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OFFICE of
RAIL REGULATION

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

9 March 2006

Dear Kiernan

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

1. I write in response to your submission of 22 February 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 are adopting a staged approach to approval of the model terms, which has prioritised the key template agreements – in particular the Asset Protection Agreement (APA) and the Implementation Agreements (IAs), both the Emerging Cost and Fixed Price versions. Following recent discussions and receipt of an appropriate letter of support from DfT, we are now content to approve - under Condition GA3 (b)(vi) of the Network Code - the model terms proposed in respect of the APA, the Emerging Cost IA and the Fixed Price IA for use in England and Wales. 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 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

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

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- 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.

3. 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 Funds²; and
 - (b) the risk allocation in the templates is appropriate and is facilitating efficient investment.

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.

4. We expect to issue a similar approval letter relating to Scotland, provided that we receive a signed letter from Transport Scotland confirming that it supports the financial commitment arising from the new Risk Funds. We received this confirmation from DfT in relation to England and Wales in a letter from Graham Dalton dated 24 January 2006, and we understand that Transport Scotland intends to provide this confirmation on the basis of the Statement of Risks you provided.

5. We have also discussed with your team the forward process for submission of the other model Agreements (six in all – the Basic IA, Basic Fixed Price IA, Basic APA, Development Services Agreement, Basic Services Agreement and the Framework Services Agreement). For these other Agreements, in order to expedite the approval process, we do not anticipate following the iterative approach we used for the APA and IAs. Rather, we expect you to make all appropriate amendments to these other model Agreements resulting from our discussions on the APA and the IAs prior to submission, and also to ensure you have reflected the policies set out in our November 2005 Technical Note. We will contact you shortly to arrange a meeting to discuss the forward process.

6. I have copied 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,

John Thomas

John Thomas

² That is, the Network Rail Fee Fund (NRFF) and the Industry Risk Fund (IRF). For further details see our Technical Note.