

NETWORK RAIL 2 (MT)

Network Rail Framework Agreement

for

Non Construction Services

Provision of Strategic Crime Intelligence,
Security and Welfare Services:

Lot 2: Station Services

Agreement No: TBC

NETWORK RAIL 2 (MT)

CONTRACT AGREEMENT

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

Between

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

and

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

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

1. This Agreement comprises this Contract Agreement together with the following documents which shall be read and construed as part of this Agreement and in the case of any ambiguity or discrepancy shall have the following order of priority:
 - 1.1 Schedule of Post Tender Amendments;
 - 1.2 Appendix;
 - 1.3 Contract Specific Conditions;
 - 1.4 Conditions;
 - 1.5 Schedule 1: The Project and Services;
 - 1.6 Schedule 2: Contract Requirements HSEA Conditions;
 - 1.7 Schedule 3: Key Supplier Personnel;
 - 1.8 Schedule 4: Pricing Document, and
 - 1.9 Schedule 5: Process for Issuing Contract Orders.
2. The Parties agree that the Term is, subject to the provisions of this Agreement, 2 years from the Commencement Date. The Agreement shall automatically expire at the end of the Term, but may be extended prior to its end in annual increments, at Network Rail's sole discretion, by Network Rail issuing written notices of extension to the Supplier, provided such notices do not extend the Term beyond 31st July 2025.
3. In consideration of the payments to be made by Network Rail to the Supplier as hereinafter mentioned the Supplier hereby covenants with Network Rail to provide services in conformity in all respects with the provisions of the Agreement.
4. Network Rail hereby covenants to pay to the Supplier in consideration of the provision of Services the Contract Price at the times and in the manner prescribed by the Agreement.

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

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

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

By:

Authorised signatory
Printed Name

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

By

Authorised signatory
Printed Name

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SCHEDULE OF POST TENDER AMENDMENTS

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

[None]

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APPENDIX

(Note: Relevant Clause numbers are shown in brackets)

- | | | |
|----|---|---|
| 1. | Network Rail's Representative (Clause 1.1.11) | Jon Ruch
Head of Crime, Security and Resilience
(Southern Region)
James Forbes House,
27 Great Suffolk Street,
Southwark, London
SE1 0NS |
| 2. | Public Liability Insurance (Clause 8.2.1) | £10,000,000 (10 million pounds) |
| 3. | Professional indemnity insurance (Clause 8.2.2) | £1,000,000 (one million pounds), in respect of all claims made in connection with any one occurrence or all occurrences of a series consequent on or attributed to one source or original cause and which may be subject to an annual aggregate limit. |
| 4. | Liability (Clause 10.2) | £5,000,000 (five million pounds) in aggregate |
| 5. | Addresses for Notices (Clause 19) | Network Rail:
Address:
Company Secretary
Network Rail
1 Eversholt St
London NW1 2DN

With a copy to:
1. notices@networkrail.co.uk ; and
2. Network Rail's Representative by email.

The Supplier:
[Insert Name]
[Insert Position]
[Insert Address] |
| 6. | Information Security (Clause 28) | Applicable |
| 7. | Real Living Wage (Clause 29) | Annual adjustment as described in Schedule 4 Pricing Document |
| 8. | Intermediaries Legislation (Clause 31) | Does not apply |
| 9. | Parent Company Guarantee (Clause 32) | [Required / Not Required] |

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CONTRACT SPECIFIC CONDITIONS

[None]

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CONDITIONS

1. Definitions and Interpretation

1.1 In this Agreement:

- 1.1.1 **“Commencement Date”** means the date of execution of the Contract Agreement;
- 1.1.2 **“Confidential Information”** means any information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential, however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel, Affiliates and suppliers (including Sub-contractors) of either Party, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential;
- 1.1.3 **“Contract Order”** means any order issued to the Supplier by Network Rail pursuant to Clause 25 in respect of any of the Services;
- 1.1.4 **“Contract Price”** means the amount to be paid by Network Rail to the Supplier in full consideration for the carrying out and completion by the Supplier of the Services and the performance by it of its other obligations under this Agreement;
- 1.1.5 **“Contract Requirements HSEA Conditions”** means the document described as such and referred to in the Agreement;
- 1.1.6 **“Contracting Authority”** means any contracting authority as defined in Regulation 4 of The Utilities Contracts Regulations 2016;
- 1.1.7 **“Crown”** means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Government and the National Assembly for Wales), including government ministers, government departments, government and particular bodies and government agencies;
- 1.1.8 **“Guarantor”** means the Guarantor under the Parent Company Guarantee provided in accordance with Clause 31;
- 1.1.9 **“Intellectual Property”** means all intellectual and industrial property and all rights therein in any part of the world including any patent, patent application, trade mark, trade mark application, registered design, registered design application, trade name, trade secret, business name, discovery, invention, process, formula, know-how, specification, improvement, technique, copyright, unregistered design right, technical information or drawing including rights in computer software, database rights, topography rights;

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- 1.1.10 **“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;
 - 1.1.11 **“Network Rail’s Representative”** means the person designated as such in the Appendix or as notified by Network Rail to the Supplier from time to time;
 - 1.1.12 **“Network Rail’s Representative Assistants”** means the persons designated as such in a Contract Order or as notified by Network Rail’s Representative to the Supplier from time to time to assist Network Rail’s Representative carry out the duties defined in this Agreement. Such delegation shall not include duties in relation to Clauses 5 and 15 ;
 - 1.1.13 **“Party”** means the Supplier or Network Rail (as appropriate) and “Parties” shall mean both of them;
 - 1.1.14 **“Post Tender Amendments”** means the Conditions specific to this Agreement which are set out in the attached Schedule of Post Tender Amendments;
 - 1.1.15 **“Pricing Document”** means Schedule 4;
 - 1.1.16 **“Real Living Wage”** means the separate basic hourly rates for London and the rest of the UK, as applicable, as set by the Living Wage Commission (before tax, other deductions and any increase for overtime), as may be revised from time to time;
 - 1.1.17 **“Services”** means the services to be performed by the Supplier pursuant to each Contract Order in accordance with this Agreement;
 - 1.1.18 **“Sub-Contractor”** means any sub-contractor of the Supplier including sub-contractors of any such sub-contractors;
 - 1.1.19 **“Supplier Personnel”** means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier’s obligations under this Agreement;
 - 1.1.20 **“Supplier Key Personnel”** means those personnel listed in Schedule 3;
 - 1.1.21 **“Term”** means the period specified in the Contract Agreement, as the same may be adjusted under this Agreement and the expiry of the Term shall mean the expiry of the Term for any reason, whether pursuant to the Contract Agreement by lawful termination or otherwise;
 - 1.1.22 **“Variation of Services”** means variations additions or other amendments to the Services provided they fall within the competency and control of the Supplier.
- 1.2 Any reference to Appendix or Clause or Schedule is to the relevant Clause of these Conditions or the relevant Appendix or Schedule to this Agreement.

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- 1.3 The headings are included for convenience only and shall not affect interpretation of this Agreement.
- 1.4 Use of the singular includes the plural and vice versa.
- 1.5 Any reference to a statute or statutory instrument shall be construed as referring to any modification extension or re-enactment thereof from time to time.
- 1.6 Any phrase introduced by the term “including” shall be construed as illustrative and without limitation.

2. Duties of the Supplier

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

3. Network Rail's Obligations

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

4. Contract Price and Payment

- 4.1 Sums contained in invoices shall be calculated in accordance with Schedule 4 or as otherwise agreed in Contract Orders. Invoices must include the correct purchase order number and be addressed to “Network Rail, Accounts Payable, P.O. Box 4145, Manchester M60 7WZ” or, if no supporting documentation is attached, original computer-generated pdf invoices can be emailed to invoices@networkrail.co.uk.
- 4.2 Invoices shall be issued either on completion of Service deliverables or as otherwise described in Contract Orders. The invoices shall be supported by documentation required by Network Rail including a statement of the basis of calculation and the supporting documentation shall be forwarded as directed by Network Rail's Representative.

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- 4.3 Network Rail shall issue payment to the Supplier of the amount properly due together with VAT thereon no later than 28 days after receipt of a valid invoice (the final date for payment). If the Supplier's invoice does not comply with the requirements of Clause 4.1, Network Rail shall be under no obligation to pay the same.
- 4.4 Payment by Network Rail shall be without prejudice to any claims or rights which Network Rail may have against the Supplier and shall not constitute any admission by Network Rail as to the performance by the Supplier of its obligations hereunder.
- 4.5 If any sum under the Contract is not paid by the final date for payment then, without prejudice to the Parties' other rights under the Contract, that sum shall bear simple interest from the final date for payment until payment is made in full at a rate of 4% per annum above the Bank of England Base Rate current at the date that a payment under this Contract becomes overdue.
- 4.6 All prices indicated shall be exclusive of Value Added Tax (VAT). The Supplier shall, if registered for VAT, supply a valid VAT invoice. The Supplier shall provide further information as may reasonably be required in relation to any such invoice.

5. Set-off

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

6. Supply of Information

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

7. Variation of Services

- 7.1 Network Rail's Representative may by written notice to the Supplier at any time request a variation to the Services. In the event that the Supplier agrees to any variation to the Services, the Contract Price shall be subject to fair and reasonable adjustment (based on the rates as set out in Schedule 4 if applicable) and shall be agreed in writing by Network Rail's Representative and the Supplier.
- 7.2 No additional sum shall be payable to the extent that any of the Variation of Services are necessitated in whole or in part by any negligence omission or default on the Supplier's part.

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8. Indemnity and Insurance

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

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9. Duration of the Agreement

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

10. Liability

- 10.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by Network Rail if and to the extent that it is caused by the negligence or wilful misconduct of Network Rail or by breach by Network Rail of its obligations under this Agreement.
- 10.2 Subject always to Clauses 10.3 and 10.4:
- 10.2.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of this Agreement, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed the sum stated in the Appendix; and
- 10.2.2 in no event shall the Supplier be liable to Network Rail, including by way of indemnity, for any:
- (a) loss of profits;
 - (b) loss of business or production;
 - (c) loss of revenue;
 - (d) loss of or damage to goodwill;
 - (e) loss of savings (whether anticipated or otherwise); and/or
 - (f) any indirect, special or consequential loss or damage.
- 10.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
- (a) death or personal injury caused by its negligence or that of its staff;
 - (b) fraud or fraudulent misrepresentation by it or that of its staff; or
 - (c) any other matter which, by law, may not be excluded or limited.
- 10.4 The Supplier warrants and undertakes to Network Rail to progress the Services with due diligence having regard to any key dates for performance of the Services set out in the Contract Orders or as otherwise agreed by the Parties. The Supplier's liability under this Clause 10.4 shall not exceed the Contract Price of the relevant Contract Order.
- 10.5 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement, including any losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Agreement.

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- 10.6 With the exception of any third party claim arising in relation to the indemnity in Clause 8.1, Network Rail shall, as soon as reasonably practicable after receiving notice of a third party claim qualifying for an indemnity under this Agreement, give written notice to the Supplier specifying details of the third party claim.

11. Assignment and Sub-contracting

- 11.1 Network Rail shall not assign charge or transfer this Agreement or any of its rights under it without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed), provided that the Supplier's consent shall not be required where it is between Network Rail and its direct or indirect holding companies and its direct or indirect subsidiaries (within the meaning of s1159 Companies Act 2006)..
- 11.2 The Supplier shall not assign charge or transfer this Agreement or any of its rights under it without the prior written consent of Network Rail (such consent not to be unreasonably withheld or delayed).
- 11.3 Any restriction on assignment will not apply to the extent that it would have no effect under The Business Contract Terms (Assignment of Receivables) Regulations 2018.
- 11.4 The Supplier shall not sub-contract to or allow any other person to perform any of the Services without Network Rail's Representative's prior written consent (such consent not to be unreasonably withheld or delayed). The Supplier shall remain responsible for the performance of any services so sub-contracted as if the sub-contracting had not occurred.
- 11.5 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 14, Network Rail can publish the details of the late payment or non-payment.

12. Intellectual Property

- 12.1 The Intellectual Property which the Supplier has supplied to Network Rail in accordance with this Agreement and which the Supplier has created and/or developed for the purposes of performing its obligation under this Agreement (whether created before or during the term of this Agreement, including, without limitation any and all information subsisting or referred to within any technical, operation and/or maintenance manuals) shall remain vested in the Supplier but the Supplier hereby grants to Network Rail an irrevocable, perpetual, royalty free non- exclusive licence to copy disclose use adapt and reproduce the Intellectual Property for any purpose whatsoever in connection with Network Rail's permitted business (including, without limitation for any purposes in connection with completing, operating, maintaining replacing, dismantling, reassembling, repairing, altering and adjusting any goods and/or equipment supplied by the Supplier hereunder). The Supplier further agrees:
- (i) that Network Rail may grant sub-licences to other persons for the purposes stated in the licence granted above and/or to otherwise assign the benefit of such licence to any third party; and
 - (ii) to the extent that the Supplier does not have ownership of the Intellectual Property in any of the materials supplied to Network Rail, use reasonable endeavours to procure from the Intellectual Property holder a licence in the form set out in the licence above.

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- 12.2 The Supplier shall indemnify Network Rail against all loss damage costs and expenses for which Network Rail is or becomes liable as a result of any infringement or alleged infringement by the Supplier of any third party's intellectual property rights.
- 12.3 The Supplier shall not be liable for any use of the Intellectual Property for any purpose other than that for which it was originally prepared or supplied by the Supplier.
- 12.4 Network Rail shall have no right to decompile any computer software which forms part of the Intellectual Property licensed to Network Rail in this Clause 12 nor shall Network Rail attempt to derive any algorithms, techniques or other features of the software or modify or attempt to create any derivative works from the software and any sub-licence granted by Network Rail shall similarly apply these prohibitions to the sub-licensee of that computer software.

13. Personnel

- 13.1 The Supplier Key Personnel listed in Schedule 3 shall carry out the Services unless otherwise agreed with Network Rail's Representative (whose agreement shall not be unreasonably withheld or delayed).
- 13.2 Network Rail's Representative shall be entitled on written notice to require the Supplier to terminate immediately any person's involvement with the provision of the Services when in the reasonable opinion of Network Rail's Representative it considers it undesirable and/or unnecessary for them to continue. The Supplier shall if so required by Network Rail's Representative as soon as reasonably practicable replace any person so removed with a suitable person to be agreed by Network Rail's Representative.
- 13.3 Security Vetting;
 - 13.3.1 The Supplier shall undertake Baseline Personnel Security Standard (BPSS) pre-employment checks, as stated in the [HMG Personnel Security Controls](#), for all Supplier Personnel that have access to Network Rail premises or Network Rail IT networks.
 - 13.3.2 Under the National Railways Security Programme (NRSP) some Supplier Personnel will be required to complete additional security checks as outlined in [HMG Personnel Security Controls](#). This applies to Critical National Infrastructure (CNI) sites and Managed Stations and those with access to CNI systems and information on sensitive train movements. The Employer's Representative may designate other roles requiring these additional checks.
 - 13.3.3 The Supplier shall prevent Supplier Personnel who are unable to obtain the required security clearances from accessing Network Rail premises and Network Rail IT networks.
 - 13.3.4 Under NRSP all Supplier Personnel are required to undergo biennial security training. These training records shall be kept for five years and be available on request. The training material will be provided by Network Rail through e-learning at no additional cost to the Supplier.

14. Confidentiality and Comptroller and Auditor General

- 14.1 Save to the extent that it is necessary in order to comply with any obligations under this Agreement, or as otherwise expressly provided for in this Clause 14, the Parties acknowledge and agree that neither they nor their respective accountants, legal advisers and insurers shall make use of or provide a copy of this Agreement or information passed under this Agreement or disclose disseminate and/or publicise or cause or permit to be disclosed disseminated and/or publicised any of the terms and conditions of this Agreement or information passed under this Agreement in whole or in part to any individual and/or entity not a Party to this Agreement except as follows:
- 14.1.1 in response to an order of a court of competent jurisdiction, or in response to an appropriate subpoena or discovery request issued in the course of litigation;
 - 14.1.2 in response to an enquiry or order issued by a government or supra-governmental agency of competent jurisdiction;
 - 14.1.3 to the extent necessary to report income to appropriate taxing authorities and/or to contest the imposition of any tax by appropriate taxing authorities;
 - 14.1.4 to the Parties' respective accountants, legal advisers and insurers;
 - 14.1.5 in connection with any litigation between the Parties relating to this Agreement; and
 - 14.1.6 to the extent required in order to comply with applicable laws and/or regulations.
- 14.2 The Supplier shall not make any announcement relating to this Agreement or its subject matter without the prior written approval of Network Rail's Representative except as required by applicable laws or by any legal or regulatory authority.
- 14.3 Nothing in this Agreement shall prevent Network Rail disclosing the Supplier's Confidential Information:
- 14.3.1 to the Crown, any other Contracting Authority or any government department. All government departments receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments on the basis that the information is confidential and is not disclosed to a third party which is not part of the Crown, any Contracting Authority or any government department.
 - 14.3.2 for the purpose of the examination and certification of Network Rail's accounts;
 - 14.3.3 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which Network Rail has used its resources; or
 - 14.3.4 for the purpose of using the Supplier's Intellectual Property in accordance with the licence granted to Network Rail under Clause 12.1 and/or for the purpose of granting sub-licences to other persons in relation to the same.

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- 14.4 The Supplier shall and shall procure that its subcontractors shall provide such access to its or their books and records as may be reasonably required from time to time by the Comptroller and Auditor General of the National Audit Office for the purpose of their audit and examination of the accounts of Network Rail and its group companies, the Department for Transport and the consolidated set of financial statements for the UK public sector.
- 14.5 Confidential Information shall not include information which:
- 14.5.1 was public knowledge at the time of disclosure;
 - 14.5.2 was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
 - 14.5.3 is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
 - 14.5.4 is independently developed without access to the Confidential Information.

15. Termination and Suspension

- 15.1 Network Rail may terminate this Agreement and/or Contract Orders at any time subject to giving 30 days written notice to the Supplier.
- 15.2 Network Rail's Representative may suspend the performance of any or all of the Services by giving reasonable written notice to the Supplier.
- 15.3 The Supplier shall resume the performance of the Services on reasonable written notice from Network Rail's Representative. If Network Rail's Representative has not served such notice within 3 months of suspension under Clause 15.2 then this Agreement shall terminate.
- 15.4 If notice of resumption of the Services is served in accordance with Clause 15.3 this Agreement will continue.
- 15.5 Upon termination of this Agreement and/or Contract Orders under Clause 15.1, 15.3 or 15.7 and subject to Clause 15.6 the Supplier shall be entitled to such proportion of the Contract Price as represents a fair and reasonable value of that part of the Contract Orders carried out at the date of termination and a sum being the amount of any expenditure reasonably incurred by the Supplier in the expectation of completing the whole of the Services in any Contract Order not then completed insofar as such expenditure has not been recovered by any other payments under this Agreement, provided always that the Supplier shall not be entitled to recover any loss of anticipated profit as a result of such termination.
- 15.6 Network Rail may terminate this Agreement and/or Contract Orders by reason of material breach by the Supplier, which breach the Supplier has failed to remedy within 14 days of being given written notice to do so by Network Rail's Representative, or where the Supplier:
- 15.6.1 is unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purpose of effecting a reconstruction or amalgamation in such manner that the company resulting from such reconstruction or amalgamation if a different legal entity shall agree to be bound by and assume the obligations of

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the Supplier under this Agreement) or compounds with or convenes a meeting of its creditors or has a receiver or manager or an administrator appointed or ceases for any reason to carry on business or takes or suffers any similar action which in the opinion of Network Rail means that the Supplier may be unable to pay its debts; or

- 15.6.2 being an individual or if the partnership or any partner (where the Supplier is a partnership) shall become bankrupt or in Scotland have its estates sequestrated or shall become apparently insolvent as defined in the Bankruptcy (Scotland) Act 1985 or shall enter into a trust deed for its creditors, or make a composition or arrangement with his or its creditors;

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

- 15.7 Network Rail may terminate this Agreement and/or Contract Orders in the event that it considers any of the circumstances set out in regulations 89(1)(a) or (c) of the Utilities Contracts Regulations 2016 SI 2016/274 ("UCR") or regulations 73(1)(a) or (c) of the Public Contracts Regulations 2015 SI 2015/102 ("PCR") as amended from time to time as applicable have arisen.
- 15.8 Network Rail may terminate this Agreement and/or Contract Orders in the event that it considers any of the circumstances set out in regulation 89(1)(b) of UCR or regulation 73(1)(b) of PCR as applicable have arisen. Termination of this Agreement by Network Rail pursuant to this Clause 15.8 shall be deemed to be a material breach which the Supplier has failed to remedy and the provisions of Clause 15.6 shall apply.
- 15.9 The Supplier shall notify Network Rail in writing immediately upon becoming aware of the circumstances referred to in Clause 15.8 applying.
- 15.10 If any undisputed sum under this Agreement and/or Contract Orders is not paid by the date which is seven days following the final date for payment then the Supplier may, upon the provision of not less than seven days' notice in writing, suspend performance of the Services until the date on which such sums are paid to the Supplier. The Supplier may terminate this Agreement and/or Contract Orders by written notice to Network Rail if Network Rail has not paid any undisputed amounts within ninety days of them falling due.

16. Waiver

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

17. Protection of Personal Data

- 17.1 For the purposes of this Clause 17 the following definitions apply;

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

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- 17.1.2 **“Controller, Processor, Joint Controllers, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer, Data Protection Impact Assessment”** take the meaning given in the Data Protection Act 2018.
- 17.1.3 **“Data Loss Event”** means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
- 17.1.4 **“Data Subject Access Request”** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
- 17.1.5 **“Sub-processor”** means any third Party appointed to process Personal Data on behalf of the Supplier.
- 17.2 With respect to the Parties’ rights and obligations under this Agreement, the Parties acknowledge that for the purposes of the Data Protection Legislation, Network Rail is the Controller and the Supplier is the Processor.
- 17.3 The only processing that the Supplier is authorised to do is listed in Annex 1 – Protection of Personal Data within Schedule 1 and may not be determined by the Supplier. If the Annex is not included no processing is required.
- 17.4 The Supplier shall provide all reasonable assistance to Network Rail in the preparation of any Data Protection Impact Assessment prior to commencing any processing.
- 17.5 The Supplier shall:
 - 17.5.1 only process Personal Data to the extent strictly necessary and listed in Annex 1 – Protection of Personal Data within Schedule 1 to perform its obligations under this Agreement;
 - 17.5.2 ensure that it has in place protective measures which are appropriate to protect against a Data Loss Event. Network Rail may reasonably reject such measures, but failure to reject shall not amount to approval by Network Rail;
 - 17.5.3 take all reasonable steps to ensure the Supplier’s personnel who have access to the Personal Data;
 - 17.5.3.1 are aware of and comply with the Supplier’s duties under this Clause 17;
 - 17.5.3.2 are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - 17.5.3.3 have undergone adequate training in the use, care, protection and handling of Personal Data;
 - 17.5.4 not transfer Personal Data outside of the EU unless the prior written consent of Network Rail has been obtained and the following conditions met;
 - 17.5.4.1 Network Rail or the Supplier has provided appropriate safeguards in relation to the transfer as determined by Network Rail;

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- 17.5.4.2 the Data Subject has enforceable rights and effective legal remedies;
 - 17.5.4.3 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist Network Rail in meeting its obligations); and
 - 17.5.5 at the written direction of Network Rail, delete or return Personal Data (and any copies of it) to Network Rail on termination of the Agreement unless the Supplier is required by law to retain the Personal Data.
- 17.6 The Supplier shall notify Network Rail as soon as is reasonably practical if it;
- 17.6.1 receives a Data Subject Request (or purported Data Subject Request);
 - 17.6.2 receives a request to rectify, block or erase any Personal Data;
 - 17.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 17.6.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 17.6.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law; or
 - 17.6.6 becomes aware of a Data Loss Event.
- 17.7 Taking into account the nature of the processing, the Supplier shall provide Network Rail with all reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made (and insofar as possible within the timescales reasonably required by Network Rail) including by promptly providing;
- 17.7.1 full details and copies of the complaint, communication or request;
 - 17.7.2 such assistance as is reasonably requested by Network Rail to enable Network Rail to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 17.7.3 Network Rail, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 17.7.4 assistance as requested by Network Rail following any Data Loss Event; and
 - 17.7.5 assistance as requested by Network Rail with respect to any request from the Information Commissioner's Office, or any consultation by Network Rail with the Information Commissioner's Office.

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- 17.8 The Supplier shall maintain complete and accurate records to demonstrate its compliance with this Clause 17 and shall upon reasonable request, promptly make them available to Network Rail.
- 17.9 The Supplier shall allow for all reasonable audits of its Data Processing activity by Network Rail or Network Rail's designated auditor.
- 17.10 Before allowing any Sub-processor to process any Personal Data, the Supplier must obtain the written approval of Network Rail and enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Clause 17 such that they apply to the Sub-processor.
- 17.11 The Supplier shall notify Network Rail as soon as is reasonably practical if it considers that any of Network Rail's instructions infringe the Data Protection Legislation.
- 17.12 Where the Parties include two or more Joint Controllers as identified in Annex 1 – Protection of Personal Data within Schedule 1, those Parties shall comply with the terms outlined in Annex 2 – Joint Controller Agreement in replacement of Clauses 17.2 – 17.11 for the Personal Data under joint control. However, if there is still also a controller-to-processor relationship under the Agreement or Contract Order, Clauses 17.2.- 17.11 shall apply to that relationship.

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

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

19. Employment Protection and TUPE

Notwithstanding anything to the contrary elsewhere in this Agreement:

- 19.1 the Supplier shall be responsible for and shall indemnify and keep indemnified Network Rail and any successor supplier from and against all and any costs, claims, expenses, damages, demands, actions, losses and liabilities arising out of or in connection with any claim in respect of any person which arises or is alleged to arise by reason of the Supplier's failure to comply with its obligations and/or for failure to inform and consult under the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or re-enacted from time to time ("TUPE");
- 19.2 in the last 12 months prior to completion of the Services or after notice of termination has been given in accordance with Clause 15, within 28 days of Network Rail's request, the Supplier shall (where TUPE is likely to apply) provide Network Rail with a list of names, ages, addresses and national insurance numbers of all persons who are, who have been, or who may be at any time concerned with the Services or any part of them, specifying their job title, job description, basic salary, bonus and all other emoluments and benefits, period of continuous employment, the percentage of the time that they have worked on this Agreement, details of any agreements entered into with employee representative bodies in relation to such persons, details of all training and competency courses attended and certificates or qualifications obtained, place of work, all relevant contractual and non-contractual termination or severance arrangements, notice periods, contractual holiday entitlements, copy of employment contract or applicable standard terms and employee handbook, immigrant status and right to work documentation, information on any disciplinary or grievance procedure taken against or by any person within the preceding 2 years, information about any tribunal claims in the preceding 2

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years or whether there are reasonable grounds to believe a claim may be brought and such other requirements as Network Rail may reasonably require (altogether the "Employee Data"). Network Rail will, subject to compliance with any Data Protection Legislation, be permitted to disclose any information provided to it under this sub-clause in summary and/or anonymised form to any person who has been invited to tender for the provision of the Services (or similar services) and to any successor supplier and successor supplier's sub-contractors;

- 19.3 in the last 12 months prior to completion of the Services or after notice of termination has been given in accordance with Clause 15, the Supplier shall (and shall procure that any Sub-Contractor shall) provide to the people engaged in the performance of this Agreement, written contracts of employment or statements of terms of employment, in either case complying with the requirements of Section 1 of the Employment Rights Act 1996, and retain copies of such documents together with such other documentation and PAYE records as may reasonably be required by Network Rail ("Personnel Records") and shall (where TUPE is likely to apply) within 28 days of Network Rail's request, whether during the performance of this Agreement or following the end of this Agreement (whether lawfully or otherwise) deliver up to Network Rail or to such person as Network Rail may nominate, the Employee Data, such copies of the Personnel Records as may be required by Network Rail and, to the extent not otherwise provided, any employee liability information pursuant to and in accordance with Regulation 11 of TUPE. Network Rail may communicate such information to persons intending to tender to execute services of the nature of the Services;
- 19.4 the Supplier shall not (and shall procure that any Sub-Contractor shall not) (where TUPE is likely to apply) in the last six months prior to completion of the Services or after notice of termination has been given in accordance with Clause 15, without the prior written permission of Network Rail:
- (i) vary or purport or promise to vary (in the employee's favour), the terms of the contract of employment of any person engaged wholly or principally in the execution of the Services;
 - (ii) terminate or give notice to terminate the employment or engagement of any person engaged wholly or principally in the execution of the Services;
 - (iii) deploy or assign any person to perform the Services who is not already doing so with the effect that the number of persons engaged wholly or principally in the execution of the Services increases;
 - (iv) increase or reduce to any significant degree the proportion of working time spent on the Services by any person engaged wholly or principally in the execution of the Services; or
 - (v) introduce any new contractual or customary practice (including any payments on termination of employment) applicable to any person engaged wholly or principally in the execution of the Services;
- 19.5 the Supplier shall not (and shall procure that any Sub-Contractor shall not) (where TUPE is likely to apply), without the prior written consent of Network Rail create or grant, or promise to create or grant, terms or conditions of employment for any new employee engaged wholly or principally in the execution of the Services if and to the extent that such terms or conditions are materially different to the terms or conditions of employment of equivalent or nearest equivalent existing employees (which themselves

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comply with sub-clause 19.4) at the date of commencement of employment of such new employee;

- 19.6 the Supplier shall (and shall procure that any Sub-Contractor shall) (where TUPE is likely to apply) at all times comply with its information and consultation obligations under Regulation 13 of TUPE; and
- 19.7 the Supplier shall indemnify and keep indemnified Network Rail and any successor supplier against all costs, claims, expenses, damages, demands, actions, losses and liabilities arising out of or in connection with:
- (i) any act, default or omission of the Supplier or any Sub-Contractor in respect of any person who was or is employed or engaged by the Supplier or any Sub-Contractor;
 - (ii) the employment or termination of employment of any person engaged wholly or principally in the execution of the Services up to and including the date of completion of the Services or expiry or termination of this Agreement;
 - (iii) any breach by the Supplier or any Sub-Contractor of its obligation to provide employee liability information to Network Rail or any successor supplier in accordance with Regulation 11 of TUPE; and/or
 - (iv) any breach by the Supplier of sub-clauses 19.4, 19.5 and/or 19.6;

and, despite anything else in this Agreement, such a successor supplier can directly enforce the indemnity in its favour provided for by sub-clauses 19.1 and 19.7.

20. Notices

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

- 20.1 if delivered personally at the time of delivery;
- 20.2 if pre-paid recorded delivery or registered post 48 hours from the date of posting; and
- 20.3 if registered airmail 5 days from the date of posting.

Provided that if deemed receipt occurs before 9am on a business day the notice shall be deemed to have been received at 9am on that day and if deemed receipt occurs after 5pm on a business day or on any day that is not a business day the notice shall be deemed to have been received at 9am on the next business day. For the purpose of this Clause "business day" means any day that is not a Saturday, a Sunday or a public holiday in the place at or to which the notice is left or sent.

21. Entire Agreement

This Agreement and the documents referred to in it constitute the entire agreement and understanding of the Parties and supersede any previous agreement between the Parties relating to the subject matter of this Agreement.

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22. Changes

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

23. Governing Law and Jurisdiction

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

24. Compliance

General

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

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

Bribery Act Compliance

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

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

Modern Slavery Act Requirements

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

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

Remedies

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

25. Contract Orders

25.1 When Network Rail requires the Supplier to perform services pursuant to this Agreement, it shall issue to the Supplier a Contract Order in accordance with the process described in Schedule 5 stating:

25.1.1 the service to be executed pursuant to the Contract Order;

25.1.2 key dates for the performance of the service;

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- 25.1.3 the lump sum price or other method of reimbursement for the provision of such service calculated on a fair and reasonable basis having regard to the rates and prices included in the Pricing Document;
 - 25.1.4 the method for calculating instalment payments in respect of such price.
- 25.2 When all of the elements of the Contract Order have been accepted or agreed pursuant to Clause 25.1, it shall be final and binding on the Parties and:
 - 25.2.1 the service under that Contract Order shall form part of the Services;
 - 25.2.2 the price shall form part of the Contract Price; and
 - 25.2.3 the Supplier shall proceed to perform the service under that Contract Order and in accordance with the provisions of this Agreement.
- 25.3 Network Rail does not warrant the quantity of service to be instructed during the Term. Network Rail reserves the right to procure any item of service described in this Agreement from other suppliers or using its own staff.

26. Freedom of Information

- 26.1 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.
- 26.2 The Supplier shall (and shall procure that its Sub-Contractors shall):
 - 26.2.1 provide all necessary assistance and cooperation as reasonably requested by Network Rail to enable it to comply with its obligations under the Information Acts;
 - 26.2.2 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;
 - 26.2.3 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
 - 26.2.4 not respond directly to a request for information unless authorised in writing to do so by Network Rail.
- 26.3 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.
- 26.4 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

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Freedom of Information Act 2000) to the extent that it is permissible and reasonably practical for it to do so and shall consider any reasonable and timely representations made by the Supplier regarding the application of exemptions to the requested information.

- 26.5 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.
- 26.6 The provisions of this Clause 26 shall apply equally to Network Rail when the Supplier is subject to the Information Acts.

27. Equality and Diversity

- 27.1 The Supplier shall perform its obligations under this Agreement in accordance with:
 - 27.1.1 all applicable equality Law (whether in relation to age, disability, gender reassignment, marriage or civil partnership status, pregnancy or maternity, race, religion or belief, sex or sexual orientation (each a "Relevant Protected Characteristic") or otherwise);
 - 27.1.2 Network Rail's equality, diversity and inclusion policy as published by Network Rail from time to time; and
 - 27.1.3 any other requirements and instructions which Network Rail reasonably imposes in connection with any equality obligations imposed on Network Rail at any time under applicable equality Law.
- 27.2 The Supplier shall take all reasonable steps to secure the observance of Clause 24.1 above by its employees, agents, representatives and Sub-Contractors.
- 27.3 The Supplier acknowledges that Network Rail is under a duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination (on the grounds of a Relevant Protected Characteristic); to advance equality of opportunity, and to foster good relations, between persons who share a Relevant Protected Characteristic and persons who do not share it. In performing its obligations under this Agreement, the Supplier shall assist and co-operate with Network Rail where possible in satisfying this duty.

28. Information Security

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

29. Real Living Wage

- 29.1 The Supplier shall and shall also use reasonable endeavours to procure that its relevant sub-contractors (if any) shall:
 - 29.1.1 ensure that none of its workers or its subcontractor's workers engaged in the performance of this Agreement in London and the rest of the UK and who would also satisfy the eligibility criteria set by the Living Wage Foundation (or any replacement thereof) is paid an hourly wage (or equivalent of an hourly wage)

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less than the Real Living Wage; and

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

29.2 Unless stated otherwise in the Appendix, if the Real 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 Real Living Wage anticipated during the term of this Agreement have been factored into the Contract Price.

29.3 Any failure by the Supplier to comply with the provisions of Clause 29.1 shall be treated as a material breach under this Agreement.

30. Force Majeure

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

31. Intermediaries Legislation (IR35) - Engagement of Off-Payroll service providers through the Supplier

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

31.1 The Supplier shall comply with the Intermediaries Legislation and all reasonable instructions and requests for information from Network Rail in respect thereof.

31.2 The Supplier shall advise Network Rail of any relevant changes in the status of Supplier Personnel.

31.3 The Supplier shall supply all the information required, and to any specified time, for Network Rail to report to the Department for Transport and HM Treasury as to compliance with the Intermediaries Legislation including the number of workers affected.

31.4 The Supplier shall be liable for and shall indemnify Network Rail against all and any loss, damage, cost, expense, liability, claims and proceedings whatsoever in respect of a failure of the Supplier to comply with this Clause 31.

31.5 Network Rail shall provide all reasonably requested information within a reasonable timescale to support the Supplier in its compliance with the Intermediaries Legislation.

31.6 Failure by the Supplier to comply with this Clause 31 shall be deemed to be a material breach of this Agreement.

32. Performance Security

- 32.1 Where specified in the Appendix the Supplier shall obtain and provide to Network Rail, forthwith upon entry into this Agreement, a parent company guarantee in the form annexed in the Contract Specific Conditions from the Supplier's ultimate holding company. For these purposes "ultimate holding company" shall mean the parent company of the group of companies of which the Supplier is a member (as each of those terms is defined in s.170 of the Taxation of Chargeable Gains Act 1992).
- 32.2 The Supplier's compliance with Clause 32.1 shall be a condition precedent to any obligation on the part of Network Rail to make any payment that may otherwise be due under this Agreement and the Supplier acknowledges that it has no entitlement either to receive payment or to exercise any rights in respect of non-payment arising under this Agreement unless and until the Supplier has provided a parent company guarantee in accordance with Clause 32.1 if so required.

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SCHEDULES

Schedule 1: Scope of Services

Schedule 2: Contract Requirements HSEA Conditions

Schedule 3: Key Supplier Personnel – **Not Applicable**

Schedule 4: Pricing Documents

Schedule 5: Process for issuing Contract Orders

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PQQ ISSUE

SCHEDULE 1 - Scope of Services

DRAFT
PQQ ISSUE

**SCHEDULE 2 - Contract Requirements
HSEA Conditions**

DRAFT
PQQ ISSUE

1 Health and Safety

- 1.1 The Supplier shall comply with all applicable European Union (EU) Directives and UK legislation regarding health and safety and the environment.
- 1.2 The Supplier shall also comply with and ensure that all of his personnel are aware of the following Network Rail policies:
 - [Code of Business Ethics](#);
 - [Drugs and Alcohol](#); and
 - [Lifesaving Rules](#).
 - Code of Conduct
- 1.3 Upon entry to Network Rail property the Supplier's staff, and any of its subcontractors, will report directly to the Network Rail Manager of the proposed worksite, and comply with all of Network Rail's safety policies, including receipt of Site Safety Induction. The Supplier's staff and subcontractors shall not go anywhere on Network Rail property without supervision..
- 1.4 Where necessary the Supplier shall provide and the Supplier's staff and subcontractors shall wear appropriate high visibility personal protective equipment (PPE) in compliance with RIS 3279-TOM and EN ISO 20471.
- 1.5 Where interface with the Operational Railway is necessary, the Supplier shall ensure that staff with the appropriate 'Track Safety Competencies' (e.g. PTS and IWA) are used.
- 1.6 It is the Supplier's responsibility to ensure that appropriate risk assessments have been undertaken, ensuring that a Safe System of Work is in place before any activities commence that involve interfaces with the Operational Railway. The Supplier's completed Safe System of Work shall be submitted to Network Rail's Representative prior to the commencement of the activities.
- 1.7 The Supplier is responsible for ensuring that compliance with NR/L2/OHS/019 'Safety of People Working on or Near the Line' is achieved when undertaking any activity that interfaces with the Operational Railway.
- 1.8 Where the proposed service will, or will have the potential to, materially affect the operational railway and infrastructure, the supplier will comply with the Construction (Design and Management) Regulations 2015, ensuring the duty to coordinate health and safety matters and to cooperate with all dutyholders, effectively in developing, promoting and checking the effectiveness of measures to ensure the health, safety and welfare of any person.
- 1.9 Where the proposed service will, or will have the potential to, result in technical, operational or organisational change to the railway system, the supplier will comply with the Railway and Other Guided Transport Systems (Safety) Regulations 2006, supporting development of safety management systems (SMS) to manage the risks associated with the service, including the application of the Common Safety Method Risk Assessment, to ensure that risks introduced by the supplier and its service, including subcontractors, are also managed through application of the CSM RA.

2 Quality

- 2.1 Unless otherwise agreed in writing by Network Rail's Representative, the Supplier shall maintain an auditable documented quality management system (QMS) and quality plan (QP) for this Contract, either certified to BS EN ISO 9001:2015, or sufficient to meet the requirements of this standard to the satisfaction of Network Rail's Representative. The Supplier shall notify Network Rail's Representative of any material changes to his QMS.
- 2.2 The Supplier shall provide Network Rail's Representative with details of any significant failures revealed at either internal or third party audit of the Supplier's QMS or QP for this Contract and also allow Network Rail's Representative to carry out similar audits if he so requires. The Supplier shall provide access to all staff, premises and records as necessary to assist Network Rail's Representative in such audits.

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3 Environment

- 3.1 The Supplier shall comply with Network Rail's Environment and Sustainable Development Strategy and Network Rail's Level 1 Environment and Social Performance Policy. The Level 1 Policy includes the following four appendices, which shall be complied with:

[Environmental Policy](#)

[Social Performance Policy](#)

[Weather Resilience and Climate Change Adaptation Policy](#)

[Energy and Carbon Policy](#)

3.2 Network Rail Standards

NR/L2/ENV/015	Environment and Social Minimum Requirements for Projects
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Note : Network Rail Standards are available free of charge on the Network Rail Standards Portal at https://global.ihs.com/csf_home.cfm?&csf=NR

3.3 ESMP

- 3.3.1 The Supplier shall take particular cognisance of Network Rail Standard NR/L2/ENV/015 and the need to produce an), Environment and Social Management Plan (ESMP) and incorporated Environment and Social Risk Assessment (ESRA) and Incident Response Plan (IRP) as appropriate for the Service and as required by this standard. The ESMP will be required per work bank or project, and this will be confirmed by the appropriate Network Rail's Representative. The ESMP will be completed by the Supplier and agreed with Network Rail's Representative within 28 days of contract award and prior to the start of the Service. For Services where the contract mobilisation period is less than 28 days, the Supplier shall submit the ESMP documentation to the Network Rail's Representative at least 14 days before on-site works commence.

Please note that site surveys may be required as part of the ESMP e.g. ecological or protected species surveys, to satisfy Network Rail of identification of potential environment and social impacts.

The Supplier shall comply with Section 5.2 of the Network Rail Standard NR/L2/ENV/015 and shall establish and/or maintain a Permits, Licenses and Consents register and comply with all PLCs as required.

The Supplier will liaise at the start of the work package or project, with Network Rail Project Manager and/or Environmental Specialist/Environment Manager and/or Community Relations Manager to agree appropriate communication pathways. Environment and social Inspections and audits will be undertaken as necessary by Network Rail staff during service/projects with suppliers able to view results of audits.

3.4 Reporting of Environmental Incidents

- 3.4.1 The Supplier shall report all environmental incidents that occur to the relevant control centre.
- 3.4.2 The Supplier shall comply with Network Rail's Level 3 Reporting Standard NR/L3/OHS/0046 'The Reporting, Investigation and Recording of Safety and Sustainable Development Events and Close Calls within Infrastructure

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SCHEDULE 3: SUPPLIER KEY PERSONNEL

Not Applicable

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SCHEDULE 4 - PRICING DOCUMENT

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PQQ ISSUE

SCHEDULE 4 - PRICING DOCUMENT

1. GENERAL

- (i) In consideration of the proper performance and completion of the Services, the Network Rail shall pay the Supplier in accordance with this Agreement.
- (ii) The method of pricing to be used shall be determined by Network Rail's Representative.
- (iii) The rates for activities shall include everything necessary to carry out the activities in accordance with all of the requirements of this Agreement.
- (iv) The Network Rail's Representative shall be responsible for awarding and agreeing the completion of the Services.
- (v) Where during the execution of the Services the Supplier identifies and notifies Network Rail's Representative of Services at variance to the tender scope of Services then it shall be agreed and valued at analogous rates to those contained within the pricing document and in the cases where there are no analogous rates then fair rates shall be agreed.

2. DAYWORKS

- (i) During the period of this Agreement the Network Rail's Representative may require the Supplier to undertake Services reimbursed on a Daywork basis. Such Services shall be initiated using an instruction. The Services shall be priced using the rates set out in the Schedule of Rates.
- (ii) All Network Rail instructions shall be in writing. Verbal instructions from Network Rail's Representative shall be of no effect unless confirmed in writing.
- (iii) Where instructions are issued for the supply of Services on an rates basis, the management of time-based costs shall be as follows:-

a) Daily Rate

The daily rates stated in this schedule shall be all-inclusive rates payable to the Supplier for each full-day worked. The daily rate shall be based on a minimum 7 hour day. Rates may be divided by 2 to give a rate per half day, which shall be the smallest unit of measure.

b) Hourly Rate

The hourly rates stated in this schedule shall be all-inclusive rates payable to the Supplier for each full-hour worked. These hourly rates may be divided by 4 to give a rate per quarter-hour, which shall be the smallest unit of measure.

c) Time Recording

Time worked shall be recorded on the Supplier's timesheet showing staff name, date, location, start time, finish time, meal breaks taken (failure to indicate a meal break shall result in 30 minutes being deducted) and total hours. Time worked shall be recorded down to the nearest unit of measure, i.e. quarter of an hour.

The Timesheet shall be the Supplier's and include carbonated copies.

d) Time authorisation

The Supplier shall ensure that each of the personnel shall, at the end of each working week, complete time-sheets in the form required by Network Rail for all personnel provided during that week and submit them to the Network Rail Representative for approval, which shall be signified by the signature of Network Rail's Representative (or other relevant approval method notified by the Network Rail from time to time). Once such approval is obtained, that timesheet becomes an approved timesheet.

The original top copy of the timesheet will be retained by the Network Rail's Representative.

The Supplier shall ensure that all approved timesheets have been sent to the person noted on the relevant instruction. Copies of timesheets that are not approved timesheets, or approved timesheets that are sent 3 months or more after the end of the relevant working week, will not be accepted or paid for by Network Rail.

3. RATES & PRICES

- (i) The rates for shall include the following:
- a. Complying with the terms and conditions of the contract and specification.
 - b. The cost of employing personnel including training, medical costs, PPE and equipment as laid out in the scope of services.
 - c. Periods of absence for whatever reason (i.e. sickness, holidays, competency training, medical screening, suspension for poor performance, Suppliers internal matters and the like).
 - d. Time and cost incurred by personnel in travelling to and from the designated place of work and home and subsistence, lodging and the like for work carried out at any location within the Project & Services
 - e. Inclusive of the Supplier's corporate and home office overhead and profit
 - f. Inclusive of all expenses unless otherwise specified on daywork.

- g. The rates and prices shall be in pounds sterling and shall be exclusive of VAT.
 - h. The requirements of the payment terms.
 - i. The provision of a single point of contact to administer the Contract and attend the Network Rail's meetings.
 - j. Transport to and from the site and the provision of tools and equipment appropriate for the Services to be undertaken.
 - k. The preparation and submission for agreement a record sheet confirming the Services carried out, to be agreed with the Network Rail's Representative.
- (ii) Where the Network Rail is providing 'free issue' resources in conjunction with the Services, the Supplier shall be responsible for calculating the amounts required, coordinating deliveries of and notifying Network Rail of any deficiencies or discrepancies in the resources delivered. Thereafter the Supplier will be responsible for any loss, theft or excessive waste and the like of 'free issue' resources.

4. PRICE REVIEW (NR2MT and NR3MT ONLY)

- (i) For the purposes of this clause the rates to be adjusted shall mean the monetary prices contained within the pricing documents, excluding percentages and the like e.g. the percentage additions to prime cost and provisional sums.
- (ii) All rates shall remain fixed for the first 12 months of this agreement. At this point, and on subsequent contract anniversary dates the Supplier or Network Rail may request an adjustment to the rates in accordance with the Consumers Price Index (CPI) published by the Office of National Statistics upon request. For each year the price adjustment will be calculated as;

$$\frac{\text{CPI index 42 days prior to anniversary of contract}}{\text{CPI index 42 days prior to award of contract}} \times \text{Base prices in pricing document}$$

- (iii) Any changes to the above calculations due to the application of Firm Indices prior to an agreement being reached will be the subject of an adjustment.
- (iv) Any adjustments to the indices applied by the Office of National Statistics Monthly Digest of Statistics subsequent to an agreement being reached for a price review shall be disregarded.

5. APPLICATIONS FOR PAYMENT

- (i) The Supplier may apply for payment of Services at the end of the Rail Industry Period in which they are fully completed and delivered to Network Rail, or in the case of part completed Services where interim payments have been agreed with Network Rail's

Representative, on a pro-rata basis at each period by the end of the first week after the end of each Period, in a format prescribed by Network Rail's Representative

- (ii) Network Rail's Representative shall review this application against the records for each individual or the performance of the Services carried out and then the Network Rail's Representative shall issue a payment certificate deducting any performance regime adjustments that may be due.
- (iii) The payment process will be supported by the following where applicable;
 - a. Completion or a detailed progress report stating the percentage completed for interim payments
 - b. Signed original timesheets (photocopies are not acceptable)
 - c. Copies of invoices to support any additional fees and the like.

6. AGREED RAIL INDUSTRY PERIODS

- (i) Network Rail's Representative shall issue to the Supplier at the start up meeting the list of the Agreed Rail Industry Periods for the purposes of application for payment.

7. ACCESS TO PAYMENT INFORMATION

- (i) Suppliers to Network Rail will be given access to Network Rail's iSUPPLIER system which will enable the progress of payments and the status of invoices to be viewed on-line. This includes the date on which payment will be received or the need for the Supplier investigate a problem e.g. if an invoice is shown as being 'on hold'

PREAMBLES TO THE SCHEDULE OF RATES

Rates & Prices

1. The following Schedule of Rates shall be read in conjunction with the Project and Services (including any associated information, drawings and specifications)
2. The Supplier's prices or rates in this schedule are deemed to be inclusive of the requirements of this agreement and all costs and liabilities in carrying out the Services, including but not limited to the Supplier's overhead, profit, fees, licences, testing and statutory requirements, the provision of all necessary equipment and expertise, required for the execution and completion and of the Services described in the contract

General Principles

3. Rates shall include for working alongside and in cooperation with other Suppliers engaged in Services associated with the maintenance and renewal of the infrastructure, working either continuously or staged to suit the progress of the Services as a whole.
4. The rates shall include for but are not limited to (wherever necessary):
 - a. The preparation and management of the Services.
 - b. Familiarisation of with the location of the Services, including that of overhead, surrounding and underlying conditions.
 - c. Safe systems of work.
 - d. Safety, health and welfare facilities including PPE
 - e. Mobile phone, IT equipment and software licences
 - f. Expenses incurred at the 'normal' place of work or at the location stated in the Services.
 - g. Record photographs
 - h. Completing any forms, reports or estimates required by the contract
 - i. Attending any meetings required by the contract
 - j. Providing instructions, manuals and 'as built' drawings (CAD quality or similar approved)
5. A price or rate shall be inserted against each item in the Schedule of Rates. Items against which no price is entered shall be considered as covered by other prices or rates in the Schedule of Rates.

Schedule of Rates

1. Basis of Pricing – Schedule of Rates

In consideration for the provision of the Services the Supplier will be paid in accordance with the Conditions of Contract based on the following Agreed Schedule of Rates:

[SUPPLIER RATES TO BE INSERTED HERE]

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2. Travel and Subsistence Expenses incurred at temporary work sites.

Travel and subsistence expenses shall only be paid where the relevant staff have been instructed by Network Rail' Representative in writing to work or attend meetings ten miles or more away from their assigned place of work or the location stated in the Services.

Expenses reasonably incurred on Network Rail business shall be recorded on an expense form in a format agreed by Network Rail's Representative.

Valid VAT receipts or other documentation must be provided wherever possible in support of all items of expense claimed.

Completed expenses forms shall all be signed by the Supplier's relevant staff member and supervisor and passed to the Network Rail Representative responsible for the commission, who will verify the expenses and if accepted, will countersign to signify agreement to the expenses incurred. In situations where errors have been identified, Network Rail's Representative will return the timesheet unauthorised and advise the Supplier where errors have been identified.

A copy of countersigned Expenses Forms shall be attached to the Supplier's invoice relating to the time in which the expenses were incurred.

Expenses must be shown as a separate line on the invoice.

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NETWORK RAIL 2 (MT)

SCHEDULE 5: PROCESS FOR ISSUING CONTRACT ORDERS

Contract Orders shall be awarded as follows:

Direct Award

Network Rail may shall direct award all works to the supplier under the Agreement without a call for mini-competition. These services shall be priced using the rates and prices in Schedule 4 Pricing Document.

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NETWORK RAIL 2 (MT)

SCHEDULE 5 – APPENDIX 1

NR2 (MT) CONTRACT ORDER FORM

Agreement Title:	CPA Ref:
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To:

From:

Network Rail Infrastructure Ltd

Contract Order	Title:
	Ref No:
	Purchase Order No:
	Date of Issue:

Duration of service and key dates for performance:	
Payment instalment method:	
Network Rail's Representative Assistants:	Name: <i>Delegated all duties save for those in Clauses 5 & 15. (add others as appropriate)</i>
Intermediaries Legislation:	Does not apply / Applies

In accordance with Agreement Clause 25 you are hereby instructed to carry out the following services:

Add service and pricing details here together with any additional requirements for the processing of personal data

Lump Sum (if applicable) £

For the Supplier	For Network Rail (with Authority to Contract)
Signature:.....	Signature:.....
Printed Name:	Printed Name:
Date:.....	Date:.....