**SUBJECT TO CONTRACT**

**BASIC SERVICES AGREEMENT**

*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 Services Agreement relating to [ ][2] (the Project)**

Network Rail Infrastructure Limited of Waterloo General Offices, London, SE1 8SW (**Network Rail**) has agreed with the Customer to provide the Services set out in paragraph 2 of Schedule 3 to this Agreement on the terms set out below (the Schedules and this letter are collectively referred to as **the Agreement**). 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 The Customer shall act in good faith towards Network Rail in respect of this Agreement.

2.2 The Customer shall comply with its obligations under this Agreement including carrying out actions or providing the information identified as necessary in Schedule 3 (together with any additional information as reasonably requested from time to time by Network Rail) to enable Network Rail to progress the Services. If any delay is caused to the Development Programme as a result of failure by the Customer to comply with this clause 2.2, then the anticipated completion 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 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 Network Rail shall act in good faith towards the Customer in respect of this Agreement.

3.2 Network Rail shall carry out the Services in accordance with:

(a) Good Industry Practice;

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

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(b) in compliance with all relevant law, Standards and Necessary Consents;

(c) having regard at any particular time to Network Rail's obligations, purposes and duties as operator, renewer, maintainer and developer of the Network; and

(d) in accordance with the terms of this Agreement.

3.3 Network Rail shall progress the Services with due diligence and having due regard to the Development Programme for performance of the Services.

3.4 Network Rail shall, in a format and at intervals (but no more frequently than every four weeks) to be agreed with the Customer, provide the Customer with regular reports on the progress of the Services including any revisions to the Estimated Cost.

3.5 Network Rail shall use reasonable endeavours to provide the Services for the Estimated 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 required to deliver the Services and as specified in paragraph 5.1 of Schedule 3.

4.2 Network Rail shall have no liability to the Customer under this Agreement 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.

4.3 Network Rail's obligation in relation to obtaining the Necessary Consents is conditional upon Network Rail receiving in full the documentation and assistance related to the relevant Necessary Consent which it may reasonably require and request from the Customer.

## 5 Access

5.1 The time and date of any access to the Network shall be agreed in writing with Network Rail, and the Customer and/or its representatives must be accompanied by Network Rail's staff or appointed contractors at all times.

5.2 Except as otherwise agreed in writing by Network Rail, access to the Network by the Customer or its representatives in accordance with clause 5.1 shall be limited to visual inspection or visual survey only and neither the Customer nor its representatives shall carry out any works or intrusive activity in respect of the Network, or to bring any equipment (other than small handheld tools) onto the Network. If this clause 5.2 is breached, the Customer shall be liable to Network Rail for any loss, damage, costs and expenses suffered by Network Rail (other than as a result of Network Rail's negligence), including any disruption caused to the operations of Network Rail or any Operator.

## 6 Variations

6.1 Any variations to this Agreement (including to the Services) shall only be effective if agreed by both Parties in writing. Any variations shall be paid for by the Customer.

## 7 Intellectual Property

7.1 Network Rail hereby grants to the Customer, to use, for the purposes of the Project, an irrevocable, royalty-free and non-exclusive licence to use, reproduce, modify and / or enhance any intellectual property in the Deliverables owned by Network Rail.

## 8 Completion

8.1 When in its reasonable opinion Network Rail has completed such Services or Deliverables, it shall notify the Customer giving the Customer at least twenty (20) Working Days' notice of its intention to treat the Services as having been completed.

## 9 Network Rail Costs

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9.1 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 9 and Schedule 2.

9.2 Within (10) ten Working Days after the end of each Payment Period throughout the carrying out of the Services, Network Rail shall submit an invoice (with an attached breakdown 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 9.3, 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**).

9.3 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 9.2. 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 9.2.

9.4 Should any invoice not be paid by the Final Date For Payment in accordance with clause 9.2 (except in respect of any amount determined not to be payable pursuant to clause 14), 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.

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

**10 Limitation of Liability**

10.1 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, in such an instance all Losses can be claimed not just the Losses in excess of £10,000 and 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 of the Services or termination of this Agreement); or

(b) the Losses are incurred as a result of, or sums are unpaid under, clauses 9 or 12.2.

10.2 Network Rail's maximum aggregate liability to the Customer for any reason arising under, or in connection with, this Agreement or the Project including but not limited to breach of contract, in tort (including negligence), or for breach of statutory duty. shall not exceed an amount equal to the Network Rail Cap.

10.3 Notwithstanding the Network Rail Cap**,** where, in respect of the same event, Network Rail recovers any sums under an insurance policy**,** taken out in relation to the Services, 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 such 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).

10.4 Clause 10.2 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 Services).

10.5 Any Losses suffered by either Party shall for the purposes of clause 10.1 be reduced to the extent that they are caused by or contributed to Party's own negligence or breach of its obligations under this Agreement.

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10.6 The Customer agrees and acknowledges that where the Services involve Network Rail in preparing or evaluating any proposed development train timetable, the operability of any such development train timetable will be subject to external factors (including evolving development, network capacity and access rights under the Network Code) and can only be modelled against the assumptions made at the relevant stage of development.

10.7 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 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 such insurance policy (including any insurance maintained by a contractor employed by the Customer) or any 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 this shall not include an obligation on the Customer to take legal action).

10.8 Clause 10.7 shall not apply to:

(a) the Customer's payment obligations under clauses 4, 9 or Schedule 2; or

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

(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.

10.9 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).

10.10 In the course of providing the Services, Network Rail may supply to the Customer data and information, which does not form part of the Deliverables. Notwithstanding any other provision in this Agreement, Network Rail does not warrant the accuracy or sufficiency of data and information provided to the Customer which does not form part of the Deliverables and the Customer shall be responsible for verifying the accuracy and assessing the sufficiency of that data and information.

**11 Termination**

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

(a) the other Party is in persistent and material breach of this Agreement (which shall include any failure to pay an amount of at least £10,000 which is due to the other Party) and, in the case of a breach which is capable of remedy, fails to remedy that breach within ten (10) Working Days (or such longer period as the terminating Party may specify) after receipt of a written notice giving full particulars of the breach and requiring it to be remedied; or

(b) the other Party becomes insolvent.

11.2 If revisions to the Estimated Cost in accordance with clause 3.4 exceed the original Estimated Cost and the parties fail to agree an increase in the Estimated Cost, the Customer may terminate this Agreement by written notice of not less than twenty (20) Working Days.

11.3 The Customer may in any event terminate this Agreement by written notice of not less than forty (40) Working Days .

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

(a) reduce expenditure under this Agreement as rapidly as possible,

(b) take immediate steps to bring to an end the performance of the Services in an orderly manner; and

(c) pass to the Customer a complete set of any documents, manuals or other information which the Customer may require in connection with the project and which at the time of termination are in the possession or under the control of Network Rail.

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## 12 Consequences of Termination, or Completion

12.1 Upon termination of this Agreement or completion of the Services, as applicable, the obligations of the Parties under this Agreement 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 9, 12.2, 13, 14 and 15 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.

12.2 If this Agreement is terminated for any reason prior to the Completion, the Customer shall pay:

(a) the Network Rail Costs incurred 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 under clause 11.1(b) 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.

## 13 Confidential information and Data Protection

13.1 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 (which is the licence to operate the Network granted to Network Rail pursuant to section 8 of the Railways Act 1993 as amended). 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.

13.2 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.

13.3 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).

13.4 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.

## 14 Escalation and Dispute resolution

14.1 Should any dispute arise out of or in connection with this Agreement, then the Parties' project managers shall initially discuss and attempt to resolve the dispute. If the project managers are unable to resolve the dispute to the satisfaction of both Parties, the dispute shall be escalated to the Parties' appropriate senior managers for resolution. If the senior managers are unable to resolve the dispute to the satisfaction of both Parties, it shall be escalated to the Parties' appropriate directors for resolution. If the Parties are still unable to reach agreement then either Party may refer the matter to adjudication in accordance with clause 14.2.

14.2 Either Party may refer to adjudication any dispute arising out of or in connection with this Agreement in accordance with the Housing Grants, Construction and Regeneration Act 1996. The adjudicator shall be agreed between the Parties and failing agreement within five (5) Working Days of receipt by one Party of a proposal by the other the adjudicator shall be

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nominated at the request of either Party by the President or Vice President for the time being of Technology and Construction Bar Association.

## 15 Freedom of Information

15.1 If either Party receives a request for the disclosure of information relating to the Services and/or this Agreement (the **Project 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 clause 43(2) of the Freedom of Information Act 2000, the parties acknowledge and agree that the disclosure by it of any commercially sensitive Project Information is likely to prejudice the interests of the parties.

## 16 Miscellaneous

16.1 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.

16.2 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) provided that such consent shall not be required in respect of any assignment by either Party to a statutory successor of the rights, obligations and interests of such Party.

16.3 If any provision of this Agreement shall be held to be illegal, invalid, void or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the remainder of this Agreement in that jurisdiction shall not be affected, and the legality, validity and enforceability of the whole of this Agreement shall not be affected in any other jurisdiction.

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

16.5 No waiver by either Party of any default or defaults by the other in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character.

16.6 No failure or delay by either Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise by that Party of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.

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

16.8 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.

16.9 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.

16.10 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. Each Party acknowledges that it has not been induced to enter into this Agreement by any representation, warranty or undertaking not expressly incorporated into it.

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16.11 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.

16.12 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]**[3]

……..

Dated: …….

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

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## Schedule 1

## Definitions and Interpretations

### 1 Definitions and Interpretations

1.1 For the purposes of this Agreement:

**Commencement Date** means the date of this Agreement;

**Completion** means the completion of the Deliverables set out in paragraph 3 of Schedule 3;

**Customer Cap** means an amount equal to 10% of the Estimated Cost as at the Commencement Date as varied from time to time in accordance with clause 6;

**Deliverables** means the documents and / or other items which Network Rail is required to deliver to the Customer as part of the Services, as set out in paragraph 3 of Schedule 3 as varied from time to time, in accordance with clause 6;

**Development Programme** means the programme set out in paragraph 6 of Schedule 3 (updated from time to time in accordance with this Agreement);

**Estimated Cost** means the estimated costs of the Services as set out in paragraph 4 of Schedule 3 as updated from time to time in accordance with 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;

**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 Project) or any indirect or consequential loss arising out of or in connection with this Agreement;

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

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

**Necessary Consents** means all approvals, permissions, consents, licences, certificates, registrations and authorisations whether statutory or otherwise, which are required from time to time for the purposes of carrying out the Project;

**Network** means the railway facilities of which Network Rail or an Operator is the facility owner (as defined in section 17(6) of the Railways Act 1993 as amended);

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

**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 Cost as at the Commencement Date as varied from time to time in accordance with clause 6;

**Network Rail Costs** has the meaning given in Schedule 2;

**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 Services and Survey Works under this Agreement, as published on the website http://www.uk.ihs.com/;

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**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 A** means the project initiation phase as set out in PACE;][4]

**[PACE Phase 1** means the development and project selection phase as set out in PACE;][5]

**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 in the year shall be such as shall be adopted by Network Rail;[6]

**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;

**Services** means the services to be performed in delivering the Deliverables to be carried out by or on behalf of Network Rail pursuant to this Agreement as set out as in paragraph 2 of Schedule 3;

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

**Variation** means any change to the Services, and / or the Completion Date in accordance with clause 6; and

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

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;

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[4] The BSA should normally be used for development up to end PACE A, but can include PACE 1 where appropriate (**strictly excluding** any design activity). Please delete if not applicable or not relevant.

[5] The BSA should normally be used for development up to end PACE A, but can include PACE 1 where appropriate (**strictly excluding** any design activity). Please delete if not applicable or not relevant.

[6] 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.

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(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:

(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 (other than a Contract) would be unreasonable; and

(b) nothing in this Agreement shall require Network Rail to give or procure the giving of any consent, approval, or approval which would be contrary to the protection, safety and efficient operation of the railway and the safety of persons or property on or near the railway.

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## 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 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 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 Services, 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 Services, 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 Services (including this Agreement);

c) insurance costs; and

d) any other disbursements or expenses reasonably and properly incurred by Network Rail in connection with the Services (other than for Necessary Consent Costs). The Customer's prior written approval must be obtained for any such disbursements or expenses over £5,000;

**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 Services;

**Necessary Consents Costs** means the costs incurred by Network Rail in connection with any Necessary Consent for the Project;

**Network Rail Costs** means Agency Costs, Contractors' Costs, Expenses and Disbursements, Network Rail Fee, Necessary Consents Costs, Personnel Costs, and Third Party Costs to the extent that they arise from or are a consequence of the performance of the Services and Deliverables;

**Network Rail Fee** means an amount equal to 0.2% of the aggregate Agency Costs, Contractors' Costs, and Personnel Costs as at the Commencement Date (as revised in accordance with clause 6);

**Network Rail's Personnel** means any employees and / or officers of Network Rail;

**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;[7]

**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; and

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

[7] 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.

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## 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

3.1 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.

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

4.1 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

5.1 The terms of payment are as set out in in clause 9.1 and clause 9.2 of this Agreement except that the Network Rail Fee set out in paragraph 4 of Schedule 3 will be added to the first invoice.

**SUBJECT TO CONTRACT**

## Schedule 3

## Project

### 1 The Project

**Background:**

[Describe the Project and background including what Network Rail is doing for the Customer. Include anticipated outputs/outcomes from the provision of the Services.

Include any appropriate requirements or constraints, is the Customer providing any information or data that Network Rail requires to undertake the Services (standards, plans, etc.).]

**Information to be provided by the Customer:**

[Set out a clear list of documents (using unique document references) which are being provided by the Customer and/or other parties upon which Network Rail will rely to deliver the Services in this Agreement.]

### 2 Services

The Services to be provided by Network Rail include:

(a) Services of the Network Rail sponsor and any other supporting resources to provide ongoing contract management, guidance and support relating to the necessary consents and commercial agreements.

(b) Project management services and support necessary to manage the efficient and timely completion of the Deliverables.

(c) Attendance at periodic progress/review/coordination meetings and workshops and to regularly report on progress including monitoring progress of design, Deliverables, and working drawings.

(d) Applying for the Necessary Consents where Network Rail is responsible for obtaining such consents.

(e) Preparatory work in respect of future project phases (including drafting of other agreements), as appropriate and by agreement between the Parties.

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

### 3 Deliverables[8]

(a) [Relevant PACE Phase A and/or 1 readiness reports]

(b) [Estimated costs and / or indicative programme for later project stages]

(c) [relevant PACE products and / or reports, as agreed]

(d) [Insert details of any other deliverables which will derive from the Services]

### 4 Estimated Cost

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

### 5 Necessary Consents

5.1 Necessary Consents to be obtained by Network Rail:

[Insert Consents here or state “none”]

[8] This paragraph should set out the tangible Deliverables to be issued to the Customer which result from the provision of the Services. The text in SQUARE BRACKETS is indicative and should be tailored for each Agreement.

**SUBJECT TO CONTRACT**

5.2 Necessary Consents to be obtained by the Customer:

[Insert Consents here or state "none"]

**6 Development Programme**

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

**7 Customer Cap**

£[Insert as applicable from ready Reckoner.]

**8 Network Rail Cap**

£[Insert as applicable from Ready Reckoner.]

**9 Assumptions / Exclusions**

[ ][9]

[9] Insert a list of all assumptions and / or exclusions made relating to low probability / high impact risks when calculating the Estimated Cost. Assumptions should be identified from the Network Rail estimating team, downstream contractors or designers, and should reflect the assumptions which were taken into account when calculating the Estimated Cost. Exclusions should reflect scope which has not been allowed for in the estimate or delivery of this Agreement and may include aspects of the Project which are not being delivered by Network Rail under the Remit.