SUBJECT TO CONTRACT

BASIC ASSET PROTECTION AGREEMENT[1]

Network Rail Infrastructure Limited

[Customer's registered company name
Address 1
Address 2
City, postcode]

[local office address 1
Address 2
City, postcode]

(the "**Customer**")[2]

Dated: as at the later date of signature

Dear Customer,

Basic Asset Protection Agreement relating to [insert a concise but specific project name] (the Agreement)

The Customer has requested and Network Rail Infrastructure Limited (**Network Rail**) has agreed to allow the Customer to carry out the Works on the terms set out below. For the avoidance of doubt, this Agreement does not constitute landlord's consent or replace the need for the Customer to obtain landlord's consent where such consent is expressed to be required in paragraph F of Schedule 2. The Customer has confirmed it will fund Network Rail's costs on the terms and conditions contained in this Agreement.

It is agreed

1 Definitions and interpretation

1.1 For the purpose of this Agreement the definitions and interpretation set out in Schedule 1 shall apply.

2 Obligations of the Customer

2.1 Without prejudice to clause 1, the Customer will:

(a) act in good faith towards Network Rail in respect of this Agreement;

(b) use reasonable endeavours to avoid unnecessary complaints, disputes and claims against Network Rail; and

(c) not interfere with the rights and obligations of Network Rail under this Agreement nor in any other way hinder, prevent or delay Network Rail from performing its obligations under this Agreement.

2.2 The Customer will design, carry out and complete the Works in accordance with:

(a) Good Industry Practice;

(b) Legal Requirements;

[1] This agreement should only be used with Third Parties who are seeking to invest in the railway. It should NOT be used for Outside Party projects.
[2] For oversees Customers, Trusts or Partnerships please seek further advice from Corporate Commercial or your local Commercial Services Manager.

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(c) Standards (but subject always to limb (d) below);3

(d) any Change in Standards;

(e) such derogations from the Standards as may be applicable from time to time and as Network Rail and/or the relevant Competent Authority may approve or consent to in writing and by expressly referring to it, being aware that its approval or consent to the matter in question constitutes a derogation;

(f) any requirements stipulated in writing by Network Rail[4];

(g) any approvals provided by Network Rail or any Necessary Consents;

(h) the Works Requirements and the terms of this Agreement; and

(i) PACE or an equivalent process (approved by Network Rail (such approval not to be unreasonably withheld)) which incorporates the key requirements agreed with Network Rail. Where an equivalent process does not include some PACE equivalent products and Network Rail require such products to be incorporated, then the Customer shall incorporate such PACE products as necessary. Where an alternative process to PACE is being used pursuant to this clause 2.2(i)), any reference in this Agreement to PACE procedural requirements shall be interpreted to mean the equivalent process in the alternative process.

2.3 For the purposes of the Works, under the CDM Regulations, the Customer is the only client.

2.4 For the purposes of the Works, under the CSM-REA Regulations the Customer is the Proposer (as defined in the CSM-REA Regulations).[5]

2.5 For the purposes of the Works, under the Railway Interoperability Regulations the Customer is the Project Entity (as defined in the Railway Interoperability Regulations).[6]

2.6 Any information or instructions provided to Network Rail by or on behalf of the Customer in connection with the Works shall be prepared and given in such a diligent and professional manner and with such clarity, in such detail and in a timely manner as is necessary for Network Rail to comply with its obligations under this Agreement.

2.7 Prior to commencement of each Contractor's relevant Works the Customer shall procure that such Contractors provide Network Rail with a collateral warranty for design and construction of their relevant Works, together with a copy of the underlying contract to which the collateral warranty relates. The Customer shall be entitled to redact any cost information from the contract.[7]

2.8 Prior to the implementation of the Works, the Customer shall for the duration of the Works (which, for the avoidance of doubt, shall include the completion of the carrying out of any rectification of defects in any physical elements of the Works identified prior to the end of any defects liability period) take out and maintain or procure that the Contractor takes out and maintains public liability insurance to cover any loss, cost, expense, liability, action, demand, claim or proceeding whatsoever arising under any statute or at common law in respect of personal injury or damage to any property arising as a result of the Works to the value stated in Schedule 2. Whenever reasonably requested by Network Rail, the Customer shall provide evidence by way of broker's letter or equivalent to the reasonable satisfaction of Network Rail that public liability insurance is being maintained in accordance with the provisions of this clause 2.8 and that payment has been made in respect of all premiums due under such policy.

3 Obligations of Network Rail

3.1 Network Rail shall provide the Services. Network Rail estimates the cost of carrying out the Services shall be the Estimated Cost. Network Rail shall use reasonable endeavours to carry out the Services for such amount but the Customer shall pay all Network Rail Costs reasonably and properly incurred by Network Rail. Network Rail shall provide the Customer with regular

[3] The definition of Change in Standards makes it clear that Changes in Standards after Approval in Principle will only be applied for safety reasons (and will then be treated as a Mandatory Variation).

[4] These will be based particularly on clauses 2, 4, 5, 6, & 8 and Schedule 8 & 9 of the full Asset Protection Agreement.
[5] If the CSM-REA Regulations are not applicable to the Works, replace the text with 'Not Used'.
[6] If the Railway Interoperability Regulations are not applicable to the Works, replace the text with 'Not Used'.
[7] Network Rail standard form warranties are available on the website.

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reports on the progress of the Services (including any changes to their estimated cost) in a format and at intervals to be agreed between the Parties.

3.2 Network Rail shall carry out or procure the carrying out of its obligations and the performance of the Services in accordance with:

(a) Good Industry Practice;

(b) Legal Requirements and Standards;

(c) Necessary Consents; and

(d) the terms of this Agreement.

3.3 Network Rail shall perform the Services and its other obligations under this Agreement so as to meet the Service Level Obligations. The Service Level Obligations are included for reporting purposes and are without prejudice to any other Network Rail obligations set out in this Agreement.

3.4 If Network Rail becomes aware of any matter which will prevent or impede it from performing the obligations on its part in this Agreement or will prevent or impede the Customer from carrying out the Works, Network Rail shall so notify the Customer promptly and in any event within five (5) Working Days after becoming so aware.

3.5 Network Rail shall at the cost of the Customer make available to the Customer, within a reasonable time, the Network Rail data and information, including the Asset Status Report(s) (except for data and information which is confidential or commercially sensitive or already in the public domain) which is already in Network Rail's possession and which the Customer reasonably requires and has requested to carry out the Works. Where Network Rail is required by the Customer to provide such information in relation to the design of the Works by the Customer, it shall, in good faith, provide information which is in all material respects the most complete and accurate understood to be in its possession, and shall 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. The Parties shall agree what is a reasonable time for Network Rail to respond to the request for information pursuant to this clause in order to determine the time period for the relevant Service Level Obligation set out in Schedule 5, once the Parties have sufficient information to determine the scope of such information request.

3.6 If Network Rail determines subsequent to the date of delivery that such information was inaccurate or incomplete in any material respect, it shall promptly notify the Customer and shall use its reasonable endeavours to make any changes necessary to correct such inaccuracies or incompleteness. Notwithstanding the foregoing or any other provision in this Agreement, Network Rail does not warrant the accuracy or sufficiency of data and information provided to the Customer and the Customer shall be responsible for verifying the accuracy and assessing the sufficiency for its purposes of all data and information provided.

3.7 With regard to clause 2.2(e), if a Customer requests a derogation to a Network Rail Standard, Network Rail shall at the cost of the Customer identify similar examples of derogations that have been adopted elsewhere. Such information shall be provided as soon as reasonably practicable and in any event within twenty-five (25) Working Days of such request.

4 Necessary Consents

4.1 Where it is necessary for Network Rail to apply for Necessary Consents, Network Rail shall use reasonable endeavours to obtain such Necessary Consents but does not guarantee that the Necessary Consents will be granted or that the terms of Necessary Consents granted will be acceptable to the Customer. Network Rail (where reasonably requested) will provide relevant correspondence in respect of Necessary Consents to the Customer and will take into account the Customer's views in this regard.

4.2 The Customer shall pay all costs reasonably incurred in applying for the Necessary Consents and any costs or compensation payable as a consequence of the grant of the Necessary Consents (except to the extent that they are due to the negligence or breach of Network Rail).

4.3 Network Rail's obligations in relation to obtaining any Necessary Consents are conditional upon Network Rail receiving in full the documentation and assistance related to the relevant Necessary Consent which it may reasonably require and has requested from the Customer.

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4.4 Network Rail shall have no liability to the Customer under this Agreement and shall have the right to extend the Construction Completion Date and the Liquidated Damages Payment Date by such period as is reasonable in the circumstances as a result of any Necessary Consent not being granted or any delay in granting any Necessary Consent or the terms upon which any Necessary Consent is granted except to the extent that it is as a result of a negligence or breach by Network Rail and in which case Network Rail will be liable for any direct costs in accordance with clause 13.5.

4.5 In conducting any discussions or negotiations with train operators in relation to a Regulated Change, Network Rail, subject to any reasonable confidentiality requirements, will allow the Customer to attend relevant meetings, provide the Customer with relevant correspondence and have due regard to the Customer's comments (if any) in relation to Regulated Change.[8]

4.6 Subject to clause 5, this Agreement does not constitute a consent under any property document between the Customer and Network Rail nor grant (or compel Network Rail to grant) any interest in any Network Rail property.

5 Access and possessions

Access to the site where the Works are to be carried out (the Site) and the programme for the Works shall be agreed in writing before the Customer is granted access to the Site. If a possession of the Network is required to carry out the Works, it will be arranged in accordance with Network Rail's possession planning and booking system.[9]

6 Safeguarding the Network

6.1 Network Rail and the Customer shall liaise generally on all safety matters arising out of the Works if, and to the extent that, they affect the Railway.

6.2 Notwithstanding any other provision of this Agreement, but subject to clause 10, Network Rail may at any time take whatever action Network Rail considers necessary to prevent, address, alleviate or comply with a Network Operation Issue, including requiring the Customer and any of its contractors to suspend the carrying out of the Works for such period and/or take such measures as Network Rail may require.

7 Taking Over and Completion

7.1 The legal and beneficial title in the Works shall vest in Network Rail unless otherwise detailed in paragraph M of Schedule 2.

7.2 Subject to Network Rail complying with the Customer's Contractor's (or the principal designer's (as defined in the CDM Regulations) if different) health and safety requirements, Network Rail shall be entitled to inspect the Works at any time, prior to countersignature of the BAPA Final Certificate by Network Rail.

7.3 Except where set out in the Works Requirements, the Customer shall at its own cost and to the satisfaction of Network Rail, acting reasonably, make good any property of Network Rail which may have been damaged or interfered with in the course of delivering the Works or as a result of the Works and shall remove all surplus material brought on to Network Rail's land by the Customer or any Contractor.

7.4 If the whole or part of the Works fails to comply in any material respect with the requirements of this Agreement, the Customer shall carry out such remedial works of construction or design as may be required so that the Works do so comply. Network Rail may reasonably require the Customer to carry out or repeat any demonstrations or tests for the whole or any part of the Works to evidence that the Works (or any part) comply.

7.5 The Customer shall take such action during the construction of the Works and during the period up to the date that Network Rail countersigns the BAPA Final Certificate in accordance with clause 7.10, as Network Rail may reasonably require to remedy any deficiencies and defects in the Works identified by Network Rail and the Customer (including those set out in a Defects Identification and Completion Certificate).

[8] This clause should be replaced with "Not used" when the Customer is a train operating company.
[9] The booking process for possessions may take a number of months. Discussions should take place between Network Rail and the Customer to determine the likely timescales for obtaining possessions and the relevant prior notice periods required by Network Rail under the asset management plan process.

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7.6 The Customer shall at its sole cost and expense, repair, maintain, renew and replace the Works prior to the date that Network Rail countersigns the Taking Over Certificate in accordance with clause 7.8.

7.7 The Customer shall notify Network Rail in writing and provide the draft BAPA Construction Certificate once the Customer considers that the Works have been completed in accordance with the agreed drawings, specification and design and the Customer believes the Construction Completion Criteria have been met. Network Rail shall comply with the procedures set out in Standard NR/L2/MTC/089 and Network Rail shall acknowledge the Construction Completion Criteria have been met by countersigning the agreed form BAPA Construction Certificate.

7.8 The Customer and Network Rail shall follow Standard NR/L2/MTC/089 and the process set out in form NR/L2/MTC/089/AMP015 and at the appropriate stage the Customer shall issue the Taking Over Certificate which, if agreed, shall be countersigned by Network Rail.

7.9 The Customer and Network Rail shall follow Standard NR/L2/MTC/089 and the process set out in form NR/L2/MTC/089/AMP016 and at the appropriate stage the Customer shall issue the Defects Identification and Completion Certificate which, if agreed, shall be countersigned by Network Rail.

7.10 The Customer shall notify Network Rail in writing and provide the draft BAPA Final Certificate once the Customer considers that the whole of the Works satisfies the Final Completion Criteria. Network Rail shall acknowledge that Network Rail is satisfied that all parts of the Works comply in all respects with this Agreement, and in particular that all deficiencies, snagging and defects in the Defects Identification and Completion Certificate have been rectified in compliance with clause 7.5 and the health and safety file has been accepted by Network Rail by countersigning the agreed form BAPA Final Certificate. If Network Rail considers that the whole or any part of the Works does not comply as aforesaid, it shall notify the Customer in writing together with full details of its opinion why the BAPA Final Certificate shall not be countersigned by Network Rail.

7.11 Issue of the BAPA Final Certificate does not release the Customer from any obligations or liabilities in respect of the Works or any defects in the Works.

8 Additional Expense[10]

8.1 The Customer agrees to reimburse Network Rail all additional operation, maintenance and renewals costs that may arise for Network Rail as a result of the Works and/or any Regulated Change (**Additional Expense**), for the life of the relevant enhanced asset or until the end of the Control Period in which the Taking Over Certificate is countersigned by Network Rail, if sooner, unless such Additional Expense is less than £50,000 per annum after deduction of any sums paid to Network Rail by a third party. For the avoidance of doubt, where the Additional Expense is greater than £50,000, the Customer shall be required to pay the entire Additional Expense and not just the Additional Expense in excess of £50,000.

8.2 The Additional Expense shall be paid by the Customer to Network Rail within twenty (20) Working Days of receipt of an invoice from Network Rail setting out the amounts due.

9 Variations

9.1 Any Variations shall be paid for by the Customer (unless the Parties agree otherwise or it is a Variation of the type specified in clause 9.2(a) to clause 9.2(c)) and shall only be effective if agreed by both Parties in writing.

9.2 Notwithstanding any provision in this Agreement, where Network Rail reasonably considers that a Variation is necessary:

(a) to avoid, address or alleviate a Network Operation Issue;

(b) to carry out any works necessary due to any Existing Asset Obligation;

(c) to address, alleviate or comply with (as appropriate) a Mandatory Variation;

(d) to address, alleviate or comply with (as appropriate) a Change in Law, direction of a Competent Authority arising as a consequence of the Works or any requirement of the Network Licence to the extent it is not a Mandatory Variation; or

[10] Wording depends on whether Works are subsequently Taken Over by Network Rail and if the asset forms part of a supplemental lease arrangement, or Network Rail agrees to take on the responsibility.

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(e) to the Service Level Obligations where the Project's scope and/or the Implementation Programme has materially changed rendering the Service Level Obligations set out in Schedule 5 to be potentially unachievable,

Network Rail shall be entitled to a Variation to the extent that is reasonable in the circumstances.

9.3 Where Network Rail considers that a Variation is necessary under clause 9.2, it shall consult with the Customer (providing reasonable information concerning the proposed Variation) and take into account the reasonable comments of the Customer when considering the scope, cost and effect of the Variation. The Customer may not object to a Variation under clause 9.2 but may refer any matter concerning the scope, cost and effect of the Variation to be resolved under clause 17.1.

10 Compensation and Relief

10.1 Network Rail shall bear all direct costs reasonably incurred by the Customer (unless such costs are below £10,000 in aggregate) as a result of:

(a) Network Rail taking or requiring any action pursuant to clause 6.2 in relation to a Network Operation Issue;

(b) any delay to the Works which 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;

(c) any booked possession being cancelled or altered (including as a result of any default by any train operator other than the Customer);

(d) any interference with the Works which is caused by another contractor from an interfacing project, provided that the Customer has used reasonable endeavours to mitigate and control the interface with such project as far as reasonably practicable;

(e) any Mandatory Variation being implemented in accordance with clause 9.2; and/or

(f) except to the extent that such costs are incurred due to the negligence, breach or default of the Customer or any contractor appointed by the Customer (other than Network Rail). If Network Rail is able to recover compensation from a third party in relation to the events described in clause 10.1(a) to 10.1(c), 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).

10.2 Any direct costs paid by Network Rail shall not be included in the calculation of Network Rail's maximum aggregate liability under clause 13.2 unless the direct costs are as a result of the cancellation or alteration of a booked possession occurring as a result of the negligence or breach of this Agreement by Network Rail.

11 Intellectual Property

11.1 The Customer grants to Network Rail an irrevocable, non-exclusive royalty-free licence to use all the intellectual property created as a result of the design and implementation of the Works for all purposes, including the right to sub-licence.

11.2 The Customer shall indemnify Network Rail from and against any and all Losses arising from the use by the Customer of any intellectual property other than for the purposes of the Works. Network Rail shall indemnify the Customer from and against any and all Losses arising from the use by Network Rail of any intellectual property other than for the purposes of the Works.

12 Network Rail Costs

12.1 The Customer shall pay to Network Rail all reasonably and properly incurred Network Rail Costs in accordance with the terms set out in clause 12.2 and Schedule 3.

12.2 Within ten (10) Working Days after the end of each payment period, Network Rail shall submit an invoice to the Customer. Subject to clause 12.3, the Customer shall pay each invoice in full and without set-off, retention, counterclaim, abatement or other deduction within twenty (20) Working Days from receipt of the invoice.

12.3 If the Customer wishes to withhold all or part of payment of any amount claimed by Network Rail in the invoice, it shall notify Network Rail within fifteen (15) Working Days of delivery of the invoice specifying the disputed amount and the grounds on which it claims that such amount is

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not due and payable. Late payment of any amount due and payable under any invoice shall carry interest from the due date to the date of payment at the greater of either Bank of England's base rate plus 2% per annum or 2.5% per annum. All amounts are exclusive of value added tax, which will be charged at the applicable rate.

13 Limitation of Liability

13.1 Save as otherwise expressly provided in this Agreement, neither Party shall be liable in respect of any Losses payable under or in connection with this Agreement except where:

(a) the aggregate amount of all Losses suffered by the relevant Party exceeds £10,000. For the avoidance of doubt:

(i) in such an instance all Losses can be claimed not just the Losses in excess of £10,000; and

(ii) after payment of such Losses, no further claim shall be made until the earlier of any further Losses suffered being in excess of £10,000 or Completion or termination of this Agreement; or

(b) the Losses are incurred as a result of, or are sums unpaid by the Customer under clause 12.1 or Schedule 3.

13.2 Network Rail's maximum aggregate liability to the Customer for any reason arising under, or in connection with, this Agreement or the Works including but not limited to breach of contract, in tort (including negligence), or for breach of statutory duty, or the liquidated damages paid pursuant to clause 13.5, shall not exceed the Network Rail Cap. Notwithstanding the Network Rail Cap where, in respect of the same event, Network Rail recovers any sums under any contract entered into by Network Rail, it shall pay such sums (if and to the extent that such recovered sums relate to loss suffered by the Customer and not by Network Rail itself) to the Customer. For the avoidance of doubt, any sums recovered by Network Rail under any contract and paid to the Customer shall contribute to the Network Rail Cap insofar as the Network Rail Cap has not already been reached. Any sums recovered by Network Rail under an insurance policy and paid to the Customer shall not contribute to the Network Rail Cap. Network Rail shall use reasonable endeavours to make such recovery (which shall include an obligation to make and diligently pursue a claim but shall not include an obligation on Network Rail to take legal action).

13.3 Clause 13.2 shall not apply to any Losses incurred by the Customer as a result of any liability in respect of:

(a) death or personal injury resulting from a negligent act or omission or breach of statutory duty by Network Rail or any employee of Network Rail; and/or

(b) the fraud or fraudulent misrepresentation of Network Rail (or its contractor employed to carry out the Services).

13.4 Any Losses payable by either Party shall be reduced to the extent that they are caused by or contributed to by that Party's own negligence or breach of its obligations under this Agreement.

13.5 Subject to the limit on liability in clause 13.2, to the extent that the [Construction Completion Date][11] has not occurred by the Liquidated Damages Payment Date due to the fault of Network Rail, then Network Rail shall pay to the Customer the Daily Liquidated Damages Sum for each day from the Liquidated Damages Payment Date until the date that the [Construction Completion Date] has occurred or the date that it is determined under the Escalation Procedure and/or the dispute resolution procedure pursuant to clause 17 that the [Construction Completion Date] has occurred. The Customer shall notify Network Rail as soon as reasonably practicable upon becoming aware that such a delay to the achievement of the [Construction Completion Date] may occur or has occurred. The Customer is not entitled to claim any other Losses in relation to delay to the achievement of any of the Completion Criteria except pursuant to this clause 13.5.

13.6 The Customer's maximum aggregate liability to Network Rail for any reason arising under or in connection with this Agreement shall not exceed an amount equal to the Customer Cap. Notwithstanding the Customer Cap where, in respect of the same event, the Customer recovers

[11] This definition should relate to when the Customer and Network Rail agree that relevant criteria should have been satisfied to prevent the Customer incurring losses. It is anticipated that in normal circumstances this will be the Construction Completion Date, but this may not always be the case.

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sums under any contract entered into by the Customer, it shall pay such sums (if and to the extent that such payments relate to loss suffered by Network Rail and not by the Customer itself) to Network Rail. For the avoidance of doubt, any sums recovered by the Customer under any contract and paid to Network Rail shall contribute to the Customer Cap insofar as the Customer Cap has not already been reached. Any sums recovered by the Customer under an insurance policy (including any insurance maintained by a contractor employed by the Customer) and paid to Network Rail shall not contribute to the Customer Cap. The Customer shall only be required to use reasonable endeavours to make such recovery (which shall include an obligation to make and diligently pursue a claim but shall not include an obligation on the Customer to take legal action) and only if and to the extent that such payments relate to loss suffered by Network Rail and not by the Customer itself.

13.7 Clause 13.6 shall not apply to:

(a) the Customer's payment obligations under clause 3.5, clause 8.1, clause 8.2, clause 12.1, clause 12.2 or Schedule 3;

(b) any Losses incurred by Network Rail due to the negligence fraud or fraudulent misrepresentation by the Customer or by any contractor appointed by the Customer (other than Network Rail); and

(c) any liability in respect of death or personal injury resulting from a negligent act or omission or breach of statutory duty by the Customer or any employee of the Customer.

13.8 In no circumstances shall Network Rail or the Customer be liable to one another for any Indirect Loss (without prejudice to any express payment or indemnity obligation of either Party under this Agreement).

14 Force Majeure Events

14.1 Subject to clause 14.2 and clause 14.3, each Party shall be relieved from liability for non-performance of its obligations under this Agreement (other than any obligation to make payment) to the extent that it is not able to perform such obligations by reason of a Force Majeure Event. Network Rail shall be entitled to a change to the Construction Completion Date and the Liquidated Damages Payment Date to reflect an extension of time properly awarded under any contracts between the Customer and any contractor carrying out the Works in respect of a Force Majeure Event.

14.2 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 this Agreement, 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 this Agreement to the extent that it is not able to perform, or have not in fact performed, its obligations under this Agreement due to any failure to comply with its obligations under clause 14.2(a).

14.3 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 ten (10) Working Days of it becoming aware of the relevant Force Majeure Event. 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 Termination

Network Rail may by serving notice on the Customer terminate this Agreement with immediate effect if the Customer is in material breach of any of its obligations in this Agreement (provided that Network Rail shall first notify the Customer of any remediable breach and its intention to terminate, and shall allow the Customer a period of twenty (20) Working Days to remedy such breach). The Customer may terminate this Agreement by giving Network Rail five (5) Working Days' notice in writing at any time.

16 Consequences of Termination

Upon termination of this Agreement:

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(a) the Customer shall pay Network Rail:

(i) the Network Rail Costs incurred up to the date of termination; and

(ii) (except where termination is due to Network Rail's default or insolvency) the Customer shall pay Network Rail the costs and expenses reasonably incurred by Network Rail in terminating this Agreement (including removal of plant, equipment and those materials not incorporated into the Works) and in reinstating or procuring the reinstatement of the Works (or such part thereof as may exist as at the date of termination) and the relevant part or parts of the Railway affected by the Works to the extent necessary to:

(A) make the same safe; and/or

(B) secure and enable Network Rail to meet its contractual, statutory and Network Licence obligations (including the reasonable cost of any contractors and compensation to third parties);

(b) all obligations of the Parties under this Agreement shall cease except for:

(i) the provisions of clause 6.1, clause 6.2, clause 8.1, clause 8.2, clause 10, clause 11.1, clause 11.2, clause 12.1, clause 12.2, clause 13.1, clause 16 and clause 21; and

(ii) any obligations arising as a result of any antecedent breach of this Agreement or any accrued rights.

17 Escalation and Dispute Resolution

17.1 If a Dispute arises under out of or in connection with this Agreement, either Party may refer such Dispute to the Escalation Procedure in accordance with Schedule 3 or to the extent that such Dispute involves a construction contract within the meaning of section 104 of the Housing Grants, Construction and Regeneration Act 1996 (as amended from time to time), to an adjudicator for adjudication in accordance with the following provisions:

(a) the Scheme for Construction Contracts SI No. 2333 of 2011 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 the Technology and Construction Bar Association.

17.2 If a Dispute is referred to an adjudicator, neither Party may commence any further proceedings until twenty (20) Working Days after the decision of the adjudicator in relation to such Dispute has been given.

17.3 The decision of an adjudicator properly appointed in accordance with this Agreement will be binding until referred to the courts for final determination or the Parties decide otherwise, 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 this Agreement and any determination of an adjudicator, including an award as to costs.

17.4 In the event that any Dispute or difference of any kind whatsoever shall arise between:

(a) the Customer and any contractor; or

(b) Network Rail and any contractor appointed by Network Rail in relation to the Project,

which is substantially the same or connected with issues in any Dispute 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 contract and the other Party shall permit and co-operate in such joinder.

18 Anti-bribery and Slavery

18.1 The Customer shall perform its obligations under this Agreement in accordance with all applicable anti-bribery, anti-corruption and anti-slavery legislation including the Bribery Act 2010 and Modern Slavery Act 2015.

18.2 The Customer shall not, (and the Customer shall procure that its Contractor shall not), purchase any raw materials, resources or products from any country that have been sourced from any product or manufacturer using forced labour in its operations or practice.

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19 Equality and Diversity

19.1 The Customer shall perform its obligations under this Agreement in accordance with:

(a) all applicable equality law (whether in relation to age, disability, gender reassignment, marriage or civil partnership status, pregnancy or maternity, race, religion or belief, sex or sexual orientation (each a "Relevant Protected Characteristic"); and

(b) any other requirements and instructions which Network Rail reasonably imposes in connection with any equality obligations imposed on Network Rail at any time under any applicable equality law.

19.2 The Customer shall take all reasonable steps to secure the observance of clause 19.1 above by its employees, agents, representatives, contractors and consultants.

19.3 The Customer acknowledges that Network Rail is under a duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination (on the grounds of a Relevant Protected Characteristic); to advance equality of opportunity, and to foster good relations, between persons who share a Relevant Protected Characteristic and persons who do not share it. In performing its obligations under this Agreement, the Customer shall assist and co-operate with Network Rail where possible in satisfying this duty.

20 Confidential Information and Data Protection

20.1 Neither Party shall disclose any confidential information save as required by any enactment, requirement of any regulatory authority or pursuant to any judicial or arbitral process, or in the case of Network Rail as required by its statutory duties or Network Licence. On termination of this Agreement, the Customer shall either destroy or, if reasonably requested to do so, return any confidential information within its possession or control that belongs to or was provided by Network Rail.

20.2 The Parties agree that, for the purposes of the Data Protection Act 2018 and the European General Data Protection Regulation (Regulation (EU) 2016/679), to the extent that it applies in the United Kingdom by virtue of the European Union (Withdrawal) Act 2018 as amended or re-enacted from time to time (together to be referred to as the **UK GDPR**), each Party processes personal data (as defined in the **UK GDPR**) as an independent data controller in its own right. Nothing in this Agreement is intended to construe either Party as the data processor of the other Party or as joint data controllers with one another with respect to Personal Data.

20.3 Each Party shall:

(a) comply with its obligations under the UK GDPR;

(b) be responsible for dealing with and responding to data subject requests, enquiries or complaints it receives (including any request by a data subject to exercise their rights under UK GDPR); and

(c) be responsible for managing all unlawful or unauthorised processing of personal data or any personal data breach as defined by the UK GDPR of which it becomes aware in accordance with their obligations under the UKGDPR, including reporting any such Security Incident to the Information Commissioner's Office (where necessary).

20.4 Each Party warrants that in complying with UK GDPR it is not subject to any restriction which would prevent or restrict it from disclosing or transferring personal data to the other Party in accordance with the terms of this Agreement.

21 Freedom of Information

If either Party receives a request for the disclosure of information relating to the Works and/or this Agreement (**Works Information**) under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 (together the **Information Acts**) it shall comply with such request in accordance with the relevant Information Act to the extent it is obliged to do so and provided that no exemption from disclosure in the relevant Information Act applies. Prior to making such disclosure it shall give the other Party the reasonable opportunity to make representations as to why the disclosure should not be made (including but not limited to any exemptions from disclosure that may apply) and shall inform the other Party of any disclosure made. For the purpose of paragraph 43(2) of the Freedom of Information Act 2000, the Parties acknowledge and agree that the disclosure by it of any commercially sensitive Works Information is likely to prejudice the interests of the Parties.

SUBJECT TO CONTRACT

22 Miscellaneous

22.1 Any notice pursuant to this Agreement shall be in writing and shall be duly and validly served if delivered by hand or sent by first class post to the registered office of the relevant Party. Any notice sent by post shall be conclusively treated as having been served two Working Days after posting.

22.2 Neither Party may assign or charge its rights or interests under this Agreement without the prior written consent of the other Party (not to be unreasonably withheld or delayed).

22.3 Neither Party intends that any term of this Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person other than Network Rail or the Customer.

22.4 No amendment to or variation of this Agreement shall be effective unless in writing and signed by or on behalf of each Party. No general terms and conditions contained in any purchase order or other document customarily required by either Party in connection with a request for works or services shall be binding on the Parties.

22.5 This Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement and supersedes any previous agreements between the Parties.

22.6 Each Party acknowledges that in entering into this Agreement it is not relying upon any statement or representation not set out in this Agreement.

22.7 This Agreement shall be governed by and construed in accordance with the laws of England and Wales. Save as expressly provided otherwise, the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any disputes that may arise out of or in connection with this Agreement.

Yours faithfully,

Signed by
duly authorised for and on behalf of
Network Rail Infrastructure Limited

……..

Dated: …….

SUBJECT TO CONTRACT

We agree to the above.

Signed by
duly authorised for and on behalf of
[Name of Customer][12]

……..

Dated: …….

[12] Insert full and correct registered company name as per top of page 1 of this Agreement.

SUBJECT TO CONTRACT

Schedule 1

Definitions and Interpretation

1 Definitions

1.1 For the purpose of this Agreement:

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

Act means the Railways Act 1993 as amended;

Approval in Principle means the certificate referred to in Standard NR/L2/CIV/003 and recorded in form NR/L2/CIV/003/FORMA, once completed and fully endorsed NR/L2/CIV/003/FORMA remains valid for three years provided construction work begins within that time;

Asset Status Report means the asset status report(s) in the form set out in NR/L2/MTC/089/AMP009 and prepared and approved in accordance with NR/L2/MTC/089;

BAPA Construction Certificate means the certificate acknowledged by countersignature of the agreed form by Network Rail in accordance with clause 7.7, confirming that the Construction Completion Criteria have been satisfied;

BAPA Final Certificate means the certificate acknowledged by countersignature of the agreed form by Network Rail in accordance with clause 7.10, confirming that the Final Completion Criteria have been satisfied;

CDM Regulations means the Construction (Design and Management) Regulations 2015;

Change in Law means the application to any Party of any Legal Requirement which did not so previously apply or the change of any Legal Requirement applying to that Party (including any such Legal Requirement ceasing to apply, being withdrawn or not being renewed) other than in relation to corporation tax (or any other tax of a similar nature replacing corporation tax on profits or gains) or value added tax;

Change in Standards means the coming into effect of a Railway Industry Standard or of any amendment thereto, or of a Network Rail Standard or of any amendment thereto with which the Customer is obliged to comply, such Change in Standards to be applied after the Works have passed Approval in Principle only where the change has been made for safety reasons, pursuant to a Mandatory Variation;

Commencement Date means the date of this Agreement;

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 Agreement, jurisdiction over either of the Parties or the subject matter of this Agreement;

Completion shall occur on the date which Network Rail countersigns the BAPA Final Certificate in accordance with clause 7;

Completion Criteria means the criteria set out in paragraph I of Schedule 2;

Construction Completion Certificate means the certificate referred to in Standard NR/L2/MTC/089 and recorded in form NR/L2/MTC/089/AMP014;

Construction Completion Criteria means:

(a) those project specific criteria set out in paragraph I of Schedule 2; and

(b) the issue of the Construction Completion Certificate;

Construction Completion Date means the date on which Network Rail countersigns the BAPA Construction Certificate in accordance with clause 7.7;

Contractor means any person to whom a contract for the whole or any part of the design and/or construction of the Works is let and for whom the Customer is the employer;

SUBJECT TO CONTRACT

Control Period means the period following an ORR access charges review over which the financial framework determined by ORR at such access charges review as being required by Network Rail to operate, maintain, renew and enhance its infrastructure is to be implemented;

CSM-REA Regulations means the Commission Implementing Regulation (EU) No 402/2013 of 30 April 2013 on the common safety method for risk evaluation and assessment and repealing Regulation (EC) No 352/2009 (as amended);

Customer Cap means an amount equal to 10% of the Estimated Project Cost as at the Commencement Date;

Daily Liquidated Damages Sum means the amount set out in paragraph J of Schedule 2;

Defects Identification and Completion Certificate means the certificate referred to in Standard NR/L2/MTC/089 and recorded in form NR/L3/MTC/089/AMP016;

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 this Agreement;

Escalation Procedure means the procedure for the escalation of disputes set out in Schedule 4;

Estimated Cost means the estimate of the Network Rail Costs as set out in paragraph D of Schedule 2, updated from time to time in accordance with this Agreement;

Estimated Project Cost means the estimated costs of the Works to the Customer up to Completion as set out in paragraph E of Schedule 2 as updated from time to time in accordance with this Agreement;

Existing Asset Obligation means any statutory or contractual obligation as at the Commencement Date for Network Rail to carry out works in relation to any land or asset owned by Network Rail;

Final Certificate means the certificate referred to in Standard NR/L2/MTC/089 and recorded in form NR/L2/MTC/089/AMP017;

Final Completion Criteria means:

(a) those project specific criteria set out in paragraph I of Schedule 2; and

(b) the issue of the Final Certificate;

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 in areas other than the site of the Works;

(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 other than involving the Customer or Network Rail;

UK GDPR has the meaning given in clause 20 (Confidential Information);

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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 properly qualified and competent person engaged in carrying out works or services of a similar size, nature, scope, type and complexity, complying with all Legal Requirements and applicable British, European and International standards and published codes of practice;

GRIP means the Network Rail document entitled Governance for Railway Investment Projects as amended from time to time;

Implementation Programme means the programme set out in paragraph G of Schedule 2 as updated from time to time;

Indirect Loss means loss of production, loss of profit, loss of revenue, loss of contracts, liabilities incurred under other agreements (save costs paid by the Customer to contractors appointed by the Customer in relation to the Works) or any indirect or consequential loss arising out of or in connection with this Agreement;

Infrastructure Manager has the meaning set out in the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (**ROGS**);

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 of the European Union 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 judgement 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;

Liquidated Damages Payment Date means the date stated in paragraph K of Schedule 2 as amended from time to time in accordance with this Agreement;[13]

Losses means costs, claims, damages, demands, losses, expenses, or liabilities incurred by the relevant person but excluding any Indirect Loss;

Mandatory Variation means any Variation necessitated by:

(a) any Specific Change in Law; and/or

(b) any Change in Standards for safety reasons;

Necessary Consents means all approvals, permissions, consents, licences, certificates, registrations and authorisations (including Regulated Change) whether statutory or otherwise, which are required from time to time for the purposes of carrying out the Works;

Network means the railway facilities of which Network Rail or another party is the facility owner (as defined in section 17(6) of the Act;

Network Code means the code setting out the rules applying to all regulated Access Agreements;

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

Network Operation Issue means the following events or circumstances, in so far as not reasonably foreseeable at the Commencement Date that requires Network Rail to act immediately or with urgency:

(a) any Safety Critical Event;

(b) any Operational Emergency;

(c) any Change in Law;

[13] The Liquidated Damages Payment Date recognises that the date on which LDs become payable may not be the same date as the Construction Completion Date. The date should be the date the Customer would start incurring financial losses.

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(d) any Direction of a Competent Authority;

(e) any change in the Network Licence;

(f) any contractual commitment of Network Rail existing on, or prior to the Commencement Date under any Access Agreement;

Network Rail Cap means the higher of:

(a) £100,000; or

(b) a sum equal to the total of Agency Costs, Contractors' Costs and Personnel Costs (all as defined in Schedule 3) included in the Estimated Cost as at the Commencement Date. As varied from time to time in accordance with Clause 9.2 (d);

Network Rail Costs has the meaning given in Schedule 3;

Network Rail Standard means a standards document issued by Network Rail from time to time in relation to the Network as a whole and which applies to the performance of the Works or Services under this Agreement, as published on the website https://standardse-networkrail.msappproxy.net/;

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;

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

PACE means the Network Rail standard NR/L2/P3M/201 entitled Project Acceleration in a Controlled Environment (PACE) as amended from time to time;

PACE Phase A means the project initiation phase as set out in PACE;

PACE Phase 1 means the development and project selection phase as set out in PACE;

PACE Phase 2 means the project design phase as set out in PACE;

PACE Phase 3 means the project delivery phase as set out in PACE;

PACE Phase 4 means the project close phase as set out in PACE;

Party means a party to this Agreement and includes its successors in title, permitted assigns and permitted transferees and Parties shall be construed accordingly;

Project has the meaning given in paragraph A of Schedule 2;

Railway means the Network and the provision of railway services as defined in section 82 of the Act in connection with the Network;

Railway Industry Standards means Railway Industry Standards produced pursuant to the Railway Group Standards Code (or equivalent predecessor documents, including previous versions of the Railway Group Standards Code) defining mandatory requirements in respect of the mainline railway in each case as published by the Rail Safety and Standards Board Limited or imposed by the Office of Rail and Road. Such standards can be accessed on the website https://www.rssb.co.uk/standards;

Railway Interoperability Regulations means The Railways (Interoperability) Regulations 2011 (as amended);

Regulated Change means Network Change (as defined in the Network Code) and/or Station Change (as defined in the Station Access Conditions) to the extent that each is required in connection with the Works;

Relevant Protected Characteristic has the meaning given in clause 19 (Equality and Diversity);

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 level of any item of infrastructure;

SUBJECT TO CONTRACT

Services means the services to be carried out by Network Rail as set out in paragraph C of Schedule 2;

Service Level Obligations means the levels of service set out in Schedule 5;

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, including any changes to either Network Rail's Safety Authorisation or the Customer's Safety Authorisation or Safety Certificate (as appropriate), these terms as defined in ROGS, or Standards required by any Change in Law; or

(b) the Works or works of a similar type, but not to works in general;

Standards means Railway Industry Standards and Network Rail Standards as these are updated and/or amended from time to time (including, for the avoidance of doubt, the Network Licence, the Network Code and the Station Access Conditions);

Station Access Conditions means the National Station Access Conditions 2013 (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;

Taking Over[14] means the taking over by Network Rail of responsibility for maintenance of the Works (or the relevant part of the works where as detailed in paragraph M of Schedule 2 not all of the Works will be taken over by Network Rail) and shall occur on the date that the Taking Over Certificate is countersigned by Network Rail pursuant to clause 7.8;

Taking Over Certificate means the certificate referred to in Standard NR/L2/MTC/089 and recorded in form NR/L2/MTC/089/AMP015;

Variation means any change or variation to the Works, the Services, the Construction Completion Date and/or the Liquidated Damages Payment Date in accordance with clause 9 and, for the avoidance of doubt, includes a Mandatory Variation;

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

Works means the whole of the design and construction works as described in the Works Requirements; and

Works Requirements means the specification in paragraph B of Schedule 2 which sets out a description of the Works.

1.2 In this Agreement, 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 this Agreement;

(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 Agreement;

(e) references to an agreement, deed, instrument, licence, code or other document (including this Agreement), or to a provision contained in any of these, shall be

[14] Where there are no Works being taken over by Network Rail, references to Taking Over throughout this Agreement to be reviewed and amended accordingly.

SUBJECT TO CONTRACT

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 this Agreement 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;

(k) a reference to writing includes any email transmission and any means of reproducing words in a tangible and permanently visible form; and

(l) the words in this Agreement shall bear their natural meaning.

1.3 Unless expressly stated to the contrary, any reference in this Agreement to the right of consent, approval, acceptance or agreement shall be construed such that such consent, approval, acceptance or agreements shall not be unreasonably delayed or withheld. The Parties acknowledge that:

(i) the withholding or delaying of the giving of consent, approval, acceptance or agreement by the Customer under this Agreement which would place Network Rail in breach of the law, the Network Licence, any Standard or any contract would be unreasonable;

(ii) nothing in this Agreement shall require Network Rail to give or procure the giving of any consent, approval or acceptance 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

(iii) notwithstanding any other provision of this Agreement, in performing its obligations and exercising its rights under this Agreement Network Rail shall retain sole discretion in relation to safety in its role as Infrastructure Manager or as owner and operator of the Network in accordance with the Network Licence.

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Schedule 2

The Works

A The Project

[This should be a description of the whole Project, setting out which activities form part of the Development Works and which form part of the proposed future construction phase.]

B Works Requirements

The Works comprise [insert a description of the Works and include references to appropriate detailed design drawings, specifications, Detailed Technical Requirements, Documents, scope, desired outputs etc.]

C Services[15]

The Services to be provided by Network Rail are as follows:

(a) provision of a Network Rail sponsor to provide support and guidance to the Customer;

(b) provision of a Network Rail project manager to provide support and guidance to the Customer;

(c) preparatory work in respect of future project phases (including drafting of other agreements;

(d) preparation and facilitation of leases and agreements with other parties;

(e) provision of guidance documents for Works to take place on Network Rail land;

(f) provision of guidance on applicable Network Rail procedures / Requirements and Standards;

(g) project engineers for relevant engineering disciplines to undertake duties under the Standard NR/L2/RSE/02009 as required;

(h) provision of Network Rail record drawings and services information where available;

(i) attendance at meetings;

(j) review of method statement / risk assessments / health and safety plans / Asset Management Plans / environment plans / safety management plans [insert details of any other reviews];

(k) review of information provided by the Customer / Design Data demonstrating that the design of the Works takes into account the site constraints and all applicable Standards;

(l) procurement and management of Possessions and Isolations;

(m) provision of asset protection services;

(n) appointment of project engineers for applicable engineering disciplines to undertake design review and acceptance or no objection where necessary;

[15] The template list provided should be amended to reflect project specifics.

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(o) issue of access permits or track visitor permits;

(p) facilitating surveys;

(q) provision of site safety staff to effect a safe system of work on Network Rail property;

(r) administration of the Taking Over procedures, including arranging the Taking Over meeting within four (4) weeks of the Construction Completion Date;

(s) facilitating the monitoring of the effects of electromagnetic interference on railway infrastructure;

(t) review of Work Package Plans submitted by the Customer;

(u) review and acceptance of compliant project health and safety file;

(v) supporting the Asset Management Plan process;

(w) monitoring and reporting on Network Rail's performance against the Service Level Obligations;

(x) applying for the Necessary Consents where Network Rail is responsible for obtaining such consents;

(y) administration and management of internal Network Rail procedures to consider the applications for the Necessary Consents;

(z) publication of operations notices; and

(aa) [insert details of any other services and/or remove services that are not required.]

D Estimated Cost

[Insert the costs table from the Ready Reckoner output here.]

E Estimated Project Cost

[Insert the costs table from the Ready Reckoner output here.]

F Necessary Consents and Regulated Changes

[Insert Consents here or state "none".]

G Implementation Programme

[Insert relevant high-level milestones, including the anticipated completion date.]

H Completion Date

[Insert date here.]

I Completion Criteria[16]

[16] The criteria for deciding whether the Works are completed will be extracted from AMP017.

SUBJECT TO CONTRACT

The detailed Completion Criteria for the Taking Over Certificate, Defects Identification and Completion Certificate and BAPA Final Certificate relating to the Works shall be agreed as part of agreeing the Asset Management Plan, but shall as a minimum comprise:

(a) for the Taking Over Certificate – satisfaction of the requirements set out in Standard NR/L2/MTC/089 and recorded in form NR/L2/MTC/089/AMP015;

(b) for the Defects Identification and Completion Certificate – satisfaction of the requirements set out in Standard NR/L2/MTC/089 and recorded in form NR/L2/MTC/089/AMP016; and

(c) for the BAPA Final Certificate – all of the foregoing, plus provision of an acceptable health and safety file.

J Daily Liquidated Damages Sum[17]

[Insert figure here.]

K Liquidated Damages Payment Date

[Insert date here.]

L Public Liability Insurance

[Insert figure here.]

M Works that will be asset protected but will not transfer to Network Rail[18]

[Insert relevant Works here or state “none”.]

N Defects Liability Period[19]

[Insert period here.]

[17] This will be based on that agreed with the Customer representing a pre-estimate of the Customer's loss which will be negotiated by the Parties acting reasonably. If the Parties cannot agree a figure clause13.5 should be redrafted to include a cap on damages.
[18] Prior to signature of the BAPA, Network Rail to check the ownership arrangements for the Works post Commissioning.
[19] Minimum 12 months required.

SUBJECT TO CONTRACT

Schedule 3

Network Rail Costs

1 Definitions

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

Agency Costs means the cost, multiplied by 1.15, to Network Rail, of any consultants and contractors who are not Network Rail employees but who are engaged by Network Rail in connection with the performance of Network Rail's obligations under this Agreement and for whom Network Rail incurs business unit overheads (for example, business unit overheads includes utility costs, accommodation, conferences/meetings, IT costs, stationary/printing, office costs and posting/archiving), plus the properly incurred expenses and disbursements charged to Network Rail by those consultants and contractors;

Contractors' Costs means the cost to Network Rail of any consultants and contractors not working within Network Rail offices and engaged by Network Rail in connection with the performance of Network Rail's obligations under this Agreement, plus the properly incurred expenses and disbursements of those consultants and contractors;

Expenses and Disbursements means the costs, expenses and disbursements incurred by Network Rail in relation to the Works, in connection with:

(a) all technical, commercial and professional fees, costs and disbursements in connection with the Works but excluding Contractors' Costs and Agency Costs;

(b) all internal and external legal and other costs, charges, and expenses properly incurred by Network Rail in connection with the preparation, negotiation and enforcement of any supplemental leases, licences (including in respect of intellectual property) and other documentation entered into by Network Rail and relating to the Works (including this Agreement);

(c) insurance costs; and

(d) any sums payable by Network Rail pursuant to Conditions G and H of the Network Code where the same arise in connection with the carrying out or completion of the Works or the subsequent operation of the completed Works;

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 in paragraph 2 of this Schedule 3 for their particular banding as the same may be adjusted from time to time in accordance with paragraph 3 of this Schedule 3, which rate will be payable in respect of all worked hours spent by Network Rail's Personnel in connection with the Works;

Industry Risk Fee means an amount equal to 0.1% of the Estimated Project Cost as at the Commencement Date as revised in accordance with clause 9.1 to clause 9.3 other than a Variation of the type described in clause 9.2(a) to clause 9.2(c);

Necessary Consents Costs means the costs incurred by Network Rail in connection with any Necessary Consent for the Works including those related to:

(a) the costs of third parties associated with applying for, undertaking, changes to or as a consequence of any Necessary Consents;

(b) any sums payable by Network Rail pursuant to Conditions G and H of the Network Code where the same arise in connection with the carrying out or completion of the Works; or

(c) Possessions-Related Costs;

Network Rail Costs means Agency Costs, Contractors' Costs, Expenses and Disbursements, the Fee, Necessary Consents Costs, Personnel Costs, Possessions-Related Costs and Third Party Costs to the extent they arise from or are a consequence of the performance of its undertaking of the Services;

Network Rail Fee means an amount equal to 2.4% of the aggregate of the Agency Costs, Contractors' Costs and Personnel Costs as set out in the Estimated Cost as at the Commencement Date (as revised in accordance with clause 9.1 to clause 9.3 other than a Variation of the type described in clause 9.2(a) to clause 9.2(c));

SUBJECT TO CONTRACT

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 this Agreement, except that should a delay arise in the Implementation Programme that is caused by the breach or negligence of Network Rail the Customer will not be liable for such amounts incurred after Completion which are in excess of those amounts that would have been allowable had the delay not occurred;

Possessions-Related Costs means sums Network Rail will be obliged to pay to any train operator pursuant to Schedule 4 and/or 8 or equivalent provision of the relevant Access Agreement (including sums payable as a result of any acts or omissions of a Contractor or the Customer in relation to possessions of the Network shared between the Works and one or more interfacing projects); and

Third Party Costs means any amount which Network Rail is obliged to pay to third parties in connection with the Works.

2 Hourly Rates

Banding	Hourly Rate
1	£256.62
2	£179.63
3	£135.63
4	£116.90
5	£95.51
6	£94.09
7	£86.96
8	£78.41

Rates apply from 1 April 2026

1 Adjustment of Hourly Rates

1.1 Network Rail shall adjust the Hourly Rates to reflect any rate review agreed between Network Rail and the ORR, or in the absence of such rate review, annually on 1 April by the increase in the retail price index for the year ending the preceding November.

1.2 Where Network Rail identifies opportunities for delivering the Services for a lower cost by using Network Rail's Personnel for whom lower hourly rates apply, Network Rail will use reasonable endeavours to deliver the Services through such Network Rail's Personnel. In such cases, the hourly rate applicable to such Network Rail's Personnel shall apply.

2 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 2 (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.

3 Terms of Payment[20]

The terms of payment are as set out in clause 12.1 and clause 12.2 of this agreement except that the Network Rail Fee and Industry Risk Fee of amounts set out in paragraph D of Schedule 2 will be added to the first invoice.

[20] Any particular terms of payment to be inserted.

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Schedule 4

Escalation Procedure

1 Definitions

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

Executive Level Director means a person from time to time appointed as the holder of such office within each Party, which for Network Rail shall include Route Managing Directors;

Initial Notice means the notice served under paragraph 2.1 of this Schedule 4;

Project Manager means the person appointed by each Party to manage the delivery of Services or Works under this Agreement;

Response Notice means the notices served under paragraph 2.3 of this Schedule 4; 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 (**Initial Notice**).

2.2 The Initial Notice shall:

(a) state the paragraph 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 (5) 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 (3) Working Days (**Response Notice**).

2.4 The Response Notice shall:

(a) state 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 (3) Working Days following the receipt of the Response Notice or within three (3) 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, both Project Managers will notify their respective Senior Managers accordingly. Such notification shall be made within three (3) Working Days following the receipt of the Response Notice or within three (3) Working Days following the meeting.

3 Stage 2 – Senior Managers' Meeting

3.1 Following receipt of a notification pursuant to paragraph 2.6 of this Schedule 4, the Senior Managers of each Party shall arrange a meeting within five (5) 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 (3) Working Days following the meeting of Senior Managers.

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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 (3) Working Days following the meeting of Senior Managers.

3.4 At the same time as they make the notification in paragraph 3.3 of this Schedule 4, each Senior Manager shall notify their respective Executive Level 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 Level Directors' Meeting

4.1 Following receipt of a notification pursuant to paragraph 3.4 of this Schedule 4, the Executive Level Directors of each Party shall arrange a meeting within five (5) Working Days to seek resolution of the matter referred to in the Initial Notice. The Executive Level Directors may, at their discretion, invite the Senior Managers and/or the Project Managers to attend such a meeting.

4.2 If the Executive Level 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 Project Manager by written notice. Such notification shall be made within three (3) Working Days following the meeting of Executive Level Directors.

4.3 If the Executive Level Directors do not agree that their meeting resolves the matter raised in the Initial Notice, either Party may refer the matter to Dispute Resolution in accordance with clause 17.

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Schedule 5

Network Rail Service Level Obligations[21]

	Service	Service Level Obligation to provide service within	Service Level description
1	Clause 3.4 – notify the Customer after becoming aware of a matter which will prevent the performance of Network Rail's obligations.	Five (5) Working Days.	Notify the Customer of any matter which will prevent or impede Network Rail from performing the obligations or will prevent or impede the Customer from carrying out the Works.
2	Clause 3.5 – data and information.	A reasonable time.[22]	Provide data and information which is already in Network Rail's possession and which the Customer reasonably requires and has requested to carry out the Works.
3	Clause 3.7 – Notification of previously granted derogations.	As soon as reasonably practicable, but no later than 25 Working Days.	Provide details of relevant previously granted derogations.
4	Clause 7.7 – BAPA Construction Certificate.	Within 25 Working Days of the Construction Completion Criteria being satisfied.	Countersign BAPA Construction Certificate.
5	Clause 7.8 – Taking Over Certificate	Within 25 Working Days of the criteria relating to the Taking Over Certificate being satisfied.	Countersign the Taking Over Certificate.
6	Clause 7.9 – Defects Identification and Completion Certificate	Within 25 Working Days of the criteria relating to the Defects Identification and Completion Certificate being satisfied.	Countersign the Defects Identification and Completion Certificate.
7	Clause 7.10 – BAPA Final Certificate	Within 25 Working Days of the criteria relating to the Final Certificate being satisfied.	Countersign the BAPA Final Certificate.

[21] The Parties should review the time periods relating to each Service Level Obligation prior to entering into the BAPA to confirm that the Service Level Obligations are appropriate based on the scope and complexity of the Project.
[22] Network Rail and the Customer will agree the relevant time period post completion of the BAPA and once there is sufficient detail regarding the scope of the requirement.