

AGREED COMMITMENTS DOCUMENT

Parties:

- (1) Department for Transport**
- (2) Network Rail**

Agreed Commitments in respect of the Midland Mainline Enhancements Programme

August 2017

This document is to be read and construed in accordance with the Memorandum of Understanding between Network Rail and the Department for Transport on rail enhancements, dated 23 March 2016 and inclusive of any subsequent updates. In the event of there being any conflict between the two the Memorandum of Understanding shall prevail.

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Definitions

“Access Charges Review” means the review undertaken by the ORR at the end of each control period;

“ACD” means this document, the Agreed Commitments Document;

“Act” means the Railways Act 1993 (as amended);

“Advance Information Assurance to DfT” means the advance assurance requirements set out in section 9.2;

“Assumptions” means the assumptions as set out in Part B;

“BICC” means the DfT Board Investment and Commercial Committee;

“Change” means a Change requiring a DfT consent under section 7;

“DfT” means The Department for Transport;

“Escalation Procedure” means the procedure for escalation as set out in section 11.5;

“Freight Operating Companies” means companies providing freight services on the rail network, as listed at <https://www.networkrail.co.uk/industry-commercial-partners/rail-freight/move-freight-rail/>;

“Governance Meeting” has the meaning given to it in section 10;

“MoU” means the Memorandum of Understanding between Network Rail and the Department for Transport on rail enhancements, dated 23 March 2016, inclusive of any subsequent updates;

“NR” means Network Rail;

“MML” means the Midland Mainline;

“ORR” means the Office of Rail and Road;

“Part B” means the second part of this document;

“Programme” means the Midland Main Line enhancements programme as set out in Part B of this ACD;

“Train Operating Companies” means companies operating passenger services on the rail network, as listed at http://www.nationalrail.co.uk/tocs_maps/tocs/TrainOperators.aspx;

THIS AGREEMENT is made between The Department for Transport and Network Rail (“the Parties”).

PART A

1. Purpose

- 1.1. The purpose of this ACD is to provide clarity regarding the:
 - a) definition of the programme to be delivered by NR;
 - b) funding envelope within which the Programme shall be delivered;
 - c) governance arrangements for the Programme;
 - d) schedule to which the Programme shall be delivered; and
 - e) roles to be played and behaviours to be enacted by DfT and NR; and
- 1.2. This document will also be used as the basis for infrastructure assumptions included in the relevant franchise agreements by DfT.
- 1.3. This ACD applies to the Programme.

2. Validity

- 2.1. This ACD shall remain valid until DfT and NR agree to its termination.
- 2.2. This ACD shall be updated as necessary and reapproved by DfT and NR in writing where a significant change is made to the Programme.
- 2.3. This ACD is not intended to constitute a legally binding agreement and the commitments made are not intended to be legally enforceable. This ACD is a bilateral agreement and does not affect DfT's and NR's statutory functions or duties and does not affect their relationship with any third parties.
- 2.4. No provision of this ACD shall be enacted where this would be contrary to the protection, safety and efficient operation of the railway and the safety of persons or property on or near the railway.

3. Roles and responsibilities

- 3.1. DfT is the client and funder for the Programme, and franchising authority for the rail routes related to the Programme.
- 3.2. NR is the system operator for the rail network, and shall develop, design and deliver the Programme. NR is also the system integrator.

4. DfT

- 4.1. DfT shall fund the Programme in accordance with this ACD (specific funding allocations are outlined in Part B).
- 4.2. DfT shall specify the outputs to be delivered by the Programme and owns and manages the business case for the Programme, which is reflected in Part B.
- 4.3. DfT shall monitor development, design and delivery of infrastructure works and infrastructure capability, through regular reporting by NR, as outlined in section 9.
- 4.4. DfT shall act as the franchise authority and procure franchises and associated rolling stock as required on the relevant route, and in line with the Rolling Stock Assumptions Document between DfT and NR dated 5 October 2016.

5. Network Rail

- 5.1. NR shall develop, design and deliver the infrastructure elements of Part B, within the funding identified in Part B. NR shall deliver the Programme as efficiently and economically as possible.
- 5.2. NR shall co-ordinate the Programme with all other relevant programmes and act as the systems and delivery integrator. NR shall maintain a comprehensive integrated delivery schedule covering infrastructure, operations and rolling stock, recognising that some critical inputs to this schedule are not in the direct control of NR.

6. Programme costs

- 6.1. The Programme costs shall be actual costs incurred by NR in its role under this ACD. The operation, maintenance and subsequent renewal costs for the completed assets are not Programme costs.

7. Changes to the Programme

- 7.1. DfT and NR may make Changes, meaning any action which requires a change to Part B.
- 7.2. Prior to making any Change DfT shall consult NR. Once DfT identifies the need for a Change, it shall inform the NR Route Managing Director or Principal Sponsor in writing as soon as possible.
- 7.3. Once NR identifies the need for a Change, it shall inform the DfT Programme Director in writing as soon as possible.
- 7.4. For proposed Changes, NR shall identify (in advance in the case of a Change proposed by NR) risks to the delivery of the Programme and potential mitigating actions to optimise their delivery.
- 7.5. This ACD has been prepared on the basis of the Assumptions set out in Part B and where the DfT or NR proposes to change any of those Assumptions, or those Assumptions change due to any other circumstance, those proposed changes constitute and shall be managed as a Change. This shall then be reflected by a change to the Assumptions as outlined in Part B.
- 7.6. Following identification of a proposed Change NR shall establish the change consequences to Part B (including infrastructure capability, scope, cost, programme, incentive mechanisms, consents and risks), and present these at a Programme Board meeting.
- 7.7. Agreement of a Change shall be confirmed through the change control process as mandated by the Network Portfolio Board.
- 7.8. Where DfT or NR becomes aware of any circumstance which may require a Change arising as a result of the actions of a third party or any other matter, they shall inform the other party's representative as soon as possible and follow the process described above to confirm this change to the Programme.

8. Behaviours

- 8.1. DfT and NR recognise and shall act within the terms of the "DfT and Network Rail: Working Together Charter", dated 1 June 2016.
- 8.2. DfT and NR shall act reasonably at all times.

- 8.3. Approvals are not to be unreasonably withheld or delayed and shall be given in writing to the relevant Governance Meeting (as defined in section 10) where necessary.
- 8.4. DfT and NR shall perform their responsibilities and discharge their accountabilities in a timely manner.
- 8.5. DfT and NR shall fully cooperate with each other to achieve the successful delivery of the Programme.
- 8.6. DfT and NR shall keep each other advised on progress of the Programme through updates taking place at least once in each rail period, and NR shall issue a management information data pack once in each rail period as per section 9.
- 8.7. DfT and NR shall provide information to each other on request on an ad hoc basis where reasonably required.
- 8.8. DfT and NR shall co-operate in fulfilment of their requirements under any mandated external reviews, and maintain appropriate assurance procedures in anticipation of any such reviews.
- 8.9. DfT and NR shall support each other in fulfilment of their commitments under this ACD where appropriate and within their ability.
- 8.10. Should NR or DfT remove any member of their senior management team working on the Programme they shall inform the other party a reasonable period in advance of removal.
- 8.11. DfT and NR shall seek to work constructively where relevant with all relevant Train Operating Companies and Freight Operating Companies.
- 8.12. Where DfT or NR have concerns regarding delivery of the Programme, either party shall give notice in writing of these concerns as soon as possible either to the DfT Programme Director, or NR Route Managing Director or Principal Sponsor. These concerns shall then be captured through the reporting and monitoring arrangements including the Governance Meetings. This shall include an outline by NR in a timely manner of how it plans to meet the infrastructure capability, agreed delivery dates and agreed target costs, including the remedial action it expects to take (which shall include if appropriate the reallocation and reprioritisation of NR's resources), or what changes are required to optimise the delivery of the Programme. Any disagreement shall be addressed through the Escalation Procedure.

9. Monitoring and Reporting to DfT

Reporting

- 9.1. NR shall prepare regular (4 weekly unless otherwise agreed) Programme status reports to be provided to the DfT Programme Director which shall:
 - a) include information relating to progress of the Programme including cost, schedule and programme, key issues and risks (through a risk register), a health and safety update, communications plan, DfT consents, Advance Information Assurance (as defined at section 9.2) and Changes;
 - b) provide key financial information including cost of work done and an updated forecast of the Anticipated Final Cost ("AFC"), for the Programme including divided by individual project;

- c) identify new contracts and contract claims together with a summary of previously agreed contracts and contract claims;
- d) identify a list of risks and opportunities to the delivery of Part B including their impact on infrastructure capability, programme or cost;
- e) identify new changes added to the Change Control log recording agreed Changes to the Programme together with a summary of previously approved Changes;
- f) identify any contingency in funding for the Programme, use of which must be approved as a Change;
- g) maintain a list of cost and schedule opportunities available to counter cost or schedule overruns;
- h) identify management actions to be taken including to mitigate cost over-runs;
- i) include a register of significant stakeholder issues; and
- j) other information as agreed between the parties.

Advance Information Assurance to DfT

- 9.2. In addition to the standard reporting requirements, NR shall provide information as soon as reasonably practicable and, in any event, sufficiently in advance to DfT where Changes are proposed to the Programme in order for DfT's views and concerns to be raised and discussed without a delay occurring to the Programme:

Visibility of information

- 9.3. DfT shall have access to, the use of (including copies made available) and open book audit rights of all Programme information during and up to six years beyond completion of the Programme. This includes having access to NR construction contracts and associated claims. For items that are of a commercially sensitive or confidential nature DfT shall respect the nature of this information as a condition of it being made available to DfT. DfT shall not divulge such commercially sensitive and commercially confidential information to other parties. Such commercially sensitive and commercially confidential information shall be passed only to nominated DfT personnel. Approval shall be required from NR if such information is to be shown to any other DfT personnel.

10. Governance Meetings

- 10.1. A chart of the governance structure is attached at Schedule 2. Decisions shall be made at the lowest possible level of governance. The Governance Meetings are as follows:
- a) Network Portfolio Board;
 - b) Programme Board; and
Programme Delivery Group.
- 10.2. The roles and responsibilities of each Governance Meeting are outlined at section 3 of the MoU and their respective terms of reference.

11. Escalation Procedure

- 11.1. Where a disagreement or dispute arises in connection with the Programme it shall be lodged in writing to the DfT Programme Director and NR Investment

Director. Nominated representatives shall seek to resolve the matter as soon as reasonably practicable, having the relevant evidence to discuss the matter. Where no satisfactory resolution is reached evidence pertaining to the disagreement or dispute shall be presented to the DfT SRO and NR Route Managing Director who shall seek to resolve the disagreement.

- 11.2. Where no satisfactory resolution is reached the disagreement or dispute evidence shall be presented to the Programme Board by both parties as soon as possible. The Programme Board shall seek to resolve the disagreement or dispute. If the Programme Board is unable to reach a resolution, it shall be referred to a meeting between the NR Chief Executive Officer and the DfT Rail Group Director General for resolution. Failing resolution by those persons the dispute shall be referred to the Secretary of State for Transport for a final decision, which shall be binding on both parties.

12. Communications

DfT and Network Rail shall co-ordinate issues related to strategic stakeholder communication.

PART B

1. Enhancement Delivery Plan/programme commitments

Committed schemes

1.1. As per the Enhancement Delivery Plan latest update¹, the MML Programme consists of the following elements:

- L2C;
- Derby to Sheffield Journey Time Improvement;
- Market Harborough;
- Leicester South Line Speed Improvement;
- CP5 MML Kettering to Corby Capacity (K2C);
- Derby Remodelling; and
- Ambergate – contribution to track renewal.

1.2. The full scope of each scheme can be found in the Enhancement Delivery Plan Update, latest version found here².

Cost

1.3. The BICC approved funding envelope for the Programme is £1.418bn.

1.4. Budgets and AFCs for individual schemes are at Schedule 1.

P80 Risk Value

1.5. As at the date of this agreement, the P80 risk value for the Programme is £133 million.

Programme milestones

1.6. The current planned schedule for delivery is as follows (to P80 certainty):

Scheme	Planned date of delivery
Kettering to Corby	August 2018
Derby Remodelling	October 2018
Leicester South JTI	December 2018
Market Harborough	December 2019
KO1 completion of prioritised route	June 2020
KO1 full completion	August 2020

2. Outcomes to be delivered under business case

The MML Programme is designed to contribute to the Government's objectives above by achieving the following outcomes:

- *Deliver shorter journey times into St Pancras;*

¹ Reference to be added when updated EDP published

² Reference to be added when updated EDP published

- *Increase passenger capacity into St Pancras through the addition of a 6th path;*
- *Reduce crowding on services;*
- *Reduce operating costs and environmental impact through electrification of the line from Bedford to Corby, and;*
- *Increase freight capacity.*

3. Assumptions

3.1. The Programme is to be delivered as outlined in this ACD, acknowledging/assuming:

- a) The Rolling Stock Assumptions Document, dated 5 October 2016;
- b) The MML Baseline Programme Definition Document, as last updated;
- c) The MML Key Output 1 Full Business Case;
- d) The MoU;
- e) The “DfT and Network Rail: Working Together Charter”, dated 1 June 2016;
- f) The East Midlands Franchise Agreement, as last updated.

Schedule 1: Budgets and AFCs for approved schemes as at date of this ACD

	Budget			AFC			Total AFC	Total Budget
	Hendy KO1 Budget	Other Hendy Funding	Other Funding	Hendy/EDP Funded	Other Funding	Hendy Funded AFC Variance		
KO1 Other Sub-total (K2C & Derby Remodelling)	263,700,000	0	59,629,000	259,832,000	59,629,000	-3,868,000	319,461,000	323,329,000
CP5 MML Kettering to Corby Capacity	131,900,000	0	1,239,000	129,931,000	1,239,000	-1,969,000	131,170,000	133,139,000
Derby Remodelling	131,800,000	0	58,390,000	129,901,000	58,390,000	-1,899,000	188,291,000	190,190,000
PJIF Sub-total	56,484,000	10,740,410	12,651,590	56,484,000	23,392,000	0	79,876,000	79,876,000
Market Harborough	30,000,000	10,740,410	12,651,590	30,000,000	23,392,000	0	53,392,000	53,392,000
Leicester South LSI	7,399,000			7,399,000		0	7,399,000	7,399,000
Derby to Sheffield JTI	37,505,000			15,405,000		-22,100,000	15,405,000	37,505,000
Proposed budget transfer to L2C	-22,100,000					22,100,000	0	-22,100,000
Contingency/unallocated for PJIF	680,000			680,000		0	680,000	680,000
Ambergate Enhancement contribution to renewal	3,000,000			3,000,000		0	3,000,000	3,000,000
L2C Sub-total (including Master Wayleaves & National Grid costs)	915,784,624	98,738,995	3,740,000	898,049,478	120,838,995	624,854	1,018,888,473	1,018,263,619
L2C (including KES)	897,200,000		3,740,000	898,049,478		-2,890,522	898,049,478	900,940,000
Budget transfer to Market Harborough LDHSS	-3,515,376					3,515,376	0	-3,515,376
KES								
L2C National GSP - power 2 electric services (KO2)		87,600,357			87,600,357	0	87,600,357	87,600,357
L2C Master Wayleaves - powerline diversions	22,100,000	11,138,638			33,238,638	0	33,238,638	33,238,638
KO1 TOTAL	1,235,968,624	109,479,405	76,020,590	1,214,365,478	203,859,995	-3,243,146 <i>Forecast under budget</i>	1,418,225,473	1,421,468,619

Schedule 2: Governance structure

