

Dated 30<sup>th</sup> April 2015

between

**HS1 LIMITED**

and

**LONDON & SOUTH EASTERN RAILWAY LIMITED**

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**THIRD SUPPLEMENTAL AGREEMENT**  
relating to the  
**FRAMEWORK TRACK ACCESS AGREEMENT**  
for Passenger Services dated 13 March 2014, as amended by  
a First Supplemental dated 11 December 2014 and  
Second Supplemental Agreement dated 8 January 2015

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**THIS THIRD SUPPLEMENTAL AGREEMENT** is made the 30<sup>th</sup> day of April 2015

**BETWEEN:**

- (1) **HS1 LIMITED**, a company registered in England and Wales under number 03539665 having its registered office at 12<sup>th</sup> Floor, One Euston Square, 40 Melton Street, London, NW1 2FD ("**HS1 Ltd**"); and
- (2) **LONDON & SOUTH EASTERN RAILWAY LIMITED**, a company registered in England and Wales under number 4860660 having its registered office at 3<sup>rd</sup> Floor, 41-51 Grey Street, Newcastle Upon Tyne, Tyne & Wear, NE1 6EE (the "**Train Operator**").

**WHEREAS**

- (A) Pursuant to a framework track access agreement for passenger services dated 13 March 2014 (as amended) (the "**Track Access Agreement**") made between HS1 Ltd and the Train Operator, HS1 Ltd granted the Train Operator permission to use certain track comprised in HS1.
- (B) HS1 Ltd and the Train Operator have agreed to amend and restate the Track Access Agreement as set out in this Third Supplemental Agreement.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 Save as expressly provided to the contrary in this Third Supplemental Agreement, unless the context requires otherwise:
  - (a) words and expressions defined in the Track Access Agreement shall have the same meaning when used in this Third Supplemental Agreement; and
  - (b) the rules of interpretation set out in paragraph 1.2 of Section 1 to the Terms have effect in relation to this Third Supplemental Agreement.

**2. AMENDMENTS**

- 2.1 Subject to the parties obtaining the prior approval of the ORR, with effect from 1 April 2015 the Track Access Agreement shall be amended and restated so that it shall be read and construed as set out in Appendix 1 to this Third Supplemental Agreement.

**3. CONTINUATION**

- 3.1 This Third Supplemental Agreement is supplemental to the Track Access Agreement.
- 3.2 Except as varied by the terms of this Third Supplemental Agreement, the Track Access Agreement will remain in full force and effect and any reference in the Track Access Agreement to the Contract or to any provision of the Contract will be construed as a reference to the Track Access Agreement, or that provision of the Track Access Agreement, as amended by this Third Supplemental Agreement.

**4. MISCELLANEOUS**

### **2.3 Compliance by other operators**

HS1 Ltd shall ensure that all operators of trains having permission to use any track comprised in HS1 agree to comply with the HS1 Network Code and each of the HS1 Operational Codes.

### **2.4 Modification of the Terms**

The Terms shall be amended by replacing Paragraph 1.2 of Section 5 of the Terms with the following text:

"Subject to paragraph 2 and the other provisions of the Contract, HS1 Ltd shall indemnify the Train Operator against all Relevant Losses resulting from:

- (a) a failure by HS1 Ltd to comply with its Safety Obligations;
- (b) any Environmental Damage to HS1 arising:
  - (i) directly from any acts or omissions of HS1 Ltd;
  - (ii) from any Environmental Condition known to have existed prior to 24 June 2009;
- (c) any damage to the Specified Equipment or other vehicles or things brought onto HS1 in accordance with the permission to use granted by the Contract arising directly from HS1 Ltd's wilful default, negligence or failure to comply with its obligations under the Contract; and
- (d) a breach by HS1 Ltd of the Contract."

## **3 PRECEDENCE OF DOCUMENTS**

3.1 In the event of any discrepancy, inconsistency, divergence or anomaly arising between the provisions of the Contract, the order of priority shall be as follows, save where expressly provided to the contrary:

- (a) first, the HS1 Network Code;
- (b) second, this Agreement;
- (c) third, the Terms; and
- (d) fourth, the HS1 Operational Codes.

## **4 SCHEDULES TO THIS AGREEMENT**

4.1 Schedules 1 to 6 (inclusive) to this Agreement shall have effect.

## **SCHEDULE 1: CONTRACT PARTICULARS**

1. HS1 Ltd's address for service of notices is:  
HS1 Limited  
12<sup>th</sup> Floor, One Euston Square, 40 Melton Street  
London NW1 2FD  
All written notices to be marked:  
"URGENT: ATTENTION THE GENERAL COUNSEL AND COMPANY SECRETARY"
  
2. The Train Operator's address for the service of notices is:  
London & South Eastern Railway Limited  
Friars Bridge Court  
41 – 45 Blackfriars Road  
London SE1 8NZ  
All written notices to be marked:  
"URGENT: ATTENTION FINANCE AND CONTRACTS DIRECTOR"
  
3. The Secretary of State's address for the service of notices is  
The Secretary of State  
Department for Transport  
Great Minster House  
London SW1P 4DR
  
4. Commencement Date: 31 December 2014
  
5. Expiry Date: 31 December 2024
  
6. Previous Access Agreement: Framework Track Access Agreement between HS1 Ltd and London & South Eastern Railway Limited dated 14 August 2009 (as amended)

## **SCHEDULE 2: THE ROUTES**

1. The Routes comprise the Main Routes in each direction as described below:
  - (a) St Pancras International to Ashford West Boundary;
  - (b) St Pancras International to Springhead Road Junction;
  - (c) St Pancras International to Temple Mills Boundary; and
  - (d) Ebbsfleet International to Church Path Pit Siding.
  
2. The Routes comprise the Diversionary Routes in each direction as described below:
  - (a) Southfleet Junction to Fawkham Junction; and
  - (b) Ashford West Junction to Ashford East Junction.

### **SCHEDULE 3: COLLATERAL AGREEMENTS**

1. An access agreement between (1) the Train Operator and (2) HS1 Ltd granting the Train Operator permission to use St Pancras International.
2. An access agreement between (1) the Train Operator and (2) HS1 Ltd granting the Train Operator permission to use Ebbsfleet International.
3. An access agreement between (1) the Train Operator and (2) HS1 Ltd granting the Train Operator permission to use Stratford International.
4. The CTRL Claims Allocation and Handling Agreement and the agreement under which the Train Operator agrees to become a party to the CTRL Claims Allocation and Handling Agreement.
5. The Disputes Resolution Agreement dated 18 February 1999 between the Secretary of State for the Environment, Transport and the Regions; London & Continental Railways Limited; Railtrack Group Plc and others ("Disputes Resolution Agreement"), and the agreement under which the Train Operator agreed to become a party to the Disputes Resolution Agreement.
6. The franchise agreement dated 29 November 2005 between (1) the Train Operator and (2) the Secretary of State under which the Train Operator undertakes to provide or procure the provision of all or a material part of the Services (or any other agreement with the Secretary of State which replaces such franchise agreement).
7. The Direct Agreement between the Secretary of State for Transport, the Train Operator and HS1 Ltd with respect to the Contract.

**SCHEDULE 4: TRACK CHARGES**

**PART 1**

**Other Services Charge – None**

**PART 2**

<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>	<b>H</b>	<b>I</b>	<b>J</b>
<b>Service Group</b>	<b>Vehicle Category</b>	<b>IRC Per Train Per Minute</b>	<b>Discount Factor</b>	<b>Chargeable Journey Time (Minutes)</b>	<b>DI Costs OMRCA1</b>	<b>DI Costs OMRCA2</b>	<b>LTOP Costs OMRCB</b>	<b>Pass Through Costs OMRCC</b>	<b>Additional IRC Per Train Per Minute</b>
Ashford - St Pancras	Class 395	£69.57	1	31	£2.58	£3.12	£22.89	£7.73	£0.31
Springhead – St Pancras	Class 395	£69.57	1	16.5	£2.58	£3.12	£22.89	£7.73	£0.31
Ebbsfleet – St Pancras	Class 395	£69.57	1	14	£2.58	£3.12	£22.89	£7.73	£0.31

St Pancras - Ebbsfleet	Class 395	£69.57	1	15	£2.58	£3.12	£22.89	£7.73	£0.31
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**Notes to Table**

1. The Additional IRC set out in Column J of the table above shall be levied by HS1 Ltd on the Train Operator between:
  - a. 1 April 2015; and
  - b. the earlier of:
    - i. the date of expiry or earlier termination of this Agreement; and
    - ii. 31 March 2025.
  
2. The Additional IRC to be levied by HS1 Ltd on the Train Operator shall at the commencement of each Relevant Year be multiplied by I, where I equals:

$$RPI_t \div RPI_0$$

where:

$RPI_t$  means the RPI published or determined with respect to February in Relevant Year t-1; and

$RPI_0$  means the RPI published or determined with respect to February 2013 provided that where a value of RPI published or determined with respect to any February is lower than the value of RPI published or determined with respect to any previous February in or after 2013, RPI shall remain at the higher value.

## SCHEDULE 5: THE SERVICES AND THE SPECIFIED EQUIPMENT

### 1 Definitions

1.1 In this Schedule unless the context otherwise requires:

"Arrival"	means arrivals of the Specified Equipment at any of the Stations;
"Contingent Right"	means a right under this Schedule 5 which is not a Firm Right and which is subject to the fulfilment of all Bids in respect of competing Firm Rights and any additional contingency specified in this Schedule 5;
"Contingent Train Slot"	means a Train Slot to which the Train Operator has Contingent Rights under the Contract as specified in paragraph 2.6A;
"Day"	means any period of 24 hours beginning at 0200 hours and ending immediately before the next succeeding 0200 hours, and any reference in this Schedule to any named day of the week shall be to such period commencing on that named day;
"Departures"	means departures of the Specified Equipment from any of the Stations;
"Evening Peak"	means in relation to the Departures from St Pancras International, the period beginning at 1630 hours and ending at 1829 hours on each Week Day;
"Firm Right"	has the meaning ascribed to it in Part D of the HS1 Network Code;
"Firm Train Slot"	means a Train Slot to which the Train Operator has Firm Rights under the Contract and are as specified in Table 2.1;
"Morning Peak"	means in relation to the Arrivals to St Pancras International, the period beginning at 0700 hours and ending at 0859 hours on each Week Day;
"NR Network Boundary"	has the meaning ascribed to it in Part A of the HS1 Network Code;
"Off Peak"	means Arrivals at St Pancras International during the period other than the Morning Peak and Departures from St Pancras International during the period other than the Evening Peak;
"Scheduled"	has the meaning ascribed to it in Part A of the HS1 Network Code;;
"Service Group"	means any one or more (as the context may require) of the service groups described in this Schedule 5 to the Contract;
"Standard Specified Equipment"	means, in respect of any Service specified in column 1 of Table 2.1, the Specified Equipment listed opposite that service in column 3 of Table 2.1;
"Station"	means St Pancras International, Ebbsfleet International and/or Stratford International (as the case may be);
"Timetable Week"	has the meaning given to it in Part D of the HS1 Network Code;
"Train Service Code" or "TSC"	means the eight character code applied in the Performance Monitoring System and used to identify Services;
"Week Day"	means any Day (including a Public Holiday) falling within a Timetable Week, which is not a Saturday or a Sunday.

- 1.2 Unless otherwise stated, where in this Schedule a period is expressed to be between two specific times that period shall be inclusive of both such times.
- 1.3 The Train Operator's rights under this Schedule as to numbers of Firm Train Slots per Day are calculated by reference to departures from the Scheduled start point on the Day in question, notwithstanding that a Service may not be Scheduled to arrive at its end point until the immediately succeeding Day.

## 2. Firm Train Slots and Standard Specified Equipment

Table 2.1: Firm Train Slots and Standard Specified Equipment

1					2			3	
Service Description : LSER SLC2 HS1 Service					Firm Train Slots				
From	To	Description	TSC	Service Group	Week Day	Saturday	Sunday	Standard Equipment	Specified
Ashford West Junction	St Pancras International	Morning Peak	24647000	Ashford West Junction and St Pancras	8	0	0	Class 395	
St Pancras International	Ashford West Junction	Evening Peak	24647000	Ashford West Junction and St Pancras	8	0	0	Class 395	
Ashford West Junction	St Pancras International	Off Peak	24647004	Ashford West Junction and St Pancras	34	36	31	Class 395	
St Pancras International	Ashford West Junction	Off Peak	24647004	Ashford West Junction and St Pancras	35	36	31	Class 395	

Springhead Road Junction	St Pancras International	Morning Peak	24648000	Springhead Junction and St Pancras	7	0	0	Class 395
St Pancras International	Springhead Road Junction	Evening Peak	24648000	Springhead Junction and St Pancras	7	0	0	Class 395
Springhead Road Junction	St Pancras International	Off Peak	24648004	Springhead Junction and St Pancras	32	33	27	Class 395
St Pancras International	Springhead Road Junction	Off Peak	24648004	Springhead Junction and St Pancras	32	34	27	Class 395
Ebbsfleet	St Pancras International	Morning Peak	24649000	Ebbsfleet and St Pancras Shuttle	1	0	0	Class 395
St Pancras International	Ebbsfleet	Evening Peak	24649000	Ebbsfleet and St Pancras Shuttle	0	0	0	Class 395
Ebbsfleet	St Pancras International	Off Peak	24649004	Ebbsfleet and St Pancras Shuttle	0	0	0	Class 395
St Pancras International	Ebbsfleet	Off Peak	24649004	Ebbsfleet and St Pancras Shuttle	0	0	0	Class 395

### *Firm Train Slots*

- 2.1 The Train Operator has Firm Rights to the number of passenger Train Slots in the Working Timetable as listed against each Service specified in Table 2.1 under the heading "Firm Train Slots" during the time period specified under the heading "Description" in Table 2.1 and on the Days so listed.
- 2.2 Subject to paragraph 2.3, the Train Operator has Firm Rights to make Ancillary Movements of the Specified Equipment to the extent necessary or reasonably required to give full effect to other Firm Rights of the Train Operator, including:
  - (a) movements of the Specified Equipment for the purpose of maintenance of the Specified Equipment to and from maintenance depots;
  - (b) movements for crew training purposes; and
  - (c) empty stock movements.
- 2.3 For the purpose of paragraph 2.2, Ancillary Movements shall not include movements of rolling stock for the purpose of crew training to the extent that the rolling stock concerned has not achieved vehicle and route acceptance necessary for its use in the carriage of passengers on the Route concerned.
- 2.4 Subject to paragraph 2.5, the entitlement of the Train Operator to Firm Train Slots on any Public Holiday will be in accordance with the Firm Train Slots specified in Table 2.1 for the Day of the Timetable Week on which the Public Holiday falls.
- 2.5 HS1 will be closed on 25 December every year and save as otherwise agreed in writing the Train Operator shall not have rights to operate Services on this day.
- 2.6 The exercise of a Stabling right or the making of an Ancillary Movement shall not count against the number of Firm Train Slots.

### *Contingent Train Slots*

- 2.6A The Train Operator has Contingent Rights to relief Passenger Train Slots for special or seasonal events, whenever the Train Operator believes (acting in a reasonable and proper manner) that a relief Passenger Train Slot is necessary to accommodate anticipated customer demand. These Contingent Rights are subject to:
  - (a) the whole of the relief Passenger Train Slot operating over the Routes as described in Schedule 2;
  - (b) the relief Passenger Train Slot operating using the Specified Equipment; and
  - (c) each relief Passenger Train Slot being allocated the relevant Train Service Code.

### *Standard Equipment*

- 2.7 The Train Operator has Firm Rights to use the Standard Specified Equipment set out in column 3 of Table 2.1. Any Standard Specified Equipment may not be used until and unless the necessary route clearance has been obtained.

### *Train Length*

- 2.8 The train length shall not be greater than 12 cars (2x6 unit sets) in the case of the Standard Specified Equipment.

## **Other rights**

### *Station Calls*

- 2.9 In respect of all Services, the Train Operator has Firm Rights to call at St Pancras International, Stratford International and Ebbsfleet International.

**SCHEDULE 6: PERFORMANCE REGIME**

A	B	C	D	E	F	G	H	I
Traffic Type	<b>HS1 Poor Performance Threshold</b> (average delay per train expressed in minutes)	<b>Payment Rate</b> (per minute of average delay)	<b>HS1 Good Performance Threshold</b> (average delay per train expressed in minutes)	<b>Bonus Payment Rate</b> (per minute of average delay)	Cancellation Minutes	<b>Train Operator's Performance Benchmark</b> (average delay per train expressed in minutes)	<b>HS1 Ltd Performance Benchmark</b>	<b>TOC on TOC Receipt Benchmark</b>
Domestic Passenger	0.22	£53.84	0.03	£13.46	30	0.33	0.11	0.29

**IN WITNESS** whereof the duly authorised representatives of HS1 Ltd and the Train Operator have executed this Agreement on the date first above written.

Signed by .....

Print name .....

Duly authorised for and on behalf of

**HS1 LIMITED**

Acting under a Power of Attorney Dated 13<sup>th</sup> June 2013

In the presence of:

Witness Signature .....

Witness Name .....

Witness Address .....

Signed by .....

Print name .....

Duly authorised for and on behalf of

**LONDON & SOUTH EASTERN RAILWAY LIMITED**

In the presence of:

Witness Signature .....

Witness Name .....

Witness Address .....

Dated 2015

between

**HS1 LIMITED**

and

**LONDON & SOUTH EASTERN RAILWAY LIMITED**

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**THIRD SUPPLEMENTAL AGREEMENT**  
relating to the  
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**THIS THIRD SUPPLEMENTAL AGREEMENT** is made the            day of            2015

**BETWEEN:**

- (1) **HS1 LIMITED**, a company registered in England and Wales under number 03539665 having its registered office at 12<sup>th</sup> Floor, One Euston Square, 40 Melton Street, London, NW1 2FD ("**HS1 Ltd**"); and
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**WHEREAS**

- (A) Pursuant to a framework track access agreement for passenger services dated 13 March 2014 (as amended) (the "**Track Access Agreement**") made between HS1 Ltd and the Train Operator, HS1 Ltd granted the Train Operator permission to use certain track comprised in HS1.
- (B) HS1 Ltd and the Train Operator have agreed to amend and restate the Track Access Agreement as set out in this Third Supplemental Agreement.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 Save as expressly provided to the contrary in this Third Supplemental Agreement, unless the context requires otherwise:
  - (a) words and expressions defined in the Track Access Agreement shall have the same meaning when used in this Third Supplemental Agreement; and
  - (b) the rules of interpretation set out in paragraph 1.2 of Section 1 to the Terms have effect in relation to this Third Supplemental Agreement.

**2. AMENDMENTS**

- 2.1 Subject to the parties obtaining the prior approval of the ORR, with effect from 1 April 2015 the Track Access Agreement shall be amended and restated so that it shall be read and construed as set out in Appendix 1 to this Third Supplemental Agreement.

**3. CONTINUATION**

- 3.1 This Third Supplemental Agreement is supplemental to the Track Access Agreement.
- 3.2 Except as varied by the terms of this Third Supplemental Agreement, the Track Access Agreement will remain in full force and effect and any reference in the Track Access Agreement to the Contract or to any provision of the Contract will be construed as a reference to the Track Access Agreement, or that provision of the Track Access Agreement, as amended by this Third Supplemental Agreement.

**4. MISCELLANEOUS**

The provisions of paragraphs 1 (*Confidentiality*), 2 (*Assignment and Novation*), 3 (*Dispute Resolution*), 4 (*Railways Regulations*), 5.1 (*Non Waiver*), 5.2 (*Amendment*), 5.3 (*Entire Contract and Exclusive Remedies*), 5.4 (*Notices*), 5.7 (*Contracts (Rights of Third Parties) Act 1999*) and 5.8 (*Invalidity*) of Section 9 of the Terms shall apply to this Third Supplemental Agreement as though those paragraphs were set out in this Third Supplemental Agreement, but as if references in those paragraphs to "the Contract" were references to "this Third Supplemental Agreement".

**5. COUNTERPARTS**

This Third Supplemental Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts each of which, when executed and delivered, shall constitute an original but all the counterparts shall together constitute one and the same instrument.

**6. GOVERNING LAW**

This Third Supplemental Agreement and any non-contractual obligations arising out of or connected with this Third Supplemental Agreement shall be governed by and construed in accordance with the laws of England.

**IN WITNESS** whereof this **THIRD SUPPLEMENTAL AGREEMENT** has been executed and delivered as a deed by the parties hereto on the day and year first written above.

**EXECUTED as a DEED** by )  
**HS1 LIMITED** acting by: ) .....  
) Authorised signatory  
under a power of attorney )  
dated )  
)  
) .....  
) Witness  
) Witness name:  
) Witness address:

**EXECUTED as a DEED** by )  
**LONDON &** ) .....  
**SOUTH EASTERN** )  
**RAILWAY LIMITED** ) Director  
acting by )  
) .....  
) Director/Secretary

**APPENDIX 1**

**Amended and Restated Track Access Agreement**