

# NETWORK RAIL 7

**Network Rail Term Contract  
for the  
Operation and Maintenance  
of  
[Insert on-track plant details]**

**Term:** [Insert years]

**Contract Area:** [Insert]

Signed by: \_\_\_\_\_

for and on behalf of Network Rail

Signed by: \_\_\_\_\_

for and on behalf of the Contractor

Agreement/Contract No.: \_\_\_\_\_

# NETWORK RAIL 7

## CONTRACT AGREEMENT

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

between:

1. **NETWORK RAIL INFRASTRUCTURE LIMITED** (a company registered in England under number 2904587) whose registered office is at Kings Place, 90 York Way, London, N1 9AG; and
2. **[NAME OF CONTRACTOR]**: [a company registered in England under number ..... whose registered office is at .....].

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 The Appendix;
  - 1.3 Contract Specific Conditions and annexed form of guarantee (if applicable);
  - 1.4 Conditions;
  - 1.5 Technical Workscope;
  - 1.6 Contract Requirements HSQE;
  - 1.7 Preliminaries; and
  - 1.8 Pricing Document.

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

- 2 The Parties agree that the Term is, subject to the provisions of this Agreement, [Insert months/years] from the Commencement Date. The Agreement shall automatically expire at the end of the Term, but may be extended annually at the Employer's sole discretion by no more than [Insert] annual extensions issued at least two months before the end of the Term.
- 3 In consideration of the payments to be made by the Employer to the Contractor the Contractor hereby covenants with the Employer to provide the Services and construct and complete the Services in conformity in all respects with the provisions of this Agreement.
- 4 The Employer hereby covenants to pay to the Contractor in consideration of the provision of the Services and the construction and completion of the Services the Contract Price at the times and in the manner prescribed by this Agreement.

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

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

Authorised signatory .....

Authorised Signatory as approved by a resolution of  
the board of Network Rail Infrastructure Limited on  
16<sup>th</sup> May 2007.

OR

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

Authorised signatory .....

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

Director .....

Director/Company Secretary .....

OR

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

Director .....

Director/Company Secretary .....

OR

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

Director .....

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## **Schedule of Post Tender Amendments**

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

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## Appendix

(Note: Relevant clause numbers are shown in brackets)

<b>1</b>	Parent company guarantee (clause 8.2)	Required
<b>2</b>	<u>Insurance</u>	
	Public liability insurance (clause 9.2.1)	£5,000,000 (five million pounds)
	Employer's liability insurance (clause 9.2.2)	£5,000,000 (five million pounds)
	Loss or damage excess for any Plant (clause 9.4)	£100,000 (one hundred thousand pounds)
<b>3</b>	<u>Addresses for Service (clause 22)</u>	
	The addresses for service of the parties under clause 22 are as follows:	
	(i) The Employer: the address stated in the Contract Agreement marked for the attention of:	[Insert]
	(ii) The Contractor: the address stated in the Contract Agreement marked for the attention of:	[Insert]
<b>4</b>	Percentage of the lump sum price agreed in respect of each Contract order (clause 24.4)	[Insert]

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## Conditions

### 1 Definitions

Defined  
Terms

The following terms bear the meanings set out below:

**“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 Network Rail’s thirteen accounting periods in a full Contract Year;

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

**“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;

**“Commencement Date”** means the date of execution of the Contract Agreement;

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

**“Contractor’s Representative”** means the representative named in the Pricing Documents employed by the Contractor with overall responsibility for the performance of the Services under this Agreement, or any replacement of him agreed by the Employer from time to time;

**“Contract Area”** means the area where the Services are to be carried out as described in the Technical Workslope;

**“Contract Order”** means any order issued to the Contractor by the Employer pursuant to Clause 3 in respect of any of the Services;

**“Contract Price”** means the amount to be paid by the Employer to the Contractor in full consideration for the provision of the Services by the Contractor and the performance by it of its other obligations under this Agreement calculated in accordance with the provisions of the Pricing Documents;

**“Contract Year”** means in the case of the first year of the Term from the Commencement Date until 24.00 on 31 March and in subsequent years means the period from 00.00 hours on 1 April until 24.00 hours on 31 March or the expiry of the Term, as the case may be;

**“Daily Work Returns”** means the forms (sometimes also known as PHIRES forms) in the format specified in the Technical Workslope to be completed by the Employer and Contractor in relation to the ordering of plant and/or recording of Services carried out;

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

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

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**“Employer’s Facilities”** means any accommodation, Stabling Points and equipment to be made available by the Employer to the Contractor as described in the Technical Workslope;

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

**“Employer Representative”** means the person or persons notified by the Employer to the Contractor 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;

**“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;

**“Force Majeure”** shall mean any circumstances beyond the reasonable control of a party that prevents or impedes the due performance of the Contract including but not limited to the following matters:

- (i) war or hostilities;
- (ii) riot or civil commotion;
- (iii) epidemic;
- (iv) earthquake, flood, fire or other natural physical disaster;
- (v) denial of the use of any railway, port, airport or other means of public transport;
- (vi) strike, lock-out or other industrial action by workers or employers;
- (vii) act of terrorism.

The mere shortage of labour, materials or utilities shall not constitute Force Majeure unless caused by circumstances which are themselves Force Majeure.

**“Insolvent”** means that the Contractor:

- (i) enters into an arrangement, compromise or composition in satisfaction of its debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction); or
- (ii) without a declaration of solvency, passes a resolution or makes a determination that it be wound up; or
- (iii) has a winding up order or bankruptcy order made against it; or
- (iv) has appointed to it an administrator, administrative receiver, receiver or manager; or
- (v) is the subject of any analogous arrangement, event or proceedings in any other jurisdiction.

**“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

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any enforceable Community right within the meaning of the European Communities Act 1972;

“**Maintainer/Operator**” means the person or persons employed by the Contractor to maintain, service, operate and drive the Plant as required by the Technical Workslope and pursuant to each Contract Order;

“**Plant**” means the machines owned by the Employer or the Contractor as described in the Technical Workslope, to be operated by the Contractor in accordance with this Agreement;

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

“**Pricing Documents**” means the Pricing Documents referred to in the Contract Agreement;

“**Route**” means the route in the Contract Area where the Services pursuant to each Contract Order are to be carried out;

“**Services**” means all of the Services required to be provided by the Contractor pursuant to this Agreement as described in the Technical Workslope and in accordance with the Contract Orders;

“**Shifts**” means the shifts for operation of the Plant as part of the execution of the Services as defined in the Technical Workslope;

“**Site**” means the area in the Contract Area where the Services pursuant to each Contract Order are to be carried out;

“**Stabling Point**” means the stabling points for the Plant made available by the Employer or the Contractor as described in the Technical Workslope or such other stabling points as may be made available from time to time;

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

“**Technical Workslope**” means the technical workslope referred to in the Contract Agreement;

“**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;

## 2 Planning

Planning  
of  
Services:  
Employer

2.1 The Employer shall devise the overall plans for carrying out and completing the Services in accordance with the requirements of the Technical Workslope and shall progressively issue more detailed plans to the Contractor as follows:-

2.1.1 Long term plans of proposed quantities of Shifts and Services;

2.1.2 Outline plans. This stage covers the securing of adequate possession arrangements and where necessary seeks to balance Plant availability against demand;

2.1.3 Provisional plans. This stage covers the confirmation of Shifts, Routes or Sites, train paths and detailed support arrangements; and

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2.1.4 Confirmed plans. This covers the detailed planning for the Services delivery.

2.2 Within the overall plans established by the Employer pursuant to clause 2.1, the Contractor shall provide a detailed plan for the carrying out of the Services in the Contract Area to include (inter alia):

2.2.1 Identification and arranging train paths in accordance with the Employer's current procedures;

2.2.2 rostering staff and arrangements for transport and accommodation;

2.2.3 arrangements for access and egress to and from Stabling Points;

2.2.4 arrangements for re-fuelling, maintaining, servicing and loading the Plant;

2.2.5 arrangements for all movements of Plant between Stabling Points (or other locations) and possession entry and exit points at Sites; and

2.2.6 proposals for the timely ordering and delivery of any materials required, including having regard to quantities and logistics.

2.3 The Employer shall be responsible for:

2.3.1 making any site management arrangements that are necessary for the Plant to be operated within any Sites including, but without limitation, disconnection/reconnection of signalling equipment, removal/reinstatement of level crossings and foot crossings, road closures, marking up of track geometry, marking of cables and removal/reinstatement of point heating equipment.

2.3.2 the cost and provision of possession arrangements and possession management staff required for the safe operation of the Plant within any Sites;

2.3.3 recording the arrival and departure of the Contractor's personnel from any Sites.

2.3.4 specifying if the Plant is required to enter or leave any Routes or Sites in a particular orientation or direction; and

2.3.5 ensuring that static, kinematic and passing clearances are such as to avoid damage to the Plant.

## 3 Contract Orders

3.1 In accordance with the requirements of the Technical Workslope, at the commencement of this Agreement, the Employer's Representative shall issue a Contract Order regarding the quantity and type of Plant to be provided and maintained. The Employer's Representative may vary the quantity and type of Plant to be provided and maintained to the extent and frequency detailed in the Technical Workslope.

3.2 No less than the time period specified in the the Technical Workslope in advance of the Services being required for any Route or at any Site, the Employer shall issue to the Contractor a draft Contract Order stating:

3.2.1 the Services to be executed pursuant to the Contract Order;

3.2.2 the Route or Site in respect of such Services;

Quantity  
of Plant

Contract  
Orders  
for  
Routes or  
Sites

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- 3.2.3 the duration of the Shift which shall be ascertained by the Employer on a fair and reasonable basis having regard to any indicative periods stated in the Technical Workslope in relation to the relevant Service to be executed;
- 3.2.4 any necessary working direction for the Route or Site;
- 3.2.5 any necessary Site possession entry and exit directions;
- 3.2.6 any other information required for completion of the Daily Work Returns or as required by the Preliminaries or Technical Workslope.

The Employer shall not be entitled to issue any draft Contract Order relating to any period of time beyond the expiry of the Term.

Acceptance 3.3 Within seven days of receipt of the Employer's draft Contract Order pursuant to clause 3.2, the Contractor shall either accept the same or shall notify the Employer that it does not accept the Contract Order, in which case it shall state in detail what element of the draft Contract Order it does not accept and its reasons therefor. Any dispute in respect of any element of the draft Contract Order which cannot be agreed shall be referred for determination by the Adjudicator under clause 23.1 and the Adjudicator's decision shall be final and conclusive in relation to the elements to which it relates.

Confirmation of Contract Order 3.4 When all of the elements of the draft Contract Order have been accepted, agreed or determined pursuant to clause 3.3, it shall be final and binding on the Parties and:

- 3.4.1 the services under that Contract Order shall form part of the Services; and
- 3.4.2 the Contractor shall proceed to deliver the Services under that Contract Order in accordance with the provisions of this Agreement.

No Warranty of Work 3.5 The Employer does not warrant the quantity of Services to be instructed during the Term. The Employer reserves the right to procure any services described in this Agreement from other contractors or using its own labour.

## 4 Contractor's Obligations

Quality and Standards 4.1 The Contractor shall provide the Services and fulfil its obligations under this Agreement from the Commencement Date until the expiry of the Term:

- 4.1.1 with the reasonable skill, care and diligence to be expected of a contractor holding itself out as having the competence, expertise and resources necessary for the proper performance of the Services;
- 4.1.2 to the quality and standards required by the Technical Workslope, or where no quality or standard is so specified, to a good quality;
- 4.1.3 to comply with Railway Group Standards, Network Rail Standards and all equivalent standards;
- 4.1.4 so as to comply with all applicable Law and the Codes;
- 4.1.5 without compromising the safety of anyone on or about or using the Employer's property and/or railway infrastructure; and
- 4.1.6 to comply with the Preliminaries.

Operating Licence 4.2 The Contractor shall hold an appropriate operating licence as issued by the Office of the Rail Regulator relating to the provision of the Services.

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Compliance with Instructions and Orders	4.3	The Contractor shall perform the Services in accordance with the Employer's Instructions and Contract Orders.
Maintenance of Plant	4.4	The Contractor shall ensure the Plant is maintained, calibrated and supplied in accordance with the requirements of the Technical Workslope and so as to be fully available to undertake the Services envisaged by the Employer's clause 2.1 overall plans and specified by clause 3 Contract Orders.
Inspection of Plant	4.5	The Contractor shall permit Network Rail to undertake detailed inspections of any maintenance records and the Plant as and when necessary to ascertain compliance with the requirements of the Technical Workslope. Where such inspection identifies non-conformance with the Technical Workslope either in the condition of an item of Plant or in its maintenance then the Contractor shall produce and implement an action plan to rectify such non-conformances without delay. Until rectification of the non-conformances has been accepted by the Employer's Representative, he may issue a notice restricting (including, if appropriate, suspending) the use of the item of Plant. Any Services lost as a result of such restrictions shall be deemed to be due to the default of the Contractor for the purposes of calculating payments in accordance with the Pricing Documents.
Use of Employer's Plant	4.6	The Contractor shall use the Employer's Plant solely in connection with the Services and may not use the Employer's Plant for any other purposes without the prior written consent of the Employer. The Contractor shall not remove, deface or cover up any name-plate or identification mark or number on the Employer's Plant nor shall it attempt to sell, mortgage, charge or otherwise deal with the Employer's Plant.
Data from Plant	4.7	Following delivery of each Shift and within the timescales stated in the Technical Workslope, the Contractor shall transfer to the Employer, in electronic form, all data required by the Daily Work Returns and the Technical Workslope. The Contractor shall at all times work with the Employer to assist in the development of data capture and transfer.
Reports and meetings	4.8	The Contractor shall provide progress reports and attend meetings with the Employer's Representative as required by the Preliminaries and in accordance with the Employer's Instructions.
Remedy for failure to comply with Instructions	4.9	If the Contractor fails to perform the Services in accordance with this Agreement, then the Employer shall be entitled, in addition to any other remedy available to it, by notice to the Contractor to require the Contractor, at no additional cost to the Employer, to remedy such breach within the time stipulated in such notice, and if the Contractor fails to comply with such notice within the period specified by the Employer, 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 Contractor (provided that, in an emergency affecting safety, this provision shall apply without the requirement to give prior notice).
Indemnity for breach	4.10	The Contractor shall indemnify the Employer and shall keep it indemnified against each and every liability which it may incur to any person whatsoever and against all damage, loss, expense, cost, claims or proceedings suffered or incurred by it to the extent that the same arises out of or in connection with any negligence or breach of duty by the Contractor, its employees, the Sub-Contractors or other persons engaged by it in relation to this Agreement or any breach by the Contractor of its obligations under this Agreement.

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## 5 The Route / Site

- Access to the Routes, Sites and Employer's property
- 5.1 The Contractor shall not have possession of any of the Routes, Sites or the Employer's Stabling Points, but the Employer shall provide reasonable access to them for the purposes of this Agreement. Each of the Routes, Sites and the Employer's Stabling Points shall only be used by the Contractor for the purpose of carrying out the Services.
- Compliance with Employer's regulations
- 5.2 The Contractor and its employees the Sub-Contractors and other persons engaged by it in relation to this Agreement shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel whilst on the Routes, Sites and/or Employer's property.
- Obstruction prohibited
- 5.3 The Contractor shall not interfere with or obstruct any public or private rights or property (including, without limitation, the Employer's property, the Employer's neighbours' property, railway operations and traffic, road traffic and highways).
- Health & Safety
- 5.4 The Contractor shall strictly comply with the Employee's health and safety requirements as set out in the Contract Requirements HSQE. In particular, but without limitation, the Contractor shall ensure that all the Contractor's employees, the Sub-Contractors and other persons engaged by it in relation to this Agreement receive safety and skills training in accordance with the requirements of the Contract Requirements HSQE and the Employer may instruct the immediate replacement, at the Contractor's cost, of any person on and off the Routes, Sites or Employer's property who is not so trained.
- Operators
- 5.5 The Contractor shall ensure that the Operators have the requisite route knowledge to carry out the Services on each Route or Site in the Contract Area. If any Operator does not have such knowledge, the Employer may instruct the Contractor to employ at the Contractor's cost a conductor in relation to any Services.
- Unsuitable employees
- 5.6 The Employer reserves the right under this Agreement to refuse to allow to use the Plant or to allow onto any of the Routes, Sites or Employer's property or to permit to be used in connection with the Services any person employed or engaged by the Contractor, or by a Sub-Contractor, whose use would be, in the opinion of the Employer, undesirable. The decision of the Employer as to whether any person is to be allowed onto a Route, Site or the Employer's property shall be final and conclusive.

## 6 Employer's Instructions and Contract Orders

- Employer's Representative
- 6.1 The Employer's Representative shall be authorised to issue Employer's Instructions, Contract Orders and notices to the Contractor under this Agreement on behalf of the Employer, to the extent expressly notified to the Contractor by the Employer from time to time.
- Adjustment for instructions
- 6.2 If any Employer's Instruction or Contract Order issued under this Agreement:
- 6.2.1 shall require the Contractor to undertake services not provided for in, or to be reasonably inferred from, this Agreement; or
- 6.2.2 shall impose any additional obligation or restriction or shall require the omission of any services or of any obligation or restriction,

and provided that such Employer's Instruction or Contract Order has not arisen from, and compliance with it does not reveal, any negligence, omission or default of the Contractor, its employees, the Sub-Contractors or other persons engaged by it in relation to this

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Agreement, the Contract Price shall be adjusted and the provisions of clause 6.3 shall apply. Otherwise, the Contractor 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 Contractor with any such Employer's Instruction or Contract Order.

Calculation  
of  
adjustment

- 6.3 The Employer's Representative shall, after consultation with the Contractor and within a reasonable time after the issue of such Employer's Instruction or Contract Order, ascertain a fair and reasonable adjustment to the Contract Price based on prices or rates included in the Pricing Documents in respect of compliance by the Contractor with such Employer's Instruction or Contract Order.

## 7 Payment

Contact  
Price

- 7.1 In consideration of the proper performance of the Services, the Employer shall pay to the Contractor the Contract Price in accordance with the Pricing Documents.

Contractor's  
Applications

- 7.2 Not less than seven days after the end of each Agreed Rail Industry Period, the Contractor shall present to the Employer's Representative an application stating the total amount due to the Contractor calculated in accordance with the provisions of and with such supporting documents as may be required by the Pricing Documents. If the Contract Area includes more than one of the Employer's maintenance areas, the Contractor shall produce separate applications for each Area.

- 7.3 On or before the expiry of 14 days from the date of submission of the Contractor's application under clause 7.2, the Employer's Representative shall issue a notice stating the amount due to the Contractor from the Employer which shall be calculated in accordance with the provisions of the Pricing Documents less all amounts previously stated as due in any notice issued under this clause 7.3 and less any amount which may become due to the Employer or recoverable by the Employer from the Contractor, whether by deduction from the Contract Price under the provisions of this Agreement or otherwise. When applicable such certificate shall be treated as a notice for the purposes of s110(2) of the Housing Grants, Construction and Regeneration Act 1996 of the payment proposed to be made by the Employer to the Contractor.

- 7.4 The Contractor shall issue a VAT invoice in the amount stated in the Employer's Representative's notice under clause 7.3 and which includes the correct contract and purchase order number and is addressed to "Network Rail, Accounts Payable, P.O. Box 4145, Manchester M60, 7WZ", the Employer shall issue payment to the Contractor of the amount properly due to the Contractor together with VAT thereon on or before the final date for payment which shall be the expiry of 30 days from the date of receipt of the Contractor's VAT invoice. If the Contractor's invoice does not comply with the requirements of this clause 7.4 the Employer shall be under no obligation to pay the same.

- 7.5 The property in any goods, materials, equipment or plant intended for incorporation into the Employer's infrastructure shall vest in the Employer when they have been incorporated into the infrastructure or when the Contractor has received payment therefor pursuant to clause 7.4 whichever is the earlier. Where the value of any goods, materials, equipment or plant is included in an application under clause 7.2, the Contractor shall ensure that such goods, materials, equipment or plant are not removed from the places where they are situated at the date of such application except for delivery to the Site.

Correction  
of errors

- 7.6 All certificates/notices issued under this Agreement shall be issued by the Employer with a copy to the Contractor. The Employer may, on any payment delete, correct or modify any

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sum previously paid by it. No certificate/notice or payment issued or made by or on behalf of the Employer under this Agreement shall relieve the Contractor from any liability arising out of or in connection with this Agreement.

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

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

7.7.2 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 7.4.

Interest on late payment

7.8 If the Employer fails to pay the Contractor any sum properly payable under this Agreement on or before the final date for payment of it, the Employer shall pay the Contractor simple interest on that sum from the relevant final date for payment until the actual date of payment calculated at a rate of 4% above the base lending rate of HSBC Bank plc. 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.

## 8 Guarantees

Warranties and guarantees

8.1 The Contractor shall ensure that the benefit of any warranty or guarantee in respect of the Employer's Plant shall not be invalidated by its actions.

Parent Company Guarantee

8.2 If stated to be required in the Appendix, the Contractor 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 Contractor's ultimate holding company. For these purposes "ultimate holding company" shall mean the parent company of the group of companies of which the Contractor is a member (as each of those terms is defined in s.170 Taxation of Chargeable Gains Act 1992).

Failure to provide guarantee

8.3 The Contractor's compliance with the provisions of clause 8.2 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 Contractor 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 Contractor has provided any parent company guarantee so required.

## 9 Indemnities and Insurance

Third Party liability - Indemnity

9.1 The Contractor 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 personnel arising out of the

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or in the course of or caused by the carrying out of the Services, except to the extent that the same is due to any act or neglect of the Employer or the Employer's Representative.

Contractor's  
Insurances

9.2 Without prejudice to the Contractor's obligation to indemnify the Employer under clause 9.1, the Contractor shall:

9.2.1 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 Services (other than injury or death to persons referred to in clause 9.2.2) and in respect of injury or damage to property, real or personal, arising out of or in the course of or by reason of the carrying out of the Services. 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;

9.2.2 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 Contractor or such Sub-Contractor as the case may be arising out of or in the course of such person's employment. Such insurance shall comply with the Employer's Liability (Compulsory Insurance) Act 1969 and any statutory orders made thereunder or any amendment or re-enactment thereof and shall be for the sum specified in the Appendix for any occurrence or series of occurrences arising out of any one event;

9.2.3 The insurance policy referred to in clause 9.2.1 shall indemnify the Employer in the like manner to the Contractor but only to the extent that the Contractor may be liable to indemnify the Employer under the terms of this Agreement.

9.2.4 Both the Employer and the Contractor 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 Contractor shall be sufficient if given to the Employer's Representative without delay.

Employer's  
Third Party  
Insurance

9.3 Without prejudice to the Contractor's obligation to indemnify the Employer under clause 9.1 the Employer shall effect and maintain in the joint names of amongst others the Contractor and the Employer a policy in respect of third party insurance in respect of excess layers from £5,000,000 to the sum of not less than £155,000,000 in respect of any one occurrence and in the aggregate, but shall not be responsible for any amounts in excess of amounts insured or any retained liability or risks not insured or excluded by the application of the terms, exceptions or conditions of any such insurance. Such insurance shall not apply to the Contractor or Sub-Contractors who already maintain such insurance to comply with the Office of the Rail Regulator's requirements. The Contractor shall have the right to receive, on request, a copy of insurances effected or maintained by the Employer under this clause 9.3.

Insurance of  
Plant

9.4 The Employer and the Contractor shall each insure in the joint names of each other their own Plant against all risk of loss or damage howsoever caused. Such insurance shall cover the replacement value of the Plant. The Contractor shall be responsible for any loss or damage to the Employer's Plant for the first amount of any claim up to the value of the excess stated in the Appendix unless such claim shall have been caused by the negligent act or omission of the Employer, or the Employer's servants, agents, contractors or subcontractors. The Employer shall be responsible for any loss or damage to the Contractor's Plant for the first amount of any claim up to the value of the Contractor's insurance policy excess or the amount stated in the Appendix, whichever is the least,

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where such claim shall have been caused by the negligent act or omission of the Employer, or the Employer's servants, agents, contractors or subcontractors.

Evidence of Insurance 9.5 As and when it is reasonably required to do so by the Employer, the Contractor shall produce and shall cause the Sub-Contractors to produce for inspection by the Employer documentary evidence that the insurance required by clause 9.2 is properly maintained.

Breach by Contractor 9.6 Should the Contractor or any Sub-Contractor be in breach of any of their respective obligations under this clause 9, 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 to become due to the Contractor under this Agreement, or, if none are due, may recover the amount paid from the Contractor as a debt.

## 10 Claims Handling Provisions

Claims Handling Agreement 10.1 In these provisions, "The Claims Allocation and Handling Agreement" means the Agreement so entitled dated 1st April 2004 and made between the several parties whose names are contained in Schedule 6 thereof (the "Industry Parties") and Railway Claims Limited (the "Agency"), as amended from time to time in accordance with its terms and the expressions defined in the Claims Allocation and Handling Agreement shall have the same meanings in this clause 10. The Employer shall supply the Contractor with a copy of each amendment thereto as and when it is made.

Application of CAHA 10.2 These provisions shall apply:

10.2.1 if this Agreement is in connection with the maintenance or operation of the Employer's Railway Assets; and

10.2.2 in respect of the period (if any) while the Contractor is an Independent Contractor; and

10.2.3 where a claim, which arises out of or is connected with this Agreement, is made by a third party who does not have a contract with the Contractor:

(i) against the Employer or the Agency, which may result in a claim being made against the Contractor; or

(ii) against the Contractor, which may result in a claim being made against the Employer or the Agency (whether by the Contractor or otherwise).

In relation to clause 17 of the Claims Allocation and Handling Agreement this Agreement does hereby permit the recovery by the Employer of loss of revenue or other consequential losses that are direct and foreseeable.

Agency to defend claims 10.3 The Contractor irrevocably appoints the Employer as its agent to authorise the Agency (in consultation, where necessary, with Industry Parties and their insurers) to defend such a claim on behalf of the Contractor and the Industry Parties, in accordance with the Claims Allocation and Handling Agreement. In relation to such a claim, the Contractor shall be bound by the terms of that Agreement as if the Contractor were a party to it.

Payments under CAHA 10.4 Where such a claim results in a payment to the third party, the Contractor agrees that liability for such payment, and the costs of handing and defending the claim, shall be allocated in accordance with the Claims Allocation and Handling Agreement. The Contractor agrees to participate in the procedure for allocating liability set out in the

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Dispute Resolution Rules; and to be bound by the result as if the Contractor were party to those Rules, and such matters shall not be referable to adjudication or litigation in accordance with this Agreement.

Where Contractor solely liable

10.5 Conditions 10.3 and 10.4 shall not apply to any claim in respect of which the Contractor admits that it is liable and that no Industry Party is liable. In such a case, the Contractor itself may defend the claim.

Indemnity in respect of CAHA costs

10.6 Without prejudice and in addition to any other rights and remedies of the Employer under this Agreement, the Contractor shall indemnify the Employer against all losses, claims, liabilities, costs and expenses which are borne by the Employer under the Claims Allocation and Handling Agreement, and which arise out of either a breach of contract by the Contractor or a breach of a duty of care owed to a third party, which is the subject of a claim under the Claims Allocation and Handling Agreement

## 11 Copyright, Intellectual Property, Confidentiality and Photographs

Copyright licence

11.1 The Intellectual Property in the Documents shall remain vested in the Contractor but the Contractor hereby grants to the Employer an irrevocable, perpetual, royalty-free, non-exclusive licence to copy and use the Documents and the contents of it for any purpose whatsoever relating to the Employer's business including, but without limitation, the construction, completion, reconstruction, reinstatement, modification, extension, maintenance, repair, letting, sale, advertisement or use of the Services. The Employer shall be entitled to grant sub-licences to others in relation to the Documents and the licence hereby granted shall be assignable to third parties and shall continue to subsist notwithstanding the expiry of this Agreement. The Contractor shall not be liable to the Employer or any sub-licensee for any use of the Documents for any purpose other than that for which the same was prepared or provided by the Contractor.

Sub-Contractors

11.2 The Contractor shall use reasonable endeavours to procure that the Sub-Contractors shall grant a licence to the Employer in terms identical to clause 11.1.

Confidentiality

11.3 All information obtained by the Contractor in the course or conduct of this Agreement shall be held confidential and shall not be divulged by the Contractor to any third party save to the extent necessary to effect the execution of the Services and then only on the basis that the recipient of such information shall be bound by similar confidentiality obligations to those undertaken by the Contractor. The Contractor shall not issue any press release or other public document containing or make any public statement containing or otherwise disclose to any other person who is not a party information that relates to or is connected with or arises out of this Agreement or the matters contained in it without the prior written approval of the Employer as to its content and the manner and extent of its publication.

Photographs

11.4 Except as required to record the condition of the Employer's Plant or the condition or activities on the Route, Site or Employer's property for the purposes of delivering the Services the Contractor shall not at any time take any photograph of the Employer's Plant or infrastructure, 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 Contractor has obtained the prior written consent of the Employer.

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## 12 Assignment and Sub-Contracting

Assignment  
by parties

12.1 The Employer shall be entitled to assign, charge or transfer this Agreement or any of its rights under it. The Contractor shall not assign, charge or transfer this Agreement or any of its rights under it without the prior written consent of the Employer.

Sub-  
Contracting  
by  
Contractor

12.2 The Contractor shall not sub-contract any part of the Services (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.

Sub-letting  
does not  
relieve  
Contractor

12.3 No sub-letting by the Contractor and no consent of the Employer and nothing contained in this Agreement requiring the Contractor 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 Contractor from its responsibility for the due execution and completion of the Services in accordance with this Agreement.

## 13 Data Protection Act 1998

Data

The Contractor shall take all necessary steps under the Data Protection Act 1998 (including, where appropriate, the procurement of any consent) to allow for disclosure to appropriate Employer's personnel of all information required by this Agreement.

## 14 Employment Protection and TUPE

Notwithstanding anything to the contrary elsewhere in the Agreement:

TUPE  
Indemnity

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

Employee  
Data

14.2 in the last 12 months prior to completion of the Services under the last Contract Order, within 28 days of the Employer's request, the Contractor shall, where TUPE is likely to apply, provide the Employer with a list of names, ages, addresses and national insurance numbers of all persons who are, who have been, or who may be at any time concerned with the Services or any part thereof, specifying their job title, job description, basic salary, bonus and all other emoluments and benefits, period of continuous employment, the percentage of the time that they have worked under this Agreement, details of any agreements entered into with employee representative bodies in relation to such persons and such other requirements as the Employer may reasonably require (altogether the "Employee Data");

Personnel  
Records

14.3 in the last 12 months prior to completion of the Services under the last Contract Order, the Contractor shall (and shall procure that any Sub-Contractor shall) provide to the people engaged in the performance of this Agreement, written contracts of employment or statements of terms of employment, in either case complying with the requirements of Section 1 of the Employment Rights Act 1996, and retain copies of such documents together with such other documentation and PAYE records as may reasonably be required by the Employer ("Personnel Records") and shall, where TUPE is likely to apply, within 28 days of the Employer's Representative's request, whether during the performance of this Agreement or following the end of this Agreement (whether lawfully or otherwise) deliver

# NETWORK RAIL 7

up to the Employer or to such person as the Employer may nominate the Employee Data, such copies of the Personnel Records as may be required by the Employer and to the extent not otherwise provided, any employee liability information pursuant to and in accordance with Regulation 11 of TUPE. The Employer may communicate such information to persons intending to tender to execute Services of the nature of the Services;

Contracts:  
Variation

14.4 the Contractor shall not (and shall procure that any Sub-Contractor shall not) (where TUPE is likely to apply), in the last 6 months prior to completion of the Services, without the prior written permission of the Employer, vary or purport or promise to vary (in the employee's favour), the terms of the contracts of employment of any person engaged wholly or principally in the execution of the Services;

New  
employees

14.5 the Contractor shall not (and shall procure that any Sub-Contractor shall not) (where TUPE is likely to apply), without the prior written consent of the Employer create or grant, or promise to create or grant, terms or conditions of employment for any new employee engaged wholly or principally in the execution of the Services if and to the extent that such terms or conditions are materially different to the terms or conditions of employment of equivalent or nearest equivalent existing employees (which themselves comply with clause 14.4) at the date of commencement of employment of such new employee;

Regulation  
13

14.6 the Contractor 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.

TUPE  
transfers

14.7 The Contractor shall indemnify and keep indemnified the Employer and any successor contractor against all costs, claims, expenses, damages, demands, actions, losses and liabilities arising out of or in connection with any claim or demand arising out of or in connection with any act or omission of the Contractor of any Sub-Contractor and which the Employer or the successor contractor incurs:

14.7.1 in relation to any one or more employees whose employment has transferred or is alleged to have transferred to the Employer and/or a successor contract pursuant to TUPE and/or this Agreement; and/or

14.7.2 as a result of the Contractor's breach of clauses 14.4, 14.5 and/or 14.6,

and, despite anything else in this Agreement, such a successor contractor can directly enforce the indemnity in its favour proved for by this clause 14.7

## 15 Employer's Facilities and free issue materials

Property in  
Facilities

15.1 All of the Employer's Facilities or other property issued 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 Contractor for the purposes of this Agreement.

Availability  
of Facilities

15.2 The Employer shall make available to the Contractor 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 Contractor shall return the same to the Employer in the condition in which it was supplied (fair wear and tear excepted).

No liens

15.3 Neither the Contractor, 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 Contractor shall take all

# NETWORK RAIL 7

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.

- 15.4 The Employer shall make available to the Contractor at the relevant Site or other locations free of charge to the Contractor the goods and materials described in the Preliminaries. Upon completion of delivery such goods and materials shall stand at the risk of the Contractor. Immediately upon the same being made available to it, the Contractor 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 Contractor does not so notify the Employer's Representative, the Contractor shall not be entitled subsequently to claim that any such goods or materials are damaged or defective to the extent that the same could have been identified by detailed inspection within such period. The Contractor shall dispose of any packaging and/or waste arising.

## 16 Breakdowns and notice of accidents

Breakdowns 16.1 If the Plant breaks down on the Employer's rail network and requires haulage to remove it to an appropriate Stabling Point, the Contractor shall be responsible for all such costs.

Accidents 16.2 If the Plant is involved in any accident resulting in injury to persons or damage to property, immediate notice must be given to the Employer's Representative by telephone and confirmed in writing. In respect of any claim, no admission, offer, promise of payment or indemnity, shall be made by the Employer without the Contractor's consent in writing.

16.3 The Contractor shall, at its own cost, support and participate in any incident or accident investigation initiated by the Employer, HMRI or any other regulatory body. The Contractor shall provide reasonable access to all internal documents relating to such incidents.

## 17 Force Majeure

Force Majeure 17.1 If either party to the Contract is prevented from or delayed in performing any of its obligations under the Contract by Force Majeure, that party may notify the other party in writing forthwith of the circumstances constituting the cause of delay and specify the obligations, the performance of which is thereby delayed or prevented. Notification shall be made within seven days of the commencement of the relevant event constituting the cause of the delay. Failure by the Contractor to give the requisite notice shall preclude him from claiming at any subsequent stage relief from their obligations under the Contract. The parties shall agree the date of cessation and any subsequent resumption of the affected part of the Contract.

17.2 If such notice under Clause 17.1 is given by the Contractor by reason of Force Majeure, the Employer shall not be liable to make any payment to the Contractor for the relevant Services in respect of the period during which the Contractor is unable to perform its obligations except as may be specified in the Pricing Document.

17.3 The Contractor shall at all times use all reasonable endeavours at its own cost to minimise any delay in the performance of its obligations under the Contract whatever may be the cause of such delay.

# NETWORK RAIL 7

- 17.4 If performance of the Services is substantially prevented for more than sixty (60) days by virtue of any event falling within the provisions of Clause 17.1 then either party may terminate the Contract by written notice to the other. In such circumstances the Contractor shall be paid in accordance with clauses 20.2.1, 20.2.2 and 20.2.3 and the provisions of clause 17.1 shall apply to any Services prevented or delayed by reason of Force Majeure.

## 18 Suspension

Suspensionr

- 18.1 The Contractor shall, on the written instructions of the Employer's Representative, suspend the performance of the Services or any part thereof for such time and in such manner as the Employer's Representative may require.
- 18.2 Where the performance of the Services or any part thereof has been suspended under Clause 18.1 and the Services are to be resumed, the Employer's Representative shall grant the Contractor a reasonable period of time in order to resume performance of such Services.
- 18.3 Unless any suspension is:
- 18.3.1 provided for in any provision of this Contract other than Clause 18.1, or
  - 18.3.2 a consequence of some default of, or breach by, the Contractor of any provision of this Contract,

the Contractor shall be entitled to reimbursement of the sums which would otherwise have fallen due under the Pricing Document less a reasonable deduction for the cost of fuel, consumables, discretionary overtime and other avoidable costs assessed by the Employer's Representative following the principles set out in clause 6. The Contractor shall take all reasonable steps to reduce avoidable costs during any suspension.

- 18.4 In the event of suspension, the Contractor:
- 18.4.1 shall comply with the Employer's Representative's instructions with regard to stabling of Plant
  - 18.4.2 shall not remove any Plant from the Contract Area or from any Stabling Point or other location without the written permission of the Employer's Representative. Such permission shall not be unreasonably withheld.

## 19 Termination

Contractor's  
breach/insolve  
ncy

- 19.1 If the Contractor:
- 19.1.1 shall be in material breach of any of the provisions of this Agreement;
  - 19.1.2 has his liability to compensate the Employer capped by any aggregate total liability referred to in the Pricing Document; or
  - 19.1.3 becomes Insolvent;

then the Employer may, in addition to any other power enabling it to terminate this Agreement, by notice terminate forthwith the employment of the Contractor under this Agreement.

Termination at  
will

- 19.2 The Employer may, in addition to any other power it may have, at any time by notice to the Contractor forthwith terminate the employment of the Contractor under this Agreement.

# NETWORK RAIL 7

## 20 Consequences of Termination

20.1 If the Employer, in exercise of the powers contained in clause 19.1 shall terminate the Contractor's employment under this Agreement the following provisions shall take effect:

- 20.1.1 the payment of any sum of money that may then be due or accruing due from the Employer to the Contractor shall be suspended;
- 20.1.2 the Contractor shall pay to the Employer the Employer's reasonable losses and expenses due to the termination, but the Contractor shall receive credit for any sum the payment of which is suspended under clause 20.1.1; and
- 20.1.3 the Employer may hire any persons in the employment of the Contractor and the Employer may enter upon any Site and take possession of all goods, materials, plant and equipment (whether or not for incorporation in the Services) which are on a Site, or in storage or lying or in the course of preparation or manufacture off Site, and may purchase or do anything requisite for the further execution of the Services, or may employ other contractors to do the same.

20.2 If the Employer, in the exercise of the powers contained in clause 19.2, shall terminate the Contractor's employment under this Agreement, the Employer shall issue a notice under clause 7.3 stating the amount due to the Contractor which shall be calculated by including:

- 20.2.1 the value of work executed up to the date of termination calculated in accordance with the provisions of the Pricing Documents and relevant Contract Orders;
- 20.2.2 the amounts payable in accordance with the provisions of the Pricing Documents in respect of the Services 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;
- 20.2.3 the cost of materials or goods reasonably ordered for the Services which have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery (such materials or goods becoming the property of the Employer upon such payment being made to the Contractor);
- 20.2.4 a sum being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the Services in any Contract Order and/or Services not then completed insofar as such expenditure has not been recovered by any other payments referred to above; and
- 20.2.5 the reasonable cost of removal of all Contractor's plant, tools, equipment, goods and materials from the Routes, Sites or Employer's property.

The Contractor shall not be entitled to payment of any other loss and/or damage arising from such termination.

## 21 Third Party Rights

Subject to clauses 12.1 and 14.7 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.

Termination at will

Payment following breach/insolvency

Payment where termination at will

No Third Party Rights Service

# NETWORK RAIL 7

## 22 Notices

Notices 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:

22.1 personally, in which case service shall be deemed effective on delivery; or

22.2 by prepaid recorded delivery post, in which case service shall be deemed effective two working days after the day after posting.

## 23 Dispute Resolution

Adjudicator 23.1 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:

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

23.1.2 the Adjudicator's decision is binding until the dispute or difference is finally determined by the Courts as provided in clause 23.3.

Adjudicator not liable 23.2 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 23.3 Disputes and differences between the Parties arising out of or in relation to this Agreement shall, subject to clause 23.1, be referred to the exclusive jurisdiction of the English Courts. This Agreement shall be governed by and construed in accordance with English Law.

## 24 Limit on Liability for Railway Costs

Railway Costs For the purposes of this paragraph:

24.1 "Track Access Agreement" means any agreement (excluding Freight Access Agreements) entered into between the Employer and any other party and incorporating the Network Code.

24.2 "Freight Access Agreement" means any agreement (excluding Track Access Agreements) entered into between the Employer and any other party for non-passenger services and incorporating the Network Code.

24.3 "Network Code" means the document entitled "Network Code" dated 16 October 2005, as amended and modified from time to time.

24.4 Notwithstanding any other provision of this Agreement, the liability of the Contractor to compensate the Employer in respect of sums payable by the Employer pursuant to Schedules 4 and 8 of any Track Access Agreement or the equivalent provisions of any Freight Access Agreement in respect of any default of the Contractor shall not exceed in aggregate the percentage stated in the Appendix which shall be applied to the prices in accordance with the Pricing Documents applicable to any related Contract Orders issued under clause 3.2.

## 25 Security

Security 25.1 The Contractor shall take all reasonable steps and all steps required by the Contract to prevent unauthorised persons being admitted to the Routes, Sites and the Employer's

## NETWORK RAIL 7

Facilities. The Contractor shall be responsible for ensuring that no person employed on its behalf trespasses beyond the agreed limits of any specified working areas or access routes.

- 25.2 The Contractor shall maintain a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part thereof, specifying the capacities in which they are so concerned, and shall supply such list to the Employer's Representative when instructed so to do, giving such other particulars as the Employer's Representative may reasonably require.

### **26 Changes to Standards**

- 26.1 If there is a change in Railway Group Standards or Network Rail Standards affecting the Services after the date of this Agreement which necessitates a variation to the Services, such variation shall be treated as if it were an Employer's Instructions to which the provisions of clause 6 shall apply.

Changes to  
Standards

# NETWORK RAIL 7

## **Contract Specific Conditions**

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## Technical Workscope

- 1 The Plant is [describe or cross-refer to a document describing the Plant required for the Services and how this may be varied during the contract(see clause 3.1)].
- 2 The specification, standards and maintenance requirements are [doc titles [●] ref [●] dated [●]] and the Drawings are [●] all of which are annexed to this Technical Workscope.
- 3 The Services are more particularly described in the document marked [●] ref [●] dated [●] which is annexed to this Technical Workscope.
- 4 The planning requirements shall be in accordance with clause 2 and .....
- 5 Shifts shall be ordered in accordance with clause 3.2 and .....
- 6 The Contract Area comprises .....
- 7 The Stabling Points are [●] as annexed to this Technical Workscope.
- 8 The Employer's Facilities to be provided by the Employer under Clause 15 are as follows and they shall be made available in respect of each Contract Order at the following times and subject to the following conditions:
- 9 Daily Work Returns information shall be provided in accordance with clauses 3.2.6 and 4.7 to provide the following information within the specified timescales:



# NETWORK RAIL 7

## **Contract Requirements: Preliminaries**

Reports and meetings shall be provided and held in accordance with clause 4.8 and as follows:

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## Pricing Document

### Contract Area

*[Insert description of area in which Services to be carried out]*

### Pricing Matters

**1** The payment application shall include the value of the Services carried out during that period calculated as follows:

- (a) *Provision of Plant.* One thirteenth of the annual cost for each Package listed in [●].
- (b) *Additional Payments.* Additional payments due in accordance with [●]
- (c) *Additional Shifts.* Payments for additional Shifts worked due in accordance with [●].

LESS

- (d) *Abatement.* Amounts due to Network Rail in accordance with [●].

LESS

- (e) *Poor Performance Adjustments.* Adjustments to the above in respect of poorly performing items of Plant calculated in accordance with [●].

PLUS

- (f) *Variations.* The total cost of any Variations issued under Clause [●] carried out during the period and not included in the above items.

PLUS

- (g) *Other monies due.* The net total of any other monies due to the Contractor less any monies due to the Employer

**2** The payment application shall include all necessary supporting documentation including all counter-signed Daily Work Returns and any relevant certificates issued under [●] and any other information as may be required by this Contract. The Employer shall be entitled to:

- (a) Withhold payment for any shift for which a Daily Work Return signed by both parties is not submitted except where the absence of the signed form is due to late cancellation by the Employer.
- (b) Withhold any adjustment to deductions for Abatement under [●] if the Contractor does not submit the certificate referred to in [●].

### Key Performance Indicators [KPI]

If any KPI for an item of Plant falls below 0.935 within any Agreed Rail Industry Period due to any matters which are the responsibility of the Contractor:

**1** The Employer may give notice to the Contractor requiring the enhanced servicing of the relevant item of Plant.

**2** The Employer may give notice to the Contractor requiring the replacement or retraining of the relevant Operators.

## NETWORK RAIL 7

- 3 The Contractor shall comply with the requirements of any such notice as quickly as possible at its own cost.
- 4 If any KPI for an item of Plant remains below 0.935 for any two consecutive Agreed Rail Industry Periods due to any matters which are the responsibility of the Contractor then:
  - 4.1 the Employer may give notice to the Contractor requiring the immediate removal of the relevant item of Plant from this Agreement.
  - 4.2 If the item of Plant is removed then the Contractor shall not be entitled to any further payment in respect of that item or to any compensation for loss of income.

### **Shifts**

[•]