

Dated:

10 January 2014

Second Supplemental Agreement

between

Network Rail Infrastructure Limited

and

Direct Rail Services Limited

relating to

The amendment of a track access contract

DRAFT

THIS SECOND SUPPLEMENTAL AGREEMENT is dated **10 January 2014** and made

BETWEEN:

- (1) **NETWORK RAIL INFRASTRUCTURE LIMITED** a company registered in England under number 2904587 having its registered office at Kings Place, 90 York Way, London, N1 9AG ("Network Rail"); and;
- (2) **DIRECT RAIL SERVICES LIMITED** a company registered in England (number 3020822) having its registered office at Herdus House, Westlake Science & Technology Park, Moor Row, Cumbria CA24 3HU (The "Train Operator").

WHEREAS

- (A) The parties entered into a Track Access Agreement (Non-Passenger Services) dated 8 January 2010 in a form approved by the Office of Rail Regulation ("ORR", previously the Rail Regulator) pursuant to section 18 of the Act (which track access agreement as subsequently amended is hereafter referred to as the "Agreement").
- (B) The parties propose to enter into this Second Supplemental Agreement in order to vary the Agreement.

IT IS HEREBY AGREED as follows:

1. INTERPRETATION

In this Second Supplemental Agreement:-

- (A) Words and expressions defined in and rules of interpretation set out in the Agreement shall have the same meaning and effect when used in this Second Supplemental Agreement except where the context requires otherwise; and

2. EFFECTIVE DATE AND TERM

- 2.1 The amendments to the Agreement as set out in this Second Supplemental Agreement shall have effect from the Effective Date and shall cease to have effect when the Agreement shall cease to have effect.

3. AMENDMENTS TO THE AGREEMENT

- 3.1 The rights table in Schedule 5 of the Track Access Agreement shall be deleted and replaced with the attached rights table in Annex 1.

4. GENERAL

The parties agree that the Agreement, as amended by this Second Supplemental Agreement, shall remain in full force and effect in accordance with its terms, and with effect from and including the Effective Date and during the period in which the amendments made by this Second Supplemental Agreement are to have effect, all references in the Agreement to “the Agreement”, “herein”, “hereof”, “hereunder” and other similar expressions shall, unless the context requires otherwise, be read and construed as a reference to the Agreement as amended by this Second Supplemental Agreement.

5. LAW

This Second Supplemental Agreement shall be governed by, construed and given effect to in all respects in accordance with English Law.

6. COUNTERPARTS

This Second Supplemental Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original, but all the counterparts shall together constitute but one and the same instrument.

7. CONTRACTS (RIGHTS OF EIGHTH PARTIES) ACT 1999

No person who is not a party to this Supplemental Agreement shall have any right under the Contracts (Rights of Eighth Parties) Act 1999 to enforce any term of this Supplemental Agreement.

IN WITNESS WHEREOF Network Rail and the Train Operator have, by their duly authorised representatives, respectively entered into this Supplemental Agreement on the date first above written.

SIGNED by)
)
for and on behalf of)
NETWORK RAIL INFRASTRUCTURE LIMITED)

SIGNED by)
)
for and on behalf of)
DIRECT RAIL SERVICES)

ANNEX 1

Schedule 5 Rights Table