

Dated 30 March 2006

**STRATEGIC RAIL AUTHORITY**  
**TO**  
**SECRETARY OF STATE FOR TRANSPORT**  
**AND TO**  
**SCOTTISH MINISTERS**

**NETWORK RAIL DEED OF GRANT**  
**TRANSFER SCHEME**

made by the Secretary of State  
pursuant to section 1 of the Railways Act 2005

in respect of the property, rights and liabilities of the  
Strategic Rail Authority relating to the Deed of Grant dated  
10 March 2004, as amended by a Supplemental Deed  
dated 28 September 2004

## TRANSFER SCHEME

### RECITALS

- (A) The Strategic Rail Authority (the "SRA") is a body corporate established by section 201 of the Transport Act 2000.
- (B) Section 1(1) and Schedule 1 of the Railways Act 2005 (the "2005 Act") provide for the transfer of certain functions of the SRA under the Transport Act 2000.
- (C) Section 1(2) of the 2005 Act provides that the Secretary of State may make a scheme for the transfer of property, rights and liabilities from the SRA (or a company which is wholly owned by the SRA) to a person specified in section 1(3) of that Act or to two or more of those persons.
- (D) The Secretary of State is a person specified in section 1(3) of the 2005 Act, as are the Scottish Ministers.
- (E) The SRA is a party to the Deed of Grant (as defined below).
- (F) The Secretary of State wishes that the responsibility for paying the amounts specified in the Deed of Grant be transferred so as to be divided between the Secretary of State and the Scottish Ministers.
- (G) The means of achieving this transfer is this transfer scheme which divides the existing Deed of Grant into the English and Welsh portion on the one hand and the Scottish portion on the other, and transfers those portions to the Secretary of State and to the Scottish Ministers respectively.
- (H) Accordingly, the Secretary of State (after such consultation as may be required pursuant to section 1(5) of the 2005 Act) in exercise of the powers conferred on him by section 1 and Schedule 2 of the 2005 Act makes this Transfer Scheme for the transfer to each of the Secretary of State and the Scottish Ministers of such of the property, rights and liabilities of the SRA relating to the Deed of Grant as are specified in this Transfer Scheme, and so as to give effect to such modifications of the interests, rights and liabilities of Network Rail Infrastructure Limited and the Train Operators in relation to track access agreements between them as are specified in this Transfer Scheme.

## PART I

### DEFINITIONS AND INTERPRETATION

#### 1 Definitions and Interpretation

1.1 In this Transfer Scheme the following definitions shall apply where the context so permits:

**"English and Welsh Track Access Agreement"** means any agreement (other than the ScotRail Track Access Agreement) entered into after 1 April 1994 under which the facility owner in respect of track grants to a beneficiary permission to use that track for or in connection with the provision of services for the carriage of passengers by rail.

**"Deed of Grant"** means the Deed of Grant dated 10 March 2004 between SRA and the Network Rail Companies under which the SRA agreed to make available certain grants, as amended by a Supplemental Deed dated 28 September 2004.

**"English and Welsh Deed of Grant"** means the Deed of Grant as amended and restated in accordance with paragraph 2.3.1 and contained in Schedule 1.

**"Network Rail Companies"** means together:

- (a) Network Rail Limited;
- (b) Network Rail Holdco Limited; and
- (c) Network Rail Infrastructure Limited.

**"Previous Deed of Grant"** means a deed of grant dated 27 June 2002 between SRA and the Network Rail Companies, as amended and restated by an Amendment and Restatement Deed dated 26 September 2002.

**"Scottish Deed of Grant"** means the Deed of Grant as amended and restated in accordance with paragraph 2.3.2 and contained in Schedule 2.

**"ScotRail Track Access Agreement"** means the track access agreement dated 10 December 2004 between Network Rail Infrastructure Limited and First ScotRail Limited.

**"Train Operator"** means a passenger train operator who is party to an English and Welsh Track Access Agreement or the ScotRail Track Access Agreement.

**"Transfer Date"** means 1 April 2006, which is the date upon which this Transfer Scheme and the Deed of Grant as amended and restated pursuant to paragraph 2 shall come into force for the purpose of paragraph 1(2) of Schedule 2 to the 2005 Act.

1.2 The headings and sub-headings are inserted for convenience only and shall not affect the construction of this Transfer Scheme.

1.3 Except as otherwise stated a reference to a "paragraph", "sub-paragraph" or "Schedule" means a paragraph or sub-paragraph of, or a schedule to, this Transfer Scheme.

1.4 The words "include", "including" and "included" are to be construed without limitation.

## PART II

### TRANSFER PROVISIONS

#### **2 Transfer of Property, Rights and Liabilities**

- 2.1** There shall be transferred to, and vest in, the Secretary of State on the Transfer Date:
- 2.1.1** such of the property, rights and liabilities of the SRA contained in the Deed of Grant as are specified in the English and Welsh Deed of Grant; and
- 2.1.2** to the extent that such are not transferred by virtue of paragraph 2.1.1, all rights of the SRA against third parties arising out of or in connection with any of the matters referred to in paragraph 2.1.1, including contractual or tortious rights in respect of advice given (whether to the SRA or otherwise) by legal, financial and accounting advisers.
- 2.2** There shall be transferred to, and vest in, the Scottish Ministers on the Transfer Date:
- 2.2.1** such of the property, rights and liabilities of the SRA contained in the Deed of Grant as are specified in the Scottish Deed of Grant; and
- 2.2.2** to the extent that such are not transferred by virtue of paragraph 2.2.1, all rights of the SRA against third parties arising out of or in connection with any of the matters referred to in paragraph 2.2.1, including contractual or tortious rights in respect of advice given (whether to the SRA or otherwise) by legal, financial and accounting advisers.
- 2.3** With effect on and from the Transfer Date, the Deed of Grant shall be deemed to have been amended and restated:
- 2.3.1** in the form set out in Schedule 1 for the purposes of the English and Welsh Deed of Grant; and
- 2.3.2** in the form set out in Schedule 2 for the purposes of the Scottish Deed of Grant, without any need for execution of those documents by the respective parties.
- 2.4** With effect from the Transfer Date, any property, rights and liabilities of the SRA in the Previous Deed of Grant are terminated.
- 2.5** For the avoidance of doubt, subject to paragraph 2.4, all property, rights and liabilities of the SRA in the Deed of Grant will transfer to the Secretary of State and Scottish Ministers by virtue of, and in accordance with, the terms of this Scheme.

**PART III**

**MODIFICATION PROVISIONS**

**3 Modifications to the Access Agreements**

**3.1** The following modifications to those English and Welsh Track Access Agreements which contain a Schedule 7 with a Part 3A headed "Grant Dilution" shall take effect on and from the Transfer Date:

**3.1.1** in Part 1 of Schedule 7:

- (a) the deletion of the definition "Grant Compensation Amount" and the substitution for it of the following:  
"English and Welsh Grant Compensation Amount" has the meaning ascribed to it in paragraph 3.2 of Part 3A of this Schedule 7;"; and
- (b) the deletion of the definition "Grant Dilution" and the substitution for it of the following:  
"English and Welsh Grant Dilution" has the meaning ascribed to it in paragraph 2.1 of Part 3A of this Schedule 7;";

**3.1.2** before paragraph 1 of Part 3A of Schedule 7 to the English and Welsh Track Access Agreements, the insertion of a new paragraph 1A as follows:

**"1A Definitions**

In this Part 3A:

**"Aggregate English and Welsh Fixed Charge"** means, in any Relevant Year t, the sum of the values of Ft under paragraph 1 of Part 2 of Schedule 7 and the corresponding provisions of each other relevant access agreement which includes this defined term; and

**"Network Rail Deed of Grant Transfer Scheme"** means the Transfer Scheme dated 30 March 2006 made by the Secretary of State pursuant to Section 1 of the Railways Act 2005 transferring the property, rights and liabilities of the SRA relating to the Deed of Grant dated 10 March 2004, as amended by a Supplemental Deed dated 28 September 2004.";

**3.1.3** references to "the Revised Deed of Grant as amended and restated by the Supplemental Deed dated 28 September 2004 between the SRA, Network Rail Limited, Network Rail Holdco Limited and Network Rail" shall, wherever they appear in Part 3A of Schedule 7 to the English and Welsh Track Access Agreements, have added immediately after them the words: "as further amended and restated and transferred to the Secretary of State by the Network Rail Deed of Grant Transfer Scheme";

**3.1.4** the replacement of the words "the Strategic Rail Authority" with the words "the Secretary of State" wherever they appear in Part 3A of Schedule 7 to the English and Welsh Track Access Agreements;

**3.1.5** the replacement of the words "section 211 of the Transport Act 2000" with the words "section 6 of the Railways Act 2005" wherever they appear in Part 3A of Schedule 7 to the English and Welsh Track Access Agreements;

**3.1.6** the insertion of the words "English and Welsh" before the expressions "Grant Compensation Amount" and "Grant Dilution", wherever they appear in Part 3A of Schedule 7 to the English and Welsh Track Access Agreements, but not where the expression "Grant Dilution Date" is used in this Part;

- 3.1.7 the substitution of "an" for "a" before the words "English and Welsh" wherever the words "English and Welsh" would otherwise be prefaced by the word "a" in Part 3A of Schedule 7 to the English and Welsh Track Access Agreements; and
- 3.1.8 the deletion of the words "Aggregate Fixed Charge" in the definition of "AF<sub>t</sub>" in paragraph 3.2 of Part 3A of Schedule 7 to the English and Welsh Track Access Agreements and the substitution for it of the words "Aggregate English and Welsh Fixed Charge".
- 3.2 The following modifications to the ScotRail Track Access Agreement shall take effect on and from the Transfer Date:
- 3.2.1 in Part 1 of Schedule 7:
- (a) the deletion of the definition "Grant Compensation Amount" and the substitution for it of the following:  
"Scottish Grant Compensation Amount" has the meaning ascribed to it in paragraph 3.2 of Part 3A of this Schedule 7"; and
- (b) the deletion of the definition "Grant Dilution" and the substitution for it of the following:  
"Scottish Grant Dilution" has the meaning ascribed to it in paragraph 2.1 of Part 3A of this Schedule 7";
- 3.2.2 before paragraph 1 of Part 3A of Schedule 7 to the ScotRail Track Access Agreement, the insertion of a new paragraph 1A as follows:
- "1A Definitions**
- In this Part 3A:
- "Aggregate Scottish Fixed Charge"** means, in any Relevant Year *t*, the sum of the values of *F<sub>t</sub>* under paragraph 1 of Part 2 of Schedule 7 and the corresponding provisions of each other relevant access agreement, if any, which includes this defined term; and
- "Network Rail Deed of Grant Transfer Scheme"** means the Transfer Scheme dated 30 March 2006 made by the Secretary of State pursuant to Section 1 of the Railways Act 2005 transferring the property, rights and liabilities of the SRA relating to the Deed of Grant dated 10 March 2004, as amended by a Supplemental Deed dated 28 September 2004.";
- 3.2.3 references to "the Revised Deed of Grant as amended and restated by the Supplemental Deed dated 28 September 2004 between the SRA, Network Rail Limited, Network Rail Holdco Limited and Network Rail" shall, wherever they appear in Part 3A of Schedule 7 to the ScotRail Track Access Agreement, have added immediately after them the words: "as further amended and restated and transferred to the Scottish Ministers by the Network Rail Deed of Grant Transfer Scheme";
- 3.2.4 the replacement of the words "the Strategic Rail Authority" with the words "the Scottish Ministers" and the replacement of the word "fails" with the word "fail", in each case wherever they appear in Part 3A of Schedule 7 to the ScotRail Track Access Agreement;
- 3.2.5 the replacement of the words "section 211 of the Transport Act 2000" with the words "section 8 of the Railways Act 2005" wherever they appear in Part 3A of Schedule 7 to the ScotRail Track Access Agreement;

- 3.2.6** the insertion of the words "Scottish" before the expressions "Grant Compensation Amount" and "Grant Dilution", wherever they appear in Part 3A of Schedule 7 to the ScotRail Track Access Agreement, but not where the expression "Grant Dilution Date" is used in this Part;
- 3.2.7** the deletion of the words "1 April and 1 October in each of the years 2004, 2005, 2006, 2007 and 2008, or such other" in the first and second lines of paragraph 1.1(b) of Part 3A of Schedule 7 to the ScotRail Track Access Agreement, and the insertion of the word "the" after "the Payment Dates are" in the first line, and also the deletion of the words "may be" in the second line of that paragraph; and
- 3.2.8** the deletion of the words "Aggregate Fixed Charge" in the definition of "AF<sub>t</sub>" in paragraph 3.2 of Part 3A of Schedule 7 to the ScotRail Track Access Agreement and the substitution for it of the words "Aggregate Scottish Fixed Charge".
- 3.3** The following further modification to Part 1 of Schedule 7 to both the English and Welsh Track Access Agreements to which paragraph 3.1 applies and the ScotRail Track Access Agreement shall take effect on and from the Transfer Date:
- in sub-paragraph (d) of the definition of "relevant access agreements" in Part 1 of Schedule 7, the replacement of the words "the Strategic Rail Authority" with the words "relevant franchising authority (as defined in Section 30(3B) of the Railways Act 1993)".
- 3.4** Reflecting the modifications contained in the preceding provisions of this paragraph 3 of this Transfer Scheme ("the modifications"), for purposes of information and clarification only an amended and restated version of Part 3A of Schedule 7 as it commonly appears in the relevant English and Welsh Track Access Agreements is contained in Schedule 3, and, also for purposes of information and clarification only, an amended and restated version of Part 3A of Schedule 7 of the ScotRail Track Access Agreement is contained in Schedule 4. Neither of these Schedules in any way prejudices the effect of the modifications, and in the case of any conflict the modifications shall prevail.

## **PART IV**

### **GENERAL**

#### **4 Supplementary Provisions**

- 4.1** The property, rights and liabilities transferred by this Transfer Scheme include:
- 4.1.1** any property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the SRA;
- 4.1.2** any property acquired in the period after the making of this Transfer Scheme and before the Transfer Date and rights and liabilities arising in that period; and
- 4.1.3** any rights and liabilities arising on or after the Transfer Date in respect of matters occurring before the Transfer Date.
- 4.2** The transfers to which this Transfer Scheme gives effect shall take effect as if there were:
- 4.2.1** no such requirement to obtain a person's consent or concurrence;
- 4.2.2** no such liability in respect of a contravention of any other requirement; and

- 4.2.3** no such interference with any interest or right;  
as there would be, in the case of a transaction apart from the 2005 Act, by reason of a provision falling within paragraph 2(3) of Schedule 2 to the 2005 Act.
- 4.3** In relation to the transfers provided for in this Transfer Scheme and with effect on and from the Transfer Date:
- 4.3.1** the Secretary of State and/or the Scottish Ministers (as appropriate) shall be treated as the same person in law as the SRA;
- 4.3.2** all agreements made, transactions effected or other things done by or in relation to the SRA shall be treated, so far as may be necessary for the purposes of or in connection with the transfers, as made, effected or done by or in relation to the Secretary of State and/or to the Scottish Ministers (as appropriate); and
- 4.3.3** any proceedings commenced by or against the SRA shall be continued by or against the Secretary of State and/or Scottish Ministers (as appropriate).
- 4.4** Where a person would be entitled, in consequence of anything done or likely to be done by or under the 2005 Act in connection with this Transfer Scheme, to terminate, modify, acquire or claim an interest or right to which the SRA is entitled or subject (or to treat such an interest or right as modified or terminated), that entitlement shall not be enforceable but that entitlement to that interest or right (or to an equivalent interest or right) shall be preserved, such that it will arise and become enforceable in respect of the first occasion when corresponding circumstances next occur after the Transfer Date.

Signed by authority of the Secretary of  
State for Transport this 30<sup>th</sup> day of  
March 2006

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Ian Charles McBrayne  
Senior Civil Servant  
Department for Transport



**SCHEDULE 1**

**ENGLISH AND WELSH DEED OF GRANT**

**Originally dated 10th March, 2004  
as amended and restated by way of a Supplemental Deed dated  
28 September 2004 and further amended and restated on the Transfer Date,  
namely 1 April 2006**

**BETWEEN**

**THE SECRETARY OF STATE FOR TRANSPORT**

**and**

**NETWORK RAIL LIMITED**

**and**

**NETWORK RAIL HOLDCO LIMITED**

**and**

**NETWORK RAIL INFRASTRUCTURE LIMITED**

THIS DEED originally dated 10 March, 2004 was amended and restated on the Effective Date and is further amended and restated on the Transfer Date, namely 1 April 2006

**BETWEEN:**

- (1) THE SECRETARY OF STATE FOR TRANSPORT (the Secretary of State);
- (2) NETWORK RAIL LIMITED, a company limited by guarantee, registered and incorporated in accordance with the law of England and Wales under registered number 04402220, whose registered office is at 40 Melton Street, London NW1 2EE, United Kingdom (**Network Rail**);
- (3) NETWORK RAIL HOLDCO LIMITED, a private limited liability company, registered and incorporated in accordance with the law of England and Wales under registered number 04423711, whose registered office is at 40 Melton Street, London NW1 2EE, United Kingdom (**Holdco**); and
- (4) NETWORK RAIL INFRASTRUCTURE LIMITED, a private limited liability company, registered and incorporated in accordance with the law of England and Wales under registered number 02904587, whose registered office is at 40 Melton Street, London NW1 2EE, United Kingdom (**NRIL**).

**BACKGROUND**

- (A) The Secretary of State has agreed to make available certain grants for those purposes set out in Section 6 of the Railways Act 2005.
- (B) In making payments of grant pursuant to this Deed, the Secretary of State acknowledges and takes comfort from the fact that NRIL has a Network Licence which contains important substantive obligations in relation to the stewardship of the Network.
- (C) The Current Existing Deed of Grant has been amended and restated as this Deed of Grant and the Scottish Deed of Grant (as defined in the Network Rail Deed of Grant Transfer Scheme) on the Transfer Date by virtue of the Network Rail Deed of Grant Transfer Scheme.

IT IS AGREED as follows:

**1. INTERPRETATION**

**1.1 Definitions**

In this Deed the following words and phrases shall have the following meanings:

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

**Current Existing Deed of Grant** means the Previous Existing Deed of Grant as amended and restated on the Effective Date.

**Debt Issuance Programme** means:

- (a) the debt issuance programme for the financing of NRIL through Network Rail Infrastructure Finance plc described in the minute laid before parliament on 15 September, 2004; or
- (b) (subject to the approval of the Secretary of State, NRIL and the Office of Rail Regulation for this purpose) any replacement of it.

**Effective Date** has the meaning given to that term in the Supplemental Deed dated 28 September, 2004 between the SRA, Network Rail, Holdco and NRIL.

**English and Welsh Grant Compensation Amount** in relation to any English and Welsh Track Access Agreement has the meaning given to that term in that English and Welsh Track Access Agreement, as that term may be amended and/or replaced from time to time.

**English and Welsh Grant Dilution** in relation to any English and Welsh Track Access Agreement has the meaning given to that term in that English and Welsh Track Access Agreement, as that term may be amended and/or replaced from time to time.

**English and Welsh Track Access Agreement** means any Track Access Agreement (other than the ScotRail Track Access Agreement).

**English and Welsh Track Access Charges** means amounts payable by a passenger service operator to NRIL under any English and Welsh Track Access Agreement.

**Grant** means the grants to be paid by the Secretary of State pursuant to section 6 of the Railways Act 2005 to NRIL pursuant to this Deed in order to provide funding for NRIL's Permitted Business in the financial year in which they are due to be paid.

**Network** means the network in respect of which NRIL is, from time to time, the facility owner for the purposes of the Railways Act 1993.

**Network Licence** means the licence to operate the Network granted to NRIL pursuant to Section 8 of the Railways Act 1993.

**Permitted Business** has the meaning given to that term in the Network Licence.

**Previous Existing Deed of Grant** means a deed of grant dated 27 June, 2002 between the SRA, Network Rail, Holdco and NRIL, as amended and restated by an Amendment and Restatement Deed dated 26 September, 2002.

**Rating Agencies** means each of Fitch Ratings Limited, Moody's Investors Service Limited and Standard and Poor's Rating Services, a division of The McGraw-Hill Companies, Inc.

**Relevant Year** means a year commencing at 00.00 hours on 1 April and ending at 23.59 hours on the following 31 March.

**Relevant Year t** means the Relevant Year for the purposes of which any calculation falls to be made.

**Relevant Year t-1** means the Relevant Year preceding Relevant Year t; and similar expressions shall be construed accordingly.

**Retail Prices Index** means the general index of retail prices published by National Statistics each month in respect of all items or:

- (a) if the index for any month in any year shall not have been published on or before the last day of the third month after such month, such index for such month or months as the Office of Rail Regulation may, after consultation with NRIL and the Secretary of State, determine to be appropriate in the circumstances; or
- (b) if there is a material change in the basis of the index, such other index as the Office of Rail Regulation may, after consultation with NRIL and the Secretary of State, determine to be appropriate in the circumstances.

**SRA** means the Strategic Rail Authority created under Section 201 of the Transport Act 2000.

**ScotRail Track Access Agreement** is as defined in and interpreted under the Scottish Deed of Grant (as defined in the Network Rail Deed of Grant Transfer Scheme).

**Track Access Agreement** means an access agreement in relation to track between NRIL and a passenger service operator.

**Transfer Date** means the date on which the Network Rail Deed of Grant Transfer Scheme becomes effective.

**VAT** means value added tax.

## 1.2 Construction

In this Deed, except to the extent that the context requires otherwise:

- (a) references to a statute, treaty or legislative provision or to a provision of it shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment at any time then in force and to all subordinate legislation made from time to time under it;
- (b) references to any agreement or document include its schedules and annexures and references to paragraphs, **Clauses**, **Recitals**, **Schedules** or **Appendices** are references to such provisions of this Deed;
- (c) references in the singular shall include references in the plural and vice versa, words denoting any gender shall include any other gender and words denoting natural persons shall include any other persons;
- (d) Clause and Schedule headings are for ease of reference only;
- (e) references to an agreement, deed, instrument, licence, code or other document (including this Deed), or to a provision contained in any of these, shall be construed, at the particular time, as

a reference to it as it may then have been amended, varied, supplemented, modified, suspended, assigned or novated;

- (f) references to times of day are to London time unless otherwise stated;
- (g) references to **Holding Company** and **Subsidiary** shall have the same meanings as in the Companies Act 1985 and references to **Affiliate** mean in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company;
- (h) the words **include** and **including** are to be construed without limitation;
- (i) a reference to a **law** includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure, in each case of any jurisdiction whatever (and **lawful** and **unlawful** shall be construed accordingly);
- (j) a reference to a **Party** means a party to this Deed and includes its successors in title, permitted assignees and permitted transferees;
- (k) a reference to a **person** includes any person, firm, body corporate, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
- (l) a **regulation** includes any regulation, rule, official directive, or published guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (m) a reference to **writing** includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form; and
- (n) (unless otherwise defined herein), words and phrases defined in the Railways Act 1993 have the same meaning in this Deed.

## **2. PREVIOUS EXISTING DEED OF GRANT**

Pursuant to the terms of the Network Rail Deed of Grant Transfer Scheme, the Previous Existing Deed of Grant has been terminated.

## **3. PAYMENT OF GRANTS**

- 3.1** The SRA has paid to NRIL the amounts specified in Schedule 1.
- 3.2** The Secretary of State shall pay to NRIL the amounts specified in Schedule 2 as due for payment after the Transfer Date.
- 3.3** Each payment required to be made under this Clause 3:
  - (a) shall be indexed in accordance with Clause 4;

- (b) subject to Clause 3.4, shall be made together with such VAT as is payable on it; and
- (c) shall be made:
  - (i) on the date immediately to the right of which it appears in the Schedule where it is specified; or
  - (ii) if that date is a not a Business Day:
    - (A) on the next following Business Day; or
    - (B) if the next following Business Day is a day which would result in a payment being made after an accounting year end of NRIL or after the end of a six month accounting period within an accounting year of NRIL or after the end of a Relevant Year and that payment would otherwise have been made before that year end or the end of that six month accounting period or the end of that Relevant Year, on the immediately preceding Business Day.

**3.4** Payments in respect of VAT under Clause 3.3(b):

- (a) shall only be made if the Secretary of State has received, in advance, a valid VAT invoice in respect of the supply complying with the VAT Regulations 1995; and
- (b) shall be made on the basis that the Secretary of State shall not be liable for any interest or penalties arising to the extent that such a VAT invoice is not issued in respect of each supply.

**3.5** All amounts payable under this Clause 3 shall be payable by way of grant pursuant to section 6 of the Railways Act 2005.

**3.6** Any amount of Grant payable under this Clause 3 shall be reduced by the aggregate English and Welsh Grant Compensation Amount payable and/or paid under all English and Welsh Track Access Agreements in relation to that amount of Grant if that English and Welsh Grant Compensation Amount is payable either:

- (a) as a result of non-payment under this Deed; or
- (b) because an English and Welsh Grant Dilution has occurred and the only reason for that English and Welsh Grant Dilution having occurred is the operation of Clauses 3.2, 3.3(b), 3.4 and/or this Clause 3.6 of this Deed (as entered into at the original date hereof, as amended on the Effective Date and as further amended and restated on the Transfer Date).

**4. INDEXATION**

Each amount specified in Schedule 1 has (before it was paid), and in Schedule 2 shall be, multiplied by the Network Grant Indexation figure for the Relevant Year in which the date for payment falls.

The Network Grant Indexation figure in Relevant Year t shall be derived from the following formula:

$$Gi_t = 1 + \frac{(RPI_{t-1} - RPI_{2003})}{RPI_{2003}}$$

where:

$Gi_t$  means the Network Grant Indexation in Relevant Year t;

$RPI_{t-1}$  means the Retail Prices Index published or determined with respect to November in Relevant Year t-1; and

$RPI_{2003}$  means the Retail Prices Index published or determined with respect to November 2003.

## **5. NOT USED**

## **6. ASSIGNMENT**

### **6.1 No Assignment by Network Rail entities**

Subject to Clause 6.2, neither Network Rail nor Holdco nor NRIL shall, without the prior written consent of the Secretary of State, assign or otherwise transfer this Deed or any part of this Deed or any benefit or interest in or under this Deed.

### **6.2 Permitted Assignment by Network Rail entities**

NRIL may assign by way of security the benefit of this Deed, or assign, transfer or sell by way of absolute assignment or otherwise, all of its rights, title, benefit and interest to the Grants and/or this Deed and/or absolutely assign any or all of the proceeds of the Grants once received by it, in each case for the purpose of the Debt Issuance Programme, provided that NRIL may not so assign, transfer or sell any of its rights, title, benefit or interest to the Grants or this Deed or any proceeds of any Grants if, following such assignment, transfer or sale, the total amount of Grants and proceeds of Grants so assigned, transferred and/or sold would equal or exceed 50% (or such other percentage as Secretary of State may notify to NRIL prior to any such assignment, transfer or sale based on the requirements of Eurostat) in aggregate of the total income of NRIL assigned, transferred and/or sold for the purpose of the Debt Issuance Programme. The Secretary of State shall, if requested by NRIL, acknowledge in writing notice of any such assignment, transfer and/or sale, although this is not required for the assignment, transfer or sale to be effective.

### **6.3 No Assignment by the Secretary of State**

Subject to Clause 6.4, the Secretary of State shall not, without the prior written consent of NRIL and Network Rail, assign its rights or otherwise transfer this Deed or any part of this Deed or any benefit or interest in or under this Deed.

## 6.4 Permitted Assignment by the Secretary of State

The Secretary of State (or any Substitute Grant Payer (as defined below)) may transfer its rights and obligations under this Deed to any United Kingdom government department or any entity directly wholly-owned by a United Kingdom government department (which, in the case of a statutory corporation without shareholders, shall be determined by reference to the person(s) entitled to appoint the members of that statutory corporation) (the "**Substitute Grant Payer**") provided that:

- (a) such transfer is in respect of all of the Secretary of State's (or, as applicable, the previous Substitute Grant Payer's) rights and obligations under this Deed;
- (b) the Substitute Grant Payer enters into documentation, in a form satisfactory to NRIL and Network Rail (acting reasonably), agreeing to be bound by the terms of the Deed, with any consequential amendments which may be appropriate, as fully as if the Substitute Grant Payer had been a party to the Deed and named in it in place of the Secretary of State (or, as applicable, the previous Substitute Grant Payer);
- (c) NRIL and Network Rail are satisfied (acting reasonably) that:
  - (i) all necessary corporate, government, regulatory (including, for the avoidance of any doubt, any necessary EU state aid clearances) and listing authority approvals, consents, updates, assurances and other actions necessary for or in connection with the assumption by the Substitute Grant Payer of its obligations under this Deed in place of the Secretary of State (or, as applicable, the previous Substitute Grant Payer) have been obtained; and
  - (ii) such approvals and consents are, at the time of such transfer, in full force and effect;
- (d) each of the Rating Agencies confirms in writing to NRIL and Network Rail that their long term debt rating of the Substitute Grant Payer is a rating which is equal to or not less than one notch below the long term credit rating of the United Kingdom government at the time;
- (e) NRIL and Network Rail are provided with a legal opinion in respect of such transfer in form and substance satisfactory to them (acting reasonably); and
- (f) all costs and expenses properly incurred by the parties to this Deed (other than the Secretary of State) in effecting such transfer or assignment are paid by the Substitute Grant Payer.

## 7. MISCELLANEOUS

### 7.1 Amendments and Variations

No amendment or variation of this Deed shall be effective unless in writing and signed or otherwise executed by or on behalf of each Party. No such amendment or variation shall have effect until seven days after joint notice of the making of the amendment or variation shall have been given by NRIL and the Secretary of State to the Office of Rail Regulation, and the Office of Rail Regulation shall have the right to enforce this Clause 7.1.



## **7.2 No Partnership**

- (a) Neither this Deed nor any other agreement or arrangement of which this Deed forms part, nor the performance by the Parties of their respective obligations under this Deed or such arrangement, shall constitute a partnership between the Parties.
- (b) No Party shall have any authority (unless expressly conferred in writing by virtue of this Deed or otherwise and not revoked) to bind any other Party as its agent or otherwise.

## **7.3 Waiver**

No failure to exercise, nor any delay in exercising, any right, power or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy.

## **7.4 Further Assurance**

Each Party shall execute such documents and do such acts and things as any other party may reasonably require for the purpose of giving to the requesting Party the full benefit of all the provisions of this Deed.

## **7.5 Counterparts**

This Deed may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

## **7.6 Contracts (Rights Of Third Parties) Act 1999**

This Deed will not create any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a Party, other than under:

- (a) Clause 3.6;
- (b) Clause 7.1;
- (c) the definition of Debt Issuance Programme in clause 1.1; and
- (d) the definition of "Retail Price Index" in clause 1.1,

which the Office of Rail Regulation may enforce.

## **7.7 Announcements**

No Party shall issue any announcement or circular regarding this Deed or any aspect of its contents without the prior written agreement of the other relevant Parties, such agreement not to be unreasonably withheld or delayed except as may be required by law or the rules of any stock exchange applicable to any Party or any of its Affiliates. The Party so issuing will use all reasonable endeavours to notify the other Parties to this Deed of the content of such announcement or circular at

least 48 hours prior to such issue (unless otherwise required by law or the rules of any applicable stock exchange) and the Party so issuing shall take such account as is reasonable in the circumstances of comments on the proposed announcement or circular made by the other Party or Parties, provided such comments are received within 24 hours of the notification.

## **7.8 Entire Agreement**

This Deed constitutes the entire agreement between the Parties with respect to the subject matter of this Deed and supersedes any prior written or oral agreement between them with respect to such subject matter.

## **7.9 No set-off or Withholding**

All payments to be made by the Secretary of State under this Deed shall be calculated and be made without (and free and clear of any deduction for) set-off, withholding or counterclaim whatsoever, save only as may be required by law.

## **7.10 No conditionality**

Notwithstanding any other provision of this Deed, no payment of any amount payable under this Deed (in each such case, the amount payable having been determined in accordance with Clause 3 above) shall be:

- (a) subject to the performance by NRIL or any other person of any obligation;
- (b) subject to the exercise by the Secretary of State or any other person of any discretion; or
- (c) contingent upon the happening of any event or circumstance, or any act or omission of any person.

It is acknowledged that there shall be no English and Welsh Grant Dilution under any English and Welsh Track Access Agreement solely by virtue of the terms of this Deed (as entered into on the original date hereof, as amended on the Effective Date and as further amended and restated on the Transfer Date.)

## **7.11 Default Interest**

If the Secretary of State:

- (a) fails to pay any amount due from it under this Deed on its due date; and
- (b) does pay such amount within seven days after its due date,

default interest shall accrue daily and be payable by the Secretary of State on the overdue amount at a rate of 2% above the base lending rate of Barclays Bank PLC as varied from time to time from and including the due date to and excluding the date of actual payment (both before and after judgment).

## **8. NOTICES**

### **8.1 Form of Notice**

Any communication to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by fax or letter.

### **8.2 Notice Details**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Deed is as follows:

#### **Secretary of State**

Secretary of State for Transport  
Great Minster House  
76 Marsham Street  
London  
SW1P 4DR

Fax: 020 7944 2224

Attention: Director, Legal Services

#### **Network Rail**

Network Rail Limited  
40 Melton Street  
London  
NW1 2EE

Fax: 020 7557 9028

Attention: Company Secretary

#### **Holdco**

Network Rail Holdco Limited  
40 Melton Street  
London NW1 2EE

Fax: 020 7557 9028

Attention: Company Secretary

## **NRIL**

Network Rail Infrastructure Limited  
40 Melton Street  
London NW1 2EE

Fax: 020 7557 9028

Attention: Company Secretary

## **Office of Rail Regulation**

Office of Rail Regulation  
1 Kemble Street  
London  
WC2B 4AN

Fax: 020 7282 2041

Attention: Chief Executive

or any substitute address, fax number or department or officer as the Party may notify to the other Parties, by not less than five days' notice.

### **8.3 Delivery**

Any communication or document made or delivered by one Party to another under or in connection with this Deed will only be effective:

- (a) if by way of fax, when received in legible form;
- (b) if by way of letter, when it has been left at the relevant address or three days after being deposited in the post (postage prepaid) in an envelope addressed to it at that address; and
- (c) if a particular department or officer is specified as part of its address details provided under Clause 8.2, if addressed to that department or officer.

### **9. GOVERNING LAW**

This Deed shall be governed by and construed in accordance with the laws of England and Wales.

### **10. JURISDICTION OF ENGLISH COURTS**

Any dispute arising between the Parties under or in connection with this Deed shall be referred to the courts of England and Wales which shall have exclusive jurisdiction to settle any disputes and the Parties irrevocably submit to the jurisdiction of those courts.

This Deed has been entered into when stated at the beginning of this Deed.

**SCHEDULE 1 PAYMENTS MADE BY THE STRATEGIC RAIL AUTHORITY**

<b>2004-05</b>	<b>£</b>	<b>2005-06</b>	<b>£</b>
<b>07/04/2004</b>	139,075,598.50	<b>06/04/2005</b>	128,948,734.53
<b>05/05/2004</b>	139,075,598.50	<b>04/05/2005</b>	128,948,734.53
<b>02/06/2004</b>	139,075,598.50	<b>01/06/2005</b>	128,948,734.53
<b>30/06/2004</b>	139,075,598.50	<b>29/06/2005</b>	128,948,734.53
<b>28/07/2004</b>	139,075,598.50	<b>27/07/2005</b>	128,948,734.53
<b>25/08/2004</b>	139,075,598.50	<b>24/08/2005</b>	128,948,734.53
<b>22/09/2004</b>	139,075,598.50	<b>21/09/2005</b>	128,948,734.53
<b>20/10/2004</b>	139,075,598.50	<b>19/10/2005</b>	128,948,734.53
<b>17/11/2004</b>	139,075,598.50	<b>16/11/2005</b>	128,948,734.53
<b>15/12/2004</b>	139,075,598.50	<b>14/12/2005</b>	128,948,734.53
<b>12/01/2005</b>	139,075,598.50	<b>11/01/2006</b>	128,948,734.53
<b>09/02/2005</b>	139,075,598.50	<b>08/02/2006</b>	128,948,734.53
<b>09/03/2005</b>	139,075,598.50	<b>08/03/2006</b>	128,948,734.53
<b>Total</b>	<b>1,807,982,780.50</b>	<b>Total</b>	<b>1,676,333,548.89</b>

**SCHEDULE 2 PAYMENTS TO BE MADE BY THE SECRETARY OF STATE FOR TRANSPORT**

2006/07	£	2007/08	£	2008/09	£
05/04/2006	181,667,989.41	04/04/2007	178,518,216.67	02/04/2008	160,788,719.64
03/05/2006	181,667,989.41	02/05/2007	178,518,216.67	30/04/2008	160,788,719.64
31/05/2006	181,667,989.41	30/05/2007	178,518,216.67	28/05/2008	160,788,719.64
28/06/2006	181,667,989.41	27/06/2007	178,518,216.67	25/06/2008	160,788,719.64
26/07/2006	181,667,989.41	25/07/2007	178,518,216.67	23/07/2008	160,788,719.64
23/08/2006	181,667,989.41	22/08/2007	178,518,216.67	20/08/2008	160,788,719.64
20/09/2006	181,667,989.41	19/09/2007	178,518,216.67	17/09/2008	160,788,719.64
18/10/2006	181,667,989.41	17/10/2007	178,518,216.67	15/10/2008	160,788,719.64
15/11/2006	181,667,989.41	14/11/2007	178,518,216.67	12/11/2008	160,788,719.64
13/12/2006	181,667,989.41	12/12/2007	178,518,216.67	10/12/2008	160,788,719.64
10/01/2007	181,667,989.41	09/01/2008	178,518,216.67	07/01/2009	160,788,719.64
07/02/2007	181,667,989.41	06/02/2008	178,518,216.67	04/02/2009	160,788,719.64
07/03/2007	181,667,989.41	05/03/2008	178,518,216.67	04/03/2009	160,788,719.64
<b>Total</b>	<b>2,361,683,862.35</b>	<b>Total</b>	<b>2,320,736,816.73</b>	<b>Total</b>	<b>2,090,253,355.38</b>

THERE ARE NO SIGNATURE BLOCKS IN THIS DEED  
THIS DEED HAS EFFECT AND IS BINDING ON THE PARTIES BY OPERATION OF LAW BY VIRTUE OF  
THE NETWORK RAIL DEED OF GRANT TRANSFER SCHEME



**SCHEDULE 2**

**SCOTTISH DEED OF GRANT**

**Originally dated 10th March, 2004  
as amended and restated by way of a Supplemental Deed dated  
28<sup>th</sup> September 2004 and as further amended and restated on the Transfer Date,  
namely 1 April 2006**

**BETWEEN**

**THE SCOTTISH MINISTERS**

**and**

**NETWORK RAIL LIMITED**

**and**

**NETWORK RAIL HOLDCO LIMITED**

**and**

**NETWORK RAIL INFRASTRUCTURE LIMITED**

THIS DEED originally dated 10 March, 2004 was amended and restated on the Effective Date and is further amended and restated on the Transfer Date, namely 1 April 2006

**BETWEEN:**

- (1) THE SCOTTISH MINISTERS;
- (2) NETWORK RAIL LIMITED, a company limited by guarantee, registered and incorporated in accordance with the law of England and Wales under registered number 04402220, whose registered office is at 40 Melton Street, London NW1 2EE, United Kingdom (**Network Rail**);
- (3) NETWORK RAIL HOLDCO LIMITED, a private limited liability company, registered and incorporated in accordance with the law of England and Wales under registered number 04423711, whose registered office is at 40 Melton Street, London NW1 2EE, United Kingdom (**Holdco**); and
- (4) NETWORK RAIL INFRASTRUCTURE LIMITED, a private limited liability company, registered and incorporated in accordance with the law of England and Wales under registered number 02904587, whose registered office is at 40 Melton Street, London NW1 2EE, United Kingdom (**NRIL**).

**BACKGROUND**

- (A) The Scottish Ministers have agreed to make available certain grants for those purposes set out in Section 8 of the Railways Act 2005.
- (B) In making payments of grant pursuant to this Deed, the Scottish Ministers acknowledge and take comfort from the fact that NRIL has a Network Licence which contains important substantive obligations in relation to the stewardship of the Network.
- (C) The Current Existing Deed of Grant has been amended and restated as this Deed of Grant and the English and Welsh Deed of Grant (as defined in the Network Rail Deed of Grant Transfer Scheme) on the Transfer Date by virtue of the Network Rail Deed of Grant Transfer Scheme.

IT IS AGREED as follows:

**1 INTERPRETATION**

**1.1 Definitions**

In this Deed the following words and phrases shall have the following meanings:

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for general business in London and Edinburgh.

**Current Existing Deed of Grant** means the Previous Existing Deed of Grant as amended and restated on the Effective Date.

**Debt Issuance Programme** means:

- (a) the debt issuance programme for the financing of NRIL through Network Rail Infrastructure Finance plc described in the minute laid before Parliament on 15 September, 2004; or
- (b) (subject to the approval of the Secretary of State, NRIL and the Office of Rail Regulation for this purpose) any replacement of it.

**Effective Date** has the meaning given to that term in the Supplemental Deed dated 28 September, 2004 between SRA, Network Rail, Holdco and NRIL.

**Grant** means the grants to be paid by the Scottish Ministers pursuant to section 8 of the Railways Act 2005 to NRIL pursuant to this Deed in order to provide funding for NRIL's Permitted Business in the financial year in which they are due to be paid.

**Network** means the network in respect of which NRIL is, from time to time, the facility owner for the purposes of the Railways Act 1993.

**Network Licence** means the licence to operate the Network granted to NRIL pursuant to Section 8 of the Railways Act 1993.

**Permitted Business** has the meaning given to that term in the Network Licence.

**Previous Existing Deed of Grant** means a Deed of Grant dated 27 June, 2002 between the SRA, Network Rail, Holdco and NRIL, as amended and restated by an Amendment and Restatement Deed dated 26 September, 2002.

**Rating Agencies** means each of Fitch Ratings Limited, Moody's Investors Service Limited and Standard and Poor's Rating Services, a division of the McGraw-Hill Companies, Inc.

**Relevant Year** means a year commencing at 00.00 hours on 1 April and ending at 23.59 hours on the following 31 March.

**Relevant Year t** means the Relevant Year for the purposes of which any calculation falls to be made.

**Relevant Year t-1** means the Relevant Year preceding Relevant Year t; and similar expressions shall be construed accordingly.

**Retail Prices Index** means the general index of retail prices published by National Statistics each month in respect of all items or:

- (a) if the index for any month in any year shall not have been published on or before the last day of the third month after such month, such index for such month or months as the Office of Rail Regulation may, after consultation with NRIL and the Scottish Ministers, determine to be appropriate in the circumstances; or
- (b) if there is a material change in the basis of the index, such other index as the Office of Rail Regulation may, after consultation with NRIL and the Scottish Ministers, determine to be appropriate in the circumstances.

**Schedule** means a schedule annexed to this Deed.

**Secretary of State** means the Secretary of State for Transport.

**SRA** means the Strategic Rail Authority created under Section 201 of the Transport Act 2000.

**Scottish Grant Compensation Amount** in relation to the ScotRail Track Access Agreement has the meaning given to that term in that Track Access Agreement, as that term may be amended and/or replaced from time to time.

**Scottish Grant Dilution** in relation to the ScotRail Track Access Agreement has the meaning given to that term in that Track Access Agreement, as that term may be amended and/or replaced from time to time.

**ScotRail Track Access Agreement** means the Track Access Agreement dated 10 December 2004 made between NRIL and First ScotRail Limited and any other Track Access Agreement which includes provisions corresponding to Part 3A of Schedule 7 to that Agreement.

**ScotRail Track Access Charges** means amounts payable by a passenger service operator to NRIL under the ScotRail Track Access Agreement.

**Track Access Agreement** means an access agreement in relation to track between NRIL and a passenger service operator.

**Transfer Date** means the date on which the Network Rail Deed of Grant Transfer Scheme becomes effective.

**VAT** means value added tax.

## 1.2 Construction

In this Deed, except to the extent that the context requires otherwise:

- (a) references to a statute, treaty or legislative provision or to a provision of it shall be construed, at any particular time, as including a reference to any modification, extension or re-enactment at any time then in force and to all subordinate legislation made from time to time under it;

- (b) references to any agreement or document include its schedules and annexures and references to paragraphs, **Clauses, Recitals, Schedules** or **Appendices** are references to such provisions of this Deed;
- (c) references in the singular shall include references in the plural and vice versa, words denoting any gender shall include any other gender and words denoting natural persons shall include any other persons;
- (d) Clause and Schedule headings are for ease of reference only;
- (e) references to an agreement, deed, instrument, licence, code or other document (including this Deed), or to a provision contained in any of these, shall be construed, at the particular time, as a reference to it as it may then have been amended, varied, supplemented, modified, suspended, assigned or novated;
- (f) references to times of day are to London time unless otherwise stated;
- (g) references to **Holding Company** and **Subsidiary** shall have the same meanings as in the companies act 1985 and references to **Affiliate** mean in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company;
- (h) the words **include** and **including** are to be construed without limitation;
- (i) a reference to a **law** includes common law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure, in each case of any jurisdiction whatever (and **lawful** and **unlawful** shall be construed accordingly);
- (j) a reference to a **Party** means a party to this Deed and includes its successors in title, permitted assignees and permitted transferees;
- (k) a reference to a **person** includes any person, firm, body corporate, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
- (l) a **regulation** includes any regulation, rule, official directive, or published guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (m) a reference to **writing** includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form; and
- (n) (unless otherwise defined herein), words and phrases defined in the Railways Act 1993 have the same meaning in this Deed.

## 2 PREVIOUS EXISTING DEED OF GRANT

Pursuant to the terms of the Network Rail Deed of Grant Transfer Scheme, the Previous Existing Deed of Grant has been terminated.

## 3 PAYMENT OF GRANTS

### 3.1 Not used.

- 3.2** The Scottish Ministers shall pay to NRIL the amounts specified in the Schedule as due for payment on and from April 2006.
- 3.3** Each payment required to be made under this Clause 3:
- (a) shall be indexed in accordance with Clause 4;
  - (b) subject to Clause 3.4, shall be made together with such VAT as is payable on it; and
  - (c) shall be made:
    - (i) on the date immediately to the right of which it appears in the Schedule where it is specified; or
    - (ii) if that date is a not a Business Day:
      - (A) on the next following Business Day; or
      - (B) if the next following Business Day is a day which would result in a payment being made after an accounting year end of NRIL or after the end of a six month accounting period within an accounting year of NRIL or after the end of a Relevant Year and that payment would otherwise have been made before that year end or the end of that six month accounting period or the end of that Relevant Year, on the immediately preceding Business Day.
- 3.4** Payments in respect of VAT under Clause 3.3(b):
- (a) shall only be made if the Scottish Ministers have received, in advance, a valid VAT invoice in respect of the supply complying with the VAT Regulations 1995; and
  - (b) shall be made on the basis that the Scottish Ministers shall not be liable for any interest or penalties arising to the extent that such a VAT invoice is not issued in respect of each supply.
- 3.5** All amounts payable under this Clause 3 shall be payable by way of grant pursuant to section 8 of the Railways Act 2005.
- 3.6** Any amount of Grant payable under this Clause 3 shall be reduced by the aggregate Scottish Grant Compensation Amount payable and/or paid under the ScotRail Track Access Agreement in relation to that amount of grant if that Scottish Grant Compensation Amount is payable either:
- (a) as a result of non-payment under this Deed; or
  - (b) because a Scottish Grant Dilution has occurred and the only reason for that Scottish Grant Dilution having occurred is the operation of Clauses 3.2, 3.3(b), 3.4 and/or this Clause 3.6 of this Deed (as entered into at the original date hereof, as amended on the Effective Date and as further amended and restated on the Transfer Date).

#### **4 INDEXATION**

Each amount specified in the Schedule shall be multiplied by the Network Grant Indexation figure for the Relevant Year in which the date for payment falls.

The Network Grant Indexation figure in Relevant Year t shall be derived from the following formula:

$$G_{i_t} = 1 + \frac{(RPI_{t-1} - RPI_{2003})}{RPI_{2003}}$$

where:

$G_{i_t}$  means the Network Grant Indexation in Relevant Year t;

$RPI_{t-1}$  means the Retail Prices Index published or determined with respect to November in Relevant Year t-1; and

$RPI_{2003}$  means the Retail Prices Index published or determined with respect to November 2003.

#### **5. NOT USED**

#### **6. ASSIGNATION**

##### **6.1 No Assigation by Network Rail entities**

Subject to Clause 6.2, neither Network Rail nor Holdco nor NRIL shall, without the prior written consent of the Scottish Ministers, assign or otherwise transfer this Deed or any part of this Deed or any benefit or interest in or under this Deed.

##### **6.2 Permitted Assigation by Network Rail entities**

NRIL may assign by way of security the benefit of this Deed, or assign, transfer or sell by way of assignation or otherwise, all of its rights, title, benefit and interest to the Grants and/or this Deed and/or assign any or all of the proceeds of the Grants once received by it, in each case for the purpose of the Debt Issuance Programme, provided that NRIL may not so assign, transfer or sell any of its rights, title, benefit or interest to the Grants or this Deed or any proceeds of any Grants if, following such assignation, transfer or sale, the total amount of Grants and proceeds of Grants so assigned, transferred and/or sold would equal or exceed 50% (or such other percentage as Scottish Ministers may notify to NRIL prior to any such assignation, transfer or sale based on the requirements of Eurostat) in aggregate of the total income of NRIL assigned, transferred and/or sold for the purpose of the Debt Issuance Programme. The Scottish Ministers shall, if requested by NRIL, acknowledge in writing notice of any such assignation, transfer and/or sale, although this is not required for the assignation, transfer or sale to be effective.

##### **6.3 No Assigation by the Scottish Ministers**

Subject to Clause 6.4, the Scottish Ministers shall not, without the prior written consent of NRIL and Network Rail, assign their rights or otherwise transfer this Deed or any part of this Deed or any benefit or interest in or under this Deed.

#### **6.4 Permitted Assignment by the Scottish Ministers**

The Scottish Ministers (or any Substitute Grant Payer (as defined below)) may transfer their rights and obligations under this Deed to any United Kingdom government department or any entity directly wholly-owned by a United Kingdom government department or the Scottish Ministers (which, in the case of a statutory corporation without shareholders, shall be determined by reference to the person(s) entitled to appoint the members of that statutory corporation) or to any entity to which the function under Section 8 of the Railways Act 2005 may be transferred (the "**Substitute Grant Payer**") provided that:

- (a) such transfer is in respect of all of the Scottish Ministers' (or, as applicable, the previous Substitute Grant Payer's) rights and obligations under this Deed;
- (b) the Substitute Grant Payer enters into documentation, in a form satisfactory to NRIL and Network Rail (acting reasonably), agreeing to be bound by the terms of the Deed, with any consequential amendments which may be appropriate, as fully as if the Substitute Grant Payer had been a party to the Deed and named in it in place of the Scottish Ministers (or, as applicable, the previous Substitute Grant Payer);
- (c) NRIL and Network Rail are satisfied (acting reasonably) that:
  - (i) all necessary corporate, government, regulatory (including, for the avoidance of any doubt, any necessary EU state aid clearances) and listing authority approvals, consents, updates, assurances and other actions necessary for or in connection with the assumption by the Substitute Grant Payer of its obligations under this Deed in place of the Scottish Ministers (or, as applicable, the previous Substitute Grant Payer) have been obtained; and
  - (ii) such approvals and consents are, at the time of such transfer, in full force and effect;
- (d) each of the Rating Agencies confirms in writing to NRIL and Network Rail that their long term debt rating of the Substitute Grant Payer is a rating which is equal to or not less than one notch below the long term credit rating of the United Kingdom government at the time;
- (e) NRIL and Network Rail are provided with a legal opinion in respect of such transfer in form and substance satisfactory to them (acting reasonably); and
- (f) all costs and expenses properly incurred by the parties to this Deed (other than the Scottish Ministers) in effecting such transfer or assignment are paid by the Substitute Grant Payer.

### **7. MISCELLANEOUS**

#### **7.1 Amendments and variations**

No amendment or variation of this Deed shall be effective unless in writing and signed or otherwise executed by or on behalf of each Party. No such amendment or variation shall have effect until seven



days after joint notice of the making of the amendment or variation shall have been given by NRIL and the Scottish Ministers to the Office of Rail Regulation and the Office of Rail Regulation shall have the right to enforce this Clause 7.1.

## **7.2 No Partnership**

- (a) Neither this Deed nor any other agreement or arrangement of which this Deed forms part, nor the performance by the Parties of their respective obligations under this Deed or such arrangement, shall constitute a partnership between the Parties.
- (b) No Party shall have any authority (unless expressly conferred in writing by virtue of this Deed or otherwise and not revoked) to bind any other Party as its agent or otherwise.

## **7.3 Waiver**

No failure to exercise, nor any delay in exercising, any right, power or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy.

## **7.4 Further Assurance**

Each Party shall execute such documents and do such acts and things as any other party may reasonably require for the purpose of giving to the requesting Party the full benefit of all the provisions of this Deed.

## **7.5 Enforceability by Third Parties**

This Deed will not create any right which is enforceable by any person who is not a Party, other than under:

- (a) Clause 3.6;
- (b) Clause 7.1;
- (c) the definition of Debt Issuance Programme in Clause 1.1; and
- (d) the definition of "Retail Price Index" in Clause 1.1,

which the Parties irrevocably agree the Office of Rail Regulation may enforce and, for the avoidance of doubt, there shall be available to the Office of Rail Regulation any remedy that would be available to it in an action for breach of contract if it had been Party to this Deed (and the rules relating to damages, interdict, specific implement and other relief shall apply accordingly).

## **7.6 Announcements**

No Party shall issue any announcement or circular regarding this Deed or any aspect of its contents without the prior written agreement of the other relevant Parties, such agreement not to be unreasonably withheld or delayed except as may be required by law or the rules of any stock exchange applicable to any Party or any of its Affiliates. The Party so issuing will use all reasonable endeavours to notify the other Parties to this Deed of the content of such announcement or circular at least 48 hours prior to such issue (unless otherwise required by law or the rules of any applicable stock exchange) and the Party so issuing shall take such account as is reasonable in the circumstances of comments on the proposed announcement or circular made by the other Party or Parties, provided such comments are received within 24 hours of the notification.

## **7.7 Entire Agreement**

This Deed comprises all the express terms of, and constitutes the entire agreement between the Parties with respect to the subject matter of this Deed and supersedes any prior written or oral agreement between them with respect to such subject matter.

## **7.8 No set-off or Withholding**

All payments to be made by the Scottish Ministers under this Deed shall be calculated and be made without (and free and clear of any deduction for) set-off, withholding, compensation, retention or counter-claim whatsoever, save only as may be required by law.

## **7.9 No conditionality**

Notwithstanding any other provision of this Deed, no payment of any amount payable under this Deed (in each such case, the amount payable having been determined in accordance with Clause 3 above) shall be:

- (a) subject to the performance by NRIL or any other person of any obligation;
- (b) subject to the exercise by the Scottish Ministers or any other person of any discretion; or
- (c) contingent upon the happening of any event or circumstance, or any act or omission of any person.

It is acknowledged that there shall be no Scottish Grant Dilution under the ScotRail Track Access Agreement solely by virtue of the terms of this Deed (as entered into on the original date hereof and as amended on the Effective Date and as further amended and restated on the Transfer Date).

## **7.10 Default Interest**

If the Scottish Ministers:

- (a) fail to pay any amount due from it under this Deed on its due date; and
- (b) do pay such amount within seven days after its due date,

default interest shall accrue daily and be payable by the Scottish Ministers on the overdue amount at a rate of 2% above the base lending rate of Barclays Bank PLC as varied from time to time from and including the due date to and excluding the date of actual payment (both before and after judgment).

## **8. NOTICES**

### **8.1 Form of notice**

Any communication to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by fax or letter.

### **8.2 Notice Details**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Deed is as follows:

#### **The Scottish Ministers**

Scottish Executive  
Victoria Quay  
EDINBURGH  
EH6 6QQ

Fax: 0131 244 0463

Attention: Head of Rail Delivery, Transport

#### **Network Rail**

Network Rail Limited  
40 Melton Street  
London NW1 2EE

Fax: 020 7557 9028

Attention: Company Secretary

#### **Holdco**

Network Rail Holdco Limited  
40 Melton Street  
London NW1 2EE

Fax: 020 7557 9028

Attention: Company Secretary

## **NRIL**

Network Rail Infrastructure Limited  
40 Melton Street  
London NW1 2EE

Fax: 020 7557 9028

Attention: Company Secretary

## **Office of Rail Regulation**

Office of Rail Regulation  
1 Kemble Street  
London WC2B 4AN

Fax: 020 7282 2041

Attention: Chief Executive

or any substitute address, fax number or department or officer as the Party may notify to the other Parties, by not less than five days' notice.

### **8.3 Delivery**

Any communication or document made or delivered by one Party to another under or in connection with this Deed will only be effective:

- (a) if by way of fax, when received in legible form;
- (b) if by way of letter, when it has been left at the relevant address or three days after being deposited in the post (postage prepaid) in an envelope addressed to it at that address; and
- (c) if a particular department or officer is specified as part of its address details provided under Clause 8.2, if addressed to that department or officer.

## **9. GOVERNING LAW**

This Deed shall be governed by and construed in accordance with the laws of Scotland.

## **10. JURISDICTION OF SCOTTISH COURTS**

Any dispute arising between the Parties under or in connection with this Deed shall be referred to the Court of Session in Scotland which shall have exclusive jurisdiction to settle any disputes and the Parties irrevocably submit to the jurisdiction of that court.

This Deed has been entered into when stated at the beginning of this Deed.

This is the Schedule referred to in the foregoing Scottish Deed of Grant between the Scottish Ministers, Network Rail Limited, Network Rail Holdco Limited and Network Rail Infrastructure Limited.

2006/07	£	2007/08	£	2008/09	£
05/04/2006	16,280,178.34	04/04/2007	16,280,178.34	02/04/2008	15,234,436.23
03/05/2006	16,280,178.34	02/05/2007	16,280,178.34	30/04/2008	15,234,436.23
31/05/2006	16,280,178.34	30/05/2007	16,280,178.34	28/05/2008	15,234,436.23
28/06/2006	16,280,178.34	27/06/2007	16,280,178.34	25/06/2008	15,234,436.23
26/07/2006	16,280,178.34	25/07/2007	16,280,178.34	23/07/2008	15,234,436.23
23/08/2006	16,280,178.34	22/08/2007	16,280,178.34	20/08/2008	15,234,436.23
20/09/2006	16,280,178.34	19/09/2007	16,280,178.34	17/09/2008	15,234,436.23
18/10/2006	16,280,178.34	17/10/2007	16,280,178.34	15/10/2008	15,234,436.23
15/11/2006	16,280,178.34	14/11/2007	16,280,178.34	12/11/2008	15,234,436.23
13/12/2006	16,280,178.34	12/12/2007	16,280,178.34	10/12/2008	15,234,436.23
10/01/2007	16,280,178.34	09/01/2008	16,280,178.34	07/01/2009	15,234,436.23
07/02/2007	16,280,178.34	06/02/2008	16,280,178.34	04/02/2009	15,234,436.23
07/03/2007	16,280,178.34	05/03/2008	16,280,178.34	04/03/2009	15,234,436.23
<b>Total</b>	<b>211,642,318.40</b>	<b>Total</b>	<b>211,642,318.40</b>	<b>Total</b>	<b>198,047,670.93</b>

THERE ARE NO SIGNATURE BLOCKS IN THIS DEED

THIS DEED HAS EFFECT AND IS BINDING ON THE PARTIES BY OPERATION OF LAW BY VIRTUE OF  
THE NETWORK RAIL DEED OF GRANT TRANSFER SCHEME

## SCHEDULE 3

### AMENDED AND RESTATED PART 3A OF SCHEDULE 7 TO THE RELEVANT ENGLISH AND WELSH TRACK ACCESS AGREEMENTS

#### PART 3A: GRANT DILUTION

##### 1A Definitions

In this Part 3A:

**“Aggregate English and Welsh Fixed Charge”** means, in any Relevant Year *t*, the sum of the values of *F<sub>t</sub>* under paragraph 1 of Part 2 of Schedule 7 and the corresponding provisions of each other relevant access agreement which includes this defined term; and

**“Network Rail Deed of Grant Transfer Scheme”** means the Transfer Scheme dated 30 March 2006 made by the Secretary of State pursuant to Section 1 of the Railways Act 2005 transferring the property, rights and liabilities of the SRA relating to the Deed of Grant dated 10 March 2004, as amended by a Supplemental Deed dated 28 September 2004.

##### 1 Grant Amounts

###### 1.1 *Basic Values and Payment Dates*

For the purposes of this Part 3A:

- (a) the Basic Values are the amounts by way of grant under section 6 of the Railways Act 2005 specified in the Revised Deed of Grant as amended and restated by the Supplemental Deed dated 28 September 2004 between the SRA, Network Rail Limited, Network Rail Holdco Limited and Network Rail as further amended and restated and transferred to the Secretary of State by the Network Rail Deed of Grant Transfer Scheme as to be paid by the Secretary of State to Network Rail; and
- (b) the Payment Dates are 1 April and 1 October in each of the years 2004, 2005, 2006, 2007 and 2008, or such other dates for the payment of such grants as may be stipulated in the Revised Deed of Grant as amended and restated by the Supplemental Deed dated 28 September 2004 between the SRA, Network Rail Limited, Network Rail Holdco Limited and Network Rail as further amended and restated and transferred to the Secretary of State by the Network Rail Deed of Grant Transfer Scheme.

###### 1.2 *Indexation*

For the purposes of this Part 3A, the Grant Amount for each Payment Date is the Basic Value specified in the Revised Deed of Grant as amended and restated by the Supplemental Deed dated 28 September 2004 between the SRA, Network Rail Limited, Network Rail Holdco Limited and Network Rail as further amended and restated and transferred to the Secretary of State by the Network Rail Deed of Grant Transfer Scheme as to be paid on that date, adjusted in accordance with any applicable indexation provisions of the Revised Deed of Grant as amended and restated by the Supplemental Deed dated 28 September 2004 between the SRA, Network Rail Limited, Network Rail Holdco Limited



and Network Rail as further amended and restated and transferred to the Secretary of State by the Network Rail Deed of Grant Transfer Scheme.

**1.3** *No Revised Deed of Grant*

If there is no Revised Deed of Grant, paragraphs 1.1 and 1.2 shall be construed as if each reference in them to “the Revised Deed of Grant” were a reference to “the Existing Deed of Grant”.

**2** **English and Welsh Grant Dilution**

**2.1** *Meaning of English and Welsh Grant Dilution*

For the purposes of this Part 3A, there shall be an “**English and Welsh Grant Dilution**” in respect of a Payment Date if:

- (a) the Secretary of State fails, for any reason, to pay the whole or any part of the Grant Amount on or before that Payment Date; or
- (b) the payment of the whole or any part of the Grant Amount in respect of that Payment Date is:
  - (i) subject to the performance by Network Rail or any other person of any obligation;
  - (ii) subject to the exercise by the Secretary of State or any other person of any discretion ; or
  - (iii) contingent upon the happening of any event or circumstance, or any act or omission of any person.

**2.2** *Meaning of Grant Dilution Date*

In respect of any English and Welsh Grant Dilution:

- (a) if the English and Welsh Grant Dilution is of the kind referred to in paragraph 2.1(a), the Grant Dilution Date shall be the Payment Date in respect of which the Secretary of State fails to pay the whole or any part of the Grant Amount due on that date; and
- (b) if the English and Welsh Grant Dilution is of the kind referred to in paragraph 2.1(b), each Payment Date which falls during any period during which the payment of the whole or any part of a Grant Amount is:
  - (i) subject to any of the matters specified in paragraph 2.1(b)(i) or (ii); or
  - (ii) contingent upon any of the matters specified in paragraph 2.1(b)(iii),shall be a Grant Dilution Date.

**3. English and Welsh Grant Compensation Amount**

**3.1** *Payment obligation*

If an English and Welsh Grant Dilution occurs:

- (a) Network Rail shall notify the Train Operator and ORR that an English and Welsh Grant Dilution has occurred, and the circumstances in which it has occurred; and
- (b) the Train Operator shall:
  - (i) send a copy of the notification it has received from Network Rail under paragraph 3.1(a) to any Passenger Transport Executive within whose area it provides services for the carriages of passengers by railway;

- (ii) if the English and Welsh Grant Dilution is of the kind described in paragraph 2.1(a), pay Network Rail an English and Welsh Grant Compensation Amount calculated in accordance with paragraph 3.2 three months after the Grant Dilution Date; and
- (iii) if the English and Welsh Grant Dilution is of the kind described in paragraph 2.1(b), pay Network Rail an English and Welsh Grant Compensation Amount calculated in accordance with paragraph 3.2 three months after each Grant Dilution Date.

### 3.2 Calculation

Any English and Welsh Grant Compensation Amount payable under paragraph 3.1 is an amount calculated in accordance with the following formula:

$$GC = (GA_p - P) \cdot \frac{F_t}{AF_t} \cdot (1.0575^{0.25})$$

where:

GC means the English and Welsh Grant Compensation Amount;

GA<sub>p</sub> means the Grant Amount for the Payment Date which is the same date as the Grant Dilution Date;

P means:

- (a) if the English and Welsh Grant Dilution is of the kind described in paragraph 2.1(a), the amount of any whole or part payment of the Grant Amount which Network Rail certifies to the Train Operator, within 7 days after the Grant Dilution Date, that it has received from the Secretary of State; and
- (b) if the English and Welsh Grant Dilution is of the kind described in paragraph 2.1(b), zero;

F<sub>t</sub> has the meaning ascribed to it in paragraph 1 of Part 2 of this Schedule 7; and

AF<sub>t</sub> means the Aggregate English and Welsh Fixed Charge in Relevant Year t.

## SCHEDULE 4

### AMENDED AND RESTATED PART 3A OF SCHEDULE 7 TO THE SCOTRAIL TRACK ACCESS AGREEMENT

#### PART 3A: GRANT DILUTION

##### 1A Definitions

In this Part 3A:

**“Aggregate Scottish Fixed Charge”** means, in any Relevant Year t, the sum of the values of Ft under paragraph 1 of Part 2 of Schedule 7 and the corresponding provisions of each other relevant access agreement, if any, which includes this defined term; and

**“Network Rail Deed of Grant Transfer Scheme”** means the Transfer Scheme dated 30 March 2006 made by the Secretary of State pursuant to Section 1 of the Railways Act 2005 transferring the property, rights and liabilities of the SRA relating to the Deed of Grant dated 10 March 2004, as amended by a Supplemental Deed dated 28 September 2004.

##### 1 Grant Amounts

###### 1.1 Basic Values and Payment Dates

For the purposes of this Part 3A:

- (a) the Basic Values are the amounts by way of grant under section 8 of the Railways Act 2005 specified in the Revised Deed of Grant as amended and restated by the Supplemental Deed dated 28 September 2004 between the SRA, Network Rail Limited, Network Rail Holdco Limited and Network Rail as further amended and restated and transferred to the Scottish Ministers by the Network Rail Deed of Grant Transfer Scheme as to be paid by the Scottish Ministers to Network Rail; and
- (b) the Payment Dates are the dates for the payment of such grants as stipulated in the Revised Deed of Grant as amended and restated by the Supplemental Deed dated 28 September 2004 between the SRA, Network Rail Limited, Network Rail Holdco Limited and Network Rail as further amended and restated and transferred to the Scottish Ministers by the Network Rail Deed of Grant Transfer Scheme.

###### 1.2 Indexation

For the purposes of this Part 3A, the Grant Amount for each Payment Date is the Basic Value specified in the Revised Deed of Grant as amended and restated by the Supplemental Deed dated 28 September 2004 between the SRA, Network Rail Limited, Network Rail Holdco Limited and Network Rail as further amended and restated and transferred to the Scottish Ministers by the Network Rail Deed of Grant Transfer Scheme as to be paid on that date, adjusted in accordance with any applicable indexation provisions of the Revised Deed of Grant as amended and restated by the Supplemental Deed dated 28 September 2004 between the SRA, Network Rail Limited, Network Rail Holdco Limited

and Network Rail as further amended and restated and transferred to the Scottish Ministers by the Network Rail Deed of Grant Transfer Scheme.

**1.3** *No Revised Deed of Grant*

If there is no Revised Deed of Grant, paragraphs 1.1 and 1.2 shall be construed as if each reference in them to “the Revised Deed of Grant” were a reference to “the Existing Deed of Grant”.

**2** **Scottish Grant Dilution**

**2.1** *Meaning of Scottish Grant Dilution*

For the purposes of this Part 3A, there shall be a “**Scottish Grant Dilution**” in respect of a Payment Date if:

- (a) the Scottish Ministers fail, for any reason, to pay the whole or any part of the Grant Amount on or before that Payment Date; or
- (b) the payment of the whole or any part of the Grant Amount in respect of that Payment Date is:
  - (i) subject to the performance by Network Rail or any other person of any obligation;
  - (ii) subject to the exercise by the Scottish Ministers or any other person of any discretion; or
  - (iii) contingent upon the happening of any event or circumstance, or any act or omission of any person.

**2.2** *Meaning of Grant Dilution Date*

In respect of any Scottish Grant Dilution:

- (a) if the Scottish Grant Dilution is of the kind referred to in paragraph 2.1(a), the Grant Dilution Date shall be the Payment Date in respect of which the Scottish Ministers fail to pay the whole or any part of the Grant Amount due on that date; and
- (b) if the Scottish Grant Dilution is of the kind referred to in paragraph 2.1(b), each Payment Date which falls during any period during which the payment of the whole or any part of a Grant Amount is:
  - (i) subject to any of the matters specified in paragraph 2.1(b)(i) or (ii); or
  - (ii) contingent upon any of the matters specified in paragraph 2.1(b)(iii),shall be a Grant Dilution Date.

**3. Scottish Grant Compensation Amount**

**3.1** *Payment obligation*

If a Scottish Grant Dilution occurs:

- (a) Network Rail shall notify the Train Operator and ORR that a Scottish Grant Dilution has occurred, and the circumstances in which it has occurred; and
- (b) the Train Operator shall:

- (i) send a copy of the notification it has received from Network Rail under paragraph 3.1(a) to any Passenger Transport Executive within whose area it provides services for the carriages of passengers by railway;
- (ii) if the Scottish Grant Dilution is of the kind described in paragraph 2.1(a), pay Network Rail a Scottish Grant Compensation Amount calculated in accordance with paragraph 3.2 three months after the Grant Dilution Date; and
- (iii) if the Scottish Grant Dilution is of the kind described in paragraph 2.1(b), pay Network Rail a Scottish Grant Compensation Amount calculated in accordance with paragraph 3.2 three months after each Grant Dilution Date.

### 3.2 Calculation

Any Scottish Grant Compensation Amount payable under paragraph 3.1 is an amount calculated in accordance with the following formula:

$$GC = (GA_p - P) \cdot \frac{E_t}{AF_t} \cdot (1.0575^{0.25})$$

where:

GC means the Scottish Grant Compensation Amount;

GA<sub>p</sub> means the Grant Amount for the Payment Date which is the same date as the Grant Dilution Date;

P means:

- (a) if the Scottish Grant Dilution is of the kind described in paragraph 2.1(a), the amount of any whole or part payment of the Grant Amount which Network Rail certifies to the Train Operator, within 7 days after the Grant Dilution Date, that it has received from the Scottish Ministers; and
- (b) if the Scottish Grant Dilution is of the kind described in paragraph 2.1(b), zero;

F<sub>t</sub> has the meaning ascribed to it in paragraph 1 of Part 2 of this Schedule 7; and

AF<sub>t</sub> means the Aggregate Scottish Fixed Charge in Relevant Year t.