

NETWORK RAIL 10

Network Rail
Schedule of Amendments to
JCT Design and Build Contract 2005
Revision 2 2009
for
[Insert Contract Title]

Signed by: _____

for and on behalf of Network Rail

Signed by: _____

for and on behalf of the Contractor

Agreement/Contract [Insert]

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NETWORK RAIL INFRASTRUCTURE LIMITED

JCT DESIGN & BUILD CONTRACT 2005

Revision 2 2009

CONTRACT AGREEMENT

This Agreement is made the [Insert] of [Insert] **between:**

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

Whereas:

- First The Employer wishes to have the design and construction of the following work carried out:
- [Insert]
- at [Insert] (the “**Works**”) and the Employer has supplied to the Contractor documents showing and describing or otherwise stating his requirements (the “**Employer’s Requirements**”);
- Second In response to the Employer’s Requirements the Contractor has supplied to the Employer:
- documents showing and describing the Contractor’s proposals for the design and construction of the Works (the “**Contractor’s Proposals**”); and
- an analysis of the Contract Sum (the “**Contract Sum Analysis**”);
- Third The Contractor has examined the Employer’s Requirements and confirms that they are satisfied by the Contractor’s Proposals;
- Fourth For the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004 and the Income Tax (Construction Industry Scheme) Regulations 2005, the status of the Employer is, at the Base Date, that stated in the Contract Particulars;
- Fifth The division of the Works into Sections is shown in the Employer’s Requirements or in such other documents as are identified in the Contract Particulars.

Articles

Now it is hereby agreed as follows:

Article 1: Contractor’s obligations

The Contractor shall complete the design for the Works and carry out and complete the construction of the Works in accordance with the Contract Documents.

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Article 2: Contract Sum

The Employer shall pay the Contractor at the times and in the manner specified in the Conditions the VAT-exclusive sum of:

[Insert] (£[Insert]) (the “**Contract Sum**”)

or such other sum as shall become payable under this Contract.

Article 3: Employer’s Representative

For the purposes of this Contract the Employer’s Representative is:

[Insert]

of **Network Rail Infrastructure Limited** or such other person as the Employer shall nominate in his place. Save for clauses 4.19, 4.20, 4.21, 8.4, 8.5, 8.6, 8.8A, 8.9.2 and 9.2 or to the extent that the Employer may otherwise specify by written notice to the Contractor, the Employer’s Representative shall have full authority to receive and issue applications, consents, instructions, notices, requests or statements and otherwise to act for the Employer under any of the Conditions. The Employer’s Representative may from time to time by notice in writing to the Contractor delegate to any person responsible to him any of the duties and authorities vested in the Employer’s Representative and he may at any time revoke such delegation.

Article 4: Employer’s Requirements and Contractor’s Proposals

The Employer’s Requirements, the Contractor’s Proposals and the Contract Sum Analysis are those referred to in the Contract Particulars.

Article 5: CDM Co-ordinator

The CDM Co-ordinator for the purposes of the CDM Regulations is:

[Insert]

of **Network Rail Infrastructure Limited** or, if he ceases to be the CDM Coordinator, such other person as the Employer shall appoint pursuant to regulation 14(1) of those regulations.

Article 6: Principal Contractor

The Principal Contractor for the purposes of the CDM Regulations is the Contractor or, if he ceases to be the Principal Contractor, such other contractor as the Employer shall appoint pursuant to regulation 14(2) of those regulations.

Article 7: Adjudication

If any dispute or difference arises under this Contract, either Party may refer it to adjudication in accordance with clause 9.2.

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Article 8: Legal proceedings

Subject to Article 7, the English courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.

Article 9: Priority of Documents

The following documents are annexed hereto and shall form and be read and construed as part of this Agreement and in case of any ambiguity or discrepancy shall have the following order of priority:-

- (a) This Contract Agreement
- (b) Schedule of Post Tender Amendments;
- (c) Appendix : Contract Particulars;
- (d) Contract Specific Conditions and annexed forms of parent company guarantee and deeds of collateral warranty and novation (if applicable);
- (e) The JCT Design and Build Contract 2005, as amended and supplemented by the NR10 Schedule of Amendments;
- (f) Technical Workslope;
- (g) Contract Requirements HSQE;
- (h) Preliminaries;
- (i) Pricing Document,
- (j) Contractor's Proposals.

Article 10: Parent Company Guarantee

Where it is stated in the Appendix: Contract Particulars that a parent company guarantee is required, the Contractor shall obtain and provide to the Employer forthwith upon entry into this Contract a parent company guarantee in the form appended to the Contract Specific Conditions from the Contractor's ultimate holding company. For these purposes, "ultimate holding company" shall mean the parent company of the group of companies of which the Contractor is a member (as each of those terms is defined in Section 170 Taxation of Chargeable Gains Act 1992).

The Contractor's compliance with the provisions of Article 10 shall be a condition precedent to any obligation on the part of the Employer to make any payment that might otherwise be due under this Contract, and the Contractor acknowledges that he has no entitlement either to receive payment or to exercise any rights in respect of non-payment arising under the Contract unless and until the Contractor has provided a parent company guarantee if so required under Article 10.

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Appendix : Contract Particulars

Part 1: General

Clause etc.	Subject	
Fourth Recital and Clause 4.5	Construction Industry Scheme (CIS)	Employer at the Base Date is a 'Contractor' for the purposes of the CIS.
Fifth Recital	Description of Sections (if any) <i>(If not shown or described in the Employer's Requirements, state the reference numbers and dates or other identifiers of documents in which they are shown.)</i>	[Insert]
Article 4	Employer's Requirements <i>(State reference numbers and dates or other identifiers of documents in which these are contained.)</i>	Means the employer's requirements contained in the Technical Workslope [Insert]
Article 4	Contractor's Proposals <i>(State reference numbers and dates or other identifiers of documents in which these are contained.)</i>	[Insert]
Article 4	Contract Sum Analysis <i>(State reference numbers and dates or other identifiers of documents in which these are contained.)</i>	Means the contract sum analysis contained in the Pricing Document [Insert]
Article 9	Contract Requirements HSQE <i>(State reference numbers and dates or other identifiers of documents in which these are contained.)</i>	[Insert]
Article 9	Preliminaries <i>(State reference numbers and dates or other identifiers of documents in which these are contained.)</i>	[Insert]
Article 10	Parent Company Guarantee	Required

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1.1	Base Date	Date of the Contract
1.1	CDM Planning Period	Shall mean the period of [Insert] days/weeks ending on the Date of Possession/beginning/ending on [Insert] of [Insert].
1.1	Date for Completion of the Works (where completion by Sections does not apply)	[Insert]
	Sections: Dates for Completion of Sections	Section [Insert] : [Insert] Section [Insert] : [Insert] Section [Insert] : [Insert]
1.7	Addresses for service of notices etc. by the Parties	Employer: Kings Place, 90 York Way, London, N1 9AG Contractor: [Insert]
1.8	Electronic communications	Not applicable
2.3	Date of Access to the site	[Insert]
2.29.2	Liquidated damages (where completion by Sections does not apply)	at the rate of £[Insert] per [Insert]
	Sections: rate of liquidated damages for each Section	Section [Insert]: £[Insert] per[Insert] Section [Insert]: £[Insert] per[Insert] Section [Insert]: £[Insert] per [Insert]
2.34	Sections: Section Sums	Section [Insert] : £[Insert] Section [Insert] : £[Insert] Section [Insert] : £[Insert]
2.35	Rectification Period (where completion by Sections does not apply)	12 months from the date of practical completion of the Works

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	Sections: Rectification Periods	From the date of Practical Completion Statement of the Section until the date of Practical Completion of the Works and for a period of 12 months thereafter.
3.3	Contractor's Design Consultants	[Insert]
4.6	Advance payment	clause 4.6 does not apply
4.6	Advance Payment Bond	Not applicable
4.7	Method of payment - alternatives (If no Alternative is selected, Alternative B applies.)	[by stages in accordance with Alternative A (clause 4.13) or periodically in accordance with alternative B (clause 4.14)]
	Alternative A: Stage Payments	The stages referred to in clause 4.9.1 are as follows/set out on a separate sheet attached:
	Stages (insert brief description)	Cumulative value
	[Insert]	£[Insert]
	[Insert]	£[Insert]
	[Insert]	£[Insert]
	[Insert]	£[Insert]
	[Insert]	£[Insert]
	[Insert]	£[Insert]
	[Insert]	£[Insert]
	[Insert]	£[Insert]
	[Insert]	£[Insert]
	[Insert]	£[Insert]
	[Insert]	£[Insert]
	[Insert]	£[Insert]
	[Insert]	£[Insert]
	[Insert]	£[Insert]
	[Insert]	£[Insert]
	[Insert]	£[Insert]
	Alternative B: Periodic Payments - Dates of Applications for Interim Payment	The first date is: [Insert] and thereafter on the same day in each of the Agreed Rail Industry Periods as published by the Office of Passenger Rail Franchising, Golding's House, 2 Hay's Lane, London SE7 2HB
4.15	Listed Items	[Insert]
4.17.1	Retention Percentage	3 per cent

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6.4.4(a)	Employer's Public Liability Insurance Insurance cover (for any one occurrence or series of occurrences arising out of one event)	£ 155,000,000.00 (One hundred and fifty five million pounds)
6.5.1	Insurance - Liability of Employer	Not required
6.7 and Schedule 3	Insurance of the Works - Insurance Options	Insurance Option B (applies to new buildings) Insurance Option C (applies for works in or extensions to existing structures) (* delete as appropriate)
6.7 and Schedule 3 Insurance Options B or C (Provisions B.1 or C.2)	Percentage to cover professional fees	An amount the Employer considers reasonable to cover professional fees.
6.7 and Schedule 3 Insurance Option A (provision A.3)	Annual renewal date of insurance (as supplied by the Contractor)	Not applicable
6.11	Professional Indemnity insurance Level of cover Level of cover for pollution/contamination claims Expiry of required period of Professional Indemnity insurance	 Amount of indemnity required for any one claim or series of claims arising out of any one event and which may be subject to an annual aggregate limit is £10,000,000.00 (ten million pounds) £5,000,000.00 in the aggregate. 12 years
6.13	Joint Fire Code If the Joint Fire Code applies, state whether the insurer under Schedule 3, Insurance Option A, B or C (provision C.2) has specified that the Works are a 'Large Project':	The Joint Fire Code applies Yes

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6.16	Joint Fire Code - amendments/revisions	The cost, if any, of compliance with amendment(s) or revision(s) to the Joint Fire Code shall be borne by the Contractor
8.9.2	Period of suspension	3 months
8.11.1.1 to 8.11.1.6	Period of suspension	3 months
9.2.1	Adjudication	The Adjudicator shall be nominated by the President or a Vice-President for the time being of the Technology and Construction Bar Association
Schedule 2	Supplemental Provisions Paragraphs 1-8	Supplemental Provisions apply

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Part 2: Collateral Warranties (clause 7.4)

Form of Collateral Warranty is appended to the Contract Specific Conditions.

Collateral Warranties from Sub-Contractors

Will not be required

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:-

EXECUTED as a DEED by the Employer)
NETWORK RAIL INFRASTRUCTURE)
LIMITED acting by:)

Authorised Signatory

Authorised signatory as approved by a resolution of the board of Network Rail Infrastructure Limited on 16th May 2007

EXECUTED as a DEED by the Contractor)
namely _____)
(Contractor a company or other body corporate))

(a) acting by a Director and the Company

Secretary/two Directors namely

_____ and

(Insert names of signatories)

or (b) by affixing hereto its common seal in the presence of:

Director

Company Secretary/Director

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Schedule of Post Tender Amendments

None

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Network Rail Infrastructure Limited

Network Rail Schedule of Amendments to the JCT Design and Build Contract 2005

Clause	Details of Amendment/Addition/Deletion
<p>Clause 1.1</p>	<p>Delete the definition of “Arbitrator”.</p> <p>In the definition of “Agreement” delete “Articles of” and insert “Contract”</p> <p>Delete the definition of “Construction Phase Plan” and substitute “the construction phase plan containing all the features required by, and updated in accordance with, regulation 13 of the CDM Regulations which is the responsibility of the Contractor under Clause 3.18”</p> <p>Delete definition of “Contract Documents” and substitute “Contract Documents”: see Article 9 in the Articles of Agreement to which these conditions are annexed.</p> <p>In definition of “Contract Particulars” delete “such” and insert “Appendix: Contract Particulars”.</p> <p>Amend definition of “Contract Sum Analysis” to “the document described as such in the Pricing Document”.</p> <p>Amend definition of “Date of Possession” to “Date of Access” and all references in the Contract to the “Date of Possession” shall be treated as references to the “Date of Access”</p> <p>Delete the definition of “Development Control Requirements” and replace with: “any decision or consent of a relevant authority under the Town and County Planning Act 1990”.</p> <p>Delete the definition of “Employer’s Agent” and substitute “the person named as the Employer’s Representative under Article 3”.</p> <p>Amend definition of “Employer’s Requirements” to “the document described as such in the Technical Worksopce”.</p> <p>Delete the definitions of “Finance Agreement”; “Funder”; “Funder Rights”; “Funder Rights Particulars”.</p> <p>Amend the definition of “Fluctuation Options A, B and C” to read “not applicable”.</p> <p>Amend the definition of “Interest Rate” by deleting “5% per annum above the official dealing rate of the Bank of England” and substituting “4% above the Bank of England Base Rate”.</p> <p>Amend the definition of “Listed Items” by deleting “annexed to the Employer’s Requirements” and substituting “included in the Contract Particulars”.</p> <p>Delete the definitions of “P&T Rights”; “P&T Rights Particulars”; “Purchaser” and “Tenant”.</p>

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	<p>Insert the following new definitions:</p> <p>“Contract Requirements HSQE”: the document referred to as such in the Contract Agreement to which these conditions are annexed.</p> <p>“Contractor’s Design Consultants”: those consultants identified in the Contract Particulars, whose contracts of appointment with the Employer have been or are to be novated to the Contractor.”</p> <p>“Preliminaries”: the document referred to as such in the Articles of Agreement to which these conditions are annexed”.</p> <p>“Sub-Contractor”: any sub-contractor to the Contractor including any sub-contractors of any such sub-contractors.</p> <p>“Technical Workslope” means the technical workslope referred to in the Agreement.</p>
Clause 1.6	Delete “Other than such rights of any Purchasers, Tenants and/or Funder as take effect pursuant to clauses 7A and/or 7B” and substitute: “Save as provided in paragraph 6.7 in Schedule 2.”
Clause 1.9	Delete clause 1.9.1.1 and insert “Not used”.
Clause 1.10	Delete “Save as stated in clause 1.9” in line 1 and capitalise the “n” of the subsequent “no”.
Clause 2.1.1	<p>Insert after “Contract Documents” in line 2 “Railway Group Standards, Network Rail Standards and/or any equivalent standards”.</p> <p>Insert at end of sub-clause:</p> <p>“If there is a change in the Railway Group Standards or Network Rail Standards affecting the Works after the date of this Contract which necessitates a change to the Works, such change shall be deemed to have been carried out under an instruction of the Employer and shall be treated as a Change.”</p>
Clause 2.1.3	<p>Insert at the beginning:</p> <p>“Where necessary to comply with his obligations under this Contract and to carry out and complete the Works, the Contractor shall as soon as reasonably practicable make all applications for any necessary permissions, licences and approvals for the purposes of the Development Control Requirements or required pursuant to the Statutory Requirements”.</p>
Clause 2.1.5	<p>Insert new sub-clause as follows:</p> <p>“Free issue materials.</p> <p>The Employer shall make available to the Contractor at the site free of charge to the Contractor the goods and materials described in the Preliminaries on or before the dates or the expiry of the periods for the provision of the same stated in the Preliminaries. Upon completion of delivery such goods and materials shall stand at the risk of the Contractor. Immediately upon the same being made available to him, the Contractor</p>

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	shall carry out a detailed inspection of such goods and materials and shall use its reasonable endeavours to advise the Employer’s Representative within 24 hours and no later than 7 days or before being taken into operational use (whichever is the sooner) if any of such goods and materials are damaged or defective. The Employer shall immediately then secure the repair, replacement and/or reissue of any such goods and materials. If the Contractor does not so notify, the Contractor shall not be entitled subsequently to claim that any such goods or materials are damaged or defective to the extent that the same could have been identified by detailed inspection within such period. The Contractor shall dispose of any packaging and/or waste arising”
Clause 2.3	Delete clause 2.3 and insert : “Subject to Schedule 2 paragraph 7 (if applicable), on the Date of Access, the Contractor shall be given a non-exclusive licence to occupy such part or parts of the site at such times and for such periods as may be reasonably necessary to enable the Contractor to execute and complete the Works and any Section in accordance with the Contract. Access to the site shall be subject to any restrictions and rights for third parties set out in the Technical Workscope. Upon access to the site being given, the Contractor shall commence construction of the Works and Sections and regularly and diligently proceed with and complete the same on or before the relevant Completion Date.”
Clause 2.4	Delete clause 2.4 and insert “Not used”.
Clause 2.6	Delete clause 2.6 and insert a new clause 2.6 as follows: “ 2.6.1 The Contractor shall permit the execution of work not forming part of this Contract by any persons authorised or licensed by the Employer to carry out work on the site and the Employer and/or any such persons may at any time re-enter the site and any part of the Works for the purposes of executing any work or installing any goods, equipment or other articles for fitting out. 2.6.2 The Contractor shall permit the execution of work not forming part of this Contract by Statutory Undertakers or authorities engaged by or employed by the Employer. 2.6.3 Every person referred to in clauses 2.6.1 and 2.6.2 shall for the purposes of clause 6.1 be deemed to be a person for whom the Employer is responsible and not to be a sub-contractor. 2.6.4 The execution of work referred to in clauses 2.6.1 and 2.6.2 shall not be deemed to be or treated as possession of part or parts of the Works by the Employer as referred to in clause 2.30 and the provisions of clauses 2.30 to 2.34 shall not apply to such execution of work.”
Clause 2.7.4	Delete clause 2.7.4 and insert :
	“ 2.7.4 All information obtained by the Contractor in the course or conduct of this Contract shall be held confidential and shall not

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		<p>be divulged by the Contractor to any third party save to the extent necessary to effect the execution of this Contract and then only on the basis that the recipient of such information shall be bound by similar confidentiality obligations to those undertaken by the Contractor hereunder.</p> <p>Provided however that this obligation shall not apply to information which:</p>
		<p>.1 is or shall become part of the public domain otherwise than in consequence of a breach by the Contractor of its obligations under this clause 2.7.4;</p>
		<p>.2 was in the Contractor's possession prior to award of this Contract and which the Employer did not notify the Contractor as being confidential or which would not reasonably be regarded as confidential by its very nature;</p>
		<p>.3 was received from third parties having to the best of the Contractor's knowledge the right to disclose such information;</p>
		<p>.4 is required to be disclosed pursuant to a court order or statutory requirement provided that the Contractor shall to the extent permitted by the relevant legal or statutory requirement: (i) provide the Employer with prompt written notice of any such requirement before such disclosure is made and (ii) take all reasonable action to avoid and limit such disclosure as may be requested by the Employer.</p>
		<p>The Contractor shall ensure that the provisions of this clause 2.7.4 are incorporated in any sub-contracts or supply orders and that the employees, agents or representatives of all or any of the Sub-Contractors or suppliers comply with the same.</p> <p>The Contractor shall not make any announcement in relation to this Contract or its subject matter without the prior written approval of the Employer except as required by law or by any legal or regulatory authority.</p> <p>This clause 2.7.4 shall remain binding on the Contractor notwithstanding the completion or termination or determination of this Contract for any reason."</p>
Clause 2.13	Delete and insert:	<p>"If the Contractor finds any inadequacy as is referred to in Clause 2.12 or any discrepancy or divergence in or between any of the documents forming part of this Contract, he shall immediately give written notice with appropriate details to the Employer who shall issue instructions in that regard applying the order of priority stated in the Contract Agreement to which these Conditions are annexed. The Contractor shall be obliged to comply with such instruction without cost to the Employer where the</p>

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	inadequacy, discrepancy or divergence has been dealt with in the Contactor's Proposals.	
Clause 2.14	Delete and insert: "The Contractor accepts entire responsibility for the Contractor's Proposals and for any mistake, inaccuracy, or omission in the Contractor's Proposals whether or not the whole or any part of the Contractor's Proposals has been prepared by or on behalf of the Employer and/or by the Contractor's Design Consultants. Any mistake, inaccuracy, or omission in the Contractor's Proposals or in any of the Contractor's Design Documents shall be corrected by the Contractor without cost to the Employer."	
Clause 2.17	Delete clause 2.17 and insert:	
	"2.17.1	Insofar as the design of the Works is comprised in the Contractor's Proposals and in what the Contractor is to complete in accordance with the Employer's Requirements and these Conditions (including any further design which the Contractor is to carry out as a result of a Change), the Contractor warrants and undertakes to the Employer that:
		.1 he has exercised and will continue to exercise in the design of the Works all the skill, care and diligence to be expected of a professionally qualified and competent architect, engineer or other appropriate consultant taking into account the size, scope, nature, type and complexity of the Works;
		.2 the Works will, when completed, comply with any performance specification or requirement included or referred to in the Employer's Requirements or the Contractor's Proposals;
		.3 save as provided in Clause 2.1.5, the Works comprise or will comprise only materials and goods which are of new and satisfactory quality; and
		.4 the Works will, when completed, comply with the Development Control Requirements and the Statutory Requirements.
	2.17.2	Any reference to the design which the Contractor has prepared or shall prepare or issue for the Works includes a reference to any design which the Contractor has caused or shall cause to be prepared or issued by others, whether before or after the date of this Contract."
	2.17.3	Where the Contractor has provided designs in relation to the Works under any other contract with the Employer which is then provided by the Employer to the Contractor under this Contract, the Contractor shall not be able to disclaim responsibility for such design and shall be responsible for any

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		inadequacy in such design.
	2.17.4	Notwithstanding anything to the contrary contained elsewhere in this Agreement, the Contractor's liability for any breach of its obligations in relation to the design of the Works, whether in contract, tort, delict or otherwise, shall not exceed the sum of £10,000,000 in the aggregate.
Clause 2.17A	Insert new clause as follows: "Prohibited Materials	
	2.17A.1	For the purposes of the clause 2.17A, material is "prohibited" if, in the context of its use in the Works (whether alone or in combination with other materials):
		<ul style="list-style-type: none"> it poses a hazard to the health and safety of any person who may come into contact with the Works (whether during their construction or after their completion);
		<ul style="list-style-type: none"> either by itself or as a result of its use in a particular situation or in combination with other materials, it would or is likely to have the effect of reducing the normal life expectancy of any other material or structure in which the material is incorporated or to which it is affixed; or
		<ul style="list-style-type: none"> it poses a threat to the structural stability or performance or the physical integrity of the Works or any part or component of the Works.
	2.17A.2	The Contractor shall not specify or authorise for use or permit to be used any materials which at the time the Works are being carried out are generally accepted or reasonably suspected of;
		<ul style="list-style-type: none"> being prohibited in themselves;
		<ul style="list-style-type: none"> becoming prohibited when used in a particular situation or in combination with other materials;
		<ul style="list-style-type: none"> becoming prohibited with the passage of time;
		<ul style="list-style-type: none"> becoming prohibited without a level of maintenance which is higher than that which would normally be expected of a structure of the type under construction; or
		<ul style="list-style-type: none"> being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed, or other structure or any neighbouring properties,
		and the Contractor shall, when requested, issue to the
		Employer and to such persons as the Employer may require a certificate that no such materials have been specified for use

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		or permitted to be used.
	2.17A.3	Without prejudice to his obligations under this Contract, the Contractor warrants that he shall specify materials for use in the Works in accordance with the guidelines contained in publication “Good Practice in Selection of Construction Materials” (1997: Ove Arup & Partners) and/or that materials as used in the construction of the Works shall be in accordance with such guidelines.”
Clause 2.26		<p>Insert after “clause 2.25” in line 1:</p> <p>“(but (except in the case of the Relevant Event referred to in clause 2.26.8) only to the extent that such events are not in any way consequent upon or necessitated by any negligence, omission, default, breach of contract or breach of statutory duty of the Contractor, his servants or agents or any Contractor’s Design Consultant, sub-consultant, Sub-Contractor or supplier or their respective servants or agents):”</p> <p>In clause 2.26.2.1, Delete “3.11”.</p> <p>In clause 2.26.2.2, Delete “or 3.13.3”.</p> <p>Delete clause 2.26.3 and insert:</p> <p>“Cancellation or alteration of the dates and times of agreed speed restrictions track possession or isolations under paragraph 7 of Schedule 2 (where applicable).”</p> <p>Insert at end of Clause 2.26.7:</p> <p>“or pollution or contamination encountered by the Contractor at the site;”</p> <p>In clause 2.26.10 in line 3, after “in the preparation for the design for the Works”, insert: “provided that no extension of time shall be granted in respect of any strike or lock out of the employees of the Contractor or of any employees of any Sub-Contractor or supplier engaged in respect of the Works”.</p>
Clause 2.27		Delete “3.18.4” in line 2 and substitute “3.18.6”
Clause 2.29		<p>Insert new clause 2.29.5:</p> <p>“The Contractor shall not be obliged to pay liquidated damages in excess of the Contract Sum.”</p>
Clause 2.35		Insert after “shall at no cost to the Employer be made good by the Contractor” in lines 11 to 12 the words “(together with any physical damage to the Works caused by such defects, shrinkages or other faults or the remedy thereof) and in accordance with programmes and methods of working reasonably required by the Employer”.
Clause 2.38.2		Delete the words “Subject to all monies due and payable under this Contract to the Contractor having been paid,” in line 1 of clause 2.38.2 and capitalise the “t” of the word “the”.

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<p>Clause 2.38.4</p>	<p>Add new clause as follows:-</p> <p>“2.38.4 The Contractor further agrees:</p> <p>2.38.4.1 to waive in favour of the Employer any and all moral rights in the Contractor’s designs and drawings;</p> <p>2.38.4.2 that the Employer may grant sub-licences to other persons to use and to reproduce the Contractor’s designs and drawings and the content of them for any purposes relating to the Works; and</p> <p>2.38.4.3 to the extent that the Contractor does not have ownership of the copyright in any of the Contractor’s designs and drawings, to procure from the copyright holder a licence with full title guarantee to the Employer in the same terms as set out in clause 2.38.2.”</p>	
<p>Clause 2.39</p>	<p>Insert new clause 2.39 as follows:</p>	
	<p>“2.39.1</p>	<p>Ground Conditions</p> <p>The Contractor has had an opportunity of inspecting the physical conditions (including the sub-surface conditions), contamination, pollution and other conditions of or affecting the site and shall have fully acquainted himself with the same and shall have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect the execution of the Works. No failure on the part of the Contractor to discover or foresee any such condition, risk, contingency or circumstance, whether the same ought reasonably to have been discovered or foreseen or not, shall entitle the Contractor to an addition to the Contract Sum or to an extension of time. The Contractor shall not and shall not be entitled to rely upon any survey, report or other document prepared by or on behalf of the Employer regarding any such matter as is referred to in this clause 2.39 and the Employer makes no representation or warranty as to the accuracy or completeness of any such survey, report or document or for any representation or statement contained therein, whether made negligently or otherwise.</p>
	<p>2.39.2</p>	<p>The Contractor shall be fully responsible for the adequacy and suitability of any existing foundations and sub-structures at the site which are to be incorporated into the Works and for their compatibility and integration with the Works.”</p>
<p>Clause 2.40</p>	<p>Insert new clause 2.40 as follows:</p> <p>“Methods of Construction</p> <p>The Contractor shall submit at such times and in such detail as the Employer’s Representative may reasonably require for full consideration to be given and if necessary for revised proposals to be considered such information pertaining for the methods of construction (including temporary works and the use of contractor’s equipment) which the Contractor proposes to adopt or use and, if requested by the Employer’s Representative, such calculations of stresses, strains and deflections that</p>	

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	will arise in the Works and any parts thereof during construction from the use of such methods as are sufficient to demonstrate to the Employer Representative that, if these methods are adhered to, the Works can be executed in accordance with this Contract and without detriment to the safe working of the railway or the property of the Employer and others or to the Works when completed.”
Clause 2.41	Insert new Clause 2.41 as follows: The Employer’s Representative shall inform the Contractor in writing within 21 days after receipt of the information submitted in accordance with Clause 2.40 either
	2.41.1 that the Contractor’s proposed methods have the consent of the Employer; or
	2.41.2 in what respects in the opinion of the Employer’s Representative they fail to meet the requirements of this Contract or will be detrimental to the Works.
	In the latter event the Contractor shall take such steps or make such changes in the said methods as may be necessary to meet such requirements and to obtain his consent. The Contractor shall not change the methods which have received the Employer’s consent without the further consent in writing of the Employer’s Representative which shall not be unreasonably withheld.”
Clause 3.3	Insert at the beginning of clause 3.3.1: “Subject to paragraph 2 of Schedule 2 and clause 3.3.4,” Insert at the beginning of clause 3.3.2: “Subject to paragraph 2 of Schedule 2 and clause 3.3.4” Insert the following new clause:
	“3.3.4 The Employer hereby consents to the Contractor sub-letting the design of all or any part of the Works to the Contractor’s Design Consultants. The Contractor shall on the date of this Contract enter into a deed of novation for each of the Contractor’s Design Consultants’ contracts of appointment in the form set out in Schedule 5. Following the execution of such deeds of novation, the Contractor shall provide a certified copy to the Employer and shall not thereafter without the prior written consent of the Employer, determine the employment of any of the Contractor’s Design Consultants or amend, vary or waive any of the terms of their appointments. Where the Employer consents to the Contractor’s termination of the employment of any of the Contractor’s Design Consultants, the Contractor shall select another consultant to carry out such consultant’s services on equivalent terms of appointment for the consent of the Employer. The Contractor shall not without the written consent of the Employer determine the employment of any such replacement consultant or amend, vary, or waive any of the terms of the replacement consultant’s appointment. The Contractor shall not be entitled to any adjustment to the

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		Contract Sum in respect of any of the matters referred to in this clause 3.3.4.”
Clause 3.4	In 1 st line, delete “3.3” and substitute ”3.3.1 and 3.3.2”.	
Clause 3.5	Delete the words “save that where...” until the end of the clause.	
Clause 3.6	<p>Re-number existing clause as “3.6.1” and add new clause 3.6.2 as follows:</p> <p>“.2 Notwithstanding clause 3.6.1 if, in the opinion of the Employer, any urgent measures shall become reasonably necessary in order to obviate any risk of accident or failure or if, by reason of the happening of any accident or failure or other event, any remedial or other work or repair shall become urgently necessary, and the Contractor shall be unable or unwilling at once to carry out such measures, the Employer may by his own staff and/or by using other contractors carry out such measures as the Employer may consider necessary. The Contractor shall be liable for all additional costs incurred by the Employer in connection therewith and an appropriate deduction shall be made from the Contract Sum.”</p>	
Clause 3.9.1	<p>Delete clause 3.9.1 and insert:</p> <p>“The Employer may issue instructions effecting a Change. No Change effected by the Employer shall vitiate this Contract.”</p> <p>Delete clauses 3.9.2 and 3.9.4 and insert “Not used”.</p>	
Clause 3.13	<p>Delete in clause 3.13.2 the words “(to which the proviso in clause 3.9.1 applies)”</p> <p>Delete in clause 3.13.3 the full stop and last sentence and insert:</p> <p>“and no addition shall be made to the Contract Sum and no extension of time shall be given in respect of compliance by the Contractor with such instruction.”</p>	
Clause 3.18	<p>Delete clause 3.18 and insert:</p> <p>“The Contractor hereby warrants that:</p>	
	.1	at the date hereof he is and for the duration of the Works he shall continue to be competent to act as “Principal Contractor” and “Designer” for the Works (as defined in the CDM Regulations);
	.2	he has allocated and he shall continue to allocate adequate
		resources to enable him to perform all the functions and duties of the “Principal Contractor” and “Designer” under the CDM Regulations for the Works;
	.3	he has put in place, and will maintain throughout the duration of the Works, arrangements for managing the carrying out and completion of the Works (including the allocation of sufficient time and resources) which are suitable to ensure that the Works can be carried out so far as is reasonably practicable without risk to the health and safety of any person and that any

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		structure designed for use as a workplace has been designed taking account of the provisions of the Workplace (Health, Safety and Welfare) Regulations 1992 relating to the design of, and materials used in, the structure;
	.4	he shall ensure that the Construction Phase Plan is prepared and received by the Employer before construction work under this Contract is commenced, that it is properly implemented and that any subsequent amendment to it by the Contractor is notified to the Employer;
	.5	he shall ensure that welfare facilities complying with Schedule 2 of the CDM Regulations are provided from the commencement of construction work until the end of the construction phase;
	.6	he shall without charge prepare a health and safety file containing all the features required by, and updated in accordance with, the CDM Regulations and deliver it to the Employer; and
	.7	he shall strictly comply with the Employer's health and safety requirements as set out in the Contract Requirements HSQE. In particular, but without limitation, the Contractor shall ensure that all the Contractor's employees, any Sub-Contractors and other persons engaged by it in relation to this Contract receive safety and skills training in accordance with the requirements of the Contract Requirements HSQE and the Employer may instruct the immediate replacement, at the Contractor's cost, of any person on the site who is not so trained."
Clause 3.20	Add new clause as follows: Site Security	
	"3.20	<p>The Contractor shall take all reasonable steps and all steps required by the Contract to prevent unauthorised persons being admitted to the site. If the Employer 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.</p> <p>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. The Contractor shall be responsible for ensuring that no person employed on his behalf trespasses beyond the agreed limits of the working area or access route and shall, if required so to do, provide and maintain to the satisfaction of the Employer temporary fencing of an approved type to prevent trespass on the railway or neighbouring land.</p> <p>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</p>

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		<p>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 reasonably requires in this connection. The passes shall be returned at any time on the demand of the Employer and in any case on the completion of the Works.</p> <p>The Contractor shall maintain a record of all visitors to the site and shall if and when instructed by the Employer, 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 may reasonably require.”</p>
Clause 3.21	<p>Add new clause as follows:</p> <p>Site Photographs</p>	
	“3.21	<p>Except as required to record activities on the site the Contractor shall not at any time take any photograph of the site or the Works or any part thereof, and shall take all reasonable steps to ensure that no such photographs shall at any time be taken or published or otherwise circulated by any person employed by him, unless the Contractor has obtained the prior written consent of the Employer.”</p>
Clause 4.4.3	<p>Insert a new sub-clause as follows:</p> <p>“The Contractor shall issue to the Employer, upon receipt of any amount paid by the Employer under this Contract and any Value Added Tax properly paid under clause 4.4.1, 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>	
Clause 4.5	<p>Delete existing clause and insert as follows:</p>	
	4.5	<p>“For the purposes of this clause 4.5, the “Scheme” shall mean the Construction Industry Scheme, as provided for in Chapter 3 of the Finance Act 2004 and the Income Tax (Construction Industry Scheme) Regulations 2005.</p>
	4.5.1	<p>Not later than 21 days before the first payment under this Contract 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.</p>
	4.5.2	<p>The Contractor shall ensure that at all times it is registered for gross payment under the Scheme.</p>
	4.5.3	<p>If the Contractor fails to comply with the provisions of clauses 4.5.1 or 4.5.2 the Employer shall not be</p>

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			obliged to make any further payment to the Contractor until such time as the failure is remedied.”
Clause 4.10.1	Delete and substitute: “The due date shall be 14 days after receipt by the Employer of the Application for Interim Payment and the final date for payment of an Interim Payment shall be 7 days from the due date for payment.”		
Clause 4.10.2	Delete “Notwithstanding the fiduciary interest of the Employer in the Retention as stated in clause 4.16.” and capitalise the “t” of the subsequent “the”. Insert “or at common law or in equity” after “this Contract” in line 2.		
Clause 4.10.3	Delete “receipt of” and substitute “due date in respect of”.		
Clause 4.13.1.2	Delete "but excluding any restoration, replacement or repair of loss or damage and removal and disposal of debris which under paragraphs B.3.5 and C.4.5.2 of Schedule 3 are treated as a Change"		
Clause 4.13.2.2	Delete "or in respect of any restoration, replacement or repair of loss or damage and removal and disposal of debris which under paragraphs B.3.5 and C.4.5.2 of Schedule 3 are treated as a Change"		
Clause 4.14.1.1	Delete "but excluding any restoration, replacement or repair of loss or damage and removal and disposal of debris which under paragraphs B.3.5 and C.4.5.2 of Schedule 3 are treated as a Change"		
Clause 4.14.2.2	Delete "or in respect of any restoration, replacement or repair of loss or damage and removal and disposal of debris which under paragraphs B.3.5 and C.4.5.2 of Schedule 3 are treated as a Change"		
Clause 4.16	Delete and insert a new clause 4.16 as follows:		
	“4.16	The Retention shall be subject to the following rules:	
		.1	the Employer shall have the full and unencumbered beneficial interest in the Retention. Neither the Contractor nor or any Contractor’s Design Consultant, sub-consultant, sub-contractor and/or supplier shall have any proprietary right or other interest (whether at law or in equity) in or over the Retention except as unsecured creditor and the Employer shall owe no fiduciary obligation to the Contractor in relation to the Retention;
		.2	the Employer shall have no obligation to segregate the Retention or any part thereof in a separate banking account, or in any other manner whatsoever. The Employer shall be entitled to the full beneficial interest in any interest accruing on the Retention and shall be under no duty to account for any such interest to the Contractor.”

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Clause 4.18	Delete and substitute as follows: “Set-off”	
	4.18	Without prejudice to the Employer’s other rights and remedies, the Employer may deduct from any sums due to the Contractor under the Contract an amount equivalent to any sum due from the Contractor to the Employer (whether such sums are due to the Employer under the Contract or under any other agreement between the Contractor and the Employer) and may also deduct any sum of money that is recoverable from or payable by the Contractor under the Contract from any sum due or which at any time thereafter may become due under any other agreement between the Employer and the Contractor”.
Clause 4.19	Delete “due to a deferment of giving possession... under clause 2.4, or” from lines 2-3.	
Clause 4.20	Insert the following after the words “Relevant Matters” in line 1: “(but only to the extent that such matters are not in any way consequent upon or necessitated by any negligence, omission, default, breach of contract or breach of statutory duty of the Contractor, his servants or agents or any Contractor’s Design Consultant, sub-consultant, sub-contractor or supplier or their respective servants or agents).”	
Clause 4.20.2.1	Delete “or 3.11”.	
Clause 4.20.2	Insert new wording at the end of clause 4.20.2.2 as follows: “or unless the Employer had reasonable grounds, based on a previous opening up or testing, for suspecting that such materials or goods may not be in accordance with this Contract”.	
Clause 4.20.6	Insert new sub-clause as follows: “Cancellation or alteration of the dates and times of agreed speed restrictions, track possessions or isolations under paragraph 7 “Track Possessions” of Schedule 2 (where applicable)”.	
Clause 6.1	Insert after “Works” in line 3 “(including the performance of the Contractor’s obligations under clause 2.35)”	
Clause 6.2	Insert after “Works” in line 3 “or of any obligation pursuant to clause 2.35”	
Clause 6.2A	Insert the following new clause 6.2A:	
	6.2A.1	“Without prejudice to the generality of clause 6.2, the Contractor shall at all times take all reasonably practicable precautions:-
	6.2A.1.1	to prevent any public or private nuisance (including such nuisance caused by noxious fumes, noisy working operations or the deposit of any materials or debris):
	6.2A.1.2	to avoid any unplanned interruption in the use of track or

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		station areas or other railway infrastructure (it being
		acknowledged that the Employer may incur penalties and liabilities for this under its contractual and regulatory arrangements with third parties including passenger, track and freight operators); or
	6.2A.1.3	to avoid any other interference with the rights of any permitted occupier of the site or the Works and/or any adjoining or neighbouring landowner, tenant or occupier or any Statutory Undertaker arising out of the Works or of any obligation pursuant to clause 2.35.
	6.2.A.2	The Contractor will advise the Employer as soon as possible of any potential liability for damages on account of noise disturbances or other pollution which would be the unavoidable consequence of carrying out the Works and on measures to be taken to mitigate such liability (such advice to be at the Contractor's cost). The Contractor will comply with any necessary changes to the Works to the satisfaction of the Employer. The cost of such compliance shall be borne by the Contractor unless, in the opinion of the Employer, the compliance is a " Change " for the purposes of clause 5.1 in which case it shall be valued accordingly.
	6.2.A.3	The Contractor shall indemnify the Employer against any expense, liability, loss, claim or proceedings to the extent that the same arises or results from any such nuisance or interference save only where such nuisance or interference is the result of the carrying out of the Works in accordance with the Contract and which could not have been avoided by the Contractor using all reasonably practical precautions in accordance with this clause 6.2A."
Clause 6.4.1	<p>Delete existing clause 6.4.1</p> <p>Insert new clause 6.4.1</p> <p>Contractor's Insurance of his liability to his employees</p> <p>Without prejudice to his obligations to indemnify the Employer under clauses 6.1 and 6.2, the Contractor shall take out and maintain insurance in respect of claims for personal injury to or death of any employee of the Contractor arising out of and in the course of such person's employment which shall comply with all relevant legislation.</p>	
Clause 6.4.4	<p>Insert new clause 6.4.4</p> <p>Employer's Third Party Insurance and Insurance of the Employer's Property</p> <p>Without prejudice to the Contractor's obligations to indemnify the Employer under clauses 6.1 and 6.2, the Employer shall take out and maintain:</p>	

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	<p>(a) a Joint Names Policy against liabilities for death of or injury to any person (other than any person in the employment of the Employer or the Contractor) or loss of or damage to any property (other than the Works, 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>(b) a policy or policies of insurance in respect of loss or damage to property of the Employer (other than work executed and Site Materials but including work executed after practical completion thereof) arising out of or in connection with the Works and business interruption costs consequent upon such loss or damage, with a waiver of subrogation in favour of the Contractor and Sub-Contractors.</p> <p>The Employer shall not be responsible for any amounts in excess of the limits of indemnity and sums insured or any retained liability or risks not insured or excluded by the terms, exceptions or conditions of such insurance policies.</p>		
<p>Clause 6.4.5</p>	<p>Insert new clause 6.4.5</p> <p>Evidence of Employer's Third Party Insurance</p> <p>A summary of the insurance policy taken out and maintained by the Employer under clause 6.4.4. is included in section 2 of the Project Insurance Manual in the Preliminaries and further details of the Employer's insurance policies may be provided to the Contractor on request.</p>		
<p>Clause 6.4.6</p>	<p>Insert new clause 6.4.6</p> <p>Notification of Claims under the Employer's Public Liability Insurance</p> <p>The Contractor shall notify all claims under the Employer's Public Liability Insurance in accordance with and comply with the provisions of, the procedures detailed in section 3 of the Project Insurance Manual in the Preliminaries.</p>		
<p>Clause 6.4.7</p>	<p>Claims Handling Provisions</p>		
	<table border="1"> <tr> <td data-bbox="488 1715 619 2045"> <p>.1</p> </td> <td data-bbox="619 1715 1394 2045"> <p>"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 terms and expressions defined in the Claims Allocation and Handling Agreement shall have the same meanings in the clause 6.4.5, and the</p> </td> </tr> </table>	<p>.1</p>	<p>"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 terms and expressions defined in the Claims Allocation and Handling Agreement shall have the same meanings in the clause 6.4.5, and the</p>
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			Employer shall supply the Contractor with a copy of each amendment thereto, as and when it is made.	
		.2	These provisions shall apply:	
			(a)	if the Contract is in connection with the maintenance or operation of the Employer's Railway Assets; and
			(b)	in respect of the period (if any) while the Contractor is an Independent Contractor; and
			(c)	where a claim, which arises out of or is connected with this Contract, 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 Contract does hereby permit the recovery by the Employer of loss of revenue or other consequential losses that are direct and foreseeable.	
		.3	The Contractor irrevocably appoints the Employer as its agent to authorise the Agency (in consultation, where necessary, with Industry Parties and their Insurers) to defend such claim on behalf of the Contractor and Industry Parties, in accordance with the Claims Allocation and Handling Agreement. In relation to such a claim, the Contractor shall be bound by the terms of that Agreement as if the Contractor were a party to it.	
		.4	Where such a claim results in a payment to the third party, the Contractor agrees that liability for such payment and the costs of handling and defending the claim, shall be allocated in accordance with the Claims Allocation and Handling Agreement. The Contractor agrees to participate in the procedure for allocating liability set out in the Dispute Resolution Rules; and to be bound by the results as if the Contractor were party to those Rules; and such matters shall not be referable to adjudication or arbitration in accordance with the Contract.	

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		.5	Provided that clause 6.4.5.3 and 6.4.5.4 shall not apply to any claim in respect of which the Contractor admits that he is liable, and that no Industry Party is liable. In such a case, the Contractor himself may defend the claim.
		.6	Without prejudice, and in addition, to any rights and remedies of the Employer, the Contractor shall indemnify the Employer against all losses, claims, liability, costs and expenses which are borne by the Employer under the Claims Allocation and Handling Agreement and which arise out of either a breach of contract by the Contractor or a breach of duty of care owed to a third party which is the subject of a claim under the Claims Allocation and Handling Agreement.
Clause 6.11.4 and 6.11.5	Insert new clauses as follows:		
	"6.11.4		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.
	6.11.5		The said terms and conditions shall not include any term or condition to the effect that the Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930."
Clause 7.1	Delete and insert:		
	"7.1		The Employer may, without the consent of the Contractor, assign or transfer the benefit of all or any of his rights arising under or out of this Contract."
Clause 7.2	Delete and insert:		
	"7.2		The Contractor shall not, without the prior written consent of the Employer, assign or transfer the benefit of all or any of his rights under this Contract to any person."
Clause 7.4	Delete and substitute as follows: "Collateral Warranties The Contractor shall, within 7 working days of the Employer's request so to do, execute in favour of any person or persons nominated by the Employer who have entered into or intend to enter into an agreement for the provision of finance in connection with the Works and/or for the purchase of an interest, whether leasehold or freehold, in the land upon which the Works or any part of them are situated a deed in the appropriate form referred to in Part 2 of the Contract Particulars."		

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Clause 7.5 and 7A to 7F	Delete and insert “Not used”.	
Clause 8.4.1	Insert new clause as follows:	
	“8.4.1.6	<p>is liable to compensate the Employer in respect of sums referred to in:</p> <p>(a) paragraph 8 of the Schedule 2 (where applicable) (Limit on Liability for Railway Costs) in excess of the aggregate total liability of the Contractor as stated in paragraph 8; or</p> <p>(b) clause 2.17 (Design Liability) in excess of the aggregate total liability of the Contractor stated in clause 2.17.3; or</p> <p>(c) clause 2.29 (Liquidated Damages) in excess of the aggregate total liability of the Contractor stated in clause 2.29.5.”</p>
Clause 8.8A	Insert new clauses as follows: “Termination at Will”	
	8.8A.1	The Employer may, in addition to any other power he may have, at any time by notice to the Contractor forthwith terminate the employment of the Contractor under this Contract.
	8.8A.2	If the Employer, in the exercise of the powers contained in clause 8.8A.1, shall terminate the Contractor’s employment under this Contract, the provisions of clause 8.12.2 shall apply and the Employer shall pay the Contractor (insofar as such
		amounts or items have not already been covered by payments on account made to the Contractor) the value of all work carried out prior to the date of termination and in addition:
	.1	the amounts payable in respect of preliminary items insofar as the work or service comprised therein has been carried out or performed and a proper proportion of any such items which have been partially carried out or performed;
	.2	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);
	.3	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
	.4	the reasonable costs of removal of all the Contractor’s plant, tools, equipment, goods and materials from site.

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	The Contractor shall not be entitled to payment of any other loss and/or damage arising from such termination.”
Clause 8.9.1.2 and 8.9.1.3	Delete and insert “Not used”.
Clause 8.9.3	Delete “14” in lines 1 and 2 of and insert “28”
Clause 8.12.3	Delete the first sentence and replace with: “where the Contractor’s employment is terminated under clause 8, the Contractor shall promptly provide the Employer with all relevant receipts and documents as the Employer may reasonably require in order for the Employer to prepare an account.”
Clauses 9.3 to 9.8	Delete and insert “Not used”.

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<p>Schedule 1</p> <p>Contractor's Design Submission Procedure</p>	<p>Delete in line 1 "two copies of each of the Contractor's Design Documents to the Employer in such format as is stated in the Employer's Requirements or the Contractor's Proposals" and insert "4 (four) paper copies and, if so requested by the Employer, one electronic copy, to the Employer".</p>	
<p>Schedule 2</p> <p>Supplemental Provisions</p>	<p>Delete text of paragraph 2 ("Persons named as Sub-Contractors in Employer's Requirements") and insert the following:</p>	
	<p>2.1</p>	<p>Where the Employer's Requirements or the Contractor's Proposals provide that the design and/or construction of any particular part of the Works or the supply of particular goods and/or materials priced by the Contractor shall be carried out by or obtained from a person or one of a list of persons named therein, the Contractor shall sub-let such work to and shall obtain such materials and/or goods from that person or from one of the persons so listed. If, for any reason beyond the control of the Contractor, the Contractor is unable to enter into a contract with any of the persons so identified, the Contractor shall select another person to carry out the design and/or construction of the work or supply the goods and/or materials to a standard and quality required by this Contract and shall obtain the Employer's written approval of the person so selected.</p>
	<p>2.2</p>	<p>Where paragraph 2.1 does not apply, the Contractor may sub-let the design and/or construction of parts of the Works and/or the supply of goods and/or materials priced by the Contractor to competent and experienced sub-consultants, sub-contractors and suppliers as appropriate.</p>
	<p>2.3</p>	<p>Before entering into any appointments, sub-contracts or supply agreements under paragraph 2.1 or 2.2, the Contractor shall obtain the Employer's prior written approval of the proposed terms of all such appointments, sub-contracts or supply agreements. After obtaining the Employer's approval, the Contractor shall not without prior written consent of the Employer (not to be unreasonably withheld) terminate the employment of any sub-consultant, sub-contractor or supplier or amend, vary or waive any of the terms of such appointments, sub-contracts or supply agreements. The Contractor shall provide a certified copy of all appointments, sub-contracts or supply agreements to the Employer as soon as they have been entered into.</p>
	<p>2.4</p>	<p>Subject always to paragraph 2.3, if any sub-consultant's appointment, sub-contract or supply agreement is terminated or discharged or if the employment of any sub-consultant, sub-contractor or supplier is terminated, the Contractor shall select another person to undertake or complete the execution of the work or the supply of the goods and/or materials to a standard and quality required by this Contract and shall obtain the</p>

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		Employer's prior written approval of the person so selected and the proposed terms of the sub-consultant's appointment, sub-contract or supply agreement.
	2.5	No sub-letting by the Contractor and no consent by the Employer and no identification of a person in the Employer's Requirements or in the Contractor's Proposals shall in any way relieve the Contractor from his responsibility for the design, execution and completion of the Works in accordance with this Contract. The Employer shall not be obliged to make any payment to the Contractor under this Contract in respect of any of the services, works or supplies which are performed by a sub-consultant, sub-contractor or supplier not appointed in accordance with this Contract. The Contractor shall not be entitled to any adjustment to the Contract Sum in respect of the matters referred to in paragraph 2.1 to paragraph 2.4."
	Insert new paragraph as follows:	
	"6	Employment Protection and TUPE
	Notwithstanding anything to the contrary elsewhere in this Contract:	
	6.1	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 1981 2006 as amended or re-enacted from time to time (" TUPE ").
	6.2	In the last 12 months prior to the issue of the Practical Completion Statement, within 28 days of the Employer's request, the Contractor shall (where TUPE is likely to apply) provide the Employer with a list of names, ages, addresses and national insurance numbers of all persons who are, who have been, or who may be at any time concerned with the Works or any part thereof, specifying their job title, job description, basic salary, bonus and all other emoluments and benefits, period of continuous employment, the percentage of the time that they have worked on this Contract, details of any agreements entered into with employee representative bodies in relation to such persons and such other requirements as the Employer may reasonably require (altogether the " Employee Data ").
	6.3	in the last 12 months prior to the issue of the Practical Completion Statement, the Contractor shall (and shall procure that any Sub-Contractor shall) provide to the people engaged in the performance of this Contract, written contracts of employment or statements of terms of employment, in either case complying with the requirements of Section 1 of the

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		Employment Rights Act 1996, and retain copies of such documents together with such other documentation and PAYE records as may reasonably be required by the Employer (“ Personnel Records ”) and shall (where TUPE is likely to apply) within 28 days of the Employer’s request, whether during the performance of this Contract or following the end of this Contract (whether lawfully or otherwise) deliver up to the Employer or to such person as the Employer may nominate, the Employee Data, such copies of the Personnel Records as may be required by the Employer and, to the extent not otherwise provided, any employee liability information pursuant to and in accordance with Regulation 11 of TUPE. The Employer may communicate such information to persons intending to tender to execute works of the nature of the Works.
	6.4	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 the issue of the Practical Completion Statement, without the prior written permission of the Employer, vary or purport or promise to vary (in the employee’s favour), the terms of the contract of employment of any person engaged wholly or principally in the execution of the Works, except in the ordinary course of business.
	6.5	the Contractor shall not (and shall procure that any Sub-Contractor shall not) (where TUPE is likely to apply), without the prior written consent of the Employer create or grant, or promise to create or grant, terms or conditions of employment for any new employee engaged wholly or principally in the execution of the 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 provision 6.4 at the date of commencement of employment of such new employee).
	6.6	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.
	6.7	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 or any Sub-Contractor and which the Employer or a successor contractor incurs:
		(i) in relation to any one or more employees whose employment has transferred or is alleged to have transferred to the Employer and/or a successor contractor pursuant to TUPE and/or this Contract;

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		and/or
	(ii)	as a result of the Contractor's breach of provisions 6.4, 6.5 and/or 6.6;
		and, despite anything else in this Contract, such a successor contractor can directly enforce the indemnity in its favour provided for by this provision 6.7."
	7	Track Possessions
	7.1	After the Date of Possession, 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 the Contract) in advance of the proposed commencement of work on or near the railway lines.
	7.2	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.
	7.3	Where any part of the Works has to be carried out during an agreed period of a speed restriction, track possession or isolation, the Contractor shall make adequate arrangements to ensure that such part can commence as programmed, and can be completed as early as possible, and in any case within that period. The arrangements shall include the provision of sufficient and suitable Contractor's equipment (including, where practicable, standby equipment) and sufficient labour.
	7.4	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 provision 7.3, 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.
	7.5	If, during a speed restriction, track possession or isolation, the Employer 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 may instruct the Contractor to reduce the extent of or vary the dates and times of the work to be carried out during such speed restriction, track possession or isolation. Such reduction or variation shall not entitle Contractor to any additional payment or extension of time for completion if

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		and to the extent that the Contractor's inability to complete the planned work was due to a breach by the Contractor of the requirements of this Contract.
	7.6	The Contractor acknowledges that the Employer may incur additional costs as a result of the requirement to use and/or obtain additional speed restrictions, track possessions or isolations in accordance with provisions 7.4 and 7.5, and that the Employer shall be entitled to contra-charge the Contractor in respect of such costs to the extent they are due to a breach by the Contractor of the requirements of the Contract."
	8	Limit on Liability for Railway Costs
	For the purposes of this provision 8:-	
	8.1	" Track Access Agreement " means any agreement (excluding Freight Access Agreements) entered into between the Employer and any other party and incorporating the Network Code.
	8.2	" 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.
	8.3	" 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 Contract, the liability of the Contractor to compensate the Employer in respect of any consequential or indirect losses arising from an act or omission of the Contractor, or any sums payable by the Employer pursuant to Schedules 4 and 8 of any Track Access Agreement or the equivalent provisions of any Freight Access Agreement, whether in contract, tort, delict or otherwise shall not exceed in aggregate the Contract Sum. Any amounts which may be payable under clause 2.29 (liquidated damages) shall not be taken into account in the calculations anticipated by this provision 8."	
	9	Anti-Bribery Requirements
	9.1	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)
	9.2	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

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		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).
	9.3	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 9.1 and 9.2 above.
Schedule 3 (Clause 6.7)	Insurance Options Insurance Option B	New Buildings – All Risks Insurance of the Works by the Employer
Clause B.3.1	Delete existing clause B.3.1 Insert new clause B.3.1	If loss or damage affecting any executed work or Site Materials is occasioned by any risk covered by the Joint Names Policy, then, upon its occurrence or later discovery, the Contractor shall forthwith make a notification of a claim in accordance and in compliance with the provisions of, the procedures detailed in section 3 of the Insurance Manual in the Preliminaries.
Clause B.3.4	Insert at the end of Sub-clause	The Employer may retain from the monies paid by the insurers the amount properly incurred by the Employer in respect of professional fees up to the amount paid by insurers in respect of those fees.
Clause B.3.5	Delete existing clause B.3.5 Insert new clause B.3.5	In respect of the restoration, replacement or repair of such loss or damage and (when required) the removal and disposal of debris, the Contractor shall not be entitled to any payment other than of monies received under the Joint Names Policy.
	Insurance Option C	Insurance by the Employer of Existing Structures and Works in or Extensions to them
Clause C.4.1	Delete existing clause C.4.1 Insert new clause C.4.1	If loss or damage affecting any executed work or Site Materials is occasioned by any risk covered by the Joint Names Policy referred to in paragraph C.2, then, upon its occurrence or later discovery, the

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	Contractor shall forthwith make a notification of a claim in accordance and in compliance with the provisions of, the procedures detailed in section 3 of the Insurance Manual in the Preliminaries.
Clause C.4.2	Delete "paragraph C.4.5.2 and" from the first line
Clause C.4.3	Insert at the end of Sub-clause The Employer may retain from the monies paid by the insurers the amount properly incurred by the Employer in respect of professional fees up to the amount paid by insurers in respect of those fees.
Clause C.4.5.2	Delete existing clause C.4.5.2 Insert new clause C.4.5.2 In respect of the restoration, replacement or repair of such loss or damage and (when required) the removal and disposal of debris, the Contractor shall not be entitled to any payment other than of monies received under the Joint Names Policy.
Schedule 5 Third Party Rights	Delete existing text and incorporate the Contractor's Design Consultants' contracts of appointment and deeds of novation.
Schedule 6 Forms of Bonds	Delete and insert "Not used"
Schedule 7 Fluctuations	Delete and insert "Not Used"

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Contract Specific Conditions

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Contract Requirements:

HSQE

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Contract Requirements:

Preliminaries

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Contract Requirements:

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