3	The said terms and conditions shall not include any term or condition that excludes the Third Parties (Rights Against Insurers) Act 2010.

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Termination	11.4	The obligations in respect of professional indemnity insurance under this clause 11 shall continue notwithstanding termination of the Contract for any reason whatsoever, including (without limitation) breach by the Employer.
Production of evidence	11.5	The provisions of clauses 10.5 and 10.6 shall apply to the Supplier's professional indemnity insurance required by this clause 11.

12 Copyright, Intellectual Property, Confidentiality, Photographs and C&AG

Copyright licence	12.1	The legal and beneficial ownership of all Intellectual Property which the Supplier has supplied to the Employer in accordance with this Agreement and which the Supplier has created and/or developed for the purposes of performing its obligations under this Agreement shall belong to the Supplier. The Supplier here grants to the Employer an irrevocable, royalty-free, non-exclusive licence to use all rights, titles and interest in any such Intellectual Property for any purposes whatsoever in connection with the Employer's permitted business provided that the Supplier shall have no liability for any use of the Intellectual Property other than for the purposes for which it was originally intended. The Employer may assign the said licence and/or grant sub-licences out of the licence.
Sub-Contractors	12.2	The Supplier shall use reasonable endeavours to procure that the Sub-Contractors shall grant a licence to the Employer in terms identical to clause 12.1.
Confidentiality	12.3	All information obtained by the Parties in the course or conduct of this Agreement shall be held confidential and shall not be divulged by the Parties to any third party save to the extent necessary to effect the execution of the Works and then only on the basis that the recipient of such information shall be bound by similar confidentiality obligations to those undertaken by the Parties. The Supplier shall not issue any press release or other public document containing or make any public statement containing or otherwise disclose to any other person who is not a party to this Agreement information that relates to or is connected with or arises out of this Agreement or the matters contained in it without the prior written approval of the Employer as to its content and the manner and extent of its publication.
	12.4.	Nothing in this Agreement shall prevent the Employer disclosing the Supplier's Confidential Information: 12.4.1 to the Crown, any other Contracting Authority or any government department. All government departments receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments on the basis that the information is confidential and is not disclosed to a third party which is not part of the Crown, any Contracting Authority or any government department; 12.4.2 for the purpose of the examination and certification of the Employer's accounts; or

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12.4.3 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Employer has used its resources.

Photographs 12.5 The Supplier shall not at any time take any photograph of the Plant or any part of them, and shall take all reasonable steps to ensure that no such photographs shall at any time be taken or published or otherwise circulated by any person employed by it, unless the Supplier has obtained the prior written consent of the Employer.

Comptroller and Auditor General 12.6 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 the Employer and its group companies, the Department for Transport and the consolidated set of financial statements for the UK public sector.

12.7 The restrictions contained in this clause shall survive the termination of this Agreement and shall continue without limit of time.

13 Assignment and Sub-Contracting

Assignment Employer 13.1 The Employer shall not assign charge or transfer this Agreement or any of its rights under it without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed), provided that the Supplier's consent shall not be required where it is between the Employer and its direct or indirect holding companies and its direct or indirect subsidiaries (within the meaning of s1159 Companies Act 2006).

Assignment by Supplier 13.2 The Supplier shall not assign charge or transfer this Agreement or any of its rights under it without the prior written consent of the Employer (such consent not to be unreasonably withheld or delayed).

Sub-Contracting by Supplier 13.3 The Supplier shall not sub-contract any part of the Works (including without limitation, the supply of goods and materials) or their design without the prior written consent of the Employer's Representative, which consent shall not be unreasonably withheld or delayed.

Sub-letting does not relieve Supplier 13.4 No sub-letting by the Supplier and no consent of the Employer and nothing contained in this Agreement requiring the Supplier to sub-let any work to or obtain any materials and/or goods from any person or persons named therein shall in any way relieve the Supplier from its responsibility for the due execution and completion of the Works, Delivery or delivery of the Spares and Special Tools in accordance with this Agreement.

Supply chain protection 13.5 The Supplier must ensure that all Sub-Contractors are paid, in full, within 28 days of receipt of a valid, undisputed invoice. If this does not happen, notwithstanding clause 12, the Employer can publish the details of the late payment or non-payment.

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14 Commencement and delays in the execution of the Works

Time for Delivery and Acceptance	14.1	The Supplier shall commence the execution of the Works within the period for commencement stated in the Appendix. The Supplier shall thereafter proceed with the Works regularly and diligently so that the Plant shall be delivered by the Supplier by the expiry of the relevant Periods for Completion (as extended from time to time in accordance with this clause 14.3) into the possession of the Employer at the Depot or such other location as may be agreed between the Employer and the Supplier in order to achieve the Provisional Acceptance and transfer of title to each item of Plant in accordance with this Agreement.
Grounds for extension of time	14.2	<p>No extension of time shall be granted to the Supplier except in the case of:</p> <p>14.2.1 any delay, impediment, prevention or default by the Employer; or</p> <p>14.2.2 the occurrence of any of the Excepted Risks; or</p> <p>14.2.3 any Instruction to which clause 7.3 applies; or</p> <p>14.2.4 the exercise after the date of tender by the United Kingdom Government of any statutory power that directly affects the execution of the Works; or</p> <p>14.2.5 the use or threat of terrorism, as defined by the Terrorism Act 2000, and/or the activities of the relevant authorities in dealing with such threat; or</p> <p>and then only to the extent that the Supplier shall prove that the Delivery is thereby delayed.</p> <p>Provided always that no account shall be taken of any of the circumstances referred to in clause 14.2 save to the extent that the Supplier:</p> <p>14.2.6 immediately upon it becoming reasonably apparent that the Works or Delivery is being or is likely to be so prevented, shall have submitted to the Employer's Representative a notice specifying the circumstance or circumstances;</p> <p>14.2.7 as soon as practicable thereafter, shall have submitted full and detailed particulars of the expected effects of those circumstances and of the extension of time to which the Supplier may consider itself entitled; and</p> <p>14.2.8 shall have kept such particulars up-to-date by submitting such further particulars which may be necessary or may be requested from time to time by the Employer's Representative,</p>
Grant of Extensions of Time	14.3	So soon as may be practicable after receipt of all of the particulars referred to in clause 14.2, the Employer's Representative shall grant to the Supplier such extension of time to the Periods for Completion affected by such circumstances as he then estimates to be fair and reasonable, provided always that the Supplier shall not be entitled to any extension of time in respect of any delay attributable to any negligence, omission or default by the Supplier, its employees or Sub-Contractors (except in the case of the

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circumstances referred to in clause 14.2.2), or in any case where the Supplier has not used its best endeavours to prevent or reduce such delay.

Liquidated Damages 14.4 If the Supplier fails to deliver any item of Plant by the expiry of the relevant Period for Completion, the Supplier shall be liable to pay the Employer liquidated damages calculated at the rate stated in the Appendix for the period from the expiry of the relevant Period for Completion to the date of Provisional Acceptance for the relevant item of Plant provided that the Supplier shall not be obliged to pay liquidated damages in excess of the amount stated in the Appendix. Where liquidated damages have been paid to the Employer and the Employer subsequently grants an extension of time in accordance with clause 14.3, the Employer shall be liable to repay to the Supplier any liquidated damages to which the Employer is no longer entitled.

15 Defect Rectification

Remedying of Defects 15.1 During the Defect Liability Period the Employer's Representative may instruct the Supplier to remedy any Defect. The Supplier shall forthwith comply with any instructions and at no cost to the Employer.

15.2 Where it is not reasonably practicable to return an item of Plant which is subject to a Defect to the Depot for rectification the Supplier shall as quickly as reasonably practicable take appropriate steps to rectify such Defect at the nearest suitable location.

15.3 In the event that an item of Plant becomes disabled as a result of a Defect which occurs during the Defect Liability Period in such a location as to affect or is likely to affect the operations of the Employer or the operations of railway services provided by third parties, then the Employer may, if it reasonably considers it appropriate, rectify the Defect and the Supplier shall pay on demand to the Employer the reasonable cost of rectification. The Supplier's obligations shall continue to apply despite any action taken by the Employer pursuant to this clause 15.3

Certificate that Defects Remedied 15.4 After the expiry of the Defect Liability Period and when all Defects that the Supplier has been instructed to remedy under clause 15.1 have been remedied, the Employer's Representative shall issue a certificate to that effect.

Defects not remedied 15.5 Where there are Defects that the Supplier has been instructed to remedy under clause 15.1 but which have not been remedied within a reasonable period, the Employer's Representative shall issue a statement identifying:

15.5.1 those Defects that it intends to engage others to rectify, together with a proper estimate of the cost of undertaking those rectification works; and

15.5.2 those Defects that it does not intend to rectify, together with particulars of the appropriate deduction it intends to make in the calculation of the amount due to the Supplier

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Epidemic and Endemic Defects	15.6	Without prejudice to the other provisions of this clause 15, if during the Endemic/Epidemic Protection Period the Employer notifies the Supplier that an Endemic Defect or an Epidemic Defect has occurred, the Supplier shall (within such period as may reasonably be specified in such notice and at the cost of the Supplier) rectify such Endemic Defect or Epidemic Defect, as the case may be (including, where necessary, the replacement of any relevant Spares) in relation to all the Plant affected and in respect of which Provisional Acceptance has occurred.
	15.7	If an Endemic Defect or Epidemic Defect is present in any Spares then supplied to the Employer and is notified in writing by the Employer to the Supplier, the Supplier shall (within such period as may reasonably be specified in such notice and at the cost of the Supplier) remedy Endemic Defect or Epidemic Defect in such Spares or if necessary, replace such Spares.
Other Rights	15.8	The provisions of clause 15 are without prejudice to any other rights or remedies the parties may possess.

16 Employer's Facilities and Free Issue materials

Property in Facilities	16.1	All of the Employer's Facilities or other property issued, made available or supplied in connection with this Agreement by or on behalf of the Employer shall remain the property of the Employer and shall only be used by the Supplier for the purposes of this Agreement.
Availability of Facilities	16.2	The Employer shall make available to the Supplier the Employer's Facilities at the times and subject to the conditions set out in the Preliminaries and subject to any temporary disrepair or mechanical breakdown. The Supplier shall return the same to the Employer in the condition in which they were supplied (fair wear and tear excepted).
No liens	16.3	Neither the Supplier, any Sub-Contractor or any other person, shall have a lien on any of the Employer's Facilities or on any other property and the Supplier shall take all necessary steps to ensure that the title of the Employer and the exclusion of any such lien are brought to the notice of all Sub-Contractors and other persons dealing with the same.
Free Issue Materials	16.4	The Employer shall make available to the Supplier free of charge to the Supplier any goods and materials described in the Preliminaries. Upon completion of delivery such goods and materials shall stand at the risk of the Supplier. Immediately upon the same being made available to it, the Supplier shall carry out a detailed inspection of such goods and materials and shall use its reasonable endeavours to advise the Employer's Representative on or before the expiry of 24 hours and no later than 7 days or before being taken into operational use (whichever is the sooner) if any of such goods and materials are damaged or defective. The Employer shall then secure the repair, replacement and/or reissue of any such goods or materials. If the Supplier does not so notify the Employer's Representative, the Supplier shall not be entitled subsequently to claim that any such goods or materials are damaged or defective to the extent that the same could

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have been identified by detailed inspection within such period. The Supplier shall dispose of any packaging and/or waste arising.

17 Termination

Contract or breach/ insolvency	17.1	<p>If the Supplier or the Guarantor or, where the Supplier is made up of more than one entity or a joint venture, one of the relevant companies (if unincorporated) or of one the joint venture shareholders (if incorporated)</p> <p>17.1.1 shall be in material breach of any of the provisions of this Agreement;</p> <p>17.1.2 is liable to compensate the Employer in respect of sums referred to in clauses 14.4 in an amount which is equal to or exceeds the aggregate total liability of the Supplier as stated; or</p> <p>17.1.3 becomes bankrupt or insolvent, including: (i) suspending or threatening to suspend payment of its debts or being unable to pay its debts as they fall due or admitting inability to pay its debts or being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; (ii) being the subject of a petition presented (which is not dismissed within fourteen (14) days of its service), a notice given, or a resolution passed for or in connection with winding up other than for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or solvent reconstruction; (iii) being the subject of an application to court for the appointment of an administrator or a notice of intention to appoint an administrator filed at court, going into liquidation, having a receiving or administration order made against him, compounding with creditors, carrying on business under a receiver, trustee or manager for the benefit of creditors or any order, act or event which under applicable laws has effect substantially similar to these orders, acts or events;</p> <p>then the Employer may, in addition to any other power enabling it to terminate this Agreement, by notice terminate forthwith the employment of the Supplier under this Agreement.</p>
Termination at will	17.2	<p>The Employer may terminate this Agreement at any time subject to giving 30 days written notice to the Supplier.</p>
Termination for breach of the Regulations by the Employer	17.3	<p>The Employer 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.</p>
Termination for breach of the Regulations by the Supplier	17.4	<p>The Employer may terminate this Agreement in the event that it considers any of the circumstances set out in regulation 89(1)(b) of UCR or regulation 73(1)(b) of PCR as applicable have arisen. Termination of this Agreement by the Employer pursuant to this clause 17.4 shall be deemed to be a material breach pursuant to clause 17.1.</p>

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17.5 The Supplier shall notify the Employer in writing immediately upon becoming aware of the circumstances referred to in clause 17.4 applying.

17.6 The Supplier may terminate this Agreement by written notice to the Employer if the Employer has not paid any undisputed amounts within 90 days of them falling due.

18 Consequences of Termination

Payment following breach/insolvency

18.1 If the Employer, in exercise of the powers contained in clause 17.1 shall terminate the Supplier's employment under this Agreement the following provisions shall take effect:

18.1.1 the payment of any sum of money that may then be due or accruing from the Employer to the Supplier shall be suspended; and

18.1.2 the Supplier shall pay to the Employer the Employer's reasonable losses and expenses due to termination, but the Supplier shall receive credit for any sum the payment of which is suspended under clause 18.1.1.

Payment following termination at will or for breach of the Regulations by the Employer

18.2 If the Employer, in the exercise of the powers contained in clause 17.2 or 17.3, shall terminate the Supplier's employment under this Agreement, the following provisions shall take effect:

18.2.1 the Employer shall issue a notice under 8.3 stating the amount due to the Supplier which shall be calculated in accordance with the provisions of clause 18.2.2; and

18.2.2 the amount payable on any termination pursuant to clause 17.2 shall be calculated as follows:

- (i) the value of work executed up to the date of termination calculated in accordance with the provisions of the Pricing Document;
- (ii) the amounts payable in respect of any preliminary items in so far as the work or service comprised therein has been carried out or performed and a proper proportion of any such items which have been partially carried out or performed;
- (iii) the cost of materials or goods reasonably ordered for the Works which have been delivered to the Supplier or for which the Supplier is legally liable to accept delivery (such materials or goods becoming the property of the Employer upon such payment being made to the Supplier);
- (iv) a sum being the amount of any expenditure reasonably incurred by the Supplier in the expectation of completing the whole of the Works insofar as such expenditure has not been recovered by any other payments referred to above; and

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- (v) the reasonable costs of removal of all the Supplier's plant, tools, equipment, goods and materials from the Site.

The Supplier shall not be entitled to payment of any other loss and/or damage arising from such termination including but not limited to loss of profit.

19 Third Party Rights

No Third Party Rights

Subject to clause 13.1 but otherwise notwithstanding anything to the contrary contained elsewhere in this Agreement, nothing in this Agreement is intended to confer on any person any right to enforce any term of this Agreement which that person would not have had but for the provisions of Contracts (Rights of Third Parties) Act 1999.

20 Notices

Service

The addresses for service of the parties shall be the relevant Addresses for Service set out in the Appendix. Any notice required to be given by a party shall be in writing and service shall be effected either:

- 20.1 personally, in which case service shall be deemed effective on delivery; or
- 20.2 by prepaid recorded delivery post, in which case service shall be deemed effective two working days after the day after posting.

21 Dispute Resolution

Adjudicator

21.1 Any dispute or difference arising under or in connection with this Agreement may be referred to adjudication by the Adjudicator in accordance with the following provisions:

21.1.1 the Scheme for Construction Contracts SI No. 649 of 1998 shall apply; and

21.1.2 the Adjudicator's decision is binding until the dispute or difference is finally determined by the Courts as provided in clause 21.3.

Adjudicator not liable

21.2 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith, and any employee or agent of the Adjudicator is similarly protected.

Courts

21.3 Disputes and differences between the parties arising out of or in relation to this Agreement shall, subject to clause 21.1, be referred to the exclusive jurisdiction of the English Courts. This Agreement shall be governed by and construed in accordance with the laws of England and Wales.

22 Compliance

General

- 22.1 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.
- 22.2 The Supplier shall comply with Network Rail's Code of Business Ethics and Code of Conduct, corporate hospitality, conflicts of interests and speak out (whistleblowing) policies and any updates thereof.

Bribery Act Compliance

- 22.3 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).
- 22.4 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 Sub-Contractors comply with this clause.

Modern Slavery Act Requirements

- 22.5 The Supplier shall implement due diligence procedures for its own Sub-Contractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- 22.6 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

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

23 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.

24 Freedom of Information

24.1 The Supplier acknowledges that:

24.1.1 The Employer may be required, under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 (collectively, the “**Information Acts**”), to disclose information relating to the subject matter of this Agreement; and

24.1.2 notwithstanding any other provision in this Agreement, the Employer shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the Information Acts.

24.2 The Supplier shall provide all necessary assistance and cooperation as reasonably requested by the Employer to enable it to comply with its obligations under the Information Acts.

25 Corporate Tax

25.1 The Supplier shall keep (and shall procure that its Sub-Contractors keep) records of all expenditure, costs and other outgoings incurred in the performance of its obligations under this Agreement, to enable, validate and support claims and compliance requirements made by the Employer under UK tax legislation with particular reference, but not limited to, reliefs provided under the Capital Allowances Act 2001 (“CAA2001”). In particular, but without limitation, the Supplier shall provide (and shall procure that any Sub-Contractors provide) a breakdown of costs at a sufficiently granular level to enable identification of costs attributable to assets qualifying for tax relief under CAA2001.

25.2 The Supplier shall provide (and shall procure that its Sub-Contractors provide) such records in the form that the Employer may request and such other documentation as they may have in their possession for the purposes set out in Clause 25.1 above.

26 Information Security

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

27 Equality and Diversity

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

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

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- 27.1.2 the Employer's equality, diversity and inclusion policy as published by the Employer from time to time; and
 - 27.1.3 any other requirements and instructions which the Employer reasonably imposes in connection with any equality obligations imposed on the Employer at any time under applicable equality Law.
- 27.2 The Supplier shall take all reasonable steps to secure the observance of clause 27.1 above by its employees, agents, representatives and Sub-Contractors.
- 27.3 The Supplier acknowledges that the Employer is under a duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination (on the grounds of a Relevant Protected Characteristic); to advance equality of opportunity, and to foster good relations, between persons who share a Relevant Protected Characteristic and persons who do not share it. In performing its obligations under this Agreement, the Supplier shall assist and co-operate with the Employer where possible in satisfying this duty.

28 London Living Wage

- 28.1 The Supplier shall and shall also procure that its relevant Sub-Contractors (if any) shall:
- 28.1.1 ensure that none of its workers or its Sub-Contractor's workers engaged in the performance of the Agreement in the Greater London Area (but not otherwise) and who would also satisfy the eligibility criteria set by the Living Wage Foundation (or any replacement thereof) is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage; and
 - 28.1.2 co-operate and provide all reasonable assistance to the Employer in monitoring the effect of the London Living Wage.
- 28.2 If the London Living Wage increases during the term of this Agreement, the Supplier shall not be entitled to adjust the Contract Price and the parties agree and acknowledge that any increases in the London Living Wage anticipated during the term of this Agreement have been factored into the Contract Price.
- 28.3 Any failure by the Supplier to comply with the provisions of clause 28.1 shall be treated as a material breach under this Agreement.

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

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

- 29.1 The Supplier shall comply with the Intermediaries Legislation and all reasonable instructions and requests for information from the Employer in respect thereof.

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- 29.2 The Supplier shall supply all the information required, and to any specified time, for the Employer to report to the Department for Transport and HM Treasury as to compliance with the Intermediaries Legislation including the number of workers affected.
- 29.3 The Supplier shall be liable for and shall indemnify the Employer against all and any loss, damage, cost, expense, liability, claims and proceedings whatsoever in respect of a failure of the Supplier to comply with this clause 29.
- 29.4 The Employer shall provide all reasonably requested information within a reasonable timescale to support the Supplier in its compliance with the Intermediaries Legislation.
- 29.5 Failure by the Supplier to comply with this clause 29 shall be deemed to be a material breach of this Agreement.

30 Data Protection

- 30.1 For the purposes of this clause 30 the following definitions apply;
 - 30.1.1 “**Data Protection Legislation**” means (i) the GDPR, and any applicable national implementing laws as amended from time to time (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable laws about the processing of personal data and privacy.
 - 30.1.2 “**Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer, Data Protection Impact Assessment**” take the meaning given in the GDPR.
 - 30.1.3 “**Data Loss Event**” means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
 - 30.1.4 “**Data Subject Request**” means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
 - 30.1.5 “**GDPR**” means the General Data Protection Regulation (*Regulation (EU) 2016/679*).
 - 30.1.6 “**Sub-processor**” means any third Party appointed to process Personal Data on behalf of the Supplier.
- 30.2 With respect to the Parties’ rights and obligations under this Agreement, the Parties acknowledge that for the purposes of the Data Protection Legislation, the Employer is the Controller and the Supplier is the Processor.
- 30.3 The only processing that the Supplier is authorised to do is listed in this Agreement and may not be determined by the Supplier.

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- 30.4 The Supplier shall provide all reasonable assistance to the Employer in the preparation of any Data Protection Impact Assessment prior to commencing any processing.
- 30.5 The Supplier shall:
 - 30.5.1 only process Personal Data to the extent strictly necessary and listed in this Agreement to perform its obligations under this Agreement;
 - 30.5.2 ensure that it has in place protective measures which are appropriate to protect against a Data Loss Event. the Employer may reasonably reject such measures, but failure to reject shall not amount to approval by the Employer;
 - 30.5.3 take all reasonable steps to ensure the Supplier's personnel who have access to the Personal Data;;
 - 30.5.3.1 are aware of and comply with the Supplier's duties under this clause 30;
 - 30.5.3.2 are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - 30.5.3.3 have undergone adequate training in the use, care, protection and handling of Personal Data;
 - 30.5.4 not transfer Personal Data outside of the EU unless the prior written consent of the Employer has been obtained and the following conditions met;
 - 30.5.4.1 the Employer or the Supplier has provided appropriate safeguards in relation to the transfer as determined by the Employer;
 - 30.5.4.2 the Data Subject has enforceable rights and effective legal remedies;
 - 30.5.4.3 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Employer in meeting its obligations); and
 - 30.5.5 at the written direction of the Employer, delete or return Personal Data (and any copies of it) to the Employer on termination of the Agreement unless the Supplier is required by law to retain the Personal Data
- 30.6 The Supplier shall notify the Employer immediately if it;
 - 30.6.1 receives a Data Subject Request (or purported Data Subject Request);
 - 30.6.2 receives a request to rectify, block or erase any Personal Data;

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- 30.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 30.6.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 30.6.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law; or
 - 30.6.6 becomes aware of a Data Loss Event.
- 30.7 Taking into account the nature of the processing, the Supplier shall provide the Employer 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 the Employer) including by promptly providing;
- 30.7.1 full details and copies of the complaint, communication or request;
 - 30.7.2 such assistance as is reasonably requested by the Employer to enable the Employer to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 30.7.3 the Employer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 30.7.4 assistance as requested by the Employer following any Data Loss Event; and
 - 30.7.5 assistance as requested by the Employer with respect to any request from the Information Commissioner's Office, or any consultation by the Employer with the Information Commissioner's Office.
- 30.8 The Supplier shall maintain complete and accurate records to demonstrate its compliance with this clause 30 and shall upon reasonable request, promptly make them available to the Employer.
- 30.9 The Supplier shall allow for audits of its Data Processing activity by the Employer or the Employer's designated auditor.
- 30.10 Before allowing any Sub-processor to process any Personal Data, the Supplier must obtain the written approval of the Employer and enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause 30 such that they apply to the Sub-processor.

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CONTRACT SPECIFIC CONDITIONS

None

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TECHNICAL WORKSCOPE

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CONTRACT REQUIREMENTS - HSEA

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PRELIMINARIES

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PRICING DOCUMENT