

**SUBJECT TO CONTRACT**  
**DATED** \_\_\_\_\_ **200[ ]**

**NETWORK RAIL INFRASTRUCTURE LIMITED**

**and**

**[NAME OF CUSTOMER]**

**FRAMEWORK AGREEMENT**

in relation to

**BASIC SERVICES, DEVELOPMENT SERVICES AND ASSET PROTECTION**  
**[Changes to agreement are required to be varied in where a fixed price is to be agreed]**

**[Note: Network Rail reserves the right to request adequate surety following internal credit review]**

## CONTENTS

	Page
1. DEFINITIONS AND INTERPRETATION	1
2. TERM	2
3. REQUEST FOR PROPOSAL	2
4. SERVICES INSTRUCTIONS	2
5. NOTICES	3
6. GENERAL	3
SCHEDULE 1: GENERAL CONDITIONS	5
1. DEFINITIONS AND INTERPRETATION	5
2. SERVICES CONTRACT	12
3. DEVELOPMENT PROGRAMME AND COSTS ESTIMATE	14
4. CONSENTS	14
5. ACCESS AND POSSESSIONS	15
6. DESIGN REVIEW	15
7. DESIGN BY THE CUSTOMER	17
8. VARIATION OF SERVICES	19
9. COMPENSATION AND RELIEF	20
10. INTELLECTUAL PROPERTY RIGHTS	22
11. NETWORK RAIL COSTS	22
12. VALUE ADDED TAX	23
13. LIABILITY	23
14. INDEMNITY	25
15. FORCE MAJEURE	26
16. TERMINATION	27
17. CONFIDENTIALITY	28
18. DISPUTE RESOLUTION	30
SCHEDULE 2: SPECIAL CONDITIONS	31
PART A: DEVELOPMENT SERVICES	31
PART B: ASSET PROTECTION	34
SCHEDULE 3	36
NETWORK RAIL COSTS	36
SCHEDULE 4	39
FORM OF COLLATERAL WARRANTY IN FAVOUR OF NETWORK RAIL	39
SCHEDULE 5	43
FORM OF SERVICES INSTRUCTION	43
SCHEDULE 6	47
NOTICES	47
SCHEDULE 7	48
ESCALATION PROCEDURE	48

**THIS FRAMEWORK AGREEMENT** is made on 200[ ]

**BETWEEN:**

- (1) **Network Rail Infrastructure Limited** a company registered in England and Wales (registered number 2904587) whose registered office is at Kings Place, 90 York Way, London, N1 9AG (“**Network Rail**”); and
- (2) [**name of customer**] a company registered in [ ] under company number [ ] whose registered office is at [ ] (the “**Customer**”)

(together the “**Parties**” and references to “**Party**” shall be construed accordingly).

**WHEREAS:**

- (A) In its capacity as funder of certain projects proposed for the enhancement of the railway network in [*region*], [either directly or by way of support to a local authority]<sup>(1)</sup>, the Customer may wish to request Network Rail to provide certain development services, including where necessary the provision to the Customer of restricted access to the rail network for the purpose of gathering information to facilitate the development of an enhancement project, in preparation for the Customer commissioning the detailed design and construction of such enhancement project.
- (B) Development services may be undertaken by either the Customer or Network Rail. The Parties wish to agree upon the procedure for approving development services and the general terms and conditions under which such services will be performed for a given project.
- (C) This Framework Agreement does not concern the implementation of any railway infrastructure works or enhancement project. The Parties acknowledge that a further agreement will be required to be entered into, outside the remit of this Framework Agreement, to permit such implementation to take place.

**NOW IT IS AGREED AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1. In this Framework Agreement and the Schedules, the following words and expressions shall have the following meanings unless the context otherwise requires:

“**Commencement Date**” means the date of this Framework Agreement;

“**Escalation Procedure**” means the escalation procedure set out in Schedule 7;

“**General Conditions**” means the conditions set out in Schedule 1;

“**Losses**” means any costs, claims, damages, demands, losses, expenses or liabilities incurred by the relevant person;

“**Services Instruction**” and “**Services Contract**” have the respective meanings given to such expressions in Clause 4.3;

“**Special Conditions**” means the conditions set out in Schedule 2;

“**Working Day**” means any day (other than a Saturday or Sunday) on which banks are open for business in England.

- 1.2. This Framework Agreement shall be interpreted in accordance with the provisions of paragraph 1.2 of the General Conditions.

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<sup>1</sup> Include if applicable

**2. TERM**

- 2.1. This Framework Agreement shall become effective on the Commencement Date and shall apply in respect of all Services Instructions issued within [five] years of the Commencement Date.
- 2.2. Either Party may by written notice terminate this Framework Agreement with immediate effect if:
- (a) the other Party commits any persistent or material breach of this Framework Agreement (which shall include any failure to pay an amount of at least £10,000 which is due to the other Party) and, in the case of a breach which is capable of remedy, fails to remedy that breach within 10 Working Days (or such longer period as the terminating Party may specify) after receipt of a written notice giving full particulars of the breach and requiring it to be remedied; or
  - (b) it has terminated any Services Contract under paragraph 16.1(a) or 16.1(b) of the General Conditions.
- 2.3. Upon termination of this Framework Agreement (howsoever arising) neither Party shall be liable to the other Party for or in respect of any Losses arising out of or in connection with such termination (subject to Clause 2.4).
- 2.4. Any termination of this Framework Agreement shall not prejudice:
- (a) any Services Instruction issued prior to the date of such termination (which shall, subject to the terms of this Framework Agreement and such Services Instruction, continue to be complied with as if such termination had not taken place);
  - (b) the provisions of paragraph 16 of the General Conditions; or
  - (c) the accrued rights or claims of either Party.

**3. REQUEST FOR PROPOSAL**

- 3.1. If the Customer wishes Network Rail to consider development services or asset protection services required for project development, the Parties shall meet to discuss the project, the objectives and the support required from Network Rail. The Parties shall develop and work up jointly a request for proposal. Thereafter, the Customer may issue to Network Rail a request for Network Rail to submit a proposal for such services ("**Request for Proposal**").
- 3.2. Within 20 Working Days after receipt of a Request for Proposal, Network Rail shall prepare and submit to the Customer a proposal giving such details as are necessary to complete a draft instruction, including a costs estimate and indicative programme (a "**Services Proposal**"). Once a Services Proposal has been received by the Customer, it will be discussed by the Parties including whether it is desirable for all or any part of the Services Proposal to be subject to either a fixed price or target price<sup>(2)</sup>. The Parties shall work together in order for Network Rail to obtain investment approval for the Services Proposal in a timely manner.

**4. SERVICES INSTRUCTIONS**

- 4.1. Following discussion of a Services Proposal by the Parties, the Customer may issue a draft services instruction to Network Rail in the form set out in Schedule 5.
- 4.2. Within 20 Working Days after receipt of each draft services instruction, Network Rail shall accept or reject such draft services instruction. If no acceptance is issued within such period (including on the grounds of unavailability of Network Rail resources), the matter shall be dealt with in accordance with the Escalation Procedure.
- 4.3. If Network Rail accepts the draft services instruction, it shall countersign the draft services instruction (which, on such countersignature, shall become the "**Services Instruction**") and shall carry out services and/or permit access to the Network as set out in the Services Instruction. The contract in relation to such Services Instruction

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<sup>2</sup> Any fixed price should include an appropriate fee and amounts in respect of quantified risk assessment and contingency.

## **SUBJECT TO CONTRACT**

("Services Contract") shall comprise the terms of such Services Instruction together with Clause 1.1 above and Clauses 5 and 6 below and the General Conditions. The Services Contract may also include Part A and/or B of the Special Conditions, which shall be adopted as follows:

- (a) Part A - Development Services: this Part must be adopted for projects with an estimated cost in excess of £50,000 and/or where Network Rail may appoint contractors or consultants to provide services on its behalf.
- (b) Part B - Asset Protection: this Part must be adopted where the Customer or its contractors are allowed access onto or near the Network, other than for Visual Survey (as defined in Schedule 1).

4.4. Each Services Contract entered into hereunder between the Parties shall be considered a separate contract from any other contract entered into between the Parties.

## **5. NOTICES**

5.1. Any notice, objection or communication to be given under this Framework Agreement or any Services Contract shall be in writing and shall be duly given if signed by a duly authorised person on behalf of the Party giving such notice, objection or communication and shall be delivered by hand, by first class post or by facsimile transmission to the relevant address or facsimile number set out in Schedule 6 and shall be deemed to have been received:

- (a) if sent by hand or by recorded delivery, at the time of delivery (and for the purpose of this Clause 5 delivery by hand shall include delivery by a reputable firm of couriers);
- (b) if sent by prepaid first class post from and to any place within the United Kingdom, two Working Days after posting unless otherwise proven; and
- (c) if sent by facsimile before 17.00 hours on a Working Day, upon sending (subject to confirmation of uninterrupted transmission by a transmission report) and in any other case at 09.00 hours on the first Working Day following the day of transmission.

5.2. If in the Services Instruction there is specified any person to whom copies of notices shall also be sent, the Party serving a notice shall send a copy of the notice in question to such person at the address for serving copies as specified in the Services Instruction. Such copy notice shall be sent at the same time as the original notice.

5.3. If in Schedule 6 there is specified any person to whom copies of notices shall also be sent, the Party serving a notice shall send a copy of the notice in question to such person at the address for serving copies as specified in Schedule 6. Such copy notice shall be sent at the same time as the original notice.

5.4. Either Party shall be entitled to amend in any respect the communication particulars which relate to it and which are set out in Schedule 6. Any such amendment shall be made only by notice given to the other Party in accordance with this Clause 5.

## **6. GENERAL**

6.1. The Framework Agreement and Services Contracts are personal to the Parties and neither Party may assign or charge all or any part of the benefit of, or its rights under, this Framework Agreement or any Services Contract without the prior written consent of the other Party (not to be unreasonably withheld or delayed), provided that such consent shall not be required in respect of any assignment by either Party to a statutory successor of the rights, obligations and interests of such Party.

6.2. Nothing in this Framework Agreement or any Services Contract shall create a partnership, association or joint venture or establish a relationship of principal and agent. Neither Party shall have any authority (unless expressly conferred in writing by virtue of this Framework Agreement or any Services Contract or otherwise and not revoked) to bind the other Party as its agent or otherwise.



SCHEDULE 1: GENERAL CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1. In this agreement, except where the context otherwise requires, the following words and expressions shall have the following meanings:

“**Access Agreement**” means an access contract or an access agreement as defined in the Act;

“**Act**” means the Railways Act 1993;

“**Affiliate**” means in relation to any company:

- (a) a company which is either a holding company or a subsidiary of such company; or
- (b) a company which is a subsidiary of a holding company of which such company is also a subsidiary,

and for these purposes “holding company” and “subsidiary” shall have the respective meanings given to them in section 736 of the Companies Act 1985;

“**Booked**” means, in relation to any Possession, the registration of such Possession in Network Rail’s Possession Planning System, subject to Network Rail’s annual and quarterly planning processes and the other provisions of Part D of the Network Code;

“**CDM Regulations**” means the Construction (Design and Management) Regulations 1994;

“**Change in Law**” means the coming into effect of:

- (a) any Act of Parliament or subordinate legislation, any exercise of the Royal Prerogative or any enforceable community right within the meaning of section 2 of the European Communities Act 1972 (by means of any enactment, revocation, repeal, amendment, alteration or otherwise); or
- (b) any applicable judgment of a relevant court of law which creates or changes a binding precedent;

“**Change in Standards**” means the coming into effect of a Group Standard or of any amendment thereto, or of a Network Rail Standard or of any amendment thereto, with which any Consultant or Contractor is obliged to comply;

“**Checker**” has the meaning ascribed to it in the Standards;

“**Competent Authority**” means any local, national or supra-national agency, authority, department, inspectorate, minister, ministry, official, court, tribunal or public or statutory person (whether autonomous or not), whether of the United Kingdom or of the European Union, which has, in respect of this Services Contract, jurisdiction over either of the Parties, any Consultant or Contractor or the subject matter of this Services Contract;

“**Confidential Information**” means in relation to any Party (the “**Provider**”), all information of a confidential nature relating to it or its Affiliates which is supplied by or on behalf of the Provider (whether before or after the Commencement Date or Effective Date), either in writing, orally or in any other form or which is obtained through observations made by the Party receiving such information and includes all analyses, compilations, notes, studies, memoranda and other documents which contain or otherwise reflect or are derived from such information, but excludes information which:

- (a) the Provider confirms in writing is not required to be treated as confidential; or
- (b) the receiving Party can show was in its possession or known to it (by being in its use or being recorded in its files or computers or other recording media) prior to receipt from the Provider and was not previously acquired by the receiving Party from the Provider under an obligation of confidence; or

## SUBJECT TO CONTRACT

(c) was developed by or for the receiving Party at any time independently of this Framework Agreement or Services Contract;

**“Consultancy Contract”** means any contract entered into by Network Rail with a Consultant for the carrying out of any part of the Services;

**“Consultant”** means any person providing professional services to, or carrying works out on behalf of, Network Rail for the delivery of the Services;

**“Contractor”** means any person to whom a contract for the whole (or any part) of the design and implementation of the Survey Works (or any other works in relation to the Project) is let and for whom the Customer is the employer;

**“Contractor’s Assurance Case”** has the meaning ascribed to that term in Standard RT/LS/P/016;

**“Costs Estimate”** means the estimate of the Network Rail Costs as set out in the Services Instruction, as the same may be amended in accordance with paragraph 3.4;

**“Customer Intellectual Property”** means all Intellectual Property created by or on behalf of the Customer in relation to the Project but excluding any and all Intellectual Property which has not been developed or produced for the purposes of the Framework Agreement, Services Contract or the Services;

**“Deliverables”** means the documents and/or other items which Network Rail is required to deliver to the Customer as part of a Services Contract;

**“Design Data”** means all drawings, reports, documents, plans, software, formulae, calculations and other data whatsoever in any medium prepared by or on behalf of the Customer relating to the design and construction of the Project;

**“Design Issue”** means a change in any law, Change in Standards, or change in any applicable regulatory requirement or requirement of the Network Licence which Network Rail reasonably considers will necessitate a variation of Network Rail’s Services or the design by the Customer in order to achieve the relevant Work Product design approval(s);

**“Design Quality Plan”** means the design quality assurance procedures referred to in the Standards;

**“Development Programme”** means the programme referred to in paragraph 3 of Schedule 1;

**“Direct Costs”** means direct costs reasonably incurred in relation to the Project but excludes any loss of production, loss of profit, loss of revenue, loss of contracts or any indirect or consequential loss;

**“Direction”** means any direction, requirement, instruction or rule legally binding on either of the Parties, and includes any modification, extension or replacement of any such direction, requirement, instruction or rule for the time being in force, but shall not include:

- (a) the exercise of a discretion under any contract or other obligation binding on the Party in question or the enforcement of any such contract or obligation; or
- (b) any direction issued by the ORR pursuant to section 16A of the Act;

**“Dispute”** means any dispute or difference of whatsoever nature arising under, out of, in connection with or in relation (in any manner whatsoever) to the Framework Agreement or Services Contract;

**“Dispute Resolution Procedure”** means the procedure set out in paragraph 18;

**“Effective Date”** means, in relation to any Services Contract, the date of the countersignature by Network Rail of the relevant Services Instruction;

**“Environmental Plan”** has the meaning ascribed to it in International Standard ISO 14001;



## SUBJECT TO CONTRACT

**“Force Majeure Event”** means any of the following events (and any circumstance arising as a direct consequence of any of the following events):

- (a) an act of the public enemy or terrorists or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
- (b) acts of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
- (c) natural disasters or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
- (d) nuclear, chemical or biological contamination;
- (e) pressure waves caused by devices travelling at supersonic speeds;
- (f) discovery of fossils, antiquities or unexploded bombs; and/or
- (g) strike or other industrial action which is a single circumstance and which also is a strike or industrial action in sectors of the economy other than the railway industry;

**“Freight Access Agreement”** means an Access Agreement with respect to the transport of freight over the Network;

**“Good Industry Practice”** means, in relation to the performance of any activity to which this standard is applied, the exercise of that degree of skill, diligence, prudence and foresight as would reasonably be expected from a skilled and competent person engaged in carrying out works or services of a similar scope, type, nature and complexity to the works or services being carried out, complying with all Legal Requirements and applicable British, European and International standards and published codes of practice;

**“Group Standards”** means:

- (a) technical standards to which railway assets or equipment used on or as part of the Network must conform; and
- (b) operating procedures with which the operators of railway assets must comply

in each case as issued by the Rail Safety and Standards Board Limited and authorised pursuant to the Railway Group Standards Code;

**“Infrastructure Controller”** means a person who controls railway infrastructure (having the meaning given to it in the Railways (Safety Case) Regulations 2000) or Infrastructure Manager for the purposes of the ROGS;

**“Insolvent”** in relation to either Party means:

- (a) such Party stopping or suspending or threatening to stop or suspend payment of all or a material part of its debts, or becoming unable to pay its debts, or being deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986, except that in the interpretation of this paragraph section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there were substituted “£10,000”;
- (b) any step being taken by any person with a view to the winding up of such Party or any person presenting a winding-up petition which is not dismissed within seven days,
- (c) a receiver, manager, administrative receiver or administrator being appointed in respect of such Party;
- (d) such Party ceasing or threatening to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the other Party before that step is taken (which approval shall not be unreasonably withheld or delayed); or

## SUBJECT TO CONTRACT

- (e) any event occurring which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above;

**“Intellectual Property”** means all intellectual property rights in any part of the world in respect of the Deliverables, including any patent, patent application, trade mark, trade mark application, registered design, registered design application, utility model, trade name, discovery, invention, process, formula, specification, copyright (including rights in computer software and database and topography rights) or unregistered design right;

**“Interest Rate”** means 2% per annum above the base rate from time to time of HSBC Bank plc;

**“Legal Requirement”** means any of the following:

- (a) any enactment to the extent that it applies to that Party;
- (b) any regulation made by the Council or the Commission of the European Union to the extent that it applies to that Party or a decision taken by the Commission which is binding on that Party to the extent that it is so binding; and
- (c) any interpretation of law, or finding, contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any legal requirement falling within paragraphs (a) or (b) above to have effect in a way which is different to that in which it previously had effect;

**“Link Up Accreditation”** means the process established by Network Rail to pre-qualify contractors for particular classes of work on the Network;

**“Long Stop Date”** means the date described in the Services Instruction as the Long Stop Date, subject to any change to such date in accordance with paragraph 3.3 of Schedule 1<sup>3</sup>;

**“Mandatory Variation”** means any change or variation to the Services necessitated by:

- (a) any Specific Change in Law; and/or
- (b) any Change in Standards for safety reasons

in each case after the date on which Project achieves Stage Gate 4 (and which is not reasonably foreseeable as at such date);

**“Necessary Consents”** means all approvals, permissions, consents, licences, certificates, registrations and authorisations (whether statutory or otherwise) which are required from time to time for the purposes of carrying out the Project, whether required in order to comply with any Legal Requirement or as a result of any rights of any third party including the Network Rail Consents, consents in respect of any Regulated Change and any consents required from any third party to enter and remain upon that third party's land;

**“Network”** means the railway network of which Network Rail is the facility owner (as defined in section 17(6) of the Act);

**“Network Change”** has the meaning given to that expression in the Network Code;

**“Network Code”** means the document now known as the Network Code and formerly known as the Railtrack Track Access Conditions 1995;

**“Network Licence”** means the licence to operate the Network granted to Network Rail pursuant to section 8 of the Act;

**“Network Operation Issue”** means:

- (a) any Safety Critical Event;
- (b) any Operational Emergency;

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<sup>3</sup> This should typically be around 15% later than the Target Completion Date

- (c) any Legal Requirement;
- (d) any Direction of a Competent Authority;
- (e) any requirement of the Network Licence;
- (f) any contractual commitment of Network Rail existing on or prior to the Effective Date of the relevant Services Contract (including under any Freight Access Agreement); or
- (g) any requirement to utilise the original copy held by a contractor of any relevant approved engineering record, drawing or any other document in respect of the Network, which is immediately necessary to address an issue arising under any of paragraphs (a) to (f) above;

provided that in each case:

- (i) Network Rail acts reasonably (but in its sole discretion in respect of its statutory obligations or safety issues);
- (ii) such issue affects or is affected by the Services or Survey Works being undertaken; and
- (iii) in the case of paragraph (f), Network Rail has used its reasonable endeavours to notify the Customer before the Effective Date as to whether there are any such commitments which are likely to conflict with the Services;

**“Network Rail Consents”** means those consents to be given by Network Rail in relation to the Services, including those consents set out in the Services Contract;

**“Network Rail Costs”** has the meaning specified in Schedule 3;

**“Network Rail Requirements”** means the Health and Safety Management of Third Party Projects (RT/LS/P/043) as may be updated from time to time, plus such other reasonable requirements notified to the Customer by Network Rail in writing from time to time;

**“Network Rail Standard”** means a standards document (or the equivalent of such document) issued by Network Rail for its own use as amended by Network Rail from time to time in relation to the Network as a whole which applies to the performance of the Services;

**“Operational Emergency”** means any situation or circumstance which Network Rail reasonably considers requires immediate or urgent action in order to maintain or restore the effective operation of the Network or any part of it;

**“Operator”** means an operator of passenger or freight trains which has entered into a Track Access Agreement or Freight Access Agreement (respectively) with Network Rail;

**“ORR”** means the Office of Rail Regulation established pursuant to section 15(1) of the Railways and Transport Safety Act 2003;

**“Payment Period”** means the period of up to 28 days (to be notified by Network Rail) commencing on the Effective Date and each period of 28 days thereafter (provided that the length of the first and last such period in any Network Rail financial year may be varied by up to 7 days on reasonable prior notice from Network Rail to the Customer);

**“Possessions”** mean planned safety arrangements which control or prevent the normal movement of rail traffic on the Network between defined locations and for a pre-defined period, including temporary speed restrictions;

**“Project”** has the meaning given to it in the relevant Services Instruction;

**“Project Costs”** means the estimated total costs of the Project (including Network Rail Costs, the Customer’s contractor costs, Regulated Change costs and agreed contingency) from commencement of the relevant Services Instruction up to the completion of the current stage of development contracted for in the relevant Services Contract (including, where Network Rail is providing asset protection services under

## SUBJECT TO CONTRACT

Part B of Schedule 2, the estimated total costs of any related works which the Customer has contracted for);

**“Proposal for Station Change”** has the meaning ascribed to “Proposal for Change” in the Station Access Conditions;

**“Railway”** means the Network and Network Rail’s operations in respect of the Network;

**“Regulated Change”** means any Network Change and/or Station Change, to the extent each is required in connection with the Project;

**“Relief Event”** has the meaning specified in paragraph 9.1;

**“Remit”** means:

- (a) the scope of the Services to be provided by Network Rail, including details of the Deliverables and any access arrangements for Survey Works required by the Customer; and
- (b) the assumptions underlying the Services and the Deliverables

as initially set out in the Services Instruction and as developed, updated and amended in accordance with paragraph 8.2 of this Schedule 1;

**“ROGS”** means the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

**“Safety Case”** means Network Rail’s safety case, as amended from time to time (as defined in the Railways (Safety Case) Regulations 2000) or any safety authorisation held by Network Rail under ROGS;

**“Safety Critical Event”** means risk to the health and safety of any individual or risk of damage or destruction to any property, or any incident which may reduce the safety integrity levels of any item of infrastructure;

**“Safety Plan”** means the documented management system by which the Customer demonstrates how the Contractor will conduct the Survey Works in compliance with the Contractor’s Assurance Case and the requirements set out in the Framework Agreement and the relevant Services Contract;

**“Services”** means the services to be provided by Network Rail pursuant to the relevant Services Contract;

**“Specific Change in Law”** means any Change in Law which applies expressly to:

- (a) the railway industry, a particular section of the railway industry or the provision of services to the railway industry and not to other transport modes or industries; or
- (b) the Project or a Contractor and not to other works or other contractors

which in the case of paragraph (a) occurs after the date the Project achieves Stage Gate 4 and in the case of paragraph (b) occurs after the Effective Date, and which in either case is not reasonably foreseeable as at such date;

**“Stage Gate 4”** means the approval stage reached following Network Rail’s Guide to Railway Investment Projects when approval in principle is required, as may be amended from time to time;

**“Standards”** means Group Standards, Network Rail Standards and any equivalent standards or any standards replacing or superseding any of them;

**“Station Access Conditions”** means the National Station Access Conditions 1996 (England and Wales) together with the station specific annexes applicable to the relevant stations the subject of the Works or any replacement of the same;

**“Station Change”** means the procedures contained in Parts B and C (as applicable) of the Station Access Conditions;

## SUBJECT TO CONTRACT

“**Survey Works**” means any survey (intrusive or non-intrusive), inspection, examination or testing of the Network in respect of this Framework Agreement and any relevant Services Contract;

“**Target Completion Date**” means the target date for completion of the Services as specified in the Development Programme;

“**Track Access Agreement**” means any Access Agreement in respect of track;

“**Visual Survey**” means a visual inspection of the Network without the use of any equipment and without any physical interference with any part of the Network;

“**Work Product**” means all the Deliverables and other documentation, information, source codes, designs, drawings, plans, specifications, outputs and related documentation that have been or will be created by Network Rail for the purposes of the relevant Services Contract; and

“**Works Quality Plan**” means the works quality assurance plan referred to in the Standards.

1.2. In the Framework Agreement and in each Services Contract, unless the context otherwise requires:

- (a) references to a statute, treaty or legislative provision or to a provision of it shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment at any time then in force and to all subordinate legislation made from time to time under it;
- (b) references to any agreement or document include its schedules and attachments and references to “paragraphs”, “Clauses”, “Recitals” or “Schedules” are references to such provisions or parts of the Framework Agreement or Services Contract as applicable;
- (c) references in the singular shall include references in the plural and vice versa, words denoting any gender shall include any other gender and words denoting natural persons shall include any other persons;
- (d) headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Framework Agreement or any Services Contract;
- (e) references to an agreement, deed, instrument, licence, code or other document (including the Framework Agreement), or to a provision contained in any of these, shall be construed, at the particular time, as a reference to it as it may then have been amended, varied, supplemented, modified, suspended, assigned or novated;
- (f) the words “**include**” and “**including**” are to be construed without limitation;
- (g) a reference to a “**law**” includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure (and “**lawful**” and “**unlawful**” shall be construed accordingly);
- (h) a reference to a “**Party**” means a party to the Framework Agreement and any Services Contract and includes its successors in title, permitted assigns and permitted transferees and “**Parties**” shall be construed accordingly;
- (i) reference to a “**person**” includes any person, firm, body corporate, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
- (j) a “**regulation**” includes any regulation, rule or official directive of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

## **SUBJECT TO CONTRACT**

- (k) a reference to “**writing**” includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form; and
- (l) the words in the Framework Agreement and any Services Contract shall bear their natural meaning.

### **2. SERVICES CONTRACT**

2.1. Each Services Contract shall take effect and become binding on the Parties on the Effective Date. Each Party will:

- (a) act in good faith towards the other Party in respect of the Framework Agreement or any Services Contract;
- (b) use reasonable endeavours to avoid unnecessary complaints, disputes and claims against the other Party; and
- (c) not interfere with the rights and obligations of the other Party under the Framework Agreement, or any Services Contract, or in any other way hinder, prevent or delay the other Party from performing their obligations under the Framework Agreement or any Services Contract.

2.2. The Customer shall pay all costs, expenses and disbursements reasonably and properly incurred by Network Rail at the request of the Customer in connection with carrying out or procuring the carrying out of services prior to the Effective Date.

2.3. The Customer shall provide to Network Rail any information reasonably requested from time to time by Network Rail for the purposes of the Services. The Customer shall ensure that any information or instructions provided to Network Rail by or on behalf of the Customer are prepared and given in such a diligent and professional manner and with such clarity and in such detail as is necessary for Network Rail to comply with its obligations under the Framework Agreement and the relevant Services Contract.

2.4. Network Rail shall carry out or procure the carrying out of its obligations and the performance of the Services:

- (a) in accordance with Legal Requirements and such other statutory requirements and mandatory standards as may be applicable to the rail industry from time to time;
- (b) in accordance with the terms of any Necessary Consents;
- (c) in a timely, economic and efficient manner having regard at any particular time to Network Rail's obligations, purposes and duties as operator, renewer, maintainer and developer of the Network;
- (d) exercising the degree of skill, care and diligence reasonably to be expected of a suitably qualified and competent person engaged in carrying out (or procuring and managing the carrying out of) services of a similar nature, scope and complexity to the Services (having regard to Network Rail's role and duties as owner and operator of the Network in accordance with the Network Licence); and
- (e) in accordance with the terms of the Framework Agreement or relevant Services Contract.

The standards set out in paragraph 2.4(a) to (e) are in descending order of priority so that in the event of any conflict between two or more of such standards, Network Rail's obligation will be to act in accordance with the standard listed higher above.

2.5. Network Rail shall:

- (a) at the cost of the Customer make available to the Customer, within a reasonable time, the data and information (except for data and information which is confidential or commercially sensitive or already in the public domain) which the Customer reasonably requires to carry out the Project;
- (b) notify the Customer of the status of the accuracy and completeness of such information on the date of delivery to the best of Network Rail's knowledge and belief; and

## SUBJECT TO CONTRACT

- (c) if it determines subsequent to the date of delivery that such information was inaccurate or incomplete in any material respect, promptly notify the Customer and shall use reasonable endeavours to make any changes necessary to correct such inaccuracies or incompleteness.

Notwithstanding the foregoing or any other provision in the Framework Agreement or any Services Contract, Network Rail does not warrant the accuracy or completeness of any data, information or material provided to the Customer which does not form part of the Deliverables, and the Customer shall be responsible for verifying the accuracy and assessing the sufficiency of all data and information provided.

- 2.6. The Customer agrees and acknowledges that:
  - (a) where the Services involve Network Rail reviewing and approving the work of the Customer or its consultants or contractors (whether for compliance against any Standard or otherwise), such reviewing and approving shall not limit the responsibility of the Customer for that work or such consultant or contractor to the Customer in respect of that work; and
  - (b) where the Services involve Network Rail in preparing or evaluating any proposed development train timetable, the operability of any such development train timetable will be subject to external factors (including evolving development, network capacity and access rights under the Network Code) and can only be modelled against the assumptions made at the relevant stage of development.
- 2.7. If in providing the Services, Network Rail assumes any role as “designer” or “planning supervisor” under the CDM Regulations, Network Rail shall comply with its duties as "designer" or “planning supervisor” respectively and the Customer will act as the "sole client" for the purposes of the CDM Regulations.
- 2.8. Unless expressly stated to the contrary, any reference in the Framework Agreement or any Services Contract to the right of consent, approval or agreement shall be construed such that such consent, approval or agreements shall not be unreasonably delayed or withheld. The Parties acknowledge that:
  - (a) the withholding or delaying of the giving of consent, approval or agreement by the Customer under the Framework Agreement or any Services Contract which would place Network Rail in breach of the law, the Network Licence or any Standard would be unreasonable;
  - (b) nothing in the Framework Agreement or any Services Contract shall require Network Rail to give or procure the giving of any consent or approval which would be contrary to the protection, safety and efficient operation of the Railway and the safety of persons or property on or near the Railway; and
  - (c) notwithstanding any other provision of the Framework Agreement or any Services Contract, in performing its obligations and exercising its rights under the Framework Agreement or any Services Contract Network Rail shall retain sole discretion in relation to safety issues.
- 2.9. If either Party becomes aware of any matter which will prevent or impede it or the other Party from performing their respective obligations on its part in the Framework Agreement or any Services Contract, it shall so notify the other Party promptly and in any event within five Working Days after becoming so aware.
- 2.10. Notwithstanding any other provision of the Framework Agreement or any Services Contract but subject to paragraph 9, Network Rail may at any time during the carrying out of the Services take such action as Network Rail considers necessary to prevent, address, alleviate or comply with a Network Operation Issue, provided that Network Rail shall first consult with the Customer before taking any such action if it is reasonably practicable to do so and shall in any event notify the Customer immediately following any such action.

**3. DEVELOPMENT PROGRAMME AND COSTS ESTIMATE**

- 3.1. The Parties shall co-operate in the planning of a Development Programme. The Development Programme shall set out, in such detail as is reasonably practicable, Network Rail's estimate of the likely programme for the Services, including the Target Completion Date and including any programme for access to the Network for Survey Works by the Customer or its contractors (where agreed by Network Rail. It shall include all submission dates for approval of Design Data and any actions or information required from the Customer to enable Network Rail to progress the Services. Network Rail shall use its reasonable endeavours to progress the Services in accordance with the Development Programme (as amended from time to time with the consent of the Customer).
- 3.2. The Customer shall use reasonable endeavours to comply with its obligations under the Development Programme including carrying out actions or providing information identified as necessary to progress the Services.
- 3.3. Network Rail acting reasonably may, from time to time or when requested by the Customer and in any case in consultation with the Customer, revise and update the Development Programme (including the Target Completion Date and the Long Stop Date) and the Costs Estimate, and each such revised or updated Development Programme and Costs Estimate shall be annexed to the Remit in substitution for any previous Development Programme and Costs Estimate.

**4. CONSENTS**

- 4.1. Where it is identified that Necessary Consents are required, the Parties shall discuss and agree who is to apply for them<sup>4</sup>. The Customer shall provide Network Rail with:
- (a) a draft form of application for any Network Change which may be required in respect of the Project; and
  - (b) if relevant, a Proposal for Station Change (which for the avoidance of doubt shall make reference to all relevant consequential documentation required in respect of the Project, including any lease(s)) which may be required in respect of the Project

for approval by Network Rail.

- 4.2. If it is agreed that Network Rail shall apply for Regulated Change (or if the Customer is not a party to a Track Access Agreement or Station Access Agreement), Network Rail shall administer:
- (a) any application for Network Change in accordance with the procedure set out in the Network Code; and
  - (b) any Proposal for Station Change in accordance with the procedures set out in the Station Access Conditions.

Network Rail shall not object to the Regulated Change in the formal procedure for approval of the same which Network Rail has approved under paragraph 4.1.

- 4.3. Except to the extent that the Customer incurs Direct Costs as a result of the failure of Network Rail to comply with paragraph 2.4, Network Rail shall have no liability whatsoever to the Customer if approval of the Regulated Change is not granted or is the subject of delay in being granted or for the terms upon which the same may be granted, provided that Network Rail shall be obliged to appeal against any decision in respect of Regulated Change if reasonably requested to do so by the Customer.
- 4.4. The Parties shall seek to include an estimate of the costs of applying for Necessary Consents (and any related compensation) in the Services Instruction, together with the estimated timescales. To the extent that it is agreed that Network Rail will apply for and manage certain Necessary Consents for the Project, Network Rail makes no

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<sup>4</sup> Where the Customer is a party to a Track Access Agreement or Station Access Agreement, it shall be responsible for applying for any relevant Regulated Change unless otherwise agreed by Network Rail.



## **SUBJECT TO CONTRACT**

representation that any Necessary Consents will be granted or that the conditions upon which they may be granted will be acceptable to the Customer.

- 4.5. Network Rail shall act in good faith, in a timely manner and in accordance with its Network Licence and its obligations as Infrastructure Controller in considering the Customer's applications for any Necessary Consents required to be given by Network Rail. Network Rail shall use its reasonable endeavours to:
- (a) obtain or issue (as appropriate) the Network Rail Consents as soon as reasonably practicable; and
  - (b) liaise with all relevant third parties to ensure, so far as practicable, that the Network Rail Consents are granted on reasonable terms.

Network Rail's obligation to use reasonable endeavours to obtain the Network Rail Consents is conditional upon Network Rail receiving in full the documentation and assistance it may reasonably require from the Customer.

- 4.6. Network Rail shall in its capacity as the owner and operator of the Network act in good faith and in a timely manner:
- (a) to assist the Customer to obtain derogations from Group Standards or permission for temporary non-compliance; and
  - (b) to consider the Customer's applications for derogations from Network Rail Standards.

Once Network Rail has no objection to any application by the Customer for a derogation pursuant to paragraph 4.6(b), Network Rail shall in a timely manner grant such derogation.

## **5. ACCESS AND POSSESSIONS**

- 5.1. Unless Part B of Schedule 5 is selected, the Customer and its contractors shall only be permitted access to the Network to the extent required to carry out a Visual Survey and Network Rail shall be responsible for all other Survey Works required. Neither the Customer nor its contractors shall carry out any other works or intrusive activities in respect of the Network or bring any equipment onto the Network for any other purpose.
- 5.2. The time and date of any access to the Network for Visual Survey shall be agreed in writing in advance with Network Rail and the Customer and/or its contractors must be accompanied by Network Rail staff or Network Rail's appointed contractors at all times.
- 5.3. A provisional programme for any Survey Works will be included in the Development Programme. If a Possession is required to carry out the Survey Works it shall be booked by Network Rail in accordance with its possession planning and booking system. In carrying out its functions as the timetabling authority and in the booking Possessions, Network Rail shall allocate Possessions in accordance with the Network Code.

## **6. DESIGN REVIEW**

- 6.1. The Customer shall notify Network Rail not less than 25 Working Days prior to a Design Data submission, in line with the Development Programme, giving sufficient detail of the content of the submission and the amount of documentation to be included with the submission for Network Rail to determine the resources required to carry out its obligations under this paragraph 6.
- 6.2. On submitting Design Data the Customer shall provide a list of the Standards, Legal Requirements and other guidance and codes of practice the Customer has complied with in preparing the Design Data. The Customer shall submit any further information, data and documents that Network Rail reasonably requires in order to determine whether Network Rail has a basis for raising comments or making objections to any element of Design Data in accordance with paragraph 6.5.
- 6.3. Subject to paragraph 6.4, if Network Rail fails to return any Design Data identified as on the Development Programme critical path within 25 Working Days from receipt of

## SUBJECT TO CONTRACT

such Design Data (or within such longer period as is specified in Network Rail's programme for a complex approval), Network Rail will pay the Customer liquidated damages at the rate of £1,000 for each Working Day thereafter up to (but excluding) the date on which that Design Data is returned to the Customer (if, and to the extent that, the late return of such Design Data is shown to have delayed completion of the Project).

- 6.4. Network Rail will not be liable to pay liquidated damages if:
- (a) the Customer has not complied with paragraphs 6.1 and 6.2; or
  - (b) the Design Data was not submitted in accordance with the detailed procedures and requirements notified by Network Rail to the Customer from time to time.
- 6.5. Network Rail may approve any element of Design Data subject to the inclusion of comments or withhold approval only if:
- (a) Network Rail reasonably believes that the relevant element of Design Data would (on the balance of probabilities) breach any Legal Requirement;
  - (b) Network Rail reasonably believes that the implementation of the relevant element of Design Data will result in non-compliance with the Customer's obligations under the Services Contract or non-compliance with the Development Programme;
  - (c) the implementation of the element of Design Data would limit, qualify or override or purport to limit, qualify or override any obligation, right or entitlement of Network Rail which arises by reason of:
    - (i) any Network Licence condition; or
    - (ii) the terms and conditions of any Track Access Agreement;
  - (d) Network Rail reasonably believes that the designs submitted are unlikely to result in the works carried out in accordance with such designs being taken into use by Network Rail; and/or
  - (e) insufficient information, data and/or documents have been provided to enable Network Rail to determine whether it has a legitimate basis for commenting or objecting.
- 6.6. If the Customer does not submit such information, data and documents in accordance with paragraphs 6.1 and 6.2, Network Rail shall be entitled to comment on the Design Data on the basis of the information, data and documents which have been provided (without prejudice to paragraph 6.5(e)).
- 6.7. If Network Rail raises comments on any element of Design Data on its return or withholds approval of any element of Design Data, it shall state the ground(s) upon which such comments or the withholding of approval are based and shall provide the supporting evidence or other information where appropriate.
- 6.8. Any element of Design Data which is returned by Network Rail endorsed "Level 1 - Approved, work may proceed" shall be complied with or implemented (as the case may be) by the Customer. The endorsement "Level 1 - Approved, work may proceed" shall mean that the relevant element of Design Data is technically approved as defined in Group Standard GC/RT5101 and associated Network Rail Company Standard RT/E/P/02009.
- 6.9. Where Network Rail has endorsed any element of Design Data "Level 2 - Approved with comments, work may proceed subject to inclusion of comments", the Customer shall proceed to construct (or proceed to the next level of design of) the part of the Project to which the element of Design Data relates but shall take into account any amendments required by Network Rail in its comments. The means of achieving compliance with Network Rail's comments shall be documented and filed for later retrieval on request by Network Rail.
- 6.10. Where Network Rail has endorsed any element of Design Data "Level 3 - Not approved with minor comments, resubmit" or "Level 4 - Not approved with major comments,

## **SUBJECT TO CONTRACT**

resubmit”, the Customer shall not act upon the Design Data but shall amend the element of Design Data in accordance with Network Rail's comments and resubmit the same to Network Rail. Network Rail (acting reasonably, subject to paragraph 2.9(b) and (c)) shall determine whether the comments on any element of Design Data (taking into account individual comments, or the cumulative number of comments) are major or minor.

- 6.11. Where Network Rail has endorsed the element of Reviewable Design Data “Level 5 - Technical Approval not required”, the Customer shall submit the next element of Design Data in accordance with the Development Programme.
- 6.12. Following the return of Design Data, the Customer shall amend the design criteria for the Project to take account of any comments properly made by Network Rail in respect of the relevant Project on such submission and submit further Design Data submissions to Network Rail as may be required by Network Rail.
- 6.13. The Customer shall not authorise the commencement of the detailed design of the works until the Design Data submission has been approved by Network Rail and the works have been allocated a checking category.
- 6.14. Notwithstanding any approval, consent, comment or confirmation which Network Rail may be required to provide pursuant to the Services Contract, the responsibility for the design and construction of the works shall remain solely at the risk and cost of the Customer and Network Rail shall have no liability whatsoever, whether in contract, tort or otherwise for such design and construction or for any errors or omissions contained in the documents relating thereto.

## **7. DESIGN BY THE CUSTOMER**

- 7.1. Where the Customer chooses to appoint any contractors or consultant (other than Network Rail) to carry out any design work in relation to the Project, the Customer shall (without prejudice to paragraphs 7.2 and 7.3):
  - (a) procure that such designer exercises the standard of reasonable skill, care and diligence to be expected of a suitably qualified and competent designer experienced in designing projects of a similar nature, scope and complexity to the Project;
  - (b) procure that each person to whom a contract for any part or all of the design is let (whether such entity is engaged by the Customer directly or as a sub-contractor or as a sub-consultant to any entity engaged directly by the Customer):
    - (i) holds a Contractor's Assurance Case;
    - (ii) has received Link Up Accreditation;
    - (iii) has met any other relevant qualification processes established by Network Rail as at the Effective Date; and
    - (iv) holds insurance cover on terms satisfactory to Network Railand shall at the request of Network Rail be required to demonstrate the same to Network Rail;
  - (c) obtain Network Rail's written approval to the appointment of any planning supervisor and any Checker;
  - (d) procure that such contractor or consultant exercises all reasonable skill, care and diligence to be expected of a prudent and competent professional experienced and skilled in works of a similar size, scope and complexity as the Project;
  - (e) procure that such design works are carried out:
    - (i) in accordance with all Legal Requirements;
    - (ii) in accordance with all Standards as at the date the Project passes Stage Gate 4 and any Change in Standards for safety reasons thereafter (without prejudice to paragraph 8.5) or such derogations from Standards as Network Rail (and/or Competent Authority may approve or consent to in writing and

## **SUBJECT TO CONTRACT**

by expressly referring to it being aware that its approval or consent to the matter in question constitutes a derogation from the relevant Standard);

- (iii) all other relevant current British, European and international codes and standards;
  - (iv) in compliance with all Necessary Consents and so as not to prejudice the renewal of any such Necessary Consents;
  - (v) in accordance with the Safety Case and, if relevant, the safety case of any other station or depot operator;
  - (vi) in a manner that is not likely to be injurious to health or to cause damage to property;
  - (vii) in accordance with all Network Rail Requirements;
  - (viii) in accordance with such other conditions as Network Rail may in its reasonable opinion consider necessary to address, alleviate or comply with (as appropriate) a Design Issue;
  - (ix) in accordance with all other relevant current design codes and standards in relation to the operation of the Network; and
  - (x) in a manner consistent with Network Rail's obligations through its Network Licence and Safety Case to reduce risks on the Network to a level which is as low as reasonably practicable;
- (f) procure that each Contractor, as necessary, produces a Design Quality Plan, Works Quality Plan, Environmental Plan, and a Safety Plan specific to the relevant works (as part of the requirements under the Contractor's Assurance Case in accordance with Standard RT/LS/P/016);
- (g) prepare an 'approval in principle' submission and submit it to Network Rail for comment, subsequently amend the design criteria for the relevant works to take account of any comments made by Network Rail in respect of the relevant works on such submission and submit further 'approval in principle' submissions to Network Rail as may be required by Network Rail (acting reasonably, subject to paragraph 2.9);
- (h) prepare (in accordance with any requirements which Network Rail may have and at the appropriate times within the design process) all the documentation required to enable Network Rail to make submissions for the Necessary Consents and when necessary modify the design process to ensure that such consent is obtained and provide Network Rail with a copy of all such relevant documents so prepared;
- (i) use its reasonable endeavours to procure that such contractor or consultant grants to Network Rail a non-exclusive, royalty-free and irrevocable licence to use any Intellectual Property created by such contractor or consultant in relation to such design work on terms acceptable to Network Rail (acting reasonably);
- (j) procure that such contractor or consultant enters into a collateral warranty in favour of Network Rail in a form set out in Schedule 4 or such other form as is satisfactory to Network Rail (acting reasonably);
- (k) ensure that the design enables future construction or maintenance to be carried out in relation to the relevant works in a way which minimises costs and disruption to the Network (as far as possible), provided that this paragraph shall not apply in relation to any post-construction costs for which the Customer has agreed in writing to accept responsibility; and
- (l) not authorise the commencement of the detailed design works until the 'approval in principle' submission has been approved by Network Rail and the works have been allocated a checking category.

## **SUBJECT TO CONTRACT**

- 7.2. Where in relation to any such design work it has been agreed that Network Rail will undertake asset protection services prior to entering into an Asset Protection Agreement, the Customer shall:
- (a) supply drawings and draft tender documents and amendments to them to Network Rail for comment and approval in writing;
  - (b) not invite tenders for the relevant works until Network Rail has confirmed its acceptance of the tender documents; and
  - (c) not appoint a Contractor to carry out the relevant works without obtaining Network Rail's prior written approval.
- 7.3. Prior to the Customer appointing any contractor or consultant to carry out any design work in relation to the Project, the Customer shall notify Network Rail of the proposed terms of such appointment, including whether the proposed appointee:
- (a) has appropriate insurance cover in accordance with paragraph 7.1(b)(iv) above (or, if not, whether the Customer will effect and maintain such cover);
  - (b) is prepared to provide an Intellectual Property licence as referred to in paragraph 7.1(i) above; and
  - (c) is prepared to enter into a collateral warranty in favour of Network Rail as referred to in paragraph 7.1(j) above;

and shall provide Network Rail with details of any such insurance policies, Intellectual Property licence and collateral warranty. Network Rail shall, within 10 Working Days of receipt of such notification, confirm in writing to the Customer either that it approves or objects on reasonable grounds to the proposed appointment. If Network Rail does not provide the Customer with such confirmation within such period, Network Rail shall be deemed to have approved the appointment. If Network Rail objects to the appointment, the Customer shall not make such appointment but shall instead use reasonable endeavours to identify an alternative. If the Customer disagrees with Network Rail's objection it may also invoke the Escalation Procedure.

- 7.4. In the event of any conflict between any of the conditions set out in paragraph 7.1, compliance with Legal Requirements, Safety Case and Necessary Consents shall take precedence. The Customer shall immediately notify Network Rail if it becomes aware of any conflict between any Legal Requirement, Safety Case or Necessary Consent and the other provisions of the relevant Services Contract and shall provide Network Rail with its proposals for overcoming such conflict as soon as reasonably practicable.
- 7.5. For the purposes of any such design work the Customer is the sole client under the CDM Regulations and shall fulfil all the roles and duties of such including making the necessary declaration to the Health and Safety Executive under Regulation 4 of the CDM Regulations.

## **8. VARIATION OF SERVICES**

- 8.1. Either Party may request a variation to the Services. Following any such request, Network Rail shall discuss with the Customer and provide the Customer with a proposed revised Remit for the Services, setting out:
- (a) the scope of the Services as so varied and any appropriate revision to the terms of the Services Contract, including details of any addition, omission or amendment to the Deliverables which will be produced by Network Rail;
  - (b) a revised non-binding Costs Estimate and an indication of the likely effect on the Development Programme (including the Target Completion Date and the Long Stop Date); and
  - (c) details of the assumptions underlying such proposed revised Remit.
- 8.2. Subject to paragraphs 2.10 and 8.3, no variation to the Remit or the Services shall be effective unless agreed in writing by the Parties.

## SUBJECT TO CONTRACT

- 8.3. Notwithstanding any other provision of the Framework Agreement or any Services Contract but subject to paragraph 8.4, where Network Rail reasonably considers that a variation of the Services is necessary to address, alleviate or comply with (as appropriate) a Design Issue or the Customer is entitled under paragraph 9.1 to a Relief Event, Network Rail shall be entitled to vary the scope of the Remit, provided that Network Rail shall consult with the Customer in relation to the impact on costs and timescales prior to making the variation and shall provide a revised Costs Estimate and Development Programme as soon as reasonably practicable.
- 8.4. If as a result of any change to the scope of the Services or any other change in circumstances the Costs Estimate would increase by more than 10% compared to the Costs Estimate immediately before such change, within 10 Working Days from receipt of notice of such actual or proposed change the Customer may refer the matter to the Escalation Procedure. If the matter is not addressed to the Customer's satisfaction by the Escalation Procedure within 15 Working Days (or such longer period as has been agreed), the Customer may terminate the relevant Services Contract by 20 Working Days' notice in writing (provided that such notice expressly refers to this paragraph 8.4). If the Customer does not so terminate it shall be bound by such change.
- 8.5. The Customer shall reimburse Network Rail in accordance with Schedule 3 for Network Rail's reasonable costs pursuant to this paragraph 8 provided that:
- (a) the Customer shall not be liable for any costs which Network Rail incurs in connection with any Mandatory Variation;
  - (b) the Customer shall not be liable in respect of any costs relating to any Variation proposed by Network Rail which is not implemented (without prejudice to paragraph 9.1(v)); and
  - (c) the Customer shall not be liable in respect of any costs which result from Network Rail failing to comply with paragraph 2.4.
- 8.6. If agreement on any matter under this paragraph 8 is not reached within a reasonable period of time, either Party may refer any matter for resolution in accordance with the Dispute Resolution Procedure.

## 9. COMPENSATION AND RELIEF

- 9.1. The Customer shall be:
- (a) entitled to claim compensation for additional Direct Costs reasonably incurred by the Customer as a result of any delay or disruption to the Development Programme; and
  - (b) relieved from its obligation to pay additional Network Rail Costs incurred as a result of any of the following (a "**Relief Event**"):
    - (i) Network Rail takes or requires any action to be taken pursuant to paragraph 2.10;
    - (ii) any delay in providing access to the Network for Survey Works is caused by a Network Operation Issue (or would have been caused in the absence of remedial action taken by the Customer to avoid any such delay);
    - (iii) any works contractor on any interfacing project prevents, hinders or obstructs a Contractor in respect of its access to the Network, provided that the Customer has managed the interface in accordance with Good Industry Practice;
    - (iv) any Booked Possession for Survey Works is cancelled or altered (including as a result of any default by any Operator); or
    - (v) a Mandatory Variation is implemented in accordance with paragraph 8 provided that such additional costs exceed £10,000 in aggregate in respect of each Relief Event. The Customer shall not be entitled to such compensation to the extent that any delay or cost incurred is due to the negligence, breach or default of the Customer, or the breach or default of any Contractor. In the case of a claim in respect

## SUBJECT TO CONTRACT

of paragraph 9.1(iii) or (iv) which arises out of Network Rail's breach of this Agreement, compensation for Direct Costs shall be included in the calculation of Network Rail's maximum aggregate liability under paragraph 13.4. If Network Rail is able to recover compensation from a third party in relation to any of Relief Event, it shall account to the Customer for all such compensation so received (to the extent that such compensation relates to the Customer's Direct Costs).

- 9.2. Where Network Rail is carrying out Development Services under Part A of Schedule 5, it shall notify the Customer of any Relief Event as soon as reasonably practicable.
- 9.3. Where the Customer is procuring asset protection from Network Rail whether or not under Part B of Schedule 5, it shall:
- (a) as soon as reasonably practicable, and in any event by the Notification Date (as defined below) notify Network Rail of the relevant Relief Event including:
    - (i) details of all Direct Costs claimed (including evidence, on an open book basis, of the calculation of the Direct Costs);
    - (ii) any relief claimed in respect of its obligations under the Services Contract; and
    - (iii) a revised Development Programme under paragraph 3 (if appropriate); and
  - (b) provide evidence to Network Rail that:
    - (i) the Relief Event was the cause of the Direct Costs and/or any delay in providing access; and
    - (ii) the Direct Costs, time lost and relief from the obligations under the Services Contract claimed (as the case may be) could not reasonably be expected to be mitigated or recovered by the affected Contractor and its sub-contractors acting in accordance with Good Industry Practice.
- 9.4. If the Customer fails to give Network Rail written notice of its claim by the Notification Date, the Customer shall not be entitled to claim compensation or relief in respect of that Relief Event. For the purposes of this paragraph 9.4 "**Notification Date**" means the date falling 15 Working Days after:
- (a) the relevant Relief Event has caused delay, breach of an obligation under the Framework Agreement or any Services Contract and/or caused a Contractor to incur costs; or
  - (b) (if earlier) the date on which the Customer or a Contractor becomes aware (or ought reasonably to have become aware) that the Relief Event is likely to have such an effect.
- 9.5. Subject to paragraph 9.4, in respect of each Relief Event the Parties shall agree the Direct Costs and the revised Development Programme (including any changes to the Target Completion Date or the Long Stop Date) on the basis of the details and evidence provided by Network Rail or the Customer pursuant to paragraphs 9.2 and 9.3 respectively, taking into account the likely effect of delay in the progress of the Services having regard to a reasonable level of ongoing programming contingency.
- 9.6. Promptly following the agreement (or determination pursuant to the Dispute Resolution Procedure) of the amount of the Direct Costs, the Customer shall deliver an invoice to Network Rail and Network Rail shall pay that sum within 30 Working Days. Should any amount not be paid within such period (except any amount determined not to be payable pursuant to the Dispute Resolution Procedure), such amount due shall bear interest thereon at the Interest Rate from and including the due date for payment to and including the date of actual payment.
- 9.7. Save as set out in paragraph 9.1 and without prejudice to paragraph 13.3, neither Party shall have any other right or remedy whether under or in connection with the Framework Agreement or any Services Contract against the other for any Relief Event.

**10. INTELLECTUAL PROPERTY RIGHTS**

- 10.1. Network Rail shall own all Work Product and all Intellectual Property created by or on behalf of Network Rail.
- 10.2. Network Rail hereby grants to the Customer a non-exclusive, royalty-free and irrevocable licence to use any Intellectual Property created by or on behalf of Network Rail (excluding any and all Intellectual Property which has not been developed or produced for the purposes of the Framework Agreement, Services Contract or the Services), provided that Network Rail shall not be obliged to grant the Customer any rights in any Intellectual Property which it does not own.
- 10.3. Where Part B of the Special Conditions applies, Network Rail shall procure that each licence granted in accordance with paragraph 10.2 carries with it the right for the Customer to grant such sub-licences to third parties as are necessary for the purposes of the Project, provided that any such sub-licence shall impose confidentiality obligations upon the sub-licensee which are no less onerous than the confidentiality obligations upon the Customer under the Services Contract; and
- 10.4. Network Rail shall have no liability whatsoever in respect of the use by the sub-licensee (other than for the purposes of the Project) of any Intellectual Property or any other documentation or information provided by Network Rail to the Customer, and the Customer shall indemnify Network Rail from and against any and all Losses with respect thereto (subject to paragraph 13.9).
- 10.5. The Customer hereby grants to Network Rail a non-exclusive, royalty-free and irrevocable licence to use any Customer Intellectual Property, provided that the Customer shall not be obliged to grant Network Rail any rights in any Intellectual Property which it does not own (without prejudice to the Customer's obligations under paragraph 6(c) of Part B of Schedule 2).

**11. NETWORK RAIL COSTS**

- 11.1. The Customer shall pay the Network Rail Costs to Network Rail in accordance with the terms set out in this paragraph 11 and Schedule 3. A non-binding estimate of Network Rail's total costs shall be set out in each Services Instruction, unless an alternate payment arrangement has been agreed between the Parties.
- 11.2. Within 10 Working Days after the end of each Payment Period throughout the carrying out of the Services, Network Rail shall submit an invoice (with an attached breakdown including any supporting information reasonably requested by the Customer) to the Customer in respect of the Network Rail Costs applicable to that Payment Period (or to either or both of the two immediately preceding Payment Periods, if not previously invoiced) and any other sums payable by the Customer to Network Rail under the Framework Agreement or any Services Contract and relating to the relevant Payment Period. Subject to paragraph 11.3, payment by the Customer to Network Rail shall be without set-off, retention, counterclaim, abatement or any other deduction and shall be due 10 Working Days after the date of issue of the invoice (the **"due date for payment"**) and the final date for payment of that invoice shall be 10 Working Days from the due date for payment (the **"final date for payment"**).
- 11.3. Not later than five Working Days after the due date of the invoice, the Customer shall give notice to Network Rail stating the amount which the Customer proposes to pay and the basis on which that amount is calculated. Where no such notice is given, the amount to be paid is that stated in the invoice.
- 11.4. Where the Customer intends to withhold payments of any amount claimed by Network Rail in the invoice, notice must be given to Network Rail not later than five Working Days before the final date for payment under paragraph 11.2. The notice shall state the amount to be withheld and the grounds for withholding payment.
- 11.5. Should any invoice not be paid by the final date for payment in accordance with paragraph 11.4 (except in respect of any amount determined not to be payable pursuant to paragraph 18), interest shall be payable on the amount due calculated from



## **SUBJECT TO CONTRACT**

the due date for payment up to and including the actual date of payment at the Interest Rate.

### **12. VALUE ADDED TAX**

- 12.1. Unless stated otherwise, all amounts referred to in the Framework Agreement or in any Services Contract shall be deemed to be exclusive of VAT.
- 12.2. Where any taxable supply for VAT purposes is made under or in connection with the Framework Agreement or any Services Contract by one Party to the other, the payer shall, in addition to any payment required for that supply, pay upon presentation of a valid tax invoice such VAT as is chargeable in respect of it.
- 12.3. Where under the Framework Agreement or any Services Contract one Party has agreed to reimburse or indemnify the other in respect of any payment made or cost incurred by the other Party, the first Party shall also reimburse any VAT paid by the other Party which forms part of its payment made or cost incurred to the extent such VAT is not available for credit for the other Party or for any member of its VAT group under sections 25 and 26 of the Value Added Tax Act 1994.
- 12.4. Where under the Framework Agreement or any Services Contract any rebate or repayment of any amount is payable by one Party to the other, and the first Party is entitled to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made and the first Party shall issue an appropriate VAT credit note to the other Party.

### **13. LIMITATION OF LIABILITY**

- 13.1. Save as otherwise expressly provided in the Framework Agreement or any Services Contract, neither party shall be liable in respect of any breach of any of its obligations under this agreement (other than under paragraph 11 of this Schedule 1) unless the aggregate amount of all claims for which the respondent would otherwise be liable to the claimant exceeds £10,000.
- 13.2. Save as set out in paragraph 6.3 and 9, Network Rail shall have no liability to the Customer for any costs or delays resulting from:

- (a) the terms of or failure to obtain or receive timely Possessions, Network Rail Consents, consents, permissions, orders and approvals; or
- (b) any delay in relation to the Development Programme

unless such costs or delays are due to the negligence of Network Rail or breach of paragraph 2.4 of the General Conditions.

In the event of any such delay which is not due to a Relief Event, Network Rail's liability for delays due to its negligence or breach of paragraph 2.4 of the General Conditions shall be satisfied in full by the payment of liquidated damages by Network Rail to the Customer at the rate of £1,000 per day of delay (only accruing after the Long Stop Date has passed). Any damages for delay shall be adjusted to the extent that the relevant delay is caused by the Customer's own negligence or breach of its obligations under the Framework Agreement or any Services Contract.

- 13.3. The Parties agree that damages may not be an adequate remedy for any breach of the Framework Agreement or any Services Contract and the Parties shall be entitled to seek the remedy of an injunction or other equitable relief (without prejudice to paragraph 2.9) provided that Network Rail shall not be required to rework any Services where:
  - (a) Network Rail considers, at its sole discretion, that reworking the Services has potential to conflict with its statutory obligations or undertakings as network operator; or
  - (b) the Customer has not confirmed that it will meet the costs of any rework where such costs exceed Network Rail's limit of liability in paragraph 13.4.

## SUBJECT TO CONTRACT

- 13.4. Without prejudice to paragraph 13.2 Network Rail's maximum aggregate liability in respect of the Framework Agreement or any Services Contract shall in any event be limited to an amount equal to 300% of the Network Rail Fee paid to Network Rail by the Customer under such Services Contract, provided that such limitation shall not apply to:
- (a) Losses in respect of which Network Rail recovers compensation pursuant to paragraph 13.5 in respect of such Services Contract or pursuant to any insurance policy effected by Network Rail pursuant to paragraph 5.1 of Part A of Schedule 2 (in each case if and to the extent that such compensation is actually recovered by Network Rail and relates to Direct Costs incurred by the Customer and not by Network Rail itself);
  - (b) any liability in respect of death or personal injury resulting from the negligence of Network Rail or any person for whom Network Rail is responsible;
  - (c) Network Rail's obligation to pay compensation for any Relief Event pursuant to paragraph 9 except any obligation to pay compensation under paragraph 9.1(iii) or (iv) which arises out of Network Rail's breach of this Agreement; or
  - (d) Losses arising due to the fraud or negligence of Network Rail or breach of paragraph 2.4.
- 13.5. If the Customer suffers loss as a result of the act or default of any Consultant, Network Rail shall take such steps as the Customer may reasonably request to obtain compensation for the Customer from that Consultant or from the Consultant's insurers and/or to terminate the relevant Consultancy Contract. Network Rail shall account to the Customer for all compensation so received (to the extent that such compensation relates to loss suffered by the Customer rather than Network Rail itself).
- 13.6. Where Network Rail is required to appoint a Consultant as part of the Services, Network Rail's responsibility in respect of any Consultant shall be limited to using the degree of skill and care set out in paragraph 2.4 of the General Conditions to procure and manage an appropriate Consultant and to complying with its obligations under paragraph 13.5. Subject thereto, Network Rail shall have no further liability whatsoever (whether in contract, tort (including negligence), indemnity, warranty or otherwise) for any Losses suffered by the Customer or any third party as a result of or in connection with the use of any work done or produced by such Consultant.
- 13.7. Any claim against Network Rail in respect of any matter arising out of or in connection with any Consultant must be notified by the Customer before the expiry of the relevant Consultant's period of liability to Network Rail.
- 13.8. If the Customer provides any document or Work Product produced by Network Rail or any Consultant to a third party, Network Rail shall have no liability to such third party in respect of the use of such document or work product for any purpose other than that for which it was produced and the Customer shall obtain prior written acknowledgement from the third party to this effect.
- 13.9. The Customer's maximum aggregate liability in respect of this Framework Agreement and the Services Contracts shall in any event be limited to:
- (a) 250% of the total Network Rail Costs paid or payable by the Customer pursuant to this Framework Agreement and Services Contracts (excluding VAT) in respect of Services carried out by Network Rail<sup>5</sup>; or
  - (b) 250% of the Project Costs in respect of the Services carried out by Network Rail<sup>6</sup>.
- Such limitation shall not apply in respect of:
- (i) any design services provided by the Customer or any consultant or contractor appointed by the Customer (other than Network Rail);

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<sup>5</sup> This sub paragraph applies where Network Rail is delivering Services

<sup>6</sup> This subparagraph applies where Network Rail is only providing asset protection

## SUBJECT TO CONTRACT

- (ii) the Customer's payment obligations under paragraphs 8.5, 11 or 12 of Schedule 1 and Schedule 3;
  - (iii) any Losses arising due to the fraud or negligence of the Customer or any Contractor;
  - (iv) any Losses in respect of which the Customer is entitled to compensation as a result of the breach or default of any Contractor (or would be so entitled but for the Customer's own default) and for these purposes the entitlement of the Customer to compensation shall be deemed not to be affected by this paragraph; or
  - (v) any Losses in respect of which the Customer is entitled to recovery from its insurers (or would be so entitled but for the Customer's own default) and for these purposes the entitlement of the Customer to recover shall be deemed not to be affected by this paragraph.
- 13.10. In no circumstances shall Network Rail or the Customer be liable to one another in respect of the Framework Agreement, any Services Contract or any matter arising out of or in connection with the Services for any indirect or consequential loss (including loss of profit) howsoever arising (without prejudice to any express payment or indemnity obligation of either Party under the Framework Agreement or any Services Contract).
- 13.11. Notwithstanding any other provision in the Framework Agreement or any Services Contract, the provisions of this paragraph 13 do not apply to liability for personal injury or death caused by negligence.

## 14. INDEMNITY

- 14.1. Subject to paragraph 13.9, the Customer shall indemnify Network Rail and keep Network Rail indemnified against any Losses arising from:
- (a) claims against Network Rail by any third party in relation to the carrying out or the procuring of the carrying out of the Services or the obligations assumed by Network Rail or the carrying out of Survey Works or preparatory works by the Customer pursuant to this Framework Agreement or any Services Contracts;
  - (b) any provisions of the Framework Agreement or Services Contracts being, or being alleged to be, void, voidable, unenforceable, invalid or ineffective due to lack of capacity on the part of the Customer
  - (c) any third party alleging a breach of the CDM Regulations in respect of the Services (except as a result of the negligence of Network Rail or a breach by Network Rail of its obligations under the Framework Agreement or any Services Contracts); or
  - (d) the Customer or any of its employees, agents or sub-contractors infringing or being held to have infringed any intellectual property rights in the course of or in connection with the Framework Agreement or any Services Contracts;
  - (e) any claim against Network Rail made for common law nuisance or pursuant to the Land Compensation Act 1973 which is attributable to the design of the Project or carrying out or completion of the Survey Works or preparatory works as part of the Railway (up to a limit to be set out in each Services Instruction ("**the Land Compensation Limit**") where such claim relates to the Network or land owned by Network Rail.

In respect of any Losses subject to the indemnity in this paragraph 14.1, Network Rail shall take all reasonable steps to prevent, mitigate and restrict the circumstances which have given or may give rise to such Losses.

- 14.2. Network Rail, upon becoming aware of any claim in respect of which it may be entitled to indemnification under paragraph 14.1, shall give written notice to the Customer as soon as reasonably practicable, and in any event within 20 Working Days of it reasonably appearing that Network Rail may be entitled to indemnification pursuant to paragraph 14.1.

## **SUBJECT TO CONTRACT**

- 14.3. Subject to Network Rail obtaining the prior written consent of its insurers, the Customer shall be entitled to resist any such claim in the name of Network Rail and shall have the right to conduct any defence, dispute, compromise or appeal of such claim or negotiations subject to paragraph 14.4. Network Rail shall give the Customer all reasonable co-operation, access and assistance for the purpose of considering and resisting such claim.
- 14.4. Where the Customer is responsible for conducting any claim pursuant to paragraph 14.3, it shall keep Network Rail fully informed and consult with it about the conduct of such claim and shall not pay or settle such claim without the consent of Network Rail, provided that Network Rail shall be entitled to pay or settle any claim on such terms as it in its absolute discretion considers fit without prejudice to any other rights or remedies it may have if:
- (a) the Customer fails to notify Network Rail of its intention to dispute any claim within 15 Working Days after receipt of the notice referred to in paragraph 14.2;
  - (b) the Customer fails to comply in any material respect with the provisions of this paragraph 14; or
  - (c) Network Rail waives the indemnity contained in paragraph 14.1 by notice in writing to the Customer

provided that before making any such payment or entering into any such settlement Network Rail shall give the Customer 15 Working Days' notice of its intention to do so (and if before the expiry of such notice the Customer notifies Network Rail of its intention to dispute the claim or remedy its non-compliance, as the case may be, Network Rail shall not make such payment or enter into such settlement).

- 14.5. The obligations of the Customer under paragraph 14.1:
- (a) are in addition to and not in substitution for any other indemnity, guarantee or any security which Network Rail may at any time hold; and
  - (b) may be enforced by Network Rail at its discretion without first having recourse to any other such indemnity, guarantee or security, without taking any steps or proceedings against the Customer or any other person, and without resorting to any other means of payment.

## **15. FORCE MAJEURE**

- 15.1. Subject to paragraph 15.2 and 15.3, each Party shall be relieved from liability for non-performance of its obligations under the Framework Agreement or any Services Contracts (other than any obligation to make payment) to the extent that it is not able to perform its obligations under the Framework Agreement or any Services Contracts by reason of a Force Majeure Event.
- 15.2. Each Party shall at all times following the occurrence of a Force Majeure Event:
- (a) take all reasonable steps to prevent and mitigate the consequences of such an event upon the performance of its obligations under the Framework Agreement or any Services Contract, resume performance of its obligations affected by the Force Majeure Event as soon as practicable and use all reasonable endeavours in accordance with Good Industry Practice to remedy its failure to perform; and
  - (b) not be relieved from liability under the Framework Agreement or any Services Contract to the extent that it is not able to perform, or has not in fact performed, its obligations under the Framework Agreement or any Services Contract due to any failure to comply with its obligations under Clause 15.2(a).
- 15.3. On the occurrence of a Force Majeure Event, the affected Party shall serve notice on the other Party as soon as reasonably practicable and in any event within 10 Working Days of it becoming aware of the relevant Force Majeure Event. Such notification shall give sufficient details to identify the particular event claimed to be a Force Majeure Event and shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including the date of occurrence of the Force Majeure Event, the effect of the Force Majeure Event on the ability of the affected Party

## SUBJECT TO CONTRACT

to perform, the action being taken in accordance with Clause 15.2(a) and an estimate of the period of time required to overcome the effects of the Force Majeure Event. The affected Party shall provide the other Party with any further information it receives or becomes aware of which relates to the Force Majeure Event and provide an update on the estimate of the period of time required to overcome its effects.

- 15.4. The affected Party shall notify the other Party as soon as practicable once the performance of its affected obligations can be resumed (performance to continue on the terms existing immediately prior to the occurrence of the Force Majeure Event).
- 15.5. As soon as practicable following the notification described in paragraph 15.3, the Parties shall use all reasonable endeavours to agree appropriate terms or modifications to the Development Programme to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of the Framework Agreement or any Services Contract.
- 15.6. If no such terms or modifications are agreed on or before the date falling three months after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its effects remain, then either Party may terminate the Services Contract, as applicable, with immediate effect by written notice to the other Party. Upon termination the provisions of paragraph 16 shall apply.
- 15.7. Upon termination the provisions of paragraph 16 shall apply.

## 16. TERMINATION AND SUSPENSION

- 16.1. Without prejudice to the Customer's right to terminate under paragraph 8.4, either Party may by written notice terminate a Services Contract with immediate effect if:
  - (a) the other Party commits any persistent or material breach of such Services Contract (which shall include any failure to pay an amount of at least £10,000 which is due to the other Party) and, in the case of a breach which is capable of remedy, fails to remedy that breach within 10 Working Days (or such longer period as the terminating Party may specify) after receipt of a written notice giving full particulars of the breach and requiring it to be remedied; or
  - (b) the other Party becomes Insolvent.

In any event, the Customer may terminate any Services Contract by written notice of not less than two calendar months.

- 16.2. Without prejudice to paragraph 16.1, Network Rail may suspend all or part of the Services under any Services Contract:
  - (a) by serving not less than five Working Days' notice in writing on the Customer if it is not reasonably practicable for Network Rail to provide such Services due to any relevant Consultancy Contract having been suspended or terminated or ceasing to be in full force and effect, save where such suspension, termination or cessation arises due to Network Rail being in breach of such Consultancy Contract; or
  - (b) with immediate effect to the extent necessary to prevent, address, alleviate or comply with (as applicable) an Operational Emergency or Safety Critical Event.

In the event of any such suspension Network Rail shall forthwith notify the Customer and shall take all reasonable steps to mitigate the effect of such suspension (including seeking to procure an alternative Consultant if appropriate). The Parties shall meet within 10 Working Days to discuss how to address the circumstances which have given rise to such suspension. If there is no agreement this shall be dealt with in accordance with the Escalation Procedure. Once such circumstances cease to apply (wholly or partly), Network Rail shall resume the Services as soon as reasonably practicable to the extent that it can do so.

- 16.3. If the Customer is in default over payments of amounts properly due in respect of Network Rail Costs, and no notice of intention to withhold such amounts has been

## **SUBJECT TO CONTRACT**

given pursuant to paragraph 11.4, Network Rail may suspend performance of any or all of the affected Services Contracts subject to Network Rail first giving the Customer not less than five Working Days' notice of such intention and stating the grounds for suspension. Such right to suspend performance shall cease once the Customer makes payment of the amount due.

16.4. Upon issue or receipt of any notice of termination, Network Rail shall:

- (a) ensure that expenditure under the Consultancy Contracts is reduced as rapidly as possible; and
- (b) take immediate steps to bring an end to the performance of the Services in an orderly manner.

16.5. Upon termination or completion of a Services Contract, as applicable, the obligations of the Parties under such Services Contract shall cease except for:

- (a) any obligations arising as a result of any antecedent breach of such Services Contract or any accrued rights;
- (b) the provisions of
  - (i) paragraphs 10.5, 11 to 14 (inclusive), 17 and 18 of Schedule 1; and
  - (ii) paragraphs 6(c), 6(f) and 8 of Part B of Schedule 2

which shall survive the termination or expiry of the Services Contract and continue in full force and effect along with any other paragraphs of or Schedules to the Framework Agreement which are necessary to give effect to them.

16.6. If the Services Contract is terminated for any reason prior to completion of the Services, the Customer shall pay:

- (a) the Network Rail Costs up to the date of termination; and
- (b) (except where termination is due to Network Rail's negligence or breach or Network Rail becoming Insolvent or a Force Majeure Event under paragraph 15.6) Network Rail's Costs in connection with such termination (including terminating relevant Consultancy Contracts and sub-contracts and vacating and leaving the site and adjacent areas in such condition as meets Network Rail's requirements in relation to the Network).

16.7. Save as provided under paragraph 16.6, neither Party shall be liable to the other Party for or in respect of any Losses arising out of or in connection with termination of the Services Contract

## **17. CONFIDENTIALITY**

17.1. Subject to paragraphs 17.2 and 17.5, the Parties shall:

- (a) at all times keep all Confidential Information confidential to the Party receiving it and shall not disclose such Confidential Information to any other person; and
- (b) procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information

except with the other Party's prior written consent.

17.2. Each Party shall, without the prior written consent of the other Party, be entitled to disclose Confidential Information:

- (a) that is reasonably required by that Party in the performance of its obligations pursuant to the Framework Agreement or any Service Contract, including the disclosure of any Confidential Information to any employee, consultant, agent, officer, sub-contractor (of any tier) or adviser to the extent necessary to enable that Party to perform its obligations under the Framework Agreement or any Services Contract;
- (b) to enable a determination to be made pursuant to paragraph 18;

## SUBJECT TO CONTRACT

- (c) to its lenders or their professional advisers, any rating agencies, or its insurance advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
- (d) to the extent required by the Act or any other applicable Legal Requirement or pursuant to an order of any court of competent jurisdiction, any parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law;
- (e) to register or record any Necessary Consents and to effect any property registration that may be required;
- (f) for the purpose of the examination and certification of either Party's accounts;
- (g) in relation to disclosure by Network Rail, in order to fulfil its Network Licence obligations or assist in the planning or execution of other maintenance, renewal or enhancement projects;
- (h) to the Health and Safety Executive;
- (i) to any Affiliate of either party; or
- (j) to the extent it has become available to the public other than as a result of any breach of an obligation of confidence;

provided that any such disclosure is made in good faith.

- 17.3. Where disclosure is permitted under paragraph 17.2(a), (c) or (i), the Party making such disclosure shall ensure that the recipient of the information is subject to the same obligation of confidentiality as that contained in the Framework Agreement or any Services Contract.
- 17.4. Subject to paragraphs 17.2(c) to (h) (inclusive) and 17.2 (j), neither Party shall make use of any information arising out of the Services issued or provided by or on behalf of the other Party in connection with the Framework Agreement or any Services Contract otherwise than for the purposes of the relevant agreement, except with the prior written consent of the Party by whom or on whose behalf the information was provided.
- 17.5. Nothing in this paragraph 17 shall be deemed to prohibit, prevent or hinder, or render either Party liable for, the disclosure of any information by that Party to the ORR, the Parliamentary Commissioner for Administration, a Minister of the Crown or any department of the Government of the United Kingdom, the European Commission, Parliament, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, the Greater London Authority or any department or officer of any of them or of information which is otherwise disclosed for the purpose of facilitating the carrying out of its functions.
- 17.6. If the Framework Agreement or Services Contract (as applicable) is terminated, each Party shall:
- (a) return to the other Party all of the Confidential Information then within its possession or control; or
  - (b) destroy such Confidential Information using a secure and confidential method of destruction; or
  - (c) unless reasonably requested to return it, retain such Confidential Information but so that the Party in question shall only be required to return any such information if it can readily identify and locate such information. If a Party elects to retain any such Confidential Information the provisions of this paragraph 17 shall remain in full force and effect in relation to such Confidential Information notwithstanding the termination of the Framework Agreement or any Services Contract.
- 17.7. Save as required by law or regulation, neither Party shall issue any press release in relation to the matters contemplated by the Framework Agreement or any Services Contract without the prior written consent of the other Party as to both the content and the timing of the issue of the press release.

**18. DISPUTE RESOLUTION**

- 18.1. In the event of any disagreement relating to the Framework Agreement or any Services Contract, either Party may at any time invoke the Escalation Procedure (in accordance with its terms) without prejudice to its other rights and obligations.
- 18.2. Any Dispute may be referred by either Party at any time to an adjudicator for adjudication in accordance with the following provisions:
- (a) the Scheme for Construction Contracts SI No. 649 of 1998 shall apply; and
  - (b) if the parties are unable to agree on a person to act as adjudicator, the adjudicator shall be nominated at the request of either party by the President or Vice President for the time being of TECBAR.
- 18.3. If a Dispute is referred to an adjudicator, neither Party may commence any further proceedings until 20 Working Days after the decision of the adjudicator in relation to such Dispute has been given.
- 18.4. The decision of an adjudicator properly appointed in accordance with the Framework Agreement or the relevant Services Agreement will be binding until the Parties decide otherwise or the decision is referred to the courts for final determination, and in any proceedings the courts shall have full power to open up, review and revise any certificate, opinion, decision, instruction, direction, valuation, requisition or notice given or made under the relevant agreement and any determination of an adjudicator, including an award as to costs.
- 18.5. If any dispute or difference of any kind whatsoever shall arise between:
- (a) Network Rail and any Consultant; or
  - (b) between the Customer and any consultant appointed by the Customer in relation to the Project

which is substantially the same or connected with issues in any dispute or difference between Network Rail and the Customer, either Party shall be entitled to require that the other Party shall be joined as a party to any determination pursuant to the relevant consultancy contract and the other Party shall permit and co-operate in such joinder.



SCHEDULE 2: SPECIAL CONDITIONS

PART A: DEVELOPMENT SERVICES

**1. DEFINITIONS**

- 1.1. In this Part A, except where the context otherwise requires, the following words and expressions have the following meanings:

“**Brief**” means the outline details of the Project and the objectives of the Services as set out in the Services Instruction;

“**Completion Certificate**” means a certificate issued by Network Rail in accordance with paragraph 4;

“**Objection Notice**” means a notice given by the Customer in accordance with paragraph 4.2 objecting to a Provisional Completion Certificate; and

“**Provisional Completion Certificate**” means a certificate issued by Network Rail in accordance with paragraph 4.1.

**2. OBJECTIVES AND BRIEF**

- 2.1. The Parties shall work together in developing the Remit in which the Services and Deliverables are set out with a view to achieving the objectives set out in the Brief. No variation to the Brief will be effective unless agreed in writing by a duly authorised representative of each Party.
- 2.2. Network Rail shall assist the Customer in developing the Remit, including identifying the scope of the Services and the Deliverables, the underlying assumptions and any requirements for Survey Works. If the Parties are unable to agree the Remit, the Customer shall pay the Network Rail Costs reasonably incurred by Network Rail in developing the Remit.
- 2.3. Network Rail may notify the Customer of any changes to the Services and/or any additional services which it considers may be necessary or advisable in order either to fulfil the Brief or facilitate the development of the Project by the Customer, and the Customer may request Network Rail to implement changes or undertake additional services in connection with the Project. Any such proposed changes or additional services shall be dealt with in accordance with paragraph 8 of Schedule 1. The Parties acknowledge that such changes may only become apparent in the course of providing the Services, including as a result of changes to assumptions and the development of design options.
- 2.4. Following agreement of the Remit, Network Rail shall from time to time review the Remit with input from the Customer, including reviewing the Development Programme and Costs Estimate, and shall notify the Customer of any changes which Network Rail considers may be needed to fulfil the objectives set out in the Brief.

**3. PROJECT DEVELOPMENT MEETINGS**

- 3.1. The Customer shall arrange project development meetings at monthly intervals (or more often if required), at which appropriate personnel of Network Rail and the Customer shall be present, to discuss the progress of the Services. The Customer shall give appropriate notice of and agree the agenda with Network Rail for all such meetings.
- 3.2. Each Party shall appoint a representative with full authority to act on its behalf in connection with the Services Contract (the initial representatives being identified in Schedule 6). Any restriction placed by either Party on its representative’s authority must be notified to the other Party in writing in order to be effective. The representatives may delegate their authority by notice in writing specifying the identity of the delegate and specifying the authority so delegated.

3.3. Network Rail shall:

- (a) procure that all appropriate accounts and records (including timesheets) relating to the Network Rail Costs are maintained and made available to the Customer for inspection;
- (b) ensure that such accounts and records show any changes in any costs or estimated costs (including any changes in the Costs Estimate) and the reason for such changes, with a view to identifying at an early stage whether costs are likely to exceed the Costs Estimate;
- (c) provide the Customer with regular reports on the progress of the Services in a format and at intervals to be agreed between the Parties; and
- (d) have due regard to, but not be bound by, any comments or representations made by the Customer in connection with such reports or at any meetings and shall provide reasons to the Customer where it does not take into account any such comments or representation.

**4. CONSULTANTS**

4.1. At the Customer's request, Network Rail shall use reasonable endeavours to obtain from any proposed Consultant which is undertaking design work:

- (a) a collateral warranty in such form as is reasonably satisfactory to the Customer (to be based on Network Rail's standard form of collateral warranty in its supply contracts, where applicable); and
- (b) an Intellectual Property licence on the terms of paragraph 10.2 of Schedule 1.

4.2. Prior to appointing any Consultant, Network Rail shall notify the Customer of the proposed terms of appointment of such Consultant, including whether the proposed Consultant:

- (a) is prepared to enter into a collateral warranty with the Customer as referred to in paragraph 4.1(a);
- (b) is prepared to provide an Intellectual Property licence as referred to in paragraph 4.1(b);
- (c) has appropriate insurance cover (or, if not, whether Network Rail will effect and maintain such cover) as referred to in paragraph 5.1; and
- (d) wishes to limit the period of its liability (and if so, to what extent).

and shall provide the Customer with details of any such Intellectual Property licence, insurance policies, collateral warranty and/or limitation of liability.

4.3. The Customer shall, within 10 Working Days of receipt of notification under paragraph 4.2, confirm in writing to Network Rail either that it approves or objects on reasonable grounds to the appointment of the proposed Consultant. If the Customer does not provide Network Rail with such confirmation within such period, the Customer shall be deemed to have approved the appointment.

4.4. If the Customer objects on reasonable grounds to the appointment, Network Rail shall not appoint the proposed Consultant but shall instead use reasonable endeavours to identify an alternative, taking into account current market practice and all other relevant circumstances. If the Customer disagrees with Network Rail's proposed appointment it may also invoke the Escalation Procedure. Network Rail may make appropriate adjustments to the Development Programme (including the Target Completion Date and the Long Stop Date) pursuant to paragraph 3.4 of Schedule 1 to reflect the impact of the delay in appointing the relevant Consultant. If the Parties have not agreed to appoint an alternative Consultant (taking into account current market practice and all other relevant circumstances) within 30 Working Days (unless a longer period has been agreed between the Parties) from the date of objection by the Customer, Network Rail may suspend the Services and either Party may refer the dispute to the Escalation Procedure. If the dispute is not referred to the Escalation Procedure within 30 Working

## SUBJECT TO CONTRACT

Days (or such longer period as has been agreed), Network Rail may terminate the relevant Services Contract with immediate effect by written notice to the Customer.

- 4.5. For the avoidance of doubt, any exercise by the Customer of its right to object pursuant to paragraph 4.4 shall not affect Network Rail's obligations to provide the Development Services to the extent that Network Rail is able to do so prior to the appointment of an alternative Consultant.

## 5. INSURANCE

- 5.1. Network Rail shall, up to the date of termination of the Services Contract or the date of the issue of the final Completion Certificate (whichever is the earlier), use its reasonable endeavours to procure that each proposed Consultant with a design responsibility effects and maintains appropriate professional indemnity and public liability insurance, as agreed between the Parties, to cover any claim against it for any negligent act, error or omission in providing the Services. Network Rail shall be entitled to effect and maintain public liability insurance itself where it decides that it is appropriate for it to do so (subject to first having consulted with the Customer), and where Network Rail itself effects and maintains such insurance, it shall not be under an obligation to use its reasonable endeavours to procure that each Consultant effects and maintains such insurance.
- 5.2. Network Rail shall, whenever reasonably requested by the Customer, provide evidence to the reasonable satisfaction of the Customer that the insurances referred to in paragraph 5.1 are being maintained as provided for therein.

## 6. COMPLETION CERTIFICATE

- 6.1. When in its reasonable opinion Network Rail has completed such Services or Deliverables as constitute all or an identifiable part of the Remit, it shall issue a Provisional Completion Certificate to the Customer which shall include adequate supporting information.
- 6.2. If the Customer objects to the issue of a Provisional Completion Certificate, it shall give notice to Network Rail (an "**Objection Notice**") setting out in detail its reasons for such objection (which may include a failure by Network Rail to provide adequate supporting information) within 20 Working Days after receipt of the Provisional Completion Certificate. If the Customer does not issue an Objection Notice within such period, it shall be deemed to have accepted that Provisional Completion Certificate, which shall become a Completion Certificate for all purposes of the Services Contract with effect from its date of issue.
- 6.3. If Network Rail receives an Objection Notice within the time specified in paragraph 6.2, Network Rail shall take due account of the matters raised therein (and provide reasons where it does not accept the Customer's objection) and be entitled to issue a Completion Certificate on completion of those Services which are reasonably and properly specified in the Objection Notice.
- 6.4. If Network Rail issues a Completion Certificate pursuant to paragraph 6.3 and the Customer is not satisfied that the Services reasonably and properly specified in the Objection Notice have been properly completed by Network Rail, it shall refer such matter to adjudication in accordance with the provisions of paragraph 18 of Schedule 1. If the Customer does not make such a referral within 20 Working Days after receipt of the Completion Certificate, it shall be deemed to have accepted that Completion Certificate, which shall become a Completion Certificate for all purposes of the Services Contract with effect from its date of issue.

**PART B: ASSET PROTECTION**

Where it is identified that access to the Network is required for the purposes of Survey Works, the Parties shall discuss and agree who is to undertake the Survey Works. To the extent that it is agreed that the Customer or its contractors (other than Network Rail) shall carry out the Survey Works, paragraphs 1 to 8 below shall apply.

1. The Customer and its contractors shall only be permitted access to the Network to the extent required to carry out the Survey Works. Neither the Customer nor its contractors shall carry out any other works or intrusive activities in respect of the Network or bring any equipment onto the Network for any other purpose.
2. The time and date of any access to the Network shall be agreed in writing in advance with Network Rail and the Customer and/or its contractors must be accompanied by Network Rail staff or Network Rail's appointed contractors at all times.
3. A provisional programme for the Survey Works will be included in the relevant Services Instruction. If a Possession is required to carry out the Survey Works it will be booked by Network Rail in accordance with its possession planning and booking system.
4. The Parties shall co-operate with each other in the planning and utilisation of Possessions to facilitate both the safe and efficient execution of the Project and the safe and efficient operation of the Network. In carrying out its functions as the timetabling authority and in the booking of Possessions, Network Rail shall act fairly in allocating Possessions between itself, the Customer and any other party booking Possessions on the Network.
5. In carrying out the Survey Works, the Customer shall exercise (and shall ensure that its contractors exercise) the standard of reasonable skill, care and diligence to be expected of a suitably qualified and competent survey works contractor experienced in designing and carrying out survey works of a similar nature, scope and complexity to the Survey Works. The Survey Works shall be designed and carried out in accordance with the Standards and any other requirements (including in relation to insurance cover) stipulated in writing by Network Rail acting reasonably (subject to paragraph 2.10 of Schedule 1). The Customer and Network Rail shall liaise generally on all safety matters arising out of the Survey Works.
6. Where the Survey Works involve physical alteration (whether temporary or permanent) to the Network:
  - (a) the Customer shall procure that any survey works contractor appointed by the Customer enters into a collateral warranty in the form set out in Schedule 4, or as otherwise agreed with Network Rail in writing, prior to commencement of the Survey Works;
  - (b) implementation of the relevant Survey Works shall not commence until Network Rail (acting reasonably) is satisfied with the form of collateral warranties to be provided to Network Rail by the relevant contractor and the public liability and professional indemnity insurances to be maintained by the Customer and/or such contractor for the benefit of Network Rail;
  - (c) the Customer shall grant to Network Rail an irrevocable, non-exclusive royalty free licence to use all the Intellectual Property created as a result of the Survey Works for all purposes, including the right to sub-licence;
  - (d) the Customer shall be the sole 'client' for the purposes of the CDM Regulations (if applicable) and shall make the declaration to the Health and Safety Executive under regulation 4;
  - (e) the Customer shall comply with any taking into use procedures which may apply to the Survey Works and shall provide certificates for any permanent works required for Network Rail to take into use the Survey Works upon their completion; and

**SUBJECT TO CONTRACT**

- (f) the Customer shall be responsible for remedying any defects in the Survey Works.
7. Network Rail will apply for any consents or approvals required before the Customer can carry out the Survey Works. Network Rail makes no representation that such consents or approvals will be granted or that the conditions upon which they may be granted will be acceptable to the Customer.

**SCHEDULE 3**  
**NETWORK RAIL COSTS**

**1. DEFINITIONS**

1.1. The following terms shall have the following meanings when used in this Schedule:

**“Agency Personnel”** means those personnel who have entered into a contract for services with Network Rail to provide services in connection with the Project exclusively to Network Rail;

**“Agency Costs”** means the cost to Network Rail of any Agency Personnel engaged in connection with the Services multiplied by 1.5, plus the properly incurred expenses and disbursements charged to Network Rail by such Agency Personnel;

**“Consultants’ Costs”** means the costs to Network Rail of any Consultants or contractors engaged by Network Rail in connection with the observance and performance of its obligations in relation to the Services Contract, plus the properly incurred expenses and disbursements of those consultants or contractors;

**“Depot Access Conditions”** means the National Depot Access Conditions (December Standard) (as amended from time to time) together with the Supplementary Depot Access Conditions applicable to the relevant depot;

**“Depot Lease”** means the lease of any depot entered into between Network Rail and a train operating company;

**“Expenses and Disbursements”** means the items referred to in paragraph 2.1;

**“Fee”** means an amount equal to the Network Rail Fee plus the Industry Risk Fee;

**“Hourly Rate”** means in respect of each member of Network Rail's Personnel the rate set out for their particular banding in paragraph 3 as the same may be adjusted from time to time in accordance with paragraph 4, which rate will be payable in respect of all worked hours spent by Network Rail's Personnel in connection with the Services;

**“Industry Risk Fee”<sup>(7)</sup>** means an amount equal to 2% of the Project Cost;

**“Network Rail Costs”** means Agency Costs, Consultants’ Costs, Expenses and Disbursements, Fee, Personnel Costs and Possessions-Related Costs, plus

- (a) costs associated with applying for or as a consequence of any necessary consents in relation to the Project; and
- (b) such other costs and expenses which are reasonably and properly incurred by Network Rail in respect of the performance of Network Rail's obligations under the Services Contract

to the extent that they arise from or are a consequence of the performance of the Services;

**“Network Rail Fee”** means an amount equal to 10% of the aggregate Agency Costs, Consultants’ Costs, and Personnel Costs as set out in the Services Instruction (and amended from time to time);

**“Network Rail’s Personnel”** means any employees and/or officers of Network Rail;

**“Personnel Costs”** means the sum of the relevant Hourly Rate multiplied by the number of hours spent by each member of Network Rail's Personnel in connection with the performance of Network Rail's obligations under the Services Contract;

**“Possessions-Related Costs”** means sums Network Rail will be obliged to pay to any train operator pursuant to Schedules 4 and/or 8 of the relevant Track Access Agreement or, where such train operator is party to a Freight Access Agreement, any equivalent provision of that agreement;

<sup>7</sup> Only applicable where Part A or Part B Services requested in Schedule 5.

**“Station Access Agreement”** means an Access Agreement in respect of a station;

**“Station Access Conditions”** means the National Station Access Conditions 1996;  
and

**“Station Lease”** means the lease of the Station entered into between Network Rail and a train operating company.

## **2. PAYMENT OF COSTS**

2.1. The Customer shall pay or reimburse Network Rail in respect of all Network Rail Costs reasonably and properly incurred by Network Rail in connection with the Project, including:

- (a) printing, reproduction and purchase of documents, drawings, office consumables, maps and records;
- (b) travelling expenses as follows:
  - (i) for journeys by train or airplane by all staff - in accordance with Network Rail's then current personnel policies;
  - (ii) for journeys by the London Underground system - actual costs;
  - (iii) car hire for business journeys other than home to Network Rail's offices - actual costs;
  - (iv) taxi fares - actual costs;
  - (v) additional costs of daily travel costs from Network Rail's offices to the designated project office; and
  - (vi) hotel and restaurant bills and other subsistence expenses associated with such travel including costs on temporary assignments to the Customer, in accordance with Network Rail's then current personnel policies;
- (c) all costs incurred that are associated with consultants, subcontracts and other outside services and facilities to the extent not included elsewhere within this Schedule;
- (d) training courses specifically for the benefit of the Project;
- (e) any VAT chargeable;
- (f) all technical, commercial, professional and legal fees, costs and disbursements in connection with the Project;
- (g) all legal and other costs, charges, and expenses incurred by Network Rail in connection with the preparation, negotiation and enforcement of any supplemental leases, licences and other documentation entered into by Network Rail and relating to the Project;
- (h) any sums payable by Network Rail pursuant to:
  - (i) Conditions G or H of the Network Code; or
  - (ii) any Station Access Agreement, Station Lease or the Station Access Conditions; or
  - (iii) any Depot Access Conditions or any Depot Leasewhere the same arise in connection with or under this agreement; and
- (i) any other disbursements or expenses incurred by Network Rail in connection with the Project under the Services Contract which are not expressly set forth herein.

2.2. For the avoidance of doubt, and notwithstanding the provisions of paragraph 2.1, the Customer shall not be liable in any circumstances for any costs, expenses or disbursements incurred by Network Rail as a result of

- (a) the negligence of Network Rail; or
- (b) Network Rail failing to comply with paragraph 2.4 of Schedule 1

**SUBJECT TO CONTRACT**

provided that any costs, expenses or disbursements which are irrecoverable by virtue of paragraph (b) above shall be counted towards the cap on Network Rail's liability for the purposes of paragraph 13.

**3. HOURLY RATES**

<b>Banding</b>	<b>Non London</b>	<b>London</b>
1	£109.43	£112.25
2	£80.46	£83.30
3	£59.87	£62.69
4	£41.84	£44.67
5	£33.47	£36.31
6	£26.38	£29.23
7	£21.89	£24.71
8	£17.38	£20.21

**4. ADJUSTMENT OF HOURLY RATES**

4.1. Network Rail shall adjust the Hourly Rates annually on 1<sup>st</sup> January to reflect the increase in the Retail Price Index for the year ending the preceding November.

**5. REVIEW**

As from time to time requested by the Customer, Network Rail shall provide to the Customer reasonable access to and evidence and records of all amounts payable by the Customer under this Schedule (other than the Hourly Rates) together with such other information and records as the Customer may reasonably require (having at all times regard for Network Rail's confidentiality and contractual obligations), which may be reviewed and audited by or on behalf of the Customer.



## SCHEDULE 4

## FORM OF COLLATERAL WARRANTY IN FAVOUR OF NETWORK RAIL

THIS DEED is made the                      day of                      200[ ]

**BETWEEN:**

- (1) [CONTRACTOR] whose registered office is at [                      ], (the “Contractor”) and
- (2) **NETWORK RAIL INFRASTRUCTURE LIMITED** registered in England and Wales under company number 2904587 and having its registered office at Kings Place, 90 York Way, London, N1 9AG (the “Beneficiary”).

**WHEREAS**

- (A) The Beneficiary has entered into an agreement dated [ ] with [ ] (the “Employer”) in connection with the Survey Works.
- (B) The Contractor has entered into the Contract with the Employer to carry out the Survey Works.
- (C) The Contractor has agreed to enter into this Deed for the benefit of the Beneficiary.

**NOW IT IS AGREED AS FOLLOWS:****1. Definitions and interpretation**

- 1.1. In this Deed (including the recitals), except where the context otherwise requires, the following words and expressions shall have the following meanings:

“Contract” means the agreement dated [ ] between (1) the Employer and (2) the Contractor;

“Intellectual Property” means all current and future legal and equitable interests in registered or unregistered trademarks, service marks, patents, registered designs, inventions, technical information, know-how or other intellectual property rights of any nature created by the Contractor in connection with the Survey Works;

“Network” means the railway network of which Network Rail Infrastructure Limited is the facility owner (as defined in section 17(6) of the Railways Act 1993);

“Network Licence” means the licence relating to the Network granted to Network Rail pursuant to section 8 of the Railways Act 1993 (as amended); and

“Survey Works” means [*insert description of Survey Works*].

- 1.2. In this Deed unless the context otherwise requires:-

- (a) words importing any gender include every gender;
- (b) words importing the singular number only include the plural number and vice versa;
- (c) words importing persons include firms, companies and corporations and vice versa;
- (d) any reference to any statute (whether or not specifically named) shall include any statutory modification or re-enactment of it for the time being in force and any order, instrument, plan, regulation, permission and direction made or issued under it or under any statute replaced by it or deriving validity from it;
- (e) references to Clauses are references to the relevant clause in this Deed;
- (f) the words “include” and “including” are to be construed without limitation;
- (g) where any obligation is undertaken by two or more persons jointly those persons shall be jointly and severally liable in respect of that obligation; and

- (h) the headings to the Clauses are for convenience only and shall not affect the interpretation of this Deed.

**2. Contractor's obligations**

- 2.1. The Contractor represents, warrants and undertakes to the Beneficiary:
  - (a) that in performing the Survey Works it has exercised and will continue to exercise all the skill, care and diligence to be reasonably expected of an appropriately qualified and competent contractor which is experienced in carrying out projects of a similar, scope, nature, complexity and size to the Survey Works;
  - (b) that it has complied with and will comply with each and all of the obligations, duties and undertakings of the Contractor under and pursuant to the Contract;
  - (c) that on completion the Survey Works will satisfy all performance specifications and requirements contained or referred to in the Contract; and
  - (d) that the Beneficiary shall be deemed to have relied upon the Contractor's skill and judgment in respect of those matters relating to the Survey Works as lie within the scope of the Contract and that the Contractor owes a duty of care in respect thereof to the Beneficiary (but not more onerous than that owed to the Employer under the Contract).

**3. Liability**

- 3.1. No approvals, comments, instructions, consents, attendance at meetings relating to the Survey Works or advices from the Beneficiary shall in any way relieve the Contractor from its obligations under this Deed.
- 3.2. Notwithstanding anything that may be contained elsewhere in this Deed, the Contractor shall have no greater liability (whether in quantum or in scope) to the Beneficiary than it would have had if the Beneficiary had been named as joint employer under the Contract.
- 3.3. No action or proceedings for any breach of this Deed shall be commenced against the Contractor after the expiry of 12 years from the date of practical completion of the Survey Works.

**4. Intellectual Property**

- 4.1. The Contractor as beneficial owner irrevocably grants to the Beneficiary with effect from the date of this Deed (and notwithstanding that the Contract may be completed or terminated) a royalty-free, non-exclusive licence to use all rights, titles and interest in the Intellectual Property for any purpose:
  - (a) in connection with the maintenance, repair, reinstatement, renewal or extension of the Survey Works; or
  - (b) in order for the Beneficiary to comply with the obligations on its part under the Network Licence or to comply with any standard or requirement affecting the Beneficiary.
- 4.2. Insofar as the beneficial ownership of any Intellectual Property provided by the Contractor in connection with the Survey Works is vested in a person other than the Contractor, the Contractor shall use all reasonable endeavours to procure that the beneficial owner grants to the Beneficiary a licence in such material or similar terms and for such purposes as are referred to in Clause 4.1.
- 4.3. The licence referred to in Clauses 4.1 and 4.2 shall carry the right to grant sub-licences in the same terms and shall be transferable to third parties.
- 4.4. All royalties or other sums payable in respect of the supply and use of any Intellectual Property required in connection with the Contract shall be paid by the Contractor and the Contractor shall indemnify the Beneficiary from and against all claims, proceedings, damages, costs and expenses suffered or incurred by the Beneficiary by reason of the Contractor infringing or being held to infringe any intellectual property rights in the

**SUBJECT TO CONTRACT**

course of or in connection with the Contract or the licence granted in Clause 4.1 or 4.2 above.

**5. Insurance**

5.1. The Contractor has effected and will maintain professional indemnity insurance in an amount of £[ ] million for each and every claim or series of claims arising out of the same event or circumstances in any one period of insurance (which period shall not be more than one year) for a period of 12 years from the date of the issue of the certificate of practical completion of the Survey Works. As and when reasonably requested to do so by the Beneficiary, the Contractor shall produce for inspection documentary evidence that such insurance is being maintained and that payment has been made in respect of all premiums due under it.

**6. Notices**

6.1. Any notices to be given under this Deed shall be either delivered personally or sent by first class recorded delivery post. The address for service of the Beneficiary and of the Contractor shall be as stated in this Deed or such other address for service as the party to be served may have previously notified in writing to the other party. A notice shall be deemed to have been served as follows:

- (a) if personally delivered, at the time of delivery; or
- (b) if posted, at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities.

In proving such service, it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authorities as a pre-paid first class recorded delivery letter.

**7. General**

7.1. The Contractor shall have no claim whatsoever against the Beneficiary in respect of any damage, loss or expense howsoever arising out of or in connection with the Contract or any amounts due to the Contractor thereunder.

7.2. The Beneficiary may assign the benefit of this Deed on a maximum of four occasions without the consent of the Contractor. The benefit of this Deed may also be assigned by way of security or charged without the consent of the Contractor to any mortgagee of the Beneficiary or its assignees on any number of occasions.

7.3. The parties to this Deed do not intend that any term of this Deed should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Deed.

7.4. If for any reason any Clause in this Deed shall be found to be ineffective inoperable or unenforceable, it shall be severed and deemed to be deleted from this Deed and in such event the remaining provisions of this Deed shall continue to have full force and effect.

7.5. This Deed shall be governed by and construed in accordance with the law of England and any dispute or difference concerned with its terms shall be referred to the non-exclusive jurisdiction of the Courts of England.

**IN WITNESS** whereof the parties have caused this agreement to be executed (as a Deed in the case of the Contractor) on the date first before written.

**EXECUTED AS A DEED** by \_\_\_\_\_ )

**[CONTRACTOR]** \_\_\_\_\_ )

acting by \_\_\_\_\_ )

Director  
Director/Secretary

**SIGNED** by )  
duly authorised on behalf of )  
**NETWORK RAIL INFRASTRUCTURE LIMITED** )

**SCHEDULE 5  
FORM OF SERVICES INSTRUCTION**

This Services Contract is made on 200[ ] between:

- (1) [Customer]; and
- (2) [Network Rail].

[ ] (the “**Project**”) [Instruction number]

Whereas:

- (A) The Customer and Network Rail have entered into a Framework Agreement dated [ ] 200[ ] (the “**Framework Agreement**”).
- (B) Further to the Framework Agreement, the Customer wishes to engage Network Rail to provide the Services set out below [and/or] the Customer wishes to carry out preparatory works and has reached agreement with Network Rail on the terms for the provision of such Services and/or for the carrying out of preparatory works by the Customer in relation to the Project.
- (C) In the event of any conflict between the terms of the Framework Agreement and this Services Contract, the terms of this Services Contract shall take priority.

Now it is agreed as follows:

- 1. In this document words and expressions shall have the same meanings as are respectively assigned to them in the General and Special Conditions referred to below.
- 2. The following documents shall form and be read and construed as part of this Services Instruction, and all the documents listed below, together with this Works Instruction, are collectively referred to as the “**Services Contract**”:
  - (a) Clauses 1.1, 5 and 6 of the Framework Agreement;
  - (b) the General Conditions;
  - (c) the Special Conditions selected in the Appendix hereto; and
  - (d) the Works Instruction detailed in the Appendix hereto, as initialled for identification purposes by or on behalf of Customer and Network Rail.
- 3. Network Rail agrees with the Customer to carry out the Services in conformity with the provisions of the Services Contract [and/or] The Customer undertakes to Network Rail to carry out the preparatory works in conformity in all respects with the provisions of the Services Contract.
- 4. The Long Stop Date is [ ].<sup>8</sup>
- 5. [The Land Compensation Limit is [ ]<sup>9</sup>]
- 6. The Customer agrees to pay the Network Rail Costs to Network Rail at the times and in the manner prescribed by the Services Contract.

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<sup>8</sup> This should typically be around 15% later than the Target Completion Date

<sup>9</sup> This limit should reflect the expected level of claims during and after any works. It will not be required for Services Contract s related solely to the supply of Services by Network Rail.

**SUBJECT TO CONTRACT**

**SIGNED** by ) **SIGNED** by )  
duly authorised on behalf of ) duly authorised on behalf of )  
[ ] ) **Network Rail Infrastructure Limited** )

**THE SERVICES**

**[Insert details]**

- Project Name
- Scope of Services
- Specification
- The Programme
- Deliverables
- Estimated total costs
- Payment Schedule
- Items to be delivered by the Customer
- Necessary Consents (including indicative timescales and costs)

**Special Conditions Required? If required, have all details been completed?**

Part A (Development Services)	<input type="checkbox"/>	<input type="text" value="Yes/No"/>
Part B (Asset Protection)	<input type="checkbox"/>	<input type="text" value="Yes/No"/>

Please complete the additional Services Instructions below as applicable.

**ADDITIONAL SERVICES INSTRUCTION FOR PART A (DEVELOPMENT SERVICES)**

**BRIEF**

[Customer to provide]

**REMIT**

Network Rail to provide, including:

- Services
- Deliverables
- underlying assumptions

To be attached to the Remit:

- Costs Estimate
- Development Programme

**ADDITIONAL SERVICES INSTRUCTION FOR PART B (ASSET PROTECTION)**

<b>Project Name</b>	
Customer Works	
Warranty required	Yes/No
Approvals and Acceptances to be provided by Network Rail	List
Network Rail Consents (Network Rail shall only be required to issue the approvals, acceptances and consents referred to in this Services Instruction if all necessary requirements relating to the same are satisfied in full).	List
Network Rail Services	
Network Rail Requirements	Network Rail Company Standard LS/043



SCHEDULE 6  
NOTICES

Network Rail’s address for the service of notices is:

Network Rail Infrastructure Limited  
Kings Place, 90 York Way, London, N1 9AG  
Tel: 020 3356 9596  
Fax: 020 7557 9000

All written notices to be marked:

“URGENT: ATTENTION THE SOLICITOR AND COMPANY SECRETARY”

and copied to:

The Director  
Network Rail **[route/HQ]**

[ ]  
Tel: [ ]  
Fax: [ ]

Network Rail’s representative is: [ ].

The Customer’s address for the service of notices is:

**[Name and address of Customer]**

Tel: [ ]  
Fax: [ ]

All written notices to be marked:

“URGENT: ATTENTION [name]”

and copied to:

[ ]  
Tel: [ ]  
Fax: [ ]

The Customer’s representative is: [ ].

**SCHEDULE 7**  
**ESCALATION PROCEDURE**

**1. DEFINITIONS**

- 1.1. In this Schedule, except where the context otherwise requires, the following words shall have the following meanings:

**[Terminology to be discussed with NR Project Delivery Team]**

**["Executive Director"]** means a person from time to time appointed as the holder of such office within each Party for the purposes of the Escalation Procedure, being a Route Director or person of similar or higher seniority]

**["Initial Notice"]** means the notice served under paragraph 2.1 of this Schedule 7;

**["Project Manager"]** means the person appointed by each Party to manage the delivery of services or works under any Works Contract entered into under this Agreement;]

**["Response Notice"]** means the notices served under paragraph 2.3 of this Schedule 7; and

**["Senior Manager"]** means the person in each Party's organisation responsible for the management and oversight of this Agreement.

**2. STAGE 1 – PROJECT MANAGERS**

- 2.1. In order to invoke the Escalation Procedure, either Project Manager may notify the other Project Manager by serving a written notice (the **"Initial Notice"**).

- 2.2. The Initial Notice shall:

- (a) state the Clause under which the Escalation Procedure is being invoked or alternatively any other matter to be resolved by means of the Escalation Procedure;
- (b) advise all correspondence and documentation relevant to the matter raised in paragraph 2.2(a); and
- (c) propose a date within five Working Days for a meeting between the Project Managers to seek resolution of the matter referred to in paragraph 2.2(a).

- 2.3. Following receipt of the Initial Notice, the receiving Project Manager shall respond by written notice within three Working Days (the **"Response Notice"**).

- 2.4. The Response Notice shall:

- (a) specify the actions and programme to resolve the matter raised in the Initial Notice; or
- (b) confirm attendance at the meeting referred to in the Initial Notice; and
- (c) advise any further correspondence and documentation relevant to matter raised in the Initial Notice.

- 2.5. If the Project Managers agree that the Response Notice or the meeting pursuant to the Initial Notice resolves the matter raised in the Initial Notice, the Project Manager who issued the Initial Notice will notify the other Project Manager by written notice. Such notification shall be made within three Working Days following the receipt of the Response Notice or within three Working Days following the meeting.

- 2.6. If the Project Managers do not agree that the Response Notice or the meeting pursuant to the Initial Notice resolves the matter raised in the Initial Notice, they will notify their respective Senior Managers accordingly. Such notification shall be made within three Working Days following the receipt of the Response Notice or within three Working Days following the meeting.

**3. STAGE 2 – SENIOR MANAGERS’ MEETING**

- 3.1. Following receipt of a notification pursuant to paragraph 2.6, the Senior Managers of each Party shall arrange a meeting within five Working Days to seek resolution of the matter referred to in the Initial Notice. The Senior Managers may, at their discretion, invite the Project Managers to attend such a meeting.
- 3.2. If the Senior Managers agree that their meeting resolves the matter raised in the Initial Notice, they will notify their Project Managers accordingly. The Project Manager who issued the Initial Notice will notify the other Project Manager by written notice. Such notification shall be made within three Working Days following the meeting of Senior Managers.
- 3.3. If the Senior Managers do not agree that their meeting resolves the matter raised in the Initial Notice, they will notify their respective Project Managers accordingly within three Working Days following the meeting of Senior Managers.
- 3.4. At the same time as they make the notification in paragraph 3.3, each Senior Manager shall notify their respective Executive Directors of the matter raised in the Initial Notice and the steps taken at the meetings between Project Managers and Senior Managers to resolve the matter.

**4. STAGE 3 – EXECUTIVE DIRECTORS’ MEETING**

- 4.1. Following receipt of a notification pursuant to paragraph 3.4, the Executive Directors of each Party shall arrange a meeting within five Working Days to seek resolution of the matter referred to in the Initial Notice. The Executive Directors may, at their discretion, invite the Senior Managers and/or the Project Managers to attend such a meeting.
- 4.2. If the Executive Directors agree that their meeting resolves the matter raised in the Initial Notice, they will notify their Senior Managers and Project Managers accordingly. The Project Manager who issued the Initial Notice will notify the other Party’s Project Manager by written notice. Such notification shall be made within three Working Days following the meeting of Executive Directors.
- 4.3. If the Executive Directors do not agree that their meeting resolves the matter raised in the Initial Notice, either Party may refer the matter to the Dispute Resolution Procedure.