

Stakeholder relations code of practice

Investing in the Network

Document version:

1.1

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1. Introduction

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

If you have any suggestions on ways to improve this guide, please give us feedback (contact details can be found [here](#)).

The guide's appendices cover:

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

2. Overview

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

The earlier you involve us with a project's development, the more we can help you to define its scope and deliver your proposal. This will help us both to align our respective objectives or commitments, to realise opportunities from integrating these commitments and to manage interface risks effectively.

Network Rail's role

Our role is to:

- help customers and stakeholders¹ (who we call 'promoters') who wish to invest in the rail network infrastructure to develop their proposals; and
- help promoters to deliver their proposals as appropriate, and help them co-ordinate with other relevant stakeholders.

¹ In this guide, we use the term 'promoter' to describe current and prospective customers and stakeholders (including developers, scheme promoters and funders) who approach us to undertake an investment or project. Find more details in appendix G.

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

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

Network Rail governance arrangements

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

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

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

The Guide to Railway Investment Projects (GRIP) explains the points of the project lifecycle when you need to obtain our funding approval. Further details can be found [here](#).

Network Rail's customers and stakeholders

Our customers are the passenger and freight train operators. On generic industry-wide issues, passenger operators are often represented by the Association of Train Operating Companies (ATOC); and freight operators by the Rail Freight group.

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

Other funders include the Welsh Assembly, Transport for London (TfL), the Passenger Transport Executives (PTEs), local and county councils, the European Union (EU), rolling stock manufacturers and developers.

We consider our stakeholders to be our customers and funders, together with any other party which relies on us to invest in or around the rail network infrastructure.

3. The investment process

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

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

When a promoter asks us to develop and implement a project, we follow a generalised process. This section describes that process, and you'll find flowcharts to illustrate it in [Appendix A](#).

When we deliver services to the promoter, and also in developing and implementing ourselves we follow the Guide to Railway Investment Projects (GRIP).

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

We describe the various investment process stages below, from inception through to completion. We also explain the contracting arrangements which apply for different kinds of project.

Stage 1: Investment (project) ideas: initiation and prioritisation

Information requirements

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

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

Receipt of request

When we receive an investment request, we will appoint an appropriate representative.

The nature of the investment will determine who within Network Rail will take responsibility for the investment process and the nature of the proposed investment and its complexity will largely determine how we allocate it, and our representative will keep you informed.

Our representative will:

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

Review and ranking of project proposal by the RSPG

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

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

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

As part of the initial review process, the RSPG will assess the scheme against the decision criteria we use to assess promoters' reasonable requirements. You can read a summary of our decision criteria in [Appendix E](#).

Failure to meet decision criteria

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

Rejection of scheme by RSPG

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

Appealing against a decision

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

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

Rejection of scheme by RSPG following appeal

If the RSPG reject the proposed scheme again and you disagree with the basis for this decision you can make a complaint using the contact details [here](#).

Prioritising a project

We will usually discuss the relative priority of your proposal with you, with the appropriate information requirements, within two weeks of receiving your request.

Our classification of the relative priority of your proposal will take into account all relevant factors, including but not limited to:

- current information;
- the industry priorities and alignment of other programmes of work;
- whether the scheme is funded by Network Rail;
- whether the scheme is delivered by Network Rail or the promoter;

- resource constraints, particularly if the scheme is funded or delivered by Network Rail or will require a significant resource input from us; and
- regulatory requirements through our network licence.

Where we are delivering the scheme, or where the delivery of the scheme will have significant resource implications on us; we will prioritise schemes which improve overall industry and customer value.

If you are delivering a scheme, we will make all reasonable efforts to help implement it according to the terms of a [Basic Asset Protection Agreement](#) or an [Asset Protection Agreement](#), as described later in this document. In line with these agreements, we will seek to recover any additional costs that we incur in facilitating the scheme's delivery from the promoter, providing these additional costs are efficiently incurred.²

Constraints on deliverability

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

For example, this might affect areas where a number of schemes are being proposed at a specific time, like the London 2012 Olympics area. If these schemes make exceptional demands on resources, we may not be able to deliver every scheme at the same time whilst operating our network efficiently.

Stage 2: Initial project feasibility and development process

Following the successful review and prioritisation of the investment proposal, Network Rail will make contact with the promoter to arrange meetings as appropriate to move forward the promoter's project. At this stage we will explain our governance and contracting arrangements for enhancements to the rail network infrastructure, further information can be found on our website at: <http://www.networkrail.co.uk/aspx/1606.aspx>

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

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

Non-contestable services

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

² In the event that we incur claims from any third party for loss or damage caused as a result of the scheme being delivered by the promoter, we will seek to recover the full costs of meeting that claim from the promoter.

We call these services ‘non-contestable’. As they are associated with protecting the integrity and safety of the rail network and its operations and include the provision of information, safety management (including approvals), consents and access. If the works are straightforward, then a Basic Asset Protection Agreement (BAPA) may be appropriate at this stage. If the project is more complex, then an Asset Protection Agreement (APA) is likely to be more suitable, further information can be found on our website at:

<http://www.networkrail.co.uk/asp/1606.aspx>

Contestable services

We may also be able to undertake contestable services as well as non-contestable services. In broad terms, these are:

- project management;
- development;
- design management; and
- implementation.

The specific type of service we provide will depend on the stage in the project lifecycle. In the early stages of a project, we recognise that you might need help to develop and refine your business case.

We will discuss and agree any charges for the work with you before taking any action or incurring any charges. Charges will depend on the nature of the proposal. Details of the contracting and risk framework for third party sponsored enhancements.

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

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

Initial agreements

If you ask us to develop the scheme and we agree that we should do so, we will incorporate the project into one or more of the following two agreements, both of which can be found on our website at: <http://www.networkrail.co.uk/asp/1606.aspx>

Basic Services Agreement (BSA)

This is suitable for straightforward projects and for schemes progressing through feasibility which generally do not require employment of consultants or any other external input.

Development Services Agreement (DSA)

This is suitable for projects progressing through development, which will usually require the appointment of consultants. Should you already have in place a [Framework Development Agreement \(FDA\)](#) the initial stage is likely to be covered by a work instruction under that agreement (for more information on an FDA see the next section on the contracting and risk framework for third party sponsored enhancements).

If you don't choose us to develop the scheme, or you decide to undertake the development activity yourself or procure it from another company, we will facilitate the project's interface with our business. We'll do this according to the most appropriate asset protection agreements.

You'll find in [Appendix D](#) an indicative list of services (both contestable and non contestable) that we can provide.

Business efficiency objectives

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

If so, you should identify your requirements in line with our business planning criteria and project development and implementation processes. You can find details of these in the Guide to Railway Investments Projects (GRIP) [here](#). Where appropriate, we will give you more information on our renewal plans to help you find such opportunities. When the proposed enhancement may pose a significant risk to the efficient operation, maintenance and renewal of the network but is nonetheless deemed to be a priority, then we will offer to develop the project in line with the template agreements.

Stage 3: Project development

If you wish to continue development activities with us, we will develop the project with you against the specification, time and cost parameters we agree through the relevant agreement, as detailed above.

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

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

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

The business case should confirm whether or not the project is affordable, whether it can be delivered in a reasonable timescale, and whether it will provide value for money.

You will then decide on the appropriate procurement route, and choose whether or not to implement the project.

Stage 4: Implementation

If the procurement route you choose is through Network Rail, we will enter into an Implementation Agreement (IA) with you. If you need it, we will generally offer you a fixed price for implementation services. We will seek a sufficient level of certainty and equivalent terms from our supply chain after completing a detailed design at GRIP Stage 5. Exclusions may apply to the price estimate as appropriate, taking into account commercial risks which may be beyond our reasonable control.

Where we implement the project, we'll agree the appropriate contracting strategy with you, and the allocation of risk between the parties.

There are four possible implementation agreements which may confirm a price, depending on the value and complexity of the scheme.

- a Basic Implementation Agreement (Fixed Price) – a simplified agreement for simple projects where generally the agreed price is less than £2m;
- a Basic Implementation Agreement (Emerging Cost) – a simplified agreement for simple projects where generally the total cost will be less than £2m;
- an Implementation Agreement (Fixed Price) for projects where generally the agreed price is from £2m up to around £10m; and
- an Implementation Agreement (Emerging Cost) for projects generally over £2m up to £50m

These agreements take into account our needs and yours and can be found on our website at: <http://www.networkrail.co.uk/aspx/1606.aspx>:

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

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

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

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

4. Contracting and risk framework for third party sponsored enhancements

Introduction

We have a set of template agreements with model terms and conditions, for use by promoters. These were first introduced in 2005; they are used with the approval of ORR and were introduced after extensive consultation with our stakeholders. After a renewed consultation and approval by ORR in early 2010, revised agreements are now available. These make the arrangements clearer and sharpen the focus of our obligations and accountability to promoters. This is intended to make it easier for you to do business with us.

The objectives of the consultation and the agreement templates themselves are to:

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

The principles of the template enhancement agreements are consistent with the ORR Investment Framework and our regulatory obligations. In particular, they are consistent with the obligation to 'secure the improvement, enhancement and development of the network', and also as regards meeting stakeholders' reasonable requirements ([see Appendix E](#)).

Also, we have in place an insurance scheme to address promoters' concerns about meeting the industry requirements for £155m of public liability insurance. You can find more details in [Appendix C](#) regarding insurance arrangements.

Template agreements

These agreements are designed for projects generally with a total cost of circa £50 million or less. To make things clearer, you can read our explanatory notes on the different agreement types: [guidance notes to template agreements](#).

The agreements are summarised below:

Basic Services Agreement (BSA)

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

The tasks it covers can include:

- providing you with asset information;
- attending meetings and workshops; and
- where appropriate for minor schemes, reviewing the 'Approval in Principle' design you've procured.

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

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

Development Services Agreement (DSA)

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

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

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

Framework Development Agreement

The [agreement](#) is aimed at promoters undertaking a number of schemes which need our input from the earliest stages. This reduces the number of separate agreements you need to negotiate with us. It includes:

- engaging with you through a Services Instruction for each individual scheme;
- options to select Basic Services or Development Services;
- access to the network for you or your representative to undertake survey work; and
- faster and simpler turnaround of service instructions forming the agreement for the project.

Basic Implementation Agreement (Emerging Cost) (BIA EC)

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

Basic Implementation Agreement (Fixed Price) (BIA FP)

A simple agreement for minor straightforward low-risk works up to a typical value of £2m from GRIP Stage 5 (Review point where we assess the viability of the project and the relevant products prior to proceeding to the next GRIP Stage that must be passed before proceeding further). It envisages that the works contractor will have given us a fixed price based on the specification that you have agreed with us. You pay for the works on a fixed price basis, and the agreement covers GRIP Stages 5 to 8 inclusive.

Implementation Agreement (Emerging Cost) (IA EC)

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

Implementation Agreement (Fixed Price) (IA FP)

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

Basic Asset Protection Agreement (BAPA)

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

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

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

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

Asset Protection Agreement (APA)

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

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

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

Funding of risk

To encourage promoter investment, these template agreements provide a more efficient and cost-effective contracting framework for developing and implementing third party investments on the network.

In addressing risks, the template agreements and particularly the revised and updated template agreements have reduced the barriers to investment.

The Network Rail Fee Fund and the Industry Risk Fund have been developed to contribute towards the funding of contractual liabilities and rail industry systemic risk.

Contact details

If you would like to make a request under this section of our Code of Practice or would like further information please contact the relevant person using their details which can be found [here](#).

If you have any suggestions in relation to the structure or content of this document please contact:

Jonathan Haskins
Licence and Assurance Manager
Network Rail
Kings Place
90 York Way
London N1 9AG

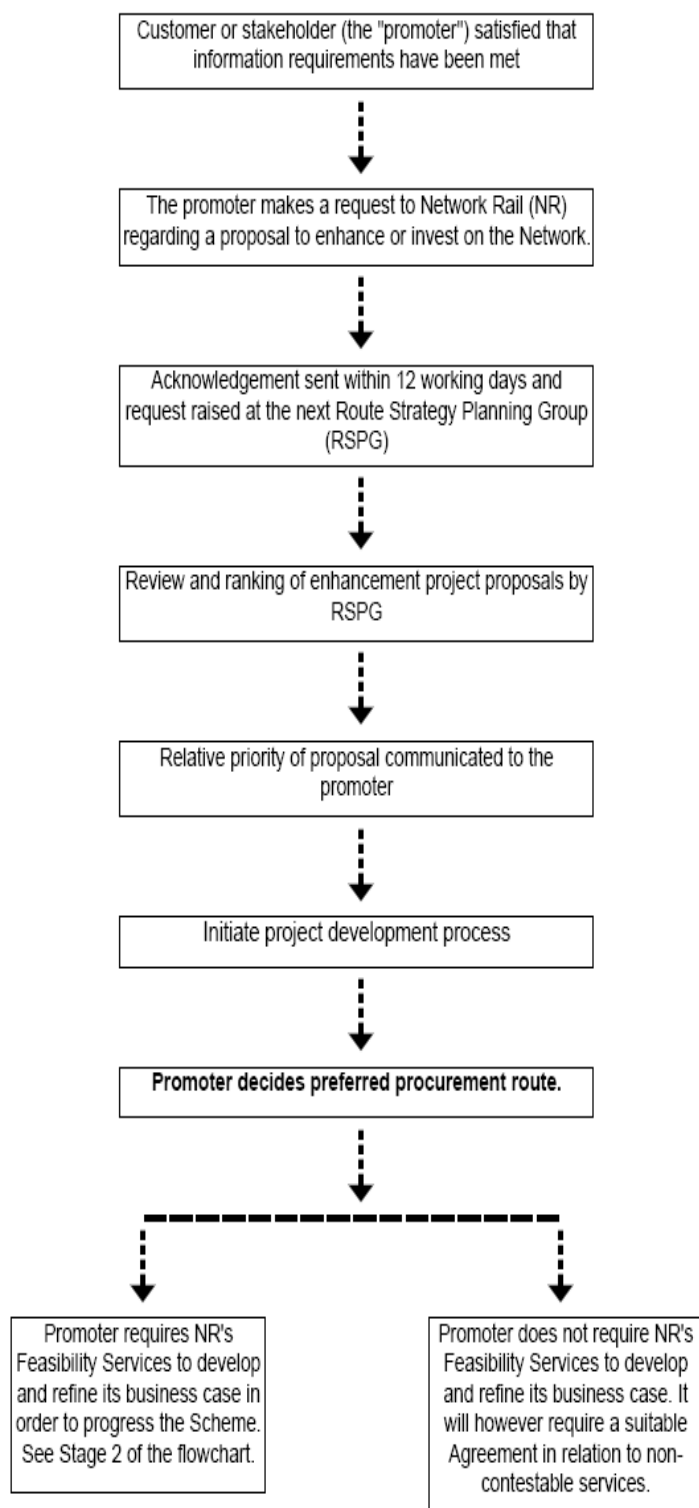
Alternatively, you can email: stakeholderrelations@networkrail.co.uk

If you have a general enquiry however, or need to contact us for any other reason, please call our 24 hour National Helpline on 08457 11 4141.

Appendix A: Investment process flowcharts

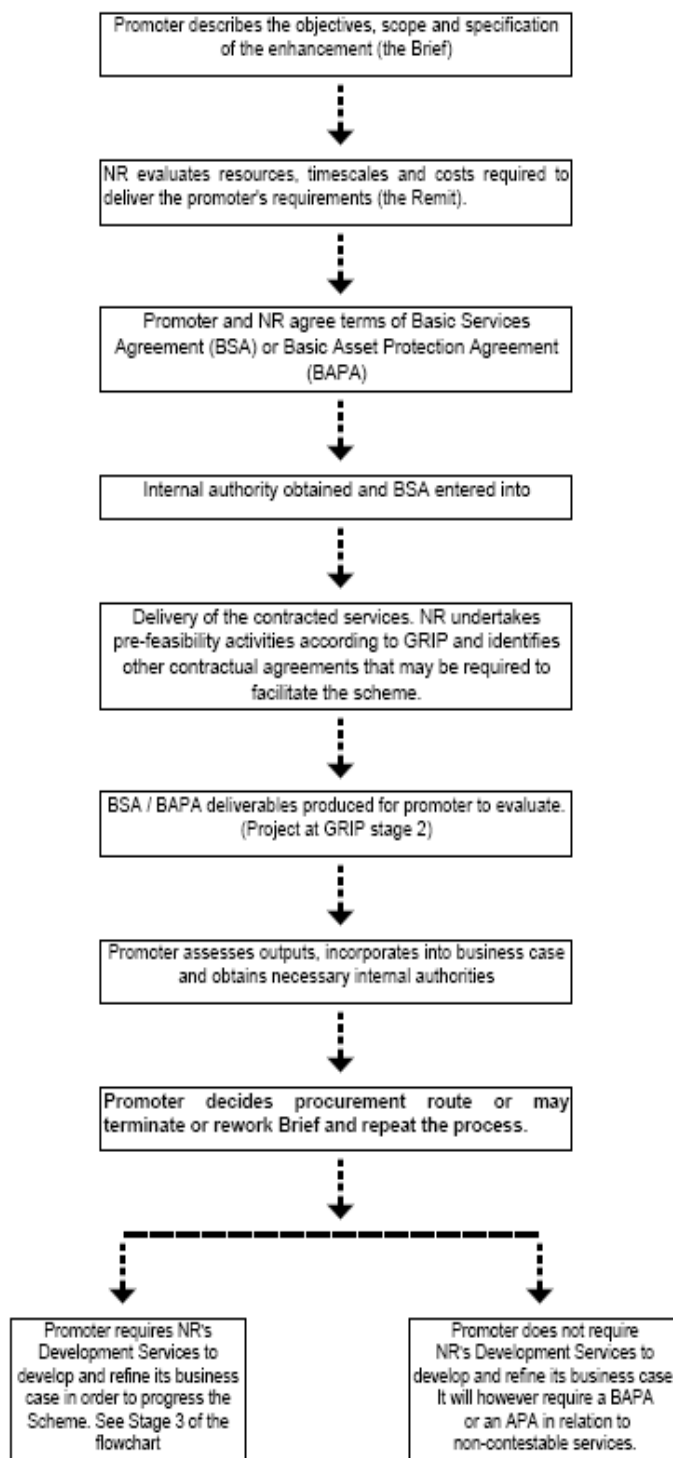
Stage 1

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



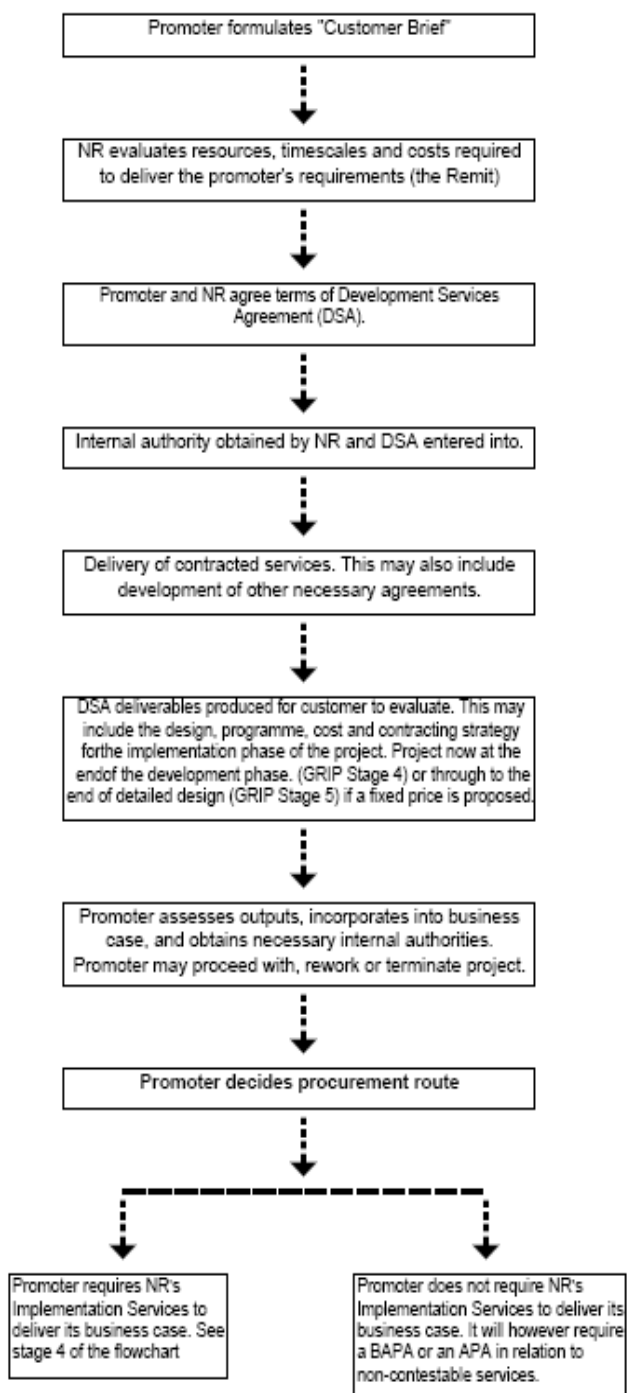
Stage 2

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



Stage 3

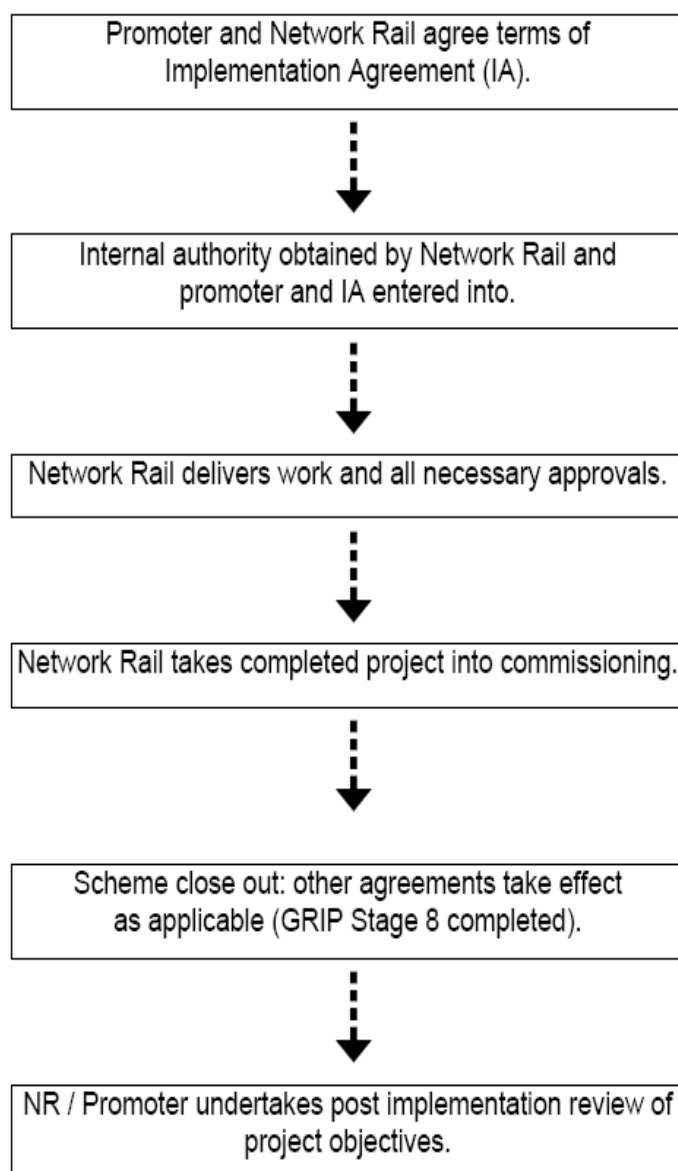
Flowchart of the project development process: Provision of development services by Network Rail.



Stage 4

Flowchart of the project implementation process.

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



Appendix B: The GRIP Process

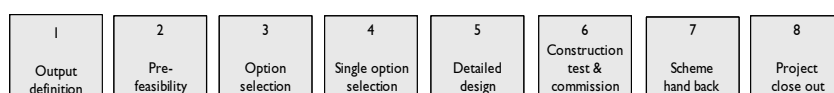
Network Rail's management and control process for enhancements

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

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

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

Key stages of the investment lifecycle (GRIP Stages)



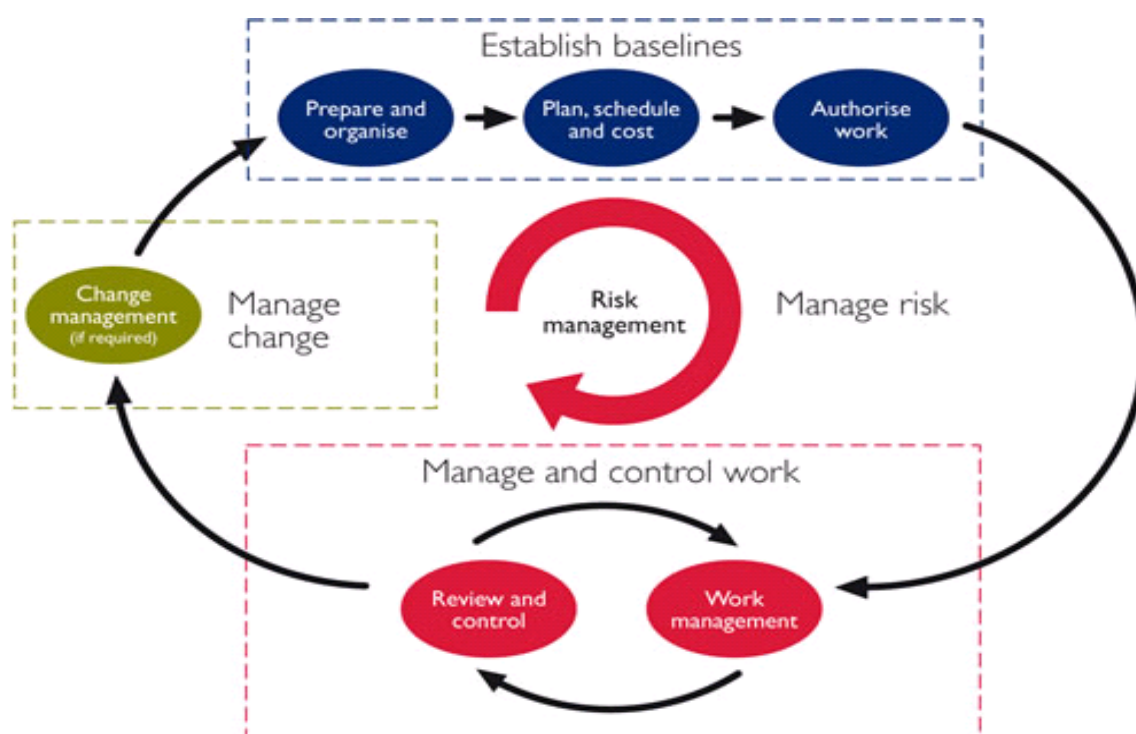
The lifecycle shows how a project is broken down into eight stages. The overall approach is driven by product rather than process, and each stage needs to deliver an agreed set of products to specific quality criteria.

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

Our project management relies on the Project Control Cycle (PCC), which defines how to plan, measure and control projects, and describes the relationships between the various control elements.

Based on project management best practice, the PCC includes the project management control processes that operate throughout the GRIP lifecycle. The key to effective project control is to establish accurate, integrated schedule and budget baselines against which you can measure performance, identify risks and manage changes.

The PCC structures this process around seven elements:



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

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

GRIP consists of several manuals, including a description of the products that must be produced on an investment project for us to discharge our role as infrastructure controller, operator and maintainer, as well as our asset protection role if a third party delivers the asset change in full or in part. Further information can be found [here](#).

Appendix C: Risk management

Network Rail Fee Fund

We have established a fund – the Network Rail Fee Fund (NRFF) – to cover our potential contractual liabilities to the promoter. For each scheme, we will charge a fee ([see Table 1](#)).

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

The Network Rail fee is agreement-specific. For example, we will charge a fee of 5% of the aggregate costs for services provided under a Basic Services Agreement. While on a Basic Asset Protection Agreement, we will charge 10% of the aggregate costs.

Industry risk fund

As well as the NRFF, there is also an industry risk fund known as the Industry Risk Fund (IRF). The IRF provides appropriate funding support for industry risks. Typically these are the low probability, high impact risks specific to rail industry conditions. For each scheme, we will charge an Industry Risk fee ([see Table 1](#)) as well as the Network Rail fee. We will pool these Industry Risk fees to meet relevant claims for industry risk.

Dealing with industry risks

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

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

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

The risk process

If a liability arises from a rail industry risk, the IRF is intended to cover the risks as set out below.

For Relief Events

The contractor, whether they're appointed by us or by you, will be reimbursed for the increased costs (excluding indirect costs) reasonably and properly incurred as a result of an event which causes delay or disruption to a project, which we call a Relief Event. The contractor has a duty to mitigate such costs to give an incentive for appropriate behaviour. The balance of liability will fall to us, and we will recover any compensation we pay from the IRF.

The categories of relief event are:

- network operation issues;
- cancellation and alteration of possessions; and
- interface risk.

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

For a mandatory variation

Where the works need to be varied as a result of any change in law or legal requirement arising after the end of GRIP Stage 4 is given, and the resulting direct costs are more than £10k, such costs would fall to us, and we will recover any compensation we pay from the IRF.

For land and noise claims

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

These claims are in respect of the diminution of property values due to the implementation of the scheme. Whilst this is a promoter risk, it has been agreed that above an agreed limit (based on the foreseeable likely level of such claims), this would be treated as an industry risk.

Bankruptcy/insolvency of promoter

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

Network, station or depot change

You will need to pay for costs associated with any network, station or depot change, or any closure processes. This cost can be uncertain, though, given that the final cost may not be determinable before the works are completed. In certain circumstances, an estimate of the value may be made and a cap agreed. Your liability for costs above this limit would be treated as an industry risk.

Insurance arrangements

Overview of insurance covers for construction projects

Common types of insurance cover for construction projects are described below, together with a brief note of specific requirements for rail projects.

Construction all risks/works damage (CAR)

Covers loss or damage to the works and free materials. The cover is usually called ‘all risks’, and includes fire, lightning, explosion, riot, civil commotion, malicious damage, storm, flood, burst pipes and impact or collision by aircraft, road and rail vehicles. It also covers other accidental damage which is not otherwise excluded.

The CAR policy can also include:

- debris removal;
- business interruption – increased costs of carrying out the works arising from an insured loss; and
- terrorism – by specific extension.

The policy limit can either be expressed as a Sum Insured, which is the total value of the works, or a Loss Limit. A Loss Limit will be less than the total value of the project, but should reflect the maximum damage which could arise from one event. Loss Limits are used in circumstances where the total project is not exposed to a single event. The Sum Insured or Loss Limit must be adequate to include the costs of professional fees, debris removal and other expenses which would be incurred in reinstating the damage.

Note: Contractor’s All Risks insurance can be arranged by either the employer, as project policy, or by the contractor under their annual insurance programme. The other party is noted as joint insured. Sub-contractors may also be included as an option.

Existing structures

Where the works relate to the refurbishment or upgrade of an existing asset, the existing structure should continue to be insured by the owner’s property damage policy. This cover is generally on an ‘all risks’ basis as described above.

If the contractor negligently causes damage to existing structures, the employer and their property damage insurers will be able to recover the costs from the contractor. This risk is insured under the contractor’s third party liability policy.

An alternative approach, particularly where the employer arranges project insurances, is for the contractor and sub-contractors to be noted as joint insured under the employer’s property damage policy. Please note that existing structures insurance should be arranged by the building owner or occupier.

Contractor’s Plant

The CAR policy may include cover for loss or damage to the contractor’s plant and/or hired-in plant. In most circumstances the contractor will have separate insurance. This cover is usually on an ‘all risks’ basis and can include electrical or mechanical breakdown and loss of hiring charges.

Note: Contractor’s plant insurance should be arranged by the contractor, unless covered by the contractor’s all risks insurance.

Public liability/third party liability

Public liability insurance covers the policy holder for legal liabilities for personal injuries and loss or damage to third party property. These liabilities can arise through negligence, nuisance, or breach of statutory duty as the project is carried out. The policy should also cover injury or damage caused by products that the policyholder supplies.

It will not cover loss or damage to the contract works but, depending on the policy's structure, may include loss or damage to existing structures.

A standard public liability policy will cover liability to third parties resulting from sudden and accidental pollution, but you need a specialist environmental policy to insure against gradual pollution.

Train delay costs from physical damage may be insurable under a public liability policy. The policy will not, however, respond unless there has been damage to property which is classed as an insured event.

Note: Public liability insurance can be arranged by either the employer as a project policy or by the contractor under their annual insurance programme. The other party and sub-contractors can be noted as joint-insured, although it may be desirable for sub-contractors to provide their own cover.

Employer's liability

Employer's liability is a legal obligation and insures the policy holder for their legal liability for death, injury or illness sustained by an employee in the course of their employment. Where an employee is injured by another party's negligence, the risk would be covered by the other party's public liability insurance.

Note: Each employer has a statutory obligation to arrange their own employer's liability insurance.

Professional indemnity

Professional indemnity is required by professional service providers. That includes people or companies who provide advice, design or specification for a fee. It covers the policy holder against claims from third parties who have suffered a loss from the negligence, error or omission of the service provider.

For construction projects this may include architects, surveyors, project managers, consultants and contractors who provide design or other professional services. Professional indemnity policies only respond to claims made when the policy is current. Contracts usually specify that the service provider maintains the insurance for a certain number of years after the project is finished.

Note: The consultant or service provider should arrange professional indemnity insurance.

General

Almost all insurance policies are subject to a maximum limit on the amount that the insurers will be responsible for in relation to a single claim or series of claims arising from one event. Policy limits should therefore reflect the potential loss, damage or injury that could arise. Some types of policy, like professional indemnity and product liability policies have an aggregate limit which caps the insurer's liability for all claims during the policy period.

Liability policies will pay for the defence costs in relation to claims. These costs may be either included in, or additional to, the policy limit.

Rail projects

Rail projects generally require the same types of insurance coverage as for other construction works. There are, however, a few industry-specific issues:

- Insurers are generally unwilling to provide cover for train delay or performance regime costs; and
- Licensed railway parties, including Network Rail, have a regulatory obligation to maintain third party liability insurance for a minimum of £155m per occurrence (or such other limit as may be agreed with ORR). Network Rail is also required to pass on the same level of insurance obligation to third parties who wish to carry out work on the network, or to provide a risk assessment justifying a lower limit.

This obligation has been seen as a major barrier to entry, especially for small projects costing less than £2m. With this in mind, we have developed a 'top up' scheme to help overcome the financial impact of this statutory obligation which is described in more detail below.

Public liability insurance

Public liability insurance provides cover for third party injury and property damage, which is obviously relevant for work on or near the operational railway. The industry standard minimum level of cover that the ORR requires is £155m of cover, and this may apply to third party developers.

In cases where the promoter is undertaking the implementation itself, we will facilitate the project's interface with Network Rail according to an Asset Protection Agreement (APA) or Basic Asset Protection Agreement (BAPA), as appropriate. The APA typically passes on the £155m requirement to the promoter, while the BAPA generally requires a much lower minimum level of cover, typically £5m–£10m.

We have put in place an insurance scheme to address concerns from customers about meeting the industry requirements for £155m public liability insurance.³ The principles of the scheme are:

- Our agreement with the customer will determine the level of public liability insurance they will need to hold;
- The promoter or their contractor will arrange their own cover (customer cover) appropriate to the size and type of project (see table below). If applicable, we can arrange catastrophic accident 'top up' cover to £155m;
- Our top up cover will be for the contingent/catastrophic risk, above the level insured by the promoter/contractor;
- There are two options for promoters – to access the scheme from a £25m or £50m attachment level;
- The cover will be 'per occurrence';
- There is no coverage for train delay costs; and

³ There may be exceptions to the scheme above which do not require this level of cover because they are very minor or don't affect the railway's regular operation. In these cases, where even a cost-effective 'top up' would be an unnecessary additional cost, we will consider promoters' proposals for discrete levels of cover.

- The charge (a percentage charge of project total costs) will be against the value of work undertaken on an annual basis.

The insurance scheme aims to cover:

- projects delivered by promoters that we facilitate through Asset Protection Arrangements; and
- larger outside party projects which we facilitate, like rail over-bridges, for local authorities and developers.

For Network Rail delivered projects for promoters using an Implementation Agreement, either we or our contractors will provide relevant insurance.

The 'top up' scheme

We intend to use this arrangement on a simple cost-recovery basis, and we will not seek to over-recover from promoters. The percentage charged depends on a number of variables, including scheme take-up. We will base the charge on a percentage of the project total rail-related cost, and we will keep this percentage under review. Having been in place for some years now, we have found this scheme is often an effective solution to issues around Public Liability insurance requirements.

Appendix D: Services provided by Network Rail

The specific type of services we provide to a promoter will depend on the project's stage in the project lifecycle. In the early stages of a project we recognise that the promoter might need help to develop and refine their business case. We may do this on a prioritised basis if we are considering a number of schemes.

We'll discuss and agree any charge for these services with you before taking action or incurring charges, and it will depend on the proposal's nature. We will not charge for providing services which we are already funded for.

In broad terms, the services we may provide are:

Contestable services:

- project development;
- design management; and
- scheme implementation through management contracting.

Non-contestable services:

- asset protection;
- asset information and booking of possessions;
- engineering safety management; and
- certain necessary consents.

This list is for guidance only, but it outlines the services we can provide to a promoter to facilitate an enhancement project according to the appropriate enhancement template agreement. We will consider projects on an individual basis according to the specific requirements and whether it's appropriate to provide a particular service. Typically we will review these with you and agree on appropriate services.

Development, design management and implementation services

Development, design management and implementation services are generally contestable, and are associated with facilitating an enhancement project for a promoter. We may procure these services from contractors and consultants in our supply chain, including:

- programme management services including:
 - programme management and integration services;
 - project management services;
 - procurement, appointment and management of sub-consultants;
 - quality assurance;
 - logistics and access planning;
 - constructability review; and
 - risk and value management for programme and project.
- systems integration;
- in-house design studies;
- maintenance, operation and performance assessments;
- technical review and validation;
- operation, maintenance, renewal and performance input into design development;
- timetable development and assessment;
- developing acceptance criteria and managing acceptance;

- support for applying for, and exercising powers under, a Transport and Works Act Order;
- identifying issues related to coordination with other railway projects;
- technical and operational assistance;
- network integration and co-ordination services;
- compliance checking of statutory and regulatory obligations;
- site surveys and other geotechnical investigations;
- administration and management of rail industry processes;
- advising on the details of relevant maintenance, performance and renewal strategies to assist in the development process;
- facilitating access to the network to undertake agreed enabling works;
- agreement of acceptance criteria, but not specific design acceptance, where applicable up to final agreement;
- facilitating use of statutory consents, including permitted development rights, where appropriate; and
- property-related advice.

Asset protection services

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

Safety

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

Access to data:

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

Engineering strategies:

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

Railway Operations:

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

Appendix E: Criteria for assessing promoters' reasonable requirements

The key constraints on our stewardship of the network are:

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

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

Where we are funding or delivering a scheme, it must meet the following criteria:

Financial constraints

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

- it can be achieved at no extra net cost to us, including future maintenance or operational liabilities;
- it can be achieved at no extra net cost to us as it forms part of a scheme which we're expected to undertake to renew or enhance the network;
- the promoter commits to pay extra funds, or procure the payment of additional funds to us based on the cost of delivering and financing the enhancement, including a return which is commensurate with the risks we carry;
- the funding for the expenditure involved is explicitly provided for at an access charges review; and
- it is not unduly difficult for us to finance the scheme, considering the other financing requirements of our regulated business.

Where relevant, we will work with our customers and funders to help secure additional sources of funding to develop the network.

Compatibility with existing commitments

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

- it does not conflict with the existing access rights of other operators, including local output commitments;
- it is not designed to give unfair advantage over other bidders in future franchise negotiations;
- it does not impede our future ability to deliver the published strategy on any route, including performance objectives for that route;
- it is consistent with our regulatory obligations under our network licence, and statutory duties under the Railways Act 1993; and
- we can operate the revised infrastructure or service in a safe and efficient manner which is consistent with our safety case and existing processes and procedures.

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

Deliverability criteria

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

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

Where there are constraints on our ability to deliver a scheme our stakeholders propose, or to support a third party scheme, we will work closely with that stakeholder to find ways to relieve these constraints.

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

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

For example, this might affect areas where a number of schemes are proposed at a specific time, like the London 2012 Olympics area. If these schemes exceed a normal and reasonable volume of activity, we may not be able to deliver every scheme at the same time whilst operating our network efficiently.

Appendix F: Enhancing the network

We maintain details of all the proposed investment schemes with an enhancement element, and their current status, within the route plans we publish as an annex to our annual business plan. We publish these details at least once a year within 17 individual volumes which represent the strategic routes A to Q:

Route A	<u>Kent</u>
Route B	<u>Sussex</u>
Route C	<u>Wessex</u>
Route D	<u>East Anglia</u>
Route E	<u>North London Line</u>
Route F	<u>Thameside</u>
Route G	<u>East Coast and North East</u>
Route H	<u>Cross-Pennine, Yorks and Humber and North West</u>
Route I	<u>London and East Midlands</u>
Route J	<u>London and West</u>
Route K	<u>West of England</u>
Route L	<u>Wales</u>
Route M	<u>West Midlands and Chilterns</u>
Route N	<u>West Coast</u>
Route O	<u>Merseyside</u>
Route P	<u>Scotland East</u>
Route Q	<u>Scotland West</u>

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

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

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

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

Appendix G: Regulated change processes

The Network Change process

Note: you should read this in conjunction with Part G of the Network Code which can be found in the Network Code [here](#).

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

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

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

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

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

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

Formal consultees are:

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

The sponsor must then produce a formal Network Change notice which we will distribute – regardless of whether we're proposing it – to each consultee.

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

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

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

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

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

Reasons for rejection include:

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

Alternatively, Access Parties may accept the change.

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

Such compensation should be:

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

However, please note that as from the commencement of CP4, compensation for disruptive possessions is paid according to Schedule 4 of the Track Access Contract.

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

The Network Change proposal may only be implemented if:

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

At this point we will write to all consultees, advising that the change has become established. We will also publish the change on our website. We are then either entitled or required (according to whether the change was proposed by us or a train operator) to implement the Network Change.

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

Station change

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

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

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

If changes are to be made to a Station, the regulatory requirements are satisfied by making a Station Change Proposal, securing approval of all relevant parties and registering the approved change with the ORR. For a detailed definition of a 'Change' please [click here](#) to access the National Station Access Conditions 2013*. The specific definition is found on page 6 in the Definitions section. For Managed Stations refer to the Independent Access Conditions 2013 page 7* - [Click Here](#)

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

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

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

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

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

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

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

For further information on the station change procedure, please [click here](#) to access the National Station Access Conditions for Franchised Stations* and [click here](#) for access to the Independent Access Conditions for Managed Stations*.

All the documents annotated with * in the above guidance can be found on the ORR's website: www.orrr.gov.uk.

Depot change (Light Maintenance Depots)

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

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

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

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

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

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

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

Appendix H: Approval in principle

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

The basic concept of an ‘approval in principle’ derives from railway group standard GC/RT5101. This states that approval in principle requires that ‘competent persons are satisfied that appropriate standards have been used in the design, and the scheme selected meets the remit’.

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

To clarify our position, we deem that the ‘approval in principle’ stage is relevant when a decision is made to launch a detailed design on a fully developed reference design, following the selection of a single option for achieving the proposed enhancement. This will be before the project reaches GRIP Stage 5 (detailed design).

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

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

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

- the design has been assessed by a competent person in the relevant disciplines arising from that design, and that person is satisfied that the design meets with relevant legislation and standards, and they expect it to meet its objectives;
- the competent person is satisfied that the scheme design contains enough information for the detailed design and procurement of the individual elements of the design to proceed safely and effectively; and
- the competent person is satisfied that the design will correctly integrate with other elements of the scheme, and the adjacent environment that the project’s products interface with.

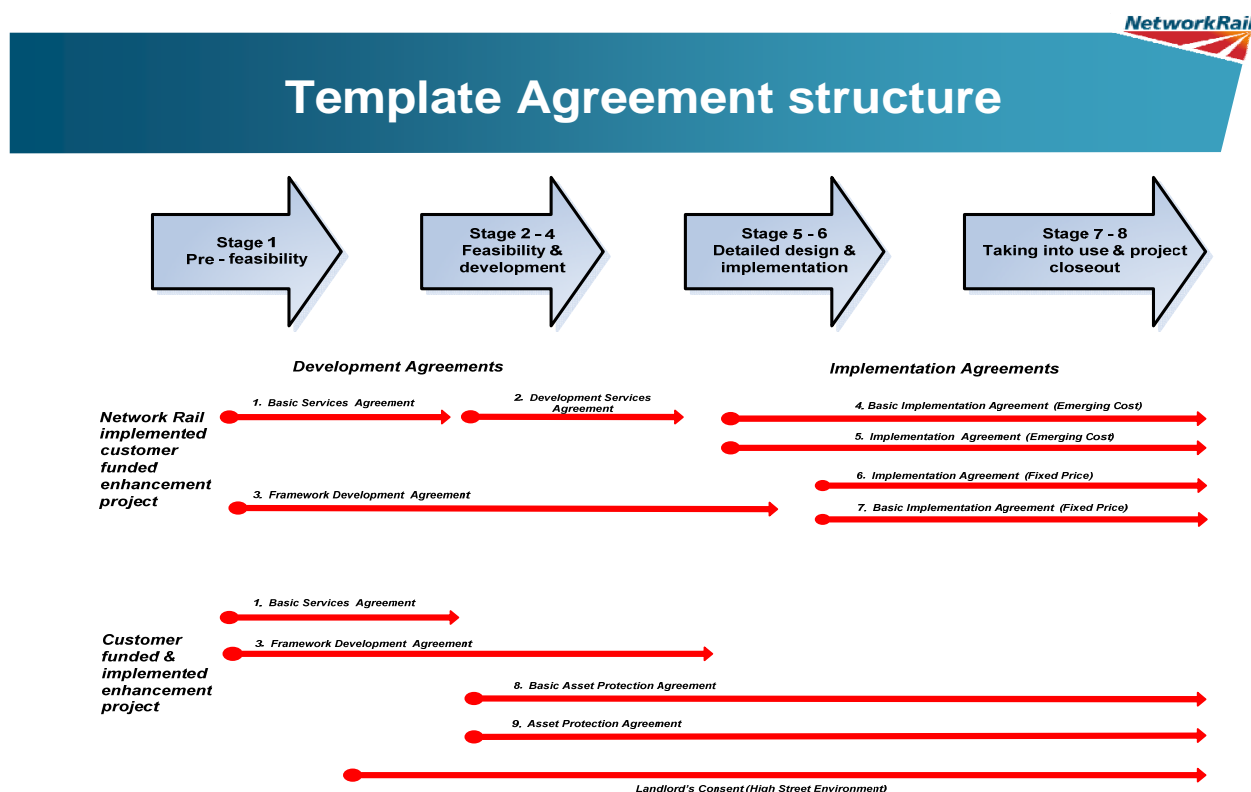
As a minimum, the following questions will usually be examined before a scheme reaches the ‘approval in principle’ stage:

- Have you looked at all the feasible options and found a single preferred option?
- Is the design detailed enough to be clear and unambiguous about what is intended?
- Is the design sufficiently detailed that it is clear that the design is fit for purpose, by comparison with the requirements the design is to meet?

- Have you considered the relevant legislation and other applicable standards in the scheme's design? And is the competent person satisfied that the design complies with the legislation and standards?
- Is the competent person satisfied that the design development is adequate to start the detailed design of individual components and assemblies?
- Is the competent person satisfied that the separate elements of the scheme design will, when brought together, have the required functionality and meet applicable legislation and standards. Will they also address interface issues where the project's products are near to, or next to, the environment?
- Are the residual risks from the scheme's design development demonstrably as low as reasonably practicable? Is there a complete and adequate risk register available to those who will carry out the detailed design, construction, testing and commissioning?
- Have suitably qualified persons carried out the design, and have they followed an established design process?

To appoint competent people, GC/RT5101 places the responsibility on us to assess their competence. We need to be satisfied that they understand their responsibilities, and that these responsibilities have been expressed and agreed in writing. Whether such an individual is a Network Rail employee is a matter for us to negotiate and agree with the promoter during the discussions on a project's governance structure and the nature of the services that each party provides to the project.

Appendix I: Network Rail's template agreement structure



Flow chart; illustrates the correct agreement to use depending on the specifics requirements of the customer and the stage in the lifecycle of the project.



Which Agreement ?

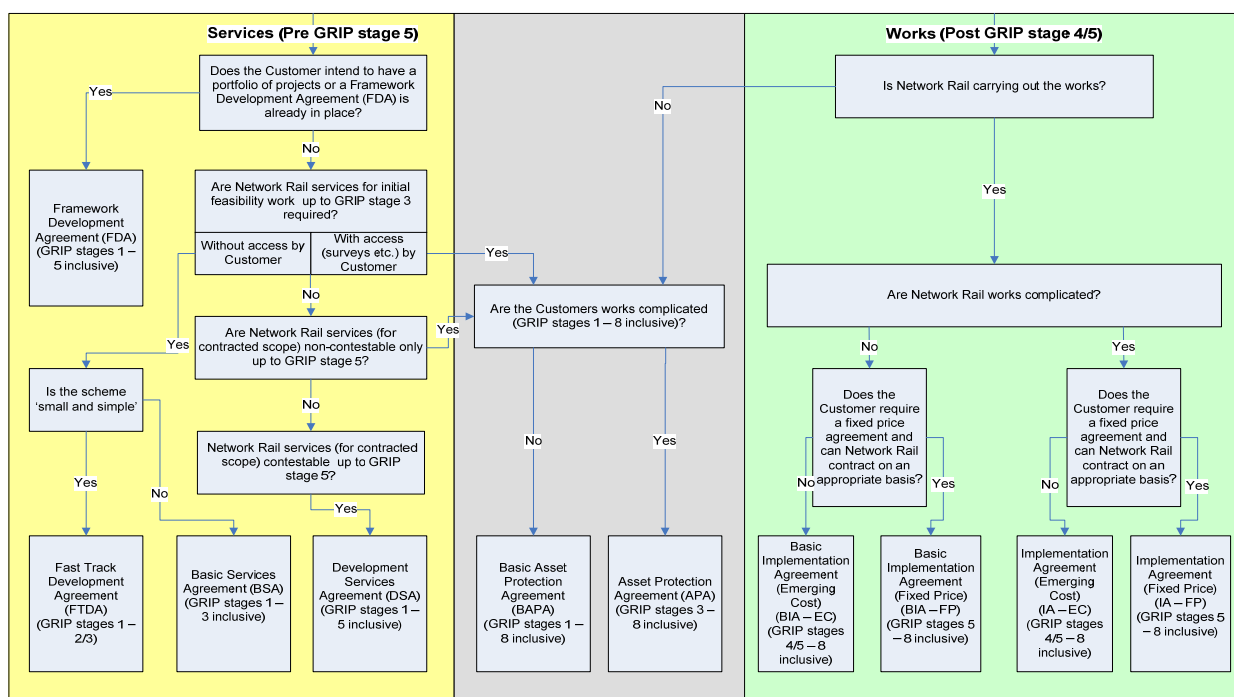


Table 1: Funding of risk

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

Table 2: Public Liability Insurance

Options	Customer cover (minimum liability funded)	Network Rail top up cover	Percentage charge (of project total cost)
Rail Project ⁴	£155m	NIL	N/A
Top up option A	£50m	£50–£155m	0.3% + Insurance Premium Tax
Top up option B	£25m	£25m–£155m	0.5% + Insurance Premium Tax
Minor project ⁵	£5m –£10m or as otherwise determined	NIL	N/A

⁴ **Rail Project:** a discrete large scale multi-disciplinary project (generally >£50m capital value) undertaken on or near the network, delivering a rail benefit, which should have its own specific project insurance cover and is not consequential to or part of another 'non-rail related' activity.

⁵ **Minor Project:** a project with works that are low risk (as determined by Network Rail) and typically dealt with through a Basic Asset Protection Agreement, requiring a lower level of insurance.