

NETWORK RAIL INFRASTRUCTURE LIMITED

PARENT COMPANY CONTRACT PERFORMANCE GUARANTEE

THIS DEED is made day of

BETWEEN

(1)
[(registered in as company number
and having its registered office at)]
OR [of]
("the Guarantor" which term shall include its successors and assigns); and

(2) NETWORK RAIL INFRASTRUCTURE LIMITED (registered in England & Wales as company number 2904587) and having its registered office at Kings Place, 90 York Way, London, N1 9AG ("the Employer", which term shall include its successors and assigns).

WHEREAS by an Agreement ("the Contract") dated and made between the Employer of the one part and ("the Supplier/Contractor") of the other part, the Supplier/Contractor has agreed to
describe the supplies, services or works
..... in accordance with the terms and conditions of the Contract.

NOW THIS DEED WITNESSETH as follows:

- 1** In consideration of the Employer entering into the Contract with the Supplier/Contractor, as the Guarantor hereby acknowledges, the Guarantor hereby unconditionally and irrevocably guarantees to the Employer:
- the due and punctual payment by the Supplier/Contractor of all sums payable under or pursuant to the Contract to the Employer as and when the same fall due (with the intention that any amount not recoverable for any reason from the Guarantor under this Deed on the basis of a guarantee shall nevertheless be recoverable on the basis of an indemnity); and
 - the due and punctual performance and observance by the Supplier/Contractor of all other acts, covenants and obligations to be performed or observed by the Supplier/Contractor under or pursuant to the Contract

and hereby undertakes to keep the Employer full and effectually indemnified against all losses, damages, costs, claims and expenses whatsoever arising out of or in connection with any failure on the part of the Supplier/Contractor to effect due and punctual payment of any sum as aforesaid or to perform or observe all or any of the other acts, covenants and obligations as aforesaid for any reason whatsoever, including the administration, receivership, insolvency, bankruptcy, winding-up, liquidation, dissolution, reconstruction, re-organisation, amalgamation or incapacity of the Supplier/Contractor or the termination of the Contract or the employment of the Supplier/Contractor under the Contract and undertakes to pay all sums covered by this indemnity on the Employer's first written demand without set-off or counterclaim and free and clear of, and without deduction for or

on account of, any present or future taxes, duties, charges, fees, deductions or withholdings of any nature whatsoever provided always that the Guarantor's liability under or pursuant to this Deed shall not exceed the Supplier's/Contractor's liability under or pursuant to the Contract and the Guarantor shall be entitled in relation to any written demand by the Employer and in any actions or proceedings by the Employer to raise any equivalent rights in defence of liability as the Supplier/Contractor would have against the Employer under the Contract.

- 2** The obligations of the Guarantor under or pursuant to this Deed shall not be discharged except by performance or the procurement of performance by the Guarantor. Such obligations shall not be subject to the Employer taking any steps or action, including, without limitation, the granting of any time or indulgence to the Supplier/Contractor, the taking of any legal proceedings or action or the obtaining of any judgment against the Supplier/Contractor, the making or filing of any claim in bankruptcy, liquidation, winding-up or dissolution of the Supplier/Contractor or the pursuance or exhaustion of any other right or remedy against the Supplier/Contractor. The rights of the Employer and the obligations of the Guarantor under or pursuant to this Deed shall not be prejudiced or affected by any extension of time, indulgence, forbearance or concession given to the Supplier/Contractor, or any assertion of or failure to assert any right or remedy against the Supplier/Contractor, or by any modification or variation of the provisions of the Contract, or by the administration, receivership, insolvency, bankruptcy, winding-up, liquidation, dissolution, reconstruction, re-organisation, amalgamation or incapacity of the Supplier/Contractor or any change in the status, function, control or ownership of the Supplier/Contractor, or by the Employer holding or taking any other or further guarantees or securities or by the invalidity of any such guarantees or securities or by the Employer varying, releasing, exchanging, enforcing or omitting or neglecting to enforce any such guarantees or securities, or by any other thing which might otherwise wholly or partially discharge the Guarantor from its obligations under this Deed.
- 3** The guarantee and indemnity contained in this Deed shall be a continuing guarantee and indemnity and shall remain in full force and effect until all monies payable to the Employer by the Supplier/Contractor under or pursuant to the Contract shall have been duly paid and all the Supplier's/Contractor's obligations under or pursuant to the Contract shall have been duly performed.
- 4** If any payment received by the Employer pursuant to the provisions of this Deed or the Contract shall on the subsequent insolvency of the Supplier/Contractor or of the Guarantor be avoided under any laws relating to insolvency, such payment shall not be considered as having discharged or diminished the liability of the Guarantor hereunder; and the liability of the Guarantor hereunder shall continue to apply as if such payment had at all times remained owing by the Supplier/Contractor and the Guarantor shall indemnify the Employer in respect thereof.
- 5** This Deed shall be governed by *[English/Scots] law.
- 6** Where the proper law of this Deed is Scots Law by virtue of the foregoing provision, the parties prorogate the non-exclusive jurisdiction of the Scottish Courts and the word "assigns" contained in this Deed shall be deleted and the word "assignees" substituted thereafter.

[Delete if under English law]

IN WITNESS whereof these presents are executed as follows

SIGNED for and on behalf of the GUARANTOR

at

on theday of

by..... (*Director/Secretary/Authorised Signatory)

Full name

before the undernoted witness

Witness(*Director/Secretary/Authorised Signatory)

Full Name

Address

[Delete if under Scots law]

IN WITNESS whereof the Guarantor has executed and delivered this Deed on the date first stated above

THE COMMON SEAL of

was affixed to this DEED in the presence of the following persons who have signed this DEED for and on behalf in the capacities herein after stated

}
}

Director

Director/Company Secretary

OR

SIGNED as a DEED for and on behalf of

..... by:

Director

Director/Company Secretary

* Delete as appropriate