

NETWORK RAIL 4

**Network Rail Agreement for Works of
Simple Content (including
Design) with optional provisions
for Working on the Operational Railway and
for Intrusive Site Surveys/Ground Investigations**

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]

NETWORK RAIL 4

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

between:

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

Now it is hereby agreed as follows:

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

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

- 2 In consideration of the payments to be made by the Employer to the Contractor the Contractor hereby covenants with the Employer to complete the Works in conformity in all respects with the provisions of this Agreement.
- 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 this Agreement.
- 4 The Employer hereby covenants to pay to the Contractor in consideration of the completion of the Works the Contract Price at the times and in the manner prescribed by this Agreement.

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

NETWORK RAIL 4

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 16th May
2007

OR

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

Authorised signatory

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

Director

Director/Company Secretary

NETWORK RAIL 4

OR

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

Director

Director/Company Secretary

OR

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

Director

NETWORK RAIL 4

Schedule of Post Tender Amendments

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

None

NETWORK RAIL 4

Appendix

(Note: Relevant clause numbers are shown in brackets)

1	<u>Payment</u> (clause 6)	Alternative [A or B] shall apply
2	<u>Parent company guarantee</u> (clause 7.2)	required
3	<u>Insurance</u> Contractor's Employer's liability insurance (clause 8.2.) Employer's Third Party Insurance (clause 8.3)) Professional indemnity insurance (If required pursuant to clause 10.1)	£5,000,000 (five million pounds) £155,000,000 (one hundred and fifty five million pounds) £10,000,000 (ten million pounds) for any one claim or series of claims arising out of any one event (subject to any customary terms, exclusions and excesses prevailing in the insurance market) and which may be subject to an annual aggregate limit.
4	<u>Dates for Completion</u> (clause 13) The Contractor shall commence the execution of the Works on the Site within [Insert] days of the Employer's Instruction so to do. The Period for Completion of the Works or for each part of the Works are as follows: [The entire Works or Part A of the Works] [Part B of the Works] [Part C of the Works] [Part D of the Works] [Part E of the Works]	[Insert weeks] [Insert weeks] [Insert weeks] [Insert weeks] [Insert weeks]
5	<u>Liquidated damages</u> (clause 13) The rate of liquidated damages shall be: [The entire Works or Part A of the Works] [Part B of the Works] [Part C of the Works] [Part D of the Works] [Part E of the Works]	£[Insert per day] £[Insert per day] £[Insert per day] £[Insert per day] £[Insert per day]
6	<u>CDM Regulations</u> (clause 17)	The Principal Contractor shall be: <ul style="list-style-type: none">• the Contractor• the Employer• other [..... (specify)] (delete as applicable)

NETWORK RAIL 4

7 Addresses for Service (clause 22)

The addresses for service of the parties are as follows:

(i) The Employer: the address stated in the Contract Agreement marked for the attention of: [Insert]

(ii) The Contractor: the address stated in the Contract Agreement marked for the attention of: [Insert]

8 Limit on Liability for Railway Costs (clause 24) [shall apply / shall not apply]

Site Security (clause 25) [shall apply / shall not apply]

Speed Restrictions, Track Possessions and/or Isolations (clause 26) [shall apply / shall not apply]

9 Conditions applying to intrusive site surveys / ground investigations (clause 28 to 30) [shall apply / shall not apply]

10 Pre-approved Additional Cost of Investigation (clause 29.4) £[Insert]

NETWORK RAIL 4

Contents

Conditions

- 1 Definitions
- 2 Contractor's Obligations
- 3 Design of the Works
- 4 The Site
- 5 Employer's Instructions
- 6 Payment
- 7 Guarantees
- 8 Indemnities and Insurance
- 9 Claims Handling Provisions
- 10 Professional Indemnity Insurance
- 11 Copyright, Intellectual Property, Confidentiality and Photographs
- 12 Assignment and Sub-Contracting
- 13 Commencement and delays in the execution of the Works
- 14 Practical Completion of the Works
- 15 Data Protection Act 1998
- 16 Employment Protection and TUPE
- 17 CDM Regulations
- 18 Employer's Facilities and Free Issue materials
- 19 Termination
- 20 Consequences of Termination
- 21 Third Party Rights
- 22 Notices
- 23 Dispute Resolution
- 24 Limit on Liability for Railway Costs
- 25 Site Security
- 26 Speed Restrictions, Track Possessions and/or Isolations
- 27 Compliance with Standards
- 28 Definitions
- 29 Unforeseen Conditions
- 30 Services of a specialist
- 31 Anti-Bribery Requirements

Contract Specific Conditions

Contract Requirements: Technical Workslope

Contract Requirements: HSQE

Contract Requirements: Preliminaries

Pricing Document

NETWORK RAIL 4

Conditions

1 Definitions

Defined Terms

The following terms bear the meanings set out below:

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

“Agreed Rail Industry Period” means each or any of Network Rail's thirteen accounting periods in a Contract Year as referred to in clause 6.2;

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

“CDM Regulations” means Construction (Design and Management) Regulations 2007 and any amendment or re-enactment thereof or regulations made pursuant thereto by the relevant Minister of the Crown;

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

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

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

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

“Contract Year” means the period from 00.00 hours on 1 April until 24.00 hours on 31 March;

“Defect” means any fault in the Works that arises as a consequence of a failure by the Contractor to comply with its obligations under this Agreement, together with the consequences of that fault;

“Defects Rectification Period” means the 12 month period commencing on the date of Practical Completion;

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

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

“Employer's Facilities” means the accommodation and equipment to be made available by the Employer to the Contractor as described in the Preliminaries;

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

“Employer's Representative” means the person notified by the Employer to the

NETWORK RAIL 4

Contractor as having authority to issue Employer's Instructions and otherwise to act on the Employer's behalf under this Agreement to the extent so notified;

"Employer's Requirements" means the employer's requirements referred to in the Technical Workslope;

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

- (i) the use or occupation by the Employer, its agents, servants or other contractors (not being employed by the Contractor) of any part of the Works;
- (ii) any fault, defect, error or omission in the design of the Works (other than a design provided by the Contractor pursuant to its obligations under this Agreement);
- (iii) war, invasion, act of foreign enemies or hostilities (whether war be declared or not);
- (iv) civil war, rebellion, revolution, insurrection or military or usurped power;
- (v) ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; and
- (vi) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

"Insolvent" means that the Contractor:

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

"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;

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

"Periods for Completion" means the periods for completion of each part of the Works

NETWORK RAIL 4

as stated in the Appendix or such periods as may be extended under clause 13.3;

“Practical Completion” means the date stated in the certificate issued by the Employer’s Representative under clause 14.1;

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

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

“Retention” means the amount accumulated by deduction in accordance with clause 6.5;

“Site” means the area where the Works are to be carried out as described in the Technical Workslope;

“Specified Perils” means fire, lightning, explosion, tempest, flood, bursting or overflowing of water tanks apparatus or pipes, earthquake, impact from aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion excluding the Excepted Risks;

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

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

“Works” means the works to be designed, constructed and completed (as appropriate) in accordance with this Agreement.

2 Contractor’s Obligations

Quality and Standards

2.1 The Contractor shall carry out and complete the Works:

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

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

2.1.3 so as to comply with all applicable Law and the Codes;

2.1.4 without compromising the safety of anyone on or about or using the Employer’s property and/or railway infrastructure; and

2.1.5 to comply with the Preliminaries.

Compliance with Instructions

2.2 The Contractor shall perform the Works in accordance with the Employer’s Instructions. If there is a change in Law affecting the Works after the date of this Agreement which necessitates a variation to the Works, such variation shall be treated as if it were an Employer’s Instruction to which the provisions of clause 5 shall apply.

Remedy for failure to comply with

2.3 If the Contractor fails to perform the Works in accordance with this Agreement, then the Employer shall be entitled, in addition to any other remedy available to it, by notice to the Contractor to require the Contractor, at no additional cost to

NETWORK RAIL 4

Instructions the Employer, to remedy such breach within the time stipulated in such notice, and if the Contractor fails to comply with such notice within the period specified by the Employer's Representative, the Employer may at its sole discretion employ another person to remedy such breach and the Employer may recover the additional costs incurred by it in so doing from the Contractor (provided that, in an emergency affecting safety, this provision shall apply without the requirement to give prior notice).

3 Design of the Works

Inaccuracies in Specifications 3.1 The Contractor acknowledges that it has checked the documents forming part of this Agreement prior to entering into it and has informed the Employer of any inaccuracies, discrepancies or ambiguities in them of which it is aware. If the Contractor shall find any inaccuracy, discrepancy or ambiguity contained in or between any of the documents forming part of this Agreement, it shall immediately notify the Employer, who shall, on receipt of such notice, issue an Employer's Instruction as to how such inaccuracy, discrepancy or ambiguity shall be resolved. 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 or ambiguity could reasonably have been found or foreseen at the date of this Agreement 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.

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

Responsibility for Detailed Design 3.3 Neither the granting of any consent by the Employer nor any comment or marking by or on behalf of the Employer on or in respect of any of the Documents submitted by the Contractor shall relieve the Contractor of any liability which it would otherwise have in relation thereto. If the Contractor considers that any comment on the Documents submitted under clause 3.2 amounts to an Employer's Instruction to which clause 5.3 applies, it shall so notify the Employer within 7 days of receipt of the same.

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

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

NETWORK RAIL 4

nature, type and complexity of the Works;

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

3.4.3 except where this Agreement expressly provides for the use of second-hand or recycled materials and goods, the Works comprise or will comprise only materials and goods which are of new and satisfactory quality and which are fit for their intended purpose.

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

Sub-Contractor's design

3.5 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 Agreement.

Cap on Liability

3.6 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.

4 The Site

Access to the site

4.1 The Contractor shall not have possession of the Site, but the Employer shall provide reasonable access to it for the purposes of this Agreement. The Site shall only be used by the Contractor for the purpose of carrying out the Works.

Compliance with Employer's regulations

4.2 The Contractor and its employees, the Sub-Contractors and other persons engaged by it in relation to this Agreement within the boundaries of the Site, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel at the Site and/or the Employer's property.

Obstruction prohibited

4.3 The Contractor shall not interfere with or obstruct any public or private rights or property (including, without limitation, the Employer's property, the Employer's neighbours' property, railway operations and traffic (except as previously agreed in writing with the Employer's Representative in accordance with clause 26), road traffic and highways).

State of the Employer's property

4.4 The Contractor shall make every reasonable effort to be aware of the state and condition of the Employer's property and the railway infrastructure. The Contractor shall immediately notify the Employer's Representative of any defect in the Employer's property or railway infrastructure which it discovers in the course of performing the Works which might compromise the safety of anyone on or about or using the Employer's property and/or railway infrastructure.

Execution of the Works

4.5 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 to the execution of the Works (including temporary works and the use of the

NETWORK RAIL 4

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 Works and any parts thereof during their execution 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 this Agreement and without detriment to the safe working of the railway or the property of the Employer and others or to the Works when completed.

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|----------------------|-----|--|
| Health & Safety | 4.6 | 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, the Sub-Contractors and other persons engaged by it in relation to this Agreement receive safety and skills training in accordance with the requirements of the Contract Requirements HSQE and the Employer may instruct the immediate replacement, at the Contractor's cost, of any person on the Site who is not so trained. |
| Unsuitable employees | 4.7 | The Employer reserves the right under this Agreement to refuse to allow on to the Site or to permit to be used in connection with the Works any person employed or engaged by the Contractor, or by a Sub-Contractor, whose use would be, in the opinion of the Employer, undesirable. The decision of the Employer as to whether any person is to be allowed on to the Site shall be final and conclusive. |
| Setting-out | 4.8 | The Contractor shall be responsible for the true and proper setting-out of the Works and for the correctness of the position levels dimensions and alignment of all parts of the Works and for the provision of all necessary instruments appliances and labour in connection therewith. If, at any time during the progress of the Works any error shall appear or arise in the position levels dimensions or alignment of any part of the Works, the Contractor on being required so to do by the Employer shall at its own cost rectify such error to the satisfaction of the Employer. |

5 Employer's Instructions

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|-------------------------------------|--|---|-------|---|-------|--|
| Employer's Representative | 5.1 | The Employer's Representative shall have full authority to act on behalf of the Employer for all purposes under this Agreement and shall be authorised to issue Employer's Instructions and notices to the Contractor under this Agreement on behalf of the Employer, unless otherwise expressly notified to the Contractor by the Employer from time to time. | | | | |
| Additional payment for instructions | 5.2 | If any Employer's Instruction issued under this Agreement:
<table border="0" style="margin-left: 20px;"><tr><td style="vertical-align: top; padding-right: 20px;">5.2.1</td><td>shall require the Contractor to undertake work not provided for in, or to be reasonably inferred from, this Agreement; or</td></tr><tr><td style="vertical-align: top; padding-right: 20px;">5.2.2</td><td>shall impose any additional obligation or restriction or shall require the omission of any work or of any obligation or restriction,</td></tr></table> <p>and provided that such instruction has not arisen from, and compliance with it does not reveal, any negligence, omission or default of the Contractor, its employees, the Sub-Contractors or other persons engaged by it in relation to</p> | 5.2.1 | shall require the Contractor to undertake work not provided for in, or to be reasonably inferred from, this Agreement; or | 5.2.2 | shall impose any additional obligation or restriction or shall require the omission of any work or of any obligation or restriction, |
| 5.2.1 | shall require the Contractor to undertake work not provided for in, or to be reasonably inferred from, this Agreement; or | | | | | |
| 5.2.2 | shall impose any additional obligation or restriction or shall require the omission of any work or of any obligation or restriction, | | | | | |

NETWORK RAIL 4

this Agreement, the Contract Price shall be adjusted and the provisions of clause 5.3 shall apply. Otherwise, the Contractor shall not be entitled to any addition to the Contract Price nor to claim, whether as damages or otherwise, any additional payment in respect of compliance by the Contractor with any such instruction.

Calculation of additional payment

5.3 The Employer's Representative shall, after consultation with the Contractor and within a reasonable time after the issue of such instruction, ascertain a fair and reasonable adjustment to the Contract Price based on prices or rates included in the Pricing Document in respect of compliance by the Contractor with such instruction and a fair and reasonable extension of time may be granted under clause 13.3.

6 Payment

Contact Price

6.1 In consideration of the proper performance of the Works, the Employer shall pay to the Contractor the Contract Price calculated as follows:

Contractor's Applications

6.1.1 the total value of the work properly executed including any design work carried out by the Contractor;

6.1.2 the total value of the materials and goods delivered to or adjacent to the Works for incorporation therein by the Contractor but not so incorporated, provided that the value of such materials and goods shall only be included as and from the times that they are reasonably, properly and not prematurely so delivered and have been adequately protected against weather and other casualties;

6.1.3 the amount of any additions to the Contract Price in accordance with this Agreement;

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

6.2 After the end of each Agreed Rail Industry Period, the Contractor shall present to the Employer's Representative an application stating the total amount due to the Contractor calculated in accordance with the provisions of clause 6.1 and with such supporting documents as may be reasonably required by the Employer's Representative.

Alternative A

Employer's Certificate

6.3A On or before the expiry of 14 days from the date of submission of the Contractor's application under clause 6.2, the Employer's Representative shall issue a certificate, stating the amount due to the Contractor from the Employer which shall be calculated in accordance with the provisions of clause 6.1 less all amounts previously stated as due in any certificate issued under this clause 6.3A and less any amount which may become due to the Employer or recoverable by the Employer from the Contractor, whether by deduction from the Contract Price under the provisions of this Agreement or otherwise. Such certificate shall be treated as a notice for the purposes of s110(2) of the Housing Grants, Construction and Regeneration Act 1996 of the payment proposed to be made by the Employer to the Contractor.

NETWORK RAIL 4

Payment by the Employer Certificates	6.4A	<p>The Employer shall issue payment to the Contractor of the amount stated as due on any certificate in cleared funds on or before the final date for payment which shall be the expiry of 7 days from the date of issue of any certificate under clause 6.3A. The Employer shall pay to the Contractor at the same time as making any such payment the total amount of Value Added Tax properly chargeable by the Contractor on the supply to the Employer of any goods or services under this Agreement. The Contractor shall issue to the Employer upon receipt from the Employer of any amount under this Agreement 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>Alternative B</p>
Employer's Notice of Payment	6.3B	<p>On or before the expiry of 14 days from the date of submission of the Contractor's application under clause 6.2, the Employer's Representative shall issue a notice stating the amount due to the Contractor from the Employer which shall be calculated in accordance with the provisions of clause 6.1 less all amounts previously stated as due in any notice issued under this clause 6.3B and less any amount which may become due to the Employer or recoverable by the Employer from the Contractor, whether by deduction from the Contract Price under the provisions of this Agreement or otherwise. Such certificate shall be treated as a notice for the purposes of s110(2) of the Housing Grants, Construction and Regeneration Act 1996 of the payment proposed to be made by the Employer to the Contractor.</p>
Payment by the Employer - VAT Invoice	6.4B	<p>The Contractor shall issue a VAT invoice in the amount stated in the Employer's Representative's notice under clause 6.3B and which includes the correct contract and purchase order number and is addressed to "Network Rail, Accounts Payable, P.O. Box 4145, Manchester M60 7WZ". The Employer shall issue payment to the Contractor of the amount properly due to the Contractor together with VAT thereon on or before the final date for payment which shall be the expiry of 7 days from the date of receipt of the Contractor's VAT invoice. If the Contractor's invoice does not comply with the requirements of this clause 6.4B the Employer shall be under no obligation to pay the same.</p>
Retention	6.5	<p>The Employer shall be entitled to deduct 3% from the amount which would otherwise have been stated as due under clause 6.3 and such deduction shall accumulate to form the Retention. One half of the Retention then held shall be paid to the Contractor on the next payment due to the Contractor after Practical Completion. The balance of the Retention shall be released to the Contractor on the next certificate issued by the Employer's Representative following completion of any work required pursuant to clause 14.2 as certified by the Employer's Representative under clause 14.3.</p>
Property in goods and materials	6.6	<p>The property in any goods, materials, equipment or plant intended for the Works shall vest in the Employer when they have been incorporated into the Works or when the Contractor has received payment for them pursuant to clause 6.4A/6.4B whichever is the earlier. Where the value of any goods, materials, equipment or plant is included in an application under clause 6.2, the Contractor shall ensure that such goods, materials, equipment or plant are not</p>

NETWORK RAIL 4

removed from the places where they are situated at the date of such application except for delivery to the Site.

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|--------------------------|------|---|
| Correction of errors | 6.7 | All certificates issued under this Agreement shall be issued by the Employer with a copy to the Contractor. The Employer may on any payment delete, correct or modify any sum previously paid by it. No certificate or payment issued or made by or on behalf of the Employer under this Agreement shall relieve the Contractor from any liability arising out of or in connection with this Agreement. |
| Set-off | 6.8 | Without prejudice to the Employer's other rights and remedies, the Employer may deduct from any sums due to the Contractor under this Agreement an amount equivalent to any sum due from the Contractor to the Employer (whether such sums are due to the Employer under this Agreement or under any other agreement between the Contractor and the Employer) and may also deduct any sum of money that is recoverable from or payable by the Contractor under this Agreement from any sum then due or which at any time thereafter may become due under any other agreement between the Contractor and the Employer. The Employer shall give to the Contractor notice of any such deduction or set-off and such notice shall specify:

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

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

Such notice shall be given not later than one day before the final date for payment of each certificate or invoice under clause 6.4. |
| Interest on late payment | 6.9 | If the Employer fails to pay the Contractor any sum properly payable under this Agreement on or before the final date for payment of it, the Employer shall pay the Contractor simple interest on that sum from the relevant final date for payment until the actual date of payment calculated at a rate of 4% above the Bank of England Base Rate. It is agreed that this provision constitutes a substantial remedy for the purposes of Section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998. |
| CIS provisions | 6.10 | Where the Contractor is paid under Alternative A, the Contractor shall ensure that at all times it is registered for gross payment under the Construction Industry Scheme, as provided for in Chapter 3 of the Finance Act 2004 and the Income Tax (Construction Industry Scheme) Regulations 2005; and not later than 21 days before the first payment under this Agreement is due to the Contractor, the Contractor shall provide to the Employer the information specified in regulation 6(2)(b)(iii) of the Income Tax (Construction Industry Scheme) Regulations 2005. If the Contractor fails to comply with the provisions of this clause, the Employer shall not be obliged to make any further payment to the Contractor until such time as the failure is remedied. |

7 Guarantees

- | | | |
|---------------------------|-----|---|
| Warranties and guarantees | 7.1 | The Contractor shall ensure that the benefit of any warranty or guarantee in respect of goods, materials, equipment or plant supplied or procured by it shall extend to the Employer. The Contractor shall not invalidate such warranties |
|---------------------------|-----|---|

NETWORK RAIL 4

and/or guarantees by its actions.

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|------------------------------------|-----|--|
| Parent
Company
Guarantee | 7.2 | If stated to be required in the Appendix, the Contractor shall obtain and provide to the Employer, forthwith upon entry into this Agreement, a parent company guarantee in the form appended to the Contract Specific Conditions from the Contractor's ultimate holding company. For these purposes "ultimate holding company" shall mean the parent company of the group of companies of which the Contractor is a member (as each of those terms is defined in Section 170 Taxation of Chargeable Gains Act 1992). |
| Failure to
provide
guarantee | 7.3 | The Contractor's compliance with the provisions of clause 7.2 shall be a condition precedent to any obligation on the part of the Employer to make any payment that might otherwise be due under this Agreement, and the Contractor acknowledges that it has no entitlement either to receive payment or to exercise any rights in respect of non-payment arising under this Agreement unless and until the Contractor has provided any parent company guarantee so required. |

8 Indemnities and Insurance

- | | | | | | | | | |
|--|---|---|-------|---|-------|--|-------|--|
| Third Party
liability -
Indemnity | 8.1 | The Contractor shall indemnify the Employer and keep the Employer indemnified against each and every liability which the Employer may incur to any person whatsoever and against all damage, expense, loss, cost, claim or proceedings suffered or incurred by the Employer to the extent that the same relates to personal injury or death of any person whomsoever or loss or injury or damage to any property real or personal (including the Works) arising out of or in the course of or caused by the carrying out of the Works, except to the extent that the same is due to any act or neglect of the Employer or the Employer's Representative. | | | | | | |
| Contractor's
Employer's
Liability
Insurance | 8.2 | <table border="0"><tr><td style="vertical-align: top; padding-right: 20px;">8.2.1</td><td>Without prejudice to the Contractor's obligation to indemnify the Employer under clause 8.1, the Contractor shall maintain and cause the Sub-Contractors to maintain insurance in respect of claims for personal injury and death of any person under a contract of service or apprenticeship with the Contractor or such Sub-Contractor as the case may be arising out of or in the course of such person's employment. Such insurance shall comply with the Employer's Liability (Compulsory Insurance) Act 1969 and any statutory orders made thereunder or any amendment or re-enactment thereof and shall be for the sum specified in the Appendix for any one occurrence or series of occurrences arising out of one event.</td></tr><tr><td style="vertical-align: top; padding-right: 20px;">8.2.2</td><td>The insurance policy referred to in clause 8.2.1 shall indemnify the Employer in the like manner to the Contractor but only to the extent that the Contractor may be liable to indemnify the Employer under the terms of this Agreement.</td></tr><tr><td style="vertical-align: top; padding-right: 20px;">8.2.3</td><td>As and when it is reasonably required to do so by the Employer, the Contractor shall produce and shall cause any Sub-Contractors to produce for inspection by the Employer documentary evidence that the insurance required by this clause 8.2 is properly maintained.</td></tr></table> | 8.2.1 | Without prejudice to the Contractor's obligation to indemnify the Employer under clause 8.1, the Contractor shall maintain and cause the Sub-Contractors to maintain insurance in respect of claims for personal injury and death of any person under a contract of service or apprenticeship with the Contractor or such Sub-Contractor as the case may be arising out of or in the course of such person's employment. Such insurance shall comply with the Employer's Liability (Compulsory Insurance) Act 1969 and any statutory orders made thereunder or any amendment or re-enactment thereof and shall be for the sum specified in the Appendix for any one occurrence or series of occurrences arising out of one event. | 8.2.2 | The insurance policy referred to in clause 8.2.1 shall indemnify the Employer in the like manner to the Contractor but only to the extent that the Contractor may be liable to indemnify the Employer under the terms of this Agreement. | 8.2.3 | As and when it is reasonably required to do so by the Employer, the Contractor shall produce and shall cause any Sub-Contractors to produce for inspection by the Employer documentary evidence that the insurance required by this clause 8.2 is properly maintained. |
| 8.2.1 | Without prejudice to the Contractor's obligation to indemnify the Employer under clause 8.1, the Contractor shall maintain and cause the Sub-Contractors to maintain insurance in respect of claims for personal injury and death of any person under a contract of service or apprenticeship with the Contractor or such Sub-Contractor as the case may be arising out of or in the course of such person's employment. Such insurance shall comply with the Employer's Liability (Compulsory Insurance) Act 1969 and any statutory orders made thereunder or any amendment or re-enactment thereof and shall be for the sum specified in the Appendix for any one occurrence or series of occurrences arising out of one event. | | | | | | | |
| 8.2.2 | The insurance policy referred to in clause 8.2.1 shall indemnify the Employer in the like manner to the Contractor but only to the extent that the Contractor may be liable to indemnify the Employer under the terms of this Agreement. | | | | | | | |
| 8.2.3 | As and when it is reasonably required to do so by the Employer, the Contractor shall produce and shall cause any Sub-Contractors to produce for inspection by the Employer documentary evidence that the insurance required by this clause 8.2 is properly maintained. | | | | | | | |

NETWORK RAIL 4

Employer's Third Party Insurance and Insurance of the Employer's Property	8.3	<p>Without prejudice to the Contractor's obligations to indemnify the Employer under clause 8.1, the Employer shall take out and maintain:</p> <p>8.3.1 a policy in the joint names of the Contractor, Sub-Contractors and the Employer 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, work executed, Site Materials 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</p> <p>8.3.2 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.</p> <p>The Employer shall not be responsible for any amounts in excess of the limits of indemnity and sums insured or retained liability or risks not insured or excluded by the terms, exceptions or conditions of such insurance policies.</p>
Employer's Insurance of the works	8.4	<p>Without prejudice to the Contractor's obligations under this Agreement, the Employer shall insure in the joint names of the Contractor Sub-Contractors and the Employer, 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. The insurance referred to in this clause 8.4 shall provide cover against all loss or damage from whatsoever cause arising other than the Excepted Risks but including, without limitation, the Specified Perils, from commencement of the Works on the Site until the date of Practical Completion. Nothing shall render the Employer liable to insure against the necessity for the repair or reconstruction of any work constructed with materials or workmanship not in accordance with the requirements of this Agreement. Any amounts not insured or not recovered from insurers whether as excesses carried under the policy or otherwise shall be borne by the Contractor.</p>
Evidence of the Employer's Insurance	8.5	<p>A summary of the insurance policies taken out and maintained by the Employer under clause 8.3 and clause 8.4 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>
Notification of Claims	8.6	<p>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>
Breach by Contractor	8.7	<p>Should the Contractor or any Sub-Contractor be in breach of any of their respective obligations under this clause 8, the Employer may itself insure against any risk in respect of which the default shall have occurred and may</p>

NETWORK RAIL 4

deduct a sum or sums equivalent to the amount paid or payable in respect of the premiums from any monies due or become due to the Contractor under this Agreement, or, if none are due, may recover the amount paid from the Contractor as a debt.

9 Claims Handling Provisions

Claims Handling Agreement

9.1 In these provisions, “The 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 expressions defined in the Claims Allocation and Handling Agreement shall have the same meanings in this clause 9. The Employer shall supply the Contractor with a copy of each amendment thereto as and when it is made.

Application of CAHA

9.2 These provisions shall apply:

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

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

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

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

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

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

Agency to defend claims

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

Payments under CAHA

9.4 Where such a claim results in a payment to the third party, the Contractor agrees that liability for such payment, and the costs of handing and defending the claim, shall be allocated in accordance with the Claims Allocation and Handling Agreement. The Contractor agrees to participate in the procedure for allocating liability set out in the Railway Industry Dispute Resolution Rules; and to be bound by the result as if the Contractor were party to those Rules, and such matters shall not be referable to adjudication or litigation in accordance with this Agreement.

NETWORK RAIL 4

Where Contractor solely liable	9.5	Conditions 9.3 and 9.4 shall not apply to any claim in respect of which the Contractor admits that it is liable and that no Industry Party is liable. In such a case, the Contractor itself may defend the claim.
Indemnity in respect of CAHA costs	9.6	Without prejudice and in addition to any other rights and remedies of the Employer under this Agreement, the Contractor shall indemnify the Employer against all losses, claims, liabilities, costs and expenses which are borne by the Employer under the Claims Allocation and Handling Agreement, and which arise out of either a breach of this Agreement by the Contractor or a breach of a duty of care owed to a third party, which is the subject of a claim under the Claims Allocation and Handling Agreement.

10 Professional Indemnity Insurance

Contractor to insure	10.1	Insofar as the design of any part of the Works is carried out by the Contractor, the Contractor shall maintain professional indemnity insurance covering amongst other things, all its liability hereunder in respect of Defects or insufficiency in design, upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom (in an amount not less than the sum specified in the Appendix for a period beginning with the date of this Agreement and ending 12 years after Practical Completion), provided always that such insurance is available at commercially reasonable rates. 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.
If insurance ceases to be available	10.2	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 means of best protecting the respective positions of the Employer and the Contractor in the absence of such insurance.
Terms of policy	10.3	The said terms and conditions shall not include any term or condition that excludes the Third Parties (Rights Against Insurers) Act 1930.
Termination	10.4	The obligations in respect of professional indemnity insurance under this clause 10 shall continue notwithstanding termination of the Contract for any reason whatsoever, including (without limitation) breach by the Employer.
Production of evidence	10.5	The provisions of clauses 8.5 and 8.6 shall apply to the Contractor's professional indemnity insurance required by this clause 10.

11 Copyright, Intellectual Property, Confidentiality and Photographs

Copyright licence	11.1	The legal and beneficial ownership of all Intellectual Property which the Contractor has supplied to the Employer in accordance with this Agreement and which the Contractor has created and/or developed for the purposes of performing its obligations under this Agreement shall belong to the Contractor. The Contractor hereby grants to the Employer an irrevocable, royalty-free, non-exclusive licence to use all rights, titles and interest in any such Intellectual Property for any purposes whatsoever in connection with the Employer's permitted business provided that the Contractor shall have no liability for any use of the Intellectual Property other than for the purposes for which it was originally intended. The Employer may assign the said licence and/or grant
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NETWORK RAIL 4

sub-licences out of the licence.

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| Sub-Contractors | 11.2 | The Contractor shall use reasonable endeavours to procure that the Sub-Contractors shall grant a licence to the Employer in terms identical to clause 11.1. |
| Confidentiality | 11.3 | All information obtained by the Contractor in the course or conduct of this Agreement shall be held confidential and shall not be divulged by the Contractor to any third party save to the extent necessary to effect the execution of the Works and then only on the basis that the recipient of such information shall be bound by similar confidentiality obligations to those undertaken by the Contractor. The Contractor shall not issue any press release or other public document containing or make any public statement containing or otherwise disclose to any other person who is not a party to this Agreement information that relates to or is connected with or arises out of this Agreement or the matters contained in it without the prior written approval of the Employer as to its content and the manner and extent of its publication. |
| Photographs | 11.4 | Except as required to record the condition of or activities on the Site, the Contractor shall not at any time take any photograph of the Site or the Works or any part of them, and shall take all reasonable steps to ensure that no such photographs shall at any time be taken or published or otherwise circulated by any person employed by it, unless the Contractor has obtained the prior written consent of the Employer. |

12 Assignment and Sub-Contracting

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| Assignment by parties | 12.1 | The Employer shall be entitled to assign, charge or transfer this Agreement or any of its rights under it. The Contractor shall not assign, charge or transfer this Agreement or any of its rights under it without the prior written consent of the Employer. |
| Sub-Contracting by Contractor | 12.2 | The Contractor shall not sub-contract any part of the 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. |
| Sub-letting does not relieve Contractor | 12.3 | No sub-letting by the Contractor and no consent of the Employer and nothing contained in this Agreement requiring the Contractor to sub-let any work to or obtain any materials and/or goods from any person or persons named therein shall in any way relieve the Contractor from its responsibility for the due execution and completion of the Works in accordance with this Agreement. |

13 Commencement and delays in the execution of the Works

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| Time for completion | 13.1 | The Contractor shall commence the execution of the Works on the Site within the period for commencement stated in the Appendix from receipt of the Employer's Representative's instruction so to do, provided that, if no such instruction is issued and the Contractor and the Employer nevertheless agree that the Contractor shall commence the execution of the Works on the Site, the obligation to commence the Works shall be deemed to have arisen on the date of actual commencement by the Contractor on the Site. The Contractor shall thereafter proceed with the Works regularly and diligently so that the Works and each part of the Works are completed on or before the expiry of the Period for |
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NETWORK RAIL 4

		Completion which relates thereto as stated in the Appendix as extended from time to time in accordance with clause 13.3.
Grounds for extension of time	13.2	No extension of time shall be granted to the Contractor except in the case of:
	13.2.1	any delay, impediment, prevention or default by the Employer; or
	13.2.2	the occurrence of any of the Excepted Risks or the Specified Perils; or
	13.2.3	any Instruction to which clause 5.3 applies; or
	13.2.4	exceptional adverse weather conditions; or
	13.2.5	pollution or contamination encountered by the Contractor at the Site
	13.2.6	cancellation or alteration of the dates and times of agreed speed restrictions, track possessions or isolations under clause 26 (where applicable).
	13.2.7	the exercise after the date of tender by the United Kingdom Government of any statutory power that directly affects the execution of the Works; or
	13.2.8	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
	13.2.9	the valid exercise by the Contractor of its rights under section 112 of the Housing Grants, Construction and Regeneration Act 1996,
		and then only to the extent that the Contractor shall prove that the completion of the Works or any part of the Works is thereby delayed.
		Provided always that no account shall be taken of any of the circumstances referred to in clause 13.2 save to the extent that the Contractor:
	13.2.10	immediately upon it becoming reasonably apparent that the completion of the Works or any part of the Works is being or is likely to be so prevented, shall have submitted to the Employer's Representative a notice specifying the circumstance or circumstances;
	13.2.11	as soon as practicable thereafter, shall have submitted full and detailed particulars of the expected effects of those circumstances and of the extension of time to which the Contractor may consider itself entitled; and
	13.2.12	shall have kept such particulars up-to-date by submitting such further particulars which may be necessary or may be requested from time to time by the Employer's Representative,
Grant of Extensions of Time	13.3	So soon as may be practicable after receipt of all of the particulars referred to in clause 13.2, the Employer's Representative shall grant to the Contractor such extension of time for the completion of any part of the Works affected by such circumstances as he then estimates to be fair and reasonable, provided always that the Contractor shall not be entitled to any extension of time in

NETWORK RAIL 4

respect of any delay attributable to any negligence, omission or default by the Contractor, its employees or sub-contractors (except in the case of the circumstances referred to in clause 13.2.2), or in any case where the Contractor has not used its reasonable endeavours to prevent or reduce such delay.

Liquidated Damages 13.4 If the Contractor fails to achieve Practical Completion by the expiry of the Period for Completion for the Works, the Contractor shall be liable to pay the Employer liquidated damages calculated at the rate stated in the Appendix for the period from the expiry of the Period for Completion to the date of Practical Completion provided that the Contractor shall not be obliged to pay liquidated damages in excess of the Contract Price. Where liquidated damages have been paid to the Employer and the Employer subsequently grants an extension of time in accordance with clause 13.3, the Employer shall be liable to repay to the Contractor any liquidated damages to which the Employer is no longer entitled.

14 Practical Completion of the Works

Certificate of Practical Completion 14.1 When, in the opinion of the Employer's Representative, the Works are practically complete, he shall issue a certificate to that effect and Practical Completion of the Works shall occur on the day named in such certificate. Such certificate may also be accompanied by a list of items of work which are, in the Employer's Representative's opinion, required to render the Works entirely completed. The Contractor shall with all due diligence complete any such items of work.

Remedying of Defects 14.2 During the Defects Rectification Period the Employer's Representative may instruct the Contractor to remedy any Defect. The Contractor shall forthwith comply with any instructions and at no cost to the Employer.

Certificate that Defects Remedied 14.3 After the expiry of the Defects Rectification Period and when all Defects that the Contractor has been instructed to remedy under clause 14.2 have been remedied, the Employer's Representative shall issue a certificate to that effect.

Defects not remedied 14.4 Where there are Defects that the Contractor has been instructed to remedy under clause 14.2 but which have not been remedied within a reasonable period of the expiry of the Defects Rectification Period, the Employer's Representative shall issue a statement identifying:

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

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

Other Rights 14.5 The provisions of clause 14 are without prejudice to any other rights or remedies the parties may possess.

15 Data Protection Act 1998

Data The Contractor shall take all necessary steps under the Data Protection Act 1998

NETWORK RAIL 4

(including, where appropriate, the procurement of any consent) to allow for disclosure to appropriate Employer's personnel of all information required by this Agreement.

16 Employment Protection and TUPE

Notwithstanding anything to the contrary elsewhere in the Agreement:-

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|---------------------------|------|--|
| TUPE
Indemnity | 16.1 | the Contractor shall be responsible for and shall indemnify and keep indemnified the Employer from and against all and any costs, claims, expenses, damages, demands, actions, losses and liabilities arising out of or in connection with any claim in respect of any person which arises or is alleged to arise by reason of the operation of and/or for failure to inform and consult under the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or re-enacted from time to time ("TUPE"). |
| Employee
Data | 16.2 | 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 under this Agreement, details of any agreements entered into with employee representative bodies in relation to such persons and such other requirements as the Employer may reasonably require (altogether the "Employee Data"). |
| Personnel
Records | 16.3 | 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 Agreement, written contracts of employment or statements of terms of employment, in either case complying with the requirements of Section 1 of the Employment Rights Act 1996, and retain copies of such documents together with such other documentation and PAYE records as may reasonably be required by the Employer ("Personnel Records") and shall, where TUPE is likely to apply, within 28 days of the Employer's Representative's request, whether during the performance of this Agreement or following the end of this Agreement (whether lawfully or otherwise) deliver 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. |
| Variation of
Contracts | 16.4 | 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 contracts of employment of any person engaged wholly or principally in the execution of the Works. |
| New
employees | 16.5 | The Contractor shall not (and shall procure that any Sub-Contractor shall not) (where TUPE is likely to apply), without the prior written consent of the Employer create or grant, or promise to create or grant, terms or conditions of |

NETWORK RAIL 4

employment for any new employee engaged wholly or 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 clause 16.4) at the date of commencement of employment of such new employee.

Regulation 13

16.6 The Contractor shall (and shall procure that any Sub-Contractor shall) (where TUPE is likely to apply) at all times comply with its information and consultation obligations under Regulation 13 of TUPE.

TUPE transfers

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

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

16.7.2 as a result of the Contractor's breach of clauses 16.4, 16.5 and/or 16.6;

and such a successor contractor can directly enforce the indemnity in its favour provided for by this clause 16.7.

17 CDM Regulations

CDM Duties

The Principal Contractor for the project shall be the person stated in the Appendix. Where this role is fulfilled by the Contractor, 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 CDM Regulations including, without limitation, liaising with the Co-ordinator for the Project.

18 Employer's Facilities and Free Issue materials

Property in Facilities

18.1 All of the Employer's Facilities or other property issued or supplied in connection with this Agreement by or on behalf of the Employer shall remain the property of the Employer and shall only be used by the Contractor for the purposes of this Agreement.

Availability of Facilities

18.2 The Employer shall make available to the Contractor the Employer's Facilities at the times and subject to the conditions set out in the Preliminaries and subject to any temporary disrepair or mechanical breakdown. The Contractor shall return the same to the Employer in the condition in which they were supplied (fair wear and tear excepted).

No liens

18.3 Neither the Contractor, any Sub-Contractor or any other person, shall have a lien on any of the Employer's Facilities or on any other property and the Contractor shall take all necessary steps to ensure that the title of the Employer and the exclusion of any such lien are brought to the notice of all Sub-

NETWORK RAIL 4

Contractors and other persons dealing with the same.

Free Issue
Materials

- 18.4 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. Upon completion of delivery such goods and materials shall stand at the risk of the Contractor. Immediately upon the same being made available to it, the Contractor shall carry out a detailed inspection of such goods and materials and shall use its reasonable endeavours to advise the Employer's Representative on or before the expiry of 24 hours and no later than 7 days or before being taken into operational use (whichever is the sooner) if any of such goods and materials are damaged or defective. The Employer shall then secure the repair, replacement and/or reissue of any such goods or materials. If the Contractor does not so notify the Employer's Representative, the Contractor shall not be entitled subsequently to claim that any such goods or materials are damaged or defective to the extent that the same could have been identified by detailed inspection within such period. The Contractor shall dispose of any packaging and/or waste arising.

19 Termination

Contract or
breach/
insolvency

- 19.1 If the Contractor:
- 19.1.1 shall be in material breach of any of the provisions of this Agreement;
 - 19.1.2 is liable to compensate the Employer in respect of sums referred to in clauses 3.6, 13.4 and/or 24 (if applicable) in an amount which is equal to or exceeds the aggregate total liability of the Contractor as stated in whichever is the relevant clause; or
 - 19.1.3 becomes Insolvent;
- then the Employer may, in addition to any other power enabling it to terminate this Agreement, by notice terminate forthwith the employment of the Contractor under this Agreement.

Termination at
will

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

20 Consequences of Termination

Payment
following
breach/
insolvency

- 20.1 If the Employer, in exercise of the powers contained in clause 19.1 shall terminate the Contractor's employment under this Agreement the following provisions shall take effect:
- 20.1.1 the payment of any sum of money that may then be due or accruing from the Employer to the Contractor shall be suspended;
 - 20.1.2 the Contractor shall pay to the Employer the Employer's reasonable losses and expenses due to termination, but the Contractor shall receive credit for any sum the payment of which is suspended under clause 20.1.1; and

NETWORK RAIL 4

20.1.3 the Employer may hire any persons in the employment of the Contractor and the Employer may enter upon the Site and take possession of all goods, materials, plant and equipment (whether or not for incorporation in the Works) which are on the Site, or in storage or lying or in the course of preparation or manufacture off the Site, and may purchase or do anything requisite for the further execution of the Works, or may employ other contractors to do the same.

Payment following termination at will

20.2 If the Employer, in the exercise of the powers contained in clause 19.2, shall terminate the Contractor's employment under this Agreement, the following provisions shall take effect:

20.2.1 the Employer shall issue a certificate under clause 6.3A or a notice under 6.3B stating the amount due to the Contractor which shall be calculated in accordance with the provisions of clause 20.2.2; and

20.2.2 the amount payable on any termination pursuant to clause 19.2 shall be calculated as follows:

- (i) the value of work executed up to the date of termination calculated in accordance with the provisions of the Pricing Document;
- (ii) the amounts payable in respect of any preliminary items in so far as the work or service comprised therein has been carried out or performed and a proper proportion of any such items which have been partially carried out or performed;
- (iii) the cost of materials or goods reasonably ordered for the Works which have been delivered to the 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);
- (iv) 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
- (v) the reasonable costs of removal of all the Contractor's plant, tools, equipment, goods and materials from the Site.

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

NETWORK RAIL 4

	21	Third Party Rights	
No Third Party Rights			Subject to clauses 12.1 and 16.7 but otherwise notwithstanding anything to the contrary contained elsewhere in this Agreement, nothing in this Agreement is intended to confer on any person any right to enforce any term of this Agreement which that person would not have had but for the provisions of Contracts (Rights of Third Parties) Act 1999.
	22	Notices	
Service			The addresses for service of the parties shall be the relevant Addresses for Service set out in the Appendix. Any notice required to be given by a party shall be in writing and service shall be effected either: 22.1 personally, in which case service shall be deemed effective on delivery; or 22.2 by prepaid recorded delivery post, in which case service shall be deemed effective two working days after the day after posting.
	23	Dispute Resolution	
Adjudicator			23.1 Any dispute or difference arising under or in connection with this Agreement may be referred to adjudication by the Adjudicator in accordance with the following provisions: 23.1.1 the Scheme for Construction Contracts SI No. 649 of 1998 shall apply; and 23.1.2 the Adjudicator's decision is binding until the dispute or difference is finally determined by the Courts as provided in clause 23.3.
Adjudicator not liable			23.2 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith, and any employee or agent of the Adjudicator is similarly protected.
Courts			23.3 Disputes and differences between the parties arising out of or in relation to this Agreement shall, subject to clause 23.1, be referred to the exclusive jurisdiction of the English Courts. This Agreement shall be governed by and construed in accordance with English Law.
	24	Limit on Liability for Railway Costs	
Cap on Liability			For the purposes of this clause 24: 24.1 " Track Access Agreement " means any agreement (excluding Freight Access Agreements) entered into between the Employer and any other party and incorporating the Network Code. 24.2 " Freight Access Agreement " means any agreement (excluding Track Access Agreements) entered into between the Employer and any other party for non-passenger services and incorporating the Network Code. 24.3 " Network Code " means the document entitled "Network Code" dated 23 September 2009, as amended and modified from time to time. Notwithstanding any other provision of this Agreement, the liability of the Contractor to compensate the Employer in respect of any consequential or

NETWORK RAIL 4

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 clauses 3.6 and/or 13.4 shall not be taken into account in the calculations anticipated by this clause 24.

25 Site Security

Unauthorised persons

25.1 The Contractor shall take all reasonable steps and all steps required by this Agreement 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.

25.2 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 its 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

25.3 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 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. 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.

Records

25.4 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 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.

26 Speed Restrictions, Track Possessions and/or Isolations

Confirmation of requirements

26.1 The Contractor shall in all cases submit written notice to the Employer confirming any speed restrictions, track possession or isolation requirements in accordance with the Employer's current planning procedures (or as otherwise laid down in this Agreement) in advance of any proposed commencement of work on or near the railway lines.

26.2 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.

NETWORK RAIL 4

Arrangements by Contractor	26.3	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 equipment (including, where practicable, standby equipment) and sufficient labour.
Cancellation prior to possession	26.4	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 this clause, 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.
Cancellation during possession	26.5	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.
	27	Compliance with Standards
Changes		The Contractor shall comply with Railway Group Standards, Network Rail Standards and/or any other equivalent standards. If there is a change in Railway Group Standards or Network Rail Standards affecting the Works after the date of this Agreement which necessitates a variation to the Works, such variation shall be treated as if it were an Employer's Instruction to which the provisions of clause 5 shall apply.
	28	Definitions
Defined terms		In clauses 29 to 30, the following terms bear the meanings set out below: 28.1 "Laboratory Testing" means the testing operations and processes necessary for the preparation of the Report to be carried out in accordance with this Agreement at a laboratory approved by the Employer on samples and cores obtained during the Works. 28.2 "Report" means the report to be prepared and submitted in accordance with the Agreement. 28.3 "Investigation" means the Works together with the Laboratory Testing and Report preparation and submission.
	29	Unforeseen Conditions
Unforeseen Conditions	29.1	If the Employer's Representative decides that the physical conditions or artificial obstructions encountered are such that the Works cannot be completed to the extent of or by the methods under this Agreement, it shall discuss with the Contractor the extent to which the Works can be completed

NETWORK RAIL 4

and shall issue any Employer's Instruction it considers desirable to complete such work. In the event that any part of the Works is, in the Employer's Representative's opinion, impossible impracticable or undesirable as a result of the conditions or obstructions encountered, it shall notify the Contractor accordingly.

Contamination and Pollution

29.2 If during the Investigation, the Contractor encounters contamination or hazardous conditions which could not in its opinion reasonably have been foreseen it shall immediately:

- (a) inform the Employer;
- (b) take whatever steps if considers necessary to protect its staff and other persons and property and to secure the Site insofar as is possible or safe;
- (c) notify any local or other authority of any potential risk to public health or safety;
- (d) notify the Employer of the Contractor's assessment of the nature of the contamination or hazard.

If as a result of encountering such conditions, it is, in the Contractor's opinion, necessary whether for reasons of safety or protection of persons and property or otherwise to suspend the Works or part of the Works, it shall do so forthwith taking whatever steps may be necessary to secure the Site and exclude access by unauthorised persons.

Hazardous Investigations

29.3 If on considering the circumstances, the Employer considers that the Investigation is more hazardous than could have been foreseen it shall:

- (a) after discussion with the Contractor and any local or other authority confirm or amend the steps taken by the Contractor under clause 29.2(b);
- (b) confirm or amend any suspension of the Works;
- (c) issue an Employer's Instruction to which clause 5.3 shall apply.

Conduct of Contractor

29.4 If during the carrying out of the Works, the Contractor shall encounter ground or geological conditions or other physical conditions which in its opinion make it necessary for the effectiveness of the Investigation or for the adequacy of the Report to vary the Investigation or to continue the Works to a greater extent than specified in this Agreement, it shall advise the Employer immediately and request an Employer's Instruction. In the event that the Employer is not available to issue an Instruction, the Contractor may continue such operations or change the mode of operation at its own discretion provided the additional cost of such changes does not exceed the sum specified in the Appendix. Any such change to the Investigation shall be treated as though it was carried out pursuant to an Employer's Instruction and clause 5.3 shall apply, unless the Employer decides that the change was unnecessary.

Boreholes

29.5 On completion of a borehole to its specified depth or to a greater depth under clause 29.4 the Contractor may unless this Agreement provides otherwise backfill the boreholes in accordance with the Technical Workslope.

NETWORK RAIL 4

30 Services of a specialist

Qualified persons

If this Agreement shall require or the Employer directs the Contractor to make available on the Site or elsewhere the services of suitably qualified persons for the description of soils and rocks, logging of trial pits, carrying out of geological and geotechnical appraisals, other intrusive surveys, other technical and advisory services (as appropriate) and the preparation of technical reports, the extent and scope of the service required shall be specified in this Agreement.

31 Anti-Bribery Requirements

- 31.1 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: <http://www.networkrail.co.uk/asp/12859.aspx>).
- 31.2 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).
- 31.3 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 31.1 and 31.2 above.

NETWORK RAIL 4

Contract Specific Conditions

NETWORK RAIL 4

Technical Worksopce

NETWORK RAIL 4

Contract Requirements HSQE

NETWORK RAIL 4

Preliminaries

NETWORK RAIL 4

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