

# NETWORK RAIL 9

Network Rail Schedule of Amendments  
to the ICE Conditions of Contract,  
Design and Construct 2nd Edition  
incorporating the Aggregate Levy amendments  
dated October 2001 and the amendments to  
Clause 66 dated July 2004  
and including the Special Conditions  
for  
**[Insert Contract Title]**

Signed by: _____ for and on behalf of Network Rail
Signed by: _____ for and on behalf of the Contractor
Agreement/Contract No.: [Insert]

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## NETWORK RAIL INFRASTRUCTURE LIMITED ICE CONDITIONS OF CONTRACT, DESIGN AND CONSTRUCT, 2<sup>nd</sup> EDITION

### CONTRACT AGREEMENT (ENGLAND AND WALES)

This AGREEMENT is made the [Insert] day of [Insert]

BETWEEN:

- (1) **NETWORK RAIL INFRASTRUCTURE LIMITED** (registered in England & Wales as company number 2904587), and having its registered office at Kings Place, 90 York Way, London, N1 9AG (“the Employer”); and
- (2) **[Insert]** [registered in ..... as company number .....] and having its [registered office at .....] (“the Contractor”).

WHEREAS the Employer is desirous that certain Works should be designed and constructed, namely the Permanent Works and Temporary Works in connection with [Insert] and has reached agreement with the Contractor on the terms of a contract for the construction and completion of such Works.

NOW THIS AGREEMENT WITNESSETH as follows:

In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions hereinafter referred to.

1. The following documents are annexed hereto and shall form and 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:
  - (a) This Contract Agreement;
  - (b) Schedule of Post Tender Amendments;
  - (c) The Appendix hereto;
  - (d) Contract Specific Conditions and annexed form of parent company guarantee, and deeds of collateral warranty and form of novation (if applicable);
  - (e) The ICE Conditions of Contract, Design and Construct, 2nd Edition, as amended and supplemented by the NR9 Schedule of Amendments;
  - (f) Technical Workslope;
  - (g) Contract Requirements HSQE;
  - (h) Preliminaries;
  - (i) Pricing Document, and
  - (j) Contractor’s Submission
2. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned the Contractor hereby covenants with the Employer to construct and complete the Works in conformity in all respects with the provisions of the Contract.

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3. The Employer and the Contractor hereby agree that the Contract Price shall be [Insert] pounds (£[Insert]) or such other sum as shall become payable in accordance with the Contract.
4. The Employer hereby covenants to pay to the Contractor in consideration of the construction and completion of the Works the Contract Price at the times and in the manner prescribed by the Contract.
5. This Agreement shall be governed by and construed in accordance with English law.

IN WITNESS whereof the Employer and the Contractor have caused this Agreement to be executed as a Deed in duplicate on the date first stated above, as follows:

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 28 <sup>th</sup> September 2011
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OR

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

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

Director .....

Director/Company Secretary .....

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OR

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

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## Network Rail Infrastructure Limited ICE DESIGN AND CONSTRUCT 2<sup>nd</sup> Edition Appendix

(NOTE: Relevant clause numbers are shown in brackets)

- |          |  |   |
|----------|--|---|
| <b>1</b> | Name of the Employer's Representative (clause 1(1)(c)):<br>Name [Insert] Position [Insert]<br>Address [Insert]<br>Name of Contractor's Representative (clause 1(1)(d))<br>[Insert]   |   |
| <b>2</b> | Defects Correction Period<br>(clause 1(1)(p)):   | Fifty two weeks   |
| <b>3</b> | Contractor's designer (clause 4(2)(a))<br>The design work for which the Contractor is responsible will be carried out by:<br>[Insert]<br>Elements for which the Contractor has not yet appointed a designer are:<br>[Insert] |   |
| <b>4</b> | Parent company guarantee (clause 10(1)):   | Required  |
| <b>5</b> | Professional indemnity insurance for design (clause 21A):<br><br>The minimum amount of professional indemnity insurance required is  | Shall apply<br><br>£10,000,000 (ten million pounds) for any one claim or series of claims arising out of any one event and which may be subject to an annual aggregate limit. |
| <b>6</b> | Minimum amount of Employer's third party insurance (clause 23(1)(a)):  | £155,000,000 (one hundred and fifty five million pounds) each and every occurrence.   |
| <b>7</b> | Insurance policy excesses (clause 25(2)):<br><br>Insurance of the Works (clause 21(1)):<br><br>Third party property damage (including damage to the Employer's property) (clause 23(1)):                                     | <br><br>As stated in the Insurance Manual in the Preliminaries<br><br>As stated in the Insurance Manual in the Preliminaries  |
| <b>8</b> | Commencement Date (if known) (clause 41(1)(a)):  | [Insert]  |
| <b>9</b> | Time for completion (clause 43):<br><br>[EITHER for the whole of the Works:  | <br><br>[Insert] weeks  |

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- OR for Sections of the Works (clause 1(1)(r)):
- Section A: [Insert] [Insert] weeks
- Section B: [Insert] [Insert] weeks
- Section C: [Insert] [Insert] weeks
- Section D: [Insert] [Insert] weeks
- the remainder of the Works: [Insert] weeks
- 10** Liquidated damages for delay (clause 47):
- [EITHER for the whole of the Works: £... per [day/week] [or part thereof]
- OR for Section A (as above): £... per [day/week] [or part thereof]
- Section B (as above): £... per [day/week] [or part thereof]
- Section C (as above): £... per [day/week] [or part thereof]
- Section D (as above): £... per [day/week] [or part thereof]
- the remainder of the Works (as above): £... per [day/week] [or part thereof]
- The total amount of liquidated damages in respect of the whole of the Works or any Section thereof shall be limited as provided in clause 47(4)(a) to the Contract Price.
- 11** Vesting of materials not on Site (clauses 54(4) and 60(1)(c)) (if required by Employer)
- 1 [Insert] 4 [Insert]
- 2 [Insert] 5 [Insert]
- 3 [Insert] 6 [Insert]
- 12** Percentage adjustment for Prime Cost Items (clause 58(2)): [Insert] %
- 13** Percentage of the value of goods and materials to be including in interim certificates (clause 60(2)(b)(ii)): 90%
- 14** Minimum amount of interim certificates (clause 60(3)): £20,000
- 15** Name of the CDM Coordinator (clause 71):  
Network Rail Infrastructure Limited  
Address [Insert]
- 16** Details of the suppliers and consultants whose contracts are to be novated to the Contractor (clause 73(2)):  
[Insert]

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Address [Insert]

Address [Insert]

Address [Insert]

**17** M&E Signalling Provisions (clauses 78 to 83)): [shall apply/do not apply]

If the M&E Signalling Provisions are stated to apply, the following definitions also apply:-

“Plant” shall include the following items:

[Insert]

The “Tests on Completion” shall be the following and/or are referred to in the following sections of the Employer’s Requirements:

[Insert]

The “Performance Tests” shall be the following and/or are referred to in the following sections of the Employer’s Requirements:

[Insert]

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## Network Rail Infrastructure Limited

### Network Rail Schedule of Amendments to the ICE Conditions of Contract, Design and Construct, 2nd Edition

Clause	Details of Amendment/Addition/Deletion
Clause 1(1): Definitions	In paragraph (a) <b>delete</b> "Appendix to the Form of Tender" and <b>insert</b> "Contract Agreement to which these Conditions are annexed"
	In paragraph (c) after "person" in line 1 <b>insert</b> "or persons"
	In paragraph (e) <b>delete</b> "as such at the date of the award of the Contract" and <b>insert</b> "in the Technical Workslope"
	<b>Delete</b> paragraph (g) and <b>insert</b> : "(g) "Contract" means the Contract Agreement and the other documents listed in the Contract Agreement to which these Conditions of Contract are annexed."
	<b>Insert</b> new paragraphs (u), (v), (w), (x), (y) and (z) as follows: "(u) "Appendix" means the Appendix to the Contract Agreement, and all references in these conditions to "the Appendix to the Form of Tender" shall be deemed to be references to such Appendix." "(v) "Contract Requirements HSQE" means the document referred to as such in the Contract Agreement to which these Conditions of Contract are annexed." "(w) "Joint Names Policy" means a policy of insurance which includes the Employer and the Contractor as the insured and under which insurers have no right of recourse against any person named as an insured." "(x) "Preliminaries" means the document referred to as such in the Contract Agreement to which these Conditions of Contract are annexed." "(y) "Sub-Contractor" means any sub-contractor to the Contractor including any sub-contractors of any such Sub-Contractors." "(z) "Technical Workslope" means the technical workslope referred to in the Contract Agreement."
Clause 2(2): Named individual	<b>Delete</b> and <b>insert</b> "Not used".
Clause 2(3): Delegation by the Employer's Representative	In paragraph (c) <b>delete</b> 15(2)(b), 44, 48, 60(4) and 61.
Clause 3(1): Assignment	<b>Delete</b> and <b>insert</b> : "(1) The Employer shall be entitled to assign, charge or transfer this contract or any of its rights under it. The Contractor shall not assign, charge or transfer this contract or any of its rights under it without the prior written consent of the Employer."

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<p>Clause 3(2): Rights of third parties</p>	<p>Insert at the beginning of the clause “Save as provided in clause 35(3)(g)”.</p>
<p>Clause 4(2): Sub-contracting</p>	<p><b>Delete</b> paragraph (b) and <b>insert</b>: “(b) The Contractor shall not sub-contract any part of the Works (including, without limitation, the supply of goods and materials) or their design without the prior written consent of the Employer’s Representative, which consent shall not be unreasonably withheld.”</p>
<p>Clause 5(1): Contract documents</p>	<p>In paragraph (a) <b>delete</b> “to be taken as mutually explanatory of one another” and <b>insert</b> “listed in the Contract Agreement” In sub-paragraph (c)(i) <b>delete</b> the existing wording and <b>insert</b> as follows: “If the Contractor shall find any inaccuracy, discrepancy or ambiguity contained in or between any of the Contract documents, he shall immediately notify the Employer, who shall, on receipt of such notice, issue an instruction as to how such inaccuracy, discrepancy or ambiguity shall be resolved applying the order of priority of documents stated in the Contract Agreement. The Contractor shall not be entitled to an extension of time or to any additional payment in respect of compliance with such instruction to the extent that such inaccuracy, discrepancy, ambiguity could reasonably have been found or foreseen at the date of this Contract by a contractor exercising the skill, care and diligence reasonably to be expected of a contractor experienced in projects of a similar nature to the Works.” In line 4 of paragraph (c)(ii) after the word “then” <b>insert</b> “, subject to the provisions of paragraph (b) above and paragraph (d) below,” In paragraph (d) <b>insert</b> at the beginning of the paragraph: “The Contractor accepts entire responsibility for the Contractor’s Submission and for any ambiguities or discrepancies therein whether or not the whole or any part of the Contractor’s Submission has been prepared by or on behalf of the Employer.”</p>
<p>Clause 6(2): Designs and drawings</p>	<p><b>Delete</b> both parts of paragraph (a) and <b>insert</b>: “(a) At such times as not to delay or disrupt the progress of the Works and in accordance with the programme referred to in clause 14 and/or any relevant dates set out in the Employer’s Requirements, the Contractor, without further charge, shall provide the Employer (unless he shall have been previously so provided) with four reproducible copies (including by electronic format) true-to-scale of such designs, drawings, details, documents, information or samples (referred to in this sub-clause (2) as “designs and drawings”) as are reasonably necessary to explain, amplify, show or describe the Employer’s Requirements or the Contractor’s Submission or to enable the Contractor to execute and complete the Works or to comply with any instruction issued by the Employer’s Representative. The Contractor shall check and co-ordinate any such designs and drawings submitted by him prior to submission of the same. The Contractor shall not commence construction in accordance with such designs and drawings until the Employer’s Representative has consented thereto, and shall not be entitled to be paid for work executed other than in accordance with designs and drawings to which the Employer’s Representative has consented.”</p>

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	<p><b>Insert</b> a new paragraph (e) as follows:</p> <p>“(e) Neither the granting of any consent by the Employer’s Representative nor any comment or marking by or on behalf of the Employer on or in respect of any designs and drawings submitted by the Contractor shall relieve the Contractor of any liability which he would otherwise have in relation thereto. If the Contractor considers that any comment of the Employer’s Representative on the Contractor’s designs and drawings submitted under this clause 6(2) amounts to an alteration in the Employer’s Requirements, he shall so notify the Employer’s Representative within 7 days of receipt of the same.”</p>
<p>Clause 6(5): Design warranty</p>	<p><b>Insert</b> new sub-clause (5) as follows:</p> <p>“(a) Insofar as the design of the Works is comprised in the Contractor’s Submission and in the designs and drawings referred to in sub-clause (2) of this clause and in accordance with the Employer’s Requirements and the Contract (including any further design which the Contractor is to carry out as a result of an alteration in the Employer’s Requirements), the Contractor warrants and undertakes to the Employer that:</p>
	<p>(i) he has exercised and will continue to exercise in the design of the Works all the skill, care and diligence to be expected of a professionally qualified and competent engineer or other appropriate consultant taking into account the size, scope, nature, type and complexity of the Works;</p> <p>(ii) the Works will, when completed, comply with any performance specification included in the Employer’s Requirements or the Contractor’s Submission provided always that nothing in the Employer’s Requirements shall be construed as imposing a fitness for purpose obligation for the Works; and</p> <p>(iii) except where otherwise stated in the Contract and subject to clause 36(8), the Works comprise or will comprise only materials and goods which are of new and satisfactory quality;</p>
	<p>(b) Any reference to the design which the Contractor has prepared or shall prepare or issue for the Works includes a reference to any design which the Contractor has caused or shall cause to be prepared or issued by others, whether before or after the date of this Contract.”</p>
	<p>(c) Where the Contractor has provided designs in relation to the Works under any other contract with the Employer which is then provided by the Employer to the Contractor under this Contract, the Contractor shall not be able to disclaim responsibility for such design and shall be responsible for any inadequacy in such design.</p>
<p>Clause 6(6): Prohibited materials</p>	<p><b>Insert</b> new sub-clause (6) as follows:</p> <p>“(a) For the purposes of the sub-clause (6), material is “prohibited” if, in the context of its use in the Works (whether alone or in combination with other materials):</p>
	<p>(i) it poses a hazard to the health and safety of any person who may come into contact with the Works (whether during their construction or after their completion);</p>

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	<p>(ii) either by itself or as a result of its use in a particular situation or in combination with other materials, it would or is likely to have the effect of reducing the normal life expectancy of any other material or structure in which the material is incorporated or to which it is affixed; or</p> <p>(iii) it poses a threat to the structural stability or performance or the physical integrity of the Works or any part or component of the Works.</p>
	<p>(b) The Contractor shall not specify or authorise for use or permit to be used any materials which at the time the Works are being carried out are generally accepted or reasonably suspected of:</p>
	<p>(i) being prohibited in themselves;</p> <p>(ii) becoming prohibited when used in a particular situation or in combination with other materials;</p> <p>(iii) becoming prohibited with the passage of time;</p> <p>(iv) becoming prohibited without a level of maintenance which is higher than that which would normally be expected of a structure of the type under construction; or</p> <p>(v) being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed, or other structure or any neighbouring property,</p>
	<p>and the Contractor shall, when requested, issue to the Employer's Representative and to such persons as the Employer's Representative may require a certificate that no such materials have been specified for use or permitted to be used.</p> <p>(c) Without prejudice to his obligations under this Contract, the Contractor warrants that he shall specify materials for use in the Works in accordance with the guidelines contained in publication "Good Practice in Selection of Construction Materials" (1997: Ove Arup &amp; Partners) and/or that materials as used in the construction of the Works shall be in accordance with such guidelines."</p>
<p>Clause 7(1): Copyright</p>	<p>In paragraph (b), in lines 3 to 5 <b>delete</b> "The Employer may obtain . . . purposes of the Contract" and <b>substitute</b> "The Contractor hereby grants to the Employer an irrevocable, royalty-free non-exclusive licence to use all the designs and drawings produced by the Contractor for any purpose in connection with the carrying out of the Works"</p> <p>At the end of paragraph (b) <b>insert:</b></p> <p>"The Contractor further agrees:</p> <p>(i) to waive in favour of the Employer any and all moral rights in the Contractor's designs and drawings;</p> <p>(ii) that the Employer may grant sub-licences to other persons to use and to reproduce the Contractor's designs and drawings and the content of them for any purposes relating to the Works or the Permanent Works; and</p> <p>(iii) to the extent that the Contractor does not have ownership of the copyright in any of the Contractor's designs and drawings, to procure from the copyright holder a licence with full title guarantee to the Employer in the same terms as set out above."</p>
<p>Clause 8(1)</p>	<p>At the end of sub-clause (1) paragraph (a) delete "and". At the end of paragraph</p>

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Contractor's general obligations	(b) insert "and". Add new paragraph (c) as follows:  "(c) comply with the Preliminaries".
Clause 8(2)(c): Contractor's design responsibility	<b>Insert</b> new sub-clause 8(2)(c): "8(2)(c) Notwithstanding anything to the contrary contained elsewhere in this Agreement, the Contractor's liability for any breach of its obligations in relation to the design of the Works, whether in contract, tort delict or otherwise, shall not exceed the sum of £10,000,000 in the aggregate.
Clause 10(1): Performance security	<b>Delete and insert:</b> "(1) If stated to be required in the Appendix the Contractor shall obtain and provide to the Employer, forthwith upon entry into the Contract, 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 section 170 Taxation of Chargeable Gains Act 1992)."
Clause 10(2): Dispute Resolution upon Security	<b>Delete and insert:</b> (2) "The Contractor's compliance with the provisions of sub-clause (1) of this Clause 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 Contract, and the Contractor acknowledges that he has no entitlement either to receive payment or to exercise any rights in respect of non-payment arising under the Contract unless and until the Contractor has provided a parent company guarantee if so required under sub-clause (1) of this clause."
Clause 12(1): Adverse physical conditions and artificial obstructions	In line 2 after "weather conditions" <b>insert</b> "or contamination and/or, pollution"
Clause 14(5): Methods of Construction	<b>Insert</b> new clause 14(5) as follows: "(5) The Contractor shall submit at such times and in such detail as the Employer's Representative may reasonably require for full consideration to be given and if necessary for revised proposals to be considered such information pertaining for the methods of construction (including Temporary Works and the use of Contractor's Equipment) which the Contractor proposes to adopt or use and, if requested by the Employer's Representative such calculations of stresses strains and deflections that will arise in the Permanent Works and any parts thereof during construction from the use of such methods as are sufficient to demonstrate to the Employer's Representative that if these methods are adhered to, the Works can be executed in accordance with the Contract and without detriment to the safe working of the railway or the property of the Employer and others or to the Permanent Works when completed".
Clause 19(1): Safety and security	After "protection of the Works" in the penultimate line <b>insert</b> "or the property of the Employer or others or the safe working of the railway"

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<p>Clause 21</p>	<p><b>Delete</b> sub-clauses 21(1) and 21(2)</p> <p><b>Insert</b> new sub-clauses 21((1), 21(2) and 21(3) as follows:</p> <p>21(1)The Employer shall without limiting his or the Contractor’s obligations under the Contract insure under a Joint Names Policy the carrying out of the Works together with materials (including free issue materials) and plant and equipment for incorporation therein to the full replacement cost plus a reasonable amount to cover any additional costs that may arise incidental to the rectification of any loss or damage, including professional fees, cost of demolition and removal of debris, having regard to the nature of the Contract.</p> <p>21(2) The insurance required under sub-clause (1) of this Clause shall cover any person recognised as an insured under the Joint Names Policy against all loss or damage from whatsoever cause arising (including Terrorism) other than the Excepted Risks as defined in Clause 20(2) from the Works Commencement Date until the date of issue of the relevant Certificate of Substantial Completion and any loss occasioned by the Contractor in the course of any operation carried out by him for the purpose of complying with his obligations under Clauses 49 and 50.</p> <p>21(3) All claims made under the insurance referred to in sub-clause (1) of this Clause shall be paid to the Employer. The Employer will pay all such monies due to the Contractor by instalments under certificates of the Employer’s Representative issued at the time of issue of interim certificates in accordance with the terms of the Contract. Any amounts not insured or not recovered from insurers whether as excesses under the policy or otherwise shall be borne by the Contractor or the Employer in accordance with their respective responsibilities under Clause 20.</p>
<p>Clause 21A: Professional indemnity insurance for design (only applicable if stated in Appendix)</p>	<p><b>Insert</b> new clause as follows:</p> <p>“(1) The Contractor shall maintain professional indemnity insurance covering (inter alia), all his liability hereunder in respect of defects or insufficiency in design, upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom (in an amount not less than that required by the Appendix for a period beginning with the date of this Contract and ending twelve years after certification under clause 48 of the substantial completion of the Works), provided always that such insurance is available at commercially reasonable rates.</p> <p>(2) Any increased or additional premium required by insurers by reason of the Contractor’s claims record or other matters particular to the Contractor shall be considered to be within commercially reasonable rates.</p> <p>(3) The Contractor shall immediately inform the Employer if such insurance ceases to be available at commercially reasonable rates in order that the Employer and the Contractor can discuss the means of best protecting the respective positions of the Employer and the Contractor in the absence of such insurance.</p> <p>(4) The said terms and conditions shall not include any term or condition to the effect that the Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930.</p>

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	<p>(5) The above obligations in respect of professional indemnity insurance shall continue notwithstanding determination or termination of the Contract in either case for any reason whatsoever, including (without limitation) breach by the Employer”.</p>
<p>Clause 23: Employer’s third party insurance and Insurance of the Employer’s Property</p>	<p><b>Delete</b> sub-clauses 23(1), 23(2) and 23(3)</p> <p><b>Insert</b> new sub-clauses 23(1) and 23(2)as follows:</p> <p>23(1) Without prejudice to the Contractor's obligations to indemnify the Employer under clause 22, the Employer shall take out and maintain:</p> <ul style="list-style-type: none"> <li>(a) a Joint Names Policy against liabilities for death of or injury to any person (other than any person in the employment of the Employer or the Contractor) or loss of or damage to any property (other than the Works or other property of the Employer or the Contractor) arising out of the performance of the Contract, for a sum not less than that stated in the Appendix for any one occurrence or series of occurrences arising out of one event.</li> <li>(b) a policy or policies of insurance in respect of loss or damage to property of the Employer (other than work executed and Site Materials but including work executed after practical completion thereof) arising out of or in connection with the Works and business interruption costs consequent upon such loss or damage, with a waiver of subrogation in favour of the Contractor and Sub-Contractors.</li> </ul> <p>23(2) The Employer shall not be responsible for any amounts in excess of the limits of indemnity and sums insured or any retained liability as specified in the Appendix or Conditions of Contract or risks not insured or excluded by the terms, exceptions or conditions of such insurance policies.</p>
<p>Clause 25(5): Evidence of the Employer's Insurance</p>	<p><b>Insert</b> new clause as follows:</p> <p>25(5) A summary of the insurance policies taken out and maintained by the Employer under clause 21 and sub-clause 23(1) is included in section 2 of the Insurance Manual in the Preliminaries and further details of the Employer's insurance policies may be provided to the Contractor on request.</p>
<p>Clause 25(6): Notification of Claims</p>	<p><b>Insert</b> new clause as follows:</p> <p>25(6) The Contractor shall immediately notify any occurrence that may result in a claim under the Employer's insurance policies in accordance and in compliance with the provisions of the procedures detailed in section 3 of the Insurance Manual in the Preliminaries.</p>
<p>Clause 26(1) Giving of notices and payment of fees</p>	<p><b>Insert</b> in line 4 after “in relation to the” the word “design”</p>
<p>Clause 26(5) Changes in Statute</p>	<p><b>Insert</b> new sub-clause as follows:-</p> <p>“(5) If there is a change in any general or local act of Parliament and the Regulations or Bye-laws of any local or other statutory authority which may be</p>

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	applicable to the Works after the date of this Contract which necessitates a variation to the Works, such variation shall be deemed to have been carried out under an instruction given pursuant to Clause 51.”
Clause 29(1): Interference with traffic and adjoining properties	In line 3 after “so as not to” <b>insert</b> “cause an unplanned interruption in the use of track or station areas or other railway infrastructure (it being acknowledged that the Employer may incur penalties and liabilities for this under its contractual and regulatory arrangements with third parties including passenger train and freight operators) or”
Clause 29(5): Notice of claims	<b>Insert</b> new clause as follows: “(5) The Contractor will advise the Employer as soon as possible of any potential liability for damages on account of noise disturbances or other pollution which would be the unavoidable consequences of carrying out the Permanent and/or Temporary Works and on measures to avoid such liability (such advice to be at the Contractor’s cost). The Contractor will comply with any necessary changes to the Permanent and/or Temporary Works to the satisfaction of the Employer’s Representative. The cost of such compliance shall be borne by the Contractor unless, in the opinion of the Employer’s Representative, the compliance is a variation for the purposes of clause 51 in which case it shall be priced in accordance with clause 52”.
Clause 33: Clearance of Site on completion	<b>Insert</b> after “the Works” in line 1 “or any Section thereof”.
Clause 34: Limit on liability for railway costs	<b>Insert</b> a new clause as follows: “(1) For the purposes of this clause 34: (a) “Track Access Agreement” means any agreement (excluding Freight Access Agreements) entered into between the Employer and any other party and incorporating the Network Code. (b) “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. (c) “Network Code” means the document entitled “Network Code” dated 23 September 2009, as amended and modified from time to time.
	(2) Notwithstanding any other provision of this Contract, the liability of the Contractor to compensate the Employer in respect of any consequential or indirect losses arising from an act or omission of the Contractor, or any 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, whether in contract, tort, delict or otherwise shall not exceed in aggregate the Contract Price. Any amounts which may be payable under clause 47 (liquidated damages) shall not be taken into account in the calculations anticipated by this Clause 34”.
Clause 35(3): Employment protection and TUPE	<b>Insert</b> new clause 35(3) as follows: “35(3) Notwithstanding anything to the contrary elsewhere in the Contract:

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	(a)	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 (" <b>TUPE</b> ").
	(b)	in the last 12 months prior to completion of the Works 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 Works 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 on the Contract, 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").
	(c)	in the last 12 months prior to completion of the Works the Contractor shall (and shall procure that any Sub-Contractor shall) provide to the people engaged in the performance of this Contract, 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 request, whether during the performance of the Contract or following the end of the Contract (whether lawfully or otherwise) deliver 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 works of the nature of the Works.
	(d)	the Contractor 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 Works, without the prior written permission of the Employer, 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 Works, except in the ordinary course of business.
	(e)	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

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		principally in the execution of the Works 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 sub-clause 35(3)(d) at the date of commencement of employment of such new employee.
	(f)	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.
	(g)	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 successor contractor incurs:
	(i)	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 contractor pursuant to TUPE and/or the Contract; and/or
	(ii)	as a result of the Contractor's breach of the sub-clauses 35(3)(d), 35(3)(e) and/or 35(3)(f)
		and, despite anything else in the Contract, such a successor contractor can directly enforce the indemnity in its favour provided for by this sub-clause 35(3)(g)."
Clause 36(1): Materials and workmanship		<b>Insert</b> after "... with the Contract" in line 2, "in accordance with Railway Group Standards, Network Rail Standards and/or any equivalent standards"  <b>Insert</b> at end: "If there is a change in the Railway Group Standards or Network Rail Standards affecting the Works after the date of this Contract which necessitates a variation to the Works, such variation shall be deemed to have been carried out under an instruction given pursuant Clause 51."
Clause 36(8): Free Issue Materials		<b>Insert</b> new sub-clause as follows:- "The Employer shall make available to the Contractor at the Site free of charge to the Contractor the goods and materials described in the Preliminaries on or before the dates or the expiry of the periods for the provision of the same stated 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 him, 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 within 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 immediately then secure the repair, replacement and/or reissue of any such goods and materials. If the Contractor does not so notify, 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

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	dispose of any packaging and/or waste arising.”
Clause 42(1): Possession of Site and access	<b>Delete</b> clause heading and <b>insert</b> “Site access” <b>Delete</b> paragraph (a) and <b>insert</b> : “(a) the extent of portions of the Site to which the Contractor is to be given non-exclusive access from time to time”
Clause 42(2)	In paragraph (a) after “sub-clause (1) of this clause” <b>insert</b> - “and Clause 29(1)” and delete “possession of” and <b>insert</b> “a non-exclusive licence to occupy” <b>Insert</b> a new paragraph (c) as follows: (c) “Upon any termination of the Contractor’s employment or if this Contract is terminated or discharged and notwithstanding that the validity of the termination or discharge is disputed by the Contractor, the Contractor shall vacate the Site and shall immediately deliver to the Employer possession of any part of the Site and the Works then occupied by the Contractor.”
Clause 42(3): Failure to give possession	<b>Delete</b> clause heading and <b>insert</b> “Failure to give access” <b>Delete</b> “possession or”
Clause 42(5): Site Security	<b>Insert</b> new clause as follows: “(5) The Contractor shall take all reasonable steps and all steps required by the Contract to prevent unauthorised persons being admitted to the Site. If the Employer’s Representative gives the Contractor notice that any person is not to be admitted to the site, the Contractor shall take all practicable steps to prevent that person being admitted. Where access to the Site is required by way of the Employer’s land the route of such access shall be approved by the Employer’s Representative. The Contractor shall be responsible for ensuring that no person employed on his behalf trespasses beyond the agreed limits of the working area or access route and shall, if required so to do, provide and maintain to the satisfaction of the Employer’s Representative temporary fencing of an approved type to prevent trespass on the railway or neighbouring land. Passes are required for admission to the Site and the Employer shall either issue them to the Contractor or arrange for their issue by the Contractor. The Contractor shall submit to the Employer’s Representative a list of the names of the relevant employees and other persons issued or to be issued with passes and any other information which the Employer’s Representative reasonably requires in this connection. The passes shall be returned at any time on the demand of the Employer’s Representative and in any case on the completion of the Works. The Contractor shall maintain a record of all visitors to the Site and shall, if and when instructed by the Employer’s Representative, give to the Employer’s Representative a list of names and addresses of all persons who are or may be at any time concerned with the Works or any part thereof, specifying the capacities in which they are so concerned, and giving such other particulars as the Employer’s Representative may reasonably require.”
Clause 42(6): Site Photographs	<b>Insert</b> new clause as follows: “(6) Except as required to record activities on the Site, the Contractor shall not at any time take any photograph of the Site or the Works or any part thereof, and

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	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 him, unless the Contractor has obtained the prior written consent of the Employer's Representative."	
Clause 44(1): Extension of time for completion	<b>Delete</b> paragraph (e) and <b>insert</b> as follows:	
	(f)	the exercise after the date of tender by the United Kingdom Government of any statutory power that directly affects the execution of Works; or
	(g)	the use or threat of terrorism as defined by the Terrorism Act 2000 and/or the activities of the relevant authorities in dealing with such threat; or
	(h)	the valid exercise by the Contractor of its rights under Section 112 of the Housing Grants, Construction and Regeneration Act 1996 (as amended); or
	(i)	pollution or contamination encountered by the Contractor at the Site; or
	(j)	cancellation or alteration of the dates and times of agreed speed restrictions, track possessions or isolations under Clause 75(2) (where applicable).
	In second line of last paragraph of clause 44(1) after the words "he shall", <b>insert</b> the words "notify the Employer's Representative as soon as reasonably practicable and, in any event,".	
Clause 48(1): Notification of Substantial Completion	In the final paragraph after "prescribed by the Contract" <b>insert</b> "(including any Tests on Completion under clause 81 but excluding Performance Tests under clause 82)"	
Clause 49(4): Remedy on Contractor's failure to carry out work required	<p><b>Delete and insert:</b></p> <p>"(4) Notwithstanding sub-clause (2) of this clause if, in the opinion of the Employer, any urgent measures shall become reasonably necessary in order to obviate any risk of accident or failure or if, by reason of the happening of any accident or failure or other event, any remedial or other work or repair shall become urgently necessary, and the Contractor shall be unable or unwilling at once to carry out such measures, the Employer may by his own staff and/or by using other contractors carry out such measures as the Employer may consider necessary.</p> <p>The Employer shall be entitled to recover from the Contractor all reasonable additional costs and expenses incurred by the Employer in carrying out such measures."</p>	
Clause 52(3): Sharing the consequences	In paragraph (a) <b>delete</b> "As soon as possible" and <b>insert</b> "Within 14 days (or such longer period as the Employer's Representative may determine to be reasonable in the circumstances)"	
Clause 55(1): Quantities	In line 3 after "quantities of the work" <b>insert</b> "for the purposes of valuing variations only" and at the end of the clause <b>insert</b> "Such quantities shall not be subject to re-measurement, except for any provisional quantities which shall be dealt with in	

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	accordance with clause 59.
Clause 56(3): Daywork	At the end of the first paragraph <b>insert</b> “or such other schedule as may be stated as applicable in the Appendix”
Clause 59: Provisional Quantities	<p><b>Delete</b> “not used” and <b>insert</b>:</p> <p>“(1) The Employer’s Representative shall except as otherwise stated ascertain and determine by admeasurement the value in accordance with the Contract of the actual work done in respect of any provisional quantities; deducting the provisional value and adding back the actual value to the Contract Price.</p> <p>(2) Should the actual quantities carried out in respect of any provisional quantities be greater or less than those stated as provisional in the Contract and if in the opinion of the Employer’s Representative such increase or decrease of itself shall so warrant the Employer’s Representative shall after consultation with the Contractor determine an appropriate increase or decrease of any rates or prices rendered unreasonable or inapplicable in consequence thereof and shall notify the Contractor accordingly.”</p>
Clause 60(1): Interim statements	<p><b>Delete</b> “such times” and substitute “28 day intervals”.</p> <p><b>Delete</b> the words “unless in the opinion . . . an interim certificate”.</p>
Clause 60(2): Interim payment	<p>In line 1 <b>delete</b> “25 days” and <b>insert</b> “14 days”</p> <p>In line 13, after “to the Contractor” <b>insert</b> “(if any)”.</p> <p>Before the final paragraph, <b>insert</b> a new paragraph as follows:</p> <p>“The certificate issued by the Employer’s Representative shall be a payment notice for the purposes of the Housing Grants Construction and Regeneration Act 1996 (as amended) and the Employer’s Representative shall issue the payment notice even if the amount that he considers to be due is zero.”</p> <p><b>Delete</b> the final paragraph and insert:</p> <p>“The payments become due on the date 14 days after the date of delivery of the Contractor’s interim statement to the Employer’s Representative in accordance with sub-clause (1) with the final date for payment being 21 days after the date of delivery of the Contractor’s interim statement.”</p>
Clause 60(4): Final account	<p><b>Delete</b> “Defects Correction Certificate” where it first appears in the first paragraph, and <b>insert</b> “Certificate of Substantial Completion (or, where there is more than one, after the date of the last in time to be issued).”</p> <p><b>Delete</b> “up to the date of the Defects Correction Certificate” where it appears in the first and second paragraphs, and <b>insert</b> “up to and including the date of the Certificate of Substantial Completion (or, where there is more than one, up to and including the date of the last in time to be issued).”</p> <p>In the second line of the third paragraph <b>delete</b> “on certification” and <b>insert</b> “3 months after the Employer’s receipt of the final account and the information reasonably required for its verification.”</p> <p>In the last line of the third paragraph <b>delete</b> “28 days” and <b>insert</b> “21 days”.</p>
	<b>Insert</b> as new paragraphs at the end of the clause 60(4):
	“If the Contractor executes further Works after the date of the Certificate of

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		Substantial Completion (or, where there is more than one, after the date of the last in time to be issued) for which he is entitled to payment under the Contract, then, not later than 3 months after the date of the substantial completion of such further Works, the Contractor shall submit to the Employer's Representative a further statement of account and supporting documentation, showing in detail the value in accordance with the Contract of such further Works executed, together with all further sums which the Contractor considers to be due to him under the Contract up to and including the date of the Certificate of Substantial Completion.
		Within 3 months after receipt of the further statement of account and of all information reasonably required for its verification, the Employer's Representative shall issue a certificate stating the amount which in his opinion is finally due under the Contract from the Employer to the Contractor or from the Contractor to the Employer, as the case may be, up to and including the date of the Certificate of Substantial Completion and after giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled under the Contract.
		Such amount shall be paid to or by the Contractor, as the case may require. The payment becomes due 3 months after the Employer's receipt of the further statement of account. The final date for payment is 21 days later.
		Any certificate issued by the Employer's Representative under this Clause 60(4) shall be a payment notice for the purposes of the Housing Grants Construction and Regeneration Act 1996 (as amended) and the Employer's Representative shall issue the payment notice even if the amount that he considers to be due is zero."
Clause 60(5): Retention		In paragraph (a) <b>delete</b> "calculated at the rate indicated in and up to the limit set out in the Appendix to the Form of Tender upon" and <b>insert</b> "equal to 3% (three percent) of"
Clause 60(6): Payment of retention		In paragraphs (a), (b) and (c) <b>delete</b> "14 days", and <b>insert</b> "21 days."
Clause 60(7): Interest on overdue payments		<b>Delete</b> "2% per annum above the base lending rate of the bank specified in the Appendix to the Form of Tender" and <b>insert</b> "4% above the Bank of England Base Rate"
Clause 60(9): Certificates and payment notices		<b>Renumber</b> clause 60(9) as sub-clause 60(9)(a), then in sub-clause 60(9)(a) <b>delete</b> "of the payment proposed to be made" and <b>insert</b> "it considers to be due at the payment due date".  <b>Insert</b> new sub-clause 60(9)(b) as follows:  "If the Employer's Representative fails to give the Contractor a payment notice in accordance with Clauses 60(2) and 60(4) the Contractor's relevant interim or final account statement (submitted to the Employer's Representative in accordance with Clause 60(1) or 60(4) as the case may be) shall be the payment notice or, in the event that no such statement was submitted by the Contractor then the Contractor

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	<p>may at any time thereafter give the Employer with a copy to the Employer's Representative a payment notice in respect of the sum the Contractor considers to be due at the payment due date and the basis on which that sum is calculated."</p> <p><b>Insert</b> new sub-clause 60(9)(c) as follows:</p> <p>"Where pursuant to sub-clause 60(9)(b) the Contractor gives a payment notice the final date for payment of the sum specified in the notice shall for all purposes be regarded as postponed by the same number of days as the number of days after the relevant payment due date referred to in sub-clause 60(9)(b) that the notice was given."</p>		
Clause 60(10): Notice of intention to withhold payment	<p><b>Delete</b> the sub-heading "Notice of intention to withhold payment" and substitute "Pay less notice".</p> <p><b>Delete</b> entire clause and <b>insert</b>:</p> <p>"If a payment is due from the Employer to the Contractor, the Employer may pay to the Contractor less than the sum stated in the payment notice issued in accordance with clause 60(2) or 60(4) or if no such payment notice was issued, the notice issued by the Contractor as described in clause 60(9)(b) provided that not later than five days before the final date for payment the Employer has given a written notice to the Contractor (the "Pay Less Notice") which specifies:</p>		
	(10)	(a)	the sum that the Employer considers to have been due on the date the notice is served having taken account of any amount to be withheld from the payment; and
		(b)	the basis on which that sum is calculated including grounds for any sums withheld.
Clause 60(11): Payment by the Contractor	<p><b>Insert</b> a new sub-clause as follows:</p> <p>"If the application of clauses 60(1) to 60(4) (inclusive) and 60(9) results in a payment being due from the Contractor to the Employer, the Contractor shall issue a valid credit note to the Employer within 5 days of the issue of the Employer's notice under clause 60(9) and the final date for payment of this sum shall be 21 days after the notice under clause 60(9) is issued, whether or not a credit note has been issued by the Contractor."</p>		
Clause 60(12): Amount due and set off	<p><b>Insert</b> a new sub-clause as follows:</p> <p>"The amount due shall be the amount assessed in accordance with the Contract up to the date of the Contractor's interim statement less any sums deductible from the Contractor or payable from the Contractor to the Employer either under clause 76 or for any other reason (including without limitation for losses arising from the Contractor's breach of contract)."</p>		
Clause 60(13): Construction Industry Scheme	<p><b>Insert</b> a new sub-clause as follows:</p>		
	(13)	(a)	For the purposes of this clause 60(13), the "Scheme" shall mean the Construction Industry Scheme, as provided for in Chapter 3 of the Finance Act 2004 and the Income Tax (Construction Industry Scheme) Regulations 2005;
		(b)	Not later than 21 days before the first payment under this Contract is due to the Contractor in such period, the Contractor shall provide to the Employer the information specified in regulation 6(2)(b)(iii) of

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			the Income Tax (Construction Industry Scheme) Regulations 2005;
		(c)	The Contractor shall ensure that at all times it is registered for gross payment under the Scheme;
		(d)	If the Contractor fails to comply with the provisions of sub-clauses 60(13)(b) or 60(13)(c), the Employer shall not be obliged to make any further payment to the Contractor until such time as the failure is remedied.”
Clause 64(4): Default of the Employer	<b>Delete</b> paragraph (b) and <b>insert</b> “Not used”		
Clause 65(1): Default of Contractor	<p><b>Insert</b> new paragraph (k) as follows:</p> <p>“is liable to compensate the Employer in respect of sums referred to in clause 8(2)(c) and/or 34 (Limit on liability for railway costs) and/or clause 47(4)(a) (limitation of liquidated damages) equal to or exceeding the aggregate total liability of the Contractor as stated in clause 8(2)(c) and/or 34(2) and/or clause 47(4)(a) whichever is relevant.”</p> <p>In the paragraph following new paragraph (k), after “specifying the default” <b>insert</b> “(and regardless of any Contractor’s attempted remedy of the event)”</p>		
Clause 65(1A) Termination at will	<p><b>Insert</b> new sub-clause as follows:</p> <p>“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 Contract.”</p>		
Clause 65(4) Valuation at the date of termination	In line 2 after “Employer” <b>insert</b> under sub-clause (1) of this clause”		
Clause 65(5)(a) Payment after termination	<p><b>Delete</b> sub-clause 65(5)(a) and <b>insert</b>:</p> <p>(a) “If the Employer enters and expels the Contractor under sub-clause (1) of this Clause no further sums shall become due to the Contractor under the Contract other than any amount that may become due to him under sub-clauses 65(5)(b) and 65(5)(c) and the Employer need not pay any sum that has already become due either:</p> <p>(i) insofar as the Employer has given or gives a Pay Less Notice under Clause 60(10); or</p> <p>(ii) if the Contractor, after the last date upon which such Pay Less Notice could have been given by the Employer in respect of that sum, has become subject to an event referred to in sub-clause 65(1)(c).”</p>		
Clause 65(6) Payment on termination at will	<p><b>Insert</b> new sub-clause as follows:</p> <p>“If the Employer, in the exercise of the powers contained in sub-clause 65(1A), shall terminate the Contractor’s employment under the Contract, the Employer shall pay the Contractor (insofar as such amounts or items have not already been covered by payments on account made to the Contractor) the Contract value of all</p>		

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	work carried out prior to the date of termination and in addition:
	(a) the amounts payable in respect of preliminary items insofar 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;
	(b) the cost of materials or goods reasonably ordered for the Works which have been delivered to the Contractor or for 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);
	(c) a sum being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the Works insofar as such expenditure has not been recovered by any other payments referred to above; and
	(d) the reasonable costs of removal of all the Contractor's plant, tools, equipment, goods and materials from site.
	The Contractor shall not be entitled to payment of any other loss and/or damage arising from such termination."
Clause 66B(1)(a): Adjudication	In paragraph (a) <b>delete</b> the second sentence and <b>insert</b> : "The adjudication shall be conducted in accordance with the provisions of the Scheme for Construction Contracts made in accordance with the provisions of section 114 of the Housing Grants, Construction and Regeneration Act 1996 (as amended)"
Clause 66B(3):	<b>Delete</b> and <b>insert</b> "Not used"
Clause 66C: Arbitration	<b>Delete</b> and <b>insert</b> as follows: <b>Litigation 66C</b> "Subject to clauses 66A and 66B, any dispute or difference that arises between the parties shall be referred to the High Court of England and Wales for resolution as business of the Technology and Construction Court."
Clause 66D(1): Appointment by agreement	<b>Delete</b> "arbitrator"
Clause 66D(2): President or Vice- President to act	<b>Delete</b> "arbitrator"
Clause 66D(3)	<b>Delete</b> "the Institution of Civil Engineers" and <b>insert</b> "the President of The Technology and Construction Bar Association."
Clause 66D(4):	<b>Delete</b> in line 1 "arbitrator"
Clause 70(2): Employer's Representative's certificates net of Value Added Tax	In lines 1 and 2 after "shall be net of Value Added Tax" <b>insert</b> "and the Contractor shall not issue any claim, statement of sums due or account to the Employer or the Employer's Representative inclusive of Value Added Tax. When requesting or claiming payment the Contractor shall state how the work or supply in question is rated for the purposes of Value Added Tax, and show separately any relevant rates

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	<p>of Value Added Tax relating to the work or supplies.”</p> <p>In line 1 of the second paragraph <b>delete</b> “such certificates” and <b>insert</b> “this Contract”.</p>				
<p>Clause 70(5): Value Added Tax on contra-charged amounts</p>	<p><b>Insert</b> a new sub-clause as follows:</p> <p>“(5) If the Contractor fails to carry out his obligations under the Contract and the Employer employs some other contractor to fulfil them, and a payment in respect of Value Added Tax is made or falls to be made to that other contractor; then the Employer shall be entitled to recover from the Contractor any Value Added Tax (which he is not otherwise able to recover) additional to what he would have paid had the Contractor carried out his obligations under the Contract.”</p>				
<p>Clause 70(6): Authenticated receipts</p>	<p><b>Insert</b> a new sub-clause as follows:</p> <p>“(6) The Contractor shall issue to the Employer, upon receipt of any amount paid by the Employer under this Contract and any Value Added Tax properly paid under sub-clause (2) of this clause, an authenticated receipt of the kind referred to in Regulation 13(4) of The Value Added Tax Regulations 1995 (or any amendment or re-enactment thereof) containing the particulars required under Regulation 14(1) of the same Regulations to be contained in a VAT invoice.”</p>				
<p>Clause 71: CDM Regulations</p>	<p><b>Delete and insert</b> as follows:</p>				
	<table border="1"> <tr> <td>“71(1)</td> <td>The Contractor shall strictly comply with the Employer’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, any Sub-Contractors and other persons engaged by it in relation to this Contract 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 the Site who is not so trained.</td> </tr> <tr> <td>71(2)</td> <td>The Contractor is appointed as “Principal Contractor” for the Project. The Contractor warrants that it is competent to accept this appointment and that it will properly perform all the duties required of a principal contractor under the Construction (Design and Management) Regulations 2007 including, without limitation, liaising with the CDM Coordinator for the Project, named in the Appendix.”</td> </tr> </table>	“71(1)	The Contractor shall strictly comply with the Employer’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, any Sub-Contractors and other persons engaged by it in relation to this Contract 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 the Site who is not so trained.	71(2)	The Contractor is appointed as “Principal Contractor” for the Project. The Contractor warrants that it is competent to accept this appointment and that it will properly perform all the duties required of a principal contractor under the Construction (Design and Management) Regulations 2007 including, without limitation, liaising with the CDM Coordinator for the Project, named in the Appendix.”
“71(1)	The Contractor shall strictly comply with the Employer’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, any Sub-Contractors and other persons engaged by it in relation to this Contract 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 the Site who is not so trained.				
71(2)	The Contractor is appointed as “Principal Contractor” for the Project. The Contractor warrants that it is competent to accept this appointment and that it will properly perform all the duties required of a principal contractor under the Construction (Design and Management) Regulations 2007 including, without limitation, liaising with the CDM Coordinator for the Project, named in the Appendix.”				

## Special Conditions

<p><b>Collateral Warranties and Novation Agreements</b></p>	<p>73</p>	<p>(1) The Contractor shall, within 7 working days of the Employer's request so to do, execute in favour of any person or persons nominated by the Employer who have entered into or intend to enter into an agreement for the provision of finance in connection with the Works and/or for the purchase of an interest, whether leasehold or freehold, in the land upon which the Works or any part of them are situated a deed in the form appended to the Contract Specific Conditions.</p> <p>(2) The Contractor shall, within 7 working days of the Employer's request so to do, execute a deed on novation in the form appended to the Contract Specific Conditions with the Employer and each of the Employer's suppliers and consultants whose details are set out in the Appendix so as to become the counter-party to each of such supplier's and consultant's contracts with the Employer in place of the Employer.</p>
<p><b>Confidentiality</b></p>	<p>74</p>	<p>(1) All information obtained by the Contractor in the course or conduct of the Contract 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 Contract 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 hereunder.</p>
		<p>(2) Provided however that this obligation shall not apply to information which:</p>
		<p>(a) is or shall become part of the public domain otherwise than in consequence of a breach of the Contractor of its obligations under this clause;</p> <p>(b) was in the Contractor's possession prior to award of this Contract and which the Employer did not notify the Contractor as being confidential or which would not reasonably be regarded as confidential by its very nature;</p> <p>(c) was received from third parties having to the best of the Contractor's knowledge the right to disclose such information;</p> <p>(d) is required to be disclosed pursuant to a court order or statutory requirement provided that the Contractor shall to the extent permitted by the relevant legal or statutory requirement: (i) provide the Employer with prompt written notice of any such requirement before such disclosure is made and (ii) take all reasonable action to avoid and limit such disclosure as may be requested by the Employer.</p>
		<p>(3) The Contractor shall ensure that the provisions of this clause are incorporated in any sub-contracts or supply orders and that the employees, agents or representatives of all or any of the Sub-Contractors or suppliers comply with the same.</p>
		<p>(4) The Contractor shall not make any announcement in relation to this contract or its subject matter without the prior written approval of the</p>

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		Employer except as required by law or by any legal or regulatory authority.
		(5) This clause 74 shall remain binding on the Contractor notwithstanding the completion or termination or determination of this Contract for any reason.
<b>Track Possessions and Isolations</b>	<b>75</b>	(1) After the programme has been accepted by the Employer's Representative and consent has been given by him to proceed with carrying out the Works, the Contractor shall in all cases submit written notice to the Employer's Representative confirming any speed restrictions, track possession or isolation requirements in accordance with the Employer's current planning procedures (or as otherwise laid down in the Contract) in advance of the proposed commencement of work on or near the railway lines.
		(2) The Employer reserves the right to cancel or alter the dates and times of the agreed speed restrictions, track possessions or isolations at short notice if this proves necessary because of any emergency affecting the safe or uninterrupted running of rail traffic, but in such an event alternative arrangements will be made as soon as the Employer's programme permits.
		(3) Where any part of the Works has to be carried out during an agreed period of a speed restriction, track possession or isolation, the Contractor shall make adequate arrangements to ensure that such part can commence as programmed, and can be completed as early as possible, and in any case within that period. The arrangements shall include the provision of sufficient and suitable Contractor's Equipment (including, where practicable, standby equipment) and sufficient labour.
		(4) Prior to the commencement of any speed restriction, track possession or isolation, if the Employer's Representative is of the opinion that the Contractor has failed to comply with the requirements of sub-clause (3) of this clause 75, he may at his discretion cancel the speed restriction, track possession or isolation, or reduce the extent of the work that the Contractor may carry out during such speed restriction, track possession or isolation, and shall notify the Contractor accordingly.
		(5) If, during a speed restriction, track possession or isolation, the Employer's Representative is of the opinion that the Contractor will be unable to complete the planned work (or any revision thereof proposed by the Contractor) to his satisfaction so as to permit the termination of the speed restriction, track possession or isolation at the time agreed, then the Employer's Representative may instruct the Contractor to reduce the extent of or vary the dates and times of the work to be carried out during such speed restriction, track possession or isolation. Such reduction or variation shall not entitle the Contractor to any additional payment or extension of time for completion if and to the extent that the Contractor's inability to complete the planned work was due to a breach by the Contractor of the requirements of the Contract.
		(6) The Contractor acknowledges that the Employer may incur additional costs as a result of the requirement to use and/or obtain additional speed

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		restrictions, track possessions or isolations in accordance with sub-clauses (4) and (5) of this clause 75, and that the Employer shall be entitled to contra-charge the Contractor in respect of such costs to the extent they are due to a breach by the Contractor of the requirements of the Contract.
<b>Set-off</b>	<b>76</b>	Without prejudice to the Employer's other rights and remedies, the Employer may deduct from any sums due to the Contractor under the Contract an amount equivalent to any sum due from the Contractor to the Employer (whether such sums are due to the Employer under the Contract 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 Contract from any sum then due or which at any time thereafter may become due under any other agreement between the Contractor and the Employer.
<b>Claims Handling Provisions</b>	<b>77</b>	(1) In these provisions, where the context admits, "Claims Allocation and Handling Agreement" means the Agreement so entitled dated 1st December 2009 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 terms and expressions defined in the Claims Allocation and Handling Agreement, and the Employer shall supply the Contractor with a copy of each amendment thereto, as and when it is made.
		(2) These provisions shall apply:
		<ul style="list-style-type: none"> <li>(a) if the Contract is in connection with the maintenance or operation of the Employer's Railway Assets; and</li> <li>(b) in respect of the period (if any) while the Contractor is an Independent Contractor; and</li> <li>(c) where a claim, which arises out of or is connected with the Contract, is made by a third party who does not have a contract with the Contractor:</li> </ul>
		<ul style="list-style-type: none"> <li>(i) against the Employer or the Agency, which may result in a claim being made against the Contractor; or</li> <li>(ii) against the Contractor, which may result in a claim being made against the Employer or the Agency (whether by the Contractor or otherwise).</li> </ul>
		In relation to clause 17 of the Claims Allocation and Handling Agreement this Contract does hereby permit the recovery by the Employer of loss of revenue or other consequential losses that are direct and foreseeable.
		(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 claim on behalf of the Contractor and 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

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		to it.
		(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 handling 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 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 arbitration in accordance with the Contract.
		(5) Provided that sub-clauses (3) and (4) of this clause shall not apply to any claim in respect of which the Contractor admits that he is liable, and that no Industry Party is liable. In such a case, the Contractor himself may defend the claim.
		(6) Without prejudice, and in addition, to any rights and remedies of the Employer, the Contractor shall indemnify the Employer against all losses, claims, liability, 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 duty of care owed to a third party which is the subject of a claim under the Claims Allocation and Handling Agreement.
<b>M&amp;E and Signalling Conditions</b>	<b>78</b>	The provisions of clauses 79 to 83 below shall apply if and to the extent that the Works include the provision of plant and machinery for which there are testing requirements in the Employer's Requirements or the Contractor's Submission as identified in the Appendix.
<b>Definitions</b>	<b>79</b>	(1) For the purposes of clauses 79 to 83, the following words and expressions shall have the following meanings assigned to them:
		<p>(a) <b>"Plant"</b> means those items of machinery, computer hardware and software, apparatus, equipment and materials (if any), other than the Contractor's Equipment, identified in the Appendix and/or in respect of which the Appendix provides that Tests on Completion or Performance Tests shall apply.</p> <p>(b) <b>"Tests on Completion"</b> means the tests (if any) referred to in the Appendix (or otherwise agreed by the Employer and the Contractor) which are to be made by the Contractor upon completion of erection and/or installation before the issue of a Certificate of Substantial Completion in respect of the Works or a Section thereof.</p> <p>(c) <b>"Performance Tests"</b> means the tests (if any) referred to in the Appendix or otherwise agreed between the Employer and the Contractor, to be made after substantial completion of the Works to demonstrate the performance of the Works.</p>
<b>Inspection and Testing of Plant Before Delivery</b>	<b>80</b>	(1) The Employer's Representative shall be entitled at all reasonable times during manufacture to inspect, examine and test on the Contractor's premises or elsewhere the materials, workmanship and performance of all Plant. If any part of the Plant is being manufactured on premises other

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		than the Contractor's own, the Contractor shall obtain permission for the Employer's Representative to inspect, examine and test such Plant as if it were being manufactured on the Contractor's premises. Such inspection, examination or testing shall not release the Contractor from any obligation under the Contract.
		(2) If not specified in the Contract, the Contractor shall agree with the Employer's Representative the date on and the place at which any Plant will be ready for inspection, examination or testing. The Employer's Representative shall give the Contractor 24 hours' notice of his intention to attend the test or inspection. If the Employer's Representative shall not attend on the date and at the place agreed, the Contractor may proceed with the inspection, examination or test which shall be deemed to have been made in the Employer's Representative's presence. The Contractor shall forthwith forward to the Employer's Representative duly certified copies of the results of the inspection, examination or test.
		(3) The Contractor shall provide such assistance, labour, materials, electricity, fuel stores, apparatus and instruments as may be necessary or as may be reasonably requested by the Employer's Representative for the purposes of carrying out any such inspection, examination or test.
		(4) When the Employer's Representative is satisfied that any Plant has passed the inspection, examination or test referred to in this clause he shall forthwith issue to the Contractor a certificate to that effect.
		(5) If after inspecting, examining or testing any Plant the Employer's Representative shall decide that such Plant or any part thereof is defective or not in accordance with the Contract, he may reject the said Plant or part thereof by giving to the Contractor notice of such rejection, stating therein the grounds upon which his decision is based. Following any such rejection the Contractor shall make good or otherwise repair or replace the rejected Plant and resubmit the same for inspection, examination or testing in accordance with this clause. All expenses reasonably incurred by the Employer in consequence of such re-inspection, re-examination or re-testing and the Employer's Representative's attendance shall be deducted from the Contract Sum.
		(6) No Plant may be delivered to the Site unless it has been certified by the Employer's Representative in accordance with sub-clause (4) of this clause 80.
<b>Tests on Completion</b>	<b>81</b>	<p>(1) The Contractor shall give to the Employer's Representative 21 days' notice of the date after which he will be ready to make any Tests on Completion. Unless otherwise agreed the Tests on Completion shall take place within 10 days after the said date on such day or days as the Employer's Representative shall notify to the Contractor.</p> <p>Provided that where the conduct of the Tests on Completion requires signalling disconnections and/or restricts the operating railway in any way, the Contractor shall submit to the Employer's Representative for its acceptance pursuant to clause 14 a programme showing those dates and times at which the Contractor requests access to the operating railway to</p>

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		complete the Works, and any such request for access that is disruptive to the railway shall be made in accordance with clause 75 (Track Possessions).
		(2) If the Employer's Representative fails to appoint a time after having been asked to do so or to attend at any time or place duly appointed for making the Tests on Completion, the Contractor shall be entitled to proceed in his absence and the Tests on Completion shall be deemed to have been made in the presence of the Employer's Representative. The Contractor shall forthwith forward to the Employer's Representative duly certified copies of the results of the Tests on Completion.
		<p>(3) Before commencing Tests on Completion in respect of signalling and signalling related works that require signalling disconnections and/or restrict the operating railway in any way, the Contractor shall have arranged any possessions or signalling disconnections required to carry out the tests in accordance with clause 75 (Track Possessions) and shall submit all pre-test documentation (including the Testing Strategy and Test Plan(s)) to the Employer's Representative in accordance with applicable Railway Group Standards, Network Rail Standards and/or any equivalent standards including, but not limited to, the Signalling Testing Handbook.</p> <p>(4) No signalling testing activity of any sort shall take place unless the Testing Strategy and Test Plan(s) have been approved in writing by the Employer.</p> <p>If the Contractor fails to submit any pre-test documentation within the time limits specified in the Signalling Testing Handbook or the submitted documentation is not approved for any reason, the proposed Tests on Completion shall not take place and the Contractor shall submit alternative arrangements to the Employer for his acceptance. Such arrangements shall be at no additional cost to the Employer and all costs which the Employer may incur in the re-arrangement of the Tests on Completion shall be deducted from the Contract Sum.</p>
		(5) If any Plant fails to pass the Tests on Completion they shall be repeated within a reasonable time upon the same terms and conditions. All expenses reasonably incurred by the Employer in consequence of such repetition of the Tests on Completion and the Employer's Representative's attendance shall be deducted from the Contract Sum.
		(6) If any Plant fails to pass the Tests on Completion (including any repetition thereof) the Contractor shall (subject to the provisions of clause 75 (Track Possessions) in the case of work or the conduct of the tests requiring signalling disconnections and/or restricting the operating railway in any way) take whatever steps may be necessary to enable the Plant to pass the Tests on Completion and shall thereafter repeat them, unless any time limit specified in the Contract for the passing thereof shall have expired, in which case the Employer's Representative shall be entitled to reject such Plant and the Employer shall be entitled to proceed in accordance with clause 65(1) (Default of Contractor).
<b>Performance</b>	<b>82</b>	(1) Where Performance Tests are included in the Contract they shall be

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<b>Tests</b>		carried out in accordance with any agreed programme or if none then as soon as is reasonably practicable and within a reasonable time after that part of the Works into which the relevant Plant is incorporated has been substantially completed.
		(2) Performance Tests shall be carried out by the Employer or the Employer's Representative on his behalf under the supervision of the Contractor and in accordance with the procedures and under the operating conditions specified in the Contract and in accordance with such other instructions as the Contractor may give in the course of carrying out such tests.
		(3) The Employer, or the Employer's Representative on his behalf, or the Contractor shall be entitled to order the cessation of any Performance Test if damage to the Plant or personal injury is likely to result from continuation.
		(4) If any Plant fails to pass any Performance Test (or repetition thereof) or if any Performance Test is stopped before its completion, such test shall, subject to sub-clause (5) of this clause 82, be repeated as soon as practicable thereafter. Any additional cost incurred by the Employer by reason of the repetition of any Performance Test shall be deducted from the Contract Price. The Employer shall permit the Contractor to make adjustments and modifications to any part of the Plant before the repetition of any Performance Test and shall, if required by the Contractor, shut down any part of the Plant for such purpose and re-start it after the adjustments and modifications have been made. All such adjustments and modifications shall be made by the Contractor with all reasonable speed and at his own expense. The Contractor shall, if so required by the Employer's Representative, submit to the Employer's Representative for his approval details of the adjustments and modifications which he proposes to make.
		(5) If any Plant fails to pass any Performance Test (of repetition thereof) and the Contractor in consequence proposes to make any adjustments or modifications thereto, the Employer's Representative may notify the Contractor that the Employer requires the carrying out of such adjustments or modifications to be postponed. In such event the Contractor shall remain liable to carry out the adjustments or modifications and a successful Performance Test within a reasonable time of being notified to do so by the Employer's Representative. If however the Employer's Representative fails to give any such notice within one year of the date of substantial completion of that part of the Works in which such Plant is incorporated, the Contractor shall be relieved of any such obligation and any Plant shall be deemed to have passed such Performance Test.
		(6) The results of Performance Tests shall be compiled and evaluated jointly by the Employer, or the Employer's Representative on his behalf, and the Contractor in the manner detailed in the Contract.
<b>Defective Plant and Further</b>	<b>83</b>	If any repairs or replacements are to be carried out pursuant to the Contractor's obligations under clause 49 (Outstanding Work and Defects)

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<b>Testing</b>		that are of such character as may affect the operation of any Plant, the Employer or the Employer's Representative may within one month after such repair or replacement give to the Contractor notice requiring that further Tests on Completion or Performance Tests be made in which case such tests shall be carried out as provided in clause 81 (Tests on Completion) or clause 82 (Performance Tests) as the case may be.
<b>Anti-Bribery Requirements</b>	<b>84</b>	(1) The Contractor shall comply with all applicable anti-bribery and anti-corruption legislation including, without limitation, the Bribery Act 2010 and any applicable European Union Directives. The Contractor shall also comply with Network Rail's codes and policies on business ethics, interests in transactions and corporate hospitality, and any updates thereof. Any breach of this clause shall be deemed a material breach under the Agreement. (Note: These codes and policies are available on line at: <a href="http://www.networkrail.co.uk/asp/12859.aspx">http://www.networkrail.co.uk/asp/12859.aspx</a> ).
		(2) Throughout the term of this Agreement the Contractor 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 and European Union Directives. 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).
		(3) The Contractor shall use all reasonable endeavours to ensure that all persons associated with the Contractor (as defined by section 8 of the Bribery Act 2010) including any subcontractors and suppliers comply with clause 84.1 and 84.2 above.

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## Contract Specific Conditions

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## **Contract Requirements:**

Technical Workslope

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## **Contract Requirements:**

HSQE

- General
- Contract Specific

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## **Contract Requirements:**

Preliminaries

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## Pricing Document