

Without prejudice and subject to contract (DRAFT)

Seventh Supplemental Agreement

between

Network Rail Infrastructure Limited

and

Colas Rail Limited

relating to

The amendment of a track access agreement

THIS SEVENTH SUPPLEMENTAL AGREEMENT is dated _____ and made

BETWEEN:

- (1) NETWORK RAIL INFRASTRUCTURE LIMITED a company registered in England (number 2904587) having its registered office at 1 Eversholt Street, London, NW1 2DN ("**Network Rail**"); and
- (2) Colas Rail Limited, a company registered in England under number 02995525 having its registered office at Dacre House, 19 Dacre Street, London, SW1H 0DJ (the "**Train Operator**").

WHEREAS

- (A) The parties entered into a Track Access Contract (Freight Services) dated 11 December 2016 in a form approved by the Office of Rail and Road ("**ORR**") pursuant to section 17 of the Act (which track access contract as subsequently amended is hereafter referred to as the "**Contract**").
- (B) The parties propose to enter into this Seventh Supplemental Agreement in order to vary the Contract as described below.

IT IS HEREBY AGREED as follows:

1. INTERPRETATION

In this Seventh 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 Seventh Supplemental Agreement except where the context requires otherwise; and
- (B) "Effective Date" means the date upon which the ORR issues its approval pursuant to Section 22 of the Act of the terms of this Seventh Supplemental Agreement.

2. EFFECTIVE DATE AND TERM

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

3. AMENDMENTS TO THE AGREEMENT

- (A) The definition of "Expiry Date" as defined in clause 1.1 of the Contract shall be replaced with the following:

"**Expiry Date**" means Principal Change Date 2030;

- (B) The following new paragraphs will be inserted into Schedule 6 of the Contract after paragraph 3.7:

3.8 *Right of termination after extension of expiry date*

Network Rail may serve a notice on the Train Operator to terminate this contract (a “post-extension termination notice”) at any time after the Principal Change Date 2025. In such circumstances, Network Rail shall provide a copy of the post-extension termination notice to ORR and comply with paragraph 3.10(c) below.

3.9 *Contents of post-extension termination notice*

The post-extension termination notice shall specify a date and time on which termination of this contract is to take effect (which shall not be earlier than 12 months from the date on which the post-extension termination notice is served on the Train Operator).

3.10 *Effect of post-extension termination notice*

Where Network Rail has served a post-extension termination notice on the Train Operator:

- (a) the service of the post-extension termination notice shall not affect the parties’ continuing obligations or any accrued rights under this contract up to the date of termination specified in the post-extension termination notice; and
- (b) the contract shall terminate under paragraph 3.8 on the date and time specified in the post-extension termination notice; and
- (c) it must at the same time as serving the post-extension termination notice and in a manner consistent with its legal and regulatory obligations existing at the time, offer to enter into a new form of contract with the Train Operator (using a model form contract (if any) developed for that purpose) for a duration of 5 years (unless the parties agree or the ORR directs otherwise) which will have the effect of granting to the Train Operator permission to use the Network to run services the same as those the Train Operator runs under Schedule 5 of this contract at the date this contract terminates under the post-extension termination notice; and
- (d) in the event the Train Operator wishes to challenge the extent of the services contained in Network Rail’s offer to the Train Operator described in paragraph 3.10(c), the Train Operator has the right to refer the matter to ORR in accordance with relevant legislative provisions.

4. GENERAL

The parties agree that the Contract, as amended by this Seventh 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 Seventh Supplemental Agreement are to have effect, all references in the Contract to "the Contract", "herein", "hereof", "hereunder" and other similar expressions shall, unless the context requires otherwise, be read and construed as a reference to the Contract as amended by this Seventh Supplemental Agreement.

5. LAW

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

6. COUNTERPARTS

This Seventh 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 THIRD PARTIES) ACT 1999

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