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Mr Kiernan Doherty
Head of Enhancement Contracts
Network Rail
40 Melton Street
London
NW1 2EE

Dear Kiernan

Model terms and conditions for third party investment schemes under Part G of the Network Code: Development Services Agreement and Framework Development Agreement

1. I write in response to your submission of 25 August 2006 requesting formal approval of the draft model terms and conditions you have submitted for third party investment schemes under Condition GA3 (b)(vi) of Part G of the Network Code. I also refer to recent discussions on the model terms between our teams.
2. As we indicated in our November 2005 Technical Note on third party investment schemes¹, we have adopted a staged approach to approval of the model terms, which has resulted in us approving seven of the nine template agreements by June 2006. This letter concerns the final two template agreements: the Development Services Agreement (DSA) and the Framework Development Agreement (FDA).
3. Following our review of the DSA and FDA, and recent discussions between our teams, we are now content to approve - under Condition GA3 (b)(vi) of the Network Code - the model terms proposed in respect of the DSA and the FDA. This approval is subject to the following conditions:
 - the model terms for these Agreements may change over time as a result of (for example) further policy development, or experience with using the Agreements. We expect you to ensure that any minor amendments are made (such as typographical

¹ Available at http://www.rail-reg.gov.uk/upload/pdf/tech_note_3rdparty_investments-231105.pdf



corrections, further simplification of the drafting and general updating), and to discuss with us if any material amendments are proposed, relating to issues raised in our policy framework, including our November 2005 Technical Note. Such issues include any proposed amendments to customer contributions or changes to risk allocation in the templates; and

- we recognise that customers may wish to contract with you under terms and conditions that differ from these model terms: as we have said, this is of course a matter for customers. One common variation required by customers relates to the basis of the price you provide to them: you should set out clearly in your explanatory notes (see below) which terms of the DSA and FDA would be varied if you contract on a fixed or target price basis.

4. We will be monitoring the use of the template agreements to assess whether:

- (a) an appropriate balance exists between customer contributions and drawdowns from the new Risk Funds, in particular in relation to the Basic Agreements where risks borne by Network Rail may be relatively limited; and
- (b) the risk allocation in the templates is appropriate and is facilitating efficient investment.

5. This monitoring will inform our comprehensive review of the arrangements for the new Risk Funds, which we expect to carry out around May 2007, once they have been in existence for a full financial year.

6. You should ensure that you publish detailed explanatory notes for customers for all the agreements by the end of October 2006. As part of these notes, you should include a table showing clearly the relationship between clauses in the FDA and corresponding relevant clauses in the DSA, Basic Services Agreement (BSA) and Asset Protection Agreement (APA).

7. Now that we have approved all template agreements it is particularly important you put in place robust processes to review and update the agreements whenever necessary. In particular, any required changes to the DSA or BSA should be reflected in the FDA and vice versa.

8. I am copying this letter to Paul Plummer, Julia Glenn and Bill Davidson at Network Rail, Graham Dalton at DfT and Bill Reeve at Transport Scotland. This letter will also be placed on our website, along with links to all your template agreements.

Yours sincerely

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