

## Basic Services Agreement Templates – Customer Explanatory Notes

### Explanatory Notes on Basic Services Agreement

Paragraph Number / Heading	Comment
Background	<p>A Basic Services Agreement is required when a Customer requests a Network Rail to undertake Services during the development stage of a project.</p> <p>The Agreement provides for reasonable and proper costs (including costs of risks <u>not</u> contracted out, insured or covered through the Industry Risk Fund, etc) to be passed through to the Customer on an emerging cost basis.</p> <p>The Agreement should be used where the Services are relatively uncomplicated, and straight forward to manage.</p> <p>Given the nature of the Services to be provided under the Agreement, the format is slightly different to the other basic enhancement agreements.</p> <p>If the services are complicated or have the potential to cause significant disruption to the network, the Design Services Agreement should be considered.</p>
Roles and Responsibilities	<p>In carrying out Services on behalf of the Customer, Network Rail will have a range of obligations towards its Customer. It is important that liabilities are appropriately identified and addressed in the Agreement.</p>
Introduction	<p>The parties agree that Network Rail will carry out the Services and that the Customer will fund the Services.</p>
1 and 2– (Obligations of the Customer)	<p>The Customer must provide Network Rail within a required time the information specified in Part A of Schedule 1, or where no information is set out, such information as Network Rail reasonably requests.</p>
3, 4, 5 and 6 (Obligations of Network Rail)	<p>At paragraph 3 Network Rail undertakes to carry out the Services exercising reasonable skill and care, in compliance with law and Necessary Consents, in accordance with Railway Group Standards, having regard to Network Rail's obligations in respect of the Network and in accordance with the terms of the Agreement.</p> <p>Network Rail will carry out the Services having due regard to any key dates set out in Part D of Schedule 1 and must provide regular reports on the progress of the Services and the Estimated Costs of the Services. Network Rail will use reasonable endeavours to provide the Services for the Estimated Costs but the Customer shall pay all reasonably and properly incurred Network Rail Costs.</p>
7, 8 and 9 – (Necessary	<p>Network Rail is to use reasonable endeavours to obtain any Necessary Consents listed in the Services. The grant of such consents is</p>

These Explanatory Notes should not be viewed as part of the Agreement and are only for guidance purposes. In the event of any discrepancy between the Agreement and these Explanatory Notes, the Agreement shall prevail.

Paragraph Number / Heading	Comment
Consents)	not within Network Rail's power, and therefore Network Rail has no liability to the Customer as a result of them not being granted or the terms on which they are granted or when they are granted (except where Network Rail is negligent or in breach).
10 and 11 – (Access and Possessions)	Any access to the Network must be agreed with Network Rail and the Customer must be accompanied by Network Rail's staff at all times. Unless agreed otherwise, access is limited to visual inspection or visual survey only and the Customer does not have the right to carry out works or intrusive activity in respect of the Network. If the Customer breaches this provision, it is liable to Network Rail for all losses including any disruption caused to operations of Network Rail or any train operator.
12 – (Variations)	A variation to the Agreement (including the Services) is only effective if agreed in writing and all Variations will be paid for by the Customer.
13 – (Intellectual Property)	At paragraph 13 Network Rail grants to the Customer an intellectual property licence to use the intellectual property in the Deliverables (which are set out in Part C of Schedule 1) owned by Network Rail. Where Network Rail does not own the rights it will use reasonable endeavours to procure such rights from the owner of the intellectual property for the Customer.
14 and 15 - (Payment)	<p>Paragraph 14 provides that the Customer is to pay all reasonably and properly incurred Network Rail Costs.</p> <p>Paragraph 15 sets out the procedure for invoicing the Customer for reimbursement of costs as set out in Schedule 2, for payment by the Customer of invoices and the rights and procedures for the Customer to object to such invoices.</p>
16 to 39 – (Limitation of Liability)	<p>Subject to qualifications set out in the Agreement, neither party is liable for any Losses incurred by the other party until the aggregate amount has exceeded £10,000 (to avoid a "claims culture"). Claims can also be made on completion of the Services or termination.</p> <p>Network Rail's liability to the Customer for any reason relating to the Agreement is limited to the Network Rail Cap. Any sums actually recovered under an insurance policy related to the Services in respect of loss suffered by the Customer are payable by Network Rail in addition to the Network Rail Cap and contribute to the Network Rail Cap if the cap has not already been reached. This limitation does not apply to losses as a result of a liability for death or personal injury from Network Rail's negligence or breach of statutory duty or in respect of fraud by Network Rail or a contractor employed to carry out the Services.</p> <p>The Customer's liability to Network Rail for any reason relating to the Agreement is limited to the Customer Cap plus any monies recovered from insurers or any contracts. This limitation does not apply to various payment obligations (including the obligation to pay Network Rail Costs), where losses are a result of the Customer's negligence or fraud or to claims for death or personal injury or breach of statutory duty.</p>

These Explanatory Notes should not be viewed as part of the Agreement and are only for guidance purposes. In the event of any discrepancy between the Agreement and these Explanatory Notes, the Agreement shall prevail.

Paragraph Number / Heading	Comment
	Neither party is liable for any loss of profits or other indirect or consequential loss suffered by the other party.
26, 27 and 28 – (Termination)	<p>At paragraph 26, either party may terminate the Agreement if:</p> <p>(a) the other party is in material and persistent breach (provided that, in respect of a remedial breach, it allows the other party twenty Working Days to remedy the breach); or</p> <p>(b) the other party becomes insolvent.</p> <p>At paragraph 27 the Customer may terminate the Agreement if the Estimated Costs are revised and the parties fail to agree the increase in the Cost Estimate.</p> <p>In addition, under paragraph 28, the Customer may terminate on not less than 2 months written notice for any reason.</p>
29, 30 and 31 – (Consequences of Termination)	<p>The Customer must pay Network Rail Costs up to the date of termination, whatever the cause of the termination. Except where termination is due to Network Rail's fault, the Customer must also pay other costs and expenses reasonably incurred by Network Rail as a result of the termination.</p> <p>Certain obligations, such as intellectual property rights and confidentiality, survive termination of the Agreement.</p>
32 (Confidential Information)	This paragraph sets out the rules with which each party agrees to comply to maintain the confidentiality of information arising or being passed between the parties and their representatives. Breach of confidentiality can create a liability.
33 and 34 – (Escalation and Dispute Resolution)	Where a dispute arises it is important that the matter is addressed and resolved quickly. As such a management procedure to escalate such matters is set out. Should this not resolve the dispute, an adjudication process is set out. That adjudication process may also be used (without escalating the matter in accordance with the management procedure) where the dispute involves a construction contract under the Housing Grants, Construction and Regeneration Act 1996.
35 – (Freedom of Information)	This paragraph refers to certain Information Acts, the right of any person to request the disclosure of information from a party who is a public authority and the conduct of that party in complying with such a request. This paragraph is to be deleted if the Customer is not a public authority under the Information Acts.

These Explanatory Notes should not be viewed as part of the Agreement and are only for guidance purposes. In the event of any discrepancy between the Agreement and these Explanatory Notes, the Agreement shall prevail.

Paragraph Number / Heading	Comment
36 to 41 – (Miscellaneous)	<p>These paragraphs cover a variety of standard boilerplate terms. These include:</p> <ul style="list-style-type: none"> <li>• neither party has the right to assign or charge its rights or benefits in the Agreement without the prior written permission of the other party (not to be unreasonably withheld or delayed);</li> <li>• the Agreement does not create any right under the Contract (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to the Agreement.</li> </ul>
Schedule 1 – (Details of Project)	This sets out the details of the information to be provided by the Customer, scopes of Services and Deliverables, key dates and Necessary Consents. It also sets out the Estimated Cost.
Schedule 2 – (Network Rail Costs)	The components of Network Rail Costs are detailed here.

These Explanatory Notes should not be viewed as part of the Agreement and are only for guidance purposes. In the event of any discrepancy between the Agreement and these Explanatory Notes, the Agreement shall prevail.