

**BASIC ASSET PROTECTION AGREEMENT**

[Date]

[Name & address of counterparty] (the **Customer**)

Dear Sirs

**Basic Asset Protection Agreement relating to [♦] (the Agreement)**

- 1 The Customer has requested Network Rail Infrastructure Limited of Kings Place, 90 York Way, London N1 9AG (**Network Rail**) and Network Rail has agreed to allow the Customer to carry out the Works on the terms set out below. The Customer has confirmed it will fund Network Rail's costs on the terms and conditions contained in this Agreement.

**Definitions and Interpretation**

- 2 The definitions detailed in Schedule 1 shall apply to this Agreement. Unless expressly stated to the contrary, any reference in this Agreement to the right of consent, approval or agreement shall be construed such that such consent, approval or agreements shall not be unreasonably delayed or withheld. The Parties acknowledge that:
- (a) the withholding or delaying of the giving of consent, approval or agreement by the Customer under this Agreement which would place Network Rail in breach of the law, the Network Licence, any Standard or any contract would be unreasonable;
  - (b) nothing in this Agreement shall require Network Rail to give or procure the giving of any consent or approval which would be contrary to the protection, safety and efficient operation of the Railway and the safety of persons or property on or near the Railway; and
  - (c) notwithstanding any other provision of this Agreement, in performing its obligations and exercising its rights under this Agreement Network Rail shall retain sole discretion in relation to safety in its role as Infrastructure Manager or as owner and operator of the Network in accordance with the Network Licence.

**Obligations of the Customer**

- 3 Without prejudice to Paragraph 2, the Customer will:
- (a) act in good faith towards Network Rail in respect of this Agreement;
  - (b) use reasonable endeavours to avoid unnecessary complaints, disputes and claims against Network Rail; and
  - (c) not interfere with the rights and obligations of Network Rail under this Agreement nor in any other way hinder, prevent or delay Network Rail from performing its obligations under this Agreement.
- 4 The Customer will design, carry out and complete the Works in accordance with:
- (a) Good Industry Practice;
  - (b) Legal Requirements and Standards;
  - (c) any requirements stipulated in writing by Network Rail<sup>1</sup>, any approvals provided by Network Rail or any Necessary Consents; and
  - (d) the Works Requirements and the terms of this Agreement.
- 5 For the purposes of the Works, under the Construction (Design and Management) Regulations 2007, the Customer is the sole client.
- 6 Prior to commencement of the Works:
- (a) the Customer shall procure from the designer and the contractor of the Works, a collateral warranty in a form acceptable to Network Rail (acting reasonably); and

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<sup>1</sup> These will be based particularly on clauses 2, 4, 5, 6, & 8 and Schedule 8 & 9 of the full Asset Protection Agreement.

(b) agree with Network Rail the insurances (including public liability and professional indemnity) to be maintained by the Customer for the benefit of Network Rail.

7 Any information or instructions provided to Network Rail by or on behalf of the Customer in connection with the Works shall be prepared and given in such a diligent and professional manner and with such clarity, in such detail and in a timely manner as is necessary for Network Rail to comply with its obligations under this Agreement.

**Obligations of Network Rail**

8 Network Rail shall provide the Services. Network Rail estimates the cost of carrying out the Services to be £[♦]. Network Rail shall use reasonable endeavours to carry out the Services for such amount but the Customer shall pay all Network Rail Costs reasonably and properly incurred by Network Rail. Network Rail shall provide the Customer with regular reports on the progress of the Services (including any changes to their estimated cost) in a format and at intervals to be agreed between the Parties.

9 Network Rail shall carry out or procure the carrying out of its obligations and the performance of the Services in accordance with:

- (a) Good Industry Practice;
- (b) Legal Requirements and Standards;
- (c) Necessary Consents;
- (d) the terms of this Agreement.

10 If Network Rail becomes aware of any matter which will prevent or impede it from performing the obligations on its part in this Agreement or will prevent or impede the Customer from carrying out the Works, Network Rail shall so notify the Customer promptly and in any event within five (5) Working Days after becoming so aware.

11 Network Rail shall at the cost of the Customer make available to the Customer, within a reasonable time, the Network Rail data and information (except for data and information which is confidential or commercially sensitive or already in the public domain) which is already in Network Rail's possession and which the Customer reasonably requires and has requested to carry out the Works. Where Network Rail is required by the Customer to provide such information in relation to the design of the Works by the Customer, it shall, in good faith, provide information which is in all material respects the most complete and accurate understood to be in its possession, and shall notify the Customer of the status of the accuracy and completeness of such information on the date of delivery, to the best of Network Rail's knowledge and belief.

12 If Network Rail determines subsequent to the date of delivery that such information was inaccurate or incomplete in any material respect, it shall promptly notify the Customer and shall use its reasonable endeavours to make any changes necessary to correct such inaccuracies or incompleteness. Notwithstanding the foregoing or any other provision in this Agreement, Network Rail does not warrant the accuracy or sufficiency of data and information provided to the Customer and the Customer shall be responsible for verifying the accuracy and assessing the sufficiency for its purposes of all data and information provided.

**Necessary Consents**

13 Where it is necessary for Network Rail to apply for Necessary Consents, Network Rail shall use reasonable endeavours to obtain such Necessary Consents but does not guarantee that the Necessary Consents will be granted or that the terms of Necessary Consents granted will be acceptable to the Customer. Network Rail (where reasonably requested) will provide relevant correspondence in respect of Necessary Consents to the Customer and will take into account the Customer's views in this regard.

14 The Customer shall pay all costs reasonably incurred in applying for the Necessary Consents and any costs or compensation payable as a consequence of the grant of the Necessary Consents (except to the extent that they are due to the negligence or breach of Network Rail).

15 Network Rail's obligations in relation to obtaining any Necessary Consents are conditional upon Network Rail receiving in full the documentation and assistance related to the relevant Necessary Consent which it may reasonably require and has requested from the Customer.

- 16 Network Rail shall have no liability to the Customer under this Agreement and shall have the right to extend the Completion Date and the Liquidated Damages Payment Date by such period as is reasonable in the circumstances as a result of any Necessary Consent not being granted or any delay in granting any Necessary Consent or the terms upon which any Necessary Consent is granted except to the extent that it is as a result of a negligence or breach by Network Rail and in which case Network Rail will be liable for any direct costs incurred by the Customer.
- 17 In conducting any discussions or negotiations with train operators in relation to a Regulated Change, Network Rail, subject to any reasonable confidentiality requirements, will allow the Customer to attend relevant meetings, provide the Customer with relevant correspondence and have due regard to the Customer's comments (if any) in relation to Regulated Change.<sup>2</sup>

**Access and possessions**

- 18 Access to the site where the Works are to be carried out (the **Site**) and the programme for the Works shall be agreed in writing before the Customer is granted access to the Site. If a possession of the Network is required to carry out the Works, it will be arranged in accordance with Network Rail's possession planning and booking system.

**Safeguarding the Network**

- 19 Network Rail and the Customer shall liaise generally on all safety matters arising out of the Works if, and to the extent that, they affect the Railway.
- 20 Notwithstanding any other provision of this Agreement, but subject to Paragraph 26, Network Rail may at any time take whatever action Network Rail considers necessary to prevent, address, alleviate or comply with a Network Operation Issue, including requiring the Customer and any of its contractors to suspend the carrying out of the Works for such period and/or take such measures as Network Rail may require.

**Taking into use and Completion**

- 21 Network Rail shall own the Works upon their Completion. The Customer shall comply with the taking into use procedures which apply to the Works and shall provide certificates for the permanent works required for Network Rail to take into use the Works upon their Completion all as set out in the Standards. The Customer shall provide other deliverables as set out by Network Rail in writing. The taking into use of the Works by Network Rail shall not relieve the Customer from its obligations to comply with the terms of this Agreement. The Customer shall be responsible for remedying any defects within the defects liability period applicable to the Works.<sup>3</sup>

**Additional Expense<sup>4</sup>**

- 22 The Customer agrees to reimburse Network Rail all additional operation, maintenance and renewals costs that may arise for Network Rail as a result of the Works and/or any Regulated Change unless such additional costs are less than £50,000 per annum after deduction of any sums paid to Network Rail by a third party.

**Variations**

- 23 Any Variations shall be paid for by the Customer (unless the Parties agree otherwise or it is a Variation of the type specified in Paragraphs 24(a) to 24(c)) and shall only be effective if agreed by both Parties in writing.
- 24 Notwithstanding any provision in this Agreement, where Network Rail reasonably considers that a Variation is necessary:
- (a) to avoid, address or alleviate a Network Operation Issue; or
  - (b) to carry out any works necessary due to any Existing Asset Obligation; or
  - (c) to address, alleviate or comply with (as appropriate) a Mandatory Variation; or

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<sup>2</sup> This Paragraph 17 should be deleted when the Customer is a Train Operating Company.

<sup>3</sup> Minimum 12 months required.

<sup>4</sup> Wording depends on whether Works are subsequently a Network Rail asset and if the asset forms part of a supplemental lease arrangement, or Network Rail agrees to take on the responsibility.

- (d) to address, alleviate or comply with (as appropriate) any Legal Requirement or a direction of a competent authority or any requirement of the Network Licence to the extent it is not a Mandatory Variation;

and Network Rail shall be entitled to a Variation to the extent that is reasonable in the circumstances.

- 25 Where Network Rail considers that a Variation is necessary under Paragraph 24, it shall consult with the Customer (providing reasonable information concerning the proposed Variation) and take into account the reasonable comments of the Customer when considering the scope, cost and effect of the Variation. The Customer may not object to a Variation under Paragraph 24 but may refer any matter concerning the scope, cost and effect of the Variation to be resolved under Paragraph 45.

### **Compensation and Relief**

- 26 Network Rail shall bear all direct costs reasonably incurred by the Customer (unless such costs are below £10,000 in aggregate) as a result of:

- (a) Network Rail taking or requiring any action pursuant to Paragraph 20 in relation to a Network Operation Issue;
- (b) any delay to the Works which is caused by a Network Operation Issue or would have been caused in the absence of remedial action taken by the Customer to avoid any such delay;
- (c) any booked possession being cancelled or altered (including as a result of any default by any train operator other than the Customer); and/or
- (d) any interference with the Works which is caused by another contractor from an interfacing project, provided that the Customer has used reasonable endeavours to mitigate and control the interface with such project as far as reasonably practicable,

except to the extent that such costs are incurred due to the negligence, breach or default of the Customer or any contractor appointed by the Customer (other than Network Rail). If Network Rail is able to recover compensation from a third party in relation to the events described in Paragraph 26(a) to 26(c), it shall account to the Customer for all such compensation so received (to the extent that such compensation relates to the Customer's direct costs).

### **Intellectual Property**

- 27 The Customer grants to Network Rail an irrevocable, 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.
- 28 The Customer shall indemnify Network Rail from and against any and all Losses arising from the use by the Customer of any intellectual property other than for the purposes of the Works. Network Rail shall indemnify the Customer from and against any and all Losses arising from the use by Network Rail of any intellectual property other than for the purposes of the Works.

### **Network Rail Costs**

- 29 The Customer shall pay to Network Rail all reasonably and properly incurred Network Rail Costs in accordance with the terms set out in Paragraph 30 and Schedule 3.
- 30 Within ten (10) Working Days after the end of each payment period, Network Rail shall submit an invoice to the Customer. The Customer shall pay each invoice in full within twenty (20) Working Days from receipt of the invoice. If the Customer wishes to dispute the amount set out in an invoice, it shall notify Network Rail within fifteen (15) Working Days of delivery of the invoice specifying the disputed amount and the grounds on which it claims that such amount is not due and payable. Late payment of any amount due and payable under any invoice shall carry interest from the due date to the date of payment at the rate of three month LIBOR plus 2% per annum. All amounts are exclusive of value added tax, which will be charged at the applicable rate.

### **Limitation of Liability**

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

- (a) the aggregate amount of all Losses suffered by the relevant Party exceeds £10,000. For the avoidance of doubt, (i) in such an instance all Losses can be claimed not just the Losses in excess of £10,000 and (ii) after payment of such Losses, no further claim shall be made until the earlier of any further Losses suffered being in excess of £10,000 or Completion or termination of this Agreement; or
  - (b) the Losses are incurred as a result of, or are sums unpaid by the Customer under Paragraph 29 or Schedule 3.
- 32 Network Rail's maximum aggregate liability to the Customer for any reason arising under, or in connection with, this Agreement or the Works including but not limited to breach of contract, in tort (including negligence), or for breach of statutory duty shall not exceed the Network Rail Cap. Notwithstanding the Network Rail Cap where, in respect of the same event, Network Rail recovers any sums under an insurance policy related to the Services, it shall pay such sums (if and to the extent that such recovered sums relate to loss suffered by the Customer and not by Network Rail itself) to the Customer. For the avoidance of doubt, any sums recovered by Network Rail under such insurance policy and paid to the Customer shall contribute to the Network Rail Cap insofar as the Network Rail Cap has not already been reached. Network Rail shall use reasonable endeavours to make such recovery (which shall include an obligation to make and diligently pursue a claim but shall not include an obligation on Network Rail to take legal action).
- 33 Paragraph 32 shall not apply to any Losses incurred by the Customer as a result of any liability in respect of (a) death or personal injury resulting from a negligent act or omission or breach of statutory duty by Network Rail or any employee of Network Rail and/or (b) the fraud or fraudulent misrepresentation of Network Rail (or its contractor employed to carry out the Works).
- 34 Any Losses payable by either Party shall be reduced to the extent that they are caused by or contributed to by the other Party's own negligence or breach of its obligations under this Agreement.
- 35 Subject to the limit on liability in Paragraph 32, to the extent that the Completion Criteria have not been achieved by the Liquidated Damages Payment Date, due to the fault of Network Rail, then Network Rail shall pay to the Customer the sum of £[♦]<sup>5</sup> for each day from the Liquidated Damages Payment Date until the date that the Completion Criteria are achieved or the date that it is determined under the escalation procedure and/or the dispute resolution procedure pursuant to Paragraphs 45 and 46 that the Completion Criteria have been achieved. The Customer shall notify Network Rail as soon as reasonably practicable upon becoming aware that such a delay to the achievement of the Completion Criteria may occur or has occurred. The Customer is not entitled to claim any other Losses in relation to delay to the achievement of the Completion Criteria except under this Paragraph 35.
- 36 The Customer's maximum aggregate liability to Network Rail for any reason arising under or in connection with this Agreement shall not exceed an amount equal to the Customer Cap. Notwithstanding the Customer Cap where, in respect of the same event, the Customer recovers sums under an insurance policy (including any insurance maintained by a contractor employed by the Customer) or under any contract entered into by the Customer, it shall pay such sums (if and to the extent that such payments relate to loss suffered by Network Rail and not by the Customer itself) to Network Rail. For the avoidance of doubt, any sums recovered by the Customer under such insurance policy or contract and paid to Network Rail shall contribute to the Customer Cap insofar as the Customer Cap has not already been reached. The Customer shall only be required to use reasonable endeavours to make such recovery (which shall include an obligation to make and diligently pursue a claim but shall not include an obligation on the Customer to take legal action) and only if and to the extent that such payments relate to loss suffered by Network Rail and not by the Customer itself.
- 37 Paragraph 36 shall not apply to:
- (a) the Customer's payment obligations under Paragraphs 11, 22, 29, 30 or Schedule 3;

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<sup>5</sup> This will be based on that agreed with the Customer representing a pre-estimate of the Customer's loss which will be negotiated by the Parties acting reasonably. If the Parties cannot agree a figure the clause should be redrafted to include a cap on damages.

- (b) any Losses incurred by Network Rail due to the negligence fraud or fraudulent misrepresentation by the Customer or by any contractor appointed by the Customer (other than Network Rail); and
- (c) any liability in respect of death or personal injury resulting from a negligent act or omission or breach of statutory duty by the Customer or any employee of the Customer.

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

### **Force Majeure Events**

39 Subject to Paragraphs 40 and 41, each Party shall be relieved from liability for non-performance of its obligations under this Agreement (other than any obligation to make payment) to the extent that it is not able to perform such obligations by reason of a Force Majeure Event. Network Rail shall be entitled to a change to the Completion Date and the Liquidated Damages Payment Date to reflect an extension of time properly awarded under any contracts between the Customer and any contractor carrying out the Works in respect of a Force Majeure Event.

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

- (a) take all reasonable steps to prevent and mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the Force Majeure Event as soon as practicable and use all reasonable endeavours in accordance with Good Industry Practice to remedy its failure to perform; and
- (b) not be relieved from liability under this Agreement to the extent that it is not able to perform, or have not in fact performed, its obligations under this Agreement due to any failure to comply with its obligations under Paragraph 40(a).

41 On the occurrence of a Force Majeure Event, the affected Party shall serve notice on the other Party as soon as reasonably practicable and in any event within ten (10) Working Days of it becoming aware of the relevant Force Majeure Event. The affected Party shall notify the other Party as soon as practicable once the performance of its affected obligations can be resumed (performance to continue on the terms existing immediately prior to the occurrence of the Force Majeure Event).

### **Termination**

42 Network Rail may by serving notice on the Customer terminate this Agreement with immediate effect if the Customer is in material breach of any of its obligations in this Agreement (provided that Network Rail shall first notify the Customer of any remediable breach and its intention to terminate, and shall allow the Customer a period of twenty (20) Working Days to remedy such breach). The Customer may terminate this Agreement by giving Network Rail five (5) Working Days' notice in writing at any time.

### **Consequences of Termination**

43 Upon termination of this Agreement:

- (a) the Customer shall pay Network Rail:
  - (i) the Network Rail Costs incurred up to the date of termination; and
  - (ii) (except where termination is due to Network Rail's default or insolvency) the Customer shall pay Network Rail the costs and expenses reasonably incurred by Network Rail in terminating this Agreement (including removal of plant, equipment and those materials not incorporated into the Works) and in reinstating or procuring the reinstatement of the Works (or such part thereof as may exist as at the date of termination) and the relevant part or parts of the Railway affected by the Works to the extent necessary to (i) make the same safe and/or (ii) secure and enable Network Rail to meet its contractual, statutory and Network Licence obligations (including the reasonable cost of any contractors and compensation to third parties); and
- (b) all obligations of the Parties under this Agreement shall cease except for:

- (i) the provisions of Paragraphs 19, 20, 22, 26, 27, 28, 29, 30, 31, 43, 44 and 47; and
- (ii) any obligations arising as a result of any antecedent breach of this Agreement or any accrued rights.

### Confidential Information

- 44 Neither Party shall disclose any confidential information save as required by any enactment, requirement of any regulatory authority or pursuant to any judicial or arbitral process, or in the case of Network Rail as required by its statutory duties or Network Licence. On termination of this Agreement, the Customer shall either destroy or, if reasonably requested to do so, return any confidential information within its possession or control that belongs to or was provided by Network Rail.

### Escalation and Dispute Resolution

- 45 Should any dispute arise out of or in connection with this Agreement, then the Parties' project managers shall initially discuss and attempt to resolve the dispute. If the project managers are unable to resolve the dispute to the satisfaction of both Parties, the dispute 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, it shall be escalated to the Parties' appropriate directors for resolution. If the directors are unable to resolve the dispute, then either Party may refer the matter to adjudication in accordance with Paragraph 46.
- 46 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 five Working Days of receipt by one Party of a proposal by the other the adjudicator shall be appointed at the request of either Party by the President or Vice President for the time being of TECBAR.

### Freedom of Information<sup>6</sup>

- 47 If either Party receives a request for the disclosure of information relating to the Works and/or this Agreement (the **Works Information**) under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 (together the **Information Acts**) it shall comply with such request in accordance with the relevant Information Act to the extent it is obliged to do so and provided that no exemption from disclosure in the relevant Information Act applies. Prior to making such disclosure it shall give the other Party the reasonable opportunity to make representations as to why the disclosure should not be made (including but not limited to any exemptions from disclosure that may apply) and shall inform the other Party of any disclosure made. For the purpose of paragraph 43(2) of the Freedom of Information Act 2000, the Parties acknowledge and agree that the disclosure by it of any commercially sensitive Works Information is likely to prejudice the interests of the Parties.

### Miscellaneous

- 48 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.
- 49 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).
- 50 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 Customer.
- 51 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.
- 52 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.

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<sup>6</sup> Only used where a Party is subject to the legislation.

Each Party acknowledges that in entering into this Agreement it is not relying upon any statement or representation not set out in this Agreement.

- 53 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.

Yours sincerely

Signed by  
duly authorised for and on behalf of  
**Network Rail Infrastructure Limited**

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We agree to the above

Signed by  
duly authorised for and on behalf of  
**[Customer]**

.....

## Schedule 1

### Definitions

For the purposes of this Agreement:

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

**Act** means the Railways Act 1993 as amended

**Change in Law** means the application to any Party of any Legal Requirement which did not so previously apply or the change of any Legal Requirement applying to that Party (including any such Legal Requirement ceasing to apply, being withdrawn or not being renewed) other than in relation to corporation tax (or any other tax of a similar nature replacing corporation tax on profits or gains) or value added tax

**Change in Standards** means the coming into effect, after the Commencement Date or GRIP 4 if later, of a Group Standard or of any amendment thereto, or of a Network Rail Standard or of any amendment thereto with which Network Rail is obliged to comply

**Commencement Date** means the date of this Agreement

**Completion** means the completion of the Works in accordance with Paragraph 21

**Completion Criteria** has the meaning given to it in Schedule 2

**Completion Date** means the date for completion of the Works as specified in Section F of Schedule 2, as amended or varied from time to time in accordance with this Agreement

**Contract** means the contract between Network Rail and its contractor

**Customer Cap** means an amount equal to 10% of the Estimated Project Cost as at the Commencement Date

**Estimated Project Cost** means the estimated costs of the Works to the Customer up to Completion as set out in Section C of Schedule 2 as updated from time to time in accordance with this Agreement

**Force Majeure Event** means any of the following events (and any circumstance arising as a direct consequence of any of the following events):

- (a) an act of the public enemy or terrorists or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
- (b) acts of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure in areas other than the site of the Works;
- (c) natural disasters or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
- (d) nuclear, chemical or biological contamination;
- (e) pressure waves caused by devices travelling at supersonic speeds;
- (f) discovery of fossils, antiquities or unexploded bombs; and or
- (g) strike or other industrial action other than involving the Customer or Network Rail

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

**GRIP 4** means the approval in principle stage reached following the Network Rail document "*Guide to Railway Investment Projects*"

**Implementation Programme** means the programme set out in Section E of Schedule 2 as updated from time to time

**Indirect Loss** means loss of production, loss of profit, loss of revenue, loss of contracts, liabilities incurred under other agreements (save costs paid by the Customer to contractors appointed by the Customer in relation to the Works) or any indirect or consequential loss arising out of or in connection with this Agreement

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

**Legal Requirement** means any of the following:

- (a) any enactment to the extent that it applies to that Party;
- (b) any regulation made by the Council or the Commission of the European Union to the extent that it applies to that Party or a decision taken by the Commission of the European Union which is binding on that Party to the extent that it is so binding; and
- (c) any interpretation of law, or finding, contained in any judgement given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any legal requirement falling within Paragraphs (a) or (b) above to have effect in a way which is different to that in which it previously had effect

**Liquidated Damages Payment Date**<sup>7</sup> means the date stated in Section G of Schedule 2, or as amended from time to time in accordance with this Agreement

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

**Mandatory Variation** means any Variation necessitated by:

- (a) any Specific Change in Law; and/or
- (b) any Change in Standards for safety reasons

**Necessary Consents** means all approvals, permissions, consents, licences, certificates, registrations and authorisations (including Regulated Change) whether statutory or otherwise, which are required from time to time for the purposes of carrying out the Works

**Network** means the railway facilities of which Network Rail or another party is the facility owner (as defined in section 17(6) of the Act

**Network Code** means the code setting out the rules applying to all regulated Access Agreements

**Network Licence** means the licence to operate the Network granted to Network Rail pursuant to section 8 of the Act

**Network Operation Issue** means:

- (a) any safety critical event, which means a risk to the health and safety of any individual or risk of damage or destruction to any property or any incident which may reduce the safety integrity level of any item of infrastructure;
- (b) any operational emergency, which means any situation or circumstance which Network Rail reasonably considers requires immediate or urgent action in order to maintain or restore the effective operation of the Network or any part of it;
- (c) any Change in Law;
- (d) any requirement of the Network Licence;
- (e) any contractual commitment of Network Rail existing on, or prior to, the date of this Agreement

**Network Rail Cap** means the higher of:

- (a) £100,000; or
- (b) a sum equal to the total of Agency Costs, Contractors' Costs and Personnel Costs (all as defined in Schedule 3) included in the Estimated Project Cost as at the Commencement Date

**Network Rail Costs** has the meaning given in Schedule 3

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

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

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<sup>7</sup> The Liquidated Damages Payment Date recognises that the date on which LD's become payable may not be the same date as the Completion Date. The date should be the date the Customer would start incurring financial losses.

**Regulated Change** means Network Change (as defined in the Network Code) and/or Station Change (as defined in the Station Access Conditions) to the extent that each is required in connection with the Works

**Services** means the services to be carried out by Network Rail as set out in Section B of Schedule 2

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

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

**Standards** means Railway Group Standards and Network Rail Company Standards as at the date of this Agreement (including, for the avoidance of doubt, the Network Licence, the Network Code and the Station Access Conditions)

**Station Access Conditions** means the National Station Access Conditions 1996 (England and Wales) together with the station specific annexes applicable to the relevant stations the subject of the Works

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

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

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

**Works Requirements** means the specification in Section A of Schedule 2 which sets out a description of the Works

**Schedule 2**  
**The Works**

- A Works Requirements
- B Services
- C Estimated Project Cost
- D Necessary Consents and Regulated Changes
- E Implementation Programme
- F Completion Date
- G Completion Criteria
- H Liquidated Damages Payment Date

**Schedule 3**  
**Network Rail Costs**

**1 Definitions**

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

**Agency Costs** means the cost to Network Rail of any Agency Personnel engaged in connection with the Services multiplied by 1.5, plus the properly incurred expenses and disbursements charged to Network Rail by such Agency Personnel

**Agency Personnel** means those personnel who have entered into a contract for services with Network Rail to provide services in connection with the Works

**Contractors' Costs** means the costs to Network Rail of any consultants or contractors engaged by Network Rail in connection with the observance and performance of its obligations in relation to the Works, plus the properly incurred expenses and disbursements of those consultants or contractors

**Expenses and Disbursements** means the costs, expenses and disbursements incurred by Network Rail in relation to the Works, in connection with:

- (a) printing, reproduction and purchase of documents, drawings, office consumables, maps and records;
- (b) travelling expenses in accordance with Network Rail's policies;
- (c) all technical, commercial and professional fees, costs and disbursements in connection with the Works but excluding Contractors' Costs and Agency Costs;
- (d) all internal and external legal and other costs, charges, and expenses properly incurred by Network Rail in connection with the preparation, negotiation and enforcement of any supplemental leases, licences (including in respect of intellectual property) and other documentation entered into by Network Rail and relating to the Works (including this Agreement);
- (e) insurance costs;
- (f) any sums payable by Network Rail pursuant to Conditions G and H of the Network Code where the same arise in connection with the carrying out or completion of the Works or the subsequent operation of the completed Works
- (g) any other disbursements or expenses reasonably and properly incurred by Network Rail in connection with the Works (other than for Necessary Consent Costs) which the Customer's prior written approval must be obtained for any such disbursements or expenses over £5,000; and
- (h) of any goods, services, materials or other items issued by or on behalf of Network Rail to the contractor at no cost to the contractor.

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

**Hourly Rate** means in respect of each member of Network Rail's Personnel the rate set out in Paragraph 2 for their particular banding as the same may be adjusted from time to time in accordance with Paragraph 3, which rate will be payable in respect of all worked hours spent by Network Rail's Personnel in connection with the Works

**Industry Risk Fee** means an amount equal to 2% of the Estimated Project Cost as at the Commencement Date as revised in accordance with Paragraphs 23-25 other than a Variation of the type described in Paragraphs 24(a) to 24(c).

**Necessary Consents Costs** means the costs incurred by Network Rail in connection with any Necessary Consent for the Works including those related to:

- (a) the costs of third parties associated with applying for, undertaking, changes to or as a consequence of any Necessary Consents;
- (b) any sums payable by Network Rail pursuant to Conditions G and H of the Network Code where the same arise in connection with the carrying out or completion of the Works; or
- (c) Possessions-Related Costs

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

**Network Rail Fee** means an amount equal to 10% of the aggregate of the Agency Costs, Contractors' Costs and Personnel Costs as set out in the Estimated Project Cost as at the Commencement Date (as revised in accordance with Paragraphs 23-25 other than a variation of the type described in Paragraph 24(a)-(c))

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

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

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

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

**2 Hourly Rates [up to 31 March 2010]**

Banding	Non London	London
1	£112.71	£115.62
2	£82.87	£85.80
3	£61.67	£64.57
4	£43.10	£46.01
5	£34.47	£37.40
6	£27.17	£30.11
7	£22.55	£25.45
8	£17.90	£20.82

**3 Adjustment of Hourly Rates**

Network Rail shall adjust the Hourly Rates annually on 1 April to reflect the increase in the retail price index for the year ending the preceding November.

**4 Review**

As from time to time requested by the Customer, Network Rail shall provide to the Customer reasonable access to and evidence and records of all amounts payable by the Customer under this Schedule 3 (other than the Hourly Rates) together with such other information and records as the Customer may reasonably require (having at all times regard for Network Rail's confidentiality and contractual obligations), which may be reviewed and audited by or on behalf of the Customer.

**5 Terms of Payment<sup>8</sup>**

<sup>8</sup> Any particular terms of payment to be inserted.