

CONFORMED COPY

Facility Agreement

between

The Secretary of State for Transport
as Lender

and

Network Rail Infrastructure Limited
as Borrower

Dated 4 July 2014

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THIS AGREEMENT is dated 4 July 2014 and made

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR TRANSPORT**, (the "**Lender**"); and
- (2) **NETWORK RAIL INFRASTRUCTURE LIMITED**, (the "**Borrower**"), registered in England and Wales as company number 02904587 and having its registered office at Kings Place, 90 York Way, London N1 9AG.

BACKGROUND:

The Lender enters into this Agreement in exercise of its power in section 6 of the Railways Act 2005 and under the authority given by section 55 of that Act.

IT IS AGREED as follows:

1. **Definitions and Interpretation**

1.1 **Definitions**

In this Agreement, unless the context otherwise requires, the following terms have the following meanings:

"Affiliate" means in respect of any company, a company which is, from time to time, its subsidiary undertaking or parent undertaking or a subsidiary undertaking of that parent undertaking (as the terms "subsidiary undertaking" and "parent undertaking" are defined in s1162 and schedule 12 of the Companies Act 2006);

"Available Commitment" means the Commitment *less*:

- (A) the amount of any outstanding Loans; and
- (B) in relation to any proposed Utilisation, the amount of any Loans (other than the Loan to be made pursuant to that proposed Utilisation) that are due to be made on or before the proposed Utilisation Date,

provided that, for the purpose of calculating Available Commitment for a proposed Utilisation, any Loans due to be repaid or prepaid on or before the proposed Utilisation Date shall not be deducted;

"Availability Period" means the period from and including the date of this Agreement and ending on 31 March 2019;

"Borrower Group" means the Borrower, any of its Affiliates, NRIF and any of NRIF's Affiliates, other than a Holding Company;

"Business Day" means a day (other than a Saturday or a Sunday) on which banks are open for general business in London;

"Commitment" means, subject to paragraphs (B) and (C) of Clause 2.4 (*Commitment*), the sum of GBP 30,300,000,000 to the extent not cancelled or reduced under this Agreement;

“Contingencies Fund” means repayable funds authorised by HM Treasury and made available to departments to meet urgent cash requirements pending parliamentary approval of main Estimates.

“Control” has the meaning given to the term “control” in the Network Licence;

“CP5 Regulatory Settlement” means the final conclusions of the access charges review carried out by the Office of Rail Regulation in respect of the Borrower pursuant to the Railways Act 1993 for control period 5 (2014-2019) as in effect on and from 1 April 2014;

“Default” means an Event of Default or any event or circumstance specified in Clause 10 (*Termination*) which would (with the expiry of a grace period, the giving of notice, the making of any determination or any combination of the foregoing) be an Event of Default;

“Default Interest” means interest to be paid on any overdue sum of principal, interest or any other amount payable under this Agreement in accordance with the provisions of Clause 5.4 (*Default Interest*);

“DMO” means the UK Debt Management Office;

“Estimate” means a main, revised or supplementary supply estimate provided, or to be provided, for the purposes of either a Supply and Appropriation (Main Estimates) Bill or a Supply and Appropriation (Anticipation & Adjustments) Bill;

“Event of Default” has the meaning given to that term in Clause 10 (*Termination*);

“Existing Hedging” means the portfolio of financial derivatives held by the Borrower or its Affiliates, disclosed to the Lender in writing before the date of this Agreement and entered into before the date of this Agreement;

“Facility” means the sterling revolving credit facility made available, subject to the terms and conditions hereto, as described in Clause 2.1 (*The Facility*);

“Finance Documents” means this Agreement and any other document so designated by the Borrower and the Lender;

“Financial Indebtedness” means any indebtedness for or in respect of:

- (A) moneys borrowed;
- (B) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (C) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (D) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with generally accepted accounting principles in the United Kingdom, be treated as a finance or capital lease;
- (E) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (F) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;

- (G) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (H) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (I) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (A) to (H) above;

“Financial Indemnity” means the financial indemnity originally dated 29 October 2004 and made between the Strategic Rail Authority and HSBC Trustee (C.I.) Limited;

“Financial Year” means each annual period ending on 31 March;

“FI Provider” means the Secretary of State for Transport (or any transferee, in accordance with the terms of the Financial Indemnity, of the Secretary of State for Transport’s rights and obligations under the Financial Indemnity);

“FI Provider Event of Default” means, in respect of the FI Provider:

- (A) the FI Provider fails to pay any amount due under the Financial Indemnity in respect of Financial Indebtedness benefiting from the Financial Indemnity and such failure continues for three Business Days after the due date for payment under the Financial Indemnity; or
- (B)
 - (i) the Financial Indemnity is illegal or invalid or is alleged by the FI Provider to be illegal or invalid for any reason; or
 - (ii) the FI Provider expressly repudiates or cancels the Financial Indemnity or expressly states an intention to repudiate or cancel the Financial Indemnity (other than in accordance with its terms);

“GBP”, **“£”** or **“sterling”** denotes the lawful currency of England;

“HM Treasury Penalty Charges” means those penalties and charges levied by HM Treasury against government departments generally for failure to meet net payment flow targets or cash transfer targets for a particular month or day;

“Holding Company” means each of Network Rail Holdco Limited (a company registered in England and Wales with company number 04423711) and Network Rail Limited (a company registered in England and Wales with company number 04402220);

“Interest Period” means:

- (A) in relation to a Loan, each period determined in accordance with Clause 5.1 (*Interest Periods*); and
- (B) in relation to an Unpaid Sum, each period determined in accordance with Clause 5.4 (*Default interest*);

“Intra-Group Loan” means a loan between any members of the Borrower Group;

“Legal Reservations” means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, bankruptcy, liquidation, reorganisation, court schemes, moratoria, administration and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under the Limitation Acts and defences of set-off or counterclaim;
- (c) the principle that additional interest imposed pursuant to any relevant agreement may be held to be unenforceable on the grounds that it is a penalty and thus void;
- (d) the principle that an English court may not give effect to an indemnity for legal costs incurred by an unsuccessful litigant;

“Limitation Acts” means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984;

“Loan” means a loan made or to be made under this Facility or the principal amount outstanding for the time being of that loan;

“Margin” means 1.50 per. cent per annum;

“Material Adverse Effect” means, in relation to any event or circumstance or series of events or circumstances, an effect which is materially adverse to the ability of the Borrower to comply with its payment obligations under the Finance Documents or the legality, validity or enforceability of any Finance Documents;

“Month” means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that in the case of the last month of any period:

- (A) (subject to paragraph (C) below) if the numerically corresponding day is not a Business Day, that period will end on the next Business Day in the calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (B) if there is no numerically corresponding day in the calendar month in which that period is to end, that period will end on the last Business Day in that calendar month; and
- (C) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period will end on the last Business Day in the calendar month in which that Interest Period is to end;

“National Loans Fund Interest Rate” means the national loan funds new loans rate under the heading “maturity” , determined by the DMO using the methodology specified by HM Treasury in accordance with section 5 of the National Loans Act 1968 and as amended from time to time, published on the DMO website (or any replacement site approved by HM Treasury after consultation with the Borrower) on the relevant Utilisation Date, at 9.30a.m., for loans of the same maturity as the relevant Loan after the deduction of the margin added by DMO (0.11 per cent. as at the date of this Agreement), or such other rate as is agreed between the Lender and the Borrower;

“Network Licence” means a licence to operate the network granted to the Borrower pursuant to Section 8 of the Railways Act 1993 as at 1 April 2014;

“NRIF” means Network Rail Infrastructure Finance plc registered in England and Wales as company number 05090412 and having its registered office at Kings Place, 90 York Way, London, N1 9AG;

“ORR” means the Office of Rail Regulation, established under section 15 of the Railways and Transport Safety Act 2003, and any person from time to time who may be a successor to its statutory functions;

“Permitted Business” has the meaning given to that term in the Network Licence;

“Prepayment Margin” means the difference between (i) the margin (being a negative number) used by DMO (0.11 per cent. as at the date of this Agreement) for the purposes of calculating the national loan funds premature repayment rate under the heading “maturity” and (ii) the margin (being a positive number) used by DMO (0.11 per cent as at the date of this Agreement) for the purposes of calculating the national loan funds new loans rate under the heading “maturity”, such difference being 0.22% as at the date of this Agreement;

“Premature Repayment Rate” means the national loan funds premature repayment rate under the heading “maturity”, determined by the DMO using the methodology specified by HM Treasury in accordance with section 5 of the National Loans Act 1968 and as amended from time to time, published on the DMO website (or any replacement site approved by HM Treasury after consultation with the Borrower) on the Relevant Date, at 9.30a.m., for loans with a maturity period equivalent to the period remaining to and including the Repayment Date for that Loan if it had not been repaid or one year if that period would be less than one year but excluding the margin deducted by DMO (0.11 per cent. as at the date of this Agreement) and instead (i) deducting an amount equal to the Prepayment Margin and (ii) adding the Margin, or such other rate as is agreed between the Lender and the Borrower;

“Regulated Contracts” means track access agreements, depot access agreements, freight facility access agreements, stations access agreements and any other types of contracts relating to Permitted Business (excluding for the purpose of this definition any business or activity falling within Clause 2.3(A)(1)) which are from time to time approved by the ORR pursuant to its statutory powers;

“Relevant Date” means: for the purposes of a repayment pursuant to Clause 4.2 the date of the notice issued by the Borrower in accordance with that clause; and for the purposes of any other repayment of a Loan before the date on which it is due, the date of prepayment.

“Repayment Date” in relation to a particular Loan means the stated Repayment Date in the Utilisation Request for that Loan;

“Repeating Representations” means the representations set out in Clause 8, which are deemed to be repeated by the Borrower in accordance with Clause 8.1;

“Rollover Loan” means one or more Loans:

- (A) made or to be made on the same day that one or more maturing Loans are due to be repaid; and
- (B) made or to be made to the Borrower for the purpose of refinancing a maturing Loan;

“Security” means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

“Station Access Charges” means all charges paid by or on behalf of train operating companies to the Borrower for access to stations, as determined by the ORR, from time to time;

“Subsidiary” means a subsidiary within the meaning of section 1159 of the Companies Act 2006 and includes a subsidiary undertaking within the meaning of section 1162 of that Act 2006;

“Tax” means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any related penalty or interest);

“Termination Date” means 1 April 2029 or such other date agreed by the parties;

“Track Access Charges” means all charges paid by or on behalf of train operating companies and/or freight operating companies pursuant to track access contracts, as determined by the ORR, from time to time;

“UK” means the United Kingdom of Great Britain and Northern Ireland;

“Unpaid Sum” means any sum due and payable but unpaid by the Borrower hereunder;

“Utilisation” means a utilisation of the Facility;

“Utilisation Date” means the date of a Utilisation being the date upon which a Loan is to be made;

“Utilisation Request” means a notice substantially in the form set out in Schedule 2 (*Utilisation Request*);

“Value of the RAB” has the meaning given to it in the Network Licence; and

“Vote on Account” means an estimate of resources, capital and cash to allow existing services to continue operating during the early months of a financial year, pending Parliament's consideration of main Estimates.

1.2 Interpretation

(A) In this Agreement, except to the extent that the context requires otherwise:

- (1) an “amendment” includes a variation, modification, supplement, restatement, replacement, novation, assignment or re-enactment or any waiver which has such effect and “amend” or “amended” will be construed accordingly;
- (2) “including” will be construed as a reference to “including without limitation”, so that any list of items or matters appearing after the word “including” will be deemed not to be an exhaustive list, but will be deemed rather to be a representative list, of those items or matters forming a part of the category described prior to the word “including”;
- (3) a “law” will be construed as any law (including common law), statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other legislative measure of any government, supranational, local government, statutory or regulatory body or court;
- (4) a “person” includes any individual, company, corporation, unincorporated association or body (including a partnership, trust, joint venture or consortium), government, state, agency, organisation or other entity whether

or not having separate legal personality, and its successors in title, permitted assigns and permitted transferees;

- (5) a “regulation” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (6) references to a statute, treaty or legislative provision or to a provision of it will be construed, at any particular time, as including a reference to any amendment, modification, extension or re-enactment at any time then in force and to all subordinate legislation made under it from time to time;
- (7) references in the singular will include references in the plural and vice versa, words denoting any gender will include any other gender and words denoting natural persons will include any other persons;
- (8) references to an agreement, deed, instrument, licence, code or other document (including this Agreement), or to a provision contained in any of these, will be construed, at the particular time, as a reference to it as it may then have been amended, varied, supplemented, restated, replaced, modified, suspended, assigned or novated;
- (9) a “Clause”, a “Subclause” or a “Schedule” is a reference to a clause or subclause of, or a schedule to, this Agreement;
- (10) a reference to a “party” means a party to this Agreement and includes its successors in title, permitted assigns and permitted transferees; and
- (11) references to times of day are to London time unless otherwise stated.

- (B) Unless the contrary intention appears, a reference to a party will not include that party if it has ceased to be a party under this Agreement.
- (C) The headings in this Agreement do not affect its interpretation.
- (D) An Event of Default or a Default is “continuing” if it has not been remedied or waived.

2. The Facility

2.1 The Facility

Subject to the terms of this Agreement, the Lender makes available to the Borrower a sterling revolving credit facility in an aggregate amount equal to the Commitment.

2.2 Conditions precedent to drawdown

The Lender will only be obliged to comply with Clause 3 (*Utilisation*) if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (A) in the case of a Rollover Loan, no Event of Default is continuing or would result from the proposed Loan and, in the case of any other Loan, no Default is continuing or would result from the proposed Loan; and

- (B) the Repeating Representations to be made by the Borrower are true in all material respects;
- (C) other than in the case of a Rollover Loan, the Borrower, its Affiliates, NRIF and its Affiliates are not in excess of the limits on financial indebtedness (as defined in the Network Licence) set out in conditions 3.1 and 3.2 (Financial Indebtedness) of the Network Licence; and
- (D) the amount of the Loan (when aggregated with the amount of other Loans made under this Agreement in the Financial Year in which that Loan is to be drawn and any other Loans to be made on or before the proposed Utilisation Date) would not exceed:
 - (1) before Royal Assent to the Supply and Appropriation (Main Estimates) Bill for the Financial Year ending 31 March 2015, an amount equal to £550,000,000, being the amount available for drawing from the Contingencies Fund, and
 - (2) thereafter, for the Financial Year in which it is to be drawn, the aggregate of the amounts approved in the Supply and Appropriation (Main Estimates) Act and the Supply and Appropriation (Anticipation & Adjustments) Act for that Financial Year for advances under this Facility,or the Lender nevertheless agrees to make that Loan.

2.3 Purpose

- (A) The Borrower must utilise the Loans solely for the purposes of financing Permitted Business (including for the purpose of repaying one or more intercompany loans from NRIF, or for the purpose of funding any amount payable under the Finance Documents (including pursuant to Clauses 5.2, 5.4, 6 and 7, but excluding principal amounts pursuant to Clause 4.2)), but for the avoidance of doubt in each case excluding:
 - (1) de minimis business conducted in accordance with conditions 4.7 to 4.10 of the Network Licence and any business or activity which has been consented to by ORR under Condition 4 of the Network Licence; and
 - (2) the refinancing of Financial Indebtedness originally incurred for any such business or activity as refinanced from time to time.
- (B) The Lender is not bound to monitor or verify the application of the Loans.

2.4 Commitment

- (A) The Available Commitment which, at that time, is unutilised will be immediately cancelled at the end of the Availability Period.
- (B) The Available Commitment may be increased if:
 - (1) the Borrower makes a written request; or
 - (2) the Value of the RAB is increased (with the approval of ORR) to reflect the inclusion of additional projects to those contemplated in the CP5 Regulatory Settlement,and, in each case, if the Lender and Borrower agree in writing to such an increase.

- (C) The Available Commitment will be reduced in the amount agreed in writing by the Borrower and the Lender in the event that the Lender replaces any of its Commitment under this Agreement with a grant to the Borrower.

3. Utilisation

3.1 A Utilisation Request hereunder may not be delivered by the Borrower unless the Lender has received all of the documents and other evidence listed in Schedule 3 (*Conditions Precedent To Initial Utilisation*) in form and substance satisfactory to the Lender. The Lender must notify the Borrower promptly upon being so satisfied.

3.2 The Borrower may utilise the Facility by delivery to the Lender of a duly completed Utilisation Request no later than:

- (A) in the case of Loans not exceeding £500,000,000, 11.00a.m. five Business Days prior to the proposed Utilisation Date; and
- (B) in the case of Loans equal to or exceeding £500,000,000, 11.00a.m. ten Business Days prior to the proposed Utilisation Date,

or such other time as the Borrower and the Lender may agree.

3.3 The amount of the proposed Loan must be an amount which is not more than the Available Commitment and:

- (A) not less than £100,000,000 or, if less, equal to the Available Commitment; and
- (B) not more than £2,000,000,000, or such other greater amount agreed by the Lender.

3.4 If the conditions set out in this Agreement have been met, the Lender must make the Loan available to the Borrower on the Utilisation Date.

3.5 Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:

- (A) the proposed Utilisation Date is a Business Day within the Availability Period;
- (B) the amount of the Utilisation complies with Clause 3.3; and
- (C) the proposed Repayment Date is (i) not earlier than the date falling 12 months after the Utilisation Date for the relevant Loan (ii) not later than the date falling 10 years after the Utilisation Date for the relevant Loan and (iii) not later than the Termination Date.

3.6 Only one Loan may be requested in each Utilisation Request. The aggregate amount of Loans drawn on the same day must not be more than £2,000,000,000, or such other amount agreed by the Lender.

4. Repayment, Prepayment and Cancellation

4.1 Repayment of Loans

- (A) All Loans will be repaid in full (including all accrued interest and any other amounts arising under this Agreement) on the Repayment Date for that Loan stated in the relevant Utilisation Request and in any event on or prior to the Termination Date.

- (B) In the case of a Rollover Loan which is less than the amount of the Loan repayable on the date on which the Rollover Loan is borrowed, unless the Borrower notifies the Lender to the contrary in its Utilisation Request, the aggregate amount of the Rollover Loan will be treated as being applied to the repayment of the maturing Loan to which it relates so that:
- (1) the Borrower will only be required to pay an amount in cash equal to the amount by which its borrowings under the maturing Loan exceed the Rollover Loan; and
 - (2) the Rollover Loan will be treated as having been made available by the Lender and applied by the Borrower in or towards the repayment of the maturing Loan and the Lender will not be required to make the Rollover Loan available in cash.
- (C) In the case of a Rollover Loan which is equal to or exceeds the amount of the Loan repayable on the date on which the Rollover Loan is borrowed, unless the Borrower notifies the Lender to the contrary in its Utilisation Request, the aggregate amount of the Rollover Loan will be treated as being applied to the repayment of the maturing Loan to which it relates so that:
- (1) the Borrower will not be required to make a payment in cash to the Lender; and
 - (2) the Rollover Loan will be treated as having been made available by the Lender and applied by the Borrower in or towards the repayment of the maturing Loan and the Lender will only be required to pay an amount in cash to the Borrower equal to the amount by which the Rollover Loan exceeds the maturing Loan.

4.2 Voluntary Prepayment of Loans

Subject to Clause 5.5, the Borrower may, if it gives the Lender not less than five Business Days' notice, prepay the whole or any part of any Loan or any other amount owed under this Agreement at any time, by way of prepayment of such Loan or other amount together with accrued and unpaid interest. Any prepayment of a Loan must be in a minimum amount of £10,000,000 (or, if less, the outstanding principal balance of that Loan). Any amount prepaid may be reborrowed in accordance with the terms of this Agreement.

4.3 Voluntary Cancellation

The Borrower may, if it gives the Lender five Business Days' notice, cancel the whole or any part of the Available Commitment. No amount cancelled may be subsequently reinstated.

4.4 Restrictions

- (A) Any notice given under this Clause 4 is irrevocable and, unless a contrary indication appears in this Agreement, must specify the date or dates upon which the relevant prepayment or cancellation is to be made and the amount of that prepayment or cancellation.
- (B) Any prepayment under this Agreement must be made together with accrued interest on the amount prepaid, and without premium or penalty save as expressly set out in this Agreement.

5. Interest and Interest Periods

5.1 Interest Period

- (A) Subject to this Clause 5.1, the Interest Period for each Loan will be six Months or any other period as may be agreed between the Borrower and the Lender.
- (B) The first Interest Period of a Loan will commence on its Utilisation Date and end on the subsequent 31 March, 30 June, 30 September or 31 December or such other time as may be agreed and described in the Utilisation Request. Each subsequent Interest Period (other than the last Interest Period) will end six Months thereafter (unless otherwise agreed between the Borrower and the Lender).
- (C) An Interest Period for a Loan must not extend beyond the Termination Date or the relevant Repayment Date.
- (D) Each Interest Period for a Loan will start on the Utilisation Date or, if already made, on the last day of its preceding Interest Period.

5.2 Interest

- (A) The rate of interest on each Loan for each Interest Period is the percentage rate per annum equal to the aggregate of:
 - (1) the Margin; and
 - (2) the applicable National Loans Fund Interest Rate for that Loan as at 9.30a.m. on its Utilisation Date.
- (B) Accrued interest on each Loan is due on the last day of each Interest Period relating to such Loan. The Borrower must pay such accrued interest in accordance with the Lender's payment terms, as notified to the Borrower from time to time.

5.3 Notification of Rates of Interest

The Lender must promptly notify the Borrower of the determination of a rate of interest under this Agreement.

5.4 Default Interest

- (A) If the Borrower fails to pay any amount payable by it hereunder on its due date, interest will accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to Clause 5.4(B) is one per cent. higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Lender (acting reasonably). Any interest accruing under this Clause 5.4 will be immediately payable by the Borrower on demand by the Lender.
- (B) If any overdue amount consists of all or part of any Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
 - (1) the first Interest Period for that overdue amount will have a duration equal to the unexpired portion of the current Interest Period relating thereto; and

- (2) the rate of interest applying to the overdue amount during that first Interest Period will be one per cent. higher than the rate which would have applied if the overdue amount had not become due.
- (C) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

5.5 **Premature Repayment Rate**

In respect of any Loan or part of a Loan which is repaid or becomes due prior to its Repayment Date, on the earlier of the date it is repaid or becomes due the Borrower must pay to the Lender, in addition to the principal amount of such Loan, an amount (if positive) equal to: (A) the aggregate of the net present value as at the date of such payment or due date of all amounts which would otherwise have been paid on that Loan or part of a Loan to and including its Repayment Date discounted at a rate equal to the Premature Repayment Rate; less (B) the relevant amount of the Loan due to be prepaid. This amount shall be calculated by the Lender and notified to the Borrower on the date of the relevant repayment or due date (as applicable).

6. **Drawdown Fee**

The Borrower must pay to the Lender a drawdown fee of 0.10 per cent. of the amount of each Loan in accordance with the Lender's payment terms, as notified to the Borrower from time to time..

7. **Costs and indemnities**

7.1 **Indemnities**

- (A) The Borrower must within five Business Days of demand, indemnify the Lender against any cost, loss or liability reasonably incurred by it as a result of:
 - (1) the occurrence of any Event of Default;
 - (2) a failure by the Borrower to pay any amount due under a Finance Document on its due date;
 - (3) the Lender investigating any event which it reasonably believes is an Event of Default;
 - (4) funding, or making arrangements to fund, its participation in a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the Lender alone); and
 - (5) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.
- (B) The Borrower must within five Business Days of demand, indemnify the Lender against any HM Treasury Penalty Charges (as amended or replaced from time to time) incurred by it as a result of the Utilisation of the Facility not being made on the date and/or in the amount set out in any forecast provided in accordance with Clause 9.4.
- (C) For the avoidance of doubt, to the extent that any cost, loss or liability of the Lender is indemnified by the Borrower under Clause 7.1(B), the Lender shall not be

entitled to make a claim, and the Borrower shall not be obliged to indemnify the Lender, in respect of the same cost, loss or liability under Clause 7.1(A).

7.2 Amendment costs

If the Borrower requests an amendment, waiver or consent it must, within five Business Days of demand, reimburse the Lender for the amount of all costs and expenses (including legal fees) reasonably incurred by the Lender in responding to, evaluating, negotiating or complying with that request or requirement.

7.3 Enforcement and preservation costs

The Borrower must, within five Business Days of demand, pay to the Lender the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under this Agreement and any proceedings instituted by or against the Lender as a consequence of enforcing these rights.

8. Representations

8.1 Times for making representations

- (A) The representations set out in this Clause 8 are made by the Borrower on the date of this Agreement.
- (B) Unless a representation is expressed to be given at specific dates, each representation is deemed to be repeated by the Borrower on:
 - (1) the date of any Utilisation Request;
 - (2) each Utilisation Date; and
 - (3) the first day of each Interest Period.
- (C) When a representation is repeated, it is made by reference to the circumstances existing at the time of repetition.

8.2 Status

- (A) It is a limited liability company, duly incorporated and validly existing under the laws of England.
- (B) It has the power to own its assets and carry on its business as it is being conducted.

8.3 Powers and authority

It has the power to enter into and perform, and has taken all necessary action to authorise the entry into and performance of, this Agreement and the transactions contemplated by this Agreement.

8.4 Legal validity

Subject to the Legal Reservations, the obligations expressed to be assumed by it under this Agreement are legal, binding, valid and enforceable obligations.

8.5 **Non-conflict**

The entry into and performance by it of, and the transactions contemplated by, this Agreement do not, and it is not aware of any event or circumstances, or series of events or circumstances which:

- (A) conflict with any law or regulation applicable to it; or
- (B) conflict with its constitutional documents.

8.6 **Authorisations**

All authorisations, licences, consents and approvals required by it in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, this Agreement have been obtained or effected (as appropriate) or will be obtained or effected (as appropriate) by the date on which they are required and are, to the extent obtained or effected, in full force and effect.

8.7 **No proceedings pending or threatened**

No litigation, arbitration or administrative proceeding of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect, have been, to the best of the Borrower's knowledge and belief, started or threatened against it.

8.8 **No default**

As at the date of this Agreement and the first Utilisation Date only, no Event of Default has occurred and is continuing or might reasonably be expected to result from any Utilisation.

8.9 **Pari passu ranking**

Its payment obligations under the Finance Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

9. **Undertakings**

9.1 The Borrower must not transfer or dispose of or create or allow to exist any Security over (i) Station Access Charges (ii) any future forms of revenue under Regulated Contracts which is of a type that the Borrower does not currently receive as at the date of this Agreement (iii) Track Access Charges or (iv) grants by the Lender to the Borrower and by Scottish Ministers to the Borrower.

- 9.2 (a) The Borrower must not incur, and must procure that none of the Borrower Group or a Holding Company incurs, any Financial Indebtedness which may be utilised for the purpose of financing, or in connection with, Permitted Business, except for:
- (1) Financial Indebtedness under this Agreement;
 - (2) Intra-Group Loans;
 - (3) foreign exchange contracts relating to contracts for the purchase or supply of goods or services entered into by a member of the Borrower Group in the ordinary course of its business;

- (4) commodities hedging relating to contracts for the purchase or supply of goods or services entered into by a member of the Borrower Group in the ordinary course of its business;
 - (5) counter indemnities provided by the Borrower or any of its Subsidiaries for letters of credit or performance bonds and parental company guarantees provided by the Borrower or any of its Subsidiaries relating to contracts for the purchase or supply of goods or services or insurance contracts, provided that such counterindemnities or parental company guarantees:
 - (A) were entered into by the Borrower or its Subsidiaries in the ordinary course of its business;
 - (B) are dated before the date of this Agreement and disclosed to the Lender in writing before the date of this Agreement; and
 - (C) are not provided for the purposes of benefiting or supporting the incurrence of Financial Indebtedness;
 - (6) renewals and amendments (including amendments as to amount) from time to time of the letters of credit, performance bonds or parental company guarantees contemplated by paragraph (5) above in respect of which the conditions in paragraph (5) (other than paragraph (B)) remain satisfied, unless at least 40 Business Days before its expiry the Lender has given the Borrower notice that they may no longer be renewed or amended and an alternative arrangement is available and has been accepted by the relevant counterparty;
 - (7) any offsetting swaps entered into solely to unwind a member of the Borrower Group's liabilities in respect of its Existing Hedging; and
 - (8) overdraft facility and other borrowing facilities subject to an aggregate limit of £50,000,000 at any time.
- (b) The Borrower must not incur, and must procure that none of the Borrower Group or a Holding Company incurs, Financial Indebtedness (including to refinance or replace existing Financial Indebtedness) which benefits from or is supported by the Financial Indemnity, except for:
- (1) counter indemnities provided by the Borrower or any of its Subsidiaries for letters of credit relating to contracts for the purchase or supply of goods or services or insurance contracts, provided that such counterindemnities:
 - (A) were entered into by the Borrower or its Subsidiaries in the ordinary course of its business;
 - (B) are dated before the date of this Agreement and disclosed to the Lender in writing before the date of this Agreement; and
 - (C) are not provided for the purposes of benefiting or supporting the incurrence of Financial Indebtedness;
 - (2) renewals and amendments (including amendments as to amount) from time to time of the letters of credit, contemplated by paragraph (1) above in respect of which the conditions in paragraph (1) (other than paragraph (B)) remain satisfied, unless at least 40 Business Days before its expiry the Lender has given the Borrower notice that they may no longer be renewed

or amended and an alternative arrangement is available and has been accepted by the relevant counterparty;

- (3) any offsetting swaps entered into solely to unwind a member of the Borrower Group's liabilities in respect of its Existing Hedging; and
- (4) overdraft facility and other borrowing facilities subject to an aggregate limit of £50,000,000 at any time.

- (c) The restrictions in this Clause 9.2 shall not apply where the Lender has repudiated its obligation to lend under this Agreement, or while it is in breach of that obligation.
- (d) For the avoidance of doubt, nothing in this Clause 9.2 shall prevent the Borrower from incurring Financial Indebtedness, that does not benefit from or receive support from the Financial Indemnity, for the purposes of financing any business or activity falling within Clause 2.3(A)(1). The Borrower must disclose any such Financial Indebtedness to the Lender in writing before the date of this Agreement, or before incurring such Financial Indebtedness.

9.3 The Borrower must provide to the Lender, on or before the date notified to the Borrower not less than 14 days in advance of such date, all information, including forecasts and estimates of expenditure and services, reasonably required for the purposes of ensuring that, in connection with utilisations and repayments under this Agreement, all information submissions to parliament and HM Treasury for the purposes of Estimates and any Vote on Account are consistent with parliamentary and HM Treasury requirements.

9.4 On or before the 6th Business Day (the “**Delivery Date**”) of each calendar month, the Borrower must provide to the Lender a forecast of the amount that it expects to draw and repay under this Agreement in the following calendar month (or such other forecast as the Borrower and the Lender may agree), provided that the Borrower may submit changes to such forecast which do not exceed £10,000,000 in value on or before the date falling 6 Business Days after the Delivery Date.

9.5 The Borrower must provide to the Lender an updated forecast of:

- (A) on 30 September 2014, and on each 31 March and 30 September thereafter, for the following 12 month period (the “**Initial Period**”), the aggregate amount of all Utilisations in each calendar month and the aggregate amount of all Loans as at the end of each calendar month; and
- (B) on each 31 March, for each Financial Year starting after the expiry of the relevant Initial Period but before the expiry of the Availability Period, the aggregate amount of all Utilisations in each Financial Year and the aggregate amount of all Loans as at the end of each Financial Year,

or such other forecasts as the Borrower and the Lender may agree.

10. Termination

10.1 Each of the following events or circumstances is an Event of Default:

- (A) the Borrower fails to pay any sum due under this Agreement within five Business Days of it being informed in writing by the Lender that such sum has become due, other than as a direct result of the Lender not complying with an obligation to fund under this Agreement;

- (B) the Borrower ceases to hold the Network Licence;
- (C) any representation or statement made or deemed to be made by the Borrower in the Finance Documents or any other document delivered by or on behalf of the Borrower under or in connection with the Finance Documents is or proves to have been incorrect or misleading in any material respect when made or deemed to be made, and, if the circumstances leading to such misrepresentation are capable of remedy, such circumstances are not remedied within sixty days after the earlier of:
 - (1) notice of such misrepresentation has been received by the Borrower from the Lender; and
 - (2) the Borrower becoming aware of the misrepresentation;
- (D) the Borrower does not comply with any provision of the Finance Documents (other than the payment obligations referred to at paragraph (A) above) and, if such non-compliance is capable of remedy, such non-compliance is not remedied within sixty days after the earlier of:
 - (1) notice of such non-compliance has been received by the Borrower from the Lender; and
 - (2) the Borrower becoming aware of the failure to comply;
- (E) the Borrower (except for the purpose of solvent corporate restructuring which is approved by the Lender), goes into liquidation or administration or is dissolved, or a liquidator, receiver, administrator or other official or creditors representative is appointed in respect of itself or a substantial part of its assets, or the Borrower becomes insolvent for the purposes of any law, or ceases or threatens to cease to carry on all or a substantial part of its business;
- (F) (i) proceedings are initiated against the Borrower under any applicable liquidation, insolvency, composition, reorganisation or other similar laws (including, but not limited to, presentation of a petition for an administration order) and such proceedings are not, in the opinion of the Lender, being disputed in good faith, (ii) an encumbrancer takes possession of the whole or substantially the whole of the undertaking, property or assets of the Borrower, (iii) a distress, execution, diligence or other process is levied or enforced upon or sued against all or the whole or substantially the whole of the undertaking, property or assets of the Borrower and in any foregoing cases such possession or process (as the case may be) is not discharged or does not otherwise cease to apply within 14 days, or (iv) the Borrower initiates or consents to judicial proceedings relating to itself under applicable liquidation, insolvency, composition, reorganisation or other similar laws or makes a conveyance or assignment for the benefit of its creditors generally;
- (G) it is or becomes unlawful for the Borrower to perform any of its obligations under the Finance Documents;
- (H) an event of default (however described, but excluding for this purpose a FI Provider Event of Default) has occurred and is continuing in relation to Financial Indebtedness which benefits from or is supported by the Financial Indemnity;
- (I) the Borrower, whether in a single transaction or series of transactions (whether related or not) and whether voluntary or involuntary sells, leases, transfers or otherwise disposes of all or substantially all of its assets; and
- (J) any person obtains Control of the Borrower and:

- (1) the Lender has not, for the purposes of this Agreement, approved the obtaining of that Control;
- (2) within one month of that obtaining of Control coming to the notice of the Lender, the Lender has served notice on the Borrower stating that the Lender proposes to exercise its rights under Clause 10.2 unless the person who has obtained Control of the Borrower ceases to have Control of the Borrower within the period of 3 months beginning with the date of service of the notice, and
- (3) that cessation of Control has not taken place within that period.

10.2 If an Event of Default has occurred and is continuing, the Lender may by notice to the Borrower:

- (A) declare that all or part of any outstanding Loan, and any accrued interest thereon and any other amounts payable under this Agreement, including pursuant to Clause 5.5, are:
 - (1) immediately due and payable where upon they shall become immediately due and payable; and/or
 - (2) payable on demand by the Lender where upon they shall become payable on demand by the Lender; and/or
- (B) cancel the Commitment whereupon it will immediately be cancelled.

11. **Taxes**

No withholdings

All payments to be made by the Borrower to the Lender under this Agreement must be made free and clear of and without deduction for or on account of Tax unless the Borrower is required by law to make such a payment subject to the deduction or withholding of Tax.

12. **Payments**

12.1 **Payments to the Borrower**

On each date on which this Agreement requires an amount to be paid by the Lender, the Lender must make the same available to the Borrower for value on the due date at such time and in sterling and to the relevant account designated by the Borrower.

12.2 **Payments to the Lender**

On each date on which this Agreement requires an amount to be paid by the Borrower to the Lender, the Borrower must make the same available to the Lender by payment in same day funds to such account or bank as the Lender may have specified for this purpose.

12.3 **No Set-off**

All payments required to be made by the Borrower under this Agreement will be calculated without reference to any set-off or counterclaim and must be made free and clear of and without any deduction for or on account of any set-off or counterclaim.

12.4 **Business Days**

- (A) Any payment which is due to be made on a day that is not a Business Day must be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (B) During any extension of the due date for payment of any principal or an Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

13. **Set-Off by the Lender**

The Lender may set off any matured obligation due from or owed by the Borrower hereunder (to the extent beneficially owned by the Lender) against any matured obligation owed by the Lender to the Borrower (other than grants), regardless of the place of payment or currency of either obligation.

14. **Assignments and Transfer**

Save as set out below, neither the Borrower, nor the Lender will be entitled to assign or transfer all or any of its rights, benefits and obligations under this Agreement and the Borrower will not create any Security over its rights under the Agreement except in each case with the consent of the other parties to this Agreement.

The Lender may transfer by novation any of its rights and obligations under the Finance Documents to any UK government department or other body (whether incorporated or unincorporated) whose liabilities are direct sovereign obligations of the Crown (as that term is or was used in section 201 of the Transport Act 2000). The Borrower shall (at the Lender's cost) enter into any agreement and shall take all such steps and actions as may reasonably be required by the Lender to give effect to such a novation.

15. **Amendments, consents and waivers**

No term of this Agreement may be amended or waived without the prior written consent of each of the parties, and any such amendment or waiver will be binding on all parties.

16. **Calculations and Evidence of Debt**

16.1 **Evidence of Debt**

The Lender must maintain accounting records evidencing the amounts from time to time lent by and owing to it under this Agreement, and will promptly upon written request provide the same to the extent required for the purposes of the Borrower's audit process..

16.2 **Evidence**

In any legal action or proceeding arising out of or in connection with this Agreement, the records maintained pursuant to Clause 16.1 (*Evidence of Debt*) will be prima facie evidence of the existence and amounts of the specified obligations of the Borrower.

16.3 **Day Count Convention**

Any interest, commission or fee accruing under this Agreement will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days.

17. Remedies and Waivers

No failure to exercise, nor any delay in exercising, on the part of a party, any right or remedy under this Agreement will operate as a waiver of it, nor will any single or partial exercise of any right or remedy prevent any further or other exercise of it or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

18. Notices

(A) Any notice to the Borrower or the Lender under this Agreement must be served or given by sending it by email, pre-paid first class post or facsimile, or delivering it by hand to the Borrower or the Lender as the case may be, at the relevant email address, facsimile number or address as set out in schedule 1 (Notice Details) or, in any such case, any substitute address, fax number, telephone number or department or officer as the Party may notify to the other Parties by not less than five Business Days' notice. Any notice so given will be deemed to have been served on the fifth Business Day following that on which it is posted, or where delivered by hand or sent by email or facsimile, when received in legible form.

(B) Any communication or document which becomes effective, in accordance with paragraph (a) above, after 5.00pm. in the place of receipt shall be deemed only to become effective on the following Business Day

19. Partial Invalidity

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

20. Counterparts

This Agreement may be executed in any number of counterparts, all of which taken together will constitute one and the same instrument.

21. Binding Agreement

This Agreement will be binding upon and enure to the benefit of each party.

22. Third Party Rights

No person who is not a party to this Agreement will have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Agreement.

23. Governing Law

This Agreement and the contractual and non-contractual obligations arising from or relating to it will be governed by, and interpreted in accordance with, the laws of England and Wales.

24. Jurisdiction

The parties agree that the courts of England are to have exclusive jurisdiction to settle any dispute which may arise in connection with the creation, validity, effect, interpretation or

performance of, or the legal relationships established by, this Agreement or otherwise arising in connection with this Agreement or any non-contractual obligations arising from or relating to it and for such purposes irrevocably submit to the jurisdiction of the English courts.

25. **Effective Date**

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1: NOTICE DETAILS

The Lender

THE SECRETARY OF STATE FOR TRANSPORT

Address: Department for Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR

Email address:
with a copy to:

[REDACTED]

Attention: Network Rail Sponsorship team

The Borrower

NETWORK RAIL INFRASTRUCTURE LIMITED

Address: Kings Place
90 York Way
London, N1 9AG

Email address:

[REDACTED]

[REDACTED]

Facsimile number:

[REDACTED]

Attention: Treasury Department

SCHEDULE 2: UTILISATION REQUEST

Network Rail Infrastructure Limited
Kings Place
90 York Way
London, N1 9AG

To: Department for Transport
Great Minster House, 33 Horseferry Road
SW1P 4DR
Attn: Network Rail Sponsorship team

Date: [●]

Dear Sirs

Facility Agreement dated [●] July 2014 (the "Agreement")

1. We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:

Proposed Utilisation Date: [●]

Loan amount: GBP [●]

Repayment Date: [●] (or, if that is not a Business Day, the next Business Day)

First Interest Payment Date: [●]

Subsequent Interest Payment [●]
Dates:

Applicable Drawdown fee: [●]
3. We confirm that each condition specified in Clause 2.2 (*Conditions precedent to drawdown*) is satisfied on the date of this Utilisation Request.
4. The proceeds of this Loan should be credited to the account details that we have advised to you separately.
5. This Utilisation Request is irrevocable.

Yours faithfully

.....
authorised signatory for
Network Rail Infrastructure Limited

SCHEDULE 3: CONDITIONS PRECEDENT TO INITIAL UTILISATION

1. A certified copy of the constitutional documents of the Borrower.
2. A certified copy of a resolution of the board of directors of the Borrower:
 - (i) approving the terms on which the Facility is to be offered and resolving that it execute all documents required to implement the Facility (the "**Documents**");
 - (ii) authorising a specified person or persons to execute the Documents on its behalf; and
 - (iii) authorising a specified person or persons to take all such actions as may be required to implement and operate the Facility.
3. A specimen of the signature of each person authorised by the resolution referred to in paragraph 2 above.
4. A legal opinion of Clifford Chance LLP legal advisers to the Borrower as to the due incorporation and due authorisation of, and execution by, the Borrower.
5. A forecast of: for the period to 31 March 2015, the aggregate amount of all Utilisations in each calendar month and the aggregate amount of all Loans as at the end of each calendar month; and for the period from 1 April 2015 to the expiry of the Availability Period, the aggregate amount of all Utilisations in each Financial Year and the aggregate amount of all Loans as at the end of each Financial Year.

The corporate seal
of the **SECRETARY OF STATE FOR TRANSPORT**
is hereunto affixed:



.....
Authenticated by authority of the Secretary of State

NETWORK RAIL INFRASTRUCTURE LIMITED

By: 



and

