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

Dear Kiernan

Model terms and conditions for third party investment schemes under Part G of the Network Code: Basic Agreements

1. I write in response to your submission of 11 May 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 in March 2006 the key template agreements for use in England and Wales. These are the Asset Protection Agreement (APA) and the Implementation Agreements (IAs), both the Emerging Cost and Fixed Price versions. Since then, we have received written support from Transport Scotland and therefore our approval of the three templates is now extended to their use in Scotland.
3. Following our review of the four "Basic" agreements, 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 Basic APA, the Basic Emerging Cost IA, the Basic Fixed Price IA and the Basic Services Agreement (BSA). This approval is subject to the following conditions:

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



- the model terms for these Agreements may change over time as a result of (for example) further policy development, future discussions on the Agreements we have not yet approved, or experience with using the Agreements. We expect you to ensure that any minor amendments are made (such as typographical 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.

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. We expect you shortly to submit the remaining two model Agreements (the Development Services Agreement and the Framework Services Agreement). As for the Basic Agreements, we expect you to make all appropriate amendments to these other model Agreements resulting from our discussions on the approved templates prior to submission, and also to ensure you have reflected the policies set out in our November 2005 Technical Note.

7. I am copying this letter to Paul Plummer, Julia Glenn and Bill Davidson at Network Rail, Graham Dalton at DfT and Janet Egdell at Transport Scotland. This letter will also be placed on our website.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Thomas'.

John Thomas