

## Implementation Agreement Templates - Customer Explanatory Notes

### Section 1 - Explanatory Notes on Implementation Template Agreement (Fixed Price)

Clause Heading	Explanation
Background	<p>An Implementation Agreement is required when a Customer requests Network Rail to undertake works, directly or indirectly via sub-contracts, on the Network Rail network or its other property. It does not give the Customer access to the network.</p> <p>In this Agreement, Network Rail undertakes to provide works and services to the Customer for a Base Price. The Customer's payment obligation to Network Rail is to pay the Base Price for carrying out the Services and Works Requirements set out in the Agreement. As such, if there are additional costs for the Services and Works Requirements exceeding the Base Price, Network Rail will cover these costs itself. Where the Customer agrees Variations, or in respect of Regulated Change, either the Base Price is adjusted (if a fixed price is agreed) or emerging costs are paid by the Customer.</p> <p>If the Works are relatively uncomplicated, straight forward to manage and do not have the potential to cause significant disruption or where the cost of the Works is at the lower end of the range, it may be more appropriate to use the Basic Implementation Agreement (Fixed Price).</p>
Roles and Responsibilities	<p>In carrying out works on behalf of the Customer, Network Rail will have a range of obligations towards its Customer. Network Rail will be contracting directly with consultants and contractors and will have direct liability to these parties for payment and other contracted obligations. Network Rail will also be liable to the Customer for the acts and omissions of the consultants and contractors. It is therefore important that these costs and liabilities are appropriately identified and addressed in the Agreement.</p> <p>In addition to Network Rail's obligations towards its Customer and its contractors and consultants, it also has obligations as operator of the network relating to safety, operational continuity, land rights and other legal/regulatory requirements.</p>
Clause 1 - Definitions and Interpretation	<p>Capitalised terms used in these guidance notes are defined in the Agreement.</p> <p>This clause includes general provisions as to consents including the acknowledgement that Network Rail retains sole discretion in relation to safety issues.</p>

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Clause 2 - Obligations of the Customer	<p>This clause places general obligations on the Customer to comply with the Agreement and confirms that a failure to do so may result in the date agreed by the parties for the completion of the Works (the <b>Completion Date</b>) and from which liquidated damages are payable for delay to completion (the <b>Liquidated Damages Payment Date</b>) being extended. These dates will be established in line with the Completion Criteria set out in schedule 3.</p>
Clause 3 - Obligations of Network Rail	<p>Network Rail undertakes to carry out the Works and/or the Services in accordance with Good Industry Practice, legislation, Necessary Consents, standards and the terms of the Agreement. What forms the Works and Services is set out in Schedule 3 and what the standards are is set out in the definitions.</p> <p>Network Rail may sub-contract its obligations but remains liable for the sub-contractor's performance. If Network Rail intends to sub-contract a material part of the works or services Network Rail is to take account of the Customer's comments on the proposed appointment.</p> <p>Network Rail is to procure that the Works will satisfy the Completion Criteria by the Completion Date. This is a fixed date which may be amended in accordance with the Agreement.</p> <p>Network Rail elects to be the client for the purposes of the CDM Regulations. It is also to procure the insurances listed in Schedule 3.</p> <p>Network Rail also has obligations to report regularly to the Customer and to update the programme estimates when appropriate. Network Rail shall also provide details of the cost of work done to date, estimated final total costs and other financial information where the costs incurred by Network Rail exceed 125% of the Base Price.</p>
Clause 4 - Necessary Consents	<p>Network Rail must apply for those Necessary Consents listed in Schedule 3. It is acknowledged that the grant of such consents is not within Network Rail's power, and therefore Network Rail cannot guarantee when they will be granted (if at all) or the terms on which they will be granted. Network Rail has no liability in respect of the Necessary Consents (and may extend the Completion Date and Liquidated Damages Payment Date) unless the failure is caused by its negligence or breach of the Agreement.</p> <p>This clause also sets out the procedure to apply in respect of a Regulated Change that has not been agreed before the Commencement Date, Network Rail must give the estimated costs related to a Regulated Change and these costs are to be inserted at Schedule 3. There is a limit on what Network Rail can claim for Regulated Change and this is set out in paragraph 5.1(a) of Schedule 2. If the scope and pricing of the Regulated Change is not known at the Commencement Date, the parties will need to agree an appropriate limit or adjustment to the limit. The limit will be based on Network Rail's experience of the likely</p>

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	<p>level of settlements required by rail industry parties.</p> <p>The Customer is responsible for the Necessary Consents listed as its responsibility in Schedule 3.</p>
Clause 5 (Additional Expense)	<p>This clause sets out the procedure to apply in respect of Network Rail incurring additional cost and expense including maintenance and other work on the Railway that would not be required but for the Works and/or a Regulated Change. Network Rail is to gain approval for any Regulated Change unless it is agreed that the Customer is responsible for obtaining it.</p> <p>The Customer is to pay the Additional Expense each year where the sum is greater than £50,000 per annum after deductions of sums paid to Network Rail by a third party.</p> <p>The clause sets out the method of calculating the Additional Expense. There is a limit on what Network Rail can claim as Additional Expense and this is set out in paragraph 5.1(b) of Schedule 2. If the scope and pricing of the Additional Expense is not known at the Commencement Date the parties will need to agree an appropriate limit or adjustment of the limit. The limit will be based on Network Rail's estimate of the likely costs of maintenance and other activities as a consequence of the Works..</p>
Clause 6 - Variations	<p>If a change to the Works, Services or Project is required by the Customer or Network Rail, the party making the request is required to issue a Variation Request. The process is set out in the clause and, when the Customer requests a Variation, Network Rail may object to it on one of a number of listed grounds. If Network Rail does object the parties are to meet for the Customer to revise or reissue the Variation Request or withdraw it. The Customer is to provide additional information required by Network Rail in order for it to make a decision in respect of the Variation Request.</p> <p>Subject to those grounds for objection, the parties are to consult and Network Rail is to provide details of the effect of the Variation on the Project. The Customer is to notify Network Rail where it agrees a Variation Request issued by Network Rail or where it agrees to the details provided by Network Rail in response to the Customer's Variation Request. Upon such agreement (including which party shall fund the Variation), the parties shall confirm the agreed Variation in writing. If the Customer is to fund the Variation, the agreement is to include whether the Customer is to pay a fixed price by an adjustment to the Base Price or on an emerging cost basis in which case Network Rail Costs set out in Schedule 2 are to be paid.</p> <p>Where Network Rail reasonably considers that a Variation is necessary for a number of listed reasons then Network Rail is entitled to vary the Works or Services, Completion Date or Liquidated Damages Payment Date. The Customer is not liable to pay any Network Rail Costs in connection with such Variation.</p>

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	<p>In respect of such Variations, the Customer may not object to the carrying out of the required Variation but may challenge the information provided and request that Network Rail amends the Works Requirements to accommodate its reasonable objections. If the parties do not agree the information provided the Dispute may be referred to the Escalation Procedure.</p> <p>In the case of certain listed Variations where Network Rail needs to act immediately to protect the safety and operation of the Railway, it does not have to serve a Variation Request with the required information.</p>
<p>Clause 7 - Compensation and Relief</p>	<p>This clause sets out the entitlement of the Customer to recover Direct Costs from Network Rail and be relieved from its obligation to pay Network Rail Costs as a result of a Relief Event. The parties are to notify each other of the occurrence of a Relief Event.</p> <p>Relief Events are industry-related events and encompass cancellation/alteration of possessions, interference from Interfacing Projects and the carrying out of Mandatory Variations.</p> <p>The Customer may only make a claim where the Direct Costs incurred and Network Rail Costs that are not payable exceed £10,000 (the threshold is to avoid a "claims culture"). No claim can be made where the Relief Event was caused by the Customer or a contractor appointed by the Customer (other than Network Rail).</p> <p>Where the Relief Event arises from the cancellation or alteration of a Booked Possession occurring as the result of Network Rail's negligence or breach, the Direct Costs paid by Network Rail will count towards the Network Rail Cap.</p>
<p>Clause 8 - Intellectual Property</p>	<p>Network Rail grants to the Customer an intellectual property licence to use and sub-licence for use the intellectual property owned by Network Rail. Where Network Rail does not own the rights it will use reasonable endeavours to procure such rights from the owner of the intellectual property for the Customer.</p> <p>The clause limits the use of such a licence. Network Rail has no liability to a sub-licensee and the Customer indemnifies Network Rail in respect of losses arising from the use of such property by a sub-licensee. Each party indemnifies the other in respect of the use by it of intellectual property other than for the purposes of the Project.</p>
<p>Clause 9 - Completion</p>	<p>Once Network Rail has completed the Works in accordance with the Completion Criteria, it will issue a Provisional Completion Certificate to the Customer. The Customer may issue an Objection Notice within the objection period if it believes the Works are not complete, stating what other matters it believes are still outstanding, otherwise the Provisional Completion Certificate shall become the Completion Certificate. If it does issue an Objection Notice, Network Rail shall address any outstanding matters and</p>

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	<p>issue a Completion Certificate.</p> <p>Title in the Works and Enhanced Assets shall vest in Network Rail.</p>
Clause 10 - Payment	<p>This clause sets out the procedure for invoicing the Customer for reimbursement of costs as set out in Schedule 2, for payment by the Customer of invoices and the rights and procedures for the Customer to object to such invoices. Network Rail is entitled to be paid the Base Price and all Network Rail Costs (as defined in Schedule 2) reasonably and properly incurred, i.e. those relating to Regulated Change and/or Variations undertaken on an emerging cost basis.</p> <p>The clause also sets out a mechanism whereby the Customer does not have to pay for Works and Services (or a Variation) already included in Network Rail's business plan although the Customer must pay financing charges to Network Rail to take account of the fact the expenditure was incurred earlier than planned.</p>
Clause 11 - Value Added Tax	<p>This clause sets out the way VAT shall be applied.</p>
Clause 12 - Limitation of Liability	<p>Subject to qualifications set out in the Agreement, neither party is liable for any Losses incurred by the other party until the aggregate amount has exceeded £10,000 (to avoid a "claims culture"). Claims can also be made on completion of the Works or termination.</p> <p>Network Rail's liability to the Customer for any reason relating to the Agreement is limited to the Network Rail Cap. Any sums actually recovered under the insurance policies listed in Schedule 3 in respect of loss suffered by the Customer are payable by Network Rail in addition to the Network Rail Cap and contribute to the Network Rail Cap if the cap has not already been reached. Regardless of any such recovery Network Rail remains liable to deliver the Works and Services for the Base Price. This limitation does not apply to losses as a result of a liability for death or personal injury from Network Rail's negligence or breach of statutory duty or in respect of fraud by Network Rail or a Contractor.</p> <p>Compensation to the Customer in the event that Network Rail fails to achieve the Completion Criteria by the Liquidated Damages Payment Date, unless due to the fault of the Customer, is limited to liquidated damages calculated on a daily basis. Any liquidated damages paid count towards the Network Rail Cap. If the parties are unable to agree a figure for the liquidated damages the clause is to be amended to provide for a cap on damages for delay.</p> <p>The Customer's liability to Network Rail for any reason relating to the Agreement is limited to the Customer Cap plus any monies</p>

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	<p>recovered from insurers. This limitation does not apply to various payment obligations (including the obligation to pay Network Rail Costs), where losses are a result of the Customer's negligence (except where negligence relates to the carrying out of design) or fraud or to claims for death or personal injury.</p> <p>There is a separate Design Liability Cap which is in addition to the Customer Cap which covers losses incurred by Network Rail as a result of the negligent design by the Customer or any contractor of the Customer.</p> <p>The Customer shall not be liable for any Land and Noise Claims over the limit in paragraph 5.1(c) in Schedule 2. The limit will be based on Network Rail's experience of the likely level of such claims.</p> <p>Neither party is liable for any loss of profits or other indirect or consequential loss suffered by the other party.</p>
Clause 13 - Force Majeure Events	<p>Force Majeure Events are set out in the definitions. Both parties are relieved of liability for non-performance of their obligations as a result of a Force Majeure Event so long as they have taken all reasonable steps to prevent and mitigate the consequences and have used reasonable endeavours to comply with their obligations.</p> <p>This clause sets out the actions each party is required to take if a Force Majeure Event arises, including obligations to inform the other party and take steps to minimise the effect where possible. Both parties have a reasonable endeavours obligation to modify the Implementation Programme and undertake other modifications to their obligations and terms of Agreement in order to mitigate the effects of the Force Majeure Event.</p> <p>If the Force Majeure Event prevails and no such agreement can be reached within three months of the occurrence of the event, then either party has the right to terminate the Agreement with immediate effect, in which case the provisions of Consequences of Termination (Clause 15) will apply.</p>
Clause 14 - Suspension and Termination	<p>Network Rail may suspend the Works to the extent required to prevent or address a Network Operation Issue or if the Customer fails to pay any amount due and has not issued a notice of intention to withhold such payment. Procedures are set out for dealing with such suspensions.</p> <p>The criteria and procedures governing termination are also set out in this clause. As well as the mutual rights to terminate for persistent or material breach and insolvency, the Customer may terminate:</p> <p>(a) if none of the infrastructure outputs have been delivered by the Completion Date provided, the delay has not been</p>

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	<p>caused by the Customer and the parties have failed to agree arrangements to address the delay; and</p> <p>(b) if the Works are unlikely to be completed by a specified time.</p> <p>If the total costs that Network Rail will incur are likely to exceed 150% of the Base Price (excluding any Variation for which a fixed price has not been agreed), the parties will discuss whether any changes to the Agreement are required in order to complete the Works in an economic and efficient manner, taking into account the interests of the rail industry. If agreement cannot be reached, Network Rail may request approval from the ORR to vary the terms of the Agreement. The ORR's decision shall be binding but the Customer may terminate the Agreement within 15 Working Days of receipt of the ORR's decision.</p> <p>Upon issue or receipt of any termination notice Network Rail will reduce as quickly as possible its expenditure, and bring the Services and Works to a close in an orderly manner.</p>
Clause 15 - Consequences of Termination or Completion	<p>This clause sets out the consequences of termination.</p> <p>The Customer must pay Network Rail Costs up to the date of termination, whatever the cause of the termination. Except where termination is due to Network Rail's fault, the Customer must also pay other costs and expenses reasonably incurred by Network Rail as a result of the termination (including the costs of reinstatement).</p> <p>Certain obligations, such as intellectual property rights and confidentiality, survive termination of the Agreement.</p> <p>The Customer is not entitled to compensation or other remedies in connection with the suspension or termination of the Agreement.</p>
Clause 16 - Confidential Information	<p>This clause sets out the rules with which each party agrees to comply to maintain the confidentiality of information arising or being passed between the parties and their representatives. Breach of confidentiality can create a liability.</p>
Clause 17 - Escalation Dispute Resolution	<p>Where a Dispute arises it is important that the matter is addressed and resolved quickly. As such a management procedure to escalate such matters is set out in Schedule 4. Should this not resolve the Dispute, an adjudication process is set out. That adjudication process may also be used (without escalating the matter in accordance with the management procedure) where the Dispute involves a construction contract under the Housing Grants, Construction and Regeneration Act 1996.</p>

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Clause 18 - Notices	This clause sets out the procedure that needs to be adhered to in order to constitute a validly delivered notice to each party. Non adherence to this procedure may mean rights could be compromised if formal notice is required in order to exercise such rights.
Clause 19 - Surety	Network Rail may undertake a credit review of the Customer as a result of which, in certain circumstances, Network Rail may require an appropriate form of Surety to satisfy Network Rail from the Customer. The purpose of the Surety would be to ensure that the Customer has the ability to meet its obligations set out in the Agreement, in particular its ability to pay Network Rail Costs.
Clause 20 - Freedom of Information	This clause refers to certain Information Acts, the right of any person to request the disclosure of information from a party who is a public authority and the conduct of that party in complying with such a request. This clause is to be deleted if the Customer is not a public authority under the Information Acts.
Clause 21- Miscellaneous	<p>This clause covers a variety of standard boilerplate terms. These include:</p> <ul style="list-style-type: none"> <li>• neither party has the right to assign or charge its rights or benefits in the Agreement without the prior written permission of the other party (not to be unreasonably withheld or delayed) provided it may do so without consent if assignment is to its statutory successor;</li> <li>• the Agreement does not constitute a partnership between the parties and that, unless expressly conferred in writing otherwise, neither party has the right to act as an agent for the other;</li> <li>• the Agreement does not create any right under the Contract (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to the Agreement.</li> </ul>
Schedule 1	Details for delivery of notices and representatives.

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Schedule 2	<p>Part A sets out the Base Price and payment schedule. The Base Price will include the Network Rail Fee and the Industry Risk Fee (i.e. 13% and 2% respectively of the Agency Costs, Contractors Costs and Personnel Costs).</p> <p>Part B sets out the components of Network Rail Costs that are to apply in relation to a Variation agreed to be carried out on an emerging cost basis and in relation to the carrying out of Regulated Change. It also sets out the limits of amounts payable by the Customer in respect of Regulated Change, Additional Expense and Land and Noise claims.</p>
Schedule 3	<p>This sets out the details of the Project, the Works Requirements, the Services, Necessary Consents, QRA, Implementation Programme, Completion Criteria, Completion Date, Liquidated Damages Payment Date and Insurance Policies. Note that Network Rail cannot deliver system outputs (such as availability of new train paths) but only infrastructure assets.</p>
Schedule 4	<p>The Escalation Procedure referred to in Clause 17 is set out here.</p>
Schedule 5	<p>Surety provisions if required.</p>

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