SUBJECT TO CONTRACT

NETWORK RAIL INFRASTRUCTURE LIMITED

and

[NAME OF CUSTOMER]

DEVELOPMENT SERVICES AGREEMENT

with respect to

[name of project]

SUBJECT TO CONTRACT

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SUBJECT TO CONTRACT

DEVELOPMENT SERVICES AGREEMENT

This Agreement is made on 20[ ][1]

Between Network Rail Infrastructure Limited registered in England and Wales under company number 02904587 whose registered office is at Waterloo General Offices, London, SE1 8SW ("**Network Rail**");

and

[Name of customer][2] a company registered in [ ][3] under company number [ ][4] whose registered office is at [ ][5] (the "**Customer**"),

(together the **Parties**, references to **Party** shall be construed accordingly).

Whereas

(A) The Customer's proposals for developing the Project involve the requirement for certain development and design services[6] to be carried out in relation thereto;

(B) Network Rail has agreed to carry out or procure the carrying out of the Services on behalf of the Customer; and

(C) The Customer has confirmed it will fund such services on the terms and conditions contained in this Agreement.

It is agreed

1 Definitions and Interpretation

1.1 In this Agreement the following words and expressions shall have the following meanings unless the contrary intention appears:

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

Act means the Railways Act 1993 as amended;

Affiliate means in relation to any company:

(a) a company which is either a holding company or a subsidiary of such company; or

(b) a company which is a subsidiary of a holding company of which such company is also a subsidiary,

(and holding company and subsidiary shall have the respective meanings given to them in section 1159 of the Companies Act 2006);

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;

Brief means the outline details of the Project and the objectives of the Services as set out in Schedule 3;

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

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[1] Date in full (e.g. 8th July 2020) to be inserted after last party has signed (NOT before).
[2] Insert full and correct registered company name as per Companies House. For local/combined authorities or partnerships, replace all text with "[Name of customer] whose principal place of business is at [registered address of Customer] (**Customer**)". For any other contracting entities not registered in Companies House (overseas based customers or Trusts) seek advice from your local Commercial Services Manaager or Corporate Commercial.
[3] Insert country of registration e.g. England and Wales.
[4] Insert company registration number as per Companies House.
[5] Insert registered office address as per Companies House.
[6] These services should be clearly articulated and set out in Schedule 4 (Remit).

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 has 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;

Completion means the completion of the Deliverables set out in paragraph 3 of Schedule 4;

Completion Date means the date for Completion as set out in paragraph 8 of Schedule 4 as amended or varied from time to time in accordance with this Agreement;

Confidential Information has the meaning given in clause 17;

Contract means any contract between Network Rail and its Contractor for the carrying out of any part of the Services;

Contractor means any person to whom a Contract for the whole or any part of the design and/or Survey Works is let for the delivery of the Services on behalf of Network Rail;

Copyright Material means all intellectual property rights in any part of the world in respect of any documentation or information provided to Network Rail by the Customer, including any patent, patent application, trade mark, trade mark application, registered design, registered design application, utility model, trade name, discovery, invention, process, formula, specification, copyright (including rights in computer software and database and topography rights), knowhow or unregistered design right;

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 Cost as at the Commencement Date as varied from time to time in accordance with clause 7.4 (d) to (f);

Customer's Design Liability Cap means an amount stated in paragraph 9 of Schedule 4;[7]

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 4 as varied from time to time, in accordance with clause 7.4 (d) to (f);

Depot means any light maintenance depot as defined by section 83 of the Act;[8]

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;

[7] 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 provided by the Customer and upon which Network Rail would rely. If Network Rail will not be relying on any designs developed by the Customer the Agreement should be amended as directed in clause 13.7 and Schedule 4. All reference to the Customer Design Liability Cap should be deleted including this definition.

[8] Note that the Depot drafting included within the DSA 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 DSA.

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;][9]

Development Programme means the programme developed in accordance with clause 4 and as set out in paragraph 7 of Schedule 4 (updated from time to time in accordance with this Agreement);

Direct Costs means direct costs reasonably incurred in relation to the Project, including in the case of the Customer any costs paid to any contractors appointed by the Customer but excludes any Indirect Loss;

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 5;

Estimated Cost means the estimated costs of the Services and Survey Works as set out in paragraph 4 of Schedule 4 as updated from time to time in accordance with this Agreement;

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;

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;

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

Insolvent in relation to either Party means:

(a) such Party stopping or suspending or threatening to stop or suspend payment of all or a material part of its debts, or becoming unable to pay its debts, or being deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986, except that in the interpretation of this paragraph section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for £750 there were substituted £10,000;

(b) any step being taken by any person with a view to the winding up of such Party or any person presenting a winding-up petition which is not dismissed within five Working Days;

(c) a receiver, manager, administrative receiver or administrator being appointed in respect of such Party;

(d) such Party ceasing or threatening to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the other Party before that step is taken (which approval shall not be unreasonably withheld or delayed); or

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

[9] If the Works are not taking place at a Depot delete this definition.

Insurance Policies means those insurances maintained by Network Rail or the Contractor in relation to the Services as are listed in paragraph 14 of Schedule 4;

Intellectual Property means all intellectual property rights in any part of the world in respect of any documentation or information provided to the Customer by Network Rail, including any patent, patent application, trade mark, trade mark application, registered design, registered design application, utility model, trade name, discovery, invention, process, formula, specification, copyright (including rights in computer software and database and topography rights), knowhow or unregistered design right;

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

Interfacing Project means a project which has an interface with the Project and includes those projects set out in paragraph 13 of Schedule 4;

Legal Requirement means any of the following:

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

(b) any regulation made by the Council or the Commission of the European Union to the extent that it applies to that Party or a decision taken by the Commission of the European Union which is binding on that Party to the extent that it is so binding; and

(c) any interpretation of law, or finding, contained in any judgement given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any legal requirement falling within Paragraphs (a) or (b) above to have effect in a way which is different to that in which it previously had effect;

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,

in each case after the date on which the Services achieve Approval in Principle (and which is not reasonably foreseeable as at such date);

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 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 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 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 7.4 (d) to (f);

Network Rail Consents means those consents to be granted by Network Rail in relation to the Project, as set out in paragraph 5.2 of Schedule 4;

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/;

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;

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

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

[PACE Phase 3 means the project delivery phase as set out in PACE;][10]

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;[11]

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);

Project means the project as set out in paragraph 1 of Schedule 4;

QRA means the quantified assessment of risks and assumptions associated with the Project (as referred in paragraph 6 of Schedule 4) produced by Network Rail;

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 Project;

Relief Event means an event where:

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

(b) any contractor from an Interfacing Project interferes with, hinders or obstructs a Contractor from carrying out Survey Works in accordance with the Development Programme; or

(c) a Variation is being implemented in accordance with clause 7.4(a);

Remit means the scope of the Services to be provided by Network Rail and includes details of the Deliverables, Necessary Consents and Interfacing Projects as set out in Schedule 4 as varied from time to time in accordance with clause 7;

Representative means the person appointed by each Party to manage the delivery of services under this Agreement;

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[10] The DSA should normally be used for development and design up to end PACE 2, but can cover some minor works in PACE 3 (**strictly excluding** any construction activity) – if no PACE 3 activities are being undertaken under the DSA delete PACE 3 definition.

[11] 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.

Services means the services to be performed in delivering the Deliverables and Survey Works to be carried out by or on behalf of Network Rail pursuant to this Agreement as set out as in paragraph 2 of Schedule 4;

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 Survey Works or Services, or services of a similar type but not to services in general;

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 Project;

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;][12]

Survey Works means any survey (intrusive or non-intrusive), inspection, examination or testing of the Network in respect of this Agreement;

Variation means any change to the Services, the Survey Works, and/or the Completion Date in accordance with clause 7 and, for the avoidance of doubt, includes a Mandatory Variation; 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;

[12] If the works are not taking place at a station delete this definition.

(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;

(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;

(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; and

(d) in the event of any conflict, ambiguity, inconsistency, error, or omission between Schedule 3 (Brief) and Schedule 4 (Remit), then Schedule 4 (Remit) shall take precedence.

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 Brief and information identified as necessary in the Development Programme to enable Network Rail progress the Services, together with any additional information as reasonably requested from time to time by Network Rail. 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 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 in connection with the Project 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 will carry out the Survey Works and/or perform the Services 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 Remit 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 any Contractor Network Rail shall remain liable for the performance of its obligations. Network Rail shall notify the Customer of any proposal to appoint a Contractor to carry out any material design services or Survey Works and where practicable shall give the Customer a reasonable opportunity to comment on the proposal and shall have due regard to the Customer's comments. Where Network Rail appoints a Contractor Network Rail shall:

(a) comply with the Utilities Contracts Regulations 2016; and

(b) appoint Contractors who in the reasonable opinion of Network Rail have the necessary competence and experience.

3.4 Network Rail will procure that the Services are completed by the Completion Date (as amended from time to time in accordance with this Agreement).

3.5 As the Project progresses Network Rail shall identify and manage arrangements between the Services including the Survey Works and any Interfacing Projects in the interests of economic and efficient Network management and operation, and in accordance with the Network Licence.

3.6 Network Rail shall, in a format and at intervals (but no more frequently than every four weeks) to be agreed with the Customer:

(a) provide the Customer with regular reports on the progress of the Services;

(b) report on Network Rail Costs, incurred to date and forecast, with a view to identifying at an early stage whether costs are likely to exceed the Estimated Cost;

(c) report on any changes to the Remit, Development Programme and Estimated Cost, which it considers may be needed to fulfil the objectives set out in the Brief;

(d) update the list of Interfacing Projects; and

(e) use reasonable endeavours to provide other information reasonably requested by the Customer.

3.7 For the purposes of the CDM Regulations:

(a) the [Customer/Network Rail][13] will act as the only **Client**; and

[13] Delete as appropriate. In most circumstances the Customer will be the only Client (i.e. it is instructing Network Rail to be the Designer), however where Network Rail is undertaking the majority of design activities it may be appropriate for Network Rail to assume some or all of the Client duties.

(b) if in providing the Services, Network Rail assumes any role as **Designer** or **Principal Designer**, Network Rail shall comply with its duties as **Designer** or **Principal Designer** respectively.

3.8 For the purposes of the CSM-REA Regulations, Network Rail will act as the Proposer as defined and in accordance with the CSM-REA Regulations.[14]

3.9 For the purposes of the Railway Interoperability Regulations, Network Rail will act as the Project Entity as defined in and in accordance with the Railway Interoperability Regulations.[15]

3.10 Network Rail shall procure that the insurances set out in paragraph 14 of Schedule 4.

3.11 Network Rail shall arrange project development meetings at monthly intervals (or more often if required), at which appropriate personnel of Network Rail and the Customer shall be present, to discuss the progress of the Services. Network Rail shall give appropriate notice of and agree the timing, location and agenda with the Customer for all such meetings.

3.12 Each Party shall appoint a Representative with full authority to act on its behalf in connection with this Agreement (the initial Representatives being identified in Schedule 1). Any restriction placed by either Party on its Representative's authority must be notified to the other Party in writing in order to be effective. The Representatives may delegate their authority by notice in writing specifying the identity of the delegate and specifying the authority so delegated.

3.13 Network Rail shall have due regard to any comments or representations made by the Customer in connection with any reports or at any meetings, and shall provide reasons to the Customer where it does not take into account any such comments or representations.

4. Brief, Remit, Programme and Cost

4.1 The Remit detailed in Schedule 4 has been developed with a view to achieving the objectives set out in the Brief detailed in Schedule 3, including identification of the scope of the Services, the Deliverables, the underlying assumptions, an outline Development Programme, any Necessary Consents required and any Interfacing Projects.

4.2 The Parties shall co-operate in the planning and management of a Development Programme. The Development Programme shall set out, in such detail as is reasonably practicable the estimated programme for:

(a) carrying out the Services;

(b) PACE Phase readiness reviews for feasibility, design optioneering and single option design development;

(c) obtaining the Necessary Consents; and

(d) any actions or information required from the Customer.

4.3 The Parties acknowledge that the need for change to the Remit or the Development Programme may become apparent in the course of developing the Project through the PACE Phases and, as a result, Network Rail shall, from time to time, review the Remit, the Development Programme and the Estimated Cost and Network Rail shall notify the Customer of any changes which Network Rail considers may be needed to fulfil the objectives set out in the Brief.

4.4 If at any time the Parties are unable to agree a change to the Remit, the Development Programme or the Estimated Cost, either Party may refer the Dispute to the Escalation Procedure.

[14] If the CSM-REA Regulations are not applicable, replace the text with "Not used". In the minority of cases where the Customer is the Proposer, delete "Network Rail" and replace with "the Customer" in this sentence.
[15] If the Railway Interoperability Regulations are not applicable, replace the text with "Not used". In the minority of cases where the Customer is the Project Entity, delete "Network Rail" and replace with "the Customer" in this sentence.

5. Progress of Services

5.1 Network Rail shall progress the Services with due diligence having due regard to the Completion Date and any other key dates for performance of the Services set out in the Development Programme (as amended from time to time in accordance with this Agreement).

6. Necessary Consents

6.1 Network Rail shall make applications for, and use reasonable endeavours to obtain, those Necessary Consents specified in paragraph 5.2 of Schedule 4 as revised in accordance with clause 7.

6.2 Network Rail shall have no liability to the Customer under this Agreement and shall have the right to extend the Completion 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.

6.3 Network Rail shall be obliged to appeal against any decision in respect of Regulated Change if reasonably requested to do so by the Customer and at the cost of the Customer.

6.4 The Customer is responsible for applying for, and using reasonable endeavours to obtain, the Necessary Consents listed in paragraph 5.3 of Schedule 4 (which shall, for the avoidance of doubt, exclude the Necessary Consents referred to in clause 6.1) in a format agreed between the Parties and in line with the requirements of the Development Programme.

6.5 Network Rail's obligations in relation to obtaining the 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.

7. Variations

7.1 Either Party may request from the other Party a Variation (a **Variation Request**). The Variation Request shall include a description of the proposed Variation and state which Party is intended to be responsible for funding the proposed Variation. Any such Variation Request may be withdrawn by the requesting Party at any time prior to the written agreement of the Variation under clause 7.3 below. If the requesting Party withdraws a Variation Request, it shall reimburse the other Party for all Direct Costs reasonably and properly incurred by the other Party in relation to the proposed Variation prior to its withdrawal.

7.2 Following any Variation Request, Network Rail shall consult with the Customer and, where the Party responsible for funding the Variation is agreed, shall provide to the Customer within a reasonable time and to a reasonable level of detail (to the extent applicable):

(a) a revised Estimated Cost;

(b) reasoned proposals to change the Development Programme and the Completion Date (if any); and

(c) in the case of a Variation of the Services and/or Survey Works, the scope of the Services and/or Survey Works as so varied and any appropriate revision to the terms of this Agreement, including details of any addition, omission or amendment to the Deliverables which will be produced by Network Rail.

7.3 Subject to clause 7.4, the Customer shall be responsible for the costs of all Variations. No Variation shall be effective unless agreed in writing by the Parties.

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

(a) as a consequence of a Relief Event;

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

(c) to address the results of Survey Works;

(d) to address, alleviate or comply with (as appropriate) any Change in Law or Change in Standards (excluding Mandatory Variations);

(e) to address changes to or realisation of any of the underlying assumptions or conditions set out in Schedule 4; or

(f) 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,

Network Rail shall be entitled to vary the Services and/or Survey Works or Completion 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 7.4 (a) to 7.4 (c) inclusive.

7.5 Where Network Rail considers a Variation is necessary under clause 7.4, it shall submit a Variation Request to the Customer pursuant to clause 7.1 and provide the information listed in clause 7.2. Clause 7.4 shall apply except that the Customer may not object to the proposed Variation itself, but may challenge the information provided under clause 7.2 and any issues arising from such information. For the avoidance of doubt the Customer may request that Network Rail amends the Variation Request to accommodate any reasonable objections raised by the Customer. Where Network Rail has to act immediately in the case of clause 7.4 (a) to 7.4 (c) inclusive to protect the safety and operation of the Railway, Network Rail shall not be obliged to serve a Variation Request prior to commencing the Variation but shall, as soon as practicable, provide to the Customer the information set out in clause 7.2. If the Parties do not agree the information provided under clause 7.2, the Dispute shall be referred to the Escalation Procedure.

8. Compensation and Relief

8.1 Where a Relief Event occurs the Customer shall be:

(a) entitled to recover from Network Rail additional Direct Costs reasonably and properly incurred by the Customer as a result of any delay or disruption to the Development Programme; and

(b) relieved from its obligation to pay additional Network Rail Costs incurred to the extent caused by a Relief Event.

8.2 Network Rail shall notify the Customer of any Relief Event as soon as reasonably practicable and shall provide a revised Development Programme (if appropriate). The Customer shall notify Network Rail of any Relief Event within a reasonable period of time of becoming aware of the same and provide reasonable details of the relief required under this clause 8. In respect of each Relief Event the Parties shall seek to agree the Direct Costs and the additional Network Rail Costs which shall be payable in accordance with clause 8.4, together with any revisions to the Development Programme (including any changes to the Completion Date taking into account the likely effect of delay in the progress of the Services.

8.3 Promptly following the agreement (or determination in accordance with clause 18) of the amount of the Direct Costs, the Customer shall deliver an invoice to Network Rail in respect of any Direct Costs incurred by the Customer as a result of the completion of the Development

Programme being delayed or disrupted due to the relevant Relief Event and Network Rail shall pay that sum within twenty (20) Working Days. Should any amount not be paid within such period (except any amount determined not to be payable pursuant to clause 18), such amount due shall bear interest thereon at the Interest Rate from and including the due date for payment to and including the date of actual payment.

8.4 In calculating the additional Direct Costs payable or the Network Rail Costs not payable as a result of a Relief Event:

(a) no claim shall be made by the Customer unless such Direct Costs exceed £10,000 in aggregate in respect of the relevant Relief Event and are notified to Network Rail prior to the Completion Date;

(b) the Customer shall not be entitled to any compensation or relief to the extent that any delay or cost incurred as a result of the occurrence of a Relief Event is due to the negligence, breach or default of the Customer or the breach or default of any contractor appointed by the Customer (other than Network Rail);

(c) any Direct Costs paid by Network Rail shall not be included in the calculation of Network Rail's maximum aggregate liability under clause 13.2 unless the Relief Event is the cancellation or alteration of a Booked Possession occurring as a result of the negligence or breach of this Agreement by Network Rail; and

(d) any Direct Costs and any relief from Network Rail Costs shall be limited to the actual costs incurred by the Customer (if any) and/or the additional Network Rail Costs incurred by Network Rail in rectifying the Relief Event, and shall not include the consequential effects of the Relief Event on the Project.

8.5 Save as set out in this clause 8, neither Party shall have any other right or remedy whether under or in connection with this Agreement against the other for any Relief Event.

9. Intellectual Property

9.1 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 such Intellectual Property owned by Network Rail.

9.2 The licence referred to in clause 9.1 shall include the right for the Customer to grant sub-licences for any of the purposes set out in clause 9.1 (other than in respect of proprietary software which is not specifically prepared for the Project), provided that:

(a) the sub-licensee shall be prohibited from entering into any assignment or further sub-licence; and

(b) any such sub-licence shall impose confidentiality obligations upon the sub-licensee which are no less onerous than the confidentiality obligations upon the Customer under this Agreement.

9.3 Where Network Rail does not own rights in any relevant Intellectual Property, it shall use reasonable endeavours to procure such rights in the Intellectual Property for the Customer.

9.4 The Customer shall not use the documentation and information provided to it by Network Rail under the Agreement other than for the purpose for which it was provided. If the Customer provides any document produced by Network Rail or any Contractor to a third party, Network Rail shall have no liability to such third party in respect of the use of such document for any purpose other than that for which it was produced and the Customer shall obtain prior written acknowledgement from the third party to this effect.

9.5 Network Rail shall have no liability whatsoever in respect of the use by the sub-licensee of any Intellectual Property provided by Network Rail to the Customer, and the Customer shall

indemnify Network Rail from and against any and all Losses arising from the use by any sub-licensee of any Intellectual Property.

9.6 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 Project. 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 Project.

9.7 The Customer hereby grants to Network Rail a full non-exclusive, royalty-free and non-terminable licence to use and reproduce any Copyright Material owned by the Customer for all purposes relating to the Survey Works and/or Services. The licence shall include the right to grant sub-licences of the right to use and reproduce the Copyright Material. The Customer shall have no liability for any use of the Copyright Material other than for the purpose for which it was originally intended. Where the Customer does not own rights in any relevant Copyright Material, it shall use reasonable endeavours to procure such rights in the Copyright Material for Network Rail.

10. Completion

10.1 When in its reasonable opinion Network Rail has completed such Services or Deliverables as constitute all or an identifiable part of Schedule 4, it shall notify the Customer.

11. Network Rail Costs

11.1 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 11 and Schedule 2. For the avoidance of doubt, costs incurred by Network Rail as a result of a breach by or negligence of its Contractors are not reasonably and properly incurred Network Rail Costs.

11.2 Within ten (10) Working Days after the end of each Payment Period throughout the carrying out of the Services and/or Survey 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 11.3, payment by the Customer to Network Rail shall be without set-off, retention, counterclaim, abatement or any other deduction and shall be due twenty (20) Working Days after the date of issue of the invoice (**Final Date For Payment**).

11.3 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 11.2. 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 11.2.

11.4 Should any invoice not be paid by the Final Date For Payment in accordance with clause 11.2 (except in respect of any amount determined not to be payable pursuant to clause 18), 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.

12. Value Added Tax

12.1 Unless stated otherwise, all amounts referred to in this Agreement shall be deemed to be exclusive of VAT.

12.2 Where any taxable supply for VAT purposes is made under or in connection with this Agreement by one Party to the other the payer shall, in addition to any payment required for

that supply, pay upon presentation of a valid tax invoice such VAT as is chargeable in respect of it.

12.3 Where under this Agreement one Party has agreed to reimburse or indemnify the other in respect of any payment made or cost incurred by the other Party, the first Party shall also reimburse any VAT paid by the other which forms part of its payment made or cost incurred to the extent such VAT is not available for credit for the other Party, or for any person treated as a member of the same VAT group as the other Party under sections 25 and 26 of the Value Added Tax Act 1994.

12.4 Where under this Agreement any rebate or repayment of any amount is payable by one Party to the other, and the first Party is entitled to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made and the first Party shall issue an appropriate VAT credit note to the other Party. When a credit is allowed to a Party and that Party is able to recover all the tax on the supply by the first Party as input tax, both Parties can agree not to adjust the original VAT charge in accordance with HMRC VAT Notice 700 paragraph 18.2.1.

13. Limitation of Liability

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

(a) the aggregate amount of all Losses suffered by the relevant Party exceeds £10,000. (For the avoidance of doubt, 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 11, 12 or 16.2.

13.2 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. 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).

13.3 Clause 13.2 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 the Contractor.

13.4 Any Losses suffered by either Party shall for the purposes of clause 13.1 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.

13.5 The Customer agrees and acknowledges that where the Services involve Network Rail 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.

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

13.7 Clause 13.6 shall not apply to:

(a) the Customer's payment obligations under clauses 6, 8.4, 11, 12 or Schedule 2;

(b) any Losses incurred by Network Rail due to the negligence (except to the extent that such negligence relates to the carrying out of any design by the Customer or any contractor appointed by the Customer[16]), fraud or fraudulent misrepresentation of the Customer or of any contractor appointed by the Customer (other than Network Rail);

(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 instead 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.

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

14. Force Majeure Events

14.1 Subject to clauses 14.2 to 14.6, 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 to reflect an extension of time properly awarded under the Contracts in respect of a Force Majeure Event.

14.2 Each Party shall at all times following the occurrence of a Force Majeure Event:

(a) take 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

[16] If Network Rail is not relying on any designs developed by the Customer, please delete: (1) the wording in brackets in 13.7(b) only (not the whole clause) and (2) clause 13.7(c) in its entirety.

use 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 14.2 (a).

14.3 On the occurrence of a Force Majeure Event, the affected Party shall serve notice on the other Party as soon as reasonably practicable and in any event within ten (10) Working Days of it becoming aware of the relevant Force Majeure Event. 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 14.2 (a) and (where possible) an estimate of the effects upon the Development Programme, the Completion 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.

14.4 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).

14.5 As soon as practicable following the notification described in clause 14.3, the Parties shall use reasonable endeavours to agree appropriate modifications to the Development Programme (including those needed to properly take into account any changes to the Completion Date required by Network Rail under clause 14.1) 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 Services.

14.6 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 14.5, then either Party may terminate this Agreement with immediate effect by written notice to the other Party. Upon termination the provisions of clause 16 shall apply.

15. Suspension and Termination

15.1 If the Customer is in default over payments of amounts properly due to Network Rail, and no notice of intention to withhold such amounts has been given pursuant to clause 11.3, Network Rail may suspend performance of any or all of the affected Services subject to Network Rail first giving the Customer not less than five (5) Working Days' notice of such intention and stating the grounds for suspension. Such right to suspend performance shall cease once the Customer makes payment of the amount due.

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

(a) the other Party commits any persistent or 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.

15.3 The Customer may in any event terminate this Agreement by giving two (2) months written notice to Network Rail.

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

(a) reduce the expenditure under this Agreement as rapidly as possible;

(b) take immediate steps to bring an end to 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.

16. Consequences of Termination, or Completion

16.1 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 8, 11, 12, 16.2, 17, 18 and 23 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.

16.2 If this Agreement is terminated for any reason prior to the 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 under clause 15.2 (b) or a Force Majeure Event under clause 14.6

(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); and

(ii) 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.

16.3 Termination of this Agreement is without prejudice to the rights of either Party which accrued before or as a result of such termination.

16.4 The Customer shall not be entitled to any payment or compensation or other rights or remedies in respect of loss of profits, revenue or goodwill in connection with the suspension or termination of this Agreement.

17. Confidential Information

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

(a) the Provider confirms in writing is not required to be treated as confidential;

(b) the receiving Party can show was in its possession or known to it (by being in its use or being recorded in its files or computers or other recording media) prior to

receipt from the Provider and was not previously acquired by the receiving Party from the Provider under an obligation of confidence; or

(c) was developed by or for the receiving Party at any time independently of this Agreement.

17.2 Subject to clauses 17.3 and 17.4, the Parties shall:

(a) at all times keep all Confidential Information confidential to the Party receiving it and shall not disclose such Confidential Information to any other person; and

(b) procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information except with the other Party's prior written consent.

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

(a) that is reasonably required by that Party in the performance of its obligations pursuant to this Agreement, including the disclosure of any Confidential Information to any employee, contractor (of any tier), agent, officer, or adviser to the extent necessary to enable that Party to perform its obligations under this Agreement;

(b) to enable a determination to be made pursuant to clause 18;

(c) to its lenders or their professional advisers, any rating agencies, or its insurance advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;

(d) to the extent required by the Act or any other applicable Legal Requirement or pursuant to an order of any court of competent jurisdiction, any parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law;

(e) to register or record any Necessary Consents and to effect any property registration that may be required;

(f) for the purpose of the examination and certification of either Party's accounts;

(g) in relation to disclosure by Network Rail, in order to fulfil its Network Licence obligations or assist in the planning or execution of other maintenance, renewal or enhancement projects;

(h) to the Health and Safety Executive;

(i) to any Affiliate of either party; or

(j) to the extent it has become available to the public other than as a result of any breach of an obligation of confidence,

provided that any such disclosure is made in good faith.

17.4 Where disclosure is permitted under clause 17.3 (a), (c) or (i), the Party making such disclosure shall require that the recipient of the information is subject to the same obligation of confidentiality as that contained in this Agreement.

17.5 If this Agreement is terminated, each Party shall:

(a) return to the other Party all of the Confidential Information then within its possession or control;

(b) destroy such Confidential Information using a secure and confidential method of destruction; or

(c) unless reasonably requested to return it, retain such Confidential Information but so that the Party in question shall only be required to return any such information if that Party can readily identify and locate such information. If a Party elects to retain any such Confidential Information the provisions of this clause 17 shall remain in full force and effect in relation to such Confidential Information notwithstanding the termination of this Agreement.

17.6 Save as required by law or regulation, neither Party shall issue any press release in relation to the matters contemplated by this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed) as to both the content and the timing of the issue of the press release.

18. Escalation and Dispute Resolution[17]

18.1 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 5 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.

18.2 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.

18.3 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.

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

(a) Network Rail and any Contractor; or

(b) between the Customer and any contractor appointed by the Customer in relation to the Project

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

19. Notices

19.1 Any notice, objection or communication to be given under this Agreement shall be in writing and shall be duly given if signed by a duly authorised person on behalf of the Party giving such notice, objection or communication. Any notice objection or communication shall be delivered by hand, by first class post or by email transmission to the relevant postal or email address set out in Schedule 1 and shall be deemed to have been received:

[17] A mediation option is available on request.

(a) if sent by hand or by recorded delivery, at the time of delivery (and for the purpose of this clause 19 delivery by hand shall include delivery by a reputable firm of couriers);

(b) if sent by prepaid first class post, from and to any place within the United Kingdom, two (2) Working Days after posting unless otherwise proven; or

(c) if sent by email, at the time evidenced by the electronic message delivery receipt.

19.2 If in Schedule 1 there is specified any person to whom copies of notices shall also be sent, the Party serving a notice in the manner required by this clause 19 shall send a copy of the notice in question to such person at the address for serving copies as specified in Schedule 1. Such copy notice shall be sent at the same time as the original notice.

19.3 Either Party shall be entitled to amend in any respect the communication particulars which relate to it and which are set out in Schedule 1. Any such amendment shall be made only by notice given to the other Party in accordance with this clause 19.

20. Anti-Bribery and Slavery

20.1 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.

21. Equality and Diversity

21.1 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**).

21.2 Each Party shall take reasonable steps to secure the observance of clause 21.1 above by its employees, agents, representatives, contractors and consultants.

21.3 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.

22. Confidential Data and Protection of Personal and Confidential Data and Information

22.1 Unless the context otherwise requires, for the purpose of this clause 22:

(a) **UK GDPR** means all applicable laws and regulations, in each case pertaining to the security, confidentiality, protection or privacy of Personal Data, as amended or re-enacted from time to time, including (without limitation and to the extent applicable) 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;

(b) **Permitted Purpose** means, with respect to a Party, the purposes of: (i) carrying out its obligations under this Agreement; (ii) exercising its rights under this Agreement; and (iii) complying with its obligations under applicable laws (including UK GDPR);

(c) **Personal Data** means the personal data that is processed by a Party pursuant to or in connection with this Agreement;

(d) **Security Incident** means: (a) the unlawful or unauthorised processing of Personal Data; or (b) any security incident affecting the Personal Data (including (without limitation) a personal data breach as defined in the UK GDPR); and

(e) the terms **controller**, **processor**, **processing** / **process**, **personal data** and **data subject** shall be interpreted and construed by reference to UK GDPR.

22.2 The Parties agree that (to the extent it processes Personal Data) for the purposes of UK GDPR each Party processes Personal Data 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.

22.3 Each Party shall:

(a) comply with its obligations under 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 Security Incidents in accordance with their obligations under the UK GDPR, including reporting any such Security Incident to the Information Commissioner's Office (where necessary).

22.4 Without prejudice to clause 22.3 (a), each Party (the Disclosing Party) agrees that if it provides Personal Data to the other Party (the Receiving Party), it shall ensure that it has provided all necessary information to, and obtained all necessary consents from, the data subjects of the Personal Data, in each case to enable the Disclosing Party to disclose the Personal Data to the Receiving Party and for the Receiving Party to use that Personal Data for the Permitted Purposes, in each case in accordance with UK GDPR.

22.5 In relation to the Personal Data it receives from the Disclosing Party, each Party shall:

(a) at all times process the Personal Data in a manner that ensures appropriate security of the Personal Data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical and organisational measures; and

(b) ensure that, at a minimum, the measures required under clause 22.3 (a) meet the standard required by UK GDPR (particularly Article 32 of the UK GDPR).

23. Freedom of Information

23.1 The Parties acknowledge that:

(a) pursuant to the provisions of section 1 (1) of the Freedom of Information Act 2000, all regulations made under it, and the Environmental Information Regulations 2004, and any amendment or re-enactment of any of them, including any guidance issued by the Information Commissioner, the Department of Constitutional Affairs, and the Department for Environment, Food and Rural Affairs in relation to such legislation (**Information Acts**), any person has a right to request information in any form from either Party who is or becomes a public authority under the Information Acts (for the purpose of this clause 23.1 (a) **Public Authority**);

(b) a Public Authority has a duty (to the extent required by and subject to any exemptions in the Information Acts) to disclose the information requested and subsequently to communicate it to the person making the request; and

(c) the publication scheme which a Public Authority is required to adopt and maintain under the Information Acts may refer to information relating to the Services and/or Survey Works, or disclosed in tendering for, the negotiation of, or pursuant to this Agreement (**Project Information**).

23.2 In the event that a Public Authority receives a request under the Information Acts relating to Project Information, it shall comply with such a request in accordance with the Information Acts and any applicable code of practice made thereunder provided that:

(a) the Public Authority shall comply with any such request only if none of the exemptions from disclosure in the Information Acts applies and the relevant Party shall provide reasonable assistance and co-operation to the Public Authority to enable the Public Authority to comply with such request;

(b) in the event that a Public Authority is in doubt whether any such exemption applies, it shall inform the relevant Party of the request as soon as possible and shall consult with the relevant Party as to the potential application of any exemption;

(c) the Public Authority shall inform the relevant Party of any Project Information it has disclosed as soon as possible after such disclosure; and

(d) if the request relates to Confidential Information the Public Authority shall, where practicable, consult with the relevant Party in advance of making any disclosure under the Information Acts and shall, acting reasonably, take due account of all reasonable representations by the other Party that such Confidential Information is exempt information.

24. Miscellaneous

24.1 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.

24.2 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.

24.3 In the event of any conflict:

(a) between the Network Code and/or Station Access Conditions and this Agreement (where the Services and/or Survey Works relate to a Station) the provisions of the Network Code and/or Station Access Conditions (as appropriate) will apply; and/or

(b) between the Network Code and/or Depot Access Conditions and this Agreement (where the Services and/or Survey Works relate to a Depot) the provisions of the Network Code and/or Depot Access Conditions (as appropriate) will apply.

24.4 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.

24.5 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.

24.6 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.

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

24.8 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.

24.9 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.

24.10 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.

24.11 No general terms and conditions contained in any purchase order or other document customarily required by either Party in connection with the request for works or services shall be binding on the Parties.

24.12 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.

Signed by)
duly authorised on behalf of)
[Name of Customer][18])

Print Name:

Title:

Signed by)
duly authorised on behalf of)
Network Rail Infrastructure Limited)

Print Name:

Title:

[18] Insert full and correct registered company name as per top of page 1st page after Contents of this Agreement.

SUBJECT TO CONTRACT

Schedule 1: Contact Particulars and Representatives

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

Network Rail Infrastructure Limited
Waterloo General Offices
London, SE1 8SW
Email: notices@networkrail.co.uk

All written notices to be marked:

"URGENT: ATTENTION THE GROUP COMPANY SECRETARY"

and copied to:

The Route Director
Network Rail [route / HQ]
[local office address 1
Address 2
City, postcode]

Network Rail's Representative is: [insert name of sponsor]

[local office address 1
Address 2
City, postcode]
Tel.: [insert number]
Email: [insert email address]

The **Customer**'s address for the service of notices is:

[Registered name of the Customer]
[office address 1
Address 2
City, postcode]
Tel.: [insert number]
Email: [insert email address]

All written notices to be marked:

"URGENT: ATTENTION [insert name or title]"

and copied to:

[Insert name and title]
[office address 1
Address 2
City, postcode]
Tel.: [insert number]
Email: [insert email address]

The Customer's Representative is: [insert name of representative]

[office address 1
Address 2
City, postcode]

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Tel.: [insert number]

Email: [insert email address]

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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 and/or Survey 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 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 Project (including this Agreement);

(c) insurance costs excluding insurances set out in paragraph 14 in Schedule 4;

(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; and

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

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 Project;

Industry Risk Fee means an amount equal to 0.2% of the aggregate of the Agency Costs, Contractors' Costs and Personnel Costs as set out in the Estimated Cost as at the Commencement Date as revised in accordance with clause 7 (other than a Variation of the type described in clause 7.4 (a) to 7.4 (c));

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

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 Services and Survey Works; or

c) Possessions-Related Costs;

Network Rail Costs means Agency Costs, Contractor 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 the Services, and undertaking of the Survey Works and Deliverables;

Network Rail Fee means an amount equal to 0.1% of the aggregate of the Agency Costs, Contractors' Costs, and Personnel Costs as at the Commencement Date (as revised in accordance with clause 7, other than a Variation of the type described in in clause 7.4 (a) to 7.4 (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;

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 in relation to Survey Works; and

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

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 clause 11.1 and clause 11.2 of this Agreement except that the Network Rail Fee and the Industry Risk Fee set out in paragraph 4 of Schedule 4 will be added to the first invoice.

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Schedule 3: Brief

[Customer to provide][19]

[19] The Brief should be succinct and originate from the Customer (wherever possible). It is the Customer's chance to set out the background, aspirations, and objectives of the (wider) project and gives context to the Remit (Schedule 4) which sets out what Network Rail is doing on behalf (i.e. on instruction) of the Customer in this Agreement.
Some example information to set out in the Brief can include (from the Customer's perspective): background, key objectives & requirements, anticipated project outputs/aspirations, and can include photos/diagrams as appropriate.

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Schedule 4: Remit[20]

1 The Project

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

Include any appropriate requirements or constraints, is the Customer providing any design that Network Rail will rely on, references to any applicable documents (standards, plans, etc.).

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) Design services.

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

(d) Services of a Designated Project Engineer and Project Engineers for relevant engineering disciplines.

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

(f) Administration and management of Railway Possessions and isolations procedures, scheduling and reporting relating to the Services.

(g) Undertaking Survey Works[21].

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

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

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

3 Deliverables[22]

(a) [Relevant PACE Phase readiness reports]

(b) [Estimated costs and/or indicative programme for implementation]

(c) [relevant Design products (i.e. Approval in Principle, Outline Design, set-out drawings)]

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[20] The Remit is Network Rail's "offer" of Services and Deliverables in response to the Customer's Brief (Schedule 3). The Remit should clearly set out what Network Rail is offering under this Agreement and should be used to clarify and give context to the Brief (including setting out assumptions and exclusions, etc.).

[21] Provide specific detail of the survey works required, especially where any possessions and/or isolations are required to undertake the surveys.

[22] 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.

(d) [survey reports]

(e) [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 (Including Regulated Change)

5.1 Necessary Consents already granted

[Insert Consents or state None]

5.2 Necessary Consents to be obtained by Network Rail

[Insert Consents or state None]

5.3 Necessary Consents to be obtained by the Customer

[Insert Consents or state None]

5.4 Estimated costs of Regulated Change

[Insert Consents or state None]

6 QRA[23]

Document reference: [insert reference and date]

7 Development Programme

[Insert relevant high-level milestones][24]

8 Completion Date

[Insert date]

9 Customer's Design Liability Cap

[Insert amount][25]

10 Customer Cap

[Insert amount from Ready Reckoner]

[23] Refer to definition of QRA within this template – this QRA document should be a quantified risk assessment applicable to the stage(s) of the Project being delivered under this Agreement. It can be a PACE or GRIP product (QRA, QCRA, QSRA), or a standalone assessment. Any Estimated Cost value allowed for risk/contingency should align with this document

[24] 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 long-lead materials (if these are being purchased under this Agreement), etc. The Development Programme must allow for the timescales and/or liabilities in this Agreement to be amended or to mature accordingly.

[25] 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 quality and age to be relied on by Network Rail. If Network Rail will not be relying on any designs developed by the Customer, the text in this paragraph should be "£0".

11 Network Rail Cap

[Insert amount from Ready Reckoner]

12 Assumptions / Exclusions / Conditions

[Insert as appropriate][26]

13 Interfacing Projects

[Insert as appropriate][27]

14 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.[28]

[26] 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 Brief which are not being delivered by Network Rail under the Remit. Conditions should reflect things which are outside of Network Rail's control which could have a material impact on the delivery of the Services and Deliverables (including programme) in this Agreement.

[27] Insert a list of applicable projects but in the event that there are no Interfacing Projects then insert "None".

[28] 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 5: Escalation Procedure

1 Definitions

1.1 In this Schedule 5, 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 5;

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 5; 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 5; 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 5.

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 5, 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 5, 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 5, 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 18.