[[1]](#footnote-2)

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

Dear Sirs

**New Stations Fund 3 (NSF3) 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 [ ][[2]](#footnote-3) phase of this Project as follows:

# The Works

* 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 with Network Rail prior to the Recipient commencing any physical Works on or near the network.
  4. The Recipient shall provide the NSF3 steering group (the “**Steering Group**”), with written progress updates in paper and electronic format at least once per railway period in relation to the Works which shall include the following:
     1. information on the progress of the Works to date including a summary in the format required by the NSF3 Principles and Governance);
     2. details of any proposed changes to the previously Network Rail approved designs for the Works;
     3. a project plan showing the outstanding Works;
     4. a statement on all Project issues, risks and mitigation measures;
     5. the actual Cost of the Works to date and a forecast of the expected future Cost of the Works up to completion; and
     6. the latest estimated date for the completion of the Works.
  5. Any Works carried out by the Recipient must be in accordance with all relevant standards including safety, quality, and environmental standards and the NSF3 Principles and Governance.
  6. 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.
  7. The implementation and completion of the Works shall be carried out in accordance with the Protection Mechanism.
  8. The Recipient shall not commence the physical Works until evidence that each of the following has occurred has been proved to Network Rail:
     1. the Recipient has gained any applicable Network Change and received all necessary Consents in respect of the Works.;
     2. the relevant Train Operating Company/ies have agreed in writing to provide train services calling at the Station;
     3. [the SFO][[3]](#footnote-4) has agreed in writing that it will be the Station Facility Owner under the terms of a Station Lease; and
     4. the Recipient has secured the rights for Network Rail to acquire the necessary land for completion of the Project prior to completion of GRIP stage 5.

This clause shall not prevent the Recipient from undertaking design as part of the Works or other work required to gain approvals required by this Agreement.

* 1. The Recipient shall not proceed with any Works beyond the GRIP stage [4/5][[4]](#footnote-5) until the Steering Group has carried out its stage gate review and decided to proceed with the physical Works. Should the Steering Group decide not to proceed with the physical Works, the Agreement shall terminate in accordance with the provisions of clause 4.1 but by reference to the completion of all Works and payment of the Funding in relation to GRIP stage [4/5] only.
  2. The Recipient shall make an application to the DfT for Experimental Status for the services stopping at the New Station. Where a request is made by a TOC for a Track Access Agreement for providing services to stop at the New Station, Network Rail will use reasonable endeavours to enter into a regulated Track Access Agreement providing the TOC with such access in accordance with the Network Code Part D.
  3. If for any reason the New Station and associated assets are not used after their completion, Network Rail will not be liable to the Recipient to pay and/or reimburse the Recipient for any costs incurred in keeping the New Station safe and/or secure. For the avoidance of doubt, the Recipient will be responsible for any costs incurred in making the New Station safe and secure for two years following completion of the New Station and where the parties agree to decommission the New Station, for the New Station decommissioning costs after that time including the costs of complying with any associated statutory or regulatory procedures.

1. **Funding by Network Rail**
   1. Network Rail agrees to fund the lesser of £[*agreed maximum funding amount*] or 75% of the actual Costs of the Works (the **“Funding”**) (plus any applicable VAT) in respect of the Project.
   2. Network Rail shall pay tranches of the Funding upon completion of the Works for each Project deliverable detailed in Schedule 2, and following the issue of a certificate of completion consistent with clause 3.2 and provision of a corresponding invoice.
   3. Network Rail shall make payment to the Recipient within 28 days following receipt by Network Rail of an invoice in accordance with clause 2.2.
2. **Completion of the Works**
   1. The Recipient shall notify Network Rail in writing once it considers that all of the Works in a Project deliverable have been completed in accordance with the drawings, specification and design agreed by Network Rail (and the requirements of the Protection Mechanism) in order to enable Network Rail to certify completion of such Works.
   2. Following receipt of a notification from the Recipient pursuant to clause 3.1 that all of the Works in a Project deliverable 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 for such Works. In the event that Network Rail considers that the whole or any part of the Project deliverable Works do 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.
3. **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. clause 5.9 (Liability);
     4. clause 5.10 (Intellectual Property);
     5. clause 5.11 (Confidential Information);
     6. clause 5.13 (Information Acts); and
     7. 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 to Network Rail by the Recipient until such time as Network Rail obtains equivalent funding from the Department for Transport through its regulatory settlement or is able to defray such costs and expenses to the Station Facility Owner through its station lease agreement.
   4. The Recipient shall not carry out the Works on terms other than terms which are in writing and 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).
   5. 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.
   6. 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.
   7. 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; or
      5. the Recipient uses all or part of the Funding other than in accordance with the terms of this Agreement;

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;

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. 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 2provided 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.
  2. 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.
  3. 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 5.13 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.
  4. The Recipient shall comply with Schedule 3.
  5. Freedom of Information:
     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 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 (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 information is exempt from disclosure in accordance with the Information Acts.

5.13A 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.

5.13B 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

5.13C Equality and Diversity: The recipient shall take all reasonable steps to secure the observance of clause 5.16 below by its employees, agents, representatives, contractors and consultants

5.13D 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 5.19.
  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. 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:

**“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;

**“Experimental Status”** has the meaning given in section 36 of the Railways Act 2005 (the Act). The Secretary of State and, where applicable, the National Assembly for Wales, can designate a new passenger service on any line or from any station as experimental for a period of up to 5 years. If the services do not prove to be viable, they may be discontinued without the need to go through the full closure procedure, in accordance with section 36 and 37 of the Railways Act 2005.

**“Funding”** has the meaning given in clause 2.1, and is the maximum funding amount including contingency funds available to the Project, to cover an expected maximum of 75% of the Cost of the Works including the proportional contingency (up to an expected 75% maximum of the required contingency);

**“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 5.13;

1. **“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. **“Network Change”** shall have the meaning given to that term in the Network Code**[[5]](#footnote-6)**;
3. **“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;

1. **“New Station”** means any new stations for heavy rail services in England and Wales which are promoted by third parties;

**“NSF3 Principles and Governance”** means the governance arrangements required by ORR and the Steering Group set out in the NSF3 Principles and Governance document in relation to the delivery and management of a Project;

**“Period”** means a railway accounting period;

**“Protection Mechanism”** means the [basic] asset protection agreement in the form set out in Schedule 4;

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

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 Facility Owner” or “SFO”** means the Train Operating Company that enters into a station lease with Network Rail to operate the New Station and becomes an infrastructure manager of the New Station;
4. **“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;
5. **“Steering Group”** means the steering group with the role and responsibilities set out in the NSF3 Principles and Governance;
6. **“Track Access Agreement”** means any agreement entered into between Network Rail and an operator for the movement of passenger trains in accordance with the Act incorporating the Network Code or any access option in relation to the movement of passenger trains on the network;
7. **“Train Operating Company”** or **“TOC”** means an operator of passenger trains which has entered into a Track Access Agreement with Network Rail;

**“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 and services 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 why a New Station is required and the proposed location.*

1. **Scope of Works**

*Guidance: When identifying works and services, reference that these Works are in accordance with the design referenced in the drawings numbered xx and dated yy and in accordance with the Protection Mechanism where relevant. See the NSF3 Principles and Governance paragraph 1.13 for a list of Project deliverables.*

1. **Programme**

*Guidance: Insert a programme for the Works that will inform the Project reporting structure. As a minimum include the programme dates for the achievement of each Project deliverable.*

1. **Funding payments and Cost of the Works**

*Guidance: Use this section to set out the Funding payments and Cost of the Works. The Total Cost of the Works should include all costs to deliver the entire Works including, without limitation, the Recipient’s management costs and financing charges, and the costs associated with the Protection Mechanism.*

*The NSF3 Funding shall not be more than 75% of the Cost of the Works. The Quantified Risk Assessment (QRA) contingency shall be based upon the Quantified Risk Assessment included in Schedule 5 and apportioned in the same proportions as the NSF3 Funding is to the Total Cost of the Works.)*

|  |  |  |  |
| --- | --- | --- | --- |
| **Project Deliverables / Works** | **NSF3 Funding (£)** | **Remaining Cost of Works and Match Funding requirement (£)** | **Total Cost of the Works (£)** |
| Completion of all Works to GRIP [4 or 5] | xxx | xxx | xxx |
| Completion of all Works to GRIP 7 | xxx | xxx | xxx |
| Insert any non-NSF3 funded deliverables |  | xxx | xxx |
|  |  |  |  |
| QRA Contingency | xxx | xxx | xxx |
| **Total Cost for the Works** | xxx | xxx | xxx |

1. **Records**

The Recipient shall retain for six years and make available to Network Rail all invoices, receipts, accounts and records relating to the expenditure of the Funding.

1. **Train Operating Companies and Station Facility Owner**
   1. [*SFO name*] has agreed to be the Station Facility Owner
   2. [*TOC name(s)*] is/are the train operating company[ies] who have agreed to provide the train services calling at the Station
2. **Agreed assumptions**

*Insert as appropriate*

**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 to demonstrate the Recipient’s compliance with this Agreement;
     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 use a competitive procurement process.
  2. 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; and use of the Funding for improper purposes;
      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]**

*Network Rail to insert either a basic asset protection agreement or an asset protection agreement depending upon the complexity of the Works*

**Schedule 5 - Quantitative Risk Assessment**

1. Note: Network Rail reserves the right to insert additional clauses in the event that the Recipient is not a public body [↑](#footnote-ref-2)
2. Provide details of the status of the Project e.g. ‘development’ stage, ‘implementation’ stage; [↑](#footnote-ref-3)
3. Insert specific name here. [↑](#footnote-ref-4)
4. Choose 4 or 5 to suit the Project and align with paragraph 4 of Schedule 2 [↑](#footnote-ref-5)
5. 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-6)