SUBJECT TO CONTRACT

BASIC IMPLEMENTATION AGREEMENT (EMERGING COST)

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**")[1]

Dated: as at the later date of signature

Dear Customer,

Basic Implementation Agreement relating to [insert name of project][2] (the Agreement)

The Customer has requested and Network Rail Infrastructure Limited (registered office at Waterloo General Offices, London, SE1 8SW, registered in England and Wales number 02904587) (**Network Rail**) has agreed to carry out the Works for the Customer on the terms set out below. The Customer has confirmed it will fund the Works 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 shall:

(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 shall comply with its obligations under this Agreement including carrying out actions or providing information as reasonably requested from time to time by Network Rail. If any delay is caused to the Implementation Programme as a result of failure by the Customer to comply with this clause 2.2, then the Completion Date and the Liquidated Damages Payment Date shall be extended by such period as is reasonable in the circumstances.

2.3 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.

3 Obligations of Network Rail

3.1 Without prejudice to clause 1, Network Rail shall:

[1] For oversees Customers, Trusts or Partnerships please seek further advice from Corporate Commercial or your local Commercial Services Manager.
[2] Project name.

(a) act in good faith towards the Customer in respect of this Agreement and use reasonable endeavours to avoid unnecessary complaints, disputes and claims; and

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

3.2 Network Rail will carry out the Works in accordance with:

(a) Good Industry Practice;

(b) Legal Requirements and Standards;

(c) the Network Licence, the Network Code, Station Access Conditions and Depot Access Conditions as may be applicable from time to time;

(d) Necessary Consents; and

(e) the Works Requirements and the terms of this Agreement.

3.3 Network Rail may subcontract all or part of its obligations under this Agreement. Notwithstanding the appointment of a contractor, Network Rail shall remain liable for the performance of its obligations.

3.4 Network Rail will procure that the Works are completed by the Completion Date and shall use reasonable endeavours to carry out the Works in accordance with the Implementation Programme as may be amended from time to time by Network Rail after reasonable consultation with the Customer. Network Rail is entitled to extend the Completion Date and the Liquidated Damages Payment Date may be amended under clauses 2.2, 4.3, 6, 7 and 12, provided that Network Rail will not be entitled to change the Completion Date or the Liquidated Damages Payment Date to the extent any delay is caused by the breach or negligence of Network Rail.

3.5 Network Rail will prepare project status reports at agreed intervals (but no more frequently than every four weeks) for submission to the Customer. The reports shall include information relating to progress of the Works and provide key financial information for the Works; including any updates to the Estimated Project Cost and any other reasonable information reasonably requested by the Customer.

3.6 Network Rail hereby elects (and the Customer acknowledges such election) that it shall be the only client in accordance with the CDM Regulations 2015.

3.7 Network Rail hereby elects (and the Customer acknowledges such election) that it shall be the Proposer in accordance with the CSM-REA Regulations.[3]

3.8 Network Rail hereby elects (and the Customer acknowledges such election) that it shall be the Project Entity as defined in and in accordance with the Railway Interoperability Regulations.[4]

3.9 Network Rail shall effect and maintain (or procure the taking out and the maintenance of) the insurances which are set out in paragraph 15 of Schedule 3.

3.10 Network Rail shall, at the reasonable request of the Customer, allow the Customer to attend and observe any progress meetings it has with its contractor in respect of the Works.

3.11 Network Rail shall use reasonable endeavours to carry out the Works for the Estimated Project Cost, but, without prejudice to the other terms of this Agreement, the Customer shall pay all Network Rail Costs reasonably and properly incurred by Network Rail.

4 Necessary Consents

4.1 Network Rail shall make applications for, and use reasonable endeavours to obtain, those Necessary Consents specified in paragraph 4.2 of Schedule 3 as revised in accordance with clause 6.

4.2 Subject to clause 4.4, 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).

[3] If CSM-REA is not applicable, the text should be replaced with “Not used”. In the minority of cases where the Customer is the Proposer, change around Network Rail and the Customer in this sentence.
[4] If RIR is not applicable, the text should be replaced with “Not used”. In the minority of cases where the Customer is the Project Entity, change around Network Rail and the Customer in this sentence.

4.3 Network Rail shall have no liability to the Customer under this Agreement and shall have the right to extend the Completion Date and the Liquidated Damages Payment Date by such period as is reasonable in the circumstances as a result of

(a) any Necessary Consent not being granted;

(b) any delay in granting any Necessary Consent; or

(c) the terms upon which any Necessary Consent is granted,

except to the extent that it is as a result of negligence or breach of this Agreement by Network Rail and in which case Network Rail will be liable for the Direct Costs incurred by the Customer.

4.4 In the case of agreement of the Regulated Change before the Commencement Date the Regulated Change shall be as listed in paragraph 4.1 of Schedule 3. Where a Regulated Change that Network Rail is undertaking, has not been agreed before the Commencement Date, then following agreement of that Regulated Change and prior to the Works the Parties shall meet and agree an estimate of costs for the Regulated Change up to the Completion Date.

4.5 In conducting any discussions or negotiations with an Operator in relation to Regulated Change, Network Rail, subject to any reasonable confidentiality requirements, will:

(a) allow the Customer and its representatives to attend relevant meetings;

(b) provide the Customer with relevant correspondence; and

(c) have due regard to the Customer's comments (if any) in relation to Regulated Change.[5]

4.6 The Customer has agreed to be responsible for applying for, and using reasonable endeavours to obtain, the Necessary Consents listed in paragraph 4.3 of Schedule 3 in a format agreed between the Parties and in line with the requirements of the Implementation Programme.

4.7 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.

5 Additional Expense

5.1 Network Rail shall own the Works upon their completion. 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 Completion Date occurs, if sooner, where the Additional Expense is greater 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.

5.2 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.

6 Variations[6]

6.1 Any Variations shall be paid for by the Customer (unless the Parties agree otherwise or it is a Variation of the type specified in clauses 6.2(a) to (c)) and shall only be effective if agreed by both Parties in writing.

6.2 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) any Change in Law or a 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;

[5] The text in this clause 4.5 should be deleted and replaced with "Not used" when the Customer is a Train Operating Company. The Customer may be responsible for obtaining the Regulated Change where the Customer is an Operator and this should be documented in paragraph 4.3 of Schedule 3.

[6] The Customer should note that these Variations provisions may be used by the Customer to reduce the scope of the Works or Services as a means of managing their budget for the Project.

(e) as a consequence of the crystallisation of a risk which is identified in the QRA or a risk which was not reasonably foreseeable as at the Commencement Date;

(f) to address changes to or realisation of any of the underlying assumptions or conditions set out in Schedule 3; or

(g) to meet the Works Requirements and the need for the Variation was not reasonably foreseeable as at the Commencement Date,

Network Rail shall be entitled to vary the Works or Completion Date or the Liquidated Damages Payment Date to the extent that is reasonable in the circumstances, and the Customer shall not be liable for the Network Rail Costs in connection with a Variation in respect of clause 6.2(a) to (c).

6.3 Where Network Rail considers that a Variation is necessary under clause 6.2, 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 6.2. but may refer any matter concerning the scope, cost and effect of the Variation to be resolved under 16.1.

7 Compensation and Relief

7.1 Network Rail shall bear additional Direct Costs reasonably and properly incurred by the Customer (unless such costs are below £10,000 in aggregate) where:

(a) any interference with the Works which is caused by another contractor from an interfacing project interferes with, hinders or obstructs Network Rail (or its contractor) from carrying out the Works in accordance with the Implementation Programme;

(b) any Booked Possession is cancelled or altered (including as a result of any default by any Operator but excluding as a result of any action and / or default by the Customer); or

(c) a Variation is being implemented in accordance with clause 6.2(a) to (c),

except to the extent such costs are incurred due to the breach or negligence of the Customer or any contractor appointed by the Customer (other than Network Rail).

8 Intellectual Property

8.1 Network Rail hereby grants to the Customer an irrevocable, royalty-free and non-exclusive, licence to use (solely in connection with the Works), reproduce, modify and / or enhance any such intellectual property owned by Network Rail.

8.2 Network Rail shall use its reasonable endeavours to procure the grant to the Customer of a similar licence to use any intellectual property rights created as a result of the design and implementation of the Works which are owned by any third party. Save as aforesaid the Customer shall not acquire any intellectual property rights as a result of this Agreement or the Works.

8.3 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.

9 Completion

9.1 Where Network Rail considers that the Works have been completed in accordance with the Completion Criteria, Network Rail shall issue the Completion Certificate to the Customer.

9.2 The legal and beneficial title in the Works shall vest in Network Rail.

10 Network Rail Costs

10.1 The Customer shall pay to Network Rail all reasonably and properly incurred Network Rail Costs and any other sums due under this Agreement in accordance with the terms set out in this clause 10 and Schedule 2.

10.2 Within ten (10) Working Days after the end of each Payment Period throughout the carrying out of the Works, Network Rail shall submit an invoice (with an attached breakdown and including any supporting information reasonably requested by the Customer) to the Customer in respect of the Network Rail Costs applicable to such Payment Period or any preceding Payment

Periods, if not previously invoiced. Subject to clause 10.3, payment by the Customer to Network Rail shall be without set-off, retention, counterclaim, abatement or any other deduction and shall be due twenty (20) Working Days after the date of issue of the invoice (**Final Date For Payment**).

10.3 Where the Customer intends to withhold all or part of payments of any amount claimed by Network Rail in the invoice, notice must be given to Network Rail not later than five (5) Working Days before the Final Date For Payment under clause 10.2. The notice shall state the amount to be withheld, the basis on which that amount is calculated and the grounds for withholding payment. Unless such notification to withhold payment has been received from the Customer, the amount to be paid is that stated in the invoice which shall become due in accordance with clause 10.2.

10.4 Should any invoice not be paid by the Final Date For Payment in accordance with clause 10.2 (except in respect of any amount determined not to be payable pursuant to clause 16), interest shall be payable on the amount due calculated from the due date for payment up to and including the actual date of payment at the Interest Rate.

10.5 All amounts are exclusive of value added tax, which will be charged at the applicable rate.

11 Limitation of Liability

11.1 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 10 or clause 14.

11.2 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 for liquidated damages payable pursuant to clause 11.5 shall not exceed an amount equal to the Network Rail Cap. Notwithstanding the Network Rail Cap where, in respect of the same event, Network Rail recovers any sums under an Insurance Policy, 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. 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).

11.3 Clause 11.2 shall not apply to Losses incurred by the Customer as a result of:

(a) any liability in respect of 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 Works).

11.4 Any Losses suffered by either Party shall, for the purposes of clause 11.1, 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.

11.5 Subject to the limit of liability in clause 11.2, if to the extent that the Completion Criteria have not occurred by the Liquidated Damages Payment Date, unless due to the fault of the Customer or any contractor employed by the Customer, then Network Rail shall pay to the Customer the Daily Liquidated Damages for each day from the Liquidated Damages Payment Date until the date the Completion Certificate is issued by Network Rail in accordance with clause 9.1 or the date that it is determined under the Escalation Procedure that the Completion Date 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 clause11.5.

11.6 The Customer's maximum aggregate liability to Network Rail for any reason arising under, or in connection with, this Agreement or the Works shall not exceed an amount equal to the

Customer Cap. Notwithstanding the Customer Cap where, in respect of the same event, the Customer recovers sums under an insurance policy (including any insurance maintained by a contractor employed by the Customer) or 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 an insurance policy (including any insurance maintained by a contractor employed by the Customer) or contract and paid to Network Rail shall not contribute to the Customer Cap. The Customer shall use reasonable endeavours to make and diligently pursue a claim but shall not include an obligation on the Customer to take legal action).

11.7 Clause 11.6 shall not apply to:

(a) the Customer's payment obligations under clauses 4.2, 5, 10, 14.2 or Schedule 2; or

(b) any Losses incurred by Network Rail due to the negligence (except to the extent such negligence relates to the carrying out of any design by the Customer or any contractor appointed by the Customer[7]), fraud or fraudulent misrepresentation of the Customer or by any contractor appointed by the Customer (other than Network Rail); or

(c) any Losses incurred by Network Rail due to negligence in relation to the carrying out of any design by the Customer or any contractor appointed by the Customer which Losses shall not exceed an amount equal to the Customer's Design Liability Cap; or

(d) 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.

11.8 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).

12 Force Majeure Events

12.1 Subject to clauses 12.2 to 12.6, 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 or suffers or causes delay in performing (acting reasonably) such obligations by reason of a Force Majeure Event. Network Rail shall be entitled to changes to the Completion Date and the Liquidated Damages Payment Date to reflect an extension of time properly awarded under the Contracts in respect of a Force Majeure Event.

12.2 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 has not in fact performed, its obligations under this Agreement due to any failure to comply with its obligations under clause 12.2(a).

12.3 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. Such notification shall identify the particular event claimed to be a Force Majeure Event and provide such relevant information 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 to perform, the action being taken in accordance with clause 12.2(a) and (where possible) an estimate of the effects upon the Implementation Programme, the Completion Date and the Liquidated Damages Payment Date. 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.

12.4 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).

[7] If Network Rail is not relying on any designs developed by the Customer, please delete: (1) the wording in brackets in clause11.7(b) only (not the whole clause limb) and (2) clause 11.7(c) in its entirety.

12.5 As soon as practicable following the notification described in clause 12.3, the Parties shall use reasonable endeavours to agree appropriate modifications to the Implementation Programme (including those needed to properly take into account any changes to the Completion Date and the Liquidated Damages Payment Date required by Network Rail under clause 12.1) to take into account the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement and the progress of the Works and Services.

12.6 If the consequences of such Force Majeure Event are continuing for a period not less than 42 calendar days and the Parties have not agreed appropriate modifications in accordance with clause 12.5, then either Party may terminate this Agreement with immediate effect by written notice to the other Party. Upon termination the provisions of clause 14 shall apply.

13 Termination

13.1 Either Party may by written notice terminate this Agreement with immediate effect if:

(a) the other Party is in persistent or material breach of this Agreement (provided that the Party wishing to terminate shall first notify the other Party of any remediable breach and its intention to terminate, and shall allow the other Party a period of twenty (20) Working Days to remedy such breach); or

(b) the other Party becomes insolvent.

13.2 The Customer may in any event terminate this Agreement by giving twenty (20) Working Days written notice to Network Rail if:

(a) the latest estimated duration of the Works results in the likelihood of the Works not being completed by [xx calendar days/weeks/months/years][8] after the Completion Date revised in accordance with clause 6 (other than clause 6.2); or

(b) the latest Estimated Project Costs are more than 25% greater than the Estimated Project Costs as at the Commencement Date revised in accordance with clause 6 (other than clause 6.2),

unless the same is due to the negligence or breach of the Customer.

14 Consequences of Termination

14.1 Upon termination of this Agreement or completion of the Works, as applicable, the obligations of the Parties shall cease except for:

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

(b) the provisions of clauses 5, 8, 10, 14.2, 15, 16 and 19 which shall survive the termination or expiry of this Agreement and continue in full force and effect along with any other clauses of or Schedules to this Agreement which are necessary to give effect to them.

14.2 If this Agreement is terminated for any reason prior to Completion, 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 Network Rail's breach or Network Rail's insolvency or a Force Majeure Event under clause 12:

(i) an amount equal to the reasonable and proper costs and expenses incurred by Network Rail as a result of or in connection with such termination (including any amounts payable to the Contractor consequent upon termination of the relevant Contracts or the engagement of the Contractor thereunder);

(ii) the reasonable and proper costs and expenses incurred by Network Rail in removing all plant, equipment and those materials not incorporated into the Works and reinstating or procuring the reinstatement of the Works (or such part thereof as may exist as at the date of termination) and of the relevant part or parts of the Network affected by the Works to the extent necessary to make the same safe and secure and enable Network Rail to meet its contractual, statutory and Network Licence obligations; and

[8] This date should be based on an increase of 25% in the duration of the Works – update as applicable.

(iii) such additional amount as is required to put Network Rail in the same after tax position (taking into account the amount of any relief, allowance, deduction, set-off or credit relating to tax available to Network Rail in respect of the payment received or the payment of the costs incurred) as it would have been in if the payment had not been a taxable receipt in Network Rail's hands.

15 Confidential Information and Data Protection

15.1 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.

15.2 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.

15.3 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 UK GDPR, including reporting any such Security Incident to the Information Commissioner's Office (where necessary).

15.4 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.

16 Escalation and Dispute Resolution[9]

16.1 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 4 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. 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 Technology and Construction Bar Association.

16.2 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.

16.3 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.

[9] A mediation option is available on request.

17 Anti-Bribery and Slavery

17.1 Each Party 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 Equality and Diversity

18.1 Each Party shall perform its obligations under this Agreement in accordance with 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").

18.2 Each Party shall take reasonable steps to secure the observance of clause 18.1 above by its employees, agents, representatives, contractors and consultants.

18.3 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.

19 Freedom of Information

19.1 If either Party receives a request for the disclosure of information relating to the Works and/or this Agreement (the **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.

20 Miscellaneous

20.1 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, or in the case of notices addressed to Network Rail by email to notices@networkrail.co.uk. Any notice sent by post shall be conclusively treated as having been served two (2) Working Days after posting.

20.2 Neither Party may assign or charge all or any part of the benefit of, or rights or benefits under, this Agreement without the prior written consent of the other Party (not to be unreasonably withheld or delayed).

20.3 This Agreement may be executed in two counterparts which, taken together, shall constitute one and the same document.

20.4 No amendment to or variation of this Agreement shall be effective unless in writing and signed by a duly authorised representative on behalf of each Party.

20.5 For the purposes of the Contracts (Rights of Third Parties) Act 1999, nothing in this Agreement confers or purports to confer on a third party who is not a Party to this Agreement any benefits or rights to enforce a term of this Agreement.

20.6 This Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement and supersedes and extinguishes any prior drafts, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.

20.7 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.

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20.8 This Agreement shall be governed by and construed in accordance with the laws of England and Wales. Save as expressly provided otherwise, the Parties irrevocably agree that the courts of England and Wales are to 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: ……

We agree to the above

Signed by
duly authorised for and on behalf of
[Name of Customer][10]

……..

Print name: ……

Dated: ……

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

SUBJECT TO CONTRACT

Schedule 1

Definitions & Interpretations

1 Definitions & Interpretations

1.1 For the purposes 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/F001; once completed and fully endorsed NR/L2/CIV/003/F001 remains valid for three years provided construction work begins within that time;

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 2015;

Change in Law means the application to any Party after the later of the Commencement Date or issue of the Approval in Principle of any Legal Requirement which was not reasonably foreseeable as at such date:

(a) which did not so previously apply; or

(b) 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, after the Commencement Date or the issue of Approval in Principle if later, of a Railway Industry Standard or of any amendment thereto, or of a Network Rail Standard or of any amendment thereto with which Network Rail is obliged to comply, such Change in Standards to be applied after the design for the Works have received 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 not, which has, in respect of this Agreement, jurisdiction over either of the Parties or the subject matter of this Agreement;

Completion Certificate means a certificate issued by Network Rail in accordance with clause 9.1;

Completion Criteria means those criteria specified in paragraph 7 of Schedule 3;

Completion Date means the date for completion of the Works as specified in paragraph 8 of Schedule 3, as amended or varied from time to time in accordance with this Agreement;

Contract means the contract between Network Rail and its contractor

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 as varied from time to time in accordance with clause 6.2 (d) to (f);

Customer's Design Liability Cap means the amount stated in paragraph 11 of Schedule 3;[11]

[11] In the event that Network Rail will be relying on any designs developed by the Customer, the cap will be agreed by the Parties acting reasonably and taking into account the particulars of the project – including the design. If Network Rail will not be relying on any designs developed by the Customer, this definition should be deleted, changes made to Clause 11.7 as instructed, and changes to Schedule 3 made as instructed.

Daily Liquidated Damages means the amount stated in paragraph 10 of Schedule 3;

Depot means any light maintenance depot as defined by section 83 of the Act;[12]

Depot Access Conditions means:

(a) the National Depot Access Conditions (December Standard); and

(b) the Annexes to the National Depot Access Conditions relating to a Depot,

as each is modified or amended in respect of the Depot from time to time in either case with the approval of the ORR;

Depot Change means the procedures contained in the Depot Access Conditions;

[Depot Facility Owner means the facility owner (as defined in section 17 of the Act) for the Depot that enters into a lease of a Depot with Network Rail to operate the Depot and becomes the Infrastructure Manager of the Depot after Completion;][13]

Direct Costs means direct costs reasonably incurred in relation to the Works, including, in the case of the Customer, any costs paid to any contractors appointed by the Customer and other parties, but excludes any loss of production, loss of profit, loss of revenue, loss of contracts or any indirect or consequential loss arising out of or in connection with this Agreement;

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 Project Cost means the estimated costs of the Works as set out in paragraph 3 of Schedule 3 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;

Force Majeure Event means an event or sequence of events beyond a Party's reasonable control (each Party having acted in accordance with Good Industry Practice and having taken necessary measures to address potential risks) preventing or delaying it (acting reasonably) from performing its obligations under this Agreement;

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;

Implementation Programme means the programme for the Works set out in paragraph 6 of Schedule 3 as updated from time to time in accordance with this Agreement;

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 given in the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (**ROGS**);

Insurance Policies means those insurances maintained by Network Rail or the Contractor in relation to the Works as are listed in paragraph 15 of Schedule 3;

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[12] Note that the Depot drafting included within the BIA relates to Network Rail's regulated light maintenance depots. Where works are being undertaken at any other type of depot that Network Rail owns and is not leased under a long lease to another party, additional drafting will need to be incorporated into the BIA.

[13] Delete if not applicable

Interest Rate means the greater of either Bank of England's base rate plus 2% per annum or 2.5% per annum;

Legal Requirement means any of the following:

(a) any enactment to the extent that it applies to that Party or to the Works;

(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 limbs (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[14] means the date stated in paragraph 9 of Schedule 3, as amended from time to time in accordance with this Agreement;

Losses means any 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 Network Rail consents and 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 an Operator is the facility owner (as defined in section 17(6) of the Act;

Network Change has the meaning given in the Network Code;

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 Direction of a Competent Authority (excluding such issue arising as a consequence of the Works except to the extent that it is as a result of negligence by Network Rail);

(d) any change in the Network Licence;

(e) any contractual commitment of Network Rail existing on or prior to the date the Commencement Date;

provided that in each case such issue affects or is affected by the Works;

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 2 included in the Estimated Project Cost as at the Commencement Date as varied from time to time in accordance with clause 6.2 (d) to (f));

Network Rail Standard means a standards document issued by Network Rail from time to time in relation to the Network as a whole which applies to the performance of the Works and Services under this Agreement, as published on the website http://www.uk.ihs.com/;

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

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 an Access Agreement with Network Rail;

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 1 means the development and project selection phase as set out in PACE;][15]

[PACE Phase 2 means the project design phase as set out in PACE;][16]

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;

Payment Period means the period of each of thirteen consecutive periods in a calendar year starting on 1st April, each such period being 28 (twenty eight) calendar days in length, save that the length of the first and last period in the year shall be such as shall be adopted by Network Rail;[17]

Possession means 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 any speed restriction);

QRA means the quantified assessment of risks and assumptions associated with the Works (as referred in paragraph 5 of Schedule 3) and which is incorporated into this Agreement;

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 and / or Station Change and / or Depot Change to the extent that each is required in connection with the Works;

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;

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 (as these terms are 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,

which occurs after the later of the Commencement Date or issue of the Approval in Principle and which is not reasonably foreseeable as at such date;

[15] The BIA should normally be used for PACE Phases 3 & 4 only, however if PACE Phases 1 & 2 are required refer to CCT otherwise delete.
[16] The BIA should normally be used for PACE Phases 3 & 4 only, however if PACE Phases 1 & 2 are required refer to CCT otherwise delete.
[17] Depending on the Commencement Date the first and last Payment Periods may be more or less than 28 days so as to synchronise the remaining Payment Periods with Network Rail's financial cycle. The definition replicates that for Accounting Period in the ORR's Network Code which can be found on Network rail's website.

Standards means Railway Industry Standards and Network Rail Standards as these are updated and / or amended from time to time;

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;

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

[**Station Facility Owner** means the party that enters into a station lease with Network Rail to operate the station and becomes the Infrastructure Manager of the station after Completion;][18]

Variation means any change or variation to the Works, the Completion Date and / or the Liquidated Damages Payment Date in accordance with clause 6 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;

Works Requirements means the specification in paragraph 2 of Schedule 3 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 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.

[18] Delete if not applicable.

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:

(a) 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;

(b) 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

(c) 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.

SUBJECT TO CONTRACT

Schedule 2

Network Rail Costs

1 Definitions

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 Works or services 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 costs to Network Rail of any contractors not working within Network Rail offices and engaged by Network Rail in connection with the observance and performance of its obligations in relation to the Works, plus the properly incurred expenses and disbursements of those 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 (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 excluding insurances set out in paragraph 15 in Schedule 3;

(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; and

(e) any goods, services, materials or other items issued by or on behalf of Network Rail to the contractor at no cost to the contractor.

For the avoidance of doubt, costs arising from trespass and vandalism occurring in the area of the Works shall not be included as Network Rail Costs;

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 2 for their particular banding as the same may be adjusted from time to time in accordance with paragraph 3 of this Schedule 2, 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 0.4% of the aggregate of the Agency Costs, Contractors' Costs and Personnel Costs as set out in the Estimated Project Cost as at the Commencement Date as revised in accordance with clause 6 (other than a Variation of the type described in clause 6.2(a) to (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 Additional Expense, Agency Costs, Contractors' Costs, Expenses and Disbursements, Fee, Necessary Consents Costs, Personnel Costs, Third Party Costs and

Possessions-Related Costs to the extent they arise from, or are a consequence of the performance of and undertaking of the Works;

Network Rail Fee means an amount equal to 0.3% of the aggregate of the Agency Costs, Contractors' Costs and Personnel Costs as set out in the Estimated Project Cost as at the Commencement Date (as revised in accordance with clause 6 other than a Variation of the type described in clause 6.2 (a) to (c));

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 the date of Completion which are in excess of those amounts that would have been allowed had the delay not occurred;

Possessions-Related Costs means sums Network Rail will be obliged to pay to any Operator pursuant to Schedules 4 and / or 8 or equivalent provision of the relevant Access Agreement; and

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

2 Hourly Rates

Banding	Hourly Rate
1	£256.62
2	£179.63
3	£135.44
4	£116.90
5	£95.51
6	£94.09
7	£86.96
8	£78.41

Rates apply from 1 April 2026

3 Adjustment of Hourly Rates

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.

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.

4 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.

5 Terms of Payment[19]

The terms of payment are as set out in clauses 10.1 and 10.2 of this Agreement except that the Network Rail Fee and the Industry Risk Fee set out in paragraph 3 of Schedule 3 will be added to the first invoice.

[19] Any particular terms of payment beyond those set out in clause 10.1 to be inserted.

SUBJECT TO CONTRACT

Schedule 3

The Works

1 The Project

[Describe the project and background]

2 Works Requirements

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

Document reference: [insert reference to documents, if relevant]

3 Estimated Project Cost

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

4 Necessary Consents (including Regulated Changes)

4.1 Necessary Consents already granted

[Insert Consents or state None]

4.2 Necessary Consents to be obtained by Network Rail

[Insert Consents or state None]

4.3 Necessary Consents to be obtained by the Customer

[Insert Consents or state None]

5 QRA[20]

Document reference: [insert reference and date]

6 Implementation Programme

[Insert all the relevant milestones][21]

7 Completion Criteria

[Insert]

8 Completion Date

[Insert date]

9 Liquidated Damages Payment Date

[Insert date][22]

[20] Under the BIA the figure is derived from a QCRA.
[21] Note that there are minimum rail industry timescales for the preparation and implementation of certain activities such as booking of possessions and the provision of certain materials, etc. Therefore the Implementation Programme must allow for the timescales or the liabilities in this Agreement to be amended accordingly.
[22] This is the date from which liquidated damages shall be payable by Network Rail in the event of delay.

SUBJECT TO CONTRACT

10 Daily Liquidated Damages

[Insert amount][23]

11 Customer's Design Liability Cap

[Insert amount][24]

12 Customer Cap

[Insert amount from Ready Reckoner]

13 Network Rail Cap

[Insert amount from Ready Reckoner]

14 Assumptions / Exclusions / Conditions

[Insert as appropriate][25]

15 Insurance Policies

Insurance policies arranged by Network Rail (which extend to cover its contractors, subcontractors, suppliers, manufacturers, and consultants) are:

- construction "all risk" insurance;
- third party liability insurance; and
- insurance of Network Rail's Property.[26]

[23] 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 agree no Liquidated Damages apply insert "NIL" or "£0" (do not leave blank and do not insert N/A). If the Parties cannot agree a figure clause 11.5 should be redrafted to include a cap on damages.
[24] In the event that Network Rail will be relying on any designs developed by the Customer, the cap will be agreed by the Parties acting reasonably and taking into account the particulars of the Project – including the design. If Network Rail will not be relying on any designs developed by the Customer, the text in this paragraph should be deleted and replaced with "Not used".
[25] Insert a list of all assumptions and / or exclusions made relating to low probability / high impact risks when calculating the Estimated Project Cost but if there are none then insert "Not used".
[26] Leave this text, but if further clarification is required then refer to Group Insurance for additional text. Any extraordinary insurances required specific to any project should be set out here.

Schedule 4

Escalation Procedure

1 Definitions

1.1 In this Schedule 4, 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 and Regional 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 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) of this Schedule 4; 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) of this Schedule 4.

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.

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 an adjudicator in accordance with clause 16.