# Investing in the Network

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# 1. Introduction

This guide gives you an overview of Network Rail's investment process and associated contractual framework. It covers a suite of enhancement template agreements for engaging with current and prospective promoters and stakeholders sponsoring infrastructure enhancement projects. It is intended to be consistent with the Office of Rail and Road (ORR)'s Policy Framework for Investments.

The guide's appendices cover:

- enhancing the network
- the Governance for Railway Investment Projects (GRIP)
- the investment process
- criteria used for assessing promoters' reasonable requirements
- services provided by Network Rail
- approval in principle
- risk management
- regulated change processes
- Network Rail's template agreement structure

# 2. Network Rail's Role

Network Rail is a key point of contact for anyone who wants to invest in the rail network – also known as 'enhancing the network'. Our aim is to facilitate appropriate investment in the network regardless of the role we are asked to play in delivering that investment.

The earlier you involve us with a project's development, the more we can help you to define its scope and deliver your proposal. This will help us both to align our respective objectives or commitments, to realise opportunities from integrating these commitments and to manage interface risks effectively. Details of how we engage with promoters can be found at Network Rail open for business. See also Appendix A.

Our role is to help developers, funders, stakeholders and other 'promoters' who wish to invest in the rail network to develop and then deliver their proposals in co-ordination with all relevant stakeholders.

We will coordinate and involve the train operators, the Department for Transport (DfT), Transport Scotland, the Welsh Government and other stakeholders as appropriate where a proposal:

- could have a separate impact on train service franchises; or
- could have a material linkage with wider public policy objectives (such as airport access or freight access to major ports).

## Network Rail governance arrangements

Before committing to a contract for services, products and works with a promoter or committing internal resources to a project, we need to approve internally every investment project. This provides for adequate monitoring of the project's impact on the network. It also lets us control and prioritise our investment plans where we're funding or delivering the project.

We authorise investment funding in discrete stages during a project's various phases. This:

- brings business case certainty;
- reduces the risks in committing investment expenditure on projects; and
- verifies that each project phase is adequately defined.

The Governance for Railway Investment Projects (GRIP) explains the stages of the project lifecycle where funding approval is required. Further details can be found in Appendix B.

## Network Rail's stakeholders

On generic industry-wide issues, passenger and freight operators are often represented by the Rail Delivery Group (RDG).

The main funder of network outputs is the Department for Transport (DfT). Following the enactment of the Railways Act 2005, Scottish Ministers are in a similar position to the DfT, in Scotland through Transport Scotland (TS).

Other funders include the Welsh Government, Transport for London (TfL), Combined Authorities (formerly Passenger Transport Executives), Local Enterprise Partnerships (LEPs), local and county councils, the European Union (EU), rolling stock manufacturers and developers.

We consider our stakeholders to be all of the above, including any other party which relies on us to invest in the rail network infrastructure and anyone who may be affected by the proposed project.

# 3. The Investment Process

The investment process has a number of possible stages. These depend on the type of project, the level of our involvement and the promoter who approaches us.

Once a promoter has approached us, we'll work with them to determine the appropriate scope and contractual framework for the project's lifecycle.

When we deliver services to the promoter, and also when developing and implementing projects ourselves we follow the Governance for Railway Investment Projects (GRIP) process.

Where the promoter undertakes the development and the implementation of the works, we will facilitate its project by providing non-contestable services, which we outline below.

We describe below the various investment process stages which we will follow from inception through to completion. Appendix C provides flowcharts to illustrate this process. We also explain the contracting arrangements which apply for different kinds of project.

## GRIP Stage 1: Output Definition

## Information requirements

When considering an investment in the rail infrastructure, you should consider:

- the objective, scope, timing, and specification of the enhancement;
- the funding for the project and any project risks;
- the procurement methodology: what you think we should undertake in development and implementation works or provision of non-contestable services (defined below);
- the likely interface with existing railway operations and other relevant projects and route strategies; and
- other stakeholder involvement.

## Receipt of request

When we receive an investment request, we will appoint an appropriate representative. The nature of the investment will determine who within Network Rail will take responsibility for the investment process, and the nature of the proposed investment and its complexity will largely determine how we allocate it.

Our representative will:

- respond to your initial request on a timely basis;
- act as your point of contact with us and keep you informed regarding the progress of your project;

- meet you to undertake an initial assessment of the project; and
- check you have given us the necessary information for our representative to seek endorsement of your request from the 'Route Strategy Planning Group (RSPG)', which is described in more detail in the following section.

## Review of project proposals by the RSPG

Each route has a RSPG, which is an internal (Network Rail) multifunctional review group which:

- provides clarity on the route's required outputs via an appropriate specification;
- verifies that the route investment programme will deliver these outputs efficiently and cost-effectively; and
- verifies that investment proposals are sufficiently well managed and supported.

All enhancement schemes, regardless of funding, are discussed at the relevant RSPG meeting. We will also seek feedback on the proposal from stakeholders and industry partners at industry meetings like the Route Investment Review Group.

As part of the review process, the RSPG will assess the scheme against the decision criteria we use to assess promoters' requirements. You can read a summary of our decision criteria in Appendix D.

## Failure to meet decision criteria

If our assessment of your scheme is that it does not meet the decision criteria for promoters' requirements, the RSPG may reject the proposal.

## Rejection of scheme by RSPG

If the RSPG reject the proposal, our representative will work with you to identify possible options for your proposed scheme, which may include revising and resubmitting your proposal.

## Appealing against a decision

If you want to appeal against a decision made by our RSPG, you should appeal in writing to our representative. This appeal should clearly set out why you believe that the decision was incorrect, and give further information as necessary.

The RSPG will review your appeal, and may invite you to a meeting to discuss your proposed scheme. The RSPG will then reassess the scheme against the decision criteria for assessing promoters' requirements.

## GRIP Stage 2: Project Feasibility

Following successful review and prioritisation of the investment proposal, Network Rail will make contact with the promoter to move the project forward.

Network Rail will decide at the RSPG meeting which part of the organisation will sponsor the project. Where a scheme changes the capability of the railway, i.e. changes to the timetable or operation of the network, or integrates with existing major programmes of work then Network Rail's System Operator team will sponsor the scheme. Other schemes will be sponsored by Route Enhancement teams (such as investments in stations).

At this stage, we will also define our involvement in the scheme. We have to be included in elements of the project that impact on the railway, which we call 'non-contestable services'. This reflects the requirements on us to preserve the railway's integrity and protect our assets. However, you may choose to engage third parties for other elements of the project. This is explained further below.

## Non-contestable services

If you intend to design and implement the project yourself, we will provide asset protection services. Only Network Rail can provide these 'non-contestable' services.

They include protecting the integrity and safety of the rail network and its operations, the provision of asset and operational information, safety management (including approvals), consents and protected access to the railway. If the works are straightforward, then a Basic Asset Protection Agreement (BAPA) may be appropriate at this stage. If the project is more complex, then an Asset Protection Agreement (APA) is likely to be more suitable. Further information can be found on our website at: Third Party Template Agreements

## Contestable services

As well as non-contestable services we may also be able to undertake a full range of 'contestable' project development and implementation services.

The specific type of service we provide will depend on the stage in the project lifecycle and we will discuss and agree the services and any charges with you before taking any action or incurring any charges.

In the early stages of a project, we recognise that you might need help to develop and refine your business case.

As part of the business case development, we need to establish:

- a sustainable funding route for the project, including risk management;
- what, if any, adverse impact the scheme will have on network capacity, and options to mitigate this; and
- what are the interface risks with our Operations, Maintenance and Renewal (OM&R) activities, including:
  - all safety risks;
  - the needs of other users of the network;
  - avoiding conflict with the existing rights of other users; and
  - the need to verify that we are not placed at undue risk of breaching our stewardship obligations as set out in our own network licence.

If you ask us to develop the scheme and we agree that we should do so, we will use either a Basic Services Agreement (BSA) or Development Services Agreement (DSA) to capture the services and fees required to progress the project. Both of these agreements are described in section 4 below and can be found on our website at Third Party Template Agreements

Appendix E has an indicative list of services (both contestable and non-contestable) that we can provide.

## Business efficiency objectives

In some cases, it might be more efficient to align your proposal for investing in the rail network with our own renewal or other activity – for example, if you were to propose a minor enhancement where we are undertaking a major renewal. In these cases, we might agree to undertake the works as part of our own renewal activity.

Where appropriate, we will give you more information on our renewal plans to help you find such opportunities. When the proposed enhancement may pose a significant risk to the efficient operation, maintenance or renewal of the network but is nonetheless deemed to be a priority, then we will offer to develop the project in line with our template agreements.

## GRIP Stage 3: Option Selection

At the end of this phase, the following workstreams should have been completed by either us or your development services provider:

- the various options available to complete the project will have been identified;
- each of these available options will have been appraised; and
- a single option and outline design should be recommended.

Based on this recommendation, you should receive indicative time and cost information from either us or your development services provider. You can use this to inform your business case.

The business case should confirm whether or not the project is affordable, including consideration of whole-life cost issues, whether it can be delivered in a reasonable timescale, whether it will provide value for money, and on this basis whether to proceed to detailed design and implementation.

## GRIP Stages 4 to 8: Option Development, Design, Construction, Handback and Close Out

If the procurement route you choose is through Network Rail, we will enter into an Implementation Agreement (IA) with you. We will seek a sufficient level of design certainty and equivalent terms from our supply chain after completing design at GRIP Stage 4 or 5 as appropriate.

Where we implement the project, we'll agree the appropriate contracting strategy with you. This will usually be on an emerging cost methodology based on cost estimates and tenders with appropriate contingencies and allocation of risk between the parties.

There are four possible implementation agreements, depending on the value and complexity of the scheme.

- a Basic Implementation Agreement (Emerging Cost or Fixed Price); and
- an Implementation Agreement (Emerging Cost or Fixed Price).

These agreements are described in section 4 below and can be found on our website at [Third Party Template Agreements]

During the implementation stage, we might provide the following services (and any other services that are required):

- project management;
- detailed design (if not already completed);
- constructing the new assets;
- approval, acceptance, commissioning; and
- project close out.

Before project close out and after implementation, you should review the business benefits of the project with us, reviewing and recording any lessons which could benefit future schemes. This is in line with project management best practice.

In cases where you are undertaking the implementation activity yourself, we will facilitate the project's interface with our business according to an Asset Protection Agreement or Basic Asset Protection Agreement, as appropriate. (For further details see our website at http://www.networkrail.co.uk/aspx/1606.aspx )

# 4. Contracting Templates

## Introduction

We have a set of template agreements with model terms and conditions for use by promoters. These were first introduced in 2005 after extensive consultation with our stakeholders and approval by the ORR. They have been updated over the years to improve them, deal with stakeholder issues and keep them up-to-date.

By establishing clear frameworks setting out for the roles and responsibilities of Network Rail and the promoter, these agreements seek to:

- encourage investment in rail enhancements;
- identify practical solutions which reduce barriers to investing in the railway;
- reduce the need for time-consuming negotiations; and
- reduce the need to develop specific contracting arrangements for each and every scheme.

The principles of the template enhancement agreements are consistent with the ORR Investment Framework and our regulatory obligations. In particular, they are consistent with the obligation to "secure the improvement, enhancement and development of the network', and to meet stakeholders' reasonable requirements.

## Template agreements

These agreements are designed for projects generally with a total cost of circa £50 million or less. To make things clearer, you can read our explanatory notes on the different agreement types at: Third Party Template Agreements

The agreements are summarised below:

## Basic Services Agreement (BSA)

A simple agreement, aimed at quickly putting in place a contractual relationship after you've approached us initially. It covers pre-feasibility works to scope the scheme and develop the business case.

The tasks it covers can include:

- providing you with asset information;
- attending meetings and workshops; and
- where appropriate for minor schemes, reviewing the 'Approval in Principle' design you've procured (see Appendix F for more information on Approval in Principle).

The agreement also permits you or your representative to undertake visual inspection of the network, within certain constraints.

It will generally be used during GRIP stages 1 and 2, but could also be used up to the end of GRIP Stage 3 for simple schemes.

## Development Services Agreement (DSA)

This agreement covers development and design work we undertake on your behalf. This includes:

- project and development management;
- contract management of consultants;
- management of the necessary consents and approvals; and
- governance and control.

The DSA covers GRIP Stages 2 to 4 inclusive, with the potential to reach GRIP Stage 5 if agreed.

## Basic Implementation Agreement (Emerging Cost) (BIA EC)

This is a simple agreement for straightforward low-risk works up to a typical value of £2m, which are on or near to the controlled railway infrastructure. You pay for the works on an emerging cost basis, and the agreement covers GRIP Stages 5 to 8 inclusive.

## Basic Implementation Agreement (Fixed Price) (BIA FP)

This is a simple agreement for straightforward low-risk works up to a typical value of £2m. It envisages that the works contractor will have given us a fixed price based on the specification that you have agreed with us. You pay for the works on a fixed price basis, and the agreement covers GRIP Stages 5 to 8 inclusive.

## Implementation Agreement (Emerging Cost) (IA EC)

With Network Rail acting as a construction manager, this is an emerging cost agreement which establishes a clear commercial framework for enhancement work on or near to the controlled railway infrastructure. It allows for detailed design and implementation of your scheme, with the contracting strategy agreed between you and us.

## Implementation Agreement (Fixed Price) (IA FP)

This is generally intended to cover implementation of schemes up to £10m from the end of GRIP Stage 5. It envisages that the works contractor will have given us a tendered price based on similar fixed price terms against a specification which you have agreed with us.

## Basic Asset Protection Agreement (BAPA)

This is a simple agreement for straightforward, low-risk promoter-led works on the controlled railway infrastructure, where we facilitate your project through asset protection. The works may take place on secondary routes and will present low risks to our network and require few or no possessions.

You will pay the costs of our services, which generally include:

- engineering safety management approvals;
- provision of asset information;
- booking of possessions and necessary consents; and
- attending meetings as required.

Whilst the agreement can cover GRIP Stages 2 to 8 inclusive, you will need to establish the implications of any single option on the agreement form before implementation. It can also be used at GRIP Stage 1 for surveys.

## Asset Protection Agreement (APA)

This is an agreement for promoter-led works on the controlled railway infrastructure, where we facilitate your enhancement scheme interface with our Operations, Maintenance and Renewals activities. You pay the costs of our services, including:

- engineering safety management approvals;
- provision of asset information;
- booking of possessions and necessary consents; and
- attending meetings as required.

Whilst the agreement can cover GRIP Stages 2 to 8 inclusive, you need to establish the implications of any single option on the agreement form before implementation. Although this agreement can be used from the end of GRIP Stage 2, it is generally used at GRIP Stages 3 to 4 onwards.

## Risk Management

Promoters' projects place additional responsibilities upon Network Rail to deliver development and design services, asset protection services and works for which it is not funded by the DfT. The template agreements frame the balance of risk and responsibility as between Network Rail and the promoter and introduce two risk funds to deal with Network Rail's contractual risks (the Network Rail Fee) and those risks systemic to the rail industry (the Industry Risk Fee).

The nature of these risks and percentage fees charged to promoters as part of the template agreements is detailed in Appendix G.

# 5. Public Liability Insurance

The ORR requires the rail industry to have a minimum of £155m of public liability cover, and this level of cover may apply to promoters carrying out works on or close to our railway infrastructure.

Promoters should consult with their insurance advisors in order to arrange the required cover, but promoters may be interested to know that a top-up insurance facility that can provide cover over a promoter's or contractors' £25m or £50m public liability cover, up to the £155m requirement, is available through JLT Specialty Ltd and AON UK Ltd. The following personnel can provide details if required:

| | |
|---|---|
| Kevin Mannifield, Client Director<br>Aon Risk Solutions, Global<br>The Aon Centre, The Leadenhall Building,<br>122 Leadenhall Street, London, EC3V 4AN<br>+44 (0) 207 086 0490<br>kevin.mannifield@aon.co.uk | Ian Thompson, Senior Partner<br>JLT Specialty Ltd<br>Direct Dial : +44 (0)20 7558 3497<br>Mobile : +44 (0)7771 710 923<br>Email : ian_thompson@jltgroup.com |
| Gill Bretherton, Client Director<br>Aon Risk Solutions, Global<br>The Aon Centre, The Leadenhall Building,<br>122 Leadenhall Street, London, EC3V 4AN<br>+44 (0) 207 086 1891<br>gill.bretherton@aon.co.uk | Andrew Birt, Senior Partner<br>JLT Specialty Ltd<br>Direct Dial : +44 (0)20 7528 4927<br>Mobile : +44 (0)7956 023 333<br>Email : andrew_birt@jltgroup.com |

Other insurance facilities may also be available and promoters should seek independent advice to ensure their liabilities are adequately covered to suit their needs.

Where promoters ask Network Rail to deliver projects and an Implementation Agreement is used, either Network Rail or our contractors will provide the relevant insurance.

# Further Information

If you need further information or have queries regarding the content of this document please follow the various links in the document to Network Rail's website pages, talk to your Network Rail contact or email SubmissionstoCorporateCommercial@networkrail.co.uk

# Appendix A: Enhancing the Network

We maintain details of all the proposed investment schemes with an enhancement element, and their current status, within the route plans we publish as an annex to our annual business plan. We publish these details at least once a year.

There are eight routes and the details for each one can be found by following the links below:

- Anglia
- London North Eastern and Midlands
- London North Western
- Scotland
- South East
- Wales
- Wessex
- Western

In addition Rail Freight is treated on a national basis.

We encourage input into our network planning process through channels which include:

- Route Utilisation Strategies and other route stakeholder groups;
- routine liaison with train operators; and
- direct contact with the relevant route enhancement manager or principal network planner.

We use Route Investment Review Groups as the formal basis for providing further dialogue with train operators about our investment plans.

We also engage separately with other stakeholders to discuss our plans and we have arrangements with freight operators for a national dialogue.

# Appendix B: The GRIP Process

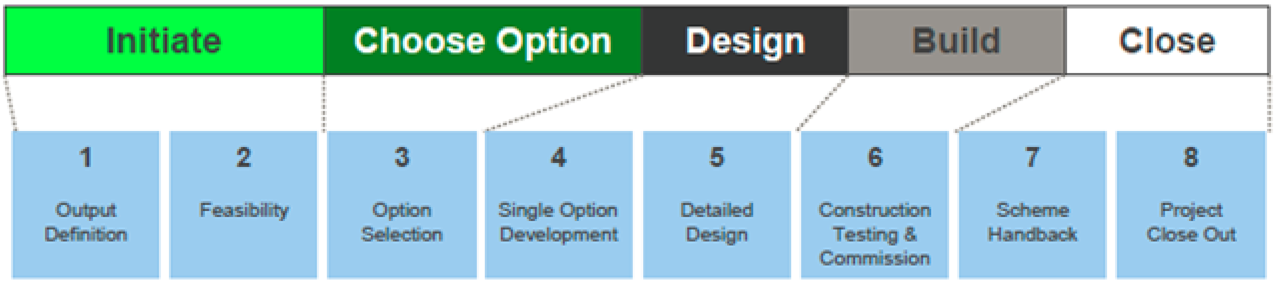
## Network Rail's management and control process for enhancements

In comparison with other industries, working on or alongside an operating rail network adds significant complexity. Work may need to be carried out at certain restricted times, like evenings or weekends, which can mean that even minor interruptions or delays in the work programme can have a significant impact on timescale and costs.

There is also a much greater risk that investment projects will lead to operational disruption. As well as the standard construction risks that affect all sectors of the economy, rail industry enhancement projects are likely to face significant additional risks that can lead to cost overruns in completing the works.

To minimise and mitigate the risks associated with delivering projects on an operational railway, we have developed an approach to managing investment schemes which we set out in GRIP. We base the approach on our own best practice, as well as that of other industries that undertake major infrastructure projects, and major professional bodies including the Association of Project Management. It covers the investment lifecycle from inception through to the post-implementation realisation of benefits:

## Key stages of the investment lifecycle (GRIP Stages)




The lifecycle shows how a project is broken down into eight stages. The overall approach is driven by product rather than process, and each stage needs to deliver an agreed set of products to specific quality criteria.

At each stage of the investment lifecycle, GRIP defines all of the 'products' which could be produced within that stage. Within each GRIP document, the products are summarised in a matrix which lists what could be produced, and at which stage in the investment lifecycle. We hold formal stage gate reviews throughout the investment lifecycle. These reviews examine a project at critical stages in its lifecycle to give assurance that it can continue successfully. The review looks at the completeness of products and assesses the risk associated with any variance or derogation.

All projects are subject to at least four mandatory stage gate reviews during the project lifecycle. At least two reviews take place during the project's development phase, leading to a single option and agreed scope, prior to the award of the detailed design and construction contract. Two other reviews look at scheme handback and project close out. Additional stage gate reviews are undertaken where we carry financial or output risk.

Where a third party carries any of the financial and/or output risk associated with an investment project, then a stage gate review may be held at the end of any stage at the request of the third party to support their investment authorisation processes. In this case, the stage gate review's format and approach stays the same, but may involve the third party's representatives.

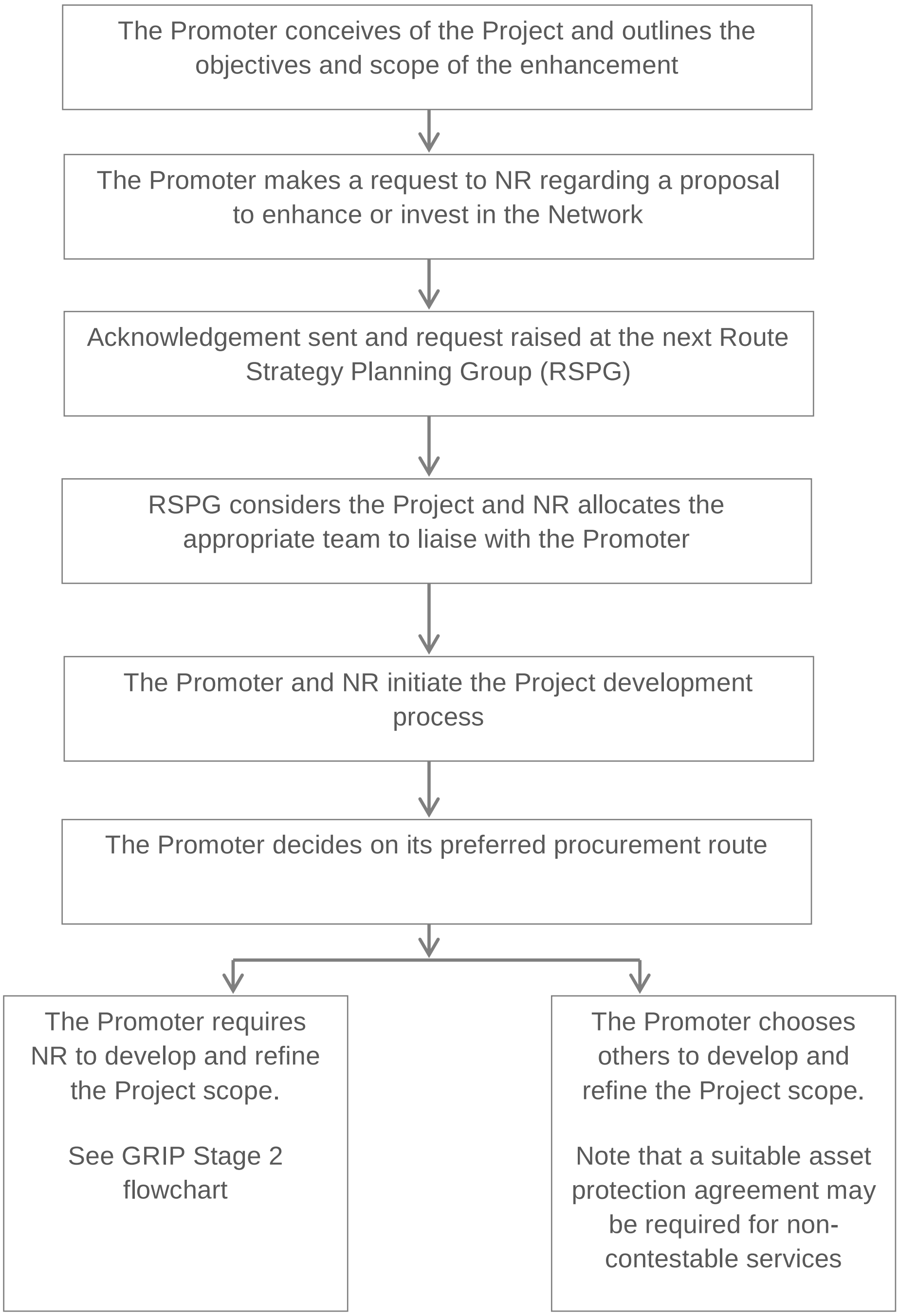
GRIP consists of several Network Rail standards and manuals, including a description of the products that must be produced on an investment project for us to discharge our role as infrastructure controller, operator and maintainer, as well as our asset protection role if a third party delivers the asset change in full or in part.

# Appendix C: Investment Process Flowcharts

The following four charts show an example of the typical steps in the investment process. For brevity they do not show all aspects, variants or alternative methodologies available as the Project moves through the eight GRIP stages.

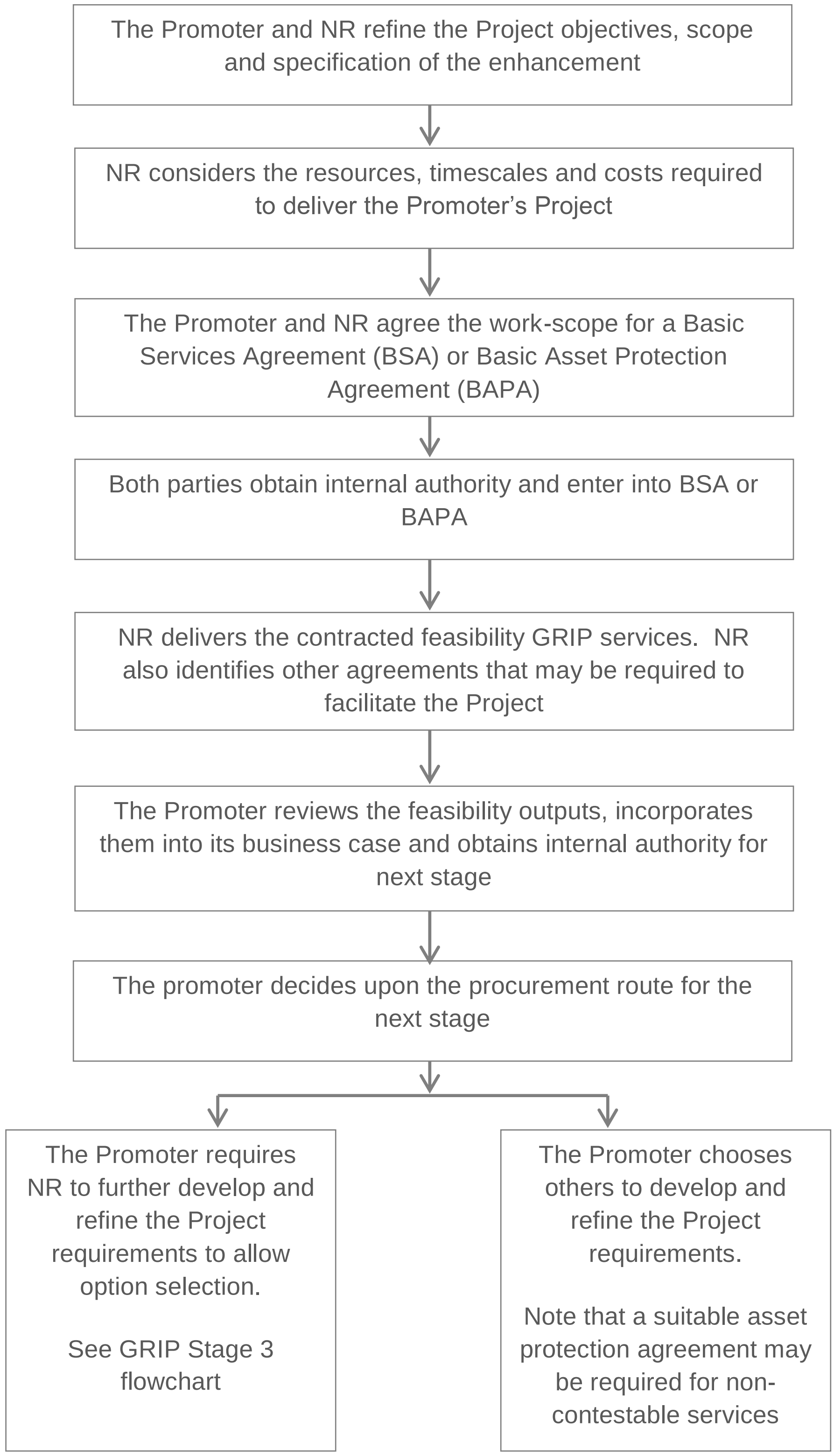
## GRIP Stage 1: Output Definition

Flowchart of the enhancement project ideas, initiation and prioritisation process:



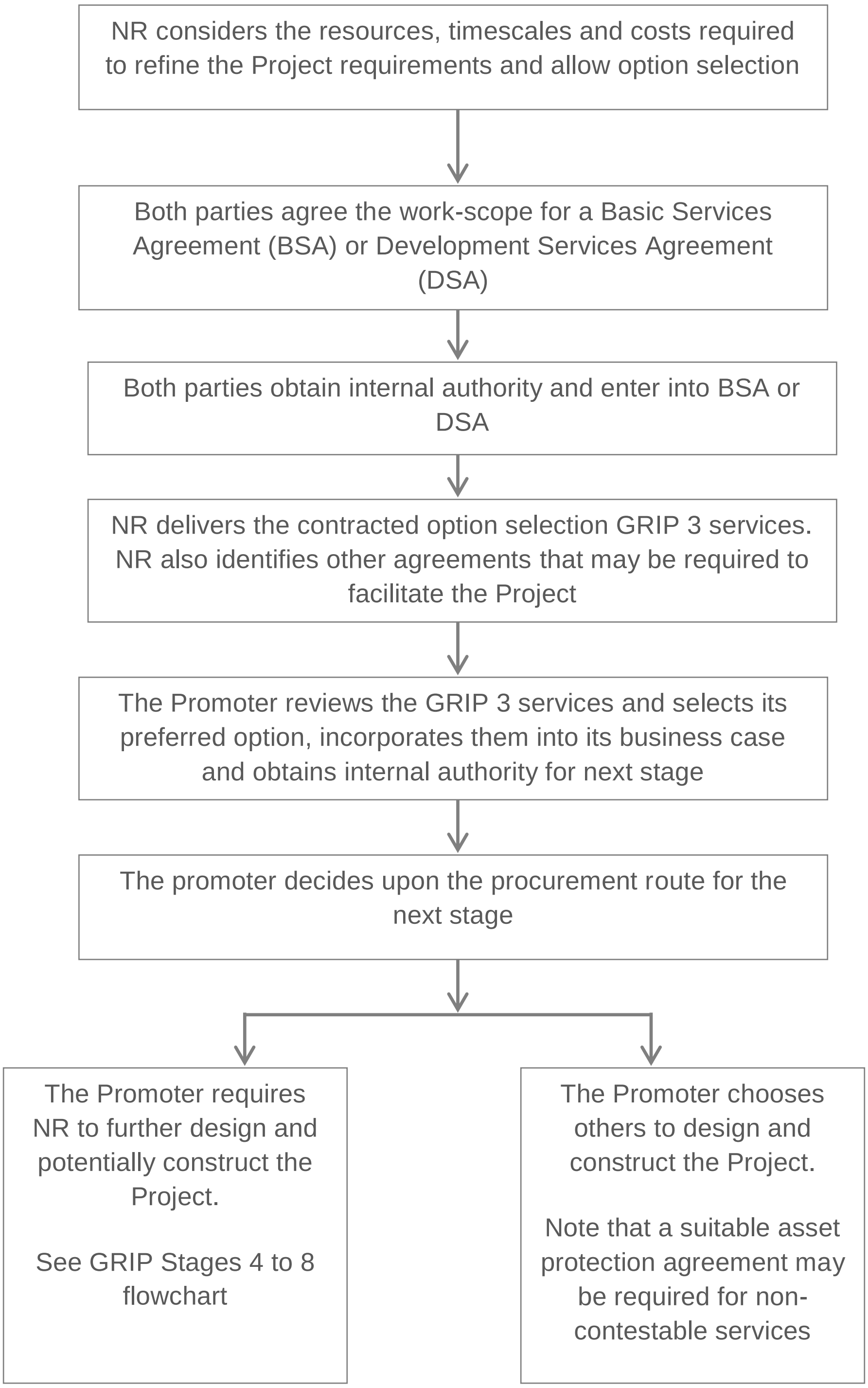
## GRIP Stage 2: Project Feasibility

Flowchart of the initial project development process: Provision of basic services by Network Rail (GRIP stages 1 to 2).



## GRIP Stage 3: Option Selection

Flowchart of the project development process: Provision of development services by Network Rail.




## GRIP Stage 4 to 8: Option Development, Design, Construction, Handover & Close Out

Flowchart of the project implementation process.

Under a fixed or an emerging cost contract with Network Rail, we will provide detailed design, procurement, construction, commissioning and project completion. (GRIP Stages 5 to 8) noting that if we are required to provide a fixed price for the cost of the implementation works, this will generally be contracted from the end of GRIP Stage 5.

NR considers the resources, timescales and costs required to complete option development (and detailed design)

↓

Both parties agree the work-scope for a Development Services Agreement (DSA)

↓

Both parties obtain internal authority and enter into the DSA

↓

NR delivers the contracted DSA services and establishes the cost and timescales to construct the Project

↓

The Promoter reviews the services and construction proposals, incorporates them into its business case and obtains internal authority for next stage

↓

Both parties agree the terms of an Implementation Agreement (IA)

↓

Both parties obtain internal authority and enter into the IA

↓

NR delivers the works, manages the necessary approvals and commissions the Project

↓

The Project is handed over, other applicable agreements take effect (e.g. property transfers, warranties, etc.) and both parties carry out the GRIP stage 8 post-implementation review of the Project

# Appendix D: Criteria for Assessing Promoters' Requirements

The key constraints on our stewardship of the network are:

- funding;
- network access;
- availability of materials, machinery and manpower;
- asset knowledge; and
- our obligations under our network licence and contracts.

These constraints set the context within which we can pursue our objectives and outputs. All of these are permanent constraints: they will always affect our approach to network stewardship.

Promoters' schemes must meet the following criteria:

## Financial constraints

A requirement is regarded as reasonable if it satisfies one or more of the following conditions:

- it can be achieved at no extra net cost to us, including future maintenance or operational liabilities;
- it can be achieved at no extra net cost to us as it forms part of a scheme which we're expected to undertake to renew or enhance the network;
- the promoter commits to pay extra funds, or procure the payment of additional funds to us based on the cost of delivering and financing the enhancement, including a return which is commensurate with the risks we carry; or
- the funding for the expenditure involved is explicitly provided for at an access charges review.

## Compatibility with existing commitments

A requirement is regarded as reasonable if it satisfies all of the following conditions:

- it does not conflict with the existing access rights of other operators, including local output commitments;
- it is not designed to give unfair advantage over other bidders in future franchise negotiations;
- it does not impede our future ability to deliver the published strategy on any route, including performance objectives for that route;
- it is consistent with our regulatory obligations under our network licence, and statutory duties under the Railways Act 2005; and
- we can operate the revised infrastructure or service in a safe and efficient manner which is consistent with our safety case and existing processes and procedures.

Where a proposed scheme conflicts with an existing route strategy, we would consider amending the strategy, subject to discussion with our funders and other operators on the route.

## Deliverability criteria

To avoid diverting resources that we need for the safe, efficient and reliable running of scheduled services, we will consider a requirement as reasonable if it satisfies all of the following conditions:

- the requirement is clearly defined, and its scope and timescale for delivery are realistic;
- the output is measurable, verifying that all parties can agree when delivery has been achieved;
- we have, or can obtain, the necessary resources to implement the scheme;
- network access can be made available; and
- delivering the scheme does not compromise our ability to deliver the existing programme of works on the route.

Notwithstanding the above, where there are constraints on our ability to deliver a scheme we will work with promoters and stakeholders to find ways to relieve these constraints.

Where we are only facilitating the delivery of a scheme, our ability to efficiently contribute to the scheme's delivery will depend on the promoter's adherence to the agreed programme plan as described in the contractual agreement, as well as the management structure and expertise they use to discharge their obligations.

Deliverability constraints will not generally affect the vast majority of schemes that are delivered by a promoter. However, when any scheme is delivered, whether by us or a promoter, we must also take into account the stewardship obligations as set out in our network licence.

For example, this might affect areas where a number of schemes are being proposed at a specific time, such as during the London Olympics. If these schemes make exceptional demands on resources, we may not be able to deliver every scheme at the same time whilst operating our network efficiently.

# Appendix E: Services Provided by Network Rail

The specific type of services we provide to a promoter will depend on the nature of the project and how many services you wish us to provide as against those services being provided by your team. We will consider projects on an individual basis according to the specific requirements and whether it is appropriate to provide a particular service.

The lists below are for guidance only, but outline the services we can provide to a promoter to facilitate an enhancement project

We'll discuss and agree your service requirements and our charges for these services with you before taking action or incurring charges. We will not charge for providing services for which we are already funded.

In broad terms, the services we can provide are:

## Contestable services:

- Project development;
- Design management; and
- Scheme implementation through management contracting.

## Non-contestable services:

- Asset protection;
- Engineering safety management; and
- Provision of asset information and booking of possessions;
- Railway operations, and
- Applications for Network Change (see Appendix G)

## Contestable Services: development, design management and implementation services

Development, design management and implementation services are generally contestable, and are associated with facilitating an enhancement project for a promoter. As well as using our own staff, we may also procure these services from contractors and consultants in our supply chain. The services include:

- Programme management services including:
  - programme management and integration services;
  - project management services;
  - procurement, appointment and management of sub-consultants;
  - quality assurance;
  - logistics and access planning;
  - constructability review; and
  - risk and value management for programme and project.
- Systems integration;
- In-house design studies;
- Maintenance, operation and performance assessments;
- Technical review and validation;
- Advising on the details of relevant maintenance, performance and renewal strategies to assist in the development process
- Timetable development and assessment;
- Developing acceptance criteria and managing the acceptance process;
- Technical and operational assistance;
- Identifying issues related to coordination with other railway projects;
- Network integration and co-ordination services;
- Facilitating access to the network to undertake agreed enabling works;
- Site surveys and other geotechnical investigations;
- Administration and management of rail industry processes;
- Support for applying for, and exercising powers under, a Transport and Works Act Order;

- Compliance checking of statutory and regulatory obligations;
- Facilitating use of statutory consents, including permitted development rights, where appropriate; and
- Property related advice
- Implementation of works through management contracting.

## Non-Contestable Services:

Non-contestable services are associated with protecting the integrity and safety of the rail network. We will facilitate asset protection services, including the following items:

## Access to data:

- Access to company standards, sectional appendix and hazard directory; and
- Access to and provision of drawings, asset data and relevant information about the existing network.

## Asset protection - safety

- Access to the network, including audit and compliance review of project safety management system;
- Agreement of level crossing risk assessments and forwarding to ORR safety directorate for approval;
- Compliance with supplier's licence;
- Acceptance of project safety case through safety review group/rolling stock acceptance board;
- Acceptance of compliance with Network Rail safety and environmental plan;
- Acceptance of proposed changes, including designs, drawings and operational layout safety within engineering safety management processes; and
- Safety directorate at ORR and London Fire and Emergency Planning Authority (LFEPA) acceptance submission, where we are the duty holder.

## Asset protection - engineering safety management

- Acceptance of maintenance regime processes and strategies, including infrastructure maintenance interface strategy;
- Engineering strategy proposals for the application and integration of new technologies, including product acceptance, and forwarding to Her Majesty's Railway Inspectorate for type approval if needed;
- Acceptance of maintainability criteria, performance measures, acceptance criteria, and reliability criteria processes (both project-specific and route-wide); and
- Handback strategy.

## Railway Operations:

- Publication of operating notices;
- Timetable – agreement of appropriateness of development timetable in relation to train service specification;
- Administration of possessions booking;
- Publication of notices under the regulated station change process, network change, or depot change – see Appendix G for further information; and
- Agreements for using existing operational land and railway assets.

# Appendix F: Approval in Principle

Every project reaching the 'approval in principle' stage of the investment lifecycle will be assessed on its individual merits. To give promoters some guidance about reaching the 'approval in principle' stage, we outline below our general assessment methodology and criteria.

The basic concept of an 'approval in principle' derives from Network Rail standard NR/GN/CIV/133. This states that approval in principle requires that 'competent persons are satisfied that appropriate standards have been used in the design, and the scheme selected meets the remit'.

In practice, different companies (including London Underground) have different definitions of when a project has reached the 'approval in principle' stage.

To clarify our position, we deem that the 'approval in principle' stage is relevant when a decision is made to launch a detailed design (GRIP Stage 5) following the selection of a single option for the proposed enhancement.

There must have been sufficient design work to clearly define the project's concept. The design must be detailed enough to make it clear what is intended, and demonstrate that all interfaces between the project and the environment in which the project is to be delivered are identified and addressed with specific action plans. This does not necessarily demand individual designs for the scheme's components.

For example, to obtain an approval in principle for a station platform development, you will need to at least define the length, height, platform ramps, canopies, finishes, lighting levels, stepping distances, and provision of services (electrical supplies and passenger information). At this stage, though, you may not need to detail the design for cable ducts, drains, brackets, building components, fencing – except for, perhaps, the definition of a fence line, or for cable ducts being satisfied that the design provides for an appropriate size of duct, and the ducts to be correctly located in relation to other services for electromagnetic compatibility considerations.

For an enhancement to the rail network infrastructure, approval in principle can be deemed to mean that:

- the design has been assessed by competent people in the relevant disciplines who are satisfied that the design meets with relevant legislation and standards, and they expect it to meet its objectives;
- the competent people are satisfied that the scheme design contains enough information for the detailed design and procurement of the individual elements of the design to proceed safely and effectively; and
- the competent people are satisfied that the design will correctly integrate with other elements of the scheme, and the adjacent environment that the project interfaces with.

As a minimum, the following questions will usually be examined before a scheme reaches the 'approval in principle' stage:

- Have you looked at all the feasible options and found a single preferred option?
- Is the design detailed enough to be clear and unambiguous about what is intended?
- Is the design sufficiently detailed that it is clear that the design is fit for purpose, by comparison with the requirements the design is to meet?
- Have you considered the relevant legislation and other applicable standards in the scheme's design? And is the competent person satisfied that the design complies with the legislation and standards?
- Is the competent person satisfied that the design is adequate to start the detailed design of individual components and assemblies?
- Is the competent person satisfied that the separate elements of the scheme design will, when brought together, have the required functionality and meet applicable legislation and standards. Will they also address interface issues between the project and adjacent buildings and systems?
- Are the residual risks from the scheme's design demonstrably as low as reasonably practicable? Is there a complete and adequate risk register available

- to those who will carry out the detailed design, construction, testing and commissioning?
- Have suitably qualified persons carried out the design, and have they followed an established design process?

Please note that NR/GN/CIV/133 places the responsibility on Network Rail to assess the competence of designers and engineers. We need to be satisfied that they understand their responsibilities, and that these responsibilities have been expressed and agreed in writing.

# Appendix G: Risk Management

Promoters' projects place additional responsibilities upon Network Rail to deliver development and design services, asset protection services and works for which it is not funded by the DfT. The template agreements frame the balance of risk and responsibility as between Network Rail and the promoter and introduce two risk funds to deal with Network Rail's contractual risks (the Network Rail Fee) and those risks systemic to the rail industry (the Industry Risk Fee).

## Network Rail Fee

The Network Rail Fee (NRF) covers our potential contractual liabilities to the promoter. For each type of agreement we charge a set fee as detailed in Table 1 at the end of this Appendix which reflects the different risk profile in each template.

We pool all Network Rail Fees to meet claims for contractual breach and negligence which are substantiated and cap our liability at the level of the value of the works and/or services being provided (or £100k whichever is the higher), although liability for death, personal injury and fraud is uncapped. This cap on liability for breach and negligence applies to both emerging costs and fixed price agreements. However, subject to the usual qualifications, in the case of fixed price implementation arrangements, there would be no cap in respect of our obligation to deliver the works or services for the agreed fixed price.

## Industry Risk Fee

The Industry Risk Fee (IRF) provides appropriate funding support for industry risks. Typically these are the low probability, high impact risks specific to rail industry conditions. For each agreement type we charge an IRF as indicated in Table 1 below. Again, we pool these Industry Risk Fees to meet relevant industry risk claims when they arise.

The IRF covers two broad categories of risk for the promoter:

1. risks which are typically regarded as 'employer' or 'government' risks in a traditional project financing or Private Finance Incentive (PFI) transaction (for example, mandatory changes resulting from a change in the law peculiar to the rail industry, or changes to railway safety standards); and
2. risks relating to events arising elsewhere on the network which have an impact on:
    - the project which results in disruption to the works (for example, a late running disruption caused by a safety critical event), and
    - the network itself where, due to the project's existence, that impact is greater than it would otherwise be.

In the event of a liability arising from an industry risk where the resultant costs are more than £10k, these costs would fall to the IRF and not to the promoter.

## Relief Events

The contractor, whether they're appointed by us or by you, will be reimbursed for the increased costs (excluding indirect costs) reasonably and properly incurred as a result of a Relief Event which causes delay or disruption to a project.

The categories of Relief Event are:

- network operation issues;
- cancellation and alteration of possessions due to events outside the control of the project team; and
- the impact of interfacing projects.

The contractor has the usual duty to mitigate such costs to give an incentive for appropriate behavior but the balance of liability will fall to us, and we will recover any compensation we pay from the IRF.

This assumes that in each case neither Network Rail, the promoter nor the contractor is at fault.

## Mandatory Variations

After approval of the works at GRIP Stage 4, if the works need to be varied as a result of any change in law or legal requirement expressly applying to the railway industry or the railway works, or as a result of changes railway safety standards, such costs would fall to us, and we will recover any compensation we pay from the IRF.

## Network, Station or Depot Change

You will need to pay for costs associated with any network, station or depot change, or any closure processes. This cost can be uncertain and an estimate of the value may be made and a cap agreed. If so, your liability for costs above this limit would be treated as an industry risk.

## Land and Noise Claims

Claims made against us at common law or pursuant to the Land Compensation Act 1973 or any regulation made pursuant to that Act which is attributable to the design, carrying out, completion, operation or existence of any works which become a Network Rail asset.

These claims are in respect of nuisance and the diminution of property values due to the implementation of the scheme. Whilst this is a promoter risk, where an estimate of the value has been made and a cap agreed, your liability for costs above this limit would be treated as an industry risk.

## Bankruptcy/Insolvency of promoter

Irrespective of the diligence applied to assess creditworthiness of the promoter and steps taken to obtain surety, there's always a possibility of insolvency or bankruptcy. In this event, particularly where the scheme is under way, the cost of termination or completion may require some additional funding above any surety. Given that by definition the promoter would be unable to pay such costs in full, and that such funding was not part of the original cost forecast, the funding shortfall would be funded through the IRF.

# Table 1

| Type of agreement | Network Rail Fee | Industry Risk Fee |
|---|---|---|
| Basic Services Agreement (BSA) | Fee is equal to 5% of the aggregate of the agency costs, consultants' and contractors' costs and personnel costs, as estimated at the scheme commencement date. | Not Applicable |
| Development services agreement | Fee is equal to 5% of the aggregate of the agency costs, consultants' and contractors' costs and personnel costs, as estimated at the scheme commencement date. | Fee is equal to 2% of the project cost, which is the estimated total cost of the project up to the completion of the current stage of development contracted for. |
| Basic implementation agreement (emerging cost) | Fee is equal to 5% of the aggregate of the agency costs, consultants' and contractors' costs and personnel costs, as estimated at the scheme commencement date. | Fee is equal to 2% of the aggregate of the agency costs, consultant's and contractors' costs and personnel costs. |
| Implementation agreement (emerging cost) | Fee is equal to 5% of the aggregate of the agency costs, consultants' and contractors' costs and personnel costs, as estimated at the scheme commencement date. | Fee is equal to 2% of the aggregate of the agency costs, consultant's and contractors' costs and personnel costs. |
| Basic implementation agreement (fixed price) | Fee is equal to 13% of the aggregate of the agency costs, consultants' and contractors' costs, personnel costs and QRA (risk assessment for any variation undertaken at a P50 probability in respect of the risks owned by Network Rail or capped to the promoter), as estimated at the scheme commencement date. | Fee is equal to 2% of the aggregate of the agency costs, consultants' and contractors' costs, personnel costs and QRA (risk assessment for any variation undertaken at a P50 probability in respect of the risks owned by Network Rail or capped to the promoter). |
| Implementation agreement (fixed price) | Fee is equal to 13% of the aggregate of the agency costs, consultants' and contractors' costs, personnel costs and QRA (risk assessment for any variation undertaken at a P50 probability in respect of the risks owned by Network Rail or capped to the promoter), as estimated at the scheme commencement date. | Fee is equal to 2% of the aggregate of the agency costs, consultants' and contractors' costs, personnel costs and QRA (risk assessment for any variation undertaken at a P50 probability in respect of the risks owned by Network Rail or capped to the promoter). |
| Asset protection agreement (including basic) | Fee is equal to 10% of the aggregate agency costs, consultants' and contractors' costs and personnel costs, as estimated at the scheme commencement date. | Fee is 2% of the total estimated costs of the project up to its completion, including construction costs, contractors' costs, regulated change costs and Network Rail costs. |

# Appendix H: Regulated Change Processes

## The Network Change process

Before undertaking any proposed changes to the rail network, Network Rail (or a train operator if they are sponsoring the change) must follow the Network Change consultation process. This is a formal process which allows a proposer to seek agreement from all affected parties that the change may go ahead, and to agree what compensation (if any) will be paid to cover the impact of the change.

A Network Change must take place on a piece of the network that we own and can be either:

- Physical – like carrying out a piece of enhancement work on the infrastructure; or
- Operational – like a change to the permitted speed on a line which will last for more than six months.

In both physical and operational cases, the change must materially affect the network's operation or the operation of trains on the network to be a formal Network Change. This materiality test is a subjective test which varies in different circumstances. When confronted with the question on whether it is a material change or not, ask yourself if the change will mean that the train driver will do something different. If so, it might be a Network Change.

Only Access Parties (parties with a Track Access Contract) can propose a Network Change. If a third party wishes to do so, they must secure the agreement of an Access Party (Network Rail or a train operator) to sponsor the change. In our case, we'll always need an Asset Protection Agreement with the proposing party and, through the Asset Protection Agreement, Network Rail will normally seek reimbursement for the compensation costs that Network Rail will need to pay any Access Beneficiary as a result of the work that a sponsor will do on our network.

We set out the consultation process in Part G of the Network Code but before the formal consultation, we advise the sponsor to carry out an informal consultation with anyone who might be affected by the proposed change. This is important so there are 'no surprises' when the formal consultation period begins.

Formal consultees are:

- any Access Beneficiary (including freight and passenger operators) affected by the proposed change;
- DfT;
- ORR;
- each passenger transport executive that may be affected by the proposed change;
- Transport for London if it is affected by the proposed change; and
- Transport Scotland if it is affected by the proposed change.

The sponsor must then produce a formal Network Change notice which we will distribute to each consultee.

We'll then put a summary of the notice on our website, along with the formal responses we receive.

The Network Code specifies that for changes we propose, consultees must have a minimum of 30 days to respond. For changes proposed by an Access Beneficiary, this must be a minimum of 60 days. However, we might extend these deadlines for large, complex or far-reaching proposals.

If the project is complex and involves changes to the network or consequential changes to vehicles, then the complex procedure could be used.

When responding to a proposed Network Change, only Access Parties are entitled to accept or reject the change and, if applicable, claim compensation (see below).

Non-Access Party consultees like Passenger Transport Executives can only comment on the proposal, although they can refer any disputes to the ORR for determination.

Reasons for rejection include:

- there is inadequate information about the proposal;
- the proposed change would breach an access contract between Network Rail and an operator;
- implementing the change would result in a material deterioration in the performance of a train operator's service which they couldn't be adequately compensated for
- the proposed change does not consider the Access Beneficiary's reasonable expectations for future use of the relevant part of the network; and
- a change proposed by a train operator may also be rejected if it would result in an adverse effect on the maintenance or operation of the network.

Alternatively, Access Parties may accept the change.

In either case, Access Parties can claim compensation to cover the consequences of the proposed change.

Such compensation should be:

> *'an amount equal to the amount of the costs, direct losses and expenses (including loss of revenue) which can reasonably be expected to be incurred…' (Condition G2.2) taking into account any 'benefit (if any) to be obtained or likely in the future to be obtained' (Condition G2.3).*

However, please note that, compensation for disruptive possessions is paid according to Schedule 4 of the Track Access Contract.

It is the sponsoring party's responsibility to work through any issues raised during the consultation process so there are no outstanding objections. If this means changing the network change proposal, this must be formally advised to all consultees, who must be given adequate opportunity to consider the revision and provide any comments, rejections or acceptances.

The Network Change proposal may only be implemented if:

- there are no outstanding objections; and
- the parties have agreed either the compensation payable, or agreed on the methodology for determining the amount.

Upon approval we will write to all consultees and publish the change on our website. We are then either entitled or required (according to whether the change was proposed by us or a train operator) to implement the Network Change.

Any Access Party involved in a Network Change consultation is entitled to refer an unresolved disagreement to the access disputes panel under the specific rules in Part G and in the access dispute resolution rules (in the annex to the Network Code). There is a further right of appeal to the ORR if any party to an access dispute panel dispute is dissatisfied by the determination. Such an appeal should adhere to the rules in part M of the Network Code.

## Station change

The station change procedure is for when a development entails changes to a station lease area, physical or operational changes to a station, or changes that affect the content or drafting of Station Access Conditions and Annexes.

This is a procedure governed by the regulated 'station access conditions' for each station. At franchised stations the conditions are part of the station leases granted by Network Rail, and in the access arrangements between the train operator tenant and other train operators who use the station. At stations we manage the arrangements apply directly between us and the station users via the access agreements which also bind the user into the managed station access conditions.

Under the station change procedure, a change proposal can be promoted by us, by any train operator or by a third party where they are investing over £50,000 capital expenditure on the enhancement or alteration of the station in connection with related schemes of development or regeneration. A third party's right to promote a station change was introduced in the revised station access conditions issued by ORR in November 2013. The procedure involves consultation by the party promoting the change with the other station users, and generally also the DFT or TS, and the ORR. This type of station change is always a Material Change proposal.

If changes are to be made to a station, the regulatory requirements are satisfied by making a Station Change Proposal, securing approval of all relevant parties and registering the approved change with the ORR. For a detailed definition of a 'Change' please see the National Station Access Conditions 2013. The specific definition is found on page 6 in the Definitions section. For Managed Stations refer to the Independent Station Access Conditions 2013 - Page 7 .

The National Station Access Conditions 2013 (NSACs) and Independent Access Conditions 2013 (ISACs) also introduced new types of station change proposal where the type of Change Proposal required is determined by the nature of the physical works and/or by the materiality of the impact of the Change Proposal on the operators at the Station. There are three types of Station Change: Non-Discretionary Change, Notifiable Change and Material Change. There is also a specific definition of Exempt Activity that does not require a Station Change. For a definition of each type of Change Proposal refer to the National Station Access Conditions 2013 for franchised stations. The definitions of each type of change can be found on pages 17 – 19 and the change procedures are contained within Parts B and C of the National Station Access Conditions. For Managed Stations see the Independent Station Access Conditions 2013. The definition of each type of change is on pages 16 – 19 and the change procedures are contained within Parts 2 & 3.

The selection of the correct type of Change Proposal is important for the change proposer as it has cost and time implications for the project - payment of costs and compensation to affected parties may be required but is not a requirement of all types of Station Change Proposal. Additionally, consultees may challenge the type of change proposal put forward if they disagree and this can cause project delays in resolving the dispute and potentially issuing a new change proposal as a different type of change.

Projects involving extensive physical works will usually fall within the definition of a Material Change Proposal and all station change proposals promoted by third parties must be issued as Material Change proposals. Under a Material Change Proposal, consultees will either be qualifying or non-qualifying consultees, depending upon the financial impact upon them of the Change Proposal. Under this type of change, all qualifying consultees must approve the proposal and the proposer is required to offer to enter into a templated Cooperation Agreement with each qualifying consultee. The Cooperation Agreement sets out how the parties will co-operate during the project and includes a financial undertaking from the promoter of the Change dealing with the payment of compensation to each qualifying consultee to cover the net costs and losses they will incur as a direct result of the change proposal.

Additionally, the proposer of a Material Change must provide a Relevant Undertaking to all qualifying consultees which provides the detail of the indemnity and/or insurance it is putting in place to ensure appropriate compensation is available to cover any costs or losses incurred if the development is not implemented in accordance with the terms of the original Material Change Proposal.

In the circumstances where Network Rail agree to issue the Station Change Proposal on behalf of a promoter, the indemnity costs arising from the Financial Undertaking within the Co-Operation Agreement and from the Relevant Undertaking need to be built in to the business case for the proposal. In cases where Network Rail agree to promote the change on behalf of a promoter who otherwise qualifies to promote the change in their own right, Network Rail will recover all associated costs and compensation payments incurred as a direct result of promoting the change from the promoter.

Station Changes require the approval of the ORR where consequential amendments are required to the station access agreements with users of the station, or, where the change proposal is likely to materially diminish the number of passengers or trains that are able to use the station for a period in excess of 28 days. However, ORR approval is not required where the change proposal falls within one of the general approvals, which are pre-approved amendments to a station, for example, adding facilities to station amenities. Where the general approvals don't apply, a specific approval will be needed. This requires the station change promoter to approach the ORR for specific approval. For more information see General Approval (Stations) 2013.

All types of station change, once approved by consultees, must be registered with and, where falling outside of the general approvals, be approved by the ORR in advance of any works starting, or the station change will lapse and no longer be valid, requiring a new change proposal to be circulated and approved.

For further information on the station change procedures please refer to ORR Template Documentation

## Depot change (Light Maintenance Depots)

The procedure for depot change was not updated in 2013 by the ORR but does have some similarities to the station change procedure

Depot change is required when a development entails changes to a depot lease area or physical or operational changes to a light maintenance depot or changes that affect the content or drafting of Depot Access Conditions and Annexes.

The depot change procedure is governed by the regulated 'depot access conditions' for each light maintenance depot which form part of the depot leases granted by Network Rail, and in the access arrangements between the depot operator tenant and other passenger service operators who use the depot.

Under the depot change procedure, a change proposal can be promoted by Network Rail, or by the Depot Facility Owner, or any User at that Depot. At the moment, third parties can't promote such proposals. The procedure involves consultation by the party promoting the change with the other depot users, and generally also the DFT or TS, and the ORR.

A proposal for change to a depot must be sent to the Depot Facility Owner to distribute to the consultees; being all users of the depot, Network Rail and the DfT/Transport Scotland as franchising authority. A minimum period of 45 days is given for the users and Network Rail to submit an objection in relation to the proposal. A change proposal is deemed to have been accepted at the expiry of the 45 days period if none of the users nor Network Rail have issued an objection. DfT/Transport Scotland is a consultee but it does not have to give consent under the depot change procedure.

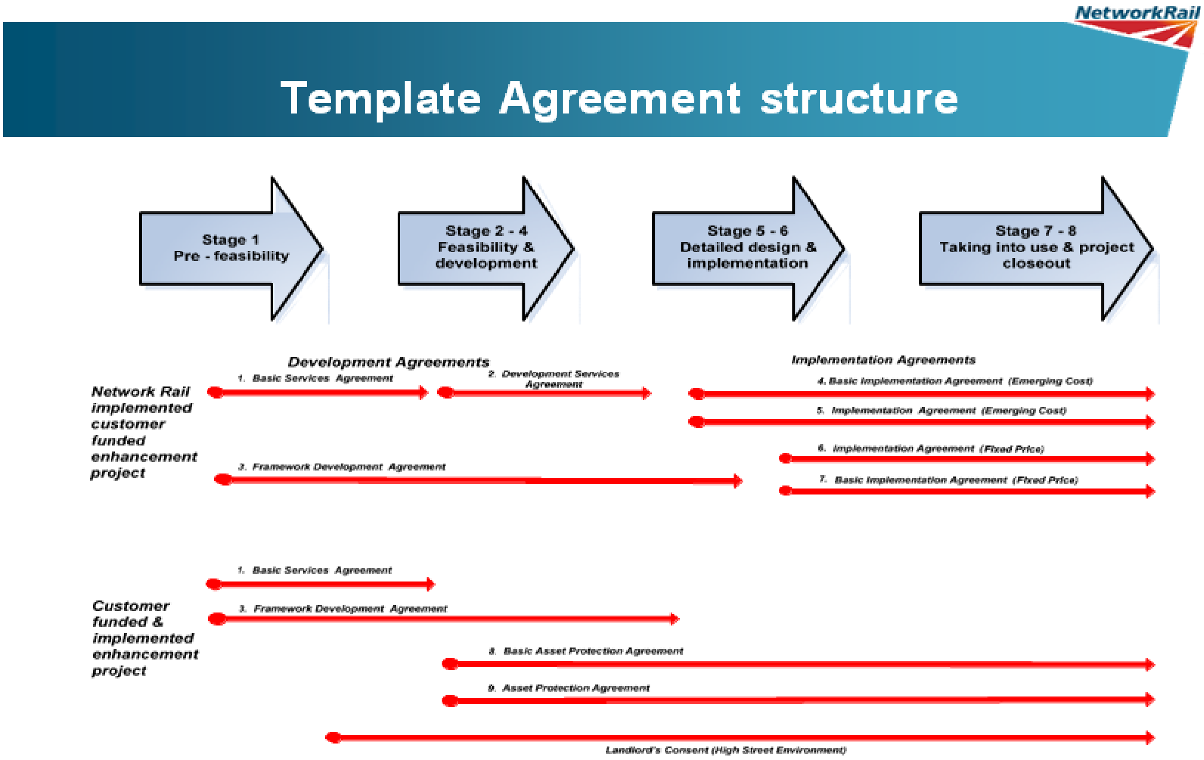
Depot Changes require the approval of the ORR where consequential amendments are required to the depot access agreements with users of the depot, or, where the change proposal is likely to materially and adversely affect the capacity of the depot in relation to the provision of light maintenance services for a period longer than 28 days. However, ORR approval is not required where the change proposal falls within one of the general approvals, which are pre-approved amendments to depots and the contractual documentation. Where the general approvals do not apply, a specific approval will be needed. This requires the Depot Facility Owner to approach the ORR for specific approval. For more information see General Approval (Depots) 2013.

Most Network Rail promoted change proposals need unanimous consent or lack of objection from users. Additionally Network Rail is required to offer an indemnity to each "Relevant Operator" offering to compensate for the material adverse effect on their existing and future business. Such indemnity costs need to be built in to the business case for the proposal.

For further information on all of the above refer to the Network Code and particularly Part G of the code at:

http://orr.gov.uk/rail/access-to-the-network/the-network-code

# Appendix I: Template Agreement Structure




This flow chart illustrates the correct agreement to use depending on the specifics requirements of the promoter and the stage in the lifecycle of the project.