NETWORK RAIL INFRASTRUCTURE LIMITED

and

[NAME OF CUSTOMER]

IMPLEMENTATION AGREEMENT

with respect to

[name of project]

EMERGING COST BASIS

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IMPLEMENTATION 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 has requested Network Rail to procure the implementation of certain works to Network Rail's railway network on behalf of the Customer.

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

(C) An [outline][detailed][6] design of such works has been undertaken by [Network Rail/the Customer][7].

(D) Network Rail has agreed to carry out such works for the Customer on the terms set out below.

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;

Additional Expense has the meaning given in clause 5.1;

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;

Area of Work means any area under the control of the Contractor for the purpose of carrying out the Works;

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;

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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. 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 CSM or Corporate Commercial.
[3] Insert country of registration e.g. England
[4] Insert company registration number
[5] Insert registered office address
[6] Select relevant status and delete the other one
[7] Select relevant party and delete the other one

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

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

(a) which did not so previously apply; or

(b) the change of any Legal Requirement applying to that Party (including any such Legal Requirement ceasing to apply, being withdrawn or not being renewed)

other than in relation to corporation tax (or any other tax of a similar nature replacing corporation tax on profits or gains) or value added tax;

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

Commencement Date means the date of this Agreement;

Commission means, the carrying out and completion, in relation to the Works, of the activities set out in Standard NR/L2/TRK/001/mod13, Standard NR/L2/CIV/133 and Standard NR/L2/INI/CP0075 so that the Works can be accepted for operational use (also known as entry into operational service and taking into use) and "**Commission**", "**Commissioning**" and "**Commissioned**" shall be construed accordingly;

Competent Authority means any local, national or supra-national agency, authority, department, inspectorate, minister, ministry, official, court, tribunal or public or statutory person (whether autonomous or not), whether of the United Kingdom or not, which has, in respect of this Agreement, jurisdiction over either of the Parties or the subject matter of this Agreement;

Completion means the completion of the Works in accordance with clause 9;

Completion Criteria means those criteria specified in paragraph 8 of Schedule 3;

Completion Date means the date for completion of the Works as set out in paragraph 9 of Schedule 3, as amended or varied from time to time in accordance with this Agreement;

Confidential Information has the meaning given in clause 16;

Contract means the contract between Network Rail and its Contractor;

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

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

CSM-REA Regulations means the Commission Implementing Regulation (EU) No 402/2013 of 30 April 2013 on the common safety method for risk evaluation and assessment and repealing Regulation (EC) No 352/2009 (as amended)[8];

Customer Cap means an amount equal to 10% of the Estimated Project Cost as at the Commencement Date as varied from time to time in accordance with clause 6.7 (d) to (f);

Customer's Design Liability Cap means the amount stated in paragraph 12 of Schedule 3;[9]

Daily Liquidated Damages Sum means the amount stated in paragraph 11 of Schedule 3;

[8] If CSM-REA is not applicable, this definition should be deleted.

[9] In the event that Network Rail will be relying on any designs developed by the Customer, the cap will be agreed by the Parties acting reasonably and taking into account the particulars of the Project – including the design. If Network Rail will not be relying on any designs developed by the Customer, this definition should be deleted, changes made to Clause 12.7 as instructed, and changes to Schedule 3 made as instructed.

Depot means any light maintenance depot as defined by section 83 of the Act;[10]

Depot Access Conditions means**:**

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

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

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

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

[Depot Facility Owner means the facility owner (as defined in section 17 of the Act) for the Depot that enters into a lease of a Depot with Network Rail to operate the Depot and becomes the Infrastructure Manager of the Depot after Completion;][11]

Detailed Route Requirements Document has the meaning given to it in standard NR/L2/INI/P3M/104 and means the detailed route requirements document for the Project as specified in paragraph 2 of Schedule 3;

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 and other parties, but excludes any loss of production, loss of profit, loss of revenue, loss of contracts or any indirect or consequential loss arising out of or in connection with this Agreement;

Direction means any direction, requirement, instruction or rule legally binding on either of the Parties, and includes any modification, extension or replacement of any such direction, requirement, instruction or rule for the time being in force, but shall not include:

(a) the exercise of a discretion under any contract or other obligation binding on the Party in question or the enforcement of any such contract or obligation; or

(b) any direction issued by the ORR pursuant to section 16A of the Act;

Dispute means any dispute or difference of whatsoever nature arising under, out of, in connection with or in relation (in any manner whatsoever) to this Agreement;

Enhanced Assets means any assets operated and / or maintained by / or on behalf of Network Rail which have been created or enhanced by the carrying out of any works and / or services forming part of the Project;

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

Estimated Project Cost means the estimated costs of the Works and Services as set out in paragraph 4 of Schedule 3 as updated from time to time in accordance with this Agreement;

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

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

Good Industry Practice means in relation to the performance of any activity to which this standard is applied, the exercise of that degree of skill, diligence, prudence and foresight as would reasonably be expected from a properly qualified and competent person engaged in carrying out works or services of a similar size, nature, scope, type and complexity, complying with all Legal Requirements and applicable British, European and International standards and published codes of practice;

[10] Note that the Depot drafting included within the IA 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 IA.
[11] Delete if not applicable

IA Construction Certificate means the provisional certificate issued by Network Rail in accordance with clause 9.1, confirming that the Completion Criteria have been satisfied;

IA Final Certificate means the final certificate issued by Network Rail in accordance with clause 9.4, confirming that the Completion Criteria have been satisfied;

Implementation Programme means the programme for the Project as set out in paragraph 7 of Schedule 3 as updated from time to time in accordance with this Agreement;

Indirect Loss means loss of production, loss of profit, loss of revenue, loss of contracts, liabilities incurred under other agreements (save costs paid by the Customer to contractors appointed by the Customer in relation to the 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 the effect as if for £750 there were substituted £10,000;

(b) any person presenting a winding-up petition which is not dismissed within 14 (fourteen) days of service of the petition on that Party;

(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;

Insurance Policies means those insurances maintained by Network Rail or the Contractor in relation to the Works as are listed in paragraph 17 of Schedule 3;

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), know how 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 16 of Schedule 3;

Land and Noise Claim means a claim against Network Rail made for common law nuisance or pursuant to the Land Compensation Act 1973 or any regulation made pursuant to that Act (including the Noise Insulation (Railways and Other Guided Transport Systems) Regulations 1996) and which is attributable to the design, carrying out or completion of the Works or the subsequent correct and proper operation of the completed Works as part of the Railway;

Legal Requirement means any of the following:

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

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

(c) any interpretation of law, or finding, contained in any judgement given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal

has expired which requires any legal requirement falling within limbs (a) or (b) above to have effect in a way which is different to that in which it previously had effect;

Liquidated Damages Payment Date[12] means the date stated in paragraph 10 of Schedule 3, as amended from time to time in accordance with this Agreement;

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

Mandatory Variation means any Variation necessitated by:

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

(b) any Change in Standards for safety reasons;

Necessary Consents means all approvals, permissions, consents, licences, certificates, registrations and authorisations (including Network Rail Consents and Regulated Change) whether statutory or otherwise, which are required from time to time for the purposes of carrying out the 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 Operation Issue means the following events or circumstances, in so far as not reasonably foreseeable at the Commencement Date that requires Network Rail to act immediately or with urgency:

(a) any Safety Critical Event;

(b) any Operational Emergency;

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

(d) any change in the Network Licence; and/or

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

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

Network Rail Cap means the higher of:

(a) £100,000; or

(b) a sum equal to the total of Agency Costs, Contractors' Costs and Personnel Costs (all as defined in Schedule 2) included in the Estimated Project Cost as at the Commencement Date as varied from time to time in accordance with clause 6.7 (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 3;

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

Operational Emergency means any situation or circumstance which Network Rail reasonably considers requires immediate or urgent action in order to maintain or restore the effective operation of the Network or any part of it;

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

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;

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

Payment Period means the period of each of thirteen consecutive periods in a calendar year starting on 1st April, each such period being 28 (twenty eight) calendar days in length, save that the length of the first and last period in the year shall be such as shall be adopted by Network Rail;[13]

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 3;

QRA means the quantified assessment of risks and assumptions associated with the Project (as referred in paragraph 6 of Schedule 3) and which is incorporated into this Agreement;

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

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

Railway Interoperability Regulations means The Railways (Interoperability) Regulations 2011 (as amended)[14];

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

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

[13] 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.
[14] If RIR is not applicable, this definition should be deleted.

(c) a Variation is being implemented in accordance with clause 6.7(a) to (c);

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

Safety Critical Event means risk to the health and safety of any individual or risk of damage or destruction to any property, or any incident which may reduce the safety integrity levels of any item of infrastructure;

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

Specific Change in Law means any Change in Law which applies expressly to:

(a) the railway industry, a particular section of the railway industry or the provision of services to the railway industry and not to other transport modes or industries, including any changes to either Network Rail's Safety Authorisation or the Customer's Safety Authorisation or Safety Certificate as appropriate (as these terms are defined in ROGS) or Standards required by any Change in Law; or

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

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

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;][15]

[**Surety** means [insert full legal name of surety]];[16]

Variation means any change or variation to the Works, the Services, the Completion Date and / or the Liquidated Damages Payment Date in accordance with clause 6 and, for the avoidance of doubt, includes a Mandatory Variation;

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

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

Works Commencement Date means the date on which the physical works commence; and

Works Requirements means the specification which sets out a description of works in paragraph 2 of Schedule 3, which shall include the technical description of the Enhanced Assets and Network Rail's requirements in respect of those works, all as developed and agreed, as amended from time to time in accordance with this Agreement.

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;

[15] Delete if not applicable

[16] Network Rail reserves the right to request a surety following internal credit review noting that no surety will normally be required where the Customer is an Operator, local authority or other public sector body. If none required, this definition should be deleted, changes made to Clause 19 as instructed, and changes to Schedule 5 made as instructed, but if Surety is required then insert the name of the surety provided.

(b) references to any agreement or document include its schedules and attachments and references to **paragraphs**, **clauses**, **recitals** or **Schedules** are references to such provisions or parts of this Agreement;

(c) references in the singular shall include references in the plural and vice versa, words denoting any gender shall include any other gender and words denoting natural persons shall include any other persons;

(d) headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;

(e) references to an agreement, deed, instrument, licence, code or other document (including this Agreement), or to a provision contained in any of these, shall be construed, at the particular time, as a reference to it as it may then have been amended, varied, supplemented, modified, suspended, assigned or novated;

(f) the words **include** and **including** are to be construed without limitation;

(g) a reference to a **law** includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure (and **lawful** and **unlawful** shall be construed accordingly);

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

(i) reference to a **person** includes any person, firm, body corporate, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;

(j) a **regulation** includes any regulation, rule or official directive of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

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

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

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 acceptance which would be contrary to the protection, safety and efficient operation of the Railway and the safety of persons or property on or near the Railway; and

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

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

2.3 Information or instructions provided to Network Rail by or on behalf of the Customer in connection with the 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 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 Works Requirements and the terms of this Agreement.

3.3 Network Rail may subcontract all or part of its obligations under this Agreement. Notwithstanding the appointment of 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 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 Works are completed by the Completion Date. The Completion Date and the Liquidated Damages Payment Date may be amended under clauses 2.2, 4.2, 6, 7, 13, 14.1 and 14.2 provided that Network Rail will not be entitled to change the Completion Date or the Liquidated Damages Payment Date to the extent any delay is caused by the breach or negligence of Network Rail.

3.5 Subject to clause 6 as the Project progresses, Network Rail shall revise and update the Implementation Programme set out in Schedule 3. Network Rail shall deliver a copy of the revised and updated Implementation Programme to the Customer promptly following its production.

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

3.7 Network Rail will prepare project status reports at agreed intervals (but no more frequently than every four weeks) for submission to the Customer. The reports shall:

(a) include information relating to progress of the Works, the Services, Implementation Programme, risks and QRA updates, and any Interfacing Project, together with a change control log recording changes in the status of the Project; and

(b) provide key financial information for the Project, including the agreed budget, original forecast for the reporting period, cost of work done to date and an updated Estimated Project Cost; and

(c) any other reasonable information reasonably requested by the Customer.

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

3.9 Network Rail hereby elects (and the Customer acknowledges such election) that it shall be the Proposer in accordance with the CSM-REA Regulations.[17]

3.10 Network Rail hereby elects (and the Customer acknowledges such election) that it shall be the Project Entity as defined in and in accordance with the Railway Interoperability Regulations.[18]

[17] If CSM-REA is not applicable, the text should be replaced with "Not used". In the minority of cases where the Customer is the Proposer, change around Network Rail and the Customer in this sentence.

[18] If RIR is not applicable, the text should replaced with "Not used". In the minority of cases where the Customer is the Project Entity, change around Network Rail and the Customer in this sentence.

3.11 Network Rail shall effect and maintain (or procure the taking out and the maintenance of) the insurances which are set out in paragraph 17 of Schedule 3.

3.12 Network Rail shall, at the request of the Customer, allow the Customer to observe any progress meetings it has with any Contractor in respect of the Works. In addition the Customer shall:

(a) on reasonable notice be entitled at all reasonable times to have access to any Area of Work to observe the carrying out of the Works by the Contractor, subject to complying with such reasonable restrictions as are stipulated by Network Rail; and

(b) be given sufficient notice by Network Rail to allow it to attend and observe any inspection of the Works pertaining to the issue of any completion certificate (whether substantial, practical, sectional or final completion as defined under the Contract), subject to complying with such reasonable restrictions as are stipulated by Network Rail.

4 Necessary Consents

4.1 Network Rail shall make applications for, and use reasonable endeavours to obtain, those Necessary Consents specified in paragraph 5.2 of Schedule 3 as revised in accordance with clause 6;

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

(a) any Necessary Consent not being granted;

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

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

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

4.3 In the case of agreement of the Regulated Change before the Commencement Date the Regulated Change shall be as listed in paragraph 5.1 of Schedule 3. Where a Regulated Change, that Network Rail is undertaking, has not been agreed before the Commencement Date, then following agreement of that Regulated Change and prior to the Works Commencement Date the Parties shall meet and agree an estimate of costs up to the Completion Date for the Regulated Change. The estimated Regulated Change costs shall be listed in paragraph 5.4 of Schedule 3. If they are not included at the Commencement Date, as soon as the estimate has been agreed, the Parties shall set it out in paragraph 5.4 of Schedule 3.

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

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

(b) provide the Customer with copies of all relevant correspondence; and

(c) have due regard to the Customer's comments (if any) in relation to Regulated Change.[19]

4.5 The Customer has agreed to be responsible for applying for, and using reasonable endeavours to obtain, the Necessary Consents listed in paragraph 5.3 of Schedule 3 in a format agreed between the Parties and in line with the requirements of the Implementation Programme.

4.6 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.

5 Additional Expense

5.1 If in consequence of the Works and / or any Regulated Change Network Rail incurs additional cost and expense in connection with the repair, maintenance, improvement, operation or alteration of the Railway which would not have been incurred but for the Works and / or the Regulated Change (**Additional Expense**), then the provisions of this clause 5 shall apply.

[19] When the Customer is an Operator, the text in clause 4.4 should be deleted and replaced with "Not used".

5.2 Network Rail shall gain approval for the Regulated Change unless the Parties agree that the Customer will be responsible for obtaining the Regulated Change[20]. In gaining approval for the Regulated Change, the relevant Party shall also agree the calculation of the Additional Expense (obtaining approvals where necessary) and shall, where applicable, recover any contribution to the Additional Expense from a third party.

5.3 The Customer shall pay the Additional Expense, as an annual sum, for the life of the relevant Enhanced Assets or until the end of the Control Period (subject to such reasonable time necessary to take account of the Enhanced Assets in the regulatory settlement for the next Control Period) in which the Completion Date occurs, if sooner, where the Additional Expense is greater than £50,000 per annum after deduction of any sums paid to Network Rail by a third party. For the avoidance of doubt, where the Additional Expense is greater than £50,000, the Customer shall be required to pay the entire Additional Expense and not just the Additional Expense in excess of £50,000.

5.4 The Additional Expense shall be calculated as follows:

(a) where the Additional Expense has not been calculated prior to the Works Commencement Date:

(i) Network Rail shall estimate a fixed sum payable each year and if such fixed sum is accepted by the Customer, this shall be the agreed Additional Expense and Network Rail shall not be entitled to claim any other sums pursuant to this clause 5; or

(ii) where the Parties cannot agree the Additional Expense pursuant to clause 5.4(a)(i) then the Additional Expense shall be the sum calculated pursuant to the Regulated Change procedure if applicable or, where there is no Regulated Change, the sum calculated by Network Rail acting reasonably at the end of Pace Phase 2;

(b) where the Regulated Change has been obtained and the Additional Expense has been calculated prior to the Works Commencement Date, the Customer shall pay the calculated Additional Expense which is set out in paragraph 5(b) of Schedule 2,

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

6 Variations[21]

6.1 Prior to the issue of the IA Final Certificate either Party may request from the other Party a Variation (**"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 6.6 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.

6.2 Where the Customer issues a Variation Request, Network Rail shall notify the Customer within ten (10) Working Days of receipt of the Variation Request setting out whether it objects to the implementation of the proposed Variation on one or more of the following grounds:

(a) that it would infringe or be contrary to any Legal Requirement, Change in Law, or Direction of a Competent Authority or existing contractual obligation;

(b) that it would cause any existing Necessary Consent (which is not capable of modification) to be revoked;

(c) that it would require a new Necessary Consent, which Network Rail (using reasonable endeavours) believes that it cannot obtain;

(d) the responsibility for funding the Variation is not agreed;

(e) the responsibility for funding the Additional Expense resulting from the implementation of the Variation is not agreed;

[20] The Customer may be responsible for obtaining the Regulated Change where the Customer is an Operator and this should be documented in paragraph 5.3 of Schedule 3.
[21] The Customer should note that these Variations provisions may be used by the Customer to reduce the scope of the Works or Services as a means of managing their budget for the Project.

(f) that it would materially hinder an Interfacing Project;

(g) that it would materially affect the ability of Network Rail to perform its role as Infrastructure Manager or as owner and operator of the Network in accordance with the Network Licence; or

(h) that the proposed Variation, if implemented, would result in a change to the essential nature of the Works or would place material additional risk on the Project (including an increased design risk) that cannot be adequately compensated for by the payment of additional money

and the Parties will meet to discuss Network Rail's concerns and the Customer will either revise and reissue the Variation Request or withdraw the Variation Request. If Network Rail requires further information in order to make a decision under this clause 6.2, the Customer shall provide such information on request and the time period of ten (10) Working Days referred to above shall commence on receipt of such additional information.

6.3 Following any Variation Request, and subject to clause 6.2, 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 Project Cost;

(b) any requirement for any Additional Expense;

(c) any amendment to the Works Requirements in order to give effect to the Variation;

(d) reasoned proposals to change the Implementation Programme and the Completion Date and the Liquidated Damages Payment Date (if any) provided that the Completion Date and the Liquidated Damages Payment Date shall not be changed if the Variation is required as a result of an event described in clause 6.7 which was reasonably foreseeable;

(e) in the case of a proposed alteration of the Works or Services details of any Necessary Consent that must be obtained or amended for the proposed Variation to be implemented and Network Rail's reasonable assessment of the latest date by which any such Necessary Consent must be obtained or modified for the matters set out in this clause 6.3 to remain valid;

(f) in the case of a proposed Variation under clause 6.7, an explanation of why the Variation is necessary and reasonable in the circumstances, and

(g) any changes needed in order to meet the Works Requirements,

provided that where the information contained in any Variation Request made by the Customer is inadequate to enable Network Rail to respond, the Customer shall provide the necessary information on request. Where the Parties do not agree which Party will be responsible for funding the Variation and / or any Additional Expense, the matter shall be referred to the Escalation Procedure.

6.4 Within fifteen (15) Working Days of the receipt of the information set out in clause 6.3 (or such longer period as may be agreed by the Parties acting reasonably), the Customer shall notify Network Rail:

(a) where the Variation was requested by Network Rail:

(i) that it has no objection to the proposed Variation and / or agrees the information provided under clause 6.3; or

(ii) acting reasonably, that it objects to the Variation and / or does not agree the information provided under clause 6.3 together with its reasons for doing so;

(b) where the Variation was requested by the Customer:

(i) that it agrees the information provided under clause 6.3; or

(ii) acting reasonably, that it does not agree with the information provided under clause 6.3 together with its reasons for doing so.

6.5 Following the issue of a notice by a Customer pursuant to clause 6.4(a)(ii) or 6.4(b)(ii), Network Rail shall meet with the Customer within a further fifteen (15) Working Days (or such longer period as may be agreed by the Parties acting reasonably) to agree the Variation Request (as

may be amended) or the matters referred to in clause 6.3 and shall supply to the Customer any further information or revisions to the information already provided under clause 6.3 as may be reasonable.

6.6 Upon the agreement or determination of the Variation Request and the matters referred to in clause 6.3, the Parties shall confirm in writing that they agree to the implementation of the Variation and which Party shall fund the Variation (including any Additional Expense) all in accordance with such agreement or determination (subject to obtaining or amending any Necessary Consents). Subject to clause 6.8, no Variation shall be effective unless agreed in writing by the Parties.

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

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

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

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

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

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

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

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

Network Rail shall be entitled to vary the Works or Services or Completion Date or the Liquidated Damages Payment Date to the extent that is reasonable in the circumstances, and the Customer shall not be liable for the Network Rail Costs in connection with a Variation in respect of clause 6.7(a) to (c).

6.8 Where Network Rail considers a Variation is necessary under clause 6.7, it shall submit a Variation Request to the Customer pursuant to clause 6.1 and provide the information listed in clause 6.3. Clause 6.4 shall apply except that the Customer may not object to the proposed Variation itself, but may challenge the information provided under clause 6.3 and any issues arising from such information. For the avoidance of doubt the Customer may request that Network Rail amends the Works Requirements to accommodate any reasonable objections raised by the Customer. Where Network Rail has to act immediately in the case of clauses 6.7(a) and 6.7(b) 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 6.3. If the Parties do not agree the information provided under clause 6.3 (whether provided before or after commencement of the Variation), the Dispute shall be referred to the Escalation Procedure. Upon agreement or determination, clause 6.6 shall apply.

6.9 If agreement on any matter under this clause 6 is not reached within a reasonable period of time, or as otherwise specified, either Party may refer such matter for resolution in accordance with the Escalation Procedure.

7 Compensation and Relief

7.1 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 Implementation Programme; and

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

7.2 Network Rail shall notify the Customer of any Relief Event as soon as reasonably practicable and shall provide a revised Implementation 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 7. 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 7.4, together with any revisions to the Implementation Programme (including any changes to the Completion Date and the Liquidated Damages Payment Date), taking into account the likely effect of delay in the progress of the Works and Services.

7.3 Promptly following the agreement (or determination in accordance with clause 17) 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 Implementation 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 17), 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.

7.4 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 12.2 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 Cost 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.

7.5 Save as set out in this clause 7, neither Party shall have any other right or remedy whether under or in connection with this Agreement against the other for any Relief Event.

8 Intellectual Property

8.1 Network Rail hereby grants to the Customer, to use for the purposes of the modification, operation or maintenance 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.

8.2 The licence referred to in clause 8.1 shall include the right for the Customer to grant sub-licences for any of the purposes set out in Clause 8.1 (other than in respect of proprietary software which is not specifically prepared for the Works), 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.

8.3 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.

8.4 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.

8.5 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.

8.6 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 Completion

9.1 Where Network Rail considers that the Works have been completed in accordance with the Completion Criteria, prior to issuing an IA Final Certificate, Network Rail shall issue a certificate to such effect (an IA Construction Certificate) to the Customer which shall include supporting information that the Works have been completed.

9.2 If the Customer objects to the IA Construction Certificate, it shall give notice to Network Rail (**Objection Notice**) setting out in detail its reasons for such objection (which may include a failure by Network Rail to provide the information described in clause 9.1) within twenty (20) Working Days after receipt of the IA Construction Certificate. If the Customer does not issue an Objection Notice within such period, it shall be deemed to have accepted that IA Construction Certificate.

9.3 If Network Rail receives an Objection Notice within the time specified in clause 9.2, Network Rail shall take due account of the matters raised therein (and provide reasons where it does not accept the Customer's objection) and be entitled to issue an IA Final Certificate.

9.4 If the Customer is not satisfied that the Works have been properly completed following issuance of an Objection Notice in accordance with clause 9.2 , it shall refer such matter to the Escalation Procedure. If the Customer does not make such a referral within twenty (20) Working Days after receipt of the IA Final Certificate, it shall be deemed to have accepted that IA Final Certificate.

9.5 The legal and beneficial title in the Works and the Enhanced Assets shall vest in Network Rail.

10 Network Rail Costs

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

10.2 Within ten (10) Working Days after the end of each Payment Period throughout the carrying out of the Works and Services, Network Rail shall submit an invoice (with an attached breakdown and including any supporting information reasonably requested by the Customer) to the Customer in respect of the Network Rail Costs applicable to such Payment Period or any preceding Payment Periods, if not previously invoiced. Subject to clause 10.3, payment by the Customer to Network Rail shall be without set-off, retention, counterclaim, abatement or any other deduction and shall be due twenty (20) Working Days after the date of issue of the invoice (**Final Date For Payment**).

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

10.4 Should any invoice not be paid by the Final Date For Payment in accordance with clause 10.2 (except in respect of any amount determined not to be payable pursuant to clause 17), interest shall be payable on the amount due calculated from the due date for payment up to and including the actual date of payment at the Interest Rate.

10.5 The Customer will not be liable for Network Rail Costs for any part of the Works and Services which have already been included in Network Rail's business plan for the year in which such Network Rail Costs are incurred and approved for the Project by Network Rail's Board prior to

the Commencement Date, or, in respect of the Network Rail Costs of any Variation, the date of agreement of such Variation.[22]

11 Value Added Tax

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

11.2 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.

11.3 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.

11.4 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.

12 Limitation of Liability

12.1 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 final Completion or termination of this Agreement); or

(b) the Losses are incurred as a result of, or sums are unpaid under, clauses 10,11 or 15.2.

12.2 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, or for liquidated damages payable pursuant to clause 12.5. shall not exceed an amount equal to the Network Rail Cap. Notwithstanding the Network Rail Cap, where, in respect of the same event, Network Rail recovers any sums under an Insurance Policy, it shall pay such sums (if and to the extent that such recovered sums relate to loss suffered by the Customer and not by Network Rail itself) to the Customer. Any sums recovered by Network Rail under an insurance policy and paid to the Customer shall not contribute to the Network Rail Cap. Network Rail shall use reasonable endeavours to make such recovery (which shall include an obligation to make and diligently pursue a claim but shall not include an obligation on Network Rail to take legal action).

12.3 Clause 12.2 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.

12.4 Any Losses suffered by either Party shall, for the purposes of clause 12.1, 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.

[22] Following Network Rail's reclassification in 2014 as an arm's length body of government, it is no longer permitted to finance the acceleration of renewals and other works from one financial year to an earlier one. Therefore, any such works included in Network Rail's business plan will only be funded by Network Rail if they are delivered in the same financial year as provided for in the business plan. The cost of any such works delivered in an earlier year would be for the account of the Customer.

12.5 Subject to the limit of liability in clause 12.2, if to the extent that the [Completion Date[23]] has not occurred by the Liquidated Damages Payment Date unless due to the fault of the Customer or any contractor employed by the Customer, then Network Rail shall pay to the Customer the Daily Liquidated Damages Sum for each day from the Liquidated Damages Payment Date until the [Completion Date][24] has occurred or the date that it is determined under the Escalation Procedure that [Completion Date][25] has occurred. The Customer is not entitled to claim any other Losses in relation to delay to the achievement of any of the Completion Criteria except pursuant to this clause 12.5.

12.6 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).

12.7 Clause 12.6 shall not apply to:

(a) the Customer's payment obligations under clauses 4.3, 5, 10, 11, 12.8, 15.2 or Schedule 2;

(b) any Losses incurred by Network Rail due to the negligence (except to the extent such negligence relates to the carrying out of any design by the Customer or any contractor appointed by the Customer[26]), 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.

12.8 The Customer shall reimburse Network Rail in respect of all Losses and / or Direct Costs arising in respect of Land and Noise Claims up to the limit set out in paragraph 5(c) of Schedule 2.

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

13 Force Majeure Events

13.1 Subject to clauses 13.2 to 13.6, each Party shall be relieved from liability for non-performance of its obligations under this Agreement (other than any obligation to make payment) to the extent that it is not able to perform or suffers or causes delay in performing (acting reasonably) such obligations by reason of a Force Majeure Event. Network Rail shall be entitled to changes to the Completion Date and the Liquidated Damages Payment Date to reflect an extension of time properly awarded under the Contracts in respect of a Force Majeure Event.

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[23] This definition should relate to when the Customer and Network Rail agree that the relevant criteria should have been satisfied to prevent the Customer incurring losses. It is anticipated that in normal circumstances this will be the Completion Date, but this may not always be the case. Either retain the existing definition or replace with agreed definition, but once confirmed remove [ ].
[24] This definition should relate to when the Customer and Network Rail agree that the relevant criteria should have been satisfied to prevent the Customer incurring losses. It is anticipated that in normal circumstances this will be the Completion Date, but this may not always be the case. Either retain the existing definition or replace with agreed definition, but once confirmed remove [ ].
[25] This definition should relate to when the Customer and Network Rail agree that the relevant criteria should have been satisfied to prevent the Customer incurring losses. It is anticipated that in normal circumstances this will be the Completion Date, but this may not always be the case. Either retain the existing definition or replace with agreed definition, but once confirmed remove [ ].
[26] If Network Rail is not relying on any designs developed by the Customer, please delete: (1) the wording in brackets in 12.7(b) only (not the whole clause limb) and (2) clause 12.7(c) in its entirety.

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

(a) take all reasonable steps to prevent and mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the Force Majeure Event as soon as practicable and use all reasonable endeavours in accordance with Good Industry Practice to remedy its failure to perform; and

(b) not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to any failure to comply with its obligations under clause 13.2(a).

13.3 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 13.2(a) and (where possible) an estimate of the effects upon the Implementation Programme, the Completion Date and the Liquidated Damages Payment Date. The affected Party shall provide the other Party with any further information it receives or becomes aware of which relates to the Force Majeure Event.

13.4 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).

13.5 As soon as practicable following the notification described in clause 13.3, the Parties shall use reasonable endeavours to agree appropriate modifications to the Implementation Programme (including those needed to properly take into account any changes to the Completion Date and the Liquidated Damages Payment Date required by Network Rail under clause 13.1) to take into account the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement and the progress of the Works and Services.

13.6 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 13.5, then either Party may terminate this Agreement with immediate effect by written notice to the other Party. Upon termination the provisions of clause 15 shall apply.

14 Suspension and Termination

14.1 Without prejudice to the other provisions of this clause 14, Network Rail may suspend all or part of the Works (acting reasonably) with immediate effect to the extent required in order to prevent, address, alleviate or comply with (as applicable) a Network Operation Issue. Network Rail shall notify the Customer of any such suspension as soon as reasonably practicable. Such notification shall contain such relevant information relating to the suspension as is available, including an estimate of the period of suspension and the effect on the Completion Date, the Liquidated Damages Payment Date and the Project. Network Rail shall promptly provide the Customer with any further information it receives or becomes aware of which relates to the suspension and provide an update on the estimate of its duration. The Parties shall meet within five (5) Working Days to discuss how to address the circumstances which have given rise to such suspension. Network Rail shall notify the Customer as soon as practicable (and in any event within two (2) Working Days) once it is established that the performance of its affected obligations can be resumed and shall resume such performance to the extent that it can do so (performance to continue on the terms existing immediately prior to the suspension). Upon resumption of the Works, the Completion Date and the Liquidated Damages Payment Date will be adjusted to reflect the period of suspension.

14.2 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 10.3, Network Rail may suspend performance of any or all of the affected Works 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. Upon resumption of the Works, the Completion Date and the Liquidated Damages Payment Date will be adjusted to reflect the period of suspension.

14.3 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.

14.4 If:

(a) none of the infrastructure outputs specified in the Works Requirements has been delivered by the Completion Date; and

(b) the delay has not arisen due to the negligence or breach of the Customer,

the Customer may give notice to Network Rail of its intention to terminate this Agreement (which notice shall include reference to this clause 14.4). If arrangements to address the delay are not proposed by Network Rail within twenty (20) Working Days which are satisfactory to the Customer (acting reasonably), the Customer may terminate this Agreement with immediate effect by further notice in writing to Network Rail.

14.5 The Customer may in any event terminate this Agreement by giving three months' written notice to Network Rail if:

(a) the latest estimated duration of the Works results in the likelihood of the Works not being completed by a date [xx calendar days/weeks/months/years][27] after the Completion Date revised in accordance with clause 6 (other than clause 6.7); or

(b) the latest Estimated Project Costs are more than 25% greater than the Estimated Project Costs as at the Commencement Date revised in accordance with clause 6 (other than clause 6.7).

14.6 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 and the Works 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.

15 Consequences of Termination, or Completion

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

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

(b) the provisions of clauses 5, 8, 10, 11, 15.2, 16, 17, 23 and paragraph 5(c) of Schedule 2 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.

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

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

(b) except where termination is due to Network Rail's negligence or Network Rail's breach or Network Rail's insolvency under clause 14.3(b) or a Force Majeure Event under clause 13 or is pursuant to clause 14.4:

(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);

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

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

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

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

15.4 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.

16 Confidential Information

16.1 **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; or

(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;

16.2 Subject to clauses 16.3 and 16.4, 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.

16.3 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 17;

(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.

16.4 Where disclosure is permitted under clause 16.3(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.

16.5 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 16 shall remain in full force and effect in relation to such Confidential Information notwithstanding the termination of this Agreement.

16.6 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.

17 Escalation and Dispute resolution[28]

17.1 If a Dispute arises under out of or in connection with this Agreement, either Party may refer such Dispute to the Escalation Procedure in accordance with Schedule 4 or to the extent that such Dispute involves a construction contract within the meaning of section 104 of the Housing Grants, Construction and Regeneration Act 1996 (as amended from time to time), to an adjudicator for adjudication in accordance with the following provisions:

(a) the Scheme for Construction Contracts SI No. 649 of 1998 shall apply; and

(b) if the Parties are unable to agree on a person to act as adjudicator, the adjudicator shall be nominated at the request of either Party by the President or Vice President for the time being of Technology and Construction Bar Association.

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

17.3 The decision of an adjudicator properly appointed in accordance with this Agreement will be binding until referred to the courts for final determination or the Parties decide otherwise, and in any proceedings the courts shall have full power to open up, review and revise any certificate, opinion, decision, instruction, direction, valuation, requisition or notice given or made under this Agreement and any determination of an adjudicator, including an award as to costs.

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

(a) Network Rail and any Contractor; or

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

[28] A mediation option is available on request.

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

18 Notices

18.1 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:

(a) if sent by hand or by recorded delivery, at the time of delivery (and for the purpose of this clause 18 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.

18.2 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 18 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.

18.3 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 18.

19 Surety Obligations[29]

19.1 On the Commencement Date the Customer shall deliver to Network Rail a [Deed / Bond / Parent Company Guarantee][30] substantially in the form set out in Schedule 5 duly executed by the Surety.

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:

[29] Network Rail reserves the right for surety. If Network Rail does not require surety replace the text in this clause 19.1 with "Not used"
[30] Subject to the form of Surety agreed, if needed

(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 clause22.3(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 Works and / or Services, 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 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 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.

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][31])

Print Name:

Title:

Signed by)

duly authorised on behalf of)

Network Rail Infrastructure Limited)

Print Name:

Title:

[31] Insert full and correct registered company name as per top of page 4 of this Agreement.

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]

Tel.: [insert number]

Email: [insert email address]

Schedule 2: Network Rail Costs

1 Definitions

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

Additional Payment means the costs in respect of Regulated Change, Additional Expense and Land and Noise Claims;

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

Contractors' Costs means the costs to Network Rail of any Contractors not working within Network Rail offices and engaged by Network Rail in connection with the observance and performance of its obligations in relation to the Works and Services, plus the properly incurred expenses and disbursements of those Contractors;

Expenses and Disbursements means the costs, expenses and disbursements incurred by Network Rail in relation to the Works and 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 17 in Schedule 3;

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

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

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

Fee means an amount equal to the Network Rail Fee plus the Industry Risk Fee;

Hourly Rate means in respect of each member of Network Rail's Personnel the rate set out in paragraph 2 of this Schedule 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 1.5% of the aggregate of the Agency Costs, Contractors' Costs and Personnel Costs as set out in the Estimated Project Cost as at the Commencement Date as revised in accordance with clause 6 (other than a Variation of the type described in clause 6.7(a) to 6.7(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;

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

c) Possessions-Related Costs.

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

Network Rail Fee means an amount equal to 5% of the aggregate of the Agency Costs, Contractors' Costs, and Personnel Costs as set out in the Estimated Project Cost as at the Commencement Date (as revised in accordance with clause 6 other than a Variation of the type described in clause 6.7(a) to 6.7(c));

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

Personnel Costs means the sum of the relevant Hourly Rate multiplied by the number of hours spent by each member of Network Rail's Personnel in connection with the performance of Network Rail's obligations under this Agreement, except that should a delay arise in the Implementation Programme that is caused by the breach or negligence of Network Rail the Customer will not be liable for such amounts incurred after the date of Completion which are in excess of those amounts which would have been allowed had the delay not occurred;

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

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

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

4 Review

As from time to time requested by the Customer, Network Rail shall provide to the Customer reasonable access to and evidence and records of all amounts payable by the Customer under this Schedule 2 (other than the Hourly Rates) together with such other information and records as the Customer may reasonably require (having at all times regard for Network Rail's confidentiality and contractual obligations), which may be reviewed and audited by or on behalf of the Customer.

5 Limits on Additional Payments[32]

The Customer shall be liable to pay Network Rail all amounts due under this Agreement, subject to the following limits:

a) The Customer's liability under this Agreement in respect of Regulated Change under clause 4 where Network Rail is undertaking Regulated Change on behalf of the Customer shall be limited to [ ];

b) The Customer's liability under this Agreement in respect of Additional Expense under clause 5 shall be limited to [ ]; and

c) The Customer's liability under this Agreement in respect of Land and Noise Claims under clause 12.8 shall be limited to [ ].

6 Terms of Payment

The terms of payment are as set out in clause 10.1 and clause 10.2 of this Agreement except that the Network Rail Fee and the Industry Risk Fee set out in paragraph 5 of Schedule 3 will be added to the first invoice.

[32] The Parties shall, where reasonably possible, agree and insert these liability caps prior to execution of the Agreement. However, if it is not reasonably possible to estimate these liability caps prior to entering into the Agreement, the Parties will seek advice from their organisations to agree appropriate action. Alternatively, if the Parties agree not to apply one or more liability caps, replace the appropriate wording in (a), (b) or (c) with "not used".

Schedule 3: Project Information

1 The Project

[Describe the Project and background]

2 Works Requirements

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

3 Services

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

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

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

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

(d) Attendance at periodic progress/review/coordination meetings and workshops and to regularly report on progress and technical aspects of Contract(s) in place to deliver the Works Requirements including monitoring progress of detailed design and working drawings.

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

(f) Undertaking surveys.

(g) Undertaking and administration of Commissioning procedures applying for the Necessary Consents where Network Rail is responsible for obtaining such consents.

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

4 Estimated Project Cost [33]

[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]

[33] If the estimated Project Costs are £40m or above, please contact Corporate Commercial as the drafting of the Agreement will need to be amended and the Customer advised of what to expect if the costs exceed this threshold.

5.3 Necessary Consents to be obtained by the Customer

[Insert Consents or state None]

5.4 Estimated costs of Regulated Change

[Insert amount]

6 QRA[34]

Document reference: [insert reference and date]

7 Implementation Programme

[Insert all the relevant milestones][35]

8 Completion Criteria

[Insert as appropriate]

9 Completion Date

[Insert date]

10 Liquidated Damages Payment Date

[Insert date][36]

11 Daily Liquidated Damages Sum

[Insert amount][37]

12 Customer's Design Liability Cap

[Insert amount][38]

13 Customer Cap

[Insert amount from Ready Reckoner]

14 Network Rail Cap

[Insert amount from Ready Reckoner]

15 Assumptions / Exclusions / Conditions

[Insert as appropriate][39]

16 Interfacing Projects

[Insert as appropriate][40]

17 Insurance Policies

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[34] Under the IA the figure is derived from a QCRA

[35] Note that there are minimum rail industry timescales for the preparation and implementation of certain activities such as booking of possessions and the provision of certain materials, etc. Therefore the Implementation Programme must allow for the timescales or the liabilities in this Agreement to be amended accordingly.

[36] This is the date from which liquidated damages shall be payable by Network Rail in the event of delay.

[37] This will be based on that agreed with the Customer representing a pre-estimate of the Customer's loss which will be negotiated by the Parties acting reasonably. If the Parties agree no Liquidated Damages apply insert "NIL" or "£0" (do not leave blank and do not insert N/A). If the Parties cannot agree a figure clause 12.5 should be redrafted to include a cap on damages.

[38] In the event that Network Rail will be relying on any designs developed by the Customer, the cap will be agreed by the Parties acting reasonably and taking into account the particulars of the Project – including the design. If Network Rail will not be relying on any designs developed by the Customer, the text in this paragraph should be deleted and replaced with "Not used".

[39] Insert a list of all assumptions and / or exclusions made relating to low probability / high impact risks when calculating the Estimated Project Cost but if there are none then insert "Not used".

[40] Insert a list of applicable projects but in the event that there are no Interfacing Projects then insert "Not used".

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.[41]

[41]Leave this text, but if further clarification is required then refer to Group Insurance for additional text. Any extraordinary insurances required specific to any project should be set out here.

Schedule 4: Escalation Procedure

1 Definitions

1.1 In this Schedule 4, except where the context otherwise requires, the following words shall have the following meanings:

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

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

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

Response Notice means the notices served under paragraph 2.3 of this Schedule 4; and

Senior Manager means the person in each Party's organisation responsible for the management and oversight of this Agreement.

2 Stage 1 - Project Managers

2.1 In order to invoke the Escalation Procedure, either Project Manager may notify the other Project Manager by serving a written notice (Initial Notice).

2.2 The Initial Notice shall:

a) state the clause under which the Escalation Procedure is being invoked or alternatively any other matter to be resolved by means of the Escalation Procedure;

b) advise all correspondence and documentation relevant to the matter raised in paragraph 2.2(a) of this Schedule 4; and

c) propose a date within five (5) Working Days for a meeting between the Project Managers to seek resolution of the matter referred to in paragraph 2.2(a)of this Schedule 4.

2.3 Following receipt of the Initial Notice, the receiving Project Manager shall respond by written notice within three (3) Working Days (Response Notice).

2.4 The Response Notice shall:

a) state the actions and programme to resolve the matter raised in the Initial Notice; or

b) confirm attendance at the meeting referred to in the Initial Notice; and

c) advise any further correspondence and documentation relevant to matter raised in the Initial Notice.

2.5 If the Project Managers agree that the Response Notice or the meeting pursuant to the Initial Notice resolves the matter raised in the Initial Notice, the Project Manager who issued the Initial Notice will notify the other Project Manager by written notice. Such notification shall be made within three (3) Working Days following the receipt of the Response Notice or within three (3) Working Days following the meeting.

2.6 If the Project Managers do not agree that the Response Notice or the meeting pursuant to the Initial Notice resolves the matter raised in the Initial Notice, both Project Managers will notify their respective Senior Managers accordingly. Such notification shall be made within three (3) Working Days following the receipt of the Response Notice or within three (3) Working Days following the meeting.

3 Stage 2 - Senior Managers Meeting

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

of the matter referred to in the Initial Notice. The Senior Managers may, at their discretion, invite the Project Managers to attend such a meeting.

3.2 If the Senior Managers agree that their meeting resolves the matter raised in the Initial Notice, they will notify their Project Managers accordingly. The Project Manager who issued the Initial Notice will notify the other Project Manager by written notice. Such notification shall be made within three (3) Working Days following the meeting of Senior Managers.

3.3 If the Senior Managers do not agree that their meeting resolves the matter raised in the Initial Notice, they will notify their respective Project Managers accordingly within three (3) Working Days following the meeting of Senior Managers.

3.4 At the same time as they make the notification in paragraph 3.3 of this Schedule 4, each Senior Manager shall notify their respective Executive Level Directors of the matter raised in the Initial Notice and the steps taken at the meetings between Project Managers and Senior Managers to resolve the matter.

4 Stage 3 - Executive Level Directors' Meeting

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

4.2 If the Executive Level Directors agree that their meeting resolves the matter raised in the Initial Notice, they will notify their Senior Managers and Project Managers accordingly. The Project Manager who issued the Initial Notice will notify the other Project Manager by written notice. Such notification shall be made within three (3) Working Days following the meeting of Executive Level Directors.

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

Schedule 5: Surety Provisions

[Insert details of Surety required (if any) in accordance with clause 19, or insert “Not used”.]