

MUNICIPAL YEAR 2015/2016 REPORT NO.

ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

PORTFOLIO DECISION OF:
Cabinet Member for Economic
Regeneration & Business Development

REPORT OF:
Director – Regeneration and
Environment

Agenda – Part:

KD Num: 4157

**Subject: New Homes Bonus Programme-
supporting skills, training,
apprenticeships, high streets and local
businesses**

Wards: All

Contact officer and telephone number:
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1. EXECUTIVE SUMMARY

- 1.1 Enfield Council has been awarded £1,082,824 of New Home Bonus funding from the Growth Deal for London for the period 2015-2017.
- 1.2 A programme of 3 projects have been developed namely,
- An Apprenticeship Training Association for the Construction and Logistics Sectors.
 - Business Sector Forums- Development and Expansion.
 - High Streets – Improvement of shop fronts in Enfield Town and Ponders End.
- 1.3 The projects will align with the current regeneration programmes in the borough to provide training and apprenticeship opportunities in key sectors such as construction improve and expand stakeholder engagement in the sector forums and refurbish shop fronts in our target high streets in particular Enfield Town and Ponders End.

2. RECOMMENDATIONS

It is recommended that the Cabinet Member for Economic Regeneration and Business Development approves:

- (i) the acceptance of the New Homes Bonus grant and the programme of 3 key projects from 2015 to 2017 amounting to £1,082,824 and
- (ii) that LBE enters into a grant agreement (s) with the Greater London Authority for the grant funding.

3. BACKGROUND

- 3.1 The Growth Deal for London made provision for £70m of New Homes Bonus (NHB) funding to be used by London's boroughs on projects to support the London Enterprise Panel's Jobs and Growth Plan.
- 3.2 The NHB is a non-ring fenced revenue grant to local authorities calculated broadly on the number of homes built in each local authority. All local authorities contributed a proportion of this funding to the £70m in proportion to their share of the total NHB allocation across London in 2015-16.
- 3.3 London boroughs were requested to develop and submit proposals against 7 priority themes for spending their portion of the £70m. The themes were as follows:
- Apprenticeships, Skills and Training
 - Business Support
 - Digital, Creative, Science and Technology
 - High Streets
 - Places of Work – Suitable and Affordable Workspaces for SMEs
 - Resilience and Low Carbon
 - Unlocking Development
- 3.4 Enfield submitted bids against three priority themes in the autumn of 2014 namely,
- Apprenticeships, Skills and Training
 - High Streets
 - Business Support

The bids were successful and Enfield was awarded a total of £1,082,824 from 2015 to 2017.

3.5 The Enfield NHB Programme of Projects

The Enfield NHB programme of projects is detailed below:

3.5.1 Apprenticeship Training Association for the Construction and Logistics Sectors.

The Council will engage with business and young people, matching current students of construction related courses and individuals experiencing barriers to employment with local construction firms. It would also have a remit for identifying apprentices interested in pursuing a career in driving jobs as part of the logistics sector (see Table 1 below).

Table 1

Outputs		Timeframe	NHB Revenue funding
Apprenticeship starts	105	April 2015 to March 2017	£292,000
Sustained for 12 months	84		
Individuals engaged with Workshops	100		
Sustained referral to job brokerage	40		
Business Supported	30		

3.5.2 High Streets

Physical improvements to a number of shop fronts within Enfield Town and Ponders End within the London Borough of Enfield. Improvements will target ground floor retail units of independent retailers as part of a block so that they contribute to the quality and appeal of the borough's high streets (see Table 2 below).

Table 2

Outputs		Timeframe	NHB Funding	
Ground floor shop front improvements completed	21	January 2015 to March 2017	Capital	Revenue
Apprenticeship starts	5		£440,000	£60,000
Estimated improved commercial space	1260m2			
SMEs supported	21			
% increase in local supply chain sourced perishable goods	5%			
FTE jobs safeguarded based on 3 FTE employees per independent retailer	63			
Increase in footfall within targeted areas	5%			
Voids in target areas reduced	From existing average of 25% to London average of 8.1%			

In addition to the NHB funding £80,000 of LBE Capital funding has been identified as match for the scheme.

3.5.3 Business Sector Forums- Development and Expansion

The scheme is focused on the creation of sector forums for the food and the logistics sectors. It is intended that over the course of 2 years to grow these new forums and expand the 3 existing forums to include all relevant stakeholders , and look to make the work sustainable by leveraging additional funds from businesses involved and other sources of funding. The scheme will also focus on sector specific promotion of business in Enfield (see Table 3 below).

Table 3

Outputs		Timeframe	NHB Funding	Revenue
Jobs created	40	April 2015 to March 2017	£290,824	
Jobs safeguarded	60			
Businesses assisted	100			
New business support models developed	3			

4. ALTERNATIVE OPTIONS CONSIDERED

There are no alternative options comparable to the scale of the NHB programme available at this time.

5. REASONS FOR RECOMMENDATIONS

- 5.1 This NHB funding enables the Council to leverage in substantial funding to support the further development of apprenticeships as well as support small and medium enterprises in our high streets as well as in growth sectors such as construction.

6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS

6.1 Financial Implications

- 6.1.1 Enfield Council has been awarded £1082.8m of New Home Bonus (NHB) top slice funding (NHB LEP programme) for the period 2015-2017.
- 6.1.2 The New Homes Bonus is a Government scheme which is aimed at encouraging local authorities to grant planning permissions for the building of new homes in return for additional revenue. In 2015/16, London boroughs will see £70 million of their New Home Bonus (NHB) top sliced and spent according to priorities set by the London Enterprise Panel (LEP).
- 6.1.3 New Homes Bonus for 15/16 will be paid in advance to Enfield in four equal quarterly instalments by the DCLG. However, rather than collect the top slice grant for the NHB LEP programme and pay back, the GLA proposes to give effect to these transactions through book entries.

Schemes	Grant Approved	Time Frame	Match Funding	Funding Split
	£000		£000	
Apprenticeships, skills and training	292.8	April 2015 - March 2017		Revenue
Business Sector Forums - Development and Expansion	292	April 2015 - March 2017		Revenue
High Streets	500	January 2015 - March 2017	80	440,000 Capital 60,000 Revenue
Total	1,082.8		80	

£80k match funding for the High Street scheme will be funded from Council reserves.

- 6.1.4 There are various conditions attached to the grant .The Council can use the Funding only to meet the Project Objectives in relation to the project in accordance with the grant agreement with the GLA. The GLA can reduce, suspend or withhold funding or ask to repay it if the council is in breach of any conditions or fails to deliver the Project or meet the Project Objectives / Milestones
- 6.1.5 The management, financial and monitoring arrangements for running the programme will be subject to the terms and conditions of an agreement between the GLA and Enfield Council, It is important that the funding agreement is drafted so as to minimise the risk to the Council.
- 6.1.6 The relevant capital and revenue expenditure forms will need to be certified and submitted to the GLA quarterly as part of the monitoring arrangements. It must be noted that systems would need to be set up to ensure good documentation is maintained to support quarterly submissions. This will need to be closely monitored to ensure compliance with the grant criteria.
- 6.1.7 Any future proposals arising, with cost implications would need to be subject to separate reports and full financial appraisal

6.2 Legal Implications

- 6.2.1 The Council has the general power of competence under Section1(1) of the Localism Act 2011 to do anything that individuals may generally do provided it is not prohibited by legislation. There is no express prohibition,

restriction or limitation contained in a statute against use of the power in this way.

- 6.2.2 The Council must comply with its contract procedure rules (CPR)
- 6.2.3 The Council must comply with its obligations with regards to obtaining best value under the Local Government (Best Value Principles) Act 1999.
- 6.2.4 The value of the grant exceeds £250k therefore the Council must comply with Key Decision Procedure.
- 6.2.5 All legal agreements arising from the matters described in this report must be approved by the Assistant Director of Legal Services.
- 6.2.6 The Council must comply with the terms of the grant agreement with the GLA.
- 6.2.7 The Council must be mindful of state aid rules. In good time before seeking to grant any state aid the Council should seek the advice of Legal Services to ensure that any available state exemptions are applied.

6.3 Property Implications

There are no property implications identified at present.

7. KEY RISKS

- 7.1 The key reputational risk identified is the delay in the commencement of the overall programme. There have been delays in the Greater London Authority process of approvals and release of documentation. Negotiations are underway with the GLA to clarify and confirm the exact timeline before funding agreements are issued for ratification by Enfield.
- 7.2 Delays to the delivery of the programme could also affect the ability of the Council to drawdown the funding within the current timetable. Negotiations with the GLA will focus on confirming the timelines and securing extensions where necessary.
- 7.3 Details of specific delivery risks for each project in the programme will be set out in separate operational reports.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

The programme of projects will provide vital support and partnership between the Council and local businesses as well as increase the opportunities for local residents to obtain apprenticeships and employment.

8.2 Growth and Sustainability

The programme provides strong support to business growth and protection as well as enhancement of the high streets at Ponders End and Enfield Town. This will safeguard employment as well as create new jobs for local people to access. The programme could improve inward investment through strong partnering relationships between the private and public sectors especially with regard to business intelligence information.

8.3 Strong Communities

The programme will support local business growth and thereby increase the opportunities for local residents to obtain employment within the borough. The programme will improve the economic and social well-being of our local population through job and business opportunities.

9. EQUALITIES IMPACT IMPLICATIONS

- 9.1 Corporate advice has been sought with regard to equalities and an agreement has been reached that an equalities impact assessment is neither relevant nor proportionate for the approval of this report to access grant funding.
- 9.2 The programme will expand the opportunities available for local residents particularly from our deprived neighbourhoods, to access apprenticeships, employment and start up or expand their small businesses. Greater equality of opportunities will result from the support to the local economy that this substantial programme will provide.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

The programme will be performance managed using the Council's well established project and performance systems namely Verto for the High Street capital scheme and Covalent for the Apprenticeship Training Association and Business Sector Forum revenue based projects.

11. HEALTH AND SAFETY IMPLICATIONS

No health and safety implications have been identified at present.

12. HUMAN RESOURCES IMPLICATIONS

The programme will require project managers to deliver each project in the programme as well as programme management. These resources will be found from the current establishment in the Business and Economic Development service.

13. PUBLIC HEALTH IMPLICATIONS

The programme will have a positive impact on the economic well-being of the high streets of Ponders End and Enfield Town Enhancing shop fronts and increasing footfall will make the high streets more attractive and increase trade and job opportunities. The increased opportunities for local residents of all ages from deprived neighbourhoods to access employment and apprenticeships will improve social and physical well-being.

Background Papers

- Briefing Note to CMB: London Borough of Enfield- Submission to New Homes Bonus 'Top Slice' 22.10.2014
- GLA letter to James Rolfe, Director of Finance and Information Services – New Homes Bonus Funded LEP Programme 15.04.15

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Background Papers

MUNICIPAL YEAR 2015/2016 REPORT NO.

ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

OPERATIONAL DECISION OF:
Ian Davis, Director – Regeneration
and Environment

Agenda – Part: 1

KD Num: 4033

Subject: Meridian Water: Angel Road Station
– signing the Development Services
Agreement (DSA) with Network Rail.

Wards: Upper Edmonton

Contact officer and telephone number: John Baker 020 8379 4009
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1. EXECUTIVE SUMMARY

- 1.1. New rail infrastructure is crucial to unlocking the potential of over 8,000 new homes and 3,000 jobs at Meridian Water and the new Meridian Water station ("the Station") is the corner stone of the redevelopment.
- 1.2. The Station (which is partly funded by the Council through Network Rail [NR]) is an integral part of the STAR scheme and NR (as the owner and delivery body) is coordinating the contracting and funding from each stakeholder.
- 1.3. NR requires each of the funding parties to enter into contracts for two distinct stages of investment. Stage 1 is the funding for the detail design and final costing (in the form of a Development Services Agreement [DSA]) and Stage 2 is for the funding for the construction delivery (in the form of an Implementation Agreement [IM]).
- 1.4. This is the first delegated approval sought since the cabinet meeting on 11 March 2015, which approved investment in the Station. In signing the DSA, the Council will commit to investing up to £831,000 between now and March 2016. NR shall use the investment contributions to complete the station design (which forms part of the STAR rail infrastructure upgrade) to a point at which it can then enter into a formal agreement to start construction of the Station.

2. RECOMMENDATIONS

- 2.1 It is recommended that the Director, Regeneration and Environment and Director of Finance, Resources and Customer Services authorise the entering into the Development Services Agreement (DSA) included at Appendix A.

3. BACKGROUND

- 3.1 Angel Road station is currently located to the North of the A406 and is only accessible from Conduit Lane via a number of stairs and a long pathway running adjacent to the existing Metals and Waste facility. There are no lifts or at level access to the station and access is poorly lit.
- 3.2 The station is regarded as one of the least accessible in Greater London and currently scores a lower Passenger Transport Accessibility Level (PTAL) 1. It will be necessary to increase PTAL to at least level 3 to achieve the levels of development density set out in the masterplan.
- 3.3 A step change is therefore required to achieve the regeneration objectives for Meridian Water, and to benefit the wider Edmonton community. The cornerstone of the masterplan is the Station and its connectivity to the west with the development of the recently acquired National Grid site at Willoughby Lane and to the east using the Boulevard to link to new residential and commercial zones.
- 3.4 The STAR scheme will deliver a third track between Angel Road and Lee Bridge stations, providing a dedicated track and 2 trains per hour between Stratford and Angel Road. The Station will cumulatively obtain the desired 4 trains per hour with improved train frequency stopping. This will then provide the “walk-on” train service to support the initial MW housing growth.
- 3.5 During 2014 a collaborative review process took place between NR and the Council's design team to establish a preferred affordable solution to improve Angel Road station as part of the STAR scheme. This led to the preferred option for Angel Road station to be completely rebuilt south of the A406 and to a design that would be suitable for the anticipated 4 tracking of the Lee Valley route.
- 3.6 On the 11 March 2015 the Council Cabinet approved report No184 (KD4029) to proceed with the investment in the Station's development. The Cabinet report provided detail on the funding for the STAR project and the estimated cost for the Angel Road station improvements. LB Enfield successfully negotiated a £6.9m contribution from the STAR project to its own investment of £11.7m to deliver the preferred option at a total estimated cost of £18.6m.
- 3.7 Since the Cabinet meeting, the Council has been successful in securing the GLA funding and when combined with the funds achieve the investment required for its contribution to the STAR project. On the 14 May, the GLA's Investment & Performance Board (IPB) approved LBEs Housing Zone bid of which £6m of grant funding contributes towards the station. Further background information on the funding sources can be found in the original Cabinet paper.
- 3.8 The Cabinet paper set a number of recommendations, one of which (Part 1 = 2.2 and Part 2 = 2.3) is authorisation to enter into agreements with NR to deliver Station improvements

- 3.9 With external funding sources now secured the Council can be comfortable that it can move forward with formally committing to the project. The DSA commits the Council to invest £831,000 with NR to take the Station through the detail design stage, approval processes in readiness for next contract / investment stage for NR to deliver the station.
- 3.10 The design will be completed though July and August and be taken through formal NR compliance approvals by October 2015. The approved design will then be priced by the end of November in parallel with obtaining planning consent. During Q1 2016 NR will combine the various sections of the STAR project into a final approval stage.
- 3.11 For each of the funding parties, there are two contract stages of the investment into the NR works. Stage 1 is the funding for the detail design and final costing (in the form of a Development Services Agreement (DSA)) and Stage 2 is for the funding for the construction delivery (in the form of an Implementation Agreement (IM)). The agreements / contracts used are from NR's standard suit of documents..
- 3.12 There have been detailed negotiations between the Council and NR over the last few months to reach a comfortable commercial position on the DSA. The agreement doesn't absolutely cap investment by Council. However the agreement does clearly identify the estimated cost of the design works and how the contingency will be managed up to the agreed investment limit of £831,000.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The DSA is a standard document template from the suit of contracts used by NR and approved by the Office of the Rail Regulator (ORR). NR avoids changes to the base terms of these agreements as they strictly follow their code of conduct for implementing projects.
- 4.3 There are limited alternative options for the Council as the Council is investing in part of a station that forms part of the much larger NR lead STAR infrastructure improvement programme.
- 4.4 One alternative is that the Council could have continued to negotiate with NR and insist on stricter conditions, including greater certainty on costs. This would have the following consequences:
- 4.4.1 Both parties would need to engage legal advisers (including, potentially, an external firm of solicitors). This would of course lead to significant costs and delays to works.
- 4.4.2 In pushing to reach a fixed price contract (as opposed to the current cost incurred, reimbursement terms) NR would increase or load the contingency to ensure they are comfortable they will incur no loss. It's likely that this would

not just increase the level of investment, but also prevent any benefit to the Council if the works are delivered under budget.

- 4.4.3 Even if this route was selected there is no comfort that a superior commercial position could be achieved for the Council.

5. REASONS FOR RECOMMENDATIONS

- 5.1 The DSA has been improved from the base standard documents and through negotiation with NR. NR has acknowledged, by including procedures in the schedules, that LBE wish to have access to data to monitor cost spend throughout the DSA.
- 5.2 The Council will closely manage NR design development activities, and spend. Regular meetings will continue to take place with NR and its team on commercial contract management and design development.
- 5.3 The alternative of pushing for improved contract terms was investigated to see if this would provide a satisfactory solution. The Council consulted with two external law firms based on their experience of working with NR.
- 5.3.1 Michael Mullarkey of Trowers Hamlin LLP
Michael provided support in March, April on the DSA. Michael provided comment that although he hasn't worked on a DSA before, he has worked with clients in relation to Asset Protection agreements with NR and agreeing any changes leads to protracted negotiations.
- 5.3.2 David Stopher – Nabarro LLP
Further feedback was also sort from a third party legal firm. Nabarro have represented private clients and also referenced experience of representing NR. In both situations David advised that agreeing changes to the standard NR documents is strongly resisted. Even when an external law firm (representing NR) believes proposed changes are acceptable is normal for NR to refuse to adopt the proposed changes.
- 5.3 The Council has recent experience with entering into the DSA form of agreement for investment into access improvement works at Edmonton Green station. At the time there were lengthy negotiations and legal costs incurred. However the final document executed remained, at the end of this process, in a similar form to the base DSA.
- 5.4 The DSA commits the Council to invest in NR undertaking its design and investigation which is more difficult to provide a fixed price as a result of variables. The approach taken by NR is therefore to have an estimated on their design works and then a contingency reflecting a measured or estimated cap which it hopes will not be exceeded.
- 5.5 The Council should take comfort that some improved contract conditions have been secured and it has reached the best possible position based on NR's approach to fixed contract terms.

- 5.6 It is clear from discussing the agreement and contract management that NR's own internal QA controls and procedures are far more tightly defined than within the DSA.
- 5.7 The final reason is that NR has started to progress with the design works and the Council should sign this agreement in order that it can fulfil its role within the project.

6 COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES, AND OTHER DEPARTMENTS

6.1 Financial Implications

- 6.1.1 The Council will commit to investing up to £831k between now and March 2016 by entering into the Development Services Agreement (DSA).
- 6.1.2 The agreements / contracts used are from Network Rail's (NR) standard suit of documents and the contract commits the funding for NR to undertake the design work rather than actually procuring the design. The agreement doesn't absolutely cap investment by Council, however the agreement does clearly identify the estimated cost of the design works and how the contingency will be managed up to the agreed investment limit of £831k.
- 6.1.3 The £831k will be funded from the Growing Places fund (GPF). Provisional approval of £2.5m funding has been received from the GLA in June 2015. However, the receipt of the £831k is subject to negotiations between the GLA and the Council concerning key funding requirements, grant conditions and final terms.
- 6.1.4 It should be noted that grants may be withdrawn if grant conditions are not met, subject to GLA's discretion. Any future proposals arising with cost implications would need to be subject to separate reports and full financial appraisal.

6.2 Legal Implications

- 6.2.1 The Council has the general power of competence under section 1(1) of the localism Act 2011 to do anything that individuals generally may generally do provided it is not prohibited by legislation. There is no express prohibition, restriction or limitation contained in a statute against use of the power in this way
- 6.2.2 The DSA must be in a form approved by the Assistant Director of Legal Services. It is noted that there are some areas of potential weakness in the standard form NR on which the DSA is based, and that the Council will seek to manage any risks flowing from this on a practical and commercial basis. It is also noted that seeking to achieve a more advantageous commercial position is unlikely to be fruitful, and the Council has carried out due diligence to confirm that this is the case.

- 6.2.3 The DSA does form a contract between NR and the Council. However, because of NR's statutory functions, it is considered that either the DSA is excluded from the public procurement regime, or the risk of challenge from a "competitor" of NR is negligible.

6.3 Property Implications

- 6.3.1 Strategic Property Services support the construction of a new Meridian Water station given its importance to unlock the potential of over 8000 new homes and 3000 jobs.
- 6.3.2 Bearing in mind the Council's significant and expanding landholdings in Meridian Water, the increase in Passenger Transport Accessibility from level 1 to Level 3 should increase the density of permitted development and therefore the value of the Council's current and future land holdings.
- 6.3.3 The Council's funding commitment of £831,000 towards detailed station design could be considered to be at risk should final approvals for the station not proceed to the implementation stage.
- 6.3.4 Careful consideration should be given to the impact of the station design in its widest sense such that the proposals are located on Network Rail and Council landholdings only and/or other land within its control. Design should ideally contribute to and not adversely affect third party landholdings or property interests and should take account of rights of light, air, access, over-sailing, easements and wayleaves and avoid blight of third party property wherever practicable.

Given the Council's significant investment it may be appropriate to secure an equity stake in any income producing or other non-operational assets developed as part of the station development.

7 KEY RISKS

- 7.1 **Cost overrun.** Yes – this risk exists given that the contract is not fixed price and that investigative / exploratory and design works required may attract additional costs (e.g. site investigations). However a **mitigation** contingency has been included within the overall approval / agreement value to take account of risks relating to the planned scope of work. Through the negotiations with NR a clearer understanding has been developed as to how NR manage the works and they place tight controls to monitor costs incurred against the original estimate. Within the agreement NR must report to the Council whenever contingency is to be used.
- 7.2 **Procurement challenge.** A third party could argue that in entering into the DSA, the Council is procuring Network Rail to deliver the station without correctly following EU procurement rules. This has been reviewed and it's

deemed to be a very low risk. It should be noted that NR itself must fairly procure its supply chain in accordance with EU procurement rules.

8 IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

The new Meridian Water station will deliver fairness for all by providing better transport links for local people into and out of central London improving employment prospects for those living in the east of the borough.

8.2 Growth and Sustainability

New transport infrastructure will increase the prosperity of local people and will make the area more attractive to businesses.

8.3 Strong Communities

This will enable more people to use Angel Station thereby encouraging growth and reducing reliance upon motorised transport. This in turn will impact upon air quality.

9 EQUALITY IMPACT IMPLICATIONS

An equalities impact assessment is in preparation. This will set out the benefits of the improvements to Angel Road Station an accessible station, meeting the needs of the people of all ages. This includes step free access and lifts to each platform creating a fully accessible location to meet the needs of people with mobility issues and sensory impairment(s).

10 PERFORMANCE MANAGEMENT IMPLICATIONS

The delivery and completion of the Meridian Water station for timetable change in May 2018 is ideally timed for the target release of the first homes.

11 HEALTH AND SAFETY IMPLICATIONS

Not Applicable

12. PUBLIC HEALTH IMPLICATIONS

Not Applicable.

Background Papers

Appendix A – Development Services Agreement (DSA)

Dated 2015

NETWORK RAIL INFRASTRUCTURE LIMITED

and

London Borough of Enfield

DEVELOPMENT SERVICES AGREEMENT

with respect to

Angel Road Station

Notes:

1. This version of the DSA is not suitable for use where the Customer is carrying out surveys which require access to the Railway, when an asset protection agreement must be used.
2. If it is intended for use for depot development then specific wording is available for insertion.
3. Network Rail reserves the right to request adequate surety following internal credit review.

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BETWEEN:

- (1) **Network Rail Infrastructure Limited** registered in England and Wales under company number 2904587 whose registered office is at 1 Eversholt Street, London NW1 2 DN ("**Network Rail**"); and
- (2) **London Borough of Enfield** whose registered office is at London Borough of Enfield, Civic Centre, Silver Street, Enfield, EN1 3XA (the "**Customer**")

(together the "**Parties**", references to "**Party**" shall be construed accordingly).

WHEREAS:

- (A) The Customer's proposals for developing the Project involve the requirement for certain services regarding GRIP Stage 3 Engineering Approval In Principal to be carried out in relation thereto; and
- (B) Network Rail has agreed to carry out the Services for the Customer on the terms set out below.

NOW IT IS AGREED AS FOLLOWS:**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement the following words and expressions shall have the following meanings unless the contrary intention appears:

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

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

"**Affiliate**" means in relation to any company:

- (a) a company which is either a holding company or a subsidiary of such company; or
- (b) a company which is a subsidiary of a holding company of which such company is also a subsidiary,

and "**holding company**" and "**subsidiary**" shall have the respective meanings given to them in section 1159 of the Companies Act 2006;

"**Booked**" means, in relation to any Possession, the registration of such Possession in Network Rail's possession planning system, subject to Network Rail's annual and quarterly planning processes and the other provisions of Part D of the Network Code;

"**Brief**" means the outline details of the Project and the objectives of the Services as set out in Schedule 3;

"**Capped Cost Estimate**" means the capped estimate of Network Rail Costs as set out in Paragraph 2.4 of Schedule 4;

"**CDM Regulations**" means the Construction (Design and Management) Regulations 2015;

"**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 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 Date**" means the date for delivery of the Deliverables as set out in the Remit;

"**Confidential Information**" has the meaning given in Clause 18;

"**Contract**" means any contract entered into by Network Rail with a Contractor for the carrying out of any part of the Services;

"Contractor" means any person providing services to, or carrying out Survey Works on behalf of, Network Rail for the delivery of the Services;

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

"Deliverables" means the documents and/or other items which Network Rail is required to deliver to the Customer as part of the Services, as set out in Schedule 4;

"Design Liability Cap" means an amount equal to ♦;

"Development Programme" means the programme developed in accordance with Clause 4 as set out in Paragraph 2.2 of Schedule 4;

"Direct Costs" means direct costs reasonably incurred in relation to the Project, including, in the case of the Customer, any costs paid by the Customer to contractors appointed by the Customer but excludes any Indirect Loss;

"Dispute" means any dispute or difference of whatsoever nature arising under, out of, in connection with or in relation (in any manner whatsoever) to this Agreement;

"Dispute Resolution Procedure" means the procedure referred to in Clause 19

"Escalation Procedure" means the procedure referred to in Schedule 5;

"Estimated Cost" means the estimate of the Network Rail Costs as set out in Paragraph 2.1 of Schedule 4 to deliver the Remit and 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 areas of Survey 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;

"GRIP" means the Network Rail document entitled Governance for Railway Investment Projects as amended from time to time;

"GRIP 3" means the option selection stage reached following the GRIP process;

"GRIP 3AIP" means the approval in principle stage reached following the GRIP process;

"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;

"Group Standards" means Railway Group Standards produced pursuant to the Railway Group Standards Code (or equivalent predecessor documents, including previous versions of the Railway Group Standards Code) defining mandatory requirements in respect of the mainline railway in each case as published by the Rail Safety and Standards Board Limited or imposed by the Office of Rail Regulation. Such standards can be accessed on the website www.rgsonline.co.uk;

"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 Project) 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"**);

"Insolvent" in relation to either Party means:

- (a) such Party stopping or suspending or threatening to stop or suspend payment of all or a material part of its debts, or becoming unable to pay its debts, or being deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986, except that in the interpretation of this paragraph section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for "£750" there were substituted "£10,000";
- (b) any step being taken by any person with a view to the winding up of such Party or any person presenting a winding-up petition which is not dismissed within five Working Days;
- (c) a receiver, manager, administrative receiver or administrator being appointed in respect of such Party;
- (d) such Party ceasing or threatening to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the other Party before that step is taken (which approval shall not be unreasonably withheld or delayed); or
- (e) any event occurring which, under the law of any relevant jurisdiction, has an analogous effect to any of the events listed above;

"Insurance Policies" means those insurances maintained by Network Rail or the Contractor in relation to the Services as are listed in Paragraph 1.5 of Schedule 4;

"Intellectual Property" means all intellectual property rights in any part of the world in respect of any documentation or information provided to the Customer by Network Rail, including any patent, patent application, trade mark, trade mark application, registered design, registered design application, utility model, trade name, discovery, invention, process, formula, specification, copyright (including rights in computer software and database and topography rights), know how or unregistered design right;

"Interest Rate" means 3 month LIBOR plus 2% per annum;

"Interfacing Project" means a project in relation to the Network which has an interface with the Project;

"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;

"Losses" means any 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;

in each case after the date on which the Services achieve GRIP 3 (and which is not reasonably foreseeable as at such date);

"Necessary Consents" means all approvals, permissions, consents, licences, certificates, registrations and authorisations, including Network Rail Consents and Regulated Change

(whether statutory or otherwise), which are required from time to time for the purposes of carrying out the Project;

"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 Change" has the meaning given in the Network Code;

"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 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 2) included in the Estimated Cost as at the Commencement Date;

"Network Rail Consents" means those consents to be granted by Network Rail in relation to the Project, including those consents set out in the Remit;

"Network Rail Costs" has the meaning given in Schedule 2;

"Network Rail Standard" means a standards document (or the equivalent of such document) issued by Network Rail from time to time in relation to the Network as a whole which applies to the performance of the Services under this Agreement as published on the website "www.uk.irs.com";

"ORR" means the Office of Rail Regulation established pursuant to section 15(1) of the Railways and Transport Safety Act 2003;

"Payment Period" means the period of up to 28 days (to be notified by Network Rail) commencing on the Commencement Date and each period of 28 days thereafter (provided that the length of the first and last such period in any Network Rail financial year may be varied by up to 7 days on reasonable prior notice from Network Rail to the Customer);

"Possession" means planned safety arrangements which control or prevent the normal movement of rail traffic on the Network between defined locations and for a pre-defined period (including any speed restriction);

"Project" means : The provision of a new station at a point south of the current Angel Road station

"QRA" means the quantified assessment of risks and assumptions associated with the Project produced by Network Rail to identify the Project Contingency sum identified in Paragraph 2.4 of Schedule 4;

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

"Regulated Change" means Network Change and/or Station Change to the extent that each is required in connection with the Project;

"Representative" means the person appointed by each Party to manage the delivery of services under this Agreement;

"Relief Event" means an event where:

- (a) any booked possession for Survey Works is cancelled or altered (including as a result of any default by any train operator but excluding as a result of any default by the Customer); or
- (b) any contractor from an Interfacing Project interferes with, hinders or obstructs a Contractor from carrying out Survey Works in accordance with the Development Programme; or
- (c) a Mandatory Variation is being implemented;

"Remit" means the scope of the Services to be provided by Network Rail and includes details of the Deliverables, Necessary Consents and Interfacing Projects as initially set out in Schedule 4 and as developed, updated and amended in accordance with the provisions of this Agreement;

"Services" means the services to be performed and Deliverables to be produced and Survey Works to be carried out by Network Rail as set out as part of the Remit;

"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 (as these terms are defined in ROGS) or Standards required by any Change in Law; or
- (b) the Services or services of a similar type but not to services in general;

"Standards" means Group Standards and Network Rail Standards;

"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 Project;

"Station Change" means the procedures contained in Parts B and C (as applicable) of the Station Access Conditions;

"Survey Works" means any survey (intrusive or non-intrusive), inspection, examination or testing of the Network in respect of this Agreement;

"Variation" means any material change to the Brief or the Completion Date which is not the result of the normal process of developing the scope and detail of the Project; and

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

1.2 In this Agreement, unless the context otherwise requires:

- (a) references to a statute, treaty or legislative provision or to a provision of it shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment at any time then in force and to all subordinate legislation made from time to time under it;
- (b) references to any agreement or document include its schedules and attachments and references to "**Paragraphs**", "**Clauses**", "**Recitals**" or "**Schedules**" are references to such provisions or parts of this Agreement;
- (c) references in the singular shall include references in the plural and vice versa, words denoting any gender shall include any other gender and words denoting natural persons shall include any other persons;
- (d) headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
- (e) references to an agreement, deed, instrument, licence, code or other document (including this Agreement), or to a provision contained in any of these, shall be construed, at the particular time, as a reference to it as it may then have been amended, varied, supplemented, modified, suspended, assigned or novated;
- (f) the words "**include**" and "**including**" are to be construed without limitation;
- (g) a reference to a "**law**" includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure (and "**lawful**" and "**unlawful**" shall be construed accordingly);
- (h) a reference to a "**Party**" means a party to this Agreement and includes its successors in title, permitted assigns and permitted transferees and "**Parties**" shall be construed accordingly;
- (i) reference to a "**person**" includes any person, firm, body corporate, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;

- (j) a "**regulation**" includes any regulation, rule or official directive of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
 - (k) a reference to "**writing**" includes an email transmission and any means of reproducing words in a tangible and permanently visible form; and
 - (l) the words in this Agreement shall bear their natural meaning.
- 1.3 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 or 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.
- 2. OBLIGATIONS OF THE CUSTOMER**
- 2.1 The Customer shall act in good faith towards Network Rail in respect of this Agreement.
- 2.2 The Customer shall comply with its obligations under this Agreement including carrying out actions or providing the Brief and information identified as necessary in the Development Programme to enable Network Rail progress the Services, together with any additional information reasonably requested from time to time by Network Rail.
- 2.3 Information or instructions provided to Network Rail by or on behalf of the Customer in connection with the Project 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.
- 3. OBLIGATIONS OF NETWORK RAIL**
- 3.1 Network Rail shall act in good faith towards the Customer in respect of this Agreement.
- 3.2 Network Rail will perform the Services in accordance with:
- (a) Good Industry Practice;
 - (b) Legal Requirements and Standards (including, for the avoidance of doubt, the Network Licence, the Network Code and Station Access Conditions) as may be applicable from time to time;
 - (c) Necessary Consents; and
 - (d) the Remit and the terms of this Agreement.
- 3.3 If in providing the Services, Network Rail assumes any role as "**designer**" and "**Principal Designer**" under the CDM Regulations, Network Rail shall comply with its duties as "**designer**" and "**Principal Designer**" the Customer will act as the "**only client**" for the purposes of the CDM Regulations.
- 3.4 Network Rail may subcontract all or part of its obligations under this Agreement. Notwithstanding the appointment of any Contractor Network Rail shall remain liable for the performance of its obligations. Network Rail shall notify the Customer of any proposal to appoint a Contractor to carry out any material design services and where practicable shall give the Customer a reasonable opportunity to comment on the proposal and shall have due regard to the Customer's comments. Where Network Rail appoints a Contractor Network Rail shall:
- (a) comply with the Utilities Contracts Regulations 2006; and

- (b) appoint Contractors who in the reasonable opinion of Network Rail have the necessary competence and experience.
- 3.5 Network Rail shall procure that the insurances set out in Paragraph 1.5 of Schedule 4 are taken out and maintained.
- 3.6 As the Project progresses Network Rail shall identify and manage arrangements between the Services and any Interfacing Projects in the interests of economic and efficient Network management and operation, and in accordance with the Network Licence.
- 4. BRIEF, REMIT, PROGRAMME AND COST**
- 4.1 Network Rail shall develop the Remit in consultation with the Customer with a view to achieving the objectives set out in the Brief, including identifying the scope of the Services, the Deliverables, the underlying assumptions, any Necessary Consents required and any Interfacing Projects.
- 4.2 The Parties shall co-operate in the planning of a Development Programme and determining the Estimated Cost. The Development Programme shall set out, in such detail as is reasonably practicable the estimated programme for:
- (a) carrying out the Services;
 - (b) GRIP stage gate reviews for feasibility, design optioneering and single option design development;
 - (c) obtaining the Necessary Consents; and
 - (d) any actions or information required from the Customer.
- 4.3 The Parties acknowledge that the need for change to the Remit or the Development Programme may become apparent in the course of developing the Project through the GRIP stages and, as a result, Network Rail shall, from time to time, review the Remit, the Development Programme and the Estimated Cost and Network Rail shall notify the Customer of any changes which Network Rail considers may be needed to fulfil the objectives set out in the Brief.
- 4.4 If at any time the Parties are unable to agree a change to the Remit, the Development Programme or the Estimated Cost, either Party may refer the Dispute to the Dispute Resolution Procedure.
- 5. PROGRESS OF SERVICES**
- 5.1 Network Rail shall progress the Services with due diligence having due regard to the Completion Date and any other key dates for performance of the Services set out in the Development Programme (as amended from time to time with the consent of the Customer or in accordance with this Agreement).
- 6. NECESSARY CONSENTS**
- 6.1 Network Rail shall make applications for, and use reasonable endeavours to obtain, those Necessary Consents specified in Paragraph 1.4 (a) of Schedule 4 as revised in accordance with Clause 8.
- 6.2 Network Rail shall have no liability to the Customer under this Agreement as a result of:
- (a) any Necessary Consent not being granted; or
 - (b) any delay in granting any Necessary Consent; or
 - (c) the terms upon which any Necessary Consent is granted;
- except to the extent that it is as a result of negligence or breach of this Agreement by Network Rail and in which case Network Rail will be liable for the Direct Costs incurred by the Customer.
- 6.3 Network Rail shall be obliged to appeal against any decision in respect of Regulated Change if reasonably requested to do so by the Customer and at the cost of the Customer.
- 6.4 The Customer is responsible for applying for, and using reasonable endeavours to obtain, the Necessary Consents listed in the Remit (which shall, for the avoidance of doubt, exclude the Necessary Consents referred to in Clause 6.1) in a format agreed between the Parties and in line with the requirements of the Development Programme.

- 6.5 Network Rail's obligations in relation to obtaining the 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.

7. PROJECT DEVELOPMENT MEETINGS AND REPORTING

- 7.1 Network Rail shall arrange project development meetings at monthly intervals (or more often if required), at which appropriate personnel of Network Rail and the Customer shall be present, to discuss the progress of the Services. Network Rail shall give appropriate notice of and agree the timing, location and agenda with the Customer for all such meetings.
- 7.2 Each Party shall appoint a Representative with full authority to act on its behalf in connection with this Agreement (the initial Representatives being identified in Schedule 1). Any restriction placed by either Party on its Representative's authority must be notified to the other Party in writing in order to be effective. The Representatives may delegate their authority by notice in writing specifying the identity of the delegate and specifying the authority so delegated.
- 7.3 Network Rail shall, in a format and at intervals to be agreed with the Customer:
- (a) provide the Customer with regular reports on the progress of the Services;
 - (b) report on Network Rail Costs, incurred to date and forecast, with a view to identifying at an early stage whether costs are likely to exceed the Estimated Cost;
 - (c) report on any changes to the Remit, Development Programme and Estimated Cost, which it considers may be needed to fulfil the objectives set out in the Brief;
 - (d) update the list of Interfacing Projects;
 - (e) use reasonable endeavours to provide other information reasonably requested by the Customer.
- 7.4 Network Rail shall have due regard to any comments or representations made by the Customer in connection with any reports or at any meetings, and shall provide reasons to the Customer where it does not take into account any such comments or representations.

8. VARIATION OF SERVICES AND COMPLETION DATE

- 8.1 Either Party may request from the other Party a Variation (a "**Variation Request**"). Following any such request, Network Rail shall consult with the Customer and shall provide to the Customer within a reasonable time and to a reasonable level of detail (to the extent applicable):
- (a) a revised Estimated Cost [and a revised Capped Cost Estimate]
 - (b) reasoned proposals to change the Development Programme and the Completion Date(if any); and
 - (c) in the case of a Variation of the Services, the scope of the Services as so varied and any appropriate revision to the terms of this Agreement, including details of any addition, omission or amendment to the Deliverables which will be produced by Network Rail.
- 8.2 Subject to Clause 8.3, the Customer shall be responsible for the costs of all Variations. No Variation shall be effective unless agreed in writing by the Parties.
- 8.3 Notwithstanding any other provision in this Agreement, where Network Rail reasonably considers that a Variation is necessary:
- (a) as a consequence of a Relief Event; or
 - (b) to address, alleviate or comply with (as appropriate) a Mandatory Variation; or
 - (c) to address the results of Survey Works; or
 - (d) to address, alleviate or comply with (as appropriate) any Change in Law or Change in Standards (excluding Mandatory Variations); or
 - (e) to address changes to the underlying assumptions set out in the Remit; or
 - (f) as a consequence of the crystallisation of a risk which is identified in the QRA;

Network Rail shall be entitled to implement a Variation to the extent that is reasonable in the circumstances and subject to Clause 9, the Customer shall not be liable for any Network Rail Costs in connection with a Variation of the type described in Clause 8.3(a) and (b).

- 8.4 Where Network Rail considers a Variation is necessary under Clause 8.3, it shall submit a Variation Request to the Customer and provide the information pursuant to Clause 8.1. The Customer may not object to the proposed Variation itself, but may challenge the information provided under Clause 8.1 and any issues arising from such information. For the avoidance of doubt the Customer may request that Network Rail amend the Variation or the Services to accommodate any objections raised by the Customer and/or to stay within the previous Capped Cost Estimate. If the Parties do not agree the information provided under Clause 8.1, the Dispute shall be referred for resolution in accordance with Clause 19.

9. COMPENSATION AND RELIEF

- 9.1 Where a Relief Event occurs, the Customer shall be:

- (a) entitled to recover from Network Rail additional Direct Costs reasonably and properly incurred by the Customer as a result of any delay or disruption to the Development Programme; and
- (b) relieved from its obligation to pay additional Network Rail Costs incurred to the extent caused by a Relief Event.

- 9.2 Network Rail shall notify the Customer of any Relief Event as soon as reasonably practicable and shall provide a revised Development Programme under Clause 4 (if appropriate). The Customer shall notify Network Rail of any Relief Event within a reasonable period of time of becoming aware of the same and provide reasonable details of the relief required under this Clause 9. In respect of each Relief Event the Parties shall seek to agree the Direct Costs and the additional Network Rail Costs which will not be payable in accordance with Clause 9.4 together with any revisions to the Development Programme (including any changes to the Completion Date), taking into account the likely effect of delay in the progress of the Services.

- 9.3 Promptly following the agreement (or determination in accordance with Clause 19) of the amount of the Direct Costs, the Customer shall deliver an invoice to Network Rail in respect of any Direct Costs incurred by the Customer as a result of the completion of the Development Programme being delayed or disrupted due to the relevant Relief Event and Network Rail shall pay that sum within twenty (20) Working Days. Should any amount not be paid within such period (except any amount determined not to be payable pursuant to Clause 19), such amount due shall bear interest thereon at the Interest Rate from and including the due date for payment to and including the date of actual payment.

- 9.4 In calculating the additional Direct Costs payable or the Network Rail Costs not payable as a result of a Relief Event:

- (a) no claim shall be made by the Customer unless such Direct Costs exceed £10,000 in aggregate in respect of the relevant Relief Event and are notified to Network Rail prior to the Completion Date;
- (b) the Customer shall not be entitled to any compensation or relief to the extent that any delay or cost incurred as a result of the occurrence of a Relief Event is due to the negligence, breach or default of the Customer or the breach or default of any contractor appointed by the Customer (other than Network Rail);
- (c) any Direct Costs paid by Network Rail shall not be included in the calculation of Network Rail's maximum aggregate liability under Clause 14.2 unless the Relief Event is the cancellation or alteration of a Booked Possession occurring as a result of the negligence or breach of this Agreement by Network Rail; and
- (d) any Direct Costs and any relief from payment of Network Rail Costs shall be limited to the actual costs incurred by the Customer (if any) and/or the additional Network Rail Costs incurred by Network Rail in rectifying the Relief Event, and shall not include the cost of the consequential effects of the Relief Event on the Project.

- 9.5 Save as set out in this Clause 9, neither Party shall have any other right or remedy whether under or in connection with this Agreement against the other for any Relief Event.

10. INTELLECTUAL PROPERTY

- 10.1 Network Rail hereby grants to the Customer, to use for the purposes of the Project, an irrevocable, royalty-free and non-exclusive licence to use, reproduce, modify and/or enhance any such Intellectual Property owned by Network Rail.
- 10.2 The licence referred to in Clause 10.1 shall include the right for the Customer to grant sub-licences for any of the purposes set out in Clause 10.1, provided that:
- (a) the sub-licensee shall be prohibited from entering into any assignment or further sub-licence; and
 - (b) any such sub-licence shall impose confidentiality obligations upon the sub-licensee which are no less onerous than the confidentiality obligations upon the Customer under this Agreement.
- 10.3 Where Network Rail does not own rights in any relevant Intellectual Property, it shall use reasonable endeavours to procure such rights in the Intellectual Property for the Customer.
- 10.4 The Customer shall not use the documentation and information provided to it by Network Rail under the Agreement other than for the purpose for which it was provided. If the Customer provides any document produced by Network Rail or any Contractor to a third party, Network Rail shall have no liability to such third party in respect of the use of such document for any purpose other than that for which it was produced and the Customer shall obtain prior written acknowledgement from the third party to this effect.
- 10.5 Network Rail shall have no liability whatsoever in respect of the use by the sub-licensee of any Intellectual Property provided by Network Rail to the Customer, and the Customer shall indemnify Network Rail from and against any and all Losses arising from the use by any sub-licensee of any Intellectual Property.
- 10.6 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 Project. 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 Project.

11. COMPLETION

- 11.1 When in its reasonable opinion Network Rail has completed such Services or Deliverables as constitute all or an identifiable part of the Remit, it shall notify the Customer.

12. NETWORK RAIL COSTS

- 12.1 [Subject to Clause ~~Error! Reference source not found.~~^{12.7},]¹ The Customer shall pay to Network Rail all reasonably and properly incurred Network Rail Costs and any other sums due under this Agreement in accordance with the terms set out in this Clause 12 and Schedule 2. For the avoidance of doubt, costs incurred by Network Rail as a result of a breach by or negligence of its Contractors are not reasonably and properly incurred Network Rail Costs.
- 12.2 Within ten (10) Working Days after the end of each Payment Period throughout the carrying out of the Services, Network Rail shall submit an invoice (with an attached breakdown and including any supporting information reasonably requested by the Customer) to the Customer in respect of the Network Rail Costs applicable to such Payment Period or any preceding Payment Periods, if not previously invoiced. Subject to Clause 12.3, payment by the Customer to Network Rail shall be without set-off, retention, counterclaim, abatement or any other deduction and shall be due twenty (20) Working Days after the date of issue of the invoice (the "**due date for payment**").
- 12.3 Where the Customer intends to withhold all or part of payments of any amount claimed by Network Rail in the invoice, notice must be given to Network Rail not later than five (5) Working Days before the due date for payment under Clause 12.2. The notice shall state the amount to be withheld, the basis on which that amount is calculated, and the grounds for withholding payment. Unless such notification to withhold payment has been received from

¹ Applies where Clauses 12.5-12.10 are included.

the Customer, the amount to be paid is that stated in the invoice which shall become due in accordance with Clause 12.2.

- 12.4 Should any invoice not be paid by the due date for payment in accordance with Clause 12.2 (except in respect of any amount determined not to be payable pursuant to Clause 19), interest shall be payable on the amount due calculated from the due date for payment up to and including the actual date of payment at the Interest Rate.

12.5 Not used.

12.6 Not used.

12.7 Not used.

12.8 Not used.

12.9 Not used.

12.10 Not used.

12.11 Not used.

13. VALUE ADDED TAX

- 13.1 Unless stated otherwise, all amounts referred to in this Agreement shall be deemed to be exclusive of VAT.

- 13.2 Where any taxable supply for VAT purposes is made under or in connection with this Agreement by one Party to the other the payer shall, in addition to any payment required for that supply, pay upon presentation of a valid tax invoice such VAT as is chargeable in respect of it.

- 13.3 Where under this Agreement one Party has agreed to reimburse or indemnify the other Party in respect of any payment made or cost incurred by the other Party the first Party shall also reimburse any VAT paid by the other Party which forms part of its payment made or cost incurred to the extent such VAT is not available for credit for the other Party, or for any person treated as a member of the same VAT group as the other Party under sections 25 and 26 of the Value Added Tax Act 1994.

- 13.4 Where under this Agreement any rebate or repayment of any amount is payable by one Party to the other, and the first Party is entitled to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made and the first Party shall issue an appropriate VAT credit note to the other Party. When a credit is allowed to a Party and that Party is able to recover all the tax on the supply by the first Party as input tax, both Parties can agree not to adjust the original VAT charge in accordance with HMRC VAT Notice 700 paragraph 18.2.1.

14. LIMITATION OF LIABILITY

- 14.1 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 of the Services or termination of this Agreement); or

(b) the Losses are incurred as a result of, or sums are unpaid under, Clauses 12, 13 or 17.2.

- 14.2 Network Rail's maximum aggregate liability to the Customer for any reason arising under, or in connection with, this Agreement or the Project including but not limited to breach of contract, in tort (including negligence), or for breach of statutory duty shall not exceed an amount equal to 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, 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 an 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).

- 14.3 Clause 14.2 shall not apply to Losses incurred by the Customer as a result of:
- (a) any liability in respect of 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 the Contractor.
- 14.4 Any Losses suffered by either Party shall for the purposes of Clause 14.1 be reduced to the extent that they are caused by or contributed to by that Party's own negligence or breach of its obligations under this Agreement.
- 14.5 The Customer agrees and acknowledges that where the Services involve Network Rail preparing or evaluating any proposed development train timetable, the operability of any such development train timetable will be subject to external factors (including evolving development, network capacity and access rights under the Network Code) and can only be modelled against the assumptions made at the relevant stage of development.
- 14.6 The Customer's maximum aggregate liability to Network Rail for any reason arising under, or in connection with, this Agreement or the Project shall not exceed an amount equal to the Customer Cap. Notwithstanding the Customer Cap where, in respect of the same event, the Customer recovers any 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 an insurance policy or any 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 use reasonable endeavours to make and diligently pursue a claim but this shall not include an obligation on the Customer to take legal action).
- 14.7 Clause 14.6 shall not apply to:
- (a) the Customer's payment obligations under Clauses 8, 10.6, 12, 13, 17.2 or Schedule 2;
 - (b) any Losses incurred by Network Rail due to the negligence (except to the extent that such negligence relates to the carrying out of any design by the Customer or any contractor appointed by the Customer), fraud or fraudulent misrepresentation of the Customer or of any contractor appointed by the Customer (other than Network Rail); and/or
 - (c) any Losses incurred by Network Rail due to negligence in relation to the carrying out of any design by the Customer or any contractor appointed by the Customer which Losses shall instead not exceed an amount equal to the Design Liability Cap; and/or
 - (d) 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.
- 14.8 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).

15. FORCE MAJEURE EVENTS

- 15.1 Subject to Clauses 15.2 and 15.3, 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.
- 15.2 Each Party shall at all times following the occurrence of a Force Majeure Event:

- (a) take 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 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 has not in fact performed, its obligations under this Agreement due to any failure to comply with its obligations under Clause 15.2(a).
- 15.3 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. Such notification shall give sufficient details to identify the particular event claimed to be a Force Majeure Event and shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including the date of occurrence of the Force Majeure Event, the effect of the Force Majeure Event on the ability of the affected Party to perform, the action being taken in accordance with Clause 15.2(a) and an estimate of the period of time required to overcome the effects of the Force Majeure Event. The affected Party shall provide the other Party with any further information it receives or becomes aware of which relates to the Force Majeure Event and provide an update on the estimate of the period of time required to overcome its effects.
- 15.4 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).
- 15.5 As soon as practicable following the notification described in Clause 15.3, the Parties shall use reasonable endeavours to agree appropriate terms or modifications to the Development Programme to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.
- 15.6 If no such terms or modifications are agreed on or before the date falling three (3) months after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its effects remain, then either Party may terminate this Agreement with immediate effect by written notice to the other Party. Upon termination the provisions of Clause 17 shall apply.
- 16. SUSPENSION AND TERMINATION**
- 16.1 If the Customer is in default over payments of amounts properly due to Network Rail, and no notice of intention to withhold such amounts has been given pursuant to Clause 12.3 Network Rail may suspend performance of any or all of the affected Services subject to Network Rail first giving the Customer not less than five (5) Working Days' notice of such intention and stating the grounds for suspension. Such right to suspend performance shall cease once the Customer makes payment of the amount due.
- 16.2 Either Party may by written notice terminate this Agreement with immediate effect if:
 - (a) the other Party commits any persistent or material breach of this Agreement (which shall include any failure to pay an amount of at least £10,000 which is due to the other Party) and, in the case of a breach which is capable of remedy, fails to remedy that breach within ten (10) Working Days (or such longer period as the terminating Party may specify) after receipt of a written notice giving full particulars of the breach and requiring it to be remedied; or
 - (b) the other Party becomes Insolvent.
- 16.3 The Customer may in any event terminate this Agreement by giving two (2) months written notice to Network Rail.
- 16.4 Upon issue or receipt of any notice of termination, Network Rail shall:
 - (a) reduce the expenditure under this Agreement as rapidly as possible;
 - (b) take immediate steps to bring an end to the performance of the Services in an orderly manner; and

- (c) pass to the Customer a complete set of any documents, manuals or other information which the Customer may require in connection with the Project and which at the time of termination are in the possession or under the control of Network Rail.

17. CONSEQUENCES OF TERMINATION, OR COMPLETION

17.1 Upon termination of this Agreement or completion of the Services, as applicable, the obligations of the Parties under this Agreement shall cease except for:

- (a) any obligations arising as a result of any antecedent breach of this Agreement or any accrued rights; and
- (b) the provisions of Clauses 10, 12, 13, 17.2, 18, 19, and 21 which shall survive the termination or expiry of this Agreement and continue in full force and effect along with any other Clauses of or Schedules to this Agreement which are necessary to give effect to them.

17.2 If this Agreement is terminated for any reason prior to the completion of the Services, the Customer shall pay:

- (a) the Network Rail Costs up to the date of termination; and
- (b) except where termination is due to Network Rail's negligence or Network Rail's breach or Network Rail's insolvency under Clause 16.2(b) or a Force Majeure Event under Clause 15.6;
 - (i) an amount equal to the costs reasonably and properly incurred by Network Rail as a result of or in connection with such termination (including any amounts payable to the Contractor consequent upon termination of the relevant Contracts); and
 - (ii) such additional amount as is required to put Network Rail in the same after tax position (taking into account the amount of any relief, allowance, deduction, set-off or credit relating to tax available to Network Rail in respect of the payment received) as it would have been in if the payment had not been a taxable receipt in Network Rail's hands.

17.3 Termination of this Agreement is without prejudice to the rights of either Party which accrued before or as a result of such termination.

17.4 The Customer shall not be entitled to any payment or compensation or other rights or remedies in respect of loss of profits, revenue or goodwill in connection with the suspension or termination of this Agreement.

18. CONFIDENTIAL INFORMATION

18.1 "**Confidential Information**" means in relation to any Party (the "**Provider**"), all information of a confidential nature relating to it or its Affiliates which is supplied by or on behalf of the Provider (whether before or after the Commencement Date), either in writing, orally or in any other form or which is obtained through observations made by the Party receiving such information and includes all analyses, compilations, notes, studies, memoranda and other documents which contain or otherwise reflect or are derived from such information, but excludes information which:

- (a) the Provider confirms in writing is not required to be treated as confidential; or
- (b) the receiving Party can show was in its possession or known to it (by being in its use or being recorded in its files or computers or other recording media) prior to receipt from the Provider and was not previously acquired by the receiving Party from the Provider under an obligation of confidence; or
- (c) was developed by or for the receiving Party at any time independently of this Agreement;

18.2 Subject to Clauses 18.1 and 18.3, the Parties shall:

- (a) at all times keep all Confidential Information confidential to the Party receiving it and shall not disclose such Confidential Information to any other person; and

- (b) procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information except with the other Party's prior written consent.
- 18.3 Each Party shall, without the prior written consent of the other Party, be entitled to disclose Confidential Information:
- (a) that is reasonably required by that Party in the performance of its obligations pursuant to this Agreement, including the disclosure of any Confidential Information to any employee, contractor, agent, officer, sub-contractor (of any tier) or adviser to the extent necessary to enable that Party to perform its obligations under this Agreement;
 - (b) to enable a determination to be made pursuant to Clause 19;
 - (c) to its lenders or their professional advisers, any rating agencies, or its insurance advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
 - (d) to the extent required by the Act or any other applicable Legal Requirement or pursuant to an order of any court of competent jurisdiction, any parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law;
 - (e) to register or record any Necessary Consents and to effect any property registration that may be required;
 - (f) for the purpose of the examination and certification of either Party's accounts;
 - (g) in relation to disclosure by Network Rail, in order to fulfil its Network Licence obligations or assist in the planning or execution of other maintenance, renewal or enhancement projects;
 - (h) to the Health and Safety Executive;
 - (i) to any Affiliate of either party; or
 - (j) to the extent it has become available to the public other than as a result of any breach of an obligation of confidence;
- provided that any such disclosure is made in good faith.
- 18.4 Where disclosure is permitted under Clause 18.3(a), 18.3(c) or 18.3(i), the Party making such disclosure shall require that the recipient of the information is subject to the same obligation of confidentiality as that contained in this Agreement.
- 18.5 If this Agreement is terminated, each Party shall:
- (a) return to the other Party all of the Confidential Information then within its possession or control; or
 - (b) destroy such Confidential Information using a secure and confidential method of destruction; or
 - (c) unless reasonably requested to return it, retain such Confidential Information but so that the Party in question shall only be required to return any such information if that Party can readily identify and locate such information. If a Party elects to retain any such Confidential Information the provisions of this Clause 18 shall remain in full force and effect in relation to such Confidential Information notwithstanding the termination of this Agreement.
- 18.6 Save as required by law or regulation, neither Party shall issue any press release in relation to the matters contemplated by this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed) as to both the content and the timing of the issue of the press release.
- 19. ESCALATION AND DISPUTE RESOLUTION**
- 19.1 If a Dispute arises under out of or in connection with this Agreement, either Party may refer such Dispute to the Escalation Procedure in accordance with Schedule 5 or to the extent that such Dispute involves a construction contract within the meaning of section 104 of the

Housing Grants, Construction and Regeneration Act 1996 (as amended from time to time), to an adjudicator for adjudication in accordance with the following provisions:

- (a) the Scheme for Construction Contracts SI No. 649 of 1998 shall apply; and
- (b) if the Parties are unable to agree on a person to act as adjudicator, the adjudicator shall be nominated at the request of either Party by the President or Vice President for the time being of TECBAR.

19.2 If a Dispute is referred to an adjudicator, neither Party may commence any further proceedings until twenty (20) Working Days after the decision of the adjudicator in relation to such Dispute has been given.

19.3 The decision of an adjudicator properly appointed in accordance with this Agreement will be binding until referred to the courts for final determination or the Parties decide otherwise, and in any proceedings the courts shall have full power to open up, review and revise any certificate, opinion, decision, instruction, direction, valuation, requisition or notice given or made under this Agreement and any determination of an adjudicator, including an award as to costs.

19.4 In the event that any dispute or difference of any kind whatsoever shall arise between:

- (a) Network Rail and any Contractor; or
- (b) between the Customer and any contractor appointed by the Customer in relation to the Project

which is substantially the same or connected with issues in any Dispute either Party shall be entitled to require that the other Party shall be joined as a party to any determination pursuant to the relevant contract and the other Party shall permit and co-operate in such joinder.

20. NOTICES

20.1 Any notice, objection or communication to be given under this Agreement shall be in writing and shall be duly given if signed by a duly authorised person on behalf of the Party giving such notice, objection or communication. Any notice objection or communication shall be delivered by hand, by first class post or by email transmission to the relevant postal or email address set out in Schedule 1 and shall be deemed to have been received:

- (a) if sent by hand or by recorded delivery, at the time of delivery (and for the purpose of this Clause 20 delivery by hand shall include delivery by a reputable firm of couriers);
- (b) if sent by prepaid first class post, from and to any place within the United Kingdom, two (2) Working Days after posting unless otherwise proven; or
- (c) if sent by email, at the time evidenced by the electronic message delivery receipt.

20.2 If in Schedule 1 there is specified any person to whom copies of notices shall also be sent, the Party serving a notice in the manner required by this Clause 20 shall send a copy of the notice in question to such person at the address for serving copies as specified in Schedule 1. Such copy notice shall be sent at the same time as the original notice.

20.3 Either Party shall be entitled to amend in any respect the communication particulars which relate to it and which are set out in Schedule 1. Any such amendment shall be made only by notice given to the other Party in accordance with this Clause 20.

21. FREEDOM OF INFORMATION²

21.1 The Parties acknowledge that:

- (a) pursuant to the provisions of section 1(1) of the Freedom of Information Act 2000, all regulations made under it, and the Environmental Information Regulations 2004, and any amendment or re-enactment of any of them, including any guidance issued by the Information Commissioner, the Department of Constitutional Affairs, and Department for Environment, Food and Rural Affairs in relation to such

legislation (the "**Information Acts**"), any person has a right to request information in any form from either Party who is or becomes a public authority under the Information Acts (for the purpose of this Clause 21.1(a) "**Public Authority**");

- (b) a Public Authority has a duty (to the extent required by and subject to any exemptions in the Information Acts) to disclose the information requested and subsequently to communicate it to the person making the request; and
- (c) the publication scheme which a Public Authority is required to adopt and maintain under the Information Acts may refer to information relating to the Services or disclosed in tendering for, the negotiation of, or pursuant to this Agreement ("**Project Information**").

21.2 In the event that a Public Authority receives a request under the Information Acts relating to Project Information, it shall comply with such a request in accordance with the Information Acts and any applicable code of practice made thereunder provided that:

- (a) the Public Authority shall comply with any such request only if none of the exemptions from disclosure in the Information Acts applies and the other Party shall provide reasonable assistance and co-operation to the Public Authority to enable the Public Authority to comply with such request; and
- (b) in the event that a Public Authority is in doubt whether any such exemption applies, it shall inform the relevant Party of the request as soon as possible and shall consult with the relevant Party as to the potential application of any exemption;
- (c) the Public Authority shall inform the relevant Party of any Project Information it has disclosed as soon as possible after such disclosure; and
- (d) if the request relates to Confidential Information the Public Authority shall, where practicable, consult with the relevant Party in advance of making any disclosure under the Information Acts and shall, acting reasonably, take due account of all reasonable representations by the relevant Party that such Confidential Information is exempt information.

22. MISCELLANEOUS

- 22.1 Neither Party may assign or charge all or any part of the benefit of, or rights or benefits under, this Agreement without the prior written consent of the other Party (not to be unreasonably withheld or delayed) provided that such consent shall not be required in respect of any assignment by either Party to a statutory successor of the rights, obligations and interests of such Party.
- 22.2 If any provision of this Agreement shall be held to be illegal, invalid, void or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the remainder of this Agreement in that jurisdiction shall not be affected, and the legality, validity and enforceability of the whole of this Agreement shall not be affected in any other jurisdiction.
- 22.3 In the event of any conflict between the Network Code and/or Station Access Conditions and this Agreement the provisions of the Network Code and/or Station Access Conditions (as appropriate) will apply.
- 22.4 Nothing in this Agreement shall create a partnership, association or joint venture or establish a relationship of principal and agent. Neither Party shall have any authority (unless expressly conferred in writing by virtue of this Agreement or otherwise and not revoked) to bind the other Party as its agent or otherwise.
- 22.5 No waiver by either Party of any default or defaults by the other in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character.
- 22.6 No failure or delay by either Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise by that Party of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.
- 22.7 This Agreement may be executed in two counterparts which, taken together, shall constitute one and the same document.

- 22.8 No amendment to or variation of this Agreement shall be effective unless in writing and signed by a duly authorised representative on behalf of each Party.
- 22.9 For the purposes of the Contracts (Rights of Third Parties) Act 1999, nothing in this Agreement confers or purports to confer on a third party who is not a Party to this Agreement any benefits or rights to enforce a term of this Agreement.
- 22.10 This Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement and supersedes and extinguishes any prior drafts, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter. Each Party acknowledges that it has not been induced to enter into this Agreement by any representation, warranty or undertaking not expressly incorporated into it.
- 22.11 No general terms and conditions contained in any purchase order or other document customarily required by either Party in connection with the request for works or services shall be binding on the Parties.
- 22.12 This Agreement shall be governed by and construed in accordance with the laws of England and Wales. Save as expressly provided otherwise, the Parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes that may arise out of or in connection with this Agreement.

SIGNED by

duly authorised on behalf of London Borough of Enfield

SIGNED by

duly authorised on behalf of Network Rail Infrastructure Limited

Schedule 1
Contact Particulars and Representatives

Network Rail's address for the service of notices is:

Network Rail Infrastructure Limited 1 Eversholt Street
London,
NW1 2DN

Email notices@networkrail.co.uk

All written notices to be marked:

"URGENT: ATTENTION THE GROUP COMPANY SECRETARY"

and copied to:

The Route Managing Director
Network Rail Anglia Route
11th Floor, One Stratford Place, Montfichet Road, London E20 1EJ

Network Rail's Representative is: Will Southward

Programme Development Manager

Tel: 07740 223 285

email will.southward@networkrail.co.uk

The Customer's address for the service of notices is:

London Borough of Enfield
Civic Centre, Silver Street, Enfield, EX1 3XA
Tel: 0208 379 4419
Email: legal.implications@enfield.gov.uk

All written notices to be marked:

"URGENT: ATTENTION THE HEAD OF LEGAL SERVICES"

and copied to:

John Baker
Infrastructure Manager
Tel: 07760 191999

Email john.baker@enfield.gov.uk

Email sharon.strutt@enfield.gov.uk

The Customer's Representative is: John Baker

Tel: 07760 191999

Email john.baker@enfield.gov.uk

Schedule 2

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 Services;

"Contractors' Costs" means the costs to Network Rail of any Contractors engaged by Network Rail in connection with the observance and performance of its obligations in relation to the Services, plus the properly incurred expenses and disbursements of those Contractors;

"Expenses and Disbursements" means the costs, expenses and disbursements incurred by Network Rail in relation to the Services, 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 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 Project (including this Agreement);
- (e) insurance costs (including the cost of additional insurance taken out at the request of the Customer in accordance with Clause 3.5);
- (f) any other disbursements or expenses reasonably and properly incurred by Network Rail in connection with the Services (other than for Necessary Consent Costs). The Customer's prior written approval must be obtained for any such disbursements or expenses over £5,000; and
- (g) 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 of this Schedule for their particular banding as the same may be adjusted from time to time in accordance with Paragraph 3 of this Schedule 2, which rate will be payable in respect of all worked hours spent by Network Rail's Personnel in connection with the Project;

"Industry Risk Fee" means an amount equal to 2% of the aggregate of the Agency Costs, Contractors' Costs and Personnel Costs as set out in the [Estimated Cost] [Capped Cost Estimate] agreed in the Remit (as revised in accordance with Clause 8, other than a Variation of the type described in Clause 8.3(a) and (b));

"Necessary Consents Costs" means the costs incurred by Network Rail in connection with any Necessary Consent for the Project;

"Network Rail Costs" means Agency Costs, Contractor Costs, Expenses and Disbursements, Fee, Necessary Consents Costs, Personnel Costs and Possessions-Related Costs to the extent they arise from or are a consequence of the performance of the Services and Deliverables as set out in the Remit;

"Network Rail Fee" means an amount equal to 5% of the aggregate of the Agency Costs, Contractors' Costs, and Personnel Costs as set out in the [Estimated Cost] [Capped Cost

Estimate] agreed in the Remit (as revised in accordance with Clause 8, other than a Variation of the type described in Clause 8.3(a) and (b));

"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; and

"Possessions-Related Costs" means sums Network Rail will be obliged to pay to any train operator pursuant to the relevant Access Agreement (Schedules 4 and/or 8 or equivalent provision) of in relation to Survey Works.

2. HOURLY RATES

Hourly Rates before April 2015

Banding	Non London	London
1	£131.59	£134.98
2	£96.75	£100.17
3	£72.00	£75.38
4	£50.32	£53.72
5	£40.24	£43.66
6	£31.72	£35.15
7	£26.33	£29.71
8	£20.90	£24.31

Hourly Rates from April 2015

Banding	Non London	London
1	£134.22	£137.68
2	£98.68	£102.17
3	£73.44	£76.89
4	£51.32	£54.79
5	£41.05	£44.54
6	£32.35	£35.86
7	£26.85	£30.31
8	£21.32	£24.79

3. ADJUSTMENT OF HOURLY RATES

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

4. REVIEW

- 4.1 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 2 (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.

Schedule 3

Brief

The July 2011 London and South East Route Utilisation Strategy (L&SE RUS), produced by Network Rail, identified future overcrowding to be an issue on the West Anglia Route, with a capacity shortfall of 1,400 passengers north of Tottenham Hale/Seven Sisters in the busiest peak hour.

Network Rail have developed the West Anglia Mainline Capacity Increase project, otherwise known as the STAR project, up to GRIP Stage 3 (Option Selection) that assessed a number of options to address the capacity gap targeted at increasing the frequency of Lea Valley line services to Stratford. The output of the Option Selection study was a recommended single option to be taken forward for further development to the completion of GRIP Stage 3 Engineering Approval In Principle (AIP).

Included within the recommended single option is a proposal to relocate Angel Road station southwards of its present location. The design for the relocated Angel Road station, which is intended to be renamed to Meridian Water station, has been based on a concept design produced by Atkins (London) on behalf of the Customer. Atkins (London) undertook a feasibility study to develop a number of options for a new station, and following discussions between Atkins (London) and the Customer, a concept design was agreed and passed on to Network Rail to incorporate into the GRIP Stage 3 Option Selection study for the STAR project.

As part of the GRIP Stage 3 Option Selection study, Network Rail produced an indicative cost estimate for the new station which was based on the concept design from the Customer and which included, but was not limited to, the following high level scope of works;

- PA System
- Customer Information Systems (CIS) including displays and help points
- Closed Circuit Television (CCTV) Camera Columns and cameras
- Driver-only operation (DOO) cameras
- Lighting Columns
- Footbridge spanning from platform 1 - platform 2/3 through to platform 4
- Stairs from footbridge to platforms, including handrails
- Ticket machines
- Ticket office (shell – fit out costs and serving window not included)
- 3 new platforms
 - (platforms 1 (western side),
 - 2/3 (island),
 - and 4 (eastern side)). Platform 4 will not be full platform length, only sufficient to “house” platform lift, footbridge and stairs/ramp to entrance
- 3 platform lifts
- Access to station including stairs, and ramp to exit, on east and west side, including handrails
- Boundary Fencing
- Seating and waiting shelters
- On site station signage
- All associated railway infrastructure including track, signalling, electrification & plant, and telecoms costs

Under the services of this Agreement, the Customer shall provide the funding necessary to progress the next stage of outline design for the new Meridian Water Station. It is intended that this station will then replace the existing Angel Road station that will be closed and taken out of service. It is intended that a further Agreement shall be entered into between the Customer and Network Rail to enable

further detailed design, procurement, construction, commissioning, and de-commissioning of the existing Angel Road station, to deliver the new Meridian Water station which forms part of the STAR project.

The Customer's objective for this stage of the project is for Network Rail (NRIL) to undertake development services to;

- Produce GRIP Stage 3 Engineering Approval In Principle (AIP) designs for all asset disciplines (track, civils, electrification & plant, telecoms, and signalling) in relation to the new Meridian Water (Angel Road) station option that is integrated with the existing and new rail infrastructure that is planned to be constructed;
- Co-ordinate the design of the new Meridian Water station with Interfacing Projects both on the rail network, but also with the infrastructure beyond the demise of the new station, This will include (but not be limited to) for example optimising accessibility and interface from highway to station, way-finding, aesthetics of the station (on station and externally),
- Involve the Customer in the evolution of the design so that it participates in discussions and decisions concerning the station design that will have a direct impact on the users and appearance of Meridian Water. It is recognised that Anglia Greater Anglia (AGA) as the Train Operating Company (TOC) will have a significant involvement in the Operational perspective of the station design.
- Develop the design in consideration of the likely future tracking and likely expansion of the station infrastructure to accommodate increased passenger numbers, access improvements.

Schedule 4

Remit

1 NETWORK RAIL REMIT

The Network Rail remit is to produce GRIP Stage 3 Engineering Approval In Principle (AIP) designs for all asset disciplines (track, civils, electrification & plant, telecoms, and signalling) in relation to the new Meridian Water (Angel Road) station in accordance with the Development Programme clause 2.2 below.

1.1 Services

Network Rail will provide the following Services in the development of the Project. Services will include, but not be limited to:

- (a) Reporting progress on a periodic basis;
- (b) Forecasting and reporting project expenditure on a periodic basis;
- (c) Responsibility for appointing and managing consultants as appropriate to complete the agreed stage;
- (d) Quality assurance;
- (e) Logistics and access planning;
- (f) Procurement and management of site surveys and other geotechnical / environmental investigations required;
- (g) Constructability review;
- (h) Risk and value management (programme and project);
- (i) Services of the Network Rail project sponsor and project manager to support and provide guidance to the Customer and produce the necessary commercial agreements for the next phase of the project;
- (j) Identification of systems integration requirements where appropriate to the new infrastructure;
- (k) Obtain the agreement and sign-off for the project designs from all key stakeholders, at the appropriate stages of their development;
- (l) Undertake project specific investigations;

1.2 Deliverables

- (a) Completion of all relevant GRIP deliverables
- (b) Signed Approval In Principle (Form 001 & Form A) for relevant disciplines including signalling
- (c) Successful completion of a GRIP Stage 3 Stage Gate Review
- (d) Production of a cost estimate for the detailed design, construction, test & commissioning, handback phases for the new Meridian Water (Angel Road) station
- (e) Production of a programme to reflect delivery of the design based on the known project constraints
- (f) Preparation and submission of Network Change and Station Change
- (g) Preparation and submission of a planning application for the works
- (h) Environmental Impact Assessment to accompany the planning application
- (i) Production of a risk register (including quantitative risk analysis) identifying implications on cost and programme to identify mitigation measures and where required contingency.

1.3 Underlying assumptions

- (a) That funding is in place, and that all associated approvals are obtained such that the scope of works described in schedule 3 (the Brief) can be developed in parallel with the overall STAR project in accordance with the overall programme

- (b) The contingency included by Network Rail to deliver the Brief in the Agreement is principally to cover the risk of programme delay
- (c) That there shall be cooperation between the Parties for the transfer / purchase of land required by the design of the new station
- (d) Sufficient possessions and isolations to carry out survey work are obtained in full as needed
- (e) The possession strategy and implementation strategy for delivering the scope of works described in schedule 3, the Brief, does not change from the strategy described in the GRIP 3 Option Selection Report
- (f) The station dimensions and facilities as outlined in the concept design proposal received by the Customer meets station safety and operational requirements
- (g) The Parties intend that the Payment Amounts shall be incurred broadly in accordance with the cost loaded programme (cash flow forecast)
- (h) The 4 weekly progress meetings will provide verification of the cost incurred and to be invoiced under this Agreement. As part of this process there will be a review of likely costs to be incurred to inform the ongoing cash flow forecasts
- (i) Use of Contingency will be subject to agreement of the Customer and meeting Minutes will provide evidence for any change controls requiring budget movements in the Network Rail Oracle Project System (OP)
- (j) Network Rail will be entitled to include Network Rail Costs, which exceed the Capped Cost Estimate, to the extent that such additional costs are as a direct result of changes to the Brief, the Project or the Remit by the Customer. These changes must be included in the 4 weekly meeting Minutes
- (k) The capped cost estimate for the development services described in this Agreement is deemed by the Parties to be a maximum target cost.

1.4 Necessary Consents required:

- (a) Preparation and submission of Network Change – responsibility of Network Rail
- (b) Preparation and submission of Station Change – responsibility of Network Rail
- (c) Preparation and submission of Planning Consents – responsibility of Network Rail

1.5 Details of Insurance Policies

- (a) Not applicable

1.6 Information to be provided by the Customer

- (a) Meridian Water details to define the extent of access/egress on the either side of the railway
- (b) Information regarding highway works on the eastern side of the railway that will be carried out by the Customer, and that will interface with the new Meridian Water (Angel Road) station

1.7 Not used.

2 SCHEDULES TO REMIT

2.1 Estimated Cost

The estimated cost for this stage of the Services is £785,024 (seven hundred and eighty five thousand pounds, and twenty four pounds), inclusive of the Network Rail Fee and Industry Risk Fee contributions. The estimated cost is broken down as follows:

Network Rail Costs		
	Contractor Costs comprised of VolkerFitzpatrick costs (principal designer), Atkins Costs (designer) to cover activities including management of sub contractors, survey work, design drawings, production and issue of AIP designs, environmental impact assessment	£688,538
	Personnel Costs to cover Network Rail Project Management, Engineering Management and Sponsorship costs	£45,129
	Industry Risk Fee	£14,673
	Network Rail Fee	£36,683
	Estimated Cost	£785,024

2.2 Development Programme

- | | | |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|
| (a) | Network Rail GRIP3AIP authority obtained | 13 th March 2015 |
| (b) | Meridian Water details provided by the Customer | 19 th June 2015 |
| (c) | Information provided by the Customer regarding highway works on the eastern side of the railway that will be carried out by the Customer, and that will interface with the new Meridian Water (Angel Road) station | 19 th June 2015 |
| (d) | Produce draft AIP designs for all asset disciplines | 30 th July 2015 |
| (e) | Final AIP design approval | 30 th September 2015 |
| (f) | Prepare Network and Station Change documents | 30 th October 2015 |
| (g) | Submit planning application | 30 th October 2015 |
| (h) | GRIP 5-8 estimate complete | 30 th November 2015 |
| (i) | Network Rail GRIP5-8 authority approval | 18 th March 2016 |

2.3 Not used.

2.4 Capped Costs Estimate - £831,419

The capped cost estimate is broken down as follows;

	Contactor Costs	£688,538
	Personnel Costs	£45,129
	Industry Risk Fee	£14,673
	Network Rail Fee	£36,683
	Contingency	£46,395
	Capped Cost Estimate	£831,419

Schedule 5
Escalation Procedure

1 DEFINITIONS

- 1.1 In this Schedule, except where the context otherwise requires, the following words shall have the following meanings:

"Executive Level Director" means a person from time to time appointed as the holder of such office within each Party which for Network Rail shall include Route Directors;

"Initial Notice" means the notice served under Paragraph 2.1 of this Schedule 5;

"Project Manager" means the person appointed by each Party to manage the delivery of Services or Works under this Agreement;

"Response Notice" means the notices served under Paragraph 2.3 of this Schedule 5;

"Senior Manager" means the person in each Party's organisation responsible for the management and oversight of this Agreement.

2 STAGE 1 – PROJECT MANAGERS

- 2.1 In order to invoke the Escalation Procedure, either Project Manager may notify the other Project Manager by serving a written notice (the **"Initial Notice"**).

- 2.2 The Initial Notice shall:

- (a) state the Clause under which the Escalation Procedure is being invoked or alternatively any other matter to be resolved by means of the Escalation Procedure;
- (b) advise all correspondence and documentation relevant to the matter raised in Paragraph 2.2(a); and
- (c) propose a date within five (5) Working Days for a meeting between the Project Managers to seek resolution of the matter referred to in Paragraph 2.2(a).

- 2.3 Following receipt of the Initial Notice, the receiving Project Manager shall respond by written notice within three (3) Working Days (the **"Response Notice"**).

- 2.4 The Response Notice shall:

- (a) state the actions and programme to resolve the matter raised in the Initial Notice; or
- (b) confirm attendance at the meeting referred to in the Initial Notice; and
- (c) advise any further correspondence and documentation relevant to matter raised in the Initial Notice.

- 2.5 If the Project Managers agree that the Response Notice or the meeting pursuant to the Initial Notice resolves the matter raised in the Initial Notice, the Project Manager who issued the Initial Notice will notify the other Project Manager by written notice. Such notification shall be made within three (3) Working Days following the receipt of the Response Notice or within three (3) Working Days following the meeting.

- 2.6 If the Project Managers do not agree that the Response Notice or the meeting pursuant to the Initial Notice resolves the matter raised in the Initial Notice, both Project Managers will notify their respective Senior Managers accordingly. Such notification shall be made within three (3) Working Days following the receipt of the Response Notice or within three (3) Working Days following the meeting.

3 STAGE 2 – SENIOR MANAGERS MEETING

- 3.1 Following receipt of a notification pursuant to Paragraph 2.6, the Senior Managers of each Party shall arrange a meeting within five (5) Working Days to seek resolution of the matter referred to in the Initial Notice. The Senior Managers may, at their discretion, invite the Project Managers to attend such a meeting.

- 3.2 If the Senior Managers agree that their meeting resolves the matter raised in the Initial Notice, they will notify their Project Managers accordingly. The Project Manager who issued the Initial Notice will notify the other Project Manager by written notice. Such notification shall be made within three (3) Working Days following the meeting of Senior Managers.

3.3 If the Senior Managers do not agree that their meeting resolves the matter raised in the Initial Notice, they will notify their respective Project Managers accordingly within three (3) Working Days following the meeting of Senior Managers.

3.4 At the same time as they make the notification in Paragraph 3.3, each Senior Manager shall notify their respective Executive Level Directors of the matter raised in the Initial Notice and the steps taken at the meetings between Project Managers and Senior Managers to resolve the matter.

4 STAGE 3 – EXECUTIVE LEVEL DIRECTORS' MEETING

4.1 Following receipt of a notification pursuant to Paragraph 3.4, the Executive Level Directors of each Party shall arrange a meeting within five (5) Working Days to seek resolution of the matter referred to in the Initial Notice. The Executive Level Directors may, at their discretion, invite the Senior Managers and/or the Project Managers to attend such a meeting.

4.2 If the Executive Level Directors agree that their meeting resolves the matter raised in the Initial Notice, they will notify their Senior Managers and Project Managers accordingly. The Project Manager who issued the Initial Notice will notify the other Project Manager by written notice. Such notification shall be made within three (3) Working Days following the meeting of Executive Level Directors.

4.3 If the Executive Level Directors do not agree that their meeting resolves the matter raised in the Initial Notice, either Party may refer the matter to Dispute Resolution in accordance with Clause 19.