

NETWORK RAIL 2

Network Rail Conditions of Contract for Purchase of Services [brief description]

Signed by: _____

for and on behalf of Network Rail

Signed by: _____

for and on behalf of the Supplier

Agreement/Contract No.: [Insert]

NETWORK RAIL 2

Contract Agreement

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

Between

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 (“**Network Rail**”)

and

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

Whereas

Network Rail wishes to confirm the appointment of the Supplier to perform the services in relation to [Insert] as described in Schedule 1 to this Agreement.

Now this Agreement witnesseth as follows:

- 1** In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions hereinafter referred to.
- 2** The following documents 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:
 - 2.1** this Contract Agreement;
 - 2.2** Schedule of Post Tender Amendments;
 - 2.3** Appendix;
 - 2.4** Contract Specific Conditions and annexed forms of guarantee and deeds of collateral warranty (if applicable);
 - 2.5** Conditions;
 - 2.6** The Project and Services (Schedule 1);
 - 2.7** Contract Requirements HSQE Conditions (Schedule 2);
 - 2.8** Personnel (Schedule 3); and
 - 2.9** Pricing Document (Schedule 4),all of which are annexed hereto and together form the Agreement.
- 3** In consideration of the payments to be made by Network Rail to the Supplier as hereinafter mentioned the Supplier hereby covenants with Network Rail to provide services in conformity in all respects with the provisions of the Agreement.

NETWORK RAIL 2

- 4 The parties hereby agree that the Contract Price shall be Insert amount in words (£Insert) or such other sum as shall become payable in accordance with this Agreement.
- 5 Network Rail hereby covenants to pay to the Supplier in consideration of the provision of Services the Contract Price at the times and in the manner prescribed by the Agreement.
- 6 This Agreement shall be governed by English law.

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

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

Authorised signatory

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

Director

NETWORK RAIL 2

Schedule of Post Tender Amendments

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

None

NETWORK RAIL 2

Appendix

(Note: Relevant clause numbers are shown in brackets)

- | | | |
|---|--|---|
| 1 | Public Liability insurance (clause 8.2.1) | £5,000,000 (five million pounds) |
| 2 | Professional indemnity insurance (clause 8.2.2) | £10,000,000 (ten million pounds), subject to any customary terms, exclusions and excesses prevailing in the insurance market and which may be subject to an annual aggregate limit. |
| 3 | Commencement date (clause 9.1) | [Insert Date] |
| | Completion date (clause 9.1) | [Completion of the Services or Insert Date] |
| 4 | Key dates for performance of Services (clause 9.2) | |

Deliverables

Completion dates

[Insert]

[Insert Date]

[Insert]

[Insert Date]

[Insert]

[Insert Date]

[Insert]

[Insert Date]

[Insert]

[Insert Date]

- 5 Addresses for Notices (clause 20)

Network Rail:

Address: [Insert]

The Supplier:

Address: [Insert]

or such other address or facsimile number as may be notified in writing from time to time by the relevant party to the other party.

- 6 Network Rail's Representative (clause 1.1.5)

[Insert]

NETWORK RAIL 2

Table of Contents

CONDITIONS

1. DEFINITIONS AND INTERPRETATION
2. DUTIES OF THE SUPPLIER
3. NETWORK RAIL'S OBLIGATIONS
4. CONTRACT PRICE AND PAYMENT
5. SET-OFF
6. SUPPLY OF INFORMATION
7. VARIATION OF SERVICES
8. INDEMNITY AND INSURANCE
9. DURATION OF THE AGREEMENT AND PROGRESS OF THE SERVICES
10. ASSIGNMENT AND SUB-CONTRACTING
11. INTELLECTUAL PROPERTY
12. PERSONNEL
13. CONFIDENTIALITY AND ANNOUNCEMENTS
14. TERMINATION AND SUSPENSION
15. WAIVER
16. DATA PROTECTION ACT 1998
17. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999
18. TUPE AND AWR
19. NOTICES
20. ENTIRE AGREEMENT
21. CHANGES
22. GOVERNING LAW JURISDICTION AND LIMITATIONS
23. ANTI-BRIBERY REQUIREMENTS

CONTRACT SPECIFIC CONDITIONS

SCHEDULE 1: PROJECT AND SERVICES

SCHEDULE 2: CONTRACT REQUIREMENTS HSQE CONDITIONS

SCHEDULE 3: PERSONNEL

SCHEDULE 4: PRICING DOCUMENT

NETWORK RAIL 2

Conditions

1. Definitions and Interpretation

- 1.1 In this Agreement the following words shall have the following meanings:
- 1.1.1 “**Agreed Rail Industry Period**” means each or any of Network Rail’s thirteen accounting periods in its financial year starting on 1st April;
 - 1.1.2 “**Contract Price**” means the sum specified in Schedule 4, as adjusted from time to time in accordance with this Agreement, to be paid by Network Rail to the Supplier in consideration for the Supplier’s performance of the Services;
 - 1.1.3 “**Contract Requirements HSQE Conditions**” means the document described as such and referred to in the Agreement;
 - 1.1.4 “**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;
 - 1.1.5 “**Network Rail’s Representative**” means the person designated as such in the Appendix or as notified by Network Rail to the Supplier from time to time;
 - 1.1.6 “**Post Tender Amendments**” means the Conditions specific to this Agreement which are set out in the attached Schedule of Post Tender Amendments;
 - 1.1.7 “**Pricing Document**” means Schedule 4;
 - 1.1.8 “**Services**” means the services to be performed by the Supplier as specified in Schedule 1 or as may be varied by Network Rail from time to time in accordance with this Agreement;
 - 1.1.9 “**Sub-Contractor**” means any sub-contractor of the Supplier including sub-contractors of any such sub-contractors;
 - 1.1.10 “**Variation of Services**” means variations additions or other amendments to the Services provided they fall within the competency and control of the Supplier.
- 1.2 Any reference to Appendix or clause sub-clause or Schedule is to the relevant clause or sub-clause of these Conditions or the relevant Appendix or Schedule to this Agreement.
- 1.3 The headings are included for convenience only and shall not affect interpretation of this Agreement.
- 1.4 Use of the singular includes the plural and vice versa.
- 1.5 Use of any gender includes all genders.
- 1.6 Any reference to a statute or statutory instrument shall be construed as referring to any modification extension or re-enactment thereof from time to time.
- 1.7 Any phrase introduced by the term “including” shall be construed as illustrative and without limitation.

NETWORK RAIL 2

2. Duties of the Supplier

- 2.1 The Supplier warrants that it has exercised and will continue to exercise in the performance of the Services all the reasonable skill care and diligence as may be expected of a properly qualified and competent member of the Supplier's profession experienced in carrying out services in relation to a project (if any) of a similar size scope and complexity to the Services.
- 2.2 The Supplier shall comply with all statutory legislation, Network Rail Standards and Railway Group Standards and observe Network Rail's policies in Contract Requirements HSQE Conditions (as set out in Schedule 2) notified to the Supplier from time to time prior to the performance of the Services.
- 2.3 The Supplier shall exercise the standard of skill, care and diligence referred to in clause 2.1 in it's compliance with any codes of practice and British Standards.
- 2.4 The Supplier shall be responsible for the accuracy of all and any documents prepared by it or on its behalf. Neither Network Rail's approval of any such documents nor its failure to discern any defect in or omission from any such documents shall absolve or relieve the Supplier from any of its responsibilities duties and obligations under this Agreement.
- 2.5 Except as stated in clause 9.2 or with respect to the Supplier's liability for death and personal injury, the Supplier's liability for any breach of its obligations under this Agreement whether in contract, tort, delict or otherwise, shall not exceed the sum of £10,000,000.00 in the aggregate.
- 2.6 If there is a change in law, Railway Group Standards or Network Rail Standards affecting the Services after the date of this Agreement which necessitates a variation of the Services, such variation shall be treated as if it were a Variation of Services pursuant to clause 7.

3. Network Rail's Obligations

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

4. Contract Price and Payment

- 4.1 The Contract Price shall be calculated in accordance with Schedule 4. The Contract Price excludes Value Added Tax that will be charged at the rate applicable at the time of invoicing. The Supplier shall provide suitable Value Added Tax invoices to enable Network Rail to reclaim the relevant Value Added Tax.
- 4.2 Either on completion of Services deliverables or after the end of each Agreed Rail Industry Period, as detailed in Schedule 4, the Supplier shall present to Network Rail's Representative an application stating the total amount due supported by documentation and other information required by Network Rail's Representative including a statement of the basis of calculation of the application. Provided the Supplier complies with this clause, payment shall be due 14 days after the submission of the Supplier's application (the "Due Date").
- 4.3 Not later than the Due Date Network Rail's Representative shall give the Supplier written notice stating the amount that Network Rail considers due on the Due Date, to what the amount relates and the basis on which the amount is calculated. Such notice shall be given even if the amount that Network Rail considers to be due is zero.

NETWORK RAIL 2

- 4.4 If a payment is due from Network Rail to the Supplier, the Supplier shall render a valid VAT invoice to Network Rail:
- 4.4.1 either in the sum stated in the notice issued in accordance with clause 4.3 or in the absence of such notice, in the sum stated in the Supplier's application under clause 4.2; and
 - 4.4.2 which includes the correct agreement/contract number and the purchase order number and is addressed to "Network Rail, Accounts payable, P.O. Box 4145, Manchester M60 7WZ."
- 4.5 Provided that the Supplier renders a valid VAT invoice to Network Rail in accordance with clause 4.4, the final date for payment shall be 28 days from the Due Date or 28 days from Network Rail's receipt of the Supplier's valid invoice, whichever is the later.
- 4.6 If a payment is due from Network Rail to the Supplier, Network Rail may pay to the Supplier less than the sum stated in the notice issued in accordance with clause 4.3 or in the absence of such notice, less than the sum stated in the Supplier's application under clause 4.2 provided that not later than 1 day before the final date for payment Network Rail's Representative has given a written notice (the "Pay Less Notice") to the Supplier which specifies:
- 4.6.1 the sum that Network Rail considers to be due on the date the notice is served having taken account of any amount to be withheld from the payment; and
 - 4.6.2 the basis on which that sum is calculated including grounds for any sums withheld.
- 4.7 If the application of clauses 4.1 to 4.3 (inclusive) results in a payment being due from the Supplier to Network Rail, the Supplier shall issue a valid credit note to Network Rail within 5 days of the issue of Network Rail's notice under clause 4.3 and the final date for payment of this sum shall be 28 days after the notice under clause 4.3 is issued, whether or not a credit note has been issued by the Supplier.
- 4.8 If Network Rail fails to pay the Supplier any sum properly payable under this Agreement by the final date for payment Network Rail shall pay the Supplier simple interest on that sum from the relevant final date for payment until the actual date of payment calculated at a rate of 4% per annum above the Bank of England Base Rate current at the date that a payment under this Agreement becomes overdue.
- 4.9 The amount due shall be the amount assessed in accordance with this Agreement less any sums deductible from the Supplier or payable from the Supplier to Network Rail either under clause 5 or for any other reason (including without limitation for losses arising from the Supplier's breach of contract).

5. Set-off

Without prejudice to Network Rail's other rights and remedies, Network Rail may deduct from any sums payable to the Supplier under this Agreement an amount equivalent to any sum payable by or recoverable from the Supplier to Network Rail (whether such sums are payable by or recoverable from the Supplier under this Agreement or under any other agreement between the Supplier and Network Rail) and may also deduct any sum then payable by or recoverable from the Supplier or which at any time thereafter may be payable by or recoverable from the Supplier under any other agreement between the Supplier and Network Rail. Network Rail shall in the Pay Less Notice give to the Supplier notice of any such deduction or set-off and such notice shall specify:

NETWORK RAIL 2

- 5.1 the sum that Network Rail considers to be due on the date the notice is served having taken account of any amount to be withheld from the payment; and
- 5.2 the basis on which that sum is calculated including the grounds for any sums withheld.

6. Supply of Information

The Supplier shall at all times keep Network Rail fully informed on the performance of the Services and shall further provide Network Rail from time to time with all such information as Network Rail may in its opinion reasonably require at no cost to Network Rail.

7. Variation of Services

- 7.1 Network Rail may require the Supplier to undertake Variation of Services
- 7.2 Where Network Rail's Representative has instructed Variation of Services then the Contract Price shall be adjusted in accordance with clause 7.3.
- 7.3 Where there is to be a Contract Price adjustment under clause 7.2 Network Rail and the Supplier shall endeavour to agree on the required adjustment. Once so agreed in writing any such adjustment shall be binding on the parties as the full and final Contract Price adjustment in respect of the Variation of Services. Where the parties fail to agree on a Contract Price adjustment Network Rail's Representative may nevertheless instruct the Supplier to implement the Variation of Services and shall state (at Network Rail's discretion) whether the resulting Contract Price adjustment shall be:
 - 7.3.1 calculated on the basis of the rates as set out in Schedule 4 (if applicable); or
 - 7.3.2 a lump sum calculated on a fair and reasonable basis having regard to the nature of the Variation of Services.
- 7.4 Unless or until Network Rail's Representative confirms his instructions in writing to proceed with any such Variation of Services the Supplier shall not perform any such Variation of Services.
- 7.5 No additional sum shall be payable to the extent that any of the Variation of Services are necessitated in whole or in part by any negligence omission or default on the Supplier's part.
- 7.6 In the event that Network Rail's Representative pursuant to this clause instructs any Variation of Services they shall be deemed to be part of the Services for the purposes of this Agreement.

8. Indemnity and Insurance

- 8.1 The Supplier shall be liable for and shall indemnify Network Rail against all and any loss, damage, cost, expense, liability, claims and proceedings whatsoever in respect of:
 - 8.1.1 any personal injury to or death of any person; and
 - 8.1.2 any loss of or damage to any propertydue to the acts, neglect, error, or omission by the Supplier or any of its employees, agents or representatives in the course of the performance of the Services whilst on or around Network Rail's property or other site or premises relevant to the Services save to the extent that the

NETWORK RAIL 2

same was caused or contributed to by Network Rail's breach of this Agreement or by the negligent act or omission of Network Rail or any of its employees, agents or representatives. This indemnity shall be subject to the limitation of the Supplier's liability pursuant to clause 2.5 save that clause 2.5 shall not limit the Supplier's liability for death and personal injury.

- 8.2 The Supplier shall:
- 8.2.1 maintain at its own cost public liability insurance for an amount not less than the sum stated in the Appendix for any one occurrence or series of occurrences arising out of one event;
 - 8.2.2 maintain at its own cost professional indemnity insurance to ensure that its activities under this Agreement are insured and remain insured for an amount not less than the sum stated in the Appendix for any one claim or series of claims arising out of any one event, provided always that such insurance is available at commercially reasonable rates (with any increased or additional premium required by insurers by reason of the Supplier's insurance record or other matters particular to the Supplier being considered to be within commercially reasonable rates);
 - 8.2.3 ensure that the foregoing insurance policy or policies shall be or are effected with reputable and established insurers upon customary and usual terms and conditions prevailing for the time being in the insurance market; and
 - 8.2.4 from time to time on request produce evidence that the Supplier is insured in accordance with the requirements of this clause and immediately notify Network Rail of the cancellation or withdrawal of any such insurance.
- 8.3 The terms and conditions of the Supplier's insurance effected in accordance with this clause shall not include any term or condition that excludes the Third Parties (Rights Against Insurers) Act 1930.
- 8.4 Nothing in this Agreement is intended to be construed as creating an employee – employer relationship between Network Rail and any worker, operative or other employee of the Supplier. In the event that Her Majesty's Revenue and Customs make an assessment that Network Rail is liable for any income tax, PAYE, National Insurance Contributions, interest or penalties in respect of the Supplier's workers, operatives or other employees the Supplier will indemnify Network Rail in full in respect of such assessment.
- 8.5 The obligations under this clause shall continue notwithstanding termination of this Agreement for any reason whatsoever including breach by Network Rail.

9. Duration of the Agreement and Progress of the Services

- 9.1 This Agreement shall be effective from the commencement date stated in the Appendix until either the completion of the Services or until the completion date stated in the Appendix.
- 9.2 The Supplier warrants and undertakes to Network Rail to progress the Services with due diligence having regard to any key dates for performance of the Services set out in the Appendix or as otherwise agreed by the parties. The Supplier's liability under this sub-clause shall not exceed the Contract Price.
- 9.3 Notwithstanding completion of the performance of the Services or suspension and/or termination in accordance with clause 14 both parties shall remain bound by this Agreement insofar as and for so long as may be necessary to give effect to the parties' respective rights

NETWORK RAIL 2

and obligations hereunder subject to the relevant periods of statutory liability under the Limitation Act 1980.

10. Assignment and Sub-contracting

- 10.1 Network Rail shall be entitled to assign charge or transfer this Agreement or any of its rights under it at any time.
- 10.2 The Supplier shall not assign charge or transfer this Agreement or any of its rights under it without the prior written consent of Network Rail.
- 10.3 The Supplier shall not sub-contract to or allow any other person to perform any of the Services without Network Rail's Representative's prior written consent (such consent not to be unreasonably withheld). The Supplier shall remain responsible for the performance of any services so sub-contracted as if the sub-contracting had not occurred.

11. Intellectual Property

- 11.1 The Intellectual Property which the Supplier has supplied to Network Rail in accordance with this Agreement and which the Supplier has created and/or developed for the purposes of performing its obligation under this Agreement shall remain vested in the Supplier but the Supplier hereby grants to Network Rail an irrevocable royalty free non-exclusive licence to copy use adapt and reproduce the Intellectual Property for any purpose whatsoever in connection with Network Rail's permitted business. Such licence shall carry with it the right to grant sub-licences and shall be transferable to third parties.
- 11.2 The Supplier shall indemnify Network Rail against all loss damage costs and expenses for which Network Rail is or becomes liable as a result of any infringement or alleged infringement by the Supplier of any third party's intellectual property rights.
- 11.3 The Supplier shall not be liable for any use of the Intellectual Property for any purpose other than that for which it was originally prepared or supplied by the Supplier.

12. Personnel

- 12.1 The Supplier's personnel listed in Schedule 3 shall carry out the Services unless otherwise agreed with Network Rail's Representative.
- 12.2 Network Rail's Representative shall be entitled on written notice to require the Supplier to terminate immediately any person's involvement with the provision of the Services when in the opinion of Network Rail's Representative it considers it undesirable and/or unnecessary for them to continue. The Supplier shall if so required by Network Rail's Representative as soon as reasonably practicable replace any person so removed with a suitable person to be agreed by Network Rail's Representative.

13. Confidentiality and Announcements

- 13.1 Save to the extent that it is necessary in order to comply with any obligations under this

NETWORK RAIL 2

Agreement, the Supplier acknowledges and agrees that neither it nor its respective accountants, legal advisers and insurers shall provide a copy of this Agreement or information passed under this Agreement or disclose disseminate and/or publicise or cause or permit to be disclosed disseminated and/or publicised any of the terms and conditions of this Agreement or information passed under this Agreement in whole or in part to any individual and/or entity not a party to this Agreement except as follows:

- 13.1.1 in response to an order of a court of competent jurisdiction, or in response to an appropriate subpoena or discovery request issued in the course of litigation; and/or
 - 13.1.2 in response to an enquiry or order issued by a government or supra-governmental agency of competent jurisdiction; and/or
 - 13.1.3 to the extent necessary to report income to appropriate taxing authorities and/or to contest the imposition of any tax by appropriate taxing authorities; and/or
 - 13.1.4 to the parties' respective accountants, legal advisers and insurers; and/or
 - 13.1.5 in connection with any litigation between the parties relating to this Agreement; and/or
 - 13.1.6 to the extent required in order to comply with applicable laws and/or regulations.
- 13.2 The Supplier shall not make any announcement relating to this Agreement or its subject matter without the prior written approval of Network Rail except as required by law or by any legal or regulatory authority.
- 13.3 The restrictions contained in this clause shall survive the termination of this Agreement and shall continue without limit of time.

14. Termination and Suspension

- 14.1 Network Rail may terminate immediately the Supplier's appointment under this Agreement at any time on notice in writing to the Supplier.
- 14.2 Network Rail may suspend the performance of any or all of the Services by giving reasonable notice in writing to the Supplier.
- 14.3 The Supplier shall resume the performance of the Services on reasonable written notice from Network Rail's Representative. If Network Rail's Representative has not served such notice within 12 months of suspension under clause 14.2 then this Agreement shall terminate.
- 14.4 If notice of resumption of the Services is served in accordance with sub-clause 14.3 this Agreement will continue.
- 14.5 Upon termination of this Agreement under sub-clause 14.1 or 14.3 and subject to sub-clause 14.6 the Supplier shall be entitled to such proportion of the Contract Price as represents a fair and reasonable value of that part of the Services carried out at the date of termination and a sum being the amount of any expenditure reasonably incurred by the Supplier in the expectation of completing the whole Services insofar as such expenditure has not been recovered by any other payments under this Agreement, provided always that the Supplier shall not be entitled to recover any loss of anticipated profit as a result of such termination.
- 14.6 Where Network Rail has terminated the Supplier's appointment under this Agreement by reason of material breach by the Supplier, which breach the Supplier has failed to remedy within 14 days of being given written notice to do so by Network Rail's Representative, or where

NETWORK RAIL 2

the Supplier:

- 14.6.1 is unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purpose of effecting a reconstruction or amalgamation in such manner that the company resulting from such reconstruction or amalgamation if a different legal entity shall agree to be bound by and assume the obligations of the Supplier under this Agreement) or compounds with or convenes a meeting of its creditors or has a receiver or manager or an administrator appointed or ceases for any reason to carry on business or takes or suffers any similar action which in the opinion of Network Rail means that the Supplier may be unable to pay its debts; or
- 14.6.2 being an individual or if the partnership or any partner (where the Supplier is a partnership) shall become bankrupt or in Scotland have his or its estates sequestrated or shall become apparently insolvent as defined in the Bankruptcy (Scotland) Act 1985 or shall enter into a trust deed for his or its creditors, or make a composition or arrangement with his or its creditors;

then Network Rail without prejudice to any other claims that it may have shall be entitled to claim from the Supplier all reasonable costs expenses and damages arising from such termination including (but not limited to) all such costs expenses and damages arising from employing and paying other persons to carry out and complete the Services and to make good defects.

15. Waiver

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

16. Data Protection Act 1998

The Supplier 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 Network Rail personnel of all information required by this Agreement.

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

Without prejudice to clause 18.7, no term of this Agreement is intended by the parties to be enforceable by a third party.

18. TUPE AND AWR

Notwithstanding anything to the contrary elsewhere in this Agreement:

- 18.1 the Supplier shall be responsible for and shall indemnify and keep indemnified Network Rail 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 failure of the Supplier to comply with the

NETWORK RAIL 2

Agency Worker Regulations 2010 or by reason of the operation of and failure of the Supplier to inform and consult under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") (as either Regulation may be amended or re-enacted from time to time), save to the extent that such liability arises due to the failure of Network Rail to comply with its obligations under the Regulations;

- 18.2 on the anniversary of the commencement date and quarterly in the last 12 months prior to completion of the Services, the Supplier shall where TUPE is likely to apply provide Network Rail with a list of names ages addresses and national insurance numbers of all persons who are who have been or who may be at any time concerned with the Services or any part thereof specifying their job title job description basic salary bonus and all other emoluments and benefits periods of continuous employment the percentage of the time that they have worked on the Agreement details of any agreements entered into with employee representative bodies in relation to such persons and such other requirements as Network Rail may reasonably require (altogether the "Employee Data");
- 18.3 in the last 12 months prior to completion of the Services, the Supplier shall (and shall procure that any Sub-Contractor shall) provide to the people engaged in the performance of the Services written contracts of employment or statements of terms of employment in either case complying with the requirements of Section 1 of the Employment Rights Act 1996 and retain copies of such documents together with such other documentation and PAYE records as may reasonably be required by Network Rail ("Personnel Records") and shall where TUPE is likely to apply within 28 days of Network Rail Representative's request whether during the performance of the Services or following the end of this Agreement (whether lawfully or otherwise) deliver up to Network Rail or to such person as Network Rail may nominate the Employee Data such copies of the Personnel Records as may be required by Network Rail and to the extent not otherwise provided any employee liability information pursuant to and in accordance with Regulation 11 of TUPE. Network Rail may communicate such information to persons intending to tender to execute works of the nature of the Services;
- 18.4 the Supplier 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 Network Rail vary or purport or promise to vary (in the employee's favour) the terms of the contract of employment of any person engaged wholly or principally in the execution of the Services;
- 18.5 the Supplier shall not (and shall procure that any Sub-Contractor shall not) (where TUPE is likely to apply) without the prior written consent of Network Rail create or grant or promise to create or grant terms or conditions of employment for any new employee engaged wholly or principally in the execution of the Services if and to the extent that such terms or conditions are materially different to the terms or conditions of employment of equivalent or nearest equivalent existing employees (which themselves comply with sub-clause 18.4) at the date of commencement of employment of such new employee;
- 18.6 the Supplier shall (and shall procure that any Sub-Contractor shall) (where TUPE is likely to apply) at all times comply with its information and consultation obligations under Regulation 13 of TUPE; and
- 18.7 the Supplier shall indemnify and keep indemnified Network Rail and any successor supplier against all costs claims expenses damages demands actions losses and liabilities arising out of or in connection with any claim or demand arising out of or in connection with any act or omission of the Supplier or any Sub-Contractor during the term of this Agreement and which

NETWORK RAIL 2

Network Rail or the successor supplier incurs:

- (i) in relation to any one or more employees whose employment has transferred or is alleged to have transferred to Network Rail and/or a successor supplier pursuant to TUPE and/or this Agreement; and/or
- (ii) as a result of the Supplier's breach of this clause 18.4, 18.5 and/or 18.6;

and such a successor supplier can directly enforce the indemnity in its favour provided for by this sub-clause 18.7.

19. Notices

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

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

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

20. Entire Agreement

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

21. Changes

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

22. Governing Law Jurisdiction and Limitations

This Agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English Courts.

NETWORK RAIL 2

23. Anti-Bribery Requirements

- 23.1 The Supplier 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 Supplier 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 this Contract. (Note: These codes and policies are available on line at: <http://www.networkrail.co.uk/aspx/12859.aspx>)
- 23.2 Throughout the term of this Contract the Supplier shall maintain and enforce its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with all applicable anti-bribery and anti-corruption legislation 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).
- 23.3 The Supplier shall use all reasonable endeavours to ensure that all persons associated with the Supplier (as defined by section 8 of the Bribery Act 2010) including any subcontractors and suppliers comply with clauses 23.1 and 23.2 above.

NETWORK RAIL 2

Contract Specific Conditions

None

NETWORK RAIL 2

Contract Requirements

Schedule 1. Project and Services

Schedule 2. Contract Requirements HSQE Conditions

Schedule 3. Personnel

Schedule 4 Pricing Documents

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Schedule 1: The Project and Services

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Schedule 2: Contract Requirements HSQE Conditions

1 Health and Safety and the Environment

- 1.1 The Supplier shall comply with all applicable European Union (EU) Directives and UK legislation regarding health and safety and the environment.
- 1.2 The Supplier shall also comply with and ensure that all of his personnel are aware of the attached Network Rail policies:
 - Business Conduct;
 - Business Expenses;
 - Drugs and Alcohol;
 - Email and Internet use;
 - Harassment;
 - Whistle blowing; and
 - Environmental.

Amend, delete or add to as appropriate

2 Quality

- 2.1 Unless otherwise agreed in writing by Network Rail's Representative, the Supplier shall maintain an auditable documented quality management system (QMS) and quality plan (QP) for this Contract, either certified to BS EN ISO 9001:2008, or sufficient to meet the requirements of this standard to the satisfaction of Network Rail's Representative. The Supplier shall notify Network Rail's Representative of any material changes to his QMS.
- 2.2 The Supplier shall provide Network Rail's Representative with details of any significant failures revealed at either internal or third party audit of the Supplier's QMS or QP for this Contract and also allow Network Rail's Representative to carry out similar audits if he so requires. The Supplier shall provide access to all staff, premises and records as necessary to assist Network Rail's Representative in such audits.

NETWORK RAIL 2

Schedule 3: Personnel

NETWORK RAIL 2

Schedule 4 Pricing Document