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| RecipientAddress 1 Address 2City Postcode  | [Network Rail local office address] |
| (the "**Recipient**")**Dated:** as at signatures |

Dear Sirs

**Funding from Network Rail Agreement for [Project Title] (the “Project”)**

An amount of £[ ] has been allocated by Network Rail towards the Cost of the Works incurred by the Recipient in undertaking the Project subject to the terms of this letter.

In this letter including the Schedules (hereafter referred to as the **“Agreement”**), the definitions in Schedule 1 shall apply.

We refer to our previous discussions about the Project and confirm our agreement in respect of the funding for the [ ][[1]](#footnote-2) phase of this Project as follows:

# The Works [and Services][[2]](#footnote-3)

* 1. The Recipient intends to carry out or procure the carrying out of the Works. Following the physical commencement of the Works, the Recipient shall use its reasonable endeavours to ensure that the Works are completed by 31st March 2024.
	2. The Recipient confirms that it intends to proceed with the Works on the terms set out in this Agreement, in accordance with good industry practice, and in compliance with applicable law.
	3. The Recipient shall enter into the Protection Mechanism[[3]](#footnote-4) with Network Rail prior to the Recipient commencing the Works where the Recipient needs to enter upon the network for the purpose of performing the Works or where Network Rail considers that the Works are of such a nature that the Protection Mechanism is required to protect the network. The Recipient and Network Rail will work together in good faith to put in place the Protection Mechanism prior to the Recipient commencing the Works.
	4. The Recipient shall provide the Local Delivery Group, or similar, meeting (the “**LDG**”) with regular written progress updates in relation to the Works and in particular will update the LDG on the following:
		1. information on the progress of the Works to date (including actual Cost of the Works to date) at least once per Period;
		2. a forecast of future Cost of the Works up to the completion of the Works at least once per Period;
		3. a project plan showing the outstanding Works; and
		4. the latest estimated date for the completion of the Works and the associated risks and mitigation measures.

The LDG shall provide copies of these reports to the Access for All Programme Board.

* 1. Any Works carried out by the Recipient must be in accordance with all relevant standards including safety, quality, and environmental standards[[4]](#footnote-5) and the AfA Programme Requirements.
	2. Prior to the commencement of the Works the Recipient must obtain from Network Rail’s engineers technical approval of the proposals relating to the design and installation of the Works[[5]](#footnote-6).
	3. The implementation and completion of the Works shall be carried out in accordance with the Protection Mechanism[[6]](#footnote-7).
1. **Funding by Network Rail**
	1. Network Rail agrees to fund the lesser of £[*agreed maximum funding amount*] or the Costs of the Works (the **“Funding”**) (where applicable, inclusive of VAT) in respect of the Project.
	2. Network Rail shall pay the amount of the Funding [upon completion of the Works following the issue of a certificate of completion consistent with clause 3.2.] / [in accordance with the following payment schedule [***INCLUDE AS APPLICABLE***]:
		1. [Up to £x of the Funding to be paid following completion (to Network Rail’s satisfaction) of the [*INSERT DETAILS*]] / [[♦]% of the Funding to be paid following completion (to Network Rail's satisfaction) of [***INSERT DETAILS OF TRIGGER FOR PAYMENT***]];
		2. [Up to £x of the Funding to be paid following completion (to Network Rail’s satisfaction) of the [*INSERT DETAILS*]] / [[♦]% of the Funding to be paid following completion (to Network Rail's satisfaction) of [***INSERT DETAILS OF TRIGGER FOR PAYMENT***];
		3. [***INCLUDE AS MANY LIMBS AS* NECESSARY**] and
		4. [[Up to / [♦]%] of the Funding to be paid upon completion of the Works following the issue of a certificate of completion consistent with clause 3.2.]
	3. Network Rail shall make payment to the Recipient within 28 days following receipt by Network Rail of a VAT invoice for such amount.
2. **Completion of the Works**
	1. The Recipient shall notify Network Rail in writing once it considers that the Works have been completed in accordance with the drawings, specification and design agreed by Network Rail (pursuant to the Protection Mechanism)[[7]](#footnote-8) in order to enable Network Rail to certify completion of the Works.
	2. Following receipt of a notification from the Recipient pursuant to clause 3.1 that all of the Works have been completed and provided that Network Rail is satisfied that the Works comply in all respects with this Agreement and all relevant standards, and that all deficiencies, snagging and defects have been rectified, Network Rail shall issue a certificate of completion of the Works. In the event that Network Rail considers that the whole or any part of the Works does not comply as aforesaid, it shall notify the Recipient in writing together with full details of its reasons why the certificate of completion of the Works should not be issued.
	3. Where the certificate of completion of the Works is not issued pursuant to clause 3.2, the Recipient shall have regard to the reasons given by Network Rail and shall carry out such further work as is required to comply with this Agreement. Once the Recipient has completed such further work the process in clauses 3.1 and 3.2 shall be repeated.

3A Change Control

* + 1. The Recipient and Network Rail recognise that as the Works develops the Recipient, Network Rail or a Funder may be desirous of a change due to (1) a variation to the Specification or (2) the occurrence of an Unforeseen Works Risk. Such a change shall be regarded as a “**Prospective Change**”. The Recipient and Network Rail recognise that a Prospective Change could affect the cost and Programme.
		2. For any Prospective Change to become a change it must be approved in accordance with AfA Programme Requirements (and funder where relevant) and any impact of such Prospective Change on the cost and programme be agreed.
		3. The Recipient and LDG (and the funder where relevant) will discuss in good faith the Prospective Change and its effect on the cost and the Recipient agrees to provide the LDG (and funder where relevant) with any additional information reasonably requested in order to fully and completely evaluate the impact of the change.
		4. Where costs are incurred as a result of Unforeseen Works Risks, or it is believed that they will be incurred, the Recipient must promptly notify the LDG of such a Prospective Change together with the mitigating actions proposed. A Prospective Change shall become a change as soon as reasonably practicable, when the LDG confirms that an Unforeseen Works Risk has occurred and is justified in accordance with clause 3A. Those costs incurred will be verified as such by the LDG and to the extent such costs have been properly and efficiently incurred by the Recipient, they will be funded by the party who applied for the AfA funding.
		5. If the Recipient, LDG (and funder where relevant) are unable to agree the amendment to the cost and programme of a Prospective Change, either Party may escalate the matter in accordance with clauses 5.21 and 5.22.
		6. Other than for an agreed change or changes and subject to the [Basic] Asset Protection Agreement and/or Landlord’s Consent as appropriate, the Recipient shall be responsible for any increase in the cost of the Project in excess of the Funding in clause 2.1.
		7. Where any change is agreed in accordance with clause 3A (b), the Recipient and Network Rail shall set out the agreed change in a format agreed between the Recipient and Network Rail and signed by the Authorised Person for the Recipient and the Authorised Person for Network Rail. The Recipient will submit to Network Rail a written statement setting out the agreed impact of the change on the cost endorsed by the LDG chairperson (and funder where relevant) and the cost shall be adjusted accordingly.
1. **Termination**
	1. Unless terminated earlier in accordance with clause 4.2, 4.3 or 4.4, this Agreement will automatically expire upon the later of:

(a) the certificate of completion for the Works having been issued consistent with clause 3.2; and

(b) the Funding having been paid in full to the Recipient by Network Rail.

* 1. Network Rail may terminate this Agreement immediately by written notice to the Recipient if the physical commencement of the Works has not occurred by [***INSERT APPROPRIATE LONG STOP DATE***].
	2. Without prejudice to Network Rail’s other rights and remedies, Network Rail may terminate this Agreement immediately by written notice to the Recipient if:
		1. the Recipient suffers an Insolvency Event;
		2. the Recipient is in material breach of this Agreement and the breach is either:
			1. not capable of rectification; or
			2. not rectified within 21 days of receipt by the Recipient of written notice of such breach from Network Rail;
		3. any information given or representation made by the Recipient in any correspondence, report or other document submitted to Network Rail relating to the Works or otherwise under this Agreement is found to be incorrect or incomplete to an extent which Network Rail acting reasonably considers to be material or which is likely to have a materially detrimental effect on the Recipient's ability to achieve the completion of the Works;
		4. the Recipient and/or one or more of its employees commits any fraud in connection with the Works or otherwise in connection with this Agreement;
		5. the Recipient uses all or part of the Funding other than in accordance with the terms of this Agreement;
		6. the Recipient is in breach of the Bribery Act 2010 or any other anti-bribery or anti-corruption laws, regulations or codes between the date of the Agreement and its termination or expiry;
		7. the Recipient or its suppliers is in breach of the Modern Slavery Act (2015) or engages in slavery or human trafficking between the date of the Agreement and its termination or expiry; or
		8. the Recipient or its suppliers purchases any raw materials, resources or products from any country that have been sourced from any producer or manufacturer using forced labour in its operations or practice;
	3. Without prejudice to the Recipient's other rights and remedies, the Recipient may terminate this Agreement immediately by written notice to Network Rail if:
		1. Network Rail is in material breach of this Agreement and the breach is either:
			1. not capable of rectification; or
			2. not rectified within 21 days of receipt by Network Rail of written notice of such breach from the Recipient; or
		2. Network Rail suffers an Insolvency Event.
	4. Upon termination of this Agreement for material breach, the party in material breach shall pay the other party's reasonably and properly incurred costs in relation to the termination.
	5. On termination the Recipient shall take all reasonable steps to leave the Works in a manner which:
		1. is safe and secure such that there is minimal risk to rail users; and
		2. minimises any costs to Network Rail associated with a replacement contractor completing the Works.
	6. Upon expiry or earlier termination of this Agreement, all provisions of this Agreement shall cease except for the following provisions, which shall survive such expiry or earlier termination and continue in force (or come into force, as applicable) in accordance with their terms:
		1. this clause 4 (Termination);
		2. clause 5.8 (Repayment);
		3. clauses 5.11 and 5.12 (Liability);
		4. clause 5.13 (Intellectual Property);
		5. clause 5.14 (Confidential Information);
		6. clause 5.16 (Information Acts);
		7. any provision in respect of the State Aid Rules and/or State Aid Proceedings; and
		8. any other provision that is expressly or by implication intended to come into or continue in force on or after expiry or earlier termination,

and save also for any antecedent breach by, and accrued rights of, either party.

1. **General**
	1. The Recipient will use its reasonable endeavours to enable Network Rail to receive the benefit of all the capital allowances in respect of Network Rail’s Funding towards the Cost of the Works, to the extent that Network Rail is entitled to those allowances.
	2. Title in the Works shall vest in Network Rail upon issue of the certificate of completion or termination of the Agreement.
	3. In consequence of the implementation and existence of the Works, it is anticipated that Network Rail will incur additional cost and expense in connection with the repair, maintenance, improvement, operation or alteration of the network, and such additional cost and expense shall be payable through an increase in long term charges.[[8]](#footnote-9)
	4. The Recipient shall not carry out the Works on terms other than terms which are in writing and:
		1. clearly and adequately set out the terms and conditions on which payment is to be made to its contractors, and by its contractors to any sub-contractors and so on down the sub-contracting chain (and shall procure that its contractors and any sub-contractors comply with such terms);
		2. include provisions to facilitate compliance with State Aid Rules, including (without limitation):
			1. co-operation and disclosure requirements to enable the Recipient to comply with clause 5.10(a); and

repayment obligations to enable the Recipient to comply with clause 5.10(b); and

* + 1. include provisions entitling the Recipient to withhold, suspend or require repayment of sums paid by the Recipient in appropriate circumstances including in circumstances similar to those listed in clauses 5.7 and 5.8 (but reading references to "Network Rail" as references to "the Recipient", references to "the Recipient" as references to the relevant third party and references to this Agreement as references to the agreement between the Recipient and the relevant third party).
	1. The Recipient shall as soon as it becomes, or ought reasonably to have become, aware of any sum incorrectly paid to it by Network Rail, whether as a result of an administrative error or otherwise, promptly repay such sum to Network Rail .
	2. Should the Recipient be subject to financial or other difficulties which are capable of having a material impact on its compliance with this Agreement, it will notify Network Rail as soon as possible so that, if possible, and without creating any legal obligation, Network Rail will have an opportunity to provide assistance in resolving the problem or to take action to protect Network Rail.
	3. Without prejudice to Network Rail’s other rights and remedies, Network Rail may at its absolute discretion, by written notice to the Recipient and with immediate effect, withhold or suspend payment of all or part of the Funding if:
		1. the Recipient suffers an Insolvency Event;
		2. the Recipient is in material breach of this Agreement;
		3. any information given or representation made by the Recipient in any correspondence, report or other document submitted to Network Rail relating to the Works or otherwise under this Agreement is found to be incorrect or incomplete to an extent which Network Rail acting reasonably considers to be material or which is likely to have a materially detrimental effect on the Recipient's ability to achieve the completion of the Works;
		4. the Recipient and/or one or more of its employees commits any fraud in connection with the Works or otherwise in connection with this Agreement;
		5. the Recipient uses all or part of the Funding other than in accordance with the terms of this Agreement; or
		6. Network Rail acting reasonably considers that the Recipient is, or may or will be, in breach of the Recipient's obligations in paragraph 1.2(a) or 1.2(b) of Schedule 3 (as applicable),

provided that Network Rail shall exercise its rights and remedies in a timely manner and where any material breach continues to subsist and payment has been withheld or suspended for a period in excess of 21 days, unless the Recipient is diligently proceeding with an agreed rectification plan, Network Rail shall either reinstate the payments or terminate this Agreement in accordance with its rights under clause 4 (Termination).

* 1. Without prejudice to Network Rail’s other rights and remedies, Network Rail may at its absolute discretion require repayment of all or part of the Funding it has paid to the Recipient if:
		1. the Recipient suffers an Insolvency Event;
		2. the Recipient is in material breach of this Agreement and the breach is either:
			1. not capable of rectification; or
			2. not rectified within 21 days of receipt by the Recipient of written notice of such breach from Network Rail;
		3. any information given or representation made by the Recipient in any correspondence, report or other document submitted to Network Rail relating to the Works or otherwise under this Agreement is found to be incorrect or incomplete to an extent which Network Rail acting reasonably considers to be material or which is likely to have a materially detrimental effect on the Recipient's ability to achieve the completion of the Works;
		4. the Recipient and/or one or more of its employees commits any fraud in connection with the Works or otherwise in connection with this Agreement;
		5. the Recipient uses all or part of the Funding other than in accordance with the terms of this Agreement; or
		6. the Recipient is in breach of the Recipient's obligations in paragraph 1.2(a) or 1.2(b) of Schedule 3 (as applicable),

and where Network Rail requires such repayment, Network Rail shall provide written notice of the repayment amount to the Recipient and the Recipient shall repay the amount concerned within 20 Working Days of receiving the written demand for repayment. The liability to meet such a demand shall be enforceable as a contractual debt. Network Rail may require interest to be paid on any amount repayable by the Recipient in accordance with the rates published in the Official Journal of the European Union from time to time.

* 1. The Recipient shall comply with State Aid Rules including (without limitation) in:
		1. its receipt, administration and management of the Funding; and
		2. the payment or award of all or part of the Funding to any third parties.
	2. In the event of any State Aid Proceedings, the Recipient shall:
		1. co-operate fully with any disclosure requirements imposed on Network Rail in the course of such State Aid Proceedings; and
		2. make immediate repayment (plus interest if required by the recovery order) in the event that such State Aid Proceedings result in an order for recovery of aid being made against the Recipient in respect of the Funding or any part of it (whether or not already committed or paid to a third party by the Recipient) and Network Rail shall have no liability to the Recipient in connection with such repayment.
	3. The Recipient shall indemnify Network Rail at all times against all liabilities, costs (including reasonable legal costs), expenses, damages and losses suffered or incurred by Network Rail arising from any breach of clause 5.9 and/or 5.10 by the Recipient or arising from any non-compliance with State Aid Rules by any third party in respect of the receipt of the Funding from the Recipient. Network Rail shall use reasonable endeavours to mitigate such liabilities, costs, expenses, damages and losses.
	4. Network Rail’s aggregate liability in respect of this Agreement (whether in contract, tort, breach of statutory duty or otherwise) shall be limited to a sum equal to the Funding less the aggregate of any amounts already paid by Network Rail in accordance with clause 2.1 provided that such limitation shall not apply to any liability in respect of fraud, or death or personal injury resulting from a negligent act or omission or breach of statutory duty by Network Rail.
	5. The Recipient grants to Network Rail an irrevocable, perpetual, non-exclusive royalty-free licence to use all the intellectual property created as a result of the design and implementation of the Works for all purposes, including the right to sub-licence.
	6. Confidential information and Freedom of Information: neither party shall disclose any confidential information save as required:
		1. by any enactment or requirement of any regulatory authority (including the Information Acts as set out in clause 5.16 below);
		2. pursuant to any judicial or arbitral process;
		3. to enable that party to perform its obligations pursuant to this Agreement, including the disclosure of such information to any employee, consultant, agent, officer, contractor, sub-contractor (of any tier), lender or adviser provided that such disclosure is made in good faith and only to the extent necessary to enable the party to fulfil its obligations under this Agreement; and/or
		4. by Network Rail, as required by its statutory duties or Network Licence.
	7. The Recipient shall comply with Schedule 3.
	8. [***INSERT RELEVANT FOI LANGUAGE FROM BELOW, DEPENDING ON NATURE OF COUNTERPARTY, AND DELETE OPTIONS NOT USED***][[9]](#footnote-10) Freedom of Information:

***Option 1: Long form FOI clauses for use with other public bodies subject to the FOI Act***

* + 1. Each party acknowledges that the other party may be required, under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 (collectively, the **Information Acts**) to respond to requests for information relating to the subject matter of this Agreement.
		2. If one party receives a request for information under the Information Acts, the other party shall:
			1. provide all necessary assistance and cooperation as reasonably requested by the first party to enable it to comply with its obligations under the Information Acts; and
			2. provide the first party with a copy of all information requested in the request for information belonging to it (which is not held by the first party and which is in the other party’s possession or control and held on behalf of the first party) in the form that the first party reasonably requires within five (5) Working Days (or such other period as may reasonably be specified by the first party).
		3. Each party acknowledges that the other may be required under the Information Acts to disclose information (including [Confidential Information/Commercially Sensitive Information]) without consulting or obtaining consent from the first party.
		4. The party receiving a request for information shall take reasonable steps to notify the other party of a request for [Confidential Information/Commercially Sensitive Information] (in accordance with the Secretary of State’s section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the of the Freedom of Information Act 2000) to the extent that it is permissible and reasonably practical for it to do so and shall consider reasonable and timely representations made by the other party regarding the application of exemptions to the requested information.
		5. Notwithstanding any other provision in this Agreement, the party receiving the request for information shall be responsible for determining in its absolute discretion whether any [Confidential Information/Commercially Sensitive Information] and/or any other information is exempt from disclosure in accordance with the Information Acts.
		6. In relation to this clause 5.16 the following definitions shall apply:
			1. “**Confidential Information**” means Information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 2018 and the General Data Protection Regulations 2016/679 (EU GDPR); and
			2. “**Commercially Sensitive Information**” means the sub set of Confidential Information listed in column 1 of Part 1 (Commercially Sensitive Contractual Provisions) and column 1 of Part 2 (Commercially Sensitive Material) of Schedule [X] (Commercially Sensitive Information) in each case for the period specified in column 2 of Parts 1 and 2 of Schedule [X].

**if using Option 1 clauses, add the Schedule below at back of agreement**

**Schedule [x] - Commercially Sensitive Information**

**Part 1**

**Commercially Sensitive Contractual Provisions**

|  |  |
| --- | --- |
| **Column 1 – Commercially Sensitive Contractual Provisions** | **Column 2 – For period ending on date below:** |
| [***PARTIES TO CONSIDER AND INSERT THOSE CONTRACTUAL PROVISIONS THAT CONTAIN COMMERCIALLY SENSITIVE INFORMATION****.*] | [**P*ARTIES TO CONSIDER AND INCLUDE AN END DATE, WHERE POSSIBLE, WITH REFERENCE TO THE NATURE OF THE INFORMATION****.*] |

**Part 2**

**Commercially Sensitive Material**

|  |  |
| --- | --- |
| **Column 1 – Commercially Sensitive Material** | **Column 2 – For period ending on date below:** |
| [***PARTIES TO CONSIDER AND INSERT ANY ADDITIONAL MATERIALS, INFORMATION, DOCUMENTS RELATING TO THE AGREEMENT WHICH THEY ALSO WANT TO DESIGNATE AS COMMERCIALLY SENSITIVE INFORMATION****.*] | [**P*ARTIES TO CONSIDER AND INCLUDE AN END DATE, WHERE POSSIBLE, WITH REFERENCE TO THE NATURE OF THE INFORMATION****.*] |

**Option 2: Long form FOI clauses for use with all other counterparties**

* + 1. The Recipient acknowledges that Network Rail may be required, under the Freedom of Information Act 2000 [and/or the Environmental Information Regulations 2004] (collectively, the **Information Acts**) to respond to requests for information relating to the subject matter of this Agreement.
		2. The Recipient shall [and shall procure that its contractors and any sub-contractors shall]:
			1. provide all necessary assistance and cooperation as reasonably requested by Network Rail to enable it to (A) comply with its obligations under the Information Acts and (B) assess and determine if any of the available exemptions apply and where the public interest lies in relation to the disclosure of the relevant information;
			2. transfer to Network Rail all requests for information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
			3. provide Network Rail with a copy of all information belonging to Network Rail requested in the request for information which is in its possession or control in the form that Network Rail requires within five (5) Working Days (or such other period as Network Rail may reasonably specify) of Network Rail requesting such information; and
			4. not respond directly to a request for information unless authorised in writing to do so by Network Rail.
		3. The Recipient acknowledges that Network Rail may be required under the Information Acts to disclose information (including [Confidential Information/Commercially Sensitive Information] of the Recipient and/or its contractors, consultants and any of their sub-contractors, sub-consultants and suppliers (of any tier)) without consulting or obtaining consent from theRecipient and its contractors, consultants and any of their sub-contractors, sub-consultants and suppliers (of any tier) (as relevant).
		4. Network Rail shall take reasonable steps to notify the Recipient of a request for [Confidential Information/Commercially Sensitive Information] of the Recipient and/or its contractors, consultants and any of their sub-contractors, sub-consultants and suppliers (of any tier) (as relevant) (in accordance with the Secretary of State’s section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000) to the extent that it is permissible and reasonably practical for it to do so and shall consider any reasonable and timely representations made by the Recipient and its contractors, consultants and any of their sub-contractors, sub-consultants and suppliers (of any tier) (as relevant) regarding the application of exemptions to the requested information.
		5. Notwithstanding any other provision in this Agreement, Network Rail shall be responsible for determining in its absolute discretion whether any [Confidential Information/Commercially Sensitive Information]and/or any other information is exempt from disclosure in accordance with the Information Acts and where the public interest lies in relation to the disclosure of the relevant information.
		6. If, after consultation with the Recipient in accordance with clause 5.16 (d) above and having considered the possible exemptions and (where required under the Information Acts) whether or not the public interest in maintaining the exemption is outweighed by the public interest in disclosing the information, Network Rail determines that the requested information is to be disclosed, Network Rail shall, as soon as possible after such disclosure, inform the Recipient of any information that it has disclosed to the extent that it is permissible to do so.
		7. In relation to this clause 5.16 the following definitions shall apply:
			1. “**Confidential Information**” means Information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 2018 and the General Data Protection Regulations 2016/679 (EU GDPR); and
			2. "**Commercially Sensitive Information**" means “Commercially Sensitive Information” means the sub set of Confidential Information listed in column 1 of Part 1 (Commercially Sensitive Contractual Provisions) and column 1 of Part 2 (Commercially Sensitive Material) of Schedule [X] (Commercially Sensitive Information) in each case for the period specified in column 2 of Parts 1 and 2 of Schedule [X].

**if using Option 2 clauses, add the Schedule below at back of agreement**

**Schedule [X] - Commercially sensitive information**

**Part 1**

**Commercially Sensitive Contractual Provisions**

|  |  |
| --- | --- |
| **Column 1 – Commercially Sensitive Contractual Provisions** | **Column 2 – For period ending on date below:** |
| [**P*ARTIES TO CONSIDER AND INSERT THOSE CONTRACTUAL PROVISIONS THAT CONTAIN COMMERCIALLY SENSITIVE INFORMATION****.*] | [**P*ARTIES TO CONSIDER AND INCLUDE AN END DATE, WHERE POSSIBLE, WITH REFERENCE TO THE NATURE OF THE INFORMATION****.*] |

**Part 2**

**Commercially Sensitive Material**

|  |  |
| --- | --- |
| **Column 1 – Commercially Sensitive Material** | **Column 2 – For period ending on date below:** |
| [***PARTIES TO CONSIDER AND INSERT ANY ADDITIONAL MATERIALS, INFORMATION, DOCUMENTS RELATING TO THE AGREEMENT WHICH THEY ALSO WANT TO DESIGNATE AS COMMERCIALLY SENSITIVE INFORMATION***.] | [***PARTIES TO CONSIDER AND INCLUDE AN END DATE, WHERE POSSIBLE, WITH REFERENCE TO THE NATURE OF THE INFORMATION****.*] |

**Option 3: Short form FOI clause**

* + 1. The Recipient acknowledges that:
			1. Network Rail may be required, under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 (collectively, the **Information Acts**), to disclose information relating to the subject matter of this Agreement; and
			2. notwithstanding any other provision in this Agreement, Network Rail shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the Information Acts.
		2. The Recipient shall provide all necessary assistance and cooperation as reasonably requested by Network Rail to enable it to comply with its obligations under the Information Acts. Each party shall treat as confidential all information provided by the other party pursuant to this Agreement, save where disclosure is required by law or regulation or where the information comes into the public domain through no fault of the receiving party.]

5.16 A Anti-bribery and Slavery:

* + 1. The Recipient 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
		2. The Recipient shall not, purchase any raw materials, resources or products from any country that have been sourced from any producer or manufacturer using forced labour in its operations or practice

5.16 B Equality and Diversity: The Recipient shall perform its obligations under this Agreement in accordance with:

* + 1. 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"); and
		2. any other requirements and instructions which Network Rail reasonably imposes in connection with any equality obligations imposed on Network Rail at any time under any applicable equality law

5.16 C Equality and Diversity: The Recipient shall take all reasonable steps to secure the observance of clause 5.19 below by its employees, agents, representatives, contractors and consultants

5.16 D Equality and Diversity: The Recipient 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 Recipient shall assist and co-operate with Network Rail where possible in satisfying this duty

* 1. Neither party intends that any term of this Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person other than Network Rail or the Recipient.
	2. Any notice pursuant to this Agreement shall be in writing and shall be duly and validly served if delivered by hand or sent by first class post to the registered office of the relevant party. Any notice sent by post shall be conclusively treated as having been served two Working Days after posting.
	3. Neither party may assign or charge its rights or interests under this Agreement without the prior written consent of the other party (not to be unreasonably withheld or delayed).
	4. No amendment to or variation of this Agreement shall be effective unless in writing and signed by or on behalf of each party. No general terms and conditions contained in any purchase order or other document customarily required by either party in connection with a request for works or services shall be binding on the parties.
	5. Should a dispute between the parties arise out of or in connection with this Agreement, the parties’ respective representatives shall initially discuss and attempt to resolve the dispute. If the parties’ representatives are unable to resolve the dispute to the satisfaction of both parties within 7 days, it shall be escalated to the parties’ appropriate senior managers for resolution. If the senior managers are unable to resolve the dispute to the satisfaction of both parties within 7 days, it shall be escalated to the parties’ directors for resolution. If the directors are unable to resolve the dispute to the satisfaction of both parties within 7 days, the dispute shall be referred to adjudication in accordance with clause 5.22.
	6. Either party may refer to adjudication any dispute arising out of or in connection with this Agreement in accordance with the Housing Grants, Construction and Regeneration Act 1996. The adjudicator shall be agreed between the parties and failing agreement within 7 days of receipt by one party of a proposal by the other the adjudicator shall be nominated at the request of either party by the President or Vice President for the time being of TECBAR.
	7. This Agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement and supersedes any previous agreements between the parties. Each party acknowledges that in entering into this Agreement it is not relying upon any statement or representation not set out in this Agreement.
	8. The rights and remedies of the parties in connection with this Agreement are cumulative and are not exclusive of and may be exercised without prejudice to any other rights or remedies provided in this Agreement, by law, statute, equity or otherwise.
	9. [In the event of any inconsistency in the terms relating to the Recipient’s rights and obligations between this Agreement and the [Basic] Asset Protection Agreement, then the terms of the [Basic] Asset Protection Agreement shall prevail.][[10]](#footnote-11)
	10. This Agreement shall be governed by and construed in accordance with the laws of England and Wales.  Save as expressly provided otherwise, the parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any disputes that may arise out of or in connection with this Agreement.

Please sign and return a copy of this Agreement to confirm your agreement to the above.

Yours faithfully

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For and on behalf of Network Rail Infrastructure Limited

We agree to the above.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dated

For and on behalf of [Recipient name]

**Schedule 1**

1. **Definitions and Interpretation**
	1. In this Agreement the following words and expressions shall have the following meanings unless the contrary intention appears:

**“Access for All Programme Board”** means the group providing the high-level, strategic overview of the Access for All programmes (Main and Mid-Tier) in accordance with the Access for All Programme Boardremit;

**“AfA Programme Requirements”** means the governance arrangements required by Office of Rail and Road and the AfA Programme principles and governance arrangements in relation to the delivery and management of a Project;

"**[Basic]** **Asset Protection Agreement**"means Network Rail's [basic] asset protection agreement in the form set out in Schedule 4;[[11]](#footnote-12)

"**C&AG**" means the Comptroller and Auditor General of the National Audit Office;

“**Cost of the Works**” means the aggregate of the costs of the Works estimated at the date of the Agreement in accordance with paragraph 4 of Schedule 2, and subsequently as actually incurred;

"**EU Procurement Requirements**” includes EU Directives 2014/23/EU, 2014/24/EU, 2014/25/EU, 2004/18/EC, 2004/17/EC, 2007/66/EC, the Public Contracts Regulations 2006 (SI 5/2006), Public Contracts Regulations 2015 (SI 2015/102), the Utilities Contracts Regulations 2006 (SI No 6/2006) and the Utilities Contracts Regulations 2006 (SI no 6/2006), the Utilities Contract Regulations 2016 (SI 2016, 274), and the Treaty Principles;

"**Funding**" has the meaning given in clause 2.1;

"**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 laws and applicable British, European and International standards and published codes of practice;

"**Information Acts**" has the meaning given in clause 5.16;

 “**Insolvency Event**” 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) of the Insolvency Act 1986 shall have the effect as if “£750” was substituted to “£50,000”;

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

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

(d) such party ceasing or threatening to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the other party before such 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;

1. **“Landlord’s Consent”** means the consent of Network Rail pursuant to the Station Leases for the Stations included in the Works;
2. **“Local Delivery Group (LDG) (or similar meeting)”** means the periodic meeting held between NR, TOCs and relevant stakeholders, to discuss local projects;
3. **“Network Change”** shall have the meaning given to that term in the Network Code**[[12]](#footnote-13)**;
4. **“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 Railways Act 1993;

"**Period**" means a railway accounting period;

“**Protection Mechanism**” [the [Basic] Asset Protection Agreement *or* the conditions that are agreed between the Recipient and Network Rail for Works on Network Rail’s property and / or assets in the form set out in Schedule 4][[13]](#footnote-14);

1. **“Regulated Change”** means Station Change, Depot Change or Network Change as appropriate;

**“Specification”** means the scope and specification for the Works in accordance with Standards and as agreed by the LDG, to be more fully described in Schedule 2

"**State Aid Rules**" means the provisions of Articles 107 – 109 of the Treaty on the Functioning of the European Union (TFEU) and any regulations or other legislation made pursuant to those provisions (or their past or future incarnations), including, without limitation, Commission Regulation (EC) No. 1407/2013 and Commission Regulation (EU) No. 651/2014;

"**State Aid Proceedings**" means:

(a) any investigation by the European Commission into the compatibility of this Agreement with State Aid Rules;

(b) any proceedings before the General Court of the European Union or the Court of Justice of the European Union arising from such an investigation; and

(c) any legal proceedings arising from an order by the European Commission, the General Court of the European Union or the Court of Justice of the European Union that any sums dispensed pursuant to this Agreement should be recovered from the Recipient or any third party on the basis of breach of State Aid Rules;

1. **“Station Access Conditions”** means the National Station Access Conditions 2013 (England and Wales), together with the station specific annexes applicable to the relevant stations, which are the subject of the Works, or any replacement of the same;
2. **“Station Change”** means the procedures contained in Parts B and C (as applicable) of the Station Access Conditions;
3. **“Station Lease”** means the lease of the station to which the SFO is or becomes the Facility Owner (as defined in section 17(6) of the Railways Act 1993) at any time during the duration of the Franchise Agreement;
4. **“TOC”** means Train Operating Company;

"**Treaty Principles**" means the principles of transparency, non discrimination, equality of treatment, proportionality and mutual recognition in the Treaty on the Functioning of the European Union 2012/C 326/01;

1. **“Unforeseen Works Risks”** means such risks as could not reasonably be foreseen by the Recipient in undertaking the Works in accordance with Section 3A above and taking into account, any assumptions and risks identified in Schedule 2 by the Recipient in relation to the Works;

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

"**Works**" means the works as described in Schedule 2.

* 1. In this Agreement, unless the context otherwise requires:
		1. 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;
		2. references to any agreement or document include its schedules and attachments, references to "**clauses**" and "**Schedules**" are references to the clauses and Schedules of this Agreement and references to "**paragraphs**" are references to the paragraphs in the relevant Schedule;
		3. 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;
		4. headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
		5. 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;
		6. the words "**include**" and "**including**" and "**in particular**"are to be construed without limitation;
		7. 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);
		8. a reference to a "**party**" means a party to this Agreement and includes its successors in title, permitted assignees and permitted transferees and "**parties**" shall be construed accordingly;
		9. 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;
		10. 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;
		11. a reference to "**writing**" includes email transmission and any means of reproducing words in a tangible and permanently visible form; and
		12. the words in this Agreement shall bear their natural meaning**.**

**Schedule 2**

**The Works**

1. **Background**

*Guidance: Brief background of the station/Project and why works are required.*

1. **Scope of Works**

*Guidance: When identifying works, reference that these Works are i.a.w. the design referenced in the drawings numbered xx and dated yy and in accordance with the Protection Mechanism where relevant.*

1. **Programme**

*Guidance: Insert a programme for the Works that will inform the Project reporting structure. Where Funding is paid upon the completion of specific elements of the Works (rather than upon solely upon the issue of a certificate of completion), the programme dates for the achievement of each element should be included.*

1. **Cost of the Works**

*Guidance: Use this section to set-out that Cost of the Works includes delivery of all of the Works plus reasonable and agreed management costs (including a margin or risk premium), costs associated with the Protection Mechanism, contingency (to be released only upon the realisation of risks identified in the Quantitative Risk Assessment) and financing charges (until completion of all of the Works).[[14]](#footnote-15)*

1. **Records**

The Recipient shall [retain for six years and make available to Network Rail] *or* [provide to Network Rail] all invoices, receipts, accounts and records relating to the expenditure of the Funding.[[15]](#footnote-16)

1. **Activities undertaken by Other Parties to Support the Recipient**

[Network Rail will provide sponsorship and reporting to the AfA Programme Board. The cost of undertaking these activities is capped at £[insert amount][[16]](#footnote-17), and whilst these are part of the costs of the Works, this amount is not included in the price of the Works payable to the Recipient listed in paragraph 4 of Schedule 2, but is stated separately in paragraph 4 of Schedule 2 and will be withheld from payment to the Recipient and retained by Network Rail. Any proposal to exceed the capped amount for Network Rail Activities is to be referred to the LDG for agreement before any additional costs are incurred].

1. **Agreed Assumptions**
	1. The deliverables will be provided at the total base value of [insert amount] identified in the tables above, with contingency available to cover the risks identified in the project risk register.
	2. [The existing building fabric is structurally sound.]
	3. [Existing underground drainage is adequate to carry flows and no work is required beyond minor repair and cleaning.]
	4. [Existing station power supplies and other utility services are adequate to cater for any additional or replacement assets and enhancements.]

**Schedule 3**

**Monitoring and Reporting Schedule**

1. Monitoring progress and tendering

**Submission of progress reports**

* 1. From the date of this Agreement
		1. without prejudice, and in addition, to its obligations in clause 1.4, the Recipient must provide such additional information and documentation in such format as Network Rail may at any time require. This includes information about the progress of the Project, the completion of the Works and any other information required to enable Network Rail to meet its reporting obligations including, without prejudice to the generality, a breakdown of all costs related to the Project on an open book basis and its and other obligations under the State Aid Rules and the EU Procurement Requirements.
		2. the Recipient warrants the accuracy of the progress updates, information and documentation it gives pursuant to clause 1.4 and this Schedule 3 and further warrants that it has diligently made full and proper enquiry of the subject matter pertaining to the progress updates, information and documentation given.

**Procurement Requirements**

* 1. In appointing contractors (or other third parties) to perform the Works or any related activity the Recipient shall:
		1. where the Recipient is a "utility" for the purposes of the Utilities Contracts Regulations 2016, comply with the relevant EU Procurement Requirements and the Treaty Principles, including the obligations in relation to the procurement of below-threshold contracts in which there is cross-border interest); or
		2. where the Recipient a "contracting authority" for the purposes of the Public Contracts Regulations 2015 and shall comply with the relevant EU Procurement Requirements to the extent applicable to a contracting authority (including the Public Contracts Regulations 2015 and the Treaty Principles including the obligations in relation to the procurement of below-threshold contracts in which there is cross-border interest);
		3. in relation to each tender process for the appointment of contractors or other third parties to perform the Works or any related activity, the Recipient shall provide monthly progress updates to Network Rail; and
		4. The Recipient shall provide the evidence that Network Rail reasonably requires to demonstrate compliance with paragraph 1.2 of Schedule 3.
1. Retention of documents and audit
	1. The Recipient shall comply (and shall procure that any contractors and sub-contractors comply) with all requests by Network Rail for information pursuant to the C&AG performing its duties of external audit of Network Rail's activities.
2. Notification by the Recipient
	1. The Recipient shall notify Network Rail in writing:
		1. as soon as practicable thereafter, in the event of any change in the information on costs (whether actual or estimated) of carrying out the Works;
		2. as soon as practicable thereafter, of any event which might adversely affect the carrying out and/or completion of the Works or any part of them.
3. Conflicts of interest and financial irregularities
	1. In relation to the Project:
		1. the Recipient and all officers, employees and other persons engaged or consulted by the Recipient in connection with the Project shall not be in a position where there is a conflict of interest. The Recipient is required to have formal procedures obliging all such persons to declare any actual or potential personal or financial interest in any matter concerning the Project, and to be excluded from any discussion or decision-making relating to the matter concerned;
		2. if the Recipient has any grounds for suspecting any financial impropriety in the use of any amount paid under this Agreement, it must notify Network Rail immediately, explain what steps are being taken to investigate the suspicion, and keep Network Rail informed about the progress of the investigation. For these purposes “financial impropriety” includes fraud or other impropriety; mismanagement; use of the Funding for improper purposes; and failure to comply with requirements in the EU Procurement Requirements relating to the control and propriety of project expenditure;
		3. Network Rail shall be entitled to interview employees of the Recipient if fraud or other financial irregularity is suspected by Network Rail on the part of the Recipient, its employees or agents in connection with the Project.

**Schedule 4**

**Form of the [Protection Mechanism] *or* [[Basic] Asset Protection Agreement][[17]](#footnote-18)**

*Guidance:*

*The Protection Mechanism should be established and agreed in principle with the Recipient before the Funding from Network Rail Agreement is signed.*

*A Protection Mechanism is required where the Funding is wholly or partly being used by the Recipient for activities that require the consent of Network Rail, or the provision of asset protection services by Network Rail.*

*Examples of a Protection Mechanism includes: Landlord’s Consent under a Depot or Station lease, 3rd Party or Outside Party (Basic) Asset Protection Agreements, Developer’s Asset Protection Agreement. The appropriate Route Asset Manager and / or Route Outside Party Asset Protection Manager should agree the nature of the Protection Mechanism which should then be either replicated or referenced in Schedule 4 of this Funding from Network Rail Agreement. Care should be taken to ensure that the Recipient understands the Asset Protection Costs and that there are sufficient funds available to cover these as well as other costs arising from the Project.*

*A Protection Mechanism is not required where the Funding is not used for activities that require the consent of or the provision of asset protection services by Network Rail.*

**Schedule [x] - Commercially Sensitive Information**

1. Provide details of the status of the project e.g. ‘development’ stage, ‘implementation’ stage; [↑](#footnote-ref-2)
2. Where Services such as design, feasibility or planning are being funded then Services should be used. A Funding from Network Rail Agreement may be used to fund either of Services or Works, or both Services and Works. Appropriate amendments should be made throughout the Agreement with references to Works amended accordingly. [↑](#footnote-ref-3)
3. The Protection Mechanism is always required where works are on NR’s land / assets and may be used where the Works are in close proximity to Network Rail’s network. The relevant definition in Schedule 1 should be completed setting out the agreed Protection Mechanism. Guidance is provided in Schedule 4. [↑](#footnote-ref-4)
4. Only applies where Works are undertaken on NR’s land / assets. Otherwise insert “Not Used”. [↑](#footnote-ref-5)
5. Only applies where Works are undertaken on NR’s land / assets. Otherwise insert “Not Used”. [↑](#footnote-ref-6)
6. Normally applies where Works are undertaken on NR’s land / assets. Otherwise insert “Not Used”. [↑](#footnote-ref-7)
7. Remove where there is no Protection Mechanism [↑](#footnote-ref-8)
8. This applies where the title of the Works vest with Network Rail in which case Agreement on recovery of additional maintenance/other costs must be reached upfront and before this Agreement can be entered into. Changes to this clause may be required to reflect the agreed position. Otherwise replace with “Not Used”. [↑](#footnote-ref-9)
9. Select only one Option. Usually Option 3 is used unless the Recipient requires alternative wording in which case consider either Option 1 or Option 2. [↑](#footnote-ref-10)
10. To be used where an Asset Protection Agreement or Basic Asset Protection Agreement is in place. Where the Works are being undertaken under Landlord’s consent, delete the text of this clause and replace with “Not used”. [↑](#footnote-ref-11)
11. If there is no Asset Protection Mechanism required then remove this definition. Otherwise select the appropriate type of Asset Protection Mechanism for the nature of the Works in consultation with the Route Asset Manager. [↑](#footnote-ref-12)
12. Explanatory Note for Draft: Network Change is only relevant if Works/parts of the Works being undertaken at a station impact upon the capability of the network. [↑](#footnote-ref-13)
13. Select an appropriate asset protection mechanism if any of the Works are on Network Rail’s property or affect Network Rail’s assets (e.g. BAPA, APA, Landlords Consent, etc.). If there is no Protection Mechanism required then remove this definition. [↑](#footnote-ref-14)
14. Set out the basis on which Network Rail is prepared to fund by listing the appropriate summary description of the Costs of the Works. Any separate sources of funds for the Project (i.e. match-funding, 3rd Party funding, funds provided directly by the Recipient) in addition to funding provided by Network Rail should be identified separately and specifically marked: “For Information: Not a component of the Costs of the Works” [↑](#footnote-ref-15)
15. This information is necessary for Network Rail to evidence how it funding has been expended by the recipient and is necessary for Network Rail to demonstrate compliance with the Managing Public Money Guidance. Select one of the options shown in [ ]. [↑](#footnote-ref-16)
16. This amount should be equal to the amount stated for Network Rail Activities in paragraph 4 [↑](#footnote-ref-17)
17. This Section is used to document the Protection Mechanism. Where there is no Protection Mechanism it may be marked as ‘Not Used’. [↑](#footnote-ref-18)