

NETWORK RAIL 12

Network Rail Schedule of Amendments to the ICE Conditions of Contract, Target Cost Version, First Edition incorporating Contractor's design and including the Special Conditions

Signed by: _____

for and on behalf of Network Rail

Signed by: _____

for and on behalf of the Contractor

Agreement/Contract No.: [Insert]

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NETWORK RAIL INFRASTRUCTURE LIMITED ICE CONDITIONS OF CONTRACT, TARGET COST VERSION, FIRST EDITION

CONTRACT AGREEMENT (ENGLAND AND WALES)

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

BETWEEN:

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

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

NOW THIS AGREEMENT WITNESSETH as follows:

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

1. The following documents are annexed hereto and shall form and be read and construed as part of this Agreement, and shall in the case of any ambiguity or discrepancy have the following order of priority:
 - (a) This Contract Agreement;
 - (b) Schedule of Post Tender Amendments;
 - (c) Appendix – Part 1 hereto;
 - (d) Contract Specific Conditions and annexed forms of guarantee, deeds of collateral warranty and/or novation (if applicable);
 - (e) The ICE Conditions of Contract, Target Cost Version, First Edition, as amended and supplemented by the NR12 Schedule of Amendments;
 - (f) Technical Workslope;
 - (g) Contractor’s Submission;
 - (h) Contract Requirements HSQE;
 - (i) Preliminaries;
 - (j) Appendix – Parts 2 to 4; and
 - (k) Pricing Document.
2. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned the Contractor hereby covenants with the Employer to design, construct and complete the Works in conformity in all respects with the provisions of the Contract.

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3. The Employer hereby covenants to pay to the Contractor in consideration of the design, construction and completion of the Works amounts ascertained in accordance with the Contract at the times and in the manner prescribed by the Contract.
4. This Agreement shall be governed by and construed in accordance with English law.

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

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

Authorised Signatory.....

Authorised signatory as approved by resolution of the board of Network Rail Infrastructure Limited on 28th September 2011

THE COMMON SEAL of)
-----)
was affixed to this Deed in the presence of)
the following persons, who have signed this DEED)
for and on behalf in the capacities hereinafter stated:)

Director

Director/Company Secretary

OR

SIGNED as a DEED for and on behalf of)
----- by)

Director

Director/Company Secretary

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Schedule of Post Tender Amendments

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Appendix - Part 1

[NOTE: Relevant clause numbers are shown in brackets]

- 1** Name of the Employer's Representative (clause 1(1)(m)):
Name [Insert] Position [Insert]
Address [Insert]
Name of Contractor's representative (clause 15(2))
[Insert]
- 2** Defects Correction Period (clause 1(1)(g)): Fifty-two weeks
- 3** Parent company guarantee (clause 10(1)): Required
- 4** Professional indemnity insurance for design (clause 21A): Shall apply
The minimum amount of professional indemnity insurance required is £10,000,000 (ten million pounds) for any one claim or series of claims arising out of any one event and which may be subject to an annual aggregate limit.
- 5** Minimum amount of Employer's third party insurance Employer (clause 23(1)(a)): £155,000,000 (one hundred and fifty five million pounds) each and every occurrence.
Insurance policy excesses (clause 25(2))
- 6** Insurance of the Works (clause 21(1)): As stated in the Insurance Manual in the Preliminaries
Third party property damage (including damage to the Employer's property) (clause 23(1)(a)): As stated in the Insurance Manual in the Preliminaries
- 7** Works Commencement Date (if known) (clause 41(1)(a)): [Insert]
- 8** Time for completion (clause 43):
EITHER for the whole of the Works: [Insert] weeks
OR for Sections of the Works (clause 1(1)(s)):
Section A: weeks
Section B: weeks
Section C: weeks
Section D: weeks

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- the remainder of the Works: weeks
- 9** Liquidated damages for delay (clause 47):
- EITHER for the whole of the Works: [£ ...per [day/week] [or part thereof]]
- OR for Section A (as above): [£ ...per [day/week] [or part thereof]]
- Section B (as above): [£ ...per [day/week] [or part thereof]]
- Section C (as above): [£ ...per [day/week] [or part thereof]]
- Section D (as above): [£ ...per [day/week] [or part thereof]]
- the remainder of the Works (as above): [£ ...per [day/week] [or part thereof]]
- The total amount of liquidated damages in respect of the whole of the Works or any Section thereof shall be limited as provided in clause 47(4)(a) to the total of the Target Cost and the Fee.
- 10** Vesting of goods and materials not on Site (clauses 54(4)) (if required by Employer)
- 1..... 4.....
- 2..... 5.....
- 3..... 6.....
- 11** Minimum amount of certificate (clause 60(7)): £20,000
- 12** The following items are excluded from the Target Cost
[Insert]
- 13** The Contractor's Share is based on the following (clauses 1(1)(e) and 60(5))
- | Differential Percentage band | Share percentage |
|-------------------------------|------------------|
| Lower than [Insert] % | [Insert] % |
| From [Insert] % to [Insert] % | [Insert] % |
| Higher than [Insert] % | [Insert] % |
- 14** Name of the CDM Co-ordinator (clause 71(2):
Network Rail Infrastructure Limited
Address: [Insert]
- 15** Details of the suppliers and consultants whose contracts are to be novated to the Contractor (clause 73(2)):
[Insert]
Address [Insert]
Address [Insert]
Address [Insert]
- 16** M&E Signalling Provisions (clauses 78 to 83) [Shall/ Shall not apply]

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- 17** M&E Provisions (clauses 78 - 83):
“Plant” shall include the following items:
[Insert]

The “Tests on Completion” shall be the following and/or are referred to in the following sections of the Technical Workslope:
[Insert]

The “Performance Tests” shall be the following and/or are referred to in the following sections of the Technical Workslope:
[Insert]

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Appendix - Part 2

- 1** The Target Cost is (clause 1(1)(v)) £[Insert]
- 2** The Fee is (expressed as a percentage of the Target Cost) (clauses 1(1)(o) and 60(3) and Part 3 of the Appendix) [Insert] %
- 3** Target Cost breakdown structure is in the Pricing Document (clause 52(3)(a))

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Appendix - Part 3

The Fee (clause 1(1)(o)) shall include for all things or matters not listed or included in Appendix - Part 4 which the Contractor considers necessary and shall include but not be limited to such items as:

1 All costs associated with personnel and services based off Site in the following indicative areas:

- Legal and company secretariat
- Senior management
- Human resources
- Finance, commercial, accounts and purchasing
- Health and safety, environmental and quality assurance
- Administration
- IT

In respect of the above the costs shall include:

Salary and benefits and Employer's on-costs
Staff redundancy
Staff bonus payments
Occupational health
Parent company management fee
Franchises and royalties
Trade bodies and professional fees
Research and development
Marketing and promotions
Charitable donations
Tendering
Recruitment, training and development
Financing of cash flow
Insurances and provision for excesses
Accommodation and accommodation running costs.
Insurance premiums

2 Profit

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Appendix - Part 4 Definition of the Total Cost

SECTION A – General

1 The Total Cost shall comprise the sum of the following VAT-exclusive costs insofar as they have been incurred by the Contractor in accordance with the Contract and are not Disallowed Cost:

- 1.1 Labour as defined in Section B;
- 1.2 Staff as defined in Section C;
- 1.3 Materials and goods as defined in section D;
- 1.4 Plant, consumable stores and services as defined in Section E;
- 1.5 Sundry costs as defined in Section F;
- 1.6 Works sub-contracted as defined in Section G;

AND

1.7 any costs incurred by the Contractor and not covered by the preceding items which are payable to the Contractor in accordance with the Conditions;

LESS

- 1.8 any payments to or credits received, or which ought to have been received, by the Contractor for materials etc., which arise from the carrying out of the Works;
- 1.9 any discounts received by the Contractor or which ought to have been received other than the discounts referred to in Sections D and G; and
- 1.10 any amounts in respect of which the Contractor is obliged to indemnify the Employer under this Contract.

No cost included under an item or in a section of this Appendix shall be included under any other item or section.

2 For the purposes of this Contract the word “incurred” in respect of Total Cost means the Contractor has paid such cost. Where the Contractor has received an invoice in respect of such cost and the “due date” (as defined in Housing Grants, Construction and Regeneration Act 1996) in respect of such invoice has passed but the Contractor has not paid the same such cost shall be treated as “accrued” cost. Provided that the amount of cost so “accrued” payable on any statement shall not exceed when aggregated with amounts on previous statements which have “accrued” but remain unpaid 5% of the Total Cost included in any application as provided in clause 60(l).

3 No amount shall be included in the Total Cost following 3 months after the date of the submission of the Contractor’s final account pursuant to clause 60(8).

SECTION B - LABOUR employed or engaged by the Contractor

1 Payments to or in respect of labour directly and properly engaged upon the Works on the site or in the Contractor’s yards.

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2 For the purposes of section B, 'labour' shall include:

2.1 workpeople engaged in accordance with the rules, decisions, terms or agreements either of the Construction Industry Joint Council or of the Building and Civil Engineering Annual and Public Holiday Agreements or of such other national wage-negotiating body as may relate to the class of labour concerned, at the time when and in the area where the work is executed; and

2.2 labour listed below which does not come within the scope of paragraph 2.1 above (which shall be subject to any alterations or changes in the persons so listed as may be agreed by the Employer's Representative which agreement shall not be unreasonably delayed or withheld).

List (set out below or on an attached sheet)

[Insert]

3 The terms of payment to be made to or in respect of labour within the scope of paragraph 2.2 are subject to agreement by the Employer's Representative (which agreement shall not be unreasonably delayed or withheld).

4 Payments to labour referred to in paragraph 2.1 above such payments include:

4.1 workpeople's earnings and all payments to workpeople in respect of skill, responsibility, discomfort, inconvenience and risks;

4.2 payments to workpeople in respect of overtime occasionally and reasonably worked;

4.3 payments in respect of public holidays;

4.4 employer's contributions to annual holiday credits, pension, lump sum retirement benefit, death benefit and other welfare schemes;

4.5 fares and daily travelling allowances;

4.6 sickness and injury payments or insurance in respect thereof;

4.7 tool allowances;

4.8 any amounts which may become payable by the Contractor to or in respect of workpeople arising from the operation of the rules, decisions, terms or agreements referred to in paragraph 2.1 above and which are not otherwise provide for in this Section;

and where authorised either by the Employer's Representative prior to such payments being made (which authorisation shall not be unreasonably delayed or withheld) or by an adjudicator appointed pursuant to the procedures under this Contract relevant to the resolution of disputes or differences:

4.9 overtime regularly worked;

4.10 bonus (other than any guaranteed minimum bonus) or incentive scheme or productivity agreements;

4.11 periodic leave and lodging allowances.

5 Payments to or in respect of labour within the scope of paragraph 2.1 above shall only include the following to the extent that they are payable in regard to payments made under

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any other provision of Section B:

- 5.1 employer's National Insurance contributions;
- 5.2 the net amount of any payment, contributions, levy or tax (excluding redundancy payments other than redundancy payments arising solely from employment on the Works) imposed by statute and payable to or in respect of labour by the Contractor in his capacity as an employer, subject to the deduction of any rebate, payment or refund of payment which is received or to be received by the Contractor.

SECTION C - STAFF employed or engaged on Site by the Contractor

- 1 The management personnel to whom Section C applies are:
 - 1.1 those listed in an attachment to the Appendix initialled on behalf of the Employer and the Contractor; and
 - 1.2 where not so listed, management personnel whose designation and numbers have been notified to the Employer's Representative and whose written consent (which consent shall not be unreasonably delayed or withheld) to their employment or engagement for the purposes of Section C has been given prior to such employment or engagement (whether such management personnel are additional to those listed or in replacement for any persons so listed).
- 2 Subject to paragraphs 3 and 4 below, payments to or in respect of the above management personnel directly and properly engaged by the contractor upon the Works to the extent that they are working on the Site up to the day named in the Certificate of Substantial Completion and, subject to being so authorised by the Employer's Representative, working on or off the site after the day named in the Certificate of Substantial Completion.
- 3 No period less than a whole working day in any week shall be taken into account and periods less than a whole working day shall not be aggregated to amount to a whole working day.
- 4 The payments referred to in paragraph 2 above shall include only:
 - 4.1 actual salaries and other emoluments;
 - 4.2 subsistence or similar allowances;
 - 4.3 fares, travelling allowances and reasonable cost or allowances for the use of cars; and
 - 4.4 employer's contributions in respect of approved occupational pension schemes paid in accordance with the Contractor's normal conditions of employment for such personnel and/or in order to comply with the Contractor's statutory obligations, and
 - 4.5 the amount of any national insurance payment, contribution, levy or tax, excluding any redundancy payments other than any redundancy payments arising solely from a person's employment on the Works, imposed by statute payable in respect of the management personnel by the Contractor in his capacity as an employer.

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SECTION D - MATERIALS AND GOODS provided by the Contractor

- 1 Subject to allowance to the Employer of any cash discounts and of any trade or other discounts, payments in respect of materials and goods shall be as follows:
 - 1.1 materials and goods obtained by the Contractor from stockists or manufacturers: the invoice cost including the cost of delivery to Site;
 - 1.2 materials and goods supplied from the Contractor's stock or worked upon in the Contractor's workshops: the market price, current at the date of their supply to the Works, together with any appropriate handling charges;
 - 1.3 payment to the extent not included in the cost or price under paragraphs 1.1 and 1.2 of any costs of:
 - 1.3.1 non-returnable crates or other packaging;
 - 1.3.2 returning crates and other packaging less any credit obtainable;
 - 1.3.3 reasonable waste;
 - 1.3.4 any testing and commissioning.

SECTION E - PLANT, CONSUMABLE STORES AND SERVICES provided by the Contractor

- 1.1 Plant referred to in paragraph 2 below:
 - 1.1.1 the net cost to the Contractor whether by hire charges or otherwise; or
 - 1.1.2 where provided by the Contractor or the Contractor's group, at hire rates agreed from time to time between the Employer's Representative and the Contractor or in the absence of prior agreement at rates as may be determined by the Employer's Representative such rates not to exceed those normally applied in the locality at the time when the plant is used and will be net of any inter-company profit.
 - 1.2 The net cost to the Contractor of the consumable stores referred to in paragraph 2 below.
 - 1.3 The net cost of the Contractor of the services referred to in paragraph 3 below.
- 2 Plant and consumable stores**
- 2.1 mechanical plant and power-operated tools
 - 2.2 scaffolding and scaffold boards including reasonable losses thereof where hired;
 - 2.3 non-mechanical plant including hand tools; including their repair and sharpening;
 - 2.4 transport including collection and disposal of rubbish and charges for tips and transportation of plant;
 - 2.5 tarpaulins and dust sheets;
 - 2.6 temporary roadways, shoring, planking and strutting, centering, formwork, hoardings, temporary fans, temporary fencings, barriers, footways, temporary partitions or the like;

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- 2.7 fuel and consumables stores for plant and power-operated tools;
- 2.8 brushes, sponges, leathers, rollers and the like;
- 2.9 fuel and equipment for drying out the Works and for testing and commissioning services installations including the cost of using equipment incorporated into the Works;
- 2.10 temporary buildings;
- 2.11 canteens, sanitary accommodation, protective clothing and other provisions for the welfare of persons engaged on the work and authorised visitors in accordance with the rules or decisions of those bodies referred to under Section B, paragraph 2.1 above or in accordance with any Act of Parliament, statutory instrument, rule, order, regulation or bye-law and/or as may be authorised by the Employer's Representative.

3 Services

- 3.1 temporary plumbing and storage;
- 3.2 temporary electrical and gas installations;
- 3.3 the provision of protection for the Works;
- 3.4 the provision of health and safety measures necessary to comply with any Act of Parliament;
- 3.5 erection, dismantling and maintenance of mechanical plant;
- 3.6 provision of canteen facilities;
- 3.7 provision of cleaning facilities;
- 3.8 progress photographs.

SECTION F - SUNDRY COSTS incurred by the Contractor

The net cost to the Contractor of the following:

- 1** charges arising from work carried out by local authorities or statutory undertakings;
- 2** charges for water, electricity and gas used on Site;
- 3** rates or other similar statutory charges on temporary buildings for his on-site staff and those of the Employer and his consultants;
- 4** payments for hoardings and similar licences less any payments received by the Contractor for advertising;
- 5** fees, royalties and similar charges;
- 6** furniture, furnishings, office equipment, stationery, office and welfare consumables, etc., including telephone, telex and fax equipment, computers and their programs, as may be authorised by the Employer's Representative (which authorisation shall not be unreasonably delayed or withheld) for the Contractor's on-site staff and those of the Employer and his consultants, less any credits obtained from their eventual disposal;

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- 7 postage and other delivery charges for letters, etc., sent from the Site;
- 8 charges for telephone, telex and fax calls made from the Site;
- 9 reproduction of drawings and other papers sent from the Site;
- 10 travelling and subsistence properly incurred in inspecting materials and work off Site;
- 11 security arrangements for the Site and the Works;
- 12 where the Contractor is and remains the Principal Contractor, any necessary further development of the Health and Safety Plan.

SECTION G - WORK SUB-CONTRACTED

Payments made by the Contractor in respect of work sub-contracted to consultants or Sub-Contractors shall be in accordance with the sub-contract to which the Employer's Representative has given his consent pursuant to clause 4(1).

List of Management Staff

[Insert]

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Network Rail Schedule of Amendments to the ICE Conditions of Contract, Target Cost Version, First Edition

Clause	Details of Amendment/Addition/Deletion
Clause 1(1): Definitions	Insert new paragraph (aa) as the first definition as follows: “(aa) “Appendix” means the Appendix Part 1 and Parts 2 to 4 referred to in the Contract Agreement, and all references in these Conditions of Contract to “the Appendix to the Form of Tender” shall be deemed to be references to such Appendix.”
	Delete paragraph (b) and insert : “(b) “Contract” means the Contract Agreement and the other documents listed in the Contract Agreement to which these Conditions are annexed.”
	Insert new paragraph (dd) after paragraph (d) as follows: “(dd) “Contractor’s Submission” means the tender and all documents forming part of the Contractor’s offer together with such modifications and additions thereto as may be agreed between the parties prior to the award of the Contract all as set out in the documents identified in the Contract Agreement.”
	Insert new paragraph (ee) as follows: “(ee) “Contract Requirements HSQE” means the document referred to as such in the Contract Agreement to which these Conditions of Contract are annexed.”
	In paragraph (j)(iii) after “negligence” insert “omission or default” and add at the end “and/or due to any negligence, omission or default on the part of the Contractor’s employees, agents, sub-contractors or suppliers in their compliance with any of their respective obligations under their contracts with the Contractor”.
	In paragraph (j)(v) delete at the end “and”.
	In paragraph (j)(vi) insert at the end “or as part of the Fee or which does not form part of the Total Cost and” Insert new paragraph (j)(vii) as follows: “any cost which was not properly and necessarily incurred in carrying out or providing the Works”.
	Delete paragraph (k) and insert “Not used”.
	In paragraph (l) delete “Part 1 of the Appendix to the Form of Tender” and insert “Contract Agreement to which these Conditions are annexed”.
	Delete paragraph (m) and insert : “(m) “Employer’s Representative” means such person or persons as

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	<p>may be nominated by the Employer to act as such for the purposes of the Contract, and all references in these Conditions to “the Engineer” or to “the Engineer’s Representative” shall be deemed to be references to the “Employer’s Representative”.</p>
	<p>Delete paragraph (n) and insert “Not used”.</p> <p>Insert new paragraphs (oo) and (pp)</p> <p>“(oo) “Joint Names Policy” means a policy of insurance which includes the Employer and the Contractor as the insured and under which insurers have no right of recourse against any person named as an insured.”</p> <p>“(pp) “Preliminaries” means the document referred to as such in the Contract Agreement to which these Conditions of Contract are annexed.”</p>
	<p>Delete paragraph (q) and insert “Pricing Document” means the document referred to as such in the Contract Agreement to which these Conditions of Contract are annexed.</p>
	<p>Delete paragraph (r) and insert “Not used”.</p> <p>Delete paragraph (u) and insert “Not used”.</p> <p>Insert new paragraph (uu) as follows:</p> <p>“(uu) “Sub-Contractor” means any Sub-Contractor of the Contractor including any sub-contractors of such Sub-Contractors.”</p> <p>Insert new paragraph (vv) as follows:</p> <p>“(vv) “Technical Workslope” means the document referred to as such in the Contract Agreement to which these Conditions of Contract are annexed. All references in these Conditions to “the Specification” shall be deemed to be references to the Technical Workslope.”</p>
	<p>Delete paragraph (x) and insert</p> <p>“(x) “Total Cost” means all cost (excluding Disallowed Cost and items covered by the Fee) incurred by the Contractor for the carrying out of the Works ascertained in accordance with the Appendix - Part 4”.</p>
Clause 1(5): Cost	Delete and insert “Not used”.
Clause 2(1): Duties and authority of Engineer	In paragraph (b) delete from second line “If the Engineer” to the end of the paragraph.
Clause 2(2): Named individual	Delete and insert “Not used”.
Clause 2(3): Engineer’s Representative	Delete and insert “Not used”.
Clause 2(4): Delegation by Engineer	Delete “to the Engineer’s Representative or any other person” and insert “to any person”.
	In paragraph (c) delete 44, 48(2), 60(8) and 61.

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Clause 2(5): Assistants	In paragraph (a) delete the first sentence and insert "The Employer's Representative may appoint any number of persons to assist the Employer's Representative in the carrying out of his duties under the Contract."
Clause 2(6): Instructions	In paragraph (b) delete "or the Engineer's Representative".
Clause 2(7): Dissatisfaction	Delete and insert "Not used".
Clause 2(8): Impartiality	Delete "the Engineer's Representative and".
Clause 3(1): Assignment	Delete and insert : <p>"(1) The Employer shall be entitled to assign, charge or transfer this Contract or any of its rights under it. The Contractor shall not assign, charge or transfer this Contract or any of its rights under it without the prior written consent of the Employer."</p> <p>In sub-clause (2) insert at the beginning:- "Save as otherwise provided in clause 35(2)"</p>
	Insert new sub-clause (4) as follows: <p>"(4) The Contractor shall not be entitled to sub-contract any part of the Works or their design to any company, which is a member of the same group of companies as the Contractor without specifically notifying the Employer of such relationship and securing his prior written consent to such sub-contracting. The costs of any sub-contractor appointed in breach of this sub-clause (4) shall be Disallowed Cost. The words "group of companies" in this context means that term as defined by section 170 Taxation of Chargeable Gains Act 1992."</p>
Clause 5(1): Contract documents	Renumber clause 5 as clause 5(1) Delete "to be taken as mutually explanatory of one another" and insert "are to have the order of priority listed in the Contract Agreement"
	Insert new clause 5(2) as follows: <p>"If the Contractor shall find any inaccuracy, discrepancy or ambiguity contained in or between any of the Contract Documents, he shall immediately notify the Employer, who shall, on receipt of such notice, issue an instruction as to how such inaccuracy, discrepancy or ambiguity shall be resolved applying the order of priority of documents stated in the Contract Agreement. The Contractor shall not be entitled to an extension of time or to any additional payment in respect of compliance with such instruction to the extent that such inaccuracy, discrepancy, ambiguity could reasonably have been found or foreseen at the date of this Contract by a contractor exercising the skill, care and diligence reasonably to be expected of a contractor experienced in projects of a similar nature to the Works."</p>
	Insert new sub-clause (3) as follows: <p>"(3) The Contractor accepts entire responsibility for the Contractor's</p>

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	Submission and for any ambiguities or discrepancies therein whether or not the whole or any part of the Contractor's Submission has been prepared by or on behalf of the Employer."
Clause 6(1)(b): Supply of documents	Delete "the number and type of copies as entered in Part 1 of the Appendix to the Form of Tender" and insert "4 (four) paper copies and, if so requested by the Employer's Representative, one electronic copy."
Clause 6(2): Copyright	<p>In lines 1 and 2 delete "all Drawings and Specifications supplied by the Employer or the Engineer" and insert "the Technical Workscope and any part of the Contractor's Submission which may have been prepared by or on behalf of the Employer".</p> <p>Delete "8(3)" in line 6 and substitute "7".</p> <p>Delete from "but the Employer" in line 7 and insert:</p> <p>"the Contractor hereby grants to the Employer an irrevocable, royalty-free non-exclusive licence to use all the designs and drawings produced by the Contractor for any purpose in connection with the carrying out of the Works.</p> <p>The Contractor further agrees:</p> <p>(i) to waive in favour of the Employer any and all moral rights in the Contractor's designs and drawings;</p> <p>(ii) that the Employer may grant sub-licences to other persons to use and to reproduce the Contractor's designs and drawings and the content of them for any purposes relating to the Works or the Permanent Works; and</p> <p>(iii) to the extent that the Contractor does not have ownership of the copyright in any of the Contractor's designs and drawings, to procure from the copyright holder a licence with full title guarantee to the Employer in the same terms as set out above."</p>
Clause 7: Further Drawings, specifications and instructions	<p>Delete clause 7 and insert:</p> <p>"(1) At such times as not to delay or disrupt the progress of the Works and in accordance with the programme referred to in clause 14 and/or any relevant dates set out in the Technical Workscope, the Contractor, without further charge, shall provide the Employer (unless he shall have been previously so provided) with four reproducible copies (including by electronic format) true-to-scale of such designs, drawings, details, documents, information or samples (referred to in this sub-clause (1) as "designs and drawings") as are reasonably necessary to explain, amplify, show or describe the Technical Workscope or the Contractor's Submission or to enable the Contractor to execute and complete the Works or to comply with any instruction issued by the Employer. The Contractor shall check and co-ordinate any such designs and drawings submitted by him prior to submission of the same.</p> <p>The Contractor shall not commence construction in accordance with such designs and drawings until the Employer's Representative has consented thereto, and shall not be entitled to be paid for work executed other than in accordance with designs and drawings to which the Employer's Representative has consented.</p>

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	(2) If in the opinion of the Employer's Representative any such design or drawing does not comply with the Technical Workslope or with any other provision of this Contract he shall so inform the Contractor in writing giving his reasons and may withhold his consent thereto until the Contractor has resubmitted the design or drawing with appropriate modifications.
	(3) The Contractor shall notify the Employer's Representative if he later wishes to modify any design or drawing to which consent has already been given and shall submit the modified design or drawing for further consent.
	(4) Should the Employer's Representative fail within a reasonable period following the submission or re-submission of any design or drawing under this clause to notify the Contractor either that he consents thereto or that he is withholding his consent he shall take such failure into account in determining any extension of time to which the Contractor is entitled under clause 44 and subject to clause 53, the Target Cost shall be increased by the amount of the additional Total Cost which may arise from such failure.
	(5) Neither the granting of any consent by the Employer's Representative nor any comment or marking by or on behalf of the Employer on or in respect of any designs and drawings submitted by the Contractor shall relieve the Contractor of any liability which he would otherwise have in relation thereto. If the Contractor considers that any comment of the Employer's Representative on the Contractor's designs and drawings submitted under this clause 7 amounts to an alteration in the Technical Workslope, he shall so notify the Employer within 7 days of receipt of the same.
	(6) One copy of the Technical Workslope and the Contractor's Submission and of all designs and drawings provided by the Contractor under clause 7 shall at all reasonable times be available on the Site for inspection and use by the Employer's Representative and by any other person authorised by the Employer's Representative in writing".
Clause 8(1): Contractors general responsibilities	At end of sub-clause (1) paragraph (a) delete "and". At end of paragraph (b) insert "and". Add new paragraph (c) as follows: "(c) comply with the Preliminaries."
Clause 8(2): Design responsibility	Delete and substitute as follows: "(2)(a) Insofar as the design of the Works is comprised in the Contractor's Submission and in the designs and drawings referred to in clause 7(1) and/or is required by this Contract to be provided by the Contractor (including any further design which the Contractor is to carry out as a result of an alteration in the Technical Workslope), the Contractor warrants and undertakes to the Employer that:
	(i) he has exercised and will continue to exercise in the design of the Works all the skill, care and diligence to be

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		<p>expected of a professionally qualified and competent engineer or other appropriate consultant taking into account the size, scope, nature, type and complexity of the Works;</p> <p>(ii) the Works will, when completed, comply with any performance specification or requirement included or referred to in the Employer's Requirements or the Contractor's Submission; and</p> <p>(iii) except where otherwise stated in the Contract and subject to Clause 36(3) (Free issue materials), the Works comprise or will comprise only materials and goods which are of new and satisfactory quality.</p>
	<p>(2)(b) Where the Contractor has provided designs in relation to the Works under any other contract with the Employer which is then provided by the Employer to the Contractor under this Contract, the Contractor shall not be able to disclaim responsibility for such design and shall be responsible for any inadequacy in such design.</p>	
	<p>(2)(c) Notwithstanding anything to the contrary contained elsewhere in this Agreement, the Contractor's liability for any breach of its obligations in relation to the design of the Works, whether in contract, tort, delict or otherwise shall not exceed the sum of £10,000,000 in the aggregate."</p>	
<p>Clause 8(3): Prohibitive Materials</p>	<p>Delete and substitute the following:</p> <p>"(3) For the purposes of this sub-clause (3), material is "prohibited" if, in the context of its use in the Works (whether alone or in combination with other materials):</p>	
		<p>(i) it poses a hazard to the health and safety of any person who may come into contact with the Works (whether during their construction or after their completion);</p> <p>(ii) either by itself or as a result of its use in a particular situation or in combination with other materials it would or is likely to have the effect of reducing the normal life expectancy of any other material or structure in which the material is incorporated or to which it is affixed; or</p> <p>(iii) it poses a threat to the structural stability or performance or the physical integrity of the Works or any part or component of the Works.</p>
	<p>The Contractor shall not specify or authorise for use or permit to be used any materials which at the time the Works are being carried out are generally accepted or reasonably suspected of:</p>	
	(i)	being prohibited in themselves;
	(ii)	becoming prohibited when used in a particular situation or in combination with other materials;
	(iii)	becoming prohibited with the passage of time;

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		(iv)	becoming prohibited without a level of maintenance which is higher than that which would normally be expected of a structure of the type under construction; or
		(v)	being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed or other structure or any neighbouring property,
	<p>and the Contractor shall, when requested, issue to the Employer's Representative and to such persons as the Employer's Representative may require a certificate that no such materials have been specified for use or permitted to be used.</p> <p>Without prejudice to his obligations under the 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."</p>		
Clause 8(4): Responsibility unaffected by acceptance	<p>Delete and substitute the following:</p> <p>"(4) 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 the Contract."</p>		
Clause 8(7): Value engineering and economical working	<p>Delete in sub-clause (c) line 4 "so that the matter can be resolved under clause 66(2)" and insert "and any additional cost occasioned by such breach shall constitute Disallowed Cost".</p>		
Clause 10(1): Performance security	<p>Delete and insert:</p> <p>"(1) If stated to be required in Part 1 of the Appendix, 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)."</p>		
Clause 10(2): Dispute resolution upon security	<p>Delete and insert:</p> <p>"(2) The Contractor's compliance with the provisions of sub-clause (1) of this clause shall be a condition precedent to any obligation on the part of the Employer to make any payment that might otherwise be due under this Contract, and the Contractor acknowledges that he has no entitlement either to receive payment or to exercise any rights in respect of non-payment arising under the Contract unless and until the Contractor has provided a parent company guarantee if so required under sub-clause (1) of this clause."</p>		

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Clause 11(2): Inspection of Site	Delete in line 4 “submitting his tender” and insert “the award of the Contract”.
Clause 11(3)(b): Basis and Sufficiency of tender	Delete in line 1 “submitting his tender” and insert “the award of the Contract”.
Clause 12(1): Adverse Physical Conditions and artificial obstructions	In line 3 after “weather conditions)” insert “or contamination and/or pollution”
Clause 12(3): Measures being taken	Add at the end: “Such details shall include where appropriate consideration of alternative design measures and/or methods or procedure with comparative estimates of costs and delays.”
Clause 14(5): Design criteria	Delete and insert “not used”.
Clause 14(6): Methods of construction	Delete and insert : “ (6) The Contractor shall submit at such times and in such detail as the Employer’s Representative may reasonably require for full consideration to be given and if necessary for revised proposals to be considered such information pertaining for the methods of construction (including Temporary Works and the use of Contractor’s Equipment) which the Contractor proposes to adopt or use and, if requested by the Employer’s Representative such calculations of stresses strains and deflections that will arise in the Permanent Works and any parts thereof during construction from the use of such methods as are sufficient to demonstrate to the Employer’s Representative that if these methods are adhered to, the Works can be executed in accordance with the Contract and without detriment to the safe working of the railway or the property of the Employer and others or to the Permanent Works when completed.”
Clause 14(7): Engineer’s consent	In paragraph (b), insert at the end “or the safe working of the railway or the property of the Employer or others”.
Clause 14(8)(b): Delay and extra cost	Delete in lines 2, 3 and 4 “or any limitations imposed by any of the design criteria supplied by the Engineer pursuant to sub-clause (5) of this clause.
Clause 15(2): Contractor’s agent	Delete in lines 7 and 8 “or (subject to the limitations of clause 2) the Engineer’s Representative”.
Clause 16: Removal of Contractor’s employees	Insert at the end of second paragraph: “Any costs thereby arising shall be Disallowed Cost.”.
Clause 17: Setting-out	Add at the end of sub-clause (1): “Any costs arising from any incorrect setting-out shall be Disallowed

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	Cost.”. In sub-clauses (2) delete “or the Engineer’s Representative”.
Clause 18: Boreholes and exploratory excavation	Delete and substitute: “(1) If during the performance of the Works the Contractor considers it necessary or desirable to make boreholes or to carry out exploratory excavations or investigations of the ground he shall apply to the Employer’s Representative for permission so to do giving his reasons and details of his proposed methods. Such permission shall not unreasonably be withheld. The Contractor shall comply with any conditions imposed by the Employer’s Representative in relation thereto and shall furnish the Employer’s Representative with copies of all information records and test results arising therefrom and of any expert opinion as may be provided in connection therewith.
	(2) The cost of making such boreholes and carrying out such investigations and of all other matters connected therewith including making good thereafter to the satisfaction of the Employer’s Representative shall be included in the Total Cost. Provided that if in the opinion of the Employer’s Representative the boreholes excavations and investigations are a necessary consequence of:
	(i) a situation arising under clause 12; or
	(ii) an alteration ordered under clause 51;
	then the Target Cost shall be adjusted by the amount of such cost.
	(3) If during the performance of the Works the Employer’s Representative requires the Contractor to make boreholes or to carry out exploratory excavations or investigations of the ground such requirements shall be ordered in writing and shall be deemed to be an alteration ordered under clause 51.”
Clause 19(2): Safety and security	Delete “or the Engineer’s Representative” After “protection of the Works” in the penultimate line insert “or the property of the Employer or others or the safe working of the railway”.
Clause 20(2)(b): Excepted risks	Delete words in brackets and insert: “for which the Contractor is not responsible under the Contract”.
Clause 21	Delete sub-clauses 21(1) and 21(2) Insert new sub-clauses 21((1), 21(2) and 21(3) as follows: 21(1)The Employer shall without limiting his or the Contractor’s obligations under the Contract insure under a Joint Names Policy the carrying out of the Works together with materials (including free issue materials) and plant and equipment for incorporation therein to the full replacement cost plus a reasonable amount to cover any additional costs that may arise incidental to the rectification of any loss or damage, including professional fees, cost of demolition and removal of debris, having regard to the nature of the Contract.

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	<p>21(2) The insurance required under sub-clause (1) of this Clause shall cover any person recognised as an insured under the Joint Names Policy against all loss or damage from whatsoever cause arising (including Terrorism) other than the Excepted Risks as defined in Clause 20(2) from the Works Commencement Date until the date of issue of the relevant Certificate of Substantial Completion and any loss occasioned by the Contractor in the course of any operation carried out by him for the purpose of complying with his obligations under Clauses 49 and 50.</p> <p>21(3) All claims made under the insurance referred to in sub-clause (1) of this Clause shall be paid to the Employer. The Employer will pay all such monies due to the Contractor by instalments under certificates of the Employer's Representative issued at the time of issue of interim certificates in accordance with the terms of the Contract. Any amounts not insured or not recovered from insurers whether as excesses under the policy or otherwise shall be borne by the Contractor or the Employer in accordance with their respective responsibilities under Clause 20.</p>
<p>Clause 21A: Professional indemnity insurance for design (only applicable if stated in Appendix – Part 1)</p>	<p>Insert new clause as follows:</p> <p>“(1) The Contractor shall maintain professional indemnity insurance covering (amongst other things), all his liability hereunder in respect of defects or insufficiency in design, upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom in an amount not less than that required by Part 1 of the Appendix for a period beginning with the date of this Contract and ending twelve years after the issue of the Certificate of Substantial Completion for the whole of the Works, provided always that such insurance is available at commercially reasonable rates.</p> <p>(2) Any increased or additional premium required by insurers by reason of the Contractor's claims, records or other matters particular to the Contractor shall be considered to be within commercially reasonable rates.</p> <p>(3) The Contractor shall immediately inform the Employer if such insurance ceases to be available at commercially reasonable rates in order that the Employer and the Contractor can discuss the means of best protecting the respective positions of the Employer and the Contractor in the absence of such insurance.</p> <p>(4) The said terms and conditions shall not include any term or condition to the effect that the Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930.</p> <p>(5) The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of the Contract for</p>

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	any reason whatsoever, including (without limitation) breach by the Employer.”
Clause 23: Employer’s third party insurance and Insurance of the Employer’s Property	<p>Delete sub-clauses 23(1), 23(2) and 23(3)</p> <p>Insert new sub-clauses 23(1) and 23(2) as follows:</p> <p>23(1) Without prejudice to the Contractor's obligations to indemnify the Employer under clause 22, the Employer shall take out and maintain:</p> <ul style="list-style-type: none"> (a) a Joint Names Policy against liabilities for death of or injury to any person (other than any person in the employment of the Employer or the Contractor) or loss of or damage to any property (other than the Works, or other property of the Employer or the Contractor) arising out of the performance of the Contract, for a sum not less than that stated in the Appendix for any one occurrence or series of occurrences arising out of one event. (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>23(2) The Employer shall not be responsible for any amounts in excess of the limits of indemnity and sums insured or any retained liability as specified in the Appendix or Conditions of Contract or risks not insured or excluded by the terms, exceptions or conditions of such insurance policies.</p>
Clause 25(2): Excesses	Delete in line 2 “Part 2” and insert “Part 1”.
Clause 25(6): Evidence of the Employer's Insurance	<p>Insert new clause as follows:</p> <p>25(6) A summary of the insurance policies taken out and maintained by the Employer under clause 21 and sub-clause 23(1) is included in section 2 of the Insurance Manual in the Preliminaries and further details of the Employer's insurance policies may be provided to the Contractor on request.</p>
Clause 25(7): Notification of Claims	<p>Insert new clause as follows:</p> <p>25(7) 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>
Clause 26(1) Giving of notices and payment of fees	Insert in line 4 after “in relation to the” - “design”.
Clause 26(3)(a) Contractor to conform	Delete in line 3 “the Contract” and insert “the Technical Workscope”.

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with statute etc.	
Clause 26(3)(b)	Delete in line 1 “the Contract” and insert “the Technical Workscope”.
Clause 26(5): Changes in Statute	Insert new sub-clause as follows: “(5) If there is a change in any general or local act of Parliament and the Regulations or Bye-laws of any local or other statutory authority which may be applicable to the Works after the date of this Contract which necessitates a variation to the Works, such variation shall be deemed to have been carried out under an instruction given pursuant to Clause 51.”
Clause 28: Patent rights	Insert new sub-clause (c) as follows: “(c) the design construction and completion of the Works or any part thereof.”
	In line 10 delete “except where such infringement results from compliance . . .” to end of sub-clause.
Clause 29(1): Interference with traffic and adjoining properties	In line 3 after “so as not to” insert “cause an unplanned interruption in the use of track or station areas or other railway infrastructure (it being acknowledged that the Employer may incur liabilities for this under its contractual and regulatory arrangements with third parties including passenger train and freight operators) or”
Clause 29(4): Notice of claims	Insert new clause as follows: “(4) The Contractor will advise the Employer as soon as possible of any potential liability for damages on account of noise disturbances or other pollution which would be the unavoidable consequences of carrying out the Permanent and Temporary Works and on measures to avoid such liability. The Contractor will comply with any necessary changes to the Permanent and Temporary Works to the satisfaction of the Employer’s Representative. The cost of such compliance shall be part of the Total Cost unless, in the opinion of the Employer’s Representative, the compliance is a variation for the purposes of clause 51 in which case subject to clause 53 the Target Cost shall be increased by the amount of such cost as may be reasonable except to the extent that such cost results from the Contractor’s default.”
Clause 31(1): Facilities for other contractors	Delete “or Engineer’s Representative”
Clause 33: Clearance of Site on completion	After “the Works” in line 1 insert “or any Section thereof”
Clause 34: Limit on liability for railway costs	Insert a new clause as follows: “(1) For the purposes of this clause 34:
	(a) “Track Access Agreement” means any agreement (excluding Freight Access Agreements) entered into between the Employer and any other party and incorporating the Network Code.
	(b) “Freight Access Agreement” means any agreement (excluding Track Access Agreements) entered into between the Employer

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		and any other party for non-passenger services and incorporating the Network Code.
	(c)	“Network Code” means the document entitled “Network Code” dated 23rd September 2009, as amended and modified from time to time.
		(2) Notwithstanding any other provision of this Contract, the liability of the Contractor to compensate the Employer in respect of any consequential or indirect losses arising from an act or omission of the Contractor, or any sums payable by the Employer pursuant to Schedules 4 and 8 of any Track Access Agreement or the equivalent provisions of any Freight Access Agreement, whether in contract, tort, delict or otherwise shall not exceed in aggregate the Target Cost and the Fee. Any amounts which may be payable under clause 47 (liquidated damages) shall not be taken into account in the calculations anticipated by this clause 34.”
Clause 35(2): Employment protection and TUPE		Renumber existing clause as 35(1) Delete “or the Engineer’s Representative” in line 2. Insert new clause 35(2) as follows:- “35(2) Notwithstanding anything to the contrary elsewhere in the Contract:
	(a)	the Contractor shall be responsible for and shall indemnify and keep indemnified the Employer from and against all and any costs, claims, expenses, damages, demands, actions, losses and liabilities arising out of or in connection with any claim in respect of any person which arises or is alleged to arise by reason of the operation of and/or for failure to inform and consult under the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or re-enacted from time to time (“ TUPE ”).
	(b)	in the last 12 months prior to completion of the Works within 28 days of the Employer’s request, the Contractor shall (where TUPE is likely to apply) provide the Employer with a list of names, ages, addresses and national insurance numbers of all persons who are, who have been, or who may be at any time concerned with the Works or any part thereof, specifying their job title, job description, basic salary, bonus and all other emoluments and benefits, period of continuous employment, the percentage of the time that they have worked on the Contract, details of any agreements entered into with employee representative bodies in relation to such persons and such other requirements as the Employer may reasonably require (altogether the “ Employee Data ”).
	(c)	in the last 12 months prior to completion of the Works the Contractor shall (and shall procure that any Sub-Contractor shall) provide to the people engaged in the performance of this Contract, written contracts of employment or statements

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		of terms of employment, in either case complying with the requirements of Section 1 of the Employment Rights Act 1996, and retain copies of such documents together with such other documentation and PAYE records as may reasonably be required by the Employer (" Personnel Records ") and shall (where TUPE is likely to apply) within 28 days of the Employer's request, whether during the performance of this Contract or following the end of the Contract (whether lawfully or otherwise) deliver up to the Employer or to such person as the Employer may nominate, the Employee Data, such copies of the Personnel Records as may be required by the Employer and, to the extent not otherwise provided, any employee liability information pursuant to and in accordance with Regulation 11 of TUPE. The Employer may communicate such information to persons intending to tender to execute works of the nature of the Works.
	(d)	the Contractor shall not (and shall procure that any Sub-Contractor shall not) in the last 6 months prior to completion of the Works (where TUPE is likely to apply), without the prior written permission of the Employer, vary or purport or promise to vary (in the employee's favour), the terms of the contract of employment of any person engaged wholly or principally in the execution of the Works, except in the ordinary course of business.
	(e)	the Contractor shall not (and shall procure that any Sub-Contractor shall not) (where TUPE is likely to apply), without the prior written consent of the Employer create or grant, or promise to create or grant, terms or conditions of employment for any new employee engaged wholly or principally in the execution of the Works if and to the extent that such terms or conditions are materially different to the terms or conditions of employment of equivalent or nearest equivalent existing employees (which themselves comply with sub-clause 35(2)(d) at the date of commencement of employment of such new employee.
	(f)	the Contractor shall (and shall procure that any Sub-Contractor shall) (where TUPE is likely to apply) at all times comply with its information and consultation obligations under Regulation 13 of TUPE.
	(g)	the Contractor shall indemnify and keep indemnified the Employer and any successor contractor against all costs, claims, expenses, damages, demands, actions, losses and liabilities arising out of or in connection with any claim or demand arising out of or in connection with any act or omission of the Contractor or any Sub-Contractor and which the Employer or the successor contractor incurs:

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		(i)	in relation to any one or more employees whose employment has transferred or is alleged to have transferred to the Employer and/or a successor contractor pursuant to TUPE and/or the Contract; and/or
		(ii)	as a result of the Contractor's breach of the sub-clauses 35(2)(d), 35(2)(e) and/or 35(2)(f);
			and, despite anything else in the Contract, such a successor contractor can directly enforce the indemnity in its favour provided for by this sub-clause 35(2)(g)."
Clause 36	Delete existing clause 36 and insert as follows:		
Quality of materials and workmanship tests and samples	"36 (1) The Works shall be designed constructed and completed in accordance with the Contract and in accordance with Railway Group Standards, Network Rail Standards and/or other equivalent standards. If there is a change in the Railway Group Standards or Network Rail Standards affecting the Works after the date of this Contract which necessitates a variation to the Works, such variation shall be deemed to have been carried out under an instruction given pursuant to Clause 51.		
	(2) All materials and workmanship shall be of the respective kinds described in the Contract or where not so described shall be appropriate in all the circumstances.		
(Free-issue Materials)	Insert a new sub-clause as follows: (3) The Employer shall make available to the Contractor at the Site free of charge to the Contractor the goods and materials described in the Preliminaries on or before the dates or the expiry of the periods for the provision of the same stated in the Preliminaries. Upon completion of delivery such goods and materials shall stand at the risk of the Contractor. Immediately upon the same being made available to him, the Contractor shall carry out a detailed inspection of such goods and materials and shall use its reasonable endeavours to advise the Employer's Representative within 24 hours and no later than 7 days or before being taken into operational use (whichever is 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.		
Checks and tests	(4) (a) The Contractor shall institute a quality assurance plan. The Contractor's quality plan shall be submitted to the Employer's Representative for his consent before each design and each construction stage is commenced. Compliance with such quality plan and procedures shall not relieve the Contractor from any of his other duties obligations or liabilities under the Contract. Where any Act of		

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	Parliament Regulation or By-Law requires that a separate check of the design or a test shall be carried out prior to the construction or loading of any permanent and temporary works the Contractor shall arrange and pay for such check or test.
	(b) Further to his obligations under clause 36(4)(a), the Contractor shall submit to the Employer's Representative for his approval proposals for checking the design and setting out of the Works and testing the materials and workmanship to ensure that the Contractor's obligations under the Contract are met.
	(c) The Contractor shall carry out the checks and tests approved under clause 36(4)(a) or elsewhere in the Contract and such further tests as the Employer's Representative may reasonably require.
Tests	(5) The Contractor shall provide such assistance and such instruments machines labour and materials as are normally required for examining measuring and testing any work and the quality weight or quantity of any materials used and shall supply samples of materials before incorporation in the Works for testing as may be required by the Employer's Representative.
Tests following alterations	(6) Whenever an alteration to the Technical Workspace is ordered or consented to by the Employer's Representative the Contractor shall consider whether any tests would be affected by or be appropriate in relation thereto and shall so inform the Employer's Representative without delay. Any proposal for amended or additional tests shall be submitted as soon as possible.
Cost of tests	(7) Unless the Contract otherwise provides, the cost of making any test shall be borne by the Employer if such test is:-
	(a) proposed by the Contractor under clause 36(4) or
	(b) clearly intended by or provided for in the Contract.
	If any test is carried out pursuant to clause 36(4) of this clause the cost of such test shall be Disallowed Cost if the test shows the workmanship or materials not to be in accordance with the provisions of the Contract."
Clause 38(2): Uncovering and making openings	Insert at the end: "and the costs shall be Disallowed Cost".
Clause 39(1): Removal of unsatisfactory work and materials	Insert at the end: "and the costs of complying with any such instruction shall be Disallowed Cost".
Clause 42(2)	In paragraph (a) after "sub-clause (1) of this clause" insert "and clause 29(1)" In paragraph (a) delete "possession of" and insert "a non-exclusive licence to occupy"
Clause 42(3):	Delete clause heading and insert "Failure to give access"

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Failure to give possession	In line 2 delete "possession or".	
Clause 42(5): Site security	<p>Insert new sub-clause as follows:</p> <p>"(5) The Contractor shall take all reasonable steps and all steps required by the Contract to prevent unauthorised persons being admitted to the Site. If the Employer's Representative gives the Contractor notice that any person is not to be admitted to the Site, the Contractor shall take all practicable steps to prevent that person being admitted.</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's Representative. The Contractor shall be responsible for ensuring that no person employed on his behalf trespasses beyond the agreed limits of the working area or access route and shall, if required so to do, provide and maintain to the satisfaction of the Employer's Representative temporary fencing of an approved type to prevent trespass on the railway or neighbouring land.</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 Employer's Representative a list of the names of the relevant employees and other persons issued or to be issued with passes, and any other information which the Employer's Representative reasonably requires in this connection. The passes shall be returned at any time on the demand of the Employer's Representative and in any case on the completion of the Works.</p> <p>The Contractor shall maintain a record of all visitors to the Site and shall, if and when instructed by the Employer's Representative, give to the Employer's Representative a list of names and addresses of all persons who are or may be at any time concerned with the Works or any part thereof, specifying the capacities in which they are so concerned, and giving such other particulars as the Employer's Representative may reasonably require."</p>	
Clause 42(6): Site photographs	<p>Insert new sub-clause as follows:</p> <p>"(6) Except as required to record activities on the Site the Contractor shall not at any time take any photograph of the Site or the Works or any part thereof, and shall take all reasonable steps to ensure that no such photographs shall at any time be taken or published or otherwise circulated by any person employed by him, unless the Contractor has obtained the prior written consent of the Employer's Representative."</p>	
Clause 44(1): Extension of time for completion	Delete paragraph (e) and insert as follows:	
	(e)	the exercise after the date of tender by the United Kingdom Government of any statutory power that directly affects the execution of Works; or
(f)	the use or threat of terrorism as defined by the Terrorism Act 2000 and/or the activities of the relevant authorities in dealing	

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		with such threat; or
	(g)	the valid exercise by the Contractor of its rights under Section 112 of the Housing Grants, Construction and Regeneration Act 1996 (as amended); or
	(h)	pollution or contamination encountered by the Contractor at the Site; or
	(i)	cancellation or alteration of the dates and times of agreed speed restrictions, track possessions or isolations under clause 75(2) (where applicable)."
		In second line of last paragraph of clause 44(1) after the words "he shall", insert the words "notify the Employer's Representative as soon as reasonably practicable and, in any event,".
Clause 46(1): Rate of progress		Insert at the end: "and such cost shall be Disallowed Cost".
Clause 48(1): Notification of substantial completion		Delete in line 7 "or to the Employer's Representative" In the final paragraph after "prescribed by the Contract" insert "(including any Tests on Completion under clause 81 (if applicable) but excluding Performance Tests under clause 82)".
Clause 49(5): Urgent measures		Insert new sub-clause as follows: "(5) Notwithstanding clause 49 (2) 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 and the provisions of clause 49 (4) shall apply in respect of the cost of carrying out such measures."
Clause 50: Contractor to search		Insert after "or trials" in line 4 - "and such cost shall constitute Disallowed Cost".
Clause 52(2): Method of valuation by Contractor		In paragraph (a) delete "As soon as possible" and insert "Within 14 days (or such longer period as the Employer's Representative may determine to be reasonable in the circumstances)".
Clause 58: Provisional Sums and Prime Cost Items		Delete and insert "Not used".
Clause 60(1): Interim statements		Delete the sub-hearing "Monthly Statement" and substitute "Interim Statements". Delete in line 1 "monthly intervals" and insert "28 day intervals". Delete in line 2 "one month" and substitute "28 days". Delete paragraph (a) and substitute : "the Total Cost incurred by him to

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	the end of the immediately preceding period supported by all documents, vouchers and receipts necessary to prove the same and/or as may be requested by the Employer's Representative together with the Total Cost accrued as provided in paragraph 2 of Appendix - Part 4, provided that such accrued amounts shall not in any statement when aggregated with amounts on previous statements which have accrued but not yet been incurred, exceed 5% of the Total Cost included in any application."
Clause 60(2)(a): Interim payment	In line 1 delete "25 days" and insert "14 days" Delete references to "monthly statement" and insert "interim statement". In line 6 after "due to the Contractor" insert "(if any)". Insert at end: "Provided that if the Total Cost certified in the immediately preceding period included any item of Total Cost which has not, in the reasonable opinion of the Employer's Representative, incurred by the Contractor by the end of the period, the Contractor shall include such amount in the aggregate figure referred to in clause 60(l)."
Clause 60(5)	In line 7 after "due to the Contractor" insert "(if any)". In line 8 after "payment to the Contractor" insert "(if any)".
Clause 60(6)(a): Amount due	Insert new sub-clause 60(6)(a): "The amount due shall be the amount assessed in accordance with this agreement as described in sub-clauses 60(2), 60(3) and 60(5) less any previous payments on account and any sums deductible from the Contractor or payable from the Contractor to the Employer either under clause 76 or for any other reason (including without limitation for losses arising from the Contractor's breach of contract)."
Clause 60(6): Time period for payments	Renumber clause 60(6) as sub-clause 60(6)(b). Delete the existing wording and insert : "The amount due in accordance with sub-clause 60(6)(a) becomes due on the date 14 days after the date of delivery of the Contractor's interim statement to the Engineer or the Engineer's Representative in accordance with sub-clause (1) with the final date for payment being 21 days after the date of delivery of the Contractor's interim statement."
Clause 60(6)(c): Payment by the Contractor	Insert new sub-clause 60(6)(c): "If the application of clauses 60(1) to 60(5) (inclusive) results in a payment being due from the Contractor to the Employer, the Contractor shall issue a valid credit note to the Employer within 5 days of the issue of the Employer's notice under clause 60(10) and the final date for payment of this sum shall be 21 days after the notice under clause 60(10) is issued, whether or not a credit note has been issued by the Contractor."
Clause 60(8): Final account	Delete "Defects Correction Certificate" where it first appears in the first paragraph, and insert "Certificate of Substantial Completion (or, where there is more than one, after the date of the last in time to be issued)."
	Delete "up to the date of the Defects Correction Certificate" where it appears in the first and second paragraphs, and insert "up to and

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	including the date of the Certificate of Substantial Completion (or, where there is more than one, up to and including the date of the last in time to be issued).”
	At the end of the second paragraph delete the full stop and insert “less any previous payments on account and any sums deductible from the Contractor or payable from the Contractor to the Employer either under clause 76 or for any other reason (including without limitation for losses arising from the Contractor’s breach of contract).”
	In the second line of the third paragraph delete “on certification” and insert “3 months after the Employer’s receipt of the final account and the information reasonably required for its verification.” In the third line of the third paragraph delete “28” and insert “21”.
	Insert as new paragraphs at the end of the clause 60(8): “If the Contractor executes further Works after the date of the Certificate of Substantial Completion (or, where there is more than one, after the date of the last in time to be issued) for which he is entitled to payment under the Contract, then, not later than 3 months after the date of the substantial completion of such further Works, the Contractor shall submit to the Employer’s Representative a further statement of account and supporting documentation, showing in detail the value in accordance with the Contract of such further Works executed, together with all further sums which the Contractor considers to be due to him under the Contract up to and including the date of the Certificate of Substantial Completion. Within 3 months after receipt of the further statement of account and of all information reasonably required for its verification, the Employer’s Representative shall issue a certificate stating the amount which in his opinion is finally due under the Contract from the Employer to the Contractor or from the Contractor to the Employer, as the case may be, up to and including the date of the Certificate of Substantial Completion and after giving credit to the Employer for all amounts previously paid by the Employer, for all sums to which the Employer is entitled under the Contract and any sums deductible from the Contractor or payable from the Contractor to the Employer either under clause 76 or for any other reason (including without limitation for losses arising from the Contractor’s breach of contract). Such amount shall be paid to or by the Contractor, as the case may require. The payment becomes due 3 months after the Employer’s receipt of the further statement of account. The final date for payment is 21 days later.”
Clause 60(9): Interest on overdue payments	Delete “2% per annum above the base lending rate of the bank specified in Part 1 of the Appendix” and insert “4% above the Bank of England Base Rate”.
Clause 60(10): Certificates and	Renumber clause 60(10) as sub-clause 60(10)(a) and insert at the beginning of the sub-clause: “Any certificate given in accordance with sub-clause 60(2)(a) or sub-

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payment notices	<p>clause 60(8) shall be a payment notice for the purposes of the Housing Grants Construction and Regeneration Act 1996 (as amended) and the certificate shall be issued even if the Employer's Representative considers that the amount due is zero."</p> <p>Delete "of the payment proposed to be made" and insert "considers to be due at the payment due date".</p>					
Clause 60(10)(b)	<p>Insert new sub-clause as follows:</p> <p>"If the Engineer fails to give the Contractor a payment notice in accordance with sub-clauses (6) and (8) the Contractor's relevant interim or final account statement (given under sub-clause (1) or (8)) shall be the payment notice or, in the event that no such statement was given by the Contractor, then the Contractor may at any time thereafter give the Employer with a copy to the Engineer a payment notice in respect of the sum the Contractor considers to be due at the payment due date and the basis on which that sum is calculated."</p>					
Clause 60(10)(c)	<p>Insert new sub-clause as follows:</p> <p>"Where pursuant to sub-clause (b) the Contractor gives a payment notice the final date for payment of the sum specified in the notice shall for all purposes be regarded as postponed by the same number of days as the number of days after the relevant payment due date referred to in sub-clause (b) that the notice was given."</p>					
Clause 60(11): Notice of intention to withhold payment	<p>Delete the sub-heading "Notice of intention to withhold payment" and substitute "Pay less notice".</p> <p>Delete entire clause and insert:</p> <p>"If a payment is due from the Employer to the Contractor, the Employer may pay to the Contractor less than the sum stated in the notice issued in accordance with clause 60(6) or 60(8) or if no such notice was issued, less than the sum stated in the Contractor's monthly statement under clause 60 or the Contractor's payment notice in accordance with clause 60(10)(b) provided that not later than one day before the final date for payment the Employer has given a written notice to the Contractor which specifies:</p> <table border="1" data-bbox="501 1512 1388 1731"> <tr> <td data-bbox="501 1512 628 1641">(a)</td> <td data-bbox="628 1512 1388 1641">the sum that the Employer considers to be due on the date the notice is served having taken account of any amount to be withheld from the payment; and</td> </tr> <tr> <td data-bbox="501 1641 628 1731">(b)</td> <td data-bbox="628 1641 1388 1731">the basis on which that sum is calculated including grounds for any sums withheld."</td> </tr> </table>		(a)	the sum that the Employer considers to be due on the date the notice is served having taken account of any amount to be withheld from the payment; and	(b)	the basis on which that sum is calculated including grounds for any sums withheld."
(a)	the sum that the Employer considers to be due on the date the notice is served having taken account of any amount to be withheld from the payment; and					
(b)	the basis on which that sum is calculated including grounds for any sums withheld."					
Clause 60(12): Construction Industry Scheme	<p>Insert a new sub-clause as follows:</p> <p>"(12)</p> <table border="1" data-bbox="501 1832 1388 2049"> <tr> <td data-bbox="501 1832 628 2000">(a)</td> <td data-bbox="628 1832 1388 2000">For the purposes of this clause 60(12), 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.</td> </tr> <tr> <td data-bbox="501 2000 628 2049">(b)</td> <td data-bbox="628 2000 1388 2049">Not later than 21 days before the first payment under the</td> </tr> </table>		(a)	For the purposes of this clause 60(12), the "Scheme" shall mean the Construction Industry Scheme, as provided for in Chapter 3 of the Finance Act 2004 and the Income Tax (Construction Industry Scheme) Regulations 2005.	(b)	Not later than 21 days before the first payment under the
(a)	For the purposes of this clause 60(12), the "Scheme" shall mean the Construction Industry Scheme, as provided for in Chapter 3 of the Finance Act 2004 and the Income Tax (Construction Industry Scheme) Regulations 2005.					
(b)	Not later than 21 days before the first payment under the					

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		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;
	(c)	The Contractor shall ensure that at all times it is registered for gross payment under the Scheme;
	(d)	If the Contractor fails to comply with the provisions of sub-clauses 60(12)(b) or 60(12)(c), the Employer shall not be obliged to make any further payment to the Contractor until such time as the failure is remedied.”
Clause 63(4): Payment on abandonment	Insert after “the Total Cost” in line 4 “but not to exceed the Target Cost value assessed by the Employer’s Representative under clause 60(4) up to the date of abandonment”.	
Clause 64(1)(a): Default of Employer	Delete and insert “Not used”.	
Clause 65(1): Default of Contractor	<p>Insert new paragraph (j) as follows:</p> <p>” (j) is liable to compensate the Employer in respect of sums referred to in clause 8(2)(b) (Contractor’s design responsibility) and/or clause 34 (Limit on liability for railway costs) and/or clause 47(4)(a) (Limitation of liquidated damages) equal to or exceeding the aggregate total liability of the Contractor as stated in clause 8(2)(b) and/or clause 34(2) and/or Part 1 of the Appendix whichever is relevant.”</p> <p>In the paragraph following sub-paragraph (j), after “specifying the event ” insert “(and regardless of any Contractor’s attempted remedy of the event)”.</p>	
Clause 65(1A) Termination at will	Insert new sub-clause as follows: “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 the Contract.”	
Clause 65(4) Valuation at date of termination	In line 2 after “Employer” insert “under sub-clause (1) of this clause”	
Clause 65(5)(a) Payment after termination	Delete sub-clause 65(5)(a) and insert :	
	(a)	<p>“If the Employer enters and expels the Contractor under sub-clause (1) of this Clause no further sums shall become due to the Contractor except in accordance with sub-clause (b).</p> <p>If the Contractor became or becomes insolvent within the meaning of Section 113(2) of the Housing Grants, Construction and Regeneration Act 1996 then the final date for payment shall be suspended in respect of any amount already due where the Contractor’s insolvency occurred after the last date for the Employer to issue a Pay Less Notice in respect of that amount.”</p>

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Clause 65(6) Payment on termination at will	Insert new sub-clause as follows: “If the Employer, in the exercise of the powers contained in clause 65(1A), shall terminate the Contractor’s employment under the Contract, the Employer shall pay the Contractor (insofar as such amounts or items have not already been covered by payments on account made to the Contractor) the Contract value of all work carried out prior to the date of termination and in addition:	
	(a)	the amounts payable in respect of preliminary items insofar as the work or service comprised therein has been carried out or performed and a proper proportion of any such items which have been partially carried out or performed;
	(b)	the cost of materials or goods reasonably ordered for the Works which have been delivered to the Contractor or for which the Contractor is legally liable to accept delivery (such materials or goods becoming the property of the Employer upon such payment being made to the Contractor);
	(c)	a sum being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the Works insofar as such expenditure has not been recovered by any other payments referred to above; and
	(d)	the reasonable costs of removal of all the Contractor’s plant, tools, equipment, goods and materials from site.
	The Contractor shall not be entitled to payment of any other loss and/or damage arising from such termination.”	
Clause 66B: Adjudication	In paragraph (a) delete the second sentence and insert : “The adjudication shall be conducted in accordance with the provisions of the Scheme for Construction Contracts made in accordance with the provisions of Section 114 of the Housing Grants, Construction and Regeneration Act 1996.”	
	Delete clause 66B(3) and insert “Not used”.	
Clause 66C: Arbitration	Delete and insert as follows: “ Litigation 66C Subject to clauses 66A and 66B, any dispute or difference that arises between the parties shall be referred to the High Court of England and Wales for resolution as business of the Technology and Construction Court.”	
Clause 66D(1): Appointment by agreement	Delete “arbitrator”.	
Clause 66D(2): President or Vice-President to act	Delete “arbitrator”.	
Clause 66D(3)	Delete “the Institution of Civil Engineers” and insert “the President or	

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	Vice-President for the time being of the Technology and Construction Bar Association”
Clause 66D(4)	Delete in line 1 “arbitrator”.
Clause 70(2): Engineer’s certificates net of Value Added Tax	In lines 1 and 2 after “shall be net of Value Added Tax” insert “and the Contractor shall not issue any claim, statement of sums due or account to the Employer or the Employer’s Representative inclusive of Value Added Tax. When requesting or claiming payment the Contractor shall state how the work or supply in question is rated for the purposes of Value Added Tax, and show separately any relevant rates of Value Added Tax relating to the work or supplies.” In line 1 of the second paragraph delete “such certificates” and insert “this Contract”.
Clause 70(5): Value Added Tax on contra-charged amounts	Insert a new sub-clause as follows: “(5) If the Contractor fails to carry out his obligations under the Contract and the Employer employs some other contractor to fulfil them, and a payment in respect of Value Added Tax is made or fails to be made to that other contractor; then the Employer shall be entitled to recover from the Contractor any Value Added Tax (which he is not otherwise able to recover) additional to what he would have paid had the Contractor carried out his obligations under the Contract.”
Clause 70(6): Authenticated receipts	Insert a new sub-clause as follows: (6) The Contractor shall issue to the Employer, upon receipt of any amount paid by the Employer under this Contract and any Value Added Tax properly paid under sub-clause (2) of this clause, an authenticated receipt of the kind referred to in Regulation 13(4) of The Value Added Tax Regulations 1995 (or any amendment or re-enactment thereof) containing the particulars required under Regulation 14(1) of the same Regulations to be contained in a VAT invoice.”
Clause 71 CDM Regulations	Delete and insert as follows: 71(1) The Contractor shall strictly comply with the Employer’s health and safety requirements as set out in the Contract Requirements HSQE. In particular, but without limitation, the Contractor shall ensure that all the Contractor’s employees, any Sub-Contractors and other persons engaged by it in relation to this Contract receive safety and skills training in accordance with the requirements of the Contract Requirements HSQE and the Employer may instruct the immediate replacement, at the Contractor’s cost, of any person on the Site who is not so trained.
	71(2) The Contractor is appointed as “Principal Contractor” for the Project. The Contractor warrants that it is competent to accept this appointment and that it will properly perform all the duties required of a principal contractor under the Construction (Design and Management) Regulations 2007 including, without limitation, liaising with the CDM Co-ordinator for the Project named in Part 1 of the Appendix.”

Special Conditions

<p>Collateral warranties and novation agreements</p>	<p>73</p>	<p>(1) The Contractor shall, within 7 working days of the Employer's request so to do, execute in favour of any person or persons nominated by the Employer who have entered into or intend to enter into an agreement for the provision of finance in connection with the Works and/or for the purchase of an interest, whether leasehold or freehold, in the land upon which the Works or any part of them are situated a deed in the appropriate form appended to the Contract Specific Conditions.</p> <p>(2) The Contractor shall, within 7 working days of the Employer's request so to do, execute a deed on novation in the form appended to the Contract Specific Conditions with the Employer and each of the Employer's suppliers and consultants whose details are set out in Part 1 of the Appendix so as to become the counter-party to each of such supplier's and consultant's contracts with the Employer in place of the Employer.</p>
<p>Confidentiality</p>	<p>74</p>	<p>(1) All information obtained by the Contractor in the course or conduct of the Contract shall be held confidential and shall not be divulged by the Contractor to any third party save to the extent necessary to effect the execution of the Contract and then only on the basis that the recipient of such information shall be bound by similar confidentiality obligations to those undertaken by the Contractor hereunder.</p>
		<p>(2) Provided however that this obligation shall not apply to information which:</p>
		<p>(a) is or shall become part of the public domain otherwise than in consequence of a breach by the Contractor of its obligations under this clause;</p>
		<p>(b) was in the Contractor's possession prior to award of this Contract and which the Employer did not notify the Contractor as being confidential or which would not reasonably be regarded as confidential by its very nature;</p>
		<p>(c) was received from third parties having to the best of the Contractor's knowledge the right to disclose such information;</p>
		<p>(d) is required to be disclosed pursuant to a court order or statutory requirement provided that the Contractor shall to the extent permitted by the relevant legal or statutory requirement: (i) provide the Employer with prompt written notice of any such requirement before such disclosure is made and (ii) take all reasonable action to avoid and limit such disclosure as may be requested by the Employer.</p>

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		(3) The Contractor shall ensure that the provisions of this clause are incorporated in any sub-contracts or supply orders and that the employees, agents or representatives of all or any of the Sub-Contractors or suppliers comply with the same.
		(4) 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.
		(5) This clause 74 shall remain binding on the Contractor notwithstanding the completion or termination of this Contract for any reason.
Track possessions	75	(1) After the programme has been accepted by the Employer's Representative under clause 14(2) and consent has been given by him to proceed with carrying out the Works, the Contractor shall in all cases submit written notice to the Employer's Representative confirming any speed restrictions, track possession or isolation requirements in accordance with the Employer's current planning procedures (or as otherwise laid down in the Contract) in advance of the proposed commencement of work on or near the railway lines.
		(2) The Employer reserves the right to cancel or alter the dates and times of the agreed speed restrictions, track possessions or isolations at short notice if this proves necessary because of any emergency affecting the safe or uninterrupted running of rail traffic, but in such an event alternative arrangements will be made as soon as the Employer's programme permits.
		(3) Where any part of the Works has to be carried out during an agreed period of a speed restriction, track possession or isolation, the Contractor shall make adequate arrangements to ensure that such part can commence as programmed, and can be completed as early as possible, and in any case within that period. The arrangements shall include the provision of sufficient and suitable Contractor's Equipment (including, where practicable, standby equipment) and sufficient labour.
		(4) Prior to the commencement of any speed restriction, track possession or isolation, if the Employer's Representative is of the opinion that the Contractor has failed to comply with the requirements of sub-clause (3) of this Clause 75, he may at his discretion cancel the speed restriction, track possession or isolation, or reduce the extent of the work that the Contractor may carry out during such speed restriction, track possession or isolation, and shall notify the Contractor accordingly.
		(5) If, during a speed restriction, track possession or isolation, the Employer's Representative is of the opinion that the Contractor will be unable to complete the planned work (or any revision thereof proposed by the Contractor) to his satisfaction so

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		as to permit the termination of the speed restriction, track possession or isolation at the time agreed, then the Employer's Representative may instruct the Contractor to reduce the extent of or vary the dates and times of the work to be carried out during such speed restriction, track possession or isolation. Such reduction or variation shall not entitle Contractor to any adjustment to the Target Cost or extension of time for completion if and to the extent that the Contractor's inability to complete the planned work was due to a breach by the Contractor of the requirements of the Contract.
		(6) The Contractor acknowledges that the Employer may incur additional costs as a result of the requirement to use and/or obtain additional speed restrictions, track possessions or isolations in accordance with sub-clauses (4) and (5) of this clause 75, and that the Employer shall be entitled to recover from the Contractor the amount of such costs to the extent they are due to a breach by the Contractor of the requirements of the Contract.
Set-off	76	Without prejudice to the Employer's other rights and remedies, the Employer may deduct from any sums due to the Contractor under the Contract an amount equivalent to any sum due from the Contractor to the Employer (whether such sums are due to the Employer under the Contract or under any other agreement between the Contractor and the Employer) and may also deduct any sum of money that is recoverable from or payable by the Contractor under this Contract from any sum then due or which at any time thereafter may become due under any other agreement between the Contractor and the Employer.
Claims handling provisions	77	(1) In these provisions, where the context admits, "Claims Allocation and Handling Agreement" means the Agreement so entitled dated 1st December 2009 and made between the several parties whose names are contained in Schedule 6 thereof (the "Industry Parties") and Railway Claims Limited (the "Agency") (as amended from time to time in accordance with its terms) and terms and expressions defined in the Claims Allocation and Handling Agreement, and the Employer shall supply the Contractor with a copy of each amendment thereto, as and when it is made.
		(2) These provisions shall apply:
		(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 the Contract, is made by a third party who does not have a contract with the Contractor:

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		(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 result as if the Contractor were party to those Rules; and such matters shall not be referable to adjudication or arbitration in accordance with the Contract.
		(5) Provided that sub-clauses (3) and (4) of this clause 75 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.
M&E and signalling conditions	78	The provisions of clauses 79 to 83 below shall apply if and to the extent that the Works include the provision of plant and machinery for which there are testing requirements in the Technical Workslope or the Contractor's Submission.
Definitions	79	(1) For the purposes of clauses 79 to 83, the following words and expressions shall have the following meanings assigned to them:
		(a) "Plant" means those items of machinery, computer hardware and software, apparatus,

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		equipment and materials (if any), other than the Contractor's Equipment, identified as such in Part 1 of the Appendix and/or in respect of which the Appendix provides that Tests on Completion or Performance Tests shall apply.
		(b) "Tests on Completion" means the tests (if any) referred to in Part 1 of the Appendix (or otherwise agreed by the Employer and the Contractor) which are to be made by the Contractor upon completion of erection and/or installation before the issue of a Certificate of Substantial Completion in respect of the Works or a Section thereof.
		(c) "Performance Test" means the tests (if any) referred to in Part 1 of the Appendix (or otherwise agreed between the Employer and the Contractor) to be made after substantial completion of the Works to demonstrate the performance of the Works.
Inspection and testing of plant before delivery	80	<p>(1) The Employer's Representative shall be entitled at all reasonable times during manufacture to inspect, examine and test on the Contractor's premises or elsewhere the materials, workmanship and performance of all Plant. If any part of the Plant is being manufactured on premises other than the Contractor's own, the Contractor shall obtain permission for the Employer's Representative to inspect, examine and test such Plant as if it were being manufactured on the Contractor's premises. Such inspection, examination or testing shall not release the Contractor from any obligation under the Contract.</p> <p>(2) If not specified in the Contract, the Contractor shall agree with the Employer's Representative the date on and the place at which any Plant will be ready for inspection, examination or testing. The Employer's Representative shall give the Contractor 24 hours' notice of his intention to attend the test or inspection. If the Employer's Representative shall not attend on the date and at the place agreed, the Contractor may proceed with the inspection, examination or test which shall be deemed to have been made in the Employer's Representative's presence. The Contractor shall forthwith forward to the Employer's Representative duly certified copies of the results of the inspection, examination or test.</p> <p>(3) The Contractor shall provide such assistance, labour, materials, electricity, fuel stores, apparatus and instruments as may be necessary or as may be reasonably requested by the Employer's Representative for the purposes of carrying out any such inspection, examination or test.</p> <p>(4) When the Employer's Representative is satisfied that any Plant has passed the inspection, examination or test referred to in this clause he shall forthwith issue to the Contractor a certificate to</p>

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		that effect.
		(5) If after inspecting, examining or testing any Plant the Employer's Representative shall decide that such Plant or any part thereof is defective or not in accordance with the Contract, he may reject the said Plant or part thereof by giving to the Contractor notice of such rejection, stating therein the grounds upon which his decision is based. Following any such rejection the Contractor shall make good or otherwise repair or replace the rejected Plant and resubmit the same for inspection, examination or testing in accordance with this clause. All expenses reasonably incurred by the Employer in consequence of such re-inspection, re-examination or re-testing and the Employer's Representative's attendance shall be deducted from any amounts due to the Contractor under this Contract.
		(6) No Plant may be delivered to the Site unless it has been certified by the Employer's Representative in accordance with sub-clause (4) of this clause 80.
Tests on Completion	81	<p>(1) The Contractor shall give to the Employer's Representative 21 days' notice of the date after which he will be ready to make any Tests on Completion. Unless otherwise agreed the Tests on Completion shall take place within 10 days after the said date on such day or days as the Employer's Representative shall notify to the Contractor.</p> <p>Provided that where the conduct of the Tests on Completion requires signalling disconnections and/or restricts the operating railway in any way, the Contractor shall submit to the Employer's Representative for his acceptance pursuant to clause 14 a programme showing those dates and times at which the Contractor requests access to the operating railway to complete the Works, and any such request for access that is disruptive to the railway shall be made in accordance with clause 75 (Track Possessions).</p>
		(2) If the Employer's Representative fails to appoint a time after having been asked to do so or to attend at any time or place duly appointed for making the Tests on Completion, the Contractor shall be entitled to proceed in his absence and the Tests on Completion shall be deemed to have been made in the presence of the Employer's Representative. The Contractor shall forthwith forward to the Employer's Representative duly certified copies of the results of the Tests on Completion.
		(3) Before commencing Tests on Completion in respect of signalling and signalling related works that require signalling disconnections and/or restrict the operating railway in any way, the Contractor shall have arranged any possessions or signalling disconnections required to carry out the tests in accordance with clause 75 (Track Possessions) and shall submit all pre-test documentation (including the Testing Strategy and Test Plan(s)) to

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		<p>the Employer's Representative in accordance with applicable Railway Group Standards, Network Rail Standards and/or any equivalent standards including, but not limited to the Signalling Testing Handbook.</p> <p>(4) No signalling testing activity of any sort shall take place unless the Testing Strategy and Test Plan(s) have been approved in writing by the Employer. If the Contractor fails to submit any pre-test documentation within the time limits specified in the Signalling Testing Handbook or the submitted documentation is not approved for any reason, the proposed Tests on Completion shall not take place and the Contractor shall submit alternative arrangements to the Employer for his acceptance. Such arrangements shall be at no additional cost to the Employer and all costs which the Employer may incur in the re-arrangement of the Tests on Completion shall be deducted from any amounts due to the Contractor under this Contract. Any additional costs incurred by the contractor as a consequence of the Contractor's failure to submit any pre-test documentation as above shall be Disallowed Cost.</p> <p>(5) If any Plant fails to pass the Tests on Completion it shall be repeated within a reasonable time upon the same terms and conditions. All expenses reasonably incurred by the Employer in consequence of such repetition of the Tests on Completion and the Employer's Representative's attendance shall be deducted from any amounts due to the Contractor under this Contract. The Contractor's costs of relating to any repeated test on Completion shall be Disallowed Cost.</p>
		<p>(6) If any Plant fails to pass the Tests on Completion (including any repetition thereof) the Contractor shall (subject to the provisions of clause 75 (Track Possessions) in the case of work or the conduct of the tests requiring signalling disconnections and/or restricting the operating railway in any way) take whatever steps may be necessary to enable the Plant to pass the Tests on Completion and shall thereafter repeat them, unless any time limit specified in the Contract for the passing thereof shall have expired, in which case the Employer's Representative shall be entitled to reject such Plant and the Employer shall be entitled to proceed in accordance with clause 65 (Default of Contractor).</p>
Performance Tests	82	<p>(1) Where Performance Tests are included in the Contract they shall be carried out in accordance with any agreed programme or if none then as soon as is reasonably practicable and within a reasonable time after that part of the Works into which the relevant Plant is incorporated has been substantially completed.</p>
		<p>(2) Performance Tests shall be carried out by the Employer or the Employer's Representative on his behalf under the supervision of the Contractor and in accordance with the procedures and under the operating conditions specified in the</p>

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		Contract and in accordance with such other instructions as the Contractor may give in the course of carrying out such tests.
		(3) The Employer, or the Employer's Representative on his behalf, or the Contractor shall be entitled to order the cessation of any Performance Test if damage to the Plant or personal injury is likely to result from continuation.
		(4) If any Plant fails to pass any Performance Test (or repetition thereof) or if any Performance Test is stopped before its completion, such test shall, subject to sub-clause (5) of this clause 82, be repeated as soon as practicable thereafter. Any additional cost incurred by the Employer by reason of the repetition of any Performance Test shall be deducted from any amounts due to the Contractor under this Contract. The costs of the Contractor for any such repeat Performance Test shall be Disallowed Cost. The Employer shall permit the Contractor to make adjustments and modifications to any part of the Plant before the repetition of any Performance Test and shall, if required by the Contractor, shut down any part of the Plant for such purpose and re-start it after the adjustments and modifications have been made. All such adjustments and modifications shall be made by the Contractor with all reasonable speed and the cost of any such adjustments and modifications shall be Disallowed Cost. The Contractor shall, if so required by the Employer's Representative, submit to the Employer's Representative for his approval details of the adjustments and modifications which he proposes to make.
		(5) If any Plant fails to pass any Performance Test (of repetition thereof) and the Contractor in consequence proposes to make any adjustments or modifications thereto, the Employer's Representative may notify the Contractor that the Employer requires the carrying out of such adjustments or modifications to be postponed. In such event the Contractor shall remain liable to carry out the adjustments or modifications and a successful Performance Test within a reasonable time of being notified to do so by the Employer's Representative. If however the Employer's Representative fails to give any such notice within one year of the date of substantial completion of that part of the Works in which such Plant is incorporated, the Contractor shall be relieved of any such obligation and any Plant shall be deemed to have passed such Performance Test.
		(6) The results of Performance Tests shall be compiled and evaluated jointly by the Employer, or the Employer's Representative on his behalf, and the Contractor in the manner detailed in the Contract.
Defective plant and further testing	83	If any repairs or replacements are to be carried out pursuant to the Contractor's obligations under clause 49 (Outstanding Work and Defects) that are of such character as may affect the operation of any Plant, the Employer or the Employer's Representative may

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		within one month after such repair or replacement give to the Contractor notice requiring that further Tests on Completion or Performance Tests be made in which case such tests shall be carried out as provided in clause 81 (Tests on Completion) or clause 82 (Performance Tests) as the case may be. The cost of any further Tests shall be Disallowed Cost.
Anti-Bribery Requirements	84	(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/aspx/12859.aspx).
		(2) Throughout the term of this Agreement the Contractor shall maintain and enforce its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with all applicable anti-bribery and anti-corruption legislation and European Union Directives. Adequate procedures shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of the Act).
		(3) The Contractor shall use all reasonable endeavours to ensure that all persons associated with the Contractor (as defined by section 8 of the Bribery Act 2010) including any subcontractors and suppliers comply with clause 84.1 and 84.2 above.

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Contract Specific Conditions

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Contract Requirements:

Technical Workslope

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Contract Requirements:

Preliminaries

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