

SUBJECT TO CONTRACT

BASIC ASSET PROTECTION AGREEMENT**Relating to Outside Party Works****Network Rail Infrastructure Limited ("Network Rail")****1 Eversholt Street London NW1 2DN**

One Heritage Great Ducie Street Limited

Company number 13833557

80 Mosley Street

Manchester

England

M2 3FX

(the "**Customer**")

(For the attention of Emma Corcoran)

Reference: 0000138074 (178237/NW8128)
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Dated as at the later date of signature

Dear Customer,

Basic Asset Protection Agreement relating to the proposed multi-storey residential and commercial development bounded by Great Ducie Street and Mirabel Street.

- 1 The Customer wishes to procure the design and construction of certain works which are described in this Agreement and which will; a) interface with and potentially impact upon the safety or operation of the Railway during construction and/or b) will involve the construction of a New Structure.
- 2 The purpose of this Agreement is to protect the Railway and to facilitate the design and construction of the Works, by the Customer.
- 3 The Parties acknowledge that this Agreement only provides for asset protection.

Obligations of the Customer

- 4 The Customer wishes to design and carry out the Works and Network Rail has agreed with the Customer for the Customer to design and carry out the Works on the terms set out in this Agreement.
- 5 The Customer is to prepare a Programme which shall, as necessary, comply with the requirements of paragraph 18 and shall be sent by the Customer to Network Rail prior to Works commencement in sufficient time to enable Network Rail to perform the Services. As

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and when the Customer updates the Programme the Customer shall promptly send a copy of the same to Network Rail.

- 6 In carrying out and completing any design for the Works, the Customer shall exercise all the reasonable skill, care and diligence to be expected of a qualified, prudent and competent architect or, as the case may be, other appropriate qualified, prudent and competent designer experienced and skilled in carrying out and completing the design for works of a similar size, scope and complexity to the Works.
- 7 The Works shall be designed and carried out in accordance with all applicable laws, any Planning Permission which may be granted for the Works, any requirements stipulated in writing by Network Rail having regard to its contractual, statutory and Network Licence obligations, any approvals or acceptances provided by Network Rail or consents obtained for the Works, and the Standards.
- 8 The Customer shall be responsible for designing, carrying out and completing the Works and shall (without prejudice to any other provision of this Agreement) not damage the Railway and/or negatively impact upon the safety, structure or operation of the Railway and/or injure or negatively impact upon the safety of persons or property on or near the Railway.
- 9 Any variation to the Works which in Network Rail's opinion will fundamentally change either the nature of the Works or the impact of the Works on the Railway shall require the prior consent of Network Rail in writing (such consent not to be unreasonably withheld or delayed, provided that Network Rail shall have sole discretion in relation to safety issues affecting the Railway).
- 10 Prior to the implementation of the Works, the Customer shall take out and maintain for the duration of the Works public liability insurance to cover any loss, cost, expense, liability, action, demand, claim or proceeding whatsoever arising under any statute or at common law in respect of personal injury or damage to any property arising as a result of the Works to the value stated in Schedule 2. Whenever reasonably requested by Network Rail, the Customer shall provide evidence by way of a broker's letter or equivalent to the reasonable satisfaction of Network Rail that public liability insurance is being maintained in accordance with the provisions of this paragraph 10 and that payment has been made in respect of all premiums due under such policy.
- 11 The Customer shall submit to Network Rail such information in relation to the Works that Network Rail reasonably requests. The Customer shall ensure that any information provided to Network Rail by the Customer is prepared and given in such a diligent and professional manner and with such clarity and in such detail as is necessary for Network Rail to comply with its obligations in this Agreement.
- 12 The Customer and Network Rail shall liaise regularly as works progress on all safety matters arising out of the Works as they affect the Network.
- 13 For the purposes of the Works (and regardless of any action Network Rail takes pursuant to this Agreement) the Customer is the sole client under the CDM Regulations and shall fulfil all the roles and duties of such including making the necessary declaration to the Health and Safety Executive in accordance with the CDM Regulations.
- 14 After consulting with Network Rail the Customer shall prepare a "Construction Phase Plan" (as defined in the CDM Regulations) for the Works and submit it to Network Rail. Network Rail shall examine and comment to the Customer (having due regard to the Programme) on the

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elements of the Construction Phase Plan relating to works in or likely to affect the Railway environment. The Customer shall amend the Construction Phase Plan to take account of any comments made by Network Rail on the same and shall submit further Construction Phase Plans to Network Rail as necessary.

- 15 Where Schedule 2 states that the Customer is required to provide a form of security then on the Commencement Date the Customer shall deliver to Network Rail the required form of security substantially in the form set out in Schedule 4 duly executed by the Surety.
- 16 Network Rail shall provide the Customer with details of the Site Constraints within a reasonable period of time to enable the Customer to design the Works in compliance with the same.

Access and possessions

- 17 Where it would be beneficial for the Customer to gain access to land in the control of Network Rail or which is in the freehold or leasehold ownership of Network Rail in order to construct the Works, then prior to the commencement of the Works the Customer may apply for and Network Rail shall grant such requests when and where it is reasonable to do so, bearing in mind the Customer's requirements and the safety and/or operational needs of the Railway.
- 18 If a possession of the Network is required to carry out the Works, Network Rail shall book such possession in accordance with its possession planning and booking system (subject to the procedures set out in the Network Code) and the Customer shall pay Network Rail all costs incurred by Network Rail in providing the possession or as a result of such possession (including, without limitation, any payments to train operators) in accordance with Schedule 3. The Programme must demonstrate that the sequencing of the Works is achievable within the available time-frame for any booked possession.
- 19 Network Rail shall have no liability to the Customer for any costs or delays occasioned by the terms of or failure to obtain or receive timely possessions. Network Rail shall give the Customer as much notice as is reasonably practicable in respect of any cancellation or alteration of any booked possession, but under no circumstances shall Network Rail have any further liability to the Customer for any cancellation or alteration of a possession.

Network Rail Services

- 20 Network Rail shall provide the Services in respect of the Works. Nothing in this Agreement shall be construed as an obligation on the part of Network Rail to provide design consultancy services as part of the Services. The Services to be undertaken by Network Rail shall solely relate to asset protection of the Railway.
- 21 In carrying out the Services, Network Rail shall exercise the standard of reasonable skill, care and diligence to be expected of a suitably qualified and competent person engaged in carrying out or procuring the carrying out of services of a similar nature, scope and complexity to the Services but taking into account Network Rail's duties to operate, maintain and renew the Railway.
- 22 Network Rail shall at the cost of the Customer use reasonable endeavours to make available to the Customer, within a reasonable time, the data and information in Network Rail's possession (except for data and information which is confidential or commercially sensitive or already in the public domain) which the Customer reasonably requires to carry out the Works. Network Rail does not warrant the accuracy or sufficiency of data and information provided to

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the Customer and the Customer shall be responsible for verifying the accuracy and assessing the sufficiency of all data and information provided.

- 23 Network Rail may instruct the Customer and/or the Customer's contractors to suspend the Works at any time with immediate effect, or take any protective action, or remedy any defect to the Works if Network Rail reasonably believes, acting in its role as owner and operator of the Network, that the safety of the Railway or any person is at risk or the suspension or protective action is in the best interests of the operation of the Railway. The Customer shall pay all costs incurred by Network Rail in taking any such action as is referred to in this paragraph 23.

Consents

- 24 Where Schedule 2 states that it is necessary for Network Rail to apply for certain consents before the Customer can carry out the Works, Network Rail will use reasonable endeavours to obtain any such consents. Network Rail cannot promise that the consents will be granted or that the conditions upon which they may be granted will be acceptable to the Customer. The Customer shall be responsible for paying all costs associated with applying for the consents and any costs or compensation payable as a consequence of the grant of the consents.
- 25 The Customer shall provide copies of statutory inspection reports and approvals, Works completion certificates and such other inspection reports, approvals and certificates as maybe required by Network Rail as the Works progress.
- 26 Prior to commencing the Works (and in any event no later than twenty (20) working days prior to commencement of the relevant part of the Works), the Customer shall:
- (a) provide a copy of all Method Statements relating to the Works to the Network Rail Principal Contact to allow due consideration by Network Rail; and
 - (b) demonstrate to Network Rail that the design of the Works takes into account the Site Constraints and all relevant Standards.
- 27 The Customer shall not be permitted to commence the Works until Network Rail has confirmed to the Customer in writing its acceptance of the proposed Method Statements and design referred to in paragraph 26.
- 28 Any consent, acceptance, approval or sign-off by Network Rail pursuant to paragraph 27 is given solely in respect of the efficacy of asset protection of the Railway and shall not be construed as design approval or acceptance and/or confirmation that the Works will not detrimentally affect the Railway. In no circumstances shall Network Rail be classed as a designer or contractor pursuant to the CDM Regulations.
- 29 Notwithstanding any consent, approval, acceptance or sign-off of the Works (or any documentation relating thereto) by Network Rail, the obligations and liabilities of the Customer under this Agreement shall not be released, diminished or in any other way affected and nor shall any such consent, approval, acceptance or sign-off be treated as confirmation by Network Rail that the Customer has complied with those obligations and liabilities. The

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responsibility for the design and construction of the Works shall remain solely at the risk and cost of the Customer and Network Rail shall have no liability for such design and construction.

Post completion

- 30 Where the Works involve a New Structure then on and from completion of the Works the Customer shall, at its own cost, arrange for the regular inspection of the New Structure in accordance with all applicable regulations and procedures. A copy of each inspection report and, as appropriate, an assessment certificate shall be submitted to Network Rail on request. Network Rail may, if in its reasonable opinion the condition of the New Structure so warrants, at any time require the Customer to carry out such additional examinations or further investigations as it considers necessary at the Customer's own cost.
- 31 Where the Works involve a New Structure the Customer shall at its own cost maintain the New Structure in a good and proper state of repair and, when necessary, repair and/or renew the New Structure to the satisfaction of Network Rail. In the event of the Customer not so maintaining, repairing or renewing the New Structure, Network Rail may carry out such works as Network Rail considers necessary at the cost of the Customer to protect the Railway. The Customer shall procure that any maintenance contractor shall comply with the Standards and such other conditions as Network Rail may impose for the protection of the Railway.

Invoicing and payment

- 32 The Customer shall pay all reasonable costs incurred by Network Rail in performing the Services and any other sums due under this Agreement in accordance with paragraph 33 and paragraph 2 of Schedule 3.
- 33 The total Estimated Cost may be adjusted from time to time in accordance with this Agreement. All amounts are exclusive of Value Added Tax, which will be charged at the applicable rate. The Customer shall provide a valid purchase order or other agreed order confirmation to Network Rail for the Estimated Cost. Network Rail shall use reasonable endeavours to carry out the Services for the Estimated Cost but the Customer shall pay all reasonable costs incurred by Network Rail in accordance with Schedule 3.
- 34 Network Rail shall invoice the Customer for the Services and for all other costs to be paid by the Customer in accordance with the payment provisions set out in paragraph 35. The Customer shall pay the invoice in full within twenty (20) working days from receipt of the invoice. If the Customer wishes to dispute the amount set out in an invoice it shall notify Network Rail within ten (10) working days of receipt of the invoice specifying the sum that the Customer considers to be due on the date the notice is served and the basis on which that sum is calculated. Late payment of any amounts(s) due and payable under any invoice shall carry interest at the rate of 2% above the Bank of England base rate from time to time. Payment by the Customer to Network Rail shall be without set-off, retention, counterclaim, abatement or any other deduction.
- 35 Invoices will be issued by Network Rail pursuant to this Agreement on the following basis:
- (a) before the execution of Services by or on behalf of Network Rail or the application for consents for the purpose of commencing the Works, 50% of the Estimated Cost;
 - (b) after the sum referred to in paragraph 35(a) has been expended, Network Rail shall be entitled no more frequently than every 28 days from the date of this Agreement to

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invoice tranches (on an emerging costs basis) of the remainder of the Estimated Cost (as such cost is adjusted in accordance with paragraph 33);

- (c) upon final completion of the Works any balance to be credited or paid, being the difference between the calculated final account and the amount paid to date; and
- (d) in respect of costs following final completion of the Works, Network Rail may invoice the Customer within a reasonable period of time following completion of the Works and such invoices shall be for the actual costs, charges and expenses outstanding.

Liability

- 36 The maximum liability of Network Rail to the Customer arising out of or in consequence of this Agreement (whether for breach of contract, in tort, for breach of statutory duty or otherwise) shall in all circumstances be limited in aggregate to 50% of the Network Rail Costs (as defined in Schedule 3) paid by the Customer under this Agreement during the preceding 24 months, provided that such limit shall not apply in respect of any liability in respect of death or personal injury resulting from the negligence of Network Rail and/or fraud of Network Rail.
- 37 In no circumstances shall Network Rail or the Customer be liable to one another in respect of this Agreement for any indirect or consequential loss (including, without limitation, loss of profit) howsoever arising (without prejudice to any express payment or indemnity obligation of either Party under this Agreement). The Parties hereby agree that Possession Related Costs shall be classed as direct losses and recoverable under this Agreement pursuant to paragraph 38.
- 38 The Customer shall indemnify Network Rail for all losses and/or costs suffered and from all liability and claims incurred for:
- (a) death or injury to persons;
 - (b) damage to property; and
 - (c) any interference to the Railway
- arising from the carrying out of the Works (except to the extent the liability or claim arises due to the negligence of Network Rail).
- 39 The Customer shall act in good faith to Network Rail in carrying out the Works and its obligations pursuant to this Agreement. Without prejudice to the foregoing generality, where the Network and/or Network Rail's land, works and/or structures suffer physical damage, distortion and/or instability due to the carrying out of the Works, recovery of the Network and Network Rail's land, works and structures shall take priority over the Works and time shall be of the essence in making good the Network and Network Rail's land, works and structures.
- 40 The Customer agrees to reimburse Network Rail any additional operation, maintenance and renewals costs that may arise for Network Rail as a result of the Works.

Termination

- 41 Network Rail may, by serving notice on the Customer, terminate this Agreement with immediate effect if the Customer is in material breach of any of its obligations in this Agreement (provided that Network Rail shall first notify the Customer of any remediable breach and its

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intention to terminate, and shall allow the Customer a period of twenty (20) working days to remedy such breach). Without prejudice to the foregoing, Network Rail may, by serving notice on the Customer, terminate this Agreement with immediate effect upon the re-occurrence of the same remediable breach of this Agreement by the Customer on three or more occasions (having notified the Customer that a repeat of the breach on a second or subsequent occasion may give rise to termination of this Agreement on its next occurrence). The Customer may terminate this Agreement on giving Network Rail twenty (20) working days' notice in writing if any of the consents, acceptances or approvals required for the Works are not obtained.

- 42 Upon termination, all obligations of both Parties under this Agreement shall cease except for paragraphs 28, 29, 30, 31, 32-35 inclusive, 36-40 inclusive, 43-44 inclusive, 48-51 inclusive, 52-57 inclusive, 59-64 inclusive and any obligations arising as a result of any antecedent breach of this Agreement or any accrued rights.
- 43 Except where termination is due to Network Rail's default or insolvency, the Customer shall pay Network Rail for any unpaid Services as at the date of termination and the reasonable costs of removing all plant, equipment and those materials not incorporated into the Works and in reinstating or procuring the reinstatement of the Works (or such part thereof as may exist as at the date of termination) and the relevant part or parts of the Railway affected by the Works to the extent necessary to make the same safe and/or secure and enable Network Rail to meet its contractual, statutory and Network Licence obligations (including the reasonable cost of any contractors and compensation to third parties).
- 44 Notwithstanding the termination of this Agreement, the Customer shall ensure the Site remains safe and secure to enable Network Rail to meet its contractual, statutory and Network Licence obligations.

Anti-bribery and slavery

- 45 The Customer shall comply with all applicable anti-bribery, anti-corruption and anti-slavery legislation including the Bribery Act 2010 and the Modern Slavery Act 2015.

Equality and diversity

- 46 The Customer shall perform its obligations under this Agreement in accordance with all applicable equality legislation including the Equality Act 2010.

Freedom of information and confidentiality

- 47 The Customer acknowledges that Network Rail may be required under the Information Acts to respond to requests for information relating to the subject matter of this Agreement. The Customer shall provide all necessary assistance and cooperation as reasonably requested by Network Rail to enable Network Rail to comply with these obligations. Where Schedule 2 states that the Customer is a public authority that is subject to the Information Acts, the provisions of this paragraph 47 shall apply equally to the Customer and Network Rail where the Customer receives a request for information.
- 48 Neither Party shall disclose any confidential information save as required by any enactment, requirement of any regulatory authority or pursuant to any judicial or arbitral process, or in the case of Network Rail as required by its statutory duties or Network Licence. On termination of this Agreement, the Customer shall either destroy or, if reasonably requested to do so, return

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any confidential information within its possession or control that belongs to or was provided by Network Rail.

- 49 The Parties agree that, for the purposes of the Data Protection Act 2018 and the European General Data Protection Regulation (Regulation (EU) 2016/679), to the extent that it applies in the United Kingdom by virtue of the European Union (Withdrawal) Act 2018 as amended or re-enacted from time to time (together to be referred to as the UK GDPR), each Party processes personal data (as defined in the UK GDPR) as an independent data controller in its own right. Nothing in this Agreement is intended to construe either Party as the data processor of the other Party or as joint data controllers with one another with respect to Personal Data.
- 50 Each Party shall:
- (a) comply with its obligations under the UK GDPR;
 - (b) be responsible for dealing with and responding to data subject requests, enquiries or complaints it receives (including any request by a data subject to exercise their rights under UK GDPR); and
 - (c) be responsible for managing all unlawful or unauthorised processing of personal data or any personal data breach as defined by the UK GDPR of which it becomes aware in accordance with their obligations under the UK GDPR, including reporting any such Security Incident to the Information Commissioner's Office (where necessary).
- 51 Each Party warrants that in complying with UK GDPR it is not subject to any restriction which would prevent or restrict it from disclosing or transferring personal data to the other Party in accordance with the terms of this Agreement.

General

- 52 The Customer grants to Network Rail an irrevocable, royalty-free and non-exclusive licence to copy and use the Documents for any purpose related to the Works or the Site or the protection of the Railway in the vicinity of the Works. The benefit of the licence is assignable and the licence includes the right to grant sub-licences. The Customer shall not be liable for any use of the Documents for any purpose other than that for which the same was prepared and provided by the Customer.
- 53 Notwithstanding any other provision in this Agreement, Network Rail does not warrant the accuracy or sufficiency of data and information provided to the Customer and the Customer shall be responsible for verifying the accuracy and assessing the sufficiency for its purposes of all data and information provided.
- 54 Nothing in this Agreement shall:
- (a) limit, qualify or override or purport to limit, qualify or override any obligation, right or entitlement of Network Rail which arises by reason of any Network Licence condition, the terms and conditions of any existing access agreement or any statutory duty pursuant to the Act or any other law; or
 - (b) require Network Rail to do anything which is inconsistent with any Network Licence condition, the terms and conditions of any existing access agreement or any statutory duty pursuant to the Act or any other law.

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- 55 In the event of any conflict between the provisions of this Agreement and any such Network Licence condition, access agreement, statutory duty or contractual obligations:
- (a) Network Rail shall notify the Customer as soon as practicable of any such conflict of which it becomes aware; and
 - (b) the Network Licence condition, access agreement, statutory duty or contractual obligations shall prevail and (to the extent that such conflict is not resolved by the Parties agreeing to vary this Agreement) this Agreement shall be of no effect to the extent of such conflict.
- 56 To the extent any dispute arises under, out of or in connection with this Agreement and such dispute involves a construction contract within the meaning of section 104 of the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 (as amended from time to time), either Party may refer such dispute to an adjudicator for adjudication in accordance with the following provisions:
- (a) the Scheme for Construction Contracts (England and Wales) Regulations 1998 as amended by the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011 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.
- 57 Notices shall be in writing and shall be duly and validly served if delivered by hand or sent by first class post or by email to the relevant postal or email address set out in Schedule 2 and, in the case of any notice issued to Network Rail, copied to the signatory of this Agreement. Any notice shall be deemed to have been received:
- (a) if sent by hand, at the time of delivery;
 - (b) if sent by first class post, two (2) working days after posting;
 - (c) if sent by email, at the time evidenced by the electronic message delivery receipt.
- 58 The Customer may not assign or charge its rights or interests under this Agreement without the prior consent of Network Rail.
- 59 Neither Party intends that any term of this Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person other than Network Rail or the Customer.
- 60 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.
- 61 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.

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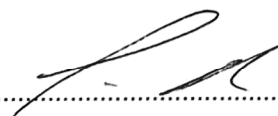
- 62 This Agreement constitutes the entire agreement between the Parties and supersedes any previous agreements between the Parties relating to the subject matter of this Agreement. Both Parties acknowledge that in entering into this Agreement they are not relying upon any pre-contractual statement that is not set out in this Agreement.
- 63 This Agreement shall be governed by and construed in accordance with the laws of England and Wales. Save as expressly provided otherwise, the Parties agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes that may arise out of or in connection with this Agreement.
- 64 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.

Yours faithfully,

Duly authorised for and on behalf of Network Rail Infrastructure Limited

Dated:.....

We agree to the above.

Signed:.....

(Duly authorised for and on behalf of One Heritage Great Ducie Street Limited)

Dated:.....24/08/22.....

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Schedule 1– Definitions and Interpretation

- 1.1 In this Agreement the following words and expressions shall have the following meanings save where the context otherwise requires:

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

Act means the Railways Act 1993 as amended;

Agreement means this letter and its schedules and appendices;

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

Commencement Date means the date of this Agreement;

Documents means all bills of quantities, calculations, details, drawings, plans, reports, specifications and other documents prepared or to be prepared by or on behalf of the Customer in connection with the Works;

Estimated Cost means the total estimated costs, charges and expenses of providing the Services as calculated by Network Rail and set out in Schedule 2;

Information Acts means the Freedom of Information Act 2000 and the Environmental Information Regulations 2004;

Method Statement means a document prepared by the Customer that details the way a work task or process is to be completed. The method statement should outline the hazards involved and include a step by step guide on how to do the job safely. The method statement must also detail which control measures have been introduced to ensure the safety of anyone who is affected by the task or process;

Network means the railway facilities of which Network Rail or an Operator is the facility owner (as defined in section 17(6) of the Act);

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

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

Network Rail Principal Contact means the entity identified as such in Schedule 2;

Network Rail Standards 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 and which applies to the performance of the Works and Services under this Agreement, as published on the website www.uk.ihs.com;

New Structure means permanent or temporary works undertaken by the Customer to create a new structure which following completion may impact upon the safety or operation of the Railway;

Operator means an operator of passenger or freight trains which has entered into an Access Agreement with Network Rail;

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

Planning Permission means any planning permission issued in connection with and/or affecting the Works and/or the Site which shall include without limitation any associated planning agreement and any agreements in respect of section 106 of the Town and Country Planning Act 1990, section 38 of the Highways Act 1980 and/or section 278 of the Highways Act 1980 or approval of reserved matters;

Programme means a programme prepared by the Customer showing key dates for the carrying out and completion of the Works;

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

Railway Group Standards means the 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 and Road. Such standards can be accessed on the website www.rgsonline.co.uk;

Services means the services to be performed by or on behalf of Network Rail pursuant to this Agreement as set out in Schedule 2;

Site means the land on which the Works are to be carried out;

Site Constraints means any constraints or asset protection issues relating to the Railway which may affect the Site as communicated in writing by Network Rail to the Customer from time to time;

Standards means together the Railway Group Standards and the Network Rail Standards;

Surety means the party listed as such in Schedule 2;

Works means the works listed in Schedule 2.

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", "Schedules" or "appendices" are references to such provisions or parts of this Agreement;
- (c) the words "include" and "including" are to be construed without limitation; and
- (d) 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.

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Schedule 2 – Works Particulars

1 The Works (Schedule 1, paragraph 1.1)

The Works comprise:

- (a) Works which potentially impact on the safety or operation of the Railway during construction, including: proposed multi-storey residential and commercial development bounded by Great Ducie Street and Mirabel Street. The site is situated adjacent to a section of Network Rail Viaduct MVE1 – 1A(Group 2) on the approach to Manchester Victoria Station;

Interfaces identified but not limited to:

- Piling adjacent
- Glint and glare
- Crane operations
- (b) The construction of New Structures, including: Multi-Story residential and commercial development adjacent.

2 The Services (Schedule 1, paragraph 1.1)

2.1 The Services to be provided by Network Rail are as follows:

- (a) preparation and facilitation of agreements with the Customer;
- (b) provision of guidance documents for works to take place on or adjacent to Network Rail land;
- (c) provision of guidance on the requisite Network Rail procedures and Standards;
- (d) provision of obtaining Network Rail record drawings and services information;
- (e) attendance at meetings;
- (f) review of Method Statements/risk assessments/health and safety plans etc.;
- (g) review of information provided by the Customer demonstrating that the design of the Works takes into account the Site Constraints and all relevant Standards;
- (h) procurement and management of track possessions and isolations;
- (i) issue of access permits or track visitor permits;
- (j) provision of safety staff to assure safe systems of work that could affect the Network;

SUBJECT TO CONTRACT**3 Network Rail Principal Contact (Schedule 1, paragraph 1.1)**

The Network Rail Principal Contact is:

Adam Dyce

Tel: 07732 642 965

Email: adam.dyce@networkrail.co.uk

4 Estimated Cost (Schedule 1, paragraph 1.1)

The total Estimated Cost of carrying out the Services is £47,542.00 + VAT.

5 Public Liability Insurance (paragraph 10)

The value of public liability insurance shall be not less than £20,000,000 (twenty million pounds).

6 Security (paragraph 15)

An on-demand bond is not required to be provided by the Customer.

7 Consents (paragraphs 24-29)

It is not necessary for Network Rail to apply for certain consents before the Customer can carry out the Works.

8 Freedom of information (paragraphs 48-51)

The Customer is not a public authority that is subject to the Information Acts.

9 Notices (paragraph 57)

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

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

Tel: 020 7557 8000

Email: notices@networkrail.co.uk

All written notices to be marked: "URGENT: ATTENTION THE GROUP COMPANY SECRETARY"

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

Emma Corcoran, One Heritage Great Ducie Street Limited, Company number 13833557, 80 Mosley Street, Manchester, England, M2 3FX

Tel: 07464 624 480

Email: emma.corcoran@one-heritage.com

SUBJECT TO CONTRACT**Schedule 3 – Costs****1 Definitions**

Agency Costs means the cost, multiplied by 1.5, to Network Rail, of any consultants and contractors who are not Network Rail employees but who are engaged by Network Rail in connection with the performance of Network Rail's obligations under this Agreement and for whom Network Rail incurs business unit overheads (business unit overheads includes, for example, utility costs, accommodation, conferences/meetings, IT costs, stationary/printing, office costs and posting/archiving), plus the properly incurred expenses and disbursements charged to Network Rail by those consultants and contractors.;

Consultants' Costs means the costs to Network Rail of any consultants or contractors engaged by Network Rail in connection with the observance and performance of its obligations under this Agreement multiplied by 1.10, plus the properly incurred expenses and disbursements of those consultants or contractors;

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

- (a) printing, reproduction and purchase of documents, drawings, office consumables, maps and records;
- (b) travelling expenses in accordance with Network Rail's policies;
- (c) all technical, commercial and professional fees, costs and disbursements in connection with the Works but excluding contractors' costs and Agency Costs;
- (d) all internal and external legal and other costs, charges and expenses properly incurred by Network Rail in connection with the preparation, negotiation and enforcement of any supplemental leases, licences (including in respect of intellectual property) and other documentation entered into by Network Rail and relating to the Works (including this Agreement);
- (e) insurance costs (if any);
- (f) any sums payable by Network Rail pursuant to the terms of any track access agreement, station access agreement, station lease or station agreement where the same arises in connection with the carrying out of the Works; and
- (g) any other disbursements or expenses reasonably and properly incurred by Network Rail in connection with the Works which are not expressly set forth herein subject to obtaining the Customer's prior approval in respect of any individual item of expenditure which exceeds £5,000 (such consent not to be unreasonably withheld or delayed).

Freight Access Agreement means any agreement entered into between Network Rail and an Operator for the movement of freight trains incorporating the Network Code;

Hourly Rate means in respect of each member of Network Rail's Personnel in any particular role band the rate set out in paragraph 3 below as the same may be adjusted from time to time

SUBJECT TO CONTRACT

in accordance with paragraph 4 below, which rate will be payable in respect of all worked hours spent by Network Rail's Personnel in connection with the Services;

Network Rail Costs means Agency Costs, Consultants' Costs, Expenses and Disbursements, Personnel Costs and Possession Related Costs, plus:

- (a) costs associated with applying for any consents in relation to the Works; and
- (b) such other costs, expenses and liabilities which are properly incurred by Network Rail in respect of the performance of Network Rail's obligations in respect of the Works to the extent that they arise from or are a consequence of the Services.

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 duties and obligations under this Agreement, including any travel time to and from the Customer's site or premises;

Possession Related Costs means sums Network Rail will be obliged to pay to any train operator pursuant to Schedules 4 and 8 of the relevant Track Access Agreement or, where such train operator is party to a Freight Access Agreement, the equivalent provision of that agreement;

Track Access Agreement means any agreement entered into between Network Rail and an Operator for the movement of passenger trains incorporating the Network Code or any access option in relation to the movement of passenger trains on the Network.

2 Expenses and Disbursements

The Customer shall pay all Network Rail Costs reasonably and properly incurred in connection with the Services.

3 Hourly Rates effective from 1 April 2022

Banding	Hourly Rate
1	£204.84
2	£143.38
3	£108.11
4	£93.31
5	£76.24
6	£75.10
7	£69.41
8	£62.59

SUBJECT TO CONTRACT**4 Adjustment of Hourly Rates**

- 4.1 Network Rail shall adjust the Hourly Rates to reflect any rate review agreed between Network Rail and the ORR, or in the absence of such rate review, annually on 1st April to reflect the increase in the retail price index for the year ending the preceding November.
- 4.2 Where Network Rail identifies opportunities for delivering the Services for a lower cost by using Network Rail's Personnel for whom lower hourly rates apply, Network Rail will use reasonable endeavours to deliver the Services through such Network Rail's Personnel. In such cases, the hourly rate applicable to such Network Rail's Personnel shall apply.

5 Review

Upon the Customer's reasonable request, Network Rail shall provide to the Customer reasonable evidence of all amounts payable by the Customer under this Schedule 3 (other than the Hourly Rates).

SUBJECT TO CONTRACT

Schedule 4 – Security

NOT USED