

AN tÚDARÁS NÁISIÚNTA IOMPAIR - NATIONAL TRANSPORT AUTHORITY

and

IARNRÓD ÉIREANN-IRISH RAIL

FRAMEWORK GRANT AGREEMENT

CONTENTS

Clause	Page
1. Definitions and Interpretation	2
2. The Grant	5
3. Payment of the Grant	5
4. Acknowledgement by Iarnród Éireann	5
5. Use of Public Transport Infrastructure	6
6. Cancellation and Repayment	7
7. Changes to the Services	8
8. Operation, Maintenance and Repair	10
9. Insurance and Replacement	12
10. Indemnities	13
11. Representations	14
12. Information Undertakings	15
13. General Undertakings	15
14. Changes to the Authority	16
15. Changes to Iarnród Éireann	16
16. Set-Off	17
17. Notices	17
18. Calculations and Certificates	18
19. Remedies and Waivers	18
20. Dispute as to Valuation	18
21. Whole Agreement	19
22. Counterparts	19
23. Governing Law	20
24. Enforcement	20

THIS AGREEMENT is made on *[insert date]* between:

- (1) An tÚdarás Náisiúnta Iompair-National Transport Authority, as established pursuant to the Dublin Transport Authority Act 2008, as amended by the Public Transport Regulation Act 2009 and having its principal office at Dún Scéine, Harcourt Lane, Dublin 2 (the "Authority"); and
- (2) Iarnród Éireann-Irish Rail, a private limited company having its principal office at Connolly Station, Dublin 1 ("Iarnród Éireann").

RECITALS

- (A) Section 48 of the Dublin Transport Authority Act 2008 (as amended, the "Act of 2008") provides that the Authority shall secure the provision of public passenger transport services by means of Public Transport Services Contracts.
- (B) Section 49 of the Act of 2008 provides that where the Authority enters into a Public Transport Services Contract under section 48, it may, subject to such conditions as it sees fit, make payments to the public transport operator concerned out of moneys provided by the Oireachtas or otherwise, in respect of the provision of public passenger transport services referred to in that contract.
- (C) Regulation (EC) No. 1370/2007 (the "PSO Regulation") on public passenger transport services by rail and by road lays down the conditions under which competent authorities, when imposing or contracting for Public Service Obligations, compensate public service operators for costs incurred and/or grant exclusive rights in return for the discharge of Public Service Obligations.
- (D) Section 52 of the Act of 2008 provides that the Authority shall enter into direct award contracts with Iarnród Éireann to secure certain rail passenger services. Pursuant to a Public Transport Services Contract dated 1 December 2009 between the Authority and Iarnród Éireann, the Authority granted to Iarnród Éireann the rights specified in the Public Service Contract and Iarnród Éireann agreed to provide the Services specified therein in accordance with the Public Service Contract, the Act of 2008 and the PSO Regulation.
- (E) Iarnród Éireann may wish from time to time to acquire new Public Transport Infrastructure in connection with the delivery of the Services specified in the Public Service Contract.
- (F) Subject to the terms of this Agreement, the Authority may wish from time to time to make available certain monies by way of grant or to make certain payments to Iarnród Éireann in accordance with section 45 and/or section 49 of the Act of 2008 to facilitate the acquisition of such new Public Transport Infrastructure by Iarnród Éireann.
- (G) The Authority and Iarnród Éireann acknowledge that any monies made available by the Authority to Iarnród Éireann is being made available in accordance with the PSO Regulation.

NOW IT IS AGREED AS FOLLOWS:

SECTION 1

INTERPRETATION

1. Definitions and Interpretation

1.1 Definitions

In this Agreement:

“Act of 2008” has the meaning given to it in Recital (A).

“Authorisation” means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

“Business Day” means a day (other than a Saturday or Sunday or public holidays) on which banks are open for general business in Dublin.

“Direct Award Contract” has the meaning assigned to it in section 47 of the Act of 2008.

“Encumbrance” means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, trust arrangement or security interest of any kind or other agreement or arrangement having the effect of conferring security (including title transfer and/or retention arrangements having a similar effect).

“Expert” has the meaning given to it in Clause 20 (*Dispute as to Valuation*).

“Grant” or “Grant Monies” means the sum or sums of money being made available by the Authority to Iarnród Éireann pursuant to, and in accordance with, a Grant Letter and this Agreement.

“Grant Balance” means the aggregate of:

- (a) any amount advanced by the Authority under this Agreement and any Grant Letter entered into pursuant to this Agreement in the twelve (12) months prior to the date of demand contemplated by Clause 6.2(b); and
- (b) in relation to any Grant advanced at any other time, the lower of:
 - (i) the amount of such Grant; and
 - (ii) the amortised value at such time of any Public Transport Infrastructure the subject of such Grant, on the basis that Iarnród Éireann complied with its obligations under the Grant Letter and this Agreement.

“Grant Letter” means a letter substantially in the form set out in the Schedule to this Agreement, or such other form as the Parties may agree, in which the Authority offers to make available to Iarnród Éireann a Grant or Grants and Iarnród Éireann accepts such offer.

“Party” means a party to this Agreement.

“PSO Regulation” has the meaning given to it in Recital (C).

“**Public Service Contract**” means the Direct Award Contract dated 1 December 2009 between the Authority and Iarnród Éireann concerning compensation for Public Service Obligations pursuant to the Act of 2008 and the PSO Regulation.

“**Public Service Obligation**” has the meaning assigned to it by section 47 of the Act of 2008.

“**Public Transport Infrastructure**” has the meaning assigned to it by the Act of 2008.

“**Public Transport Services Contract**” has the meaning assigned to it in section 47 of the Act of 2008.

“**Sale Amount**” means the amount received by Iarnród Éireann in respect of the sale of Public Transport Infrastructure following a tender process required by the Authority pursuant to Clause 6.2(b)(ii) or Clause 7.1.

“**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.

“**Service**” or “**Services**” means the rail passenger services Iarnród Éireann is required to provide pursuant to the Public Service Contract or any subsequent Direct Award Contract or Public Transport Services Contract made between the Parties.

“**Tax**” means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
- (i) the “**Authority**”, “**Iarnród Éireann**”, any “**Party**” or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
 - (ii) “**assets**” includes present and future properties, revenues and rights of every description;
 - (iii) a “**person**” includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) of two or more of the foregoing;
 - (iv) a “**regulation**” includes any regulation, rule, official directive, request or guideline (having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
 - (v) “**VAT**” shall be construed as a reference to value added tax including any similar tax which may be imposed in place thereof from time to time;
 - (vi) a provision of law is a reference to that provision as amended or re-enacted; and
 - (vii) a time of day is a reference to Dublin time.

(b) Section, Clause and Schedule headings are for ease of reference only.

1.3 Currency symbols and definitions

"€" and "euro" denote the lawful currency of Ireland.

SECTION 2**GRANT TO IARNRÓD ÉIREANN****2. The Grant****2.1 The Grant**

The Authority may make available to Iarnród Éireann from time to time Grants by way of grant, subject to, and in accordance with, this Agreement and the applicable Grant Letter.

2.2 Purpose of the Grant

The purpose for which each Grant is to be applied shall be as set out in the applicable Grant Letter.

3. Payment of the Grant**3.1 Payment of the Grant**

The Grant (or any part of a Grant as may be due in accordance with the Grant Letter) shall be paid to Iarnród Éireann within twenty (20) Business Days of the conditions specified in the relevant Grant Letter for such Grant (or part, as the case may be) being satisfied.

4. Acknowledgement by Iarnród Éireann**4.1 Acknowledgement by Iarnród Éireann**

Iarnród Éireann hereby acknowledges that:

- (a) the Authority, in making the Grants available to Iarnród Éireann, is not acting as a lender or finance provider of any kind; and
- (b) the Public Transport Infrastructure purchased by Iarnród Éireann in accordance with this Agreement is, subject to Clause 7.3, the sole responsibility of Iarnród Éireann.

SECTION 3

PUBLIC TRANSPORT INFRASTRUCTURE

5. Use of Public Transport Infrastructure

5.1 Use of Public Transport Infrastructure

- (a) Subject to Clause 5.1(b), Iarnród Éireann shall use the Public Transport Infrastructure solely and exclusively for the purpose of providing the Services.
- (b) Iarnród Éireann may use the Public Transport Infrastructure in connection with the provision of services other than the Services, provided that it pays to the Authority within ten (10) Business Days of the end of each Period an amount determined in accordance with the following:

$$MAx \frac{NPSH}{TSH}$$

Where:

MA is amount of grant divided by number of Periods in expected life of public transport infrastructure

NPSH is, in any Period, the number of hours (rounded upwards) in respect of which Public Transport Infrastructure has been used in connection with services other than Services; and

TSH is, in any Period, the number of hours (rounded upwards) in respect of which Public Transport Infrastructure has been used in connection with services (including Services)

(the "Repayment Mechanism").

- (c) For the purposes of this Clause 5.1, "Period" means each Iarnród Éireann accounting period of four weeks.
- (d) The Authority and Iarnród Éireann shall review the Repayment Mechanism within 12 months of the date of execution of this Agreement and discuss and negotiate in good faith any amendments to the Repayment Mechanism.

5.2 Restriction on Use

Iarnród Éireann shall not without the prior written consent of the Authority use or permit the use of any Public Transport Infrastructure except in accordance with Clause 5.1 above.

5.3 No alienation

Except with the prior written consent of the Authority, Iarnród Éireann shall not sell, alienate, assign, part with the possession of or otherwise dispose of or remove (save for purpose of normal maintenance, repair or replacement) or mortgage or charge or otherwise create, or permit to be created, any Encumbrance over the Public Transport Infrastructure or any part thereof.

SECTION 4

CANCELLATION AND REPAYMENT

6. Cancellation and Repayment

6.1 Cancellation and Repayment of Grant

The Authority may stop payment of the Grant and/or revoke and cancel the Grant and require repayment of the Grant Balance if any one or more of the following events occur:

- (a) if Iarnród Éireann commits a breach of any of the terms, conditions or warranties of this Agreement and fails to rectify such breach within fifteen (15) Business Days after written notice thereof has been served by the Authority on Iarnród Éireann;
- (b) if Iarnród Éireann enters into liquidation whether compulsory or voluntary or becomes insolvent or enters into receivership or examinership or enters into any arrangement with its creditors or takes or suffers any similar action in consequence of debt other than a bona fide amalgamation or reconstruction of Iarnród Éireann;
- (c) if it becomes unlawful for the Authority to perform any of its obligations as contemplated by this Agreement (whether by reference to the Regulation or otherwise);
- (d) if there is a breach by Iarnród Éireann of any of the provisions of Clause 5 (*Use of Public Transport Infrastructure*);
- (e) if Iarnród Éireann suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business without the prior written consent of the Authority; and
- (f) if Iarnród Éireann rescinds or purports to rescind or repudiates or purports to repudiate this Agreement or any Grant Letter.

6.2 Demand for Repayment / Request for Tender

Iarnród Éireann hereby covenants that on the occurrence of any of the events referred to in Clause 6.1:

- (a) it shall as soon as practicable notify the Authority of the occurrence of such event (other than in respect of Clause 6.1(c)); and
- (b) it shall, at the sole discretion of the Authority:
 - (i) within ten (10) Business Days of the date of a written demand from the Authority repay to the Authority the Grant Balance together with all costs reasonably incurred by the Authority in the recovery of such monies; or
 - (ii) within fifteen (15) Business Days of the date of a written request from the Authority initiate a tender process for the sale of the relevant Public Transport Infrastructure.

6.3 Amount Due

The amount specified by the Authority in any notice issued pursuant to Clause 6.2(b)(i) shall, except in the case of manifest error, be conclusive as to the amount due by the Iarnród Éireann to the Authority pursuant to Clause 6.2(b)(i).

6.4 Interest

If Iarnród Éireann fails to pay any amount payable by it under this Agreement:

- (a) on its due date; or
- (b) in the case of Clause 6.2(b)(ii), within fifteen (15) Business Days of the date of receipt by Iarnród Éireann of the Sale Amount,

interest shall accrue on the overdue amount from the due date up to the date of actual payment at a rate of 0.3% per month. Any interest accruing under this Clause 6.4 shall be immediately payable by Iarnród Éireann on demand by the Authority.

7. Changes to the Services

7.1 Changes to the Services

If:

- (a) there is a reduction or loss of the Services arising from Section 51 or Section 52(6) of the Act of 2008; or
- (b) to the extent not falling with (a), Iarnród Éireann ceases to provide some or all of the Services,

the Authority can require Iarnród Éireann to identify surplus Public Transport Infrastructure, together with information as to its state and maintenance within twenty (20) Business Days of the request being made and, at any time thereafter, the Authority can require Iarnród Éireann, within ten (10) Business Days thereof, either to:

- (i) subject to Clause 7.3, transfer to the Authority the surplus Public Transport Infrastructure free from any Encumbrance and in good repair, appearance and condition (fair wear and tear excepted); or
- (ii) subject to Clause 20, repay to the Authority an amount of the Grant equivalent to the amortised value of the surplus Public Transport Infrastructure; or
- (iii) initiate a tender process for the sale of the surplus Public Transport Infrastructure and pay the Authority the Sale Amount within fifteen (15) Business Days of the date of receipt by Iarnród Éireann of the Sale Amount.

7.2 Manufacturer's Warranties

If Iarnród Éireann elects to transfer the surplus Public Transport Infrastructure to the Authority in accordance with Clause 7.1, Iarnród Éireann shall, at the same time, transfer to the Authority any guarantee or warranty given by the manufacturer or supplier of the surplus Public Transport Infrastructure (to the extent permitted to do so) and any manuals or log books in respect of such surplus Public Transport Infrastructure.

7.3 Date of Transfer and Date of Sale

As between the Authority and Iarnród Éireann:

- (i) the Public Transport Infrastructure acquired by Iarnród Éireann in accordance with this Agreement are the sole responsibility of Iarnród Éireann up to the date of any transfer of such Public Transport Infrastructure to the Authority pursuant to Clause 7.1 (the "Date of Transfer") or the date of sale of such Public Transport Infrastructure pursuant to Clause 6.2(b)(ii) or Clause 7.1 (the "Date of Sale") (collectively, the "Relevant Public Transport Infrastructure");
- (ii) on and with effect from the Date of Transfer or the Date of Sale (as the case may be), Iarnród Éireann has no further obligation to maintain insurance in respect of the Relevant Public Transport Infrastructure; and
- (iii) except in respect of any liability arising, or the circumstances giving rise to such liability arising, prior to the Date of Transfer or the Date of Sale (as the case may be), Iarnród Éireann has no liability in respect of the Relevant Public Transport Infrastructure arising on or after the Date of Transfer or the Date of Sale.

SECTION 5**OPERATION, MAINTENANCE AND REPAIR****8. Operation, Maintenance and Repair****8.1 Operation and Use**

Iarnród Éireann shall operate the Public Transport Infrastructure:

- (a) in the normal and ordinary course of its operations and not for any purpose for which it is not designed or reasonably suited;
- (b) in accordance with all applicable laws;
- (c) subject to Clause 8.3(c), in accordance with any manuals and technical documents and all certificates and approvals relating to the Public Transport Infrastructure;
- (d) so as not to discriminate between the Public Transport Infrastructure and other transport infrastructure owned or operated by Iarnród Éireann;
- (e) subject to Clause 8.3(c), so as not to invalidate any manufacturer's warranties; and
- (f) so as not to render any applicable insurances invalid, void, voidable or unenforceable or render any sum payable under any applicable insurance repayable.

8.2 Licences and Taxes

Iarnród Éireann shall at its own expense register, if necessary, the Public Transport Infrastructure and pay any registration fees, licence fees, vehicle inspection fees, Taxes, tolls or other costs and expenses payable in connection with the purchase, registration, commissioning and/or licensing of the Public Transport Infrastructure.

8.3 Maintenance and Repair

Iarnród Éireann shall maintain, service and repair the Public Transport Infrastructure using suitably qualified personnel so as to:

- (a) keep all Public Transport Infrastructure in good repair, condition and appearance (fair wear and tear excepted);
- (b) keep all Public Transport Infrastructure clean internally and externally and free from rubbish, stains and graffiti;
- (c) comply with the applicable manufacturer's maintenance, component maintenance or structural repair manuals and corrosion prevention programmes and all modifications, service bulletins and similar requirements applicable to the Public Transport Infrastructure (the "Manufacturer's Requirements") except where Iarnród Éireann reasonably believes that any such Manufacturer's Requirements are unnecessary to achieve an acceptable standard of maintenance; and
- (d) not, without the prior written approval of the Authority, discriminate in its maintenance or repair of the Public Transport Infrastructure as between the Public Transport Infrastructure and other transport infrastructure owned or operated by Iarnród Éireann.

8.4 Alterations

Iarnród Éireann shall ensure that no modification to or change or alteration in the Public Transport Infrastructure is made without the prior written consent of the Authority which will have the effect of materially reducing the value of the Public Transport Infrastructure except as is:

- (a) necessary for compliance with applicable laws; or
- (b) required by the manufacturer.

Iarnród Éireann may, at its own expense, make modifications, alterations and improvements to the Public Transport Infrastructure (including making any associated changes to the manuals and technical documents) if such modifications, alterations and improvements do not have the effect of materially reducing the value or remaining useful life of the Public Transport Infrastructure.

8.5 Inspection

Iarnród Éireann shall permit:

- (a) the Authority;
- (b) the Authority's Representatives; or
- (c) such other persons as the Authority may nominate in connection with any competition for the award of a Public Service Contract,

(in the case of (a) and (b)) during normal business hours and, in the case of (c), during normal business hours, in each case on reasonable notice, to inspect the Public Transport Infrastructure. For the purpose of inspecting the Public Transport Infrastructure, Iarnród Éireann shall procure that the Authority or the Authority's Representatives are authorised to enter onto any land or into any premises at which the Public Transport Infrastructure may from time to time be located. For the avoidance of doubt, in the case of (a), (b) and (c), entry onto any land or into any premises is subject to compliance with Iarnród Éireann's health and safety requirements and all applicable health and safety legislation.

For the purposes of this Clause 8.5 and Clause 8.6(c), the "Authority's Representatives" means employees, consultants or advisers of the Authority.

8.6 Manuals and Technical Records

Iarnród Éireann shall:

- (a) maintain all such records, information and documents that are required to be maintained in respect of the Public Transport Infrastructure to comply with any applicable laws and in accordance with prudent ownership, operating and management practice;
- (b) keep accurate, complete and up to date records of the location of all Public Transport Infrastructure and of all maintenance, repairs, additions, alterations and modifications to, and removal of parts from, all Public Transport Infrastructure; and

- (c) subject to compliance with Iarnród Éireann's health and safety requirements and all applicable health and safety legislation, permit the Authority or the Authority's Representatives during normal business hours on reasonable notice to examine and take copies of such records, information and documents.

9. Insurance and Replacement

9.1 Insurance

Iarnród Éireann shall ensure that such insurances in respect of the Public Transport Infrastructure as may be required by law are taken out and maintained, and shall furnish such evidence in this respect as the Authority may require.

9.2 Replacement of Public Transport Infrastructure

If there should be damage to or loss of any of the Public Transport Infrastructure through fire or accident or any other cause the insurance or other compensation received by Iarnród Éireann in respect of such Public Transport Infrastructure shall be used to restore the Public Transport Infrastructure so damaged or lost and in the event of such compensation being insufficient for that purpose Iarnród Éireann shall bear the first €500,000 of the deficiency out of its own funds and half of any deficiency above this amount.

9.3 Substitution of Public Transport Infrastructure

- (a) If there should be damage to or loss of any Public Transport Infrastructure resulting in such Public Transport Infrastructure being unavailable for use, Iarnród Éireann may substitute for such Public Transport Infrastructure any other transport infrastructure owned by it provided that such transport infrastructure is of an equivalent specification, state of repair and condition to the Public Transport Infrastructure that is available for use.
- (b) Any transport infrastructure substituted for Public Transport Infrastructure in accordance with Clause 9.3(a) shall be deemed to be a Public Transport Infrastructure for the purposes of this Agreement and the provisions of this Agreement shall apply to such transport infrastructure for the period for time for which it is substituted and being used as Public Transport Infrastructure.

SECTION 6**INDEMNITIES****10. Indemnities****10.1 Iarnród Éireann Indemnity**

Subject to clause 10.2, clause 10.3 and clause 10.4, Iarnród Éireann hereby indemnifies and agrees to hold harmless on demand the Authority, its respective officers, agents, servants and/or employees (each an "Indemnified Person") from and against all and any loss, liability or claims which may arise as a direct result of :

- (a) any negligent act or omission of Iarnród Éireann or any person for whom Iarnród Éireann is responsible in connection with the performance of its obligations under this Agreement.;
- (b) failure to comply with any applicable laws;
- (c) the use of the Public Transport Infrastructure by Iarnród Éireann; or
- (d) any breach of this Agreement by Iarnród Éireann.

10.2 Iarnród Éireann shall not be liable, in contract, tort (including negligence) or for breach of duty or breach of statutory duty for:

- (a) any economic loss (including loss of revenues, profits, contracts, business or anticipated savings);
- (b) any loss of goodwill or reputation; or
- (c) any special or indirect or consequential losses

in any case, whether or not such losses were within the contemplation of the Parties at the date of this Agreement, or were suffered or incurred by a Party arising out of or in connection with any matter arising under this Agreement.

10.3 Such indemnity shall not operate to the extent that the act complained of arises directly from Iarnród Éireann's compliance with a direction of the Authority under the Act of 2008.

SECTION 7**REPRESENTATIONS AND UNDERTAKINGS****11. Representations**

Iarnród Éireann makes the representations and warranties set out in this Clause 12 to the Authority on the date of this Agreement.

11.1 Status

- (a) It is a corporation, duly incorporated and validly existing under the laws of Ireland.
- (b) It has the power to own its assets and carry on its business as it is being conducted.

11.2 Binding obligations

Obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations.

11.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, this Agreement do not and will not conflict with:

- (a) any law or regulation applicable to Iarnród Éireann;
- (b) Iarnród Éireann's constitutional documents; or
- (c) any agreement or instrument binding upon Iarnród Éireann or any of its assets.

11.4 Power and authority

- (a) Iarnród Éireann has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Agreement to which it is a party and the transactions contemplated by this Agreement.
- (b) No limit on any of Iarnród Éireann's powers will be exceeded as a result of anything contemplated by this Agreement.

11.5 Validity and admissibility in evidence

Iarnród Éireann has all Authorisations required to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Agreement and the transactions contemplated by this Agreement.

11.6 No misleading information

- (a) Any factual information which has been provided in writing to the Authority by or on behalf of Iarnród Éireann in relation to this Agreement was, or will be, true and accurate in all material respects at the date it was, or is, provided.
- (b) Nothing has occurred or been knowingly omitted from that factual information provided at the time it is provided and no information has been given or withheld

that results in the information or assumptions contained in that information provided at the time it is provided being untrue or misleading in any material respect.

11.7 Solvency

Iarnród Éireann has not taken any action nor have any steps been taken or legal proceedings started or threatened against it for winding up, examination, dissolution or re-organisation, the enforcement of any Security over its assets or for the appointment of a receiver, examiner, administrative receiver or administrator, trustee or similar officer of it or any of its assets.

12. Information Undertakings

The undertakings in this Clause 12 remain in force from the date of this Agreement for so long as any amount is outstanding under this Agreement.

12.1 Information: miscellaneous

Iarnród Éireann shall promptly supply to the Authority, upon request, such information regarding the financial condition, business, operations and related matters of Iarnród Éireann and/or information on the use, condition and maintenance/operational records of the Public Transport Infrastructure as the Authority may reasonably request and to the extent that such information relates to the Public Transport Infrastructure.

12.2 Notification of default

Iarnród Éireann shall notify the Authority of the occurrence of any event referred to in Clause 6.1 (*Cancellation and Repayment of Grant*) (other than in respect of Clause 6.1(c)) promptly upon becoming aware of its occurrence.

13. General Undertakings

The undertakings in this Clause 13 remain in force from the date of this Agreement for so long as any amount is outstanding under this Agreement.

13.1 Authorisations

Iarnród Éireann shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) where requested by the Authority, supply certified copies to the Authority of,

any Authorisation required under any law or regulation to enable it to perform its obligations under this Agreement and to ensure the legality, validity, enforceability or admissibility in evidence of this Agreement.

13.2 Change of business

Iarnród Éireann shall procure that no substantial change is made to the nature of its business contemplated by the Public Service Contract from that carried on at the date of this Agreement.

SECTION 8**CHANGES TO THE PARTIES****14. Changes to the Authority****14.1 Assignments and transfers by the Authority**

The Authority may:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations,

under this Agreement to a statutory body corporate without the consent of Iarnród Éireann.

15. Changes to Iarnród Éireann**15.1 Assignment and transfers by Iarnród Éireann**

Iarnród Éireann may not assign any of its rights or transfer any of its rights or obligations under this Agreement without the consent in writing of the Authority.

SECTION 9**ADMINISTRATION****16. Set-Off****16.1 No set-off by Iarnród Éireann**

Subject to Clause 20, all payments to be made by Iarnród Éireann under this Agreement shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

16.2 Set-off by the Authority

The Authority may set off any amount due and owing from Iarnród Éireann under this Agreement against any amount due and owed by the Authority to Iarnród Éireann.

17. Notices**17.1 Communications in writing**

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

17.2 Addresses

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 Agreement is that identified with its name below in the case of the Authority, that identified with its name below in the case of Iarnród Éireann, or any substitute address, fax number or department or officer as Iarnród Éireann may notify to the Authority (or the Authority may notify to Iarnród Éireann, if a change is made by the Authority) by not less than five Business Days' notice.

17.3 Delivery

(a) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:

- (i) if by way of fax, when received in legible form; or
- (ii) if by way of letter, when it has been left at the relevant address or five Business Days' after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 17.2 (*Addresses*), if addressed to that department or officer.

17.4 Notification of address and fax number

Promptly upon receipt of notification of an address, and fax number or change of address or fax number pursuant to Clause 17.2 (*Addresses*) or changing its own address or fax number, the Authority shall notify the other Parties.

17.5 English language

- (a) Any notice given under or in connection with this Agreement must be in English.
- (b) All other documents provided under or in connection with this Agreement must be:
 - (i) in English, or
 - (ii) if not in English, and if so required by the Authority, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

18. Calculations and Certificates**18.1 Accounts**

Subject to Clause 20, in any litigation arising out of or in connection with this Agreement, the entries made in the accounts by the Authority are, in the absence of manifest error, *prima facie* evidence of the matters to which they relate.

18.2 Certificates and determinations

Subject to Clause 20, any certification or determination by the Authority of a rate or amount under this Agreement is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

18.3 Day count convention

Any interest 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 360 days or, in any case where the practice in the European interbank market differs, in accordance with that market practice.

18.4 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.

19. Remedies and Waivers

No failure to exercise, nor any delay in exercising, on the part of the Authority, any right or remedy under this Agreement 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. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

20. Dispute as to valuation

If any dispute arises out of or in connection with the value of the Public Transport Infrastructure, either Party may give a notice that a dispute exists (a "Dispute Notice") to the other Party and if the Parties have not resolved the dispute within five (5) Business Days of the date of the Dispute Notice, the following provisions apply:

- (a) either Party may refer the dispute to an independent person agreed by the Parties or in default of agreement within fourteen (14) Business Days of the date of the Dispute Notice, an independent person nominated by the Chairman of the Chartered Institute of Arbitrators Irish Branch (the "Expert"), with a request that the Expert make a decision on the dispute within twenty one (21) Business Days of receiving the reference;
- (b) in a reference, the Expert shall act as an expert and not as an arbitrator;
- (c) the decision of the Expert is, in the absence of fraud or manifest error, final and binding on both Parties;
- (d) the Parties shall bear the Expert's costs equally;
- (e) the Parties shall with reasonable expedition endeavour to agree any terms of reference of the Expert or procedures relating to the determination (failing which the Expert shall determine his own terms of reference and the procedures to be applied to the determination of any dispute pursuant to this clause); and
- (f) each Party shall promptly furnish to the Expert all such assistance, documents, information and personnel as the Expert may require for the purpose of the determination.

21. Whole Agreement

This Agreement and the Public Transport Services Contract between the Authority and Iarnród Éireann, dated 1st December 2009, constitute the entire agreement between the Parties relating to the subject matter of this Agreement, and supersede all prior representations, arrangements, understandings and agreements between the Parties. No Party has relied on any representation, arrangement, understanding or agreement (whether written or oral) not expressly set out or referred to in this Agreement or the said Public Transport Services Contract.

22. Counterparts

This Agreement 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 Agreement.

SECTION 10**GOVERNING LAW AND ENFORCEMENT****23. Governing Law**

This Agreement is governed by and shall be construed in accordance with Irish law.

24. Enforcement

- (a) Except pursuant to Clause 20 (*Disputes as to Valuation*), the courts of Ireland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement (a "Dispute")).
- (b) The Parties agree that the courts of Ireland are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

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

SIGNATURES

IARNRÓD ÉIREANN

IARNRÓD ÉIREANN-IRISH RAIL

By:

Address: Iarnród Éireann Head Office
Connolly Station
Dublin 1

Fax: +353 (0) 1 8731195

Attention: Aidan Cronin
Company Secretary

THE AUTHORITY

AN tÚDARÁS NÁISIÚNTA IOMPAIR-NATIONAL TRANSPORT AUTHORITY

By:

Address: Dun Scéine,
Harcourt Lane,
Dublin 2.

Fax: +353 (0) 1 879 8333

Attention: Gerry Murphy
Chief Executive

SCHEDULE**Form of Offer Letter**

[Date]

Iarnród Éireann-Irish Rail

FAO: The Company Secretary

Grant Offer Letter

Dear Sirs

We refer to the Framework Grant Agreement dated [•] between us (the “Framework Agreement”). Terms and expressions used in this letter shall have the same meaning as in the Framework Agreement unless the context otherwise requires.

You have notified us that you [*insert purpose of grant*] and the Authority has determined to make available to you the following grant on the terms and conditions of the Framework Agreement and this letter.

1. This is a Grant Letter for the purposes of the Framework Agreement.
2. The Grant being made available by the Authority is [*insert details of the grant, e.g., the amount of [•] in respect of each piece of Public Transport Infrastructure being acquired provided that the aggregate amount to be made available pursuant to this Offer Letter shall not exceed [•]*] (the “Grant”).
3. The Grant is being made available by the Authority to Iarnród Éireann to [facilitate the acquisition by Iarnród Éireann] / [reimburse Iarnród Éireann for expenditure incurred by it in connection with the acquisition] of Public Transport Infrastructure to be used for the purpose of providing the Services.
4. The Grant shall be made by the Authority:
 - (a) upon it receiving, in form and substance satisfactory to it, the following:

[*insert applicable conditions precedent, such as*

 - (i) *evidence of the [expenditure incurred and paid] / [invoices] as the purchase price for the Public Transport Infrastructure;*
 - (ii) *evidence the insurances referred to in Clause 9.1 have been put in place;*

- (iii) *that Iarnród Éireann is up to date in its affairs with the Revenue Commissioners and that prior to payment of the Grant it shall submit an up to date tax clearance certificate from the Revenue Commissioners;*
 - (iv) *a copy of the contract (and any document relating thereto requested by the Authority) entered into by Iarnród Éireann with the vendor in connection with the acquisition of the Public Transport Infrastructure;*
 - (v) *evidence that Iarnród Éireann has acquired the Public Transport Infrastructure the subject of the Grant;*
- (b) if the representations set out in the Framework Agreement are true and correct as of [each/the] date the Grant is made.
5. Payment of the Grant shall be made in accordance with Clause 3.1 of the Framework Agreement.
6. The Framework Agreement shall apply to this letter and the Grant contemplated by this Grant Letter except to the extent modified by this Grant Letter and any such modification has been agreed with Iarnród Éireann.
7. In the event of an inconsistency between the terms of this Grant Letter and the Framework Agreement, the terms of this Grant Letter shall prevail.

Please sign where indicated below to acknowledge your acceptance of, and agreement to, the foregoing.

Yours faithfully

**AN tÚDARÁS NÁISIÚNTA IOMPAIR -
NATIONAL TRANSPORT AUTHORITY**

ACCEPTED AND AGREED THIS [*]

IARNRÓD ÉIREANN-IRISH RAIL