

BASIC ASSET PROTECTION AGREEMENT

Relating to Outside Party Works

Network Rail Infrastructure Limited

One Eversholt Street, London NW1 2DN

GOLDCREST LAND PLC
Goldcrest House
3 Hurlingham Business Park
London
SW6 3DU

Ref: 146246/WR5759PF

Date: 18/02/2016

For the Attention of: Chris Halligan

Dear Sirs,

Basic Asset Protection Agreement relating to Goldcrest Land Plc in Demolition of Current Industrial and Construct of New Residential Development on former BR Land In relation to (C6513) Covenants Dated 16th March 1984.

1. Network Rail Infrastructure Limited ("**Network Rail**") has agreed with the Customer for the Customer to carry out the works set out in Schedule 1 to this letter ("**the Works**") on the terms set out below. The Schedules and this letter are collectively referred to as 'this **Agreement**'. The Works comprise some or all of the following:
 - (a) permanent works making changes to Network Rail's infrastructure and/or operational track ("**Rail Related Works**");
 - (b) permanent works creating a new structure ("**New Structure**") which in construction and following completion may impact upon the safety and operation of the Network Rail's infrastructure and/or operations (the "**Railway**"); and/or
 - (c) Any works interfacing with and potentially impacting upon the safety and operation of the Railway during construction.

A provisional programme is included in Schedule 1.

Obligations of the Customer

2. In designing and carrying out the Works, the Customer shall exercise the standard of reasonable skill, care and diligence to be expected of a suitably qualified and competent designer and works contractor experienced in designing and carrying out works of a similar nature, scope and complexity to the Works. The Works shall be designed and carried out in accordance with any requirements stipulated in writing by Network Rail, any approvals provided by Network Rail or consents obtained for the Works, Railway Group Standards and Network Rail Company Standards (the last two items are together are referred to as the “**Standards**”).
3. Any variations to the Works shall only be effective if agreed by Network Rail in writing (such consent not to be unreasonably withheld or delayed, provided that Network Rail shall have sole discretion in relation to safety issues affecting the Railway).
4. The Customer shall be the sole ‘Client’ for the purposes of the Construction (Design and Management) Regulations 2015 and shall make the declaration to the Health and Safety Executive under regulation 4.
5. NOT USED
6. Prior to any access to the site or implementation of the Works, the Customer shall agree with Network Rail the public liability insurance to be maintained by the Customer for the benefit of Network Rail.
7. The Customer shall ensure that any information or instructions provided to Network Rail by the Customer are prepared and given in such a diligent and professional manner and with such clarity and in such detail as is necessary for Network Rail to comply with its obligations in this Agreement.
8. The Customer and Network Rail shall liaise generally on all safety matters arising out of the Works as they affect alterations to the railway network.

Access and Possessions

9. Access to the site where the Works are to be carried out (the “**Site**”) and the programme for the Works shall be agreed in writing in advance of the Customer being granted access to the Site. If a possession of the network is required to carry out the Works, Network Rail shall book such possession in accordance with its possession planning and booking system (subject to the procedures set out in the Network Code) and the Customer will pay Network Rail all costs incurred in providing the possession or as a result of such possession (including any payments to train operators) in accordance with Schedule 2.

Network Rail Services

10. Network Rail shall provide the services set out in Schedule 1 (“**the Services**”). Network Rail estimates the cost of carrying out the Services to be **£74,876.00** excl. VAT. Network Rail shall use reasonable endeavours to carry out the Services for that amount but the Customer shall pay all costs incurred by Network Rail in accordance with Schedule 2.
11. In carrying out the Services, Network Rail shall exercise the standard of reasonable skill, care and diligence to be expected of a suitably qualified and competent person engaged in carrying out or procuring the carrying out of

services of a similar nature, scope and complexity to the Services but taking into account Network Rail's duties to operate, maintain and renew the Railway.

12. Network Rail shall at the cost of the Customer make available to the Customer, within a reasonable time, the data and information in Network Rail's possession (except for data and information which is confidential or commercially sensitive or already in the public domain) which the Customer reasonably requires to carry out the Rail Related Works. Network Rail does not warrant the accuracy or sufficiency of data and information provided to the Customer and the Customer shall be responsible for verifying the accuracy and assessing the sufficiency of all data and information provided.
13. Network Rail may suspend the Works at any time with immediate effect, or take any protective action if Network Rail reasonably believes, acting in its role as owner and operator of the network, that the safety of the Railway or any person is at risk or the suspension or protective action is in the best interests of the operation of the Railway. The Customer shall pay all costs incurred by Network Rail in taking any such action as set out in this paragraph.

Consents

14. It may be necessary for Network Rail to apply for certain consents before the Customer can carry out the Works, including those specified in Schedule 1. Network Rail will use reasonable endeavors to obtain those consents. It will be necessary for the Customer to apply to Network Rail for various approvals (including Method Statements, Approval in Principle, etc...) before carrying out the Works. Network Rail cannot promise that the consents or approvals will be granted or that the conditions upon which they may be granted will be acceptable to the Customer. The Customer shall be responsible for paying all reasonable costs associated with applying for the consents and approvals and any costs or compensation payable as a consequence of the grant of the consents and approvals.
15. The Customer shall comply with all Network Rail sign-off procedures which apply to the Works and shall provide certificates as required by Network Rail prior to the completion of the Rail Related Works as set out in the Standards, and as set out by Network Rail in writing. Any signing-off of the Works by Network Rail does not relieve the Customer from its obligations to comply with the terms of this Agreement nor is it confirmation by Network Rail that the Customer has complied with those obligations.

Post Completion

16. NOT USED
17. NOT USED.
18. The Customer shall, at its own cost, maintain the New Structure in a good and proper state of repair and, when necessary, repair and/or renew the New Structure all to the satisfaction of Network Rail. In the event of the Customer not so maintaining, repairing or renewing the New Structure, Network Rail may carry out such works as Network Rail considers necessary at the cost of the Customer to protect the Railway.

19. In carrying out inspection, maintenance, repair or renewal of the Structure, the Customer shall procure that any maintenance contractor shall comply with the Special Requirements and Standards and such other conditions as Network Rail may impose for the protection of the Railway.

Invoicing and Payment

20. Network Rail shall invoice the Customer for the Services and for all other costs to be paid by the Customer in accordance with the payment provisions set out in part 4 of the Schedule. The Customer shall pay the invoice in full within 28 days from receipt of the invoice. If the Customer wishes to dispute the amount set out in an invoice it shall notify Network Rail within 10 days of delivery of the invoice specifying the disputed amount and the grounds on which it claims that the relevant amount is not due and payable. Late payment of any amount(s) due and payable under any invoice shall carry interest at the rate of 2% above the base rate of HSBC Bank plc from time to time. All amounts are exclusive of Value Added Tax, which will be charged at the applicable rate.

Liability

21. The maximum liability of Network Rail to the Customer arising out of or in consequence of this Agreement (whether for breach of contract, in tort, for breach of statutory duty or otherwise) shall in all circumstances be limited in aggregate to 50% of the Network Rail Costs (as defined in Schedule 2) paid by the Customer during the preceding 24 months, provided that such limit shall not apply in respect of any liability in respect of death or personal injury resulting from the negligence of Network Rail.
22. In no circumstances shall Network Rail or the Customer be liable to one another in respect of this Agreement for any indirect or consequential loss (including loss of profit) howsoever arising (without prejudice to paragraphs 4, 9, 13, 14 or 18 to 20 (inclusive) or 26 or to Schedule 2).
23. The Customer shall indemnify Network Rail for all loss suffered and from all liability and claims incurred for: (A) death or injury to persons, (B) damage to property and (C) any interference to the Railway, arising from the carrying out of the Works (except to the extent the liability or claim arises due to the negligence of Network Rail).

Termination

24. Network Rail may, by serving notice on the Customer, terminate this Agreement with immediate effect if the Customer is in material breach of any of its obligations in this Agreement (provided that Network Rail shall first notify the Customer of any remediable breach and its intention to terminate, and shall allow the Customer a period of 28 days to remedy such breach). The Customer may terminate this Agreement on giving Network Rail 28 days notice in writing if any of the consents or approvals required for the Works is not obtained.
25. Upon termination, all obligations of both parties under this Agreement shall cease except for:
 - (a) Paragraphs 18,19, 21 to 23 (inclusive) and 26, 28 to 36 (inclusive);and
 - (b) Any obligations arising as a result of any antecedent breach of this Agreement or any accrued rights.

26. Except where termination is due to Network Rail's default or insolvency, the Customer shall pay Network Rail for (A) any unpaid Services as at the date of termination, and (B) the reasonable costs of removing all plant, equipment and those materials not incorporated into the Works and in reinstating or procuring the reinstatement of the Works (or such part thereof as may exist as at the date of termination) and the relevant part or parts of the Railway affected by the Works to the extent necessary to make the same safe and/or secure and enable Network Rail to meet its contractual, statutory and Network Licence obligations (including the reasonable cost of any contractors and compensation to third parties). The decision to make good the Site and/or complete the Rail Related Works (or part of them) shall be discussed with the Customer but shall be the final decision of Network Rail. If so requested by Network Rail, the Customer shall give reasonable assistance to Network Rail in relation to making good the Site.

General

27. NOT USED
28. Neither party shall disclose any confidential information save as required by law, or in the case of Network Rail as required by its statutory duties or Network Licence. On termination of this Agreement, the Customer shall either destroy or, if reasonably requested to do so, return any confidential information within its possession or control that belongs to or was provided by Network Rail.
29. The Customer acknowledges that:
- (a) Network Rail may be required, under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 (collectively, the **Information Acts**), to disclose information relating to the Works; and
 - (b) Notwithstanding any other provision in this Agreement, Network Rail shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the Information Acts.
30. Nothing in this Agreement shall:
- (a) limit, qualify or override or purport to limit, qualify or override any obligation, right or entitlement of Network Rail which arises by reason of any Network Licence Condition, the terms and conditions of any existing access agreement or any statutory duty pursuant to the Railways Act or any other law; or
 - (b) Require Network Rail to do anything which is inconsistent with any Network Licence Condition, the terms and conditions of any existing access agreement or any statutory duty pursuant to the Railways Act or any other law.

In the event of any conflict between the provisions of this Agreement and any such Network Licence Condition, access agreement, statutory duty or contractual obligations:

- (i) Network Rail shall notify the Customer as soon as practicable of any such conflict of which it becomes aware; and
- (ii) The Network Licence Condition, access agreement, statutory duty or contractual obligations shall prevail and (to the extent that such conflict is

not resolved by the parties agreeing to vary this Agreement) this Agreement shall be of no effect to the extent of such conflict.

31. Either party may refer to adjudication any dispute arising out of or in connection with this Agreement in accordance with the Housing Grants, Construction and Regeneration Act 1996. The adjudicator shall be agreed between the parties and failing agreement within five working days of receipt by one party of a proposal by the other the adjudicator shall be appointed at the request of either party by the President of TECBAR. The Customer shall provide all necessary assistance and cooperation as reasonably requested by Network Rail to enable it to comply with its obligations under the Information Acts.
32. Notices shall be in writing and shall be duly and validly served if delivered by hand or sent by first class post to the registered office of the relevant party. Any notice sent by post shall be conclusively treated as having been served 48 hours after posting.
33. Neither party may novate, assign or charge its rights or interests under this Agreement without the prior consent of the other party (not to be unreasonably withheld or delayed).
34. Neither party intends that any term of this Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person other than Network Rail or the Customer.
35. This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements between the parties relating to the subject matter of this Agreement. Both parties acknowledge that in entering into this agreement they are not relying upon any pre-contractual statement that is not set out in this Agreement.
36. This Agreement shall be governed by and construed in accordance with the laws of England and Wales. Save as expressly provided otherwise, the parties agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes that may arise out of or in connection with this Agreement.

Yours faithfully

Signed:.....

Dated:.....

Duly authorised for and on behalf of Network Rail Infrastructure Limited

We agree to the above.

Signed:.....

(Duly authorised for and on behalf of)

Dated:.....

SCHEDULE 1 - THE WORKS

1. Description of the Works/Specification

- a) NOT USED
- b) NOT USED
- c) Works potentially impacting on the safety and operation of the Railway during construction / implementation.

Brief Description: Goldcrest Land Plc in Demolition of Current Industrial and Construct of New Residential Development on former BR Land In relation to (C6513) Covenants Dated 16th March 1984.

The party undertaking the works will be required to show that they carry Public Liability Insurance in the amount of £50,000,000.00

2. The Provisional Programme

To be agreed with Network Rail

3. The Services

3.1 General

- a) Arrangement of outside party asset management for the Works including Possessions in line with the Programme.
- b) Administration & management of internal Network Rail procedures to consider the applications for Network Rail Consents. The appointment of a project manager and appropriate supporting resources.
- c) Safety inspection for the duration of the period of construction of the Works as notified to Network Rail by the Customer to ensure the safety and operation of the Railway.
- d) Provision of asset protection services for the duration of the notified implementation period of the Works.
- e) Review of health and safety plan and the associated method statements with particular reference to protection of the running line.
- f) Services of the Network Rail project manager to manage the interface with Network Rail.
- g) Services of the Network Rail project sponsor and appropriate support staff and resources to support and provide guidance to the Customer during the initial stages of the Works including examining and commenting upon designs, drawings and specifications in respect of their impact on the Railway.

- h) Appointment under a call-off arrangement of a Designated Project Engineer and Project Engineers for relevant engineering disciplines to undertake duties in accordance with the Standards as and when reasonably required.
- i) Appointment under a call-off arrangement of a Designated Safety Agent and Safety Supervisors for relevant engineering disciplines to undertake duties in accordance with the Standards as and when reasonably required.
- j) Such other services as are necessary in the negotiation and preparation of this Agreement and/or the carrying out of Network Rail's obligations under this Agreement.

3.2 Scheme Specific

- a) Evaluate and negotiate a programme for the proposed works identifying the level of safety requirements required.
- b) Evaluate and plan safe system of work.
- c) Provide railway infrastructure safety supervision / monitoring to safeguard the railway infrastructure and operations.
- d) Vet and accept method statements in respect of their impact on the Railway.
- e) Examine and comment upon designs, drawings and specifications in respect of their impact on the Railway.
- f) Undertake review of design in accordance with NR/L2/CIV/003 Engineering Assurance of Building and Civil Engineering Works.

4. The Payment Schedule

- a) A purchase order for 100% of the estimate to be provided in advance of the provision of any services.
- b) Invoices will be issued as follows:
 - i. 50% of the estimated costs before the execution of any works or services
 - ii. Upon anticipation by Network Rail that first 50% paid by the Customer will be expended a second invoice for the remaining 50% of the estimated costs will be issued
 - iii. Upon final completion of works any balance to be credited
 - iv. In respect of costs following final completion of the works, Network Rail may invoice the Customer at any time and such invoices shall be for the actual costs outstanding.

- c) Estimate: **£75,876.00** Excludes VAT
- d) This is a budget estimate of costs likely to be incurred by 'the Customer' based on information supplied by 'the Customer' to date. The actual final cost that is invoiced may be more or less than the estimate
- e) VAT will be added at the rate currently in force

5. Network Rail consents

The following documents will be required for Network Rail's review and acceptance.

1. F001
2. F002
3. F003
4. RAMS

SCHEDULE 2 - COSTS

1. DEFINITIONS

The following terms shall have the following meanings when used in this Schedule:

"Agency Personnel" mean those personnel who have entered into a contract for services with Network Rail to provide services in connection with the Works exclusively to Network Rail;

"Agency Costs" means the cost to Network Rail of any Agency Personnel engaged in connection with the Services multiplied by 1.5, plus the properly incurred expenses and disbursements charged to Network Rail by such Agency Personnel;

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

"Hourly Rate" means in respect of each member of Network Rail's Personnel in any particular role band the rate set out in paragraph 3 below as the same may be adjusted from time to time in accordance with paragraph 4 below, which rate will be payable in respect of all worked hours spent by Network Rail's Personnel in connection with the Services;

"Network Rail Costs" means Agency Costs, Consultants' Costs, Personnel Costs and Possessions-Related Costs, plus

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

To the extent that they arise from or are a consequence of the Services;

"Network Rail's Personnel" means any employees and/or officers of Network Rail;

"Personnel Costs" means the sum of the relevant Hourly Rate multiplied by the number of hours spent by each member of Network Rail's Personnel in connection with the performance of Network Rail's duties and obligations under this Agreement;

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

2. EXPENSES AND DISBURSEMENTS

2.1. The Company shall pay or reimburse Network Rail all Network Rail Costs reasonably incurred by Network Rail plus the following costs reasonably and properly incurred by Network Rail in connection with the Services:

- (a) printing, reproduction and purchase of documents, drawings, office consumables, maps and records;
- (b) travelling expenses as follows:
 - (i) for journeys by train or airplane by all staff - in accordance with Network Rail's then current personnel policies;
 - (ii) for journeys by the London Underground system - actual costs;
 - (iii) car hire for business journeys other than home to Network Rail's offices - actual costs;
 - (iv) taxi fares - actual costs;
 - (v) additional costs of daily travel costs from Network Rail's offices to the designated project office; and
 - (vi) hotel and restaurant bills and other subsistence expenses associated with such travel including costs on temporary assignments to the Company, in accordance with Network Rail's then current personnel policies;
- (c) costs incurred that are associated with consultants, subcontracts and other outside services and facilities to the extent not included elsewhere within this Schedule;
- (d) training courses specifically relating to the Works;
- (e) any VAT chargeable;
- (f) technical, commercial, professional and legal fees, costs and disbursements in connection with the Works;
- (g) any supplemental leases, licences and other documentation entered into by Network Rail and relating to the Services, including all legal and other costs, charges, and expenses incurred by Network Rail in connection with the preparation, negotiation and enforcement of the same;
- (h) any sums payable by Network Rail pursuant to Conditions G or H of the Network Code or Schedule 4 or Schedule 8 of any Track Access Agreement or the equivalent provisions of a Freight Access Agreement where the same arise in connection with the carrying out or completion of the Works or the subsequent operation of the completed Works; and
- (i) any other disbursements or expenses incurred by Network Rail in connection with the Works under this Agreement which are not expressly set forth herein.

3. **HOURLY RATES TO APPLY FROM 1 APRIL 2015**

Banding	Non London	London
1	£154.35	£158.33
2	£113.48	£117.48
3	£84.45	£88.43
4	£59.00	£63.02
5	£47.21	£51.21
6	£37.21	£41.22
7	£30.89	£34.87
8	£24.52	£28.51

4. **ADJUSTMENT OF HOURLY RATES**

Network Rail shall adjust the Hourly Rates annually on 1st April to reflect the increase in the Retail Price Index for the year ending the preceding November.

5. **REVIEW**

- 5.1 As from time to time requested by the Customer, Network Rail shall provide to the Customer reasonable access to and evidence and records of all amounts payable by the Customer under this Schedule (other than the Hourly Rates), which may be reviewed and audited by or on behalf of the Customer.