Contract for the Provision of Freight Train Services and Associated Intermodal Terminal Services

### iPort Medway/Medlog Intermodal Container Terminal

**Dated**

###

**Medway Rail Limited**

### (as Facility Owner)

**Direct Rail Services Limited**

### (as Train Operator)

**Contents**

[1 Interpretation 1](#_Toc152600196)

[2 Effective date and duration 7](#_Toc152600197)

[3 Standard of Performance 8](#_Toc152600198)

[4 Permission to use the Facility 9](#_Toc152600199)

[5 Operation and Maintenance 10](#_Toc152600200)

[6 Facility Owner Obligations 11](#_Toc152600201)

[7 Train Operator's Obligations 12](#_Toc152600202)

[8 Goods 13](#_Toc152600203)

[9 Access Charges 13](#_Toc152600204)

[10 Indemnities and Limitation of Liability 15](#_Toc152600205)

[11 Governing Law 17](#_Toc152600206)

[12 Dispute Resolution 17](#_Toc152600207)

[13 Confidentiality 17](#_Toc152600208)

[14 Assignment and Sub-Contracting 19](#_Toc152600209)

[15 Payments, Interest and VAT 20](#_Toc152600210)

[16 Force Majeure Events 21](#_Toc152600211)

[17 Miscellaneous 23](#_Toc152600212)

[Schedule 2 – The Facility, Facility Operating Constraints, Facility Services and Ancillary Services 28](#_Toc152600213)

[Schedule 3 – The Train Services 36](#_Toc152600214)

[Schedule 4 – Events of Default, Suspension and Termination 38](#_Toc152600215)

**This contract is made on the**

###

**Between**

1. **Medway Rail Limited**, a company registered in England with registered No 11691214 and having its registered address at Medite House, The Havens, Ransomes Europark, Ipswich,

Suffolk, United Kingdom, IP3 9SJ (the **Facility Owner)**; and

1. **Direct Rail Services Ltd** a company registered in England with registered No 03020822 and having its registered address at Herdus House, Ingwell Drive, Westlakes Science & Technology Park, Moor Row, Cumbria, CA24 3HU (the **Train Operator)**.

**Recitals**

* 1. The Facility Owner is the facility owner and operator of Facilities.
	2. The Train Operator wishes to obtain permission to use its Facilities in order to access the Terminal.
	3. The Facility Owner has agreed to grant the Train Operator and its associates’ permission to use its Facilities on the terms and conditions of this Contract.
	4. This contract is entered into under the terms of the General Approval for facility access agreements dated 7 February 2018 ("**Approval**") issued by the Office of Rail and Road.
	5. The Facility Owner has carried out Consultation within the meaning of the Approval.

**It is agreed:**

## Interpretation

* + - 1. Definitions

In this Contract, unless the context otherwise requires:

“**Access Sum**” is the amount set out in paragraph 1 of [Schedule 5](#_bookmark63) as varied from time to time in accordance with this Contract;

“**Access Dispute Resolution Rules**” means the set of rules entitled “Access Dispute Resolution Rules” annexed to the publication entitled “The Network Code”;

“**Act**” means the Railways Act 1993;

“**Adjustment Factor**” has the meaning attributed to it in Clause [9.1.6;](#_bookmark26) “**Affiliate**” means in relation to any company:

1. a company which is either a holding company or a subsidiary of such company; or
2. a company which is a subsidiary of a holding company of which such company is also a subsidiary;

and for these purposes “holding company” and “subsidiary” have the meanings ascribed to them in section 1159 of the Companies Act 2006;

“**Ancillary Charges**” are the amounts specified in paragraph 2 of [Schedule 5](#_bookmark63) for provision of the Ancillary Services and as varied from time to time in accordance with this Contract;

“**Ancillary Movements**” means train movements on the Facility which are not an express part of the Train Services, but which are necessary or reasonably required for giving full effect to the Train Services;

“**Ancillary Services**” are those services, which are not Facility Services, which may be provided by the Facility Owner to the Train Operator on request at the Facility, as more particularly described in paragraph 7 of [Schedule 2;](#_bookmark60)

**“Anti-Bribery Laws”** means anti-bribery and anti-corruption laws, respectively applicable to both parties, including without limitation, the UK Bribery Act;;

“**Associate**” has the meaning ascribed to it in section 17 of the Act;

“**Charges**” means the total of the Access Sums and the Ancillary Charges payable each Charging Period under this Contract;

“**Charging Period**” means a calendar month save that the first and last periods may be of less than a calendar month if the Effective Date does not coincide with the first day of a calendar month or the Expiry Date does not coincide with the last day of a calendar month;

“**Confidential Information**” means information relating to the affairs of one party to this Contract or any of its Affiliates which has been provided by any such person to the other party under or for the purposes of this Contract, or any matter or thing contemplated by this Contract or to which this Contract relates, the disclosure of which is likely materially to compromise or otherwise prejudice the commercial interests of any such person;

“**Contract**” means this document including all schedules and appendices to it;

“**Contract Year**” means a calendar year commencing at 0000 hours on 1 January and ending immediately before 0000 hours on the next succeeding 1 January save that:

1. the first such period shall commence on the Effective Date; and
2. the last such period shall end on the Expiry Date;

“**Crippled Wagon Stabling**” means stabling of crippled wagons in a specific siding until repairs are affected.

“**Dangerous Goods**” means any Goods incorporating dangerous substances listed in the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (as amended) and any other substance of a similar nature or presenting a similar hazard;

“**Decision Criteria**” means the necessity or desirability of the following:

1. sharing the capacity, and securing the development, of the Facility and the Premises in the most efficient and economical manner in the interests of all users having regard, in particular, to safety, the environment, and the proper maintenance, improvement and usage of the Facility and Premises;
2. enabling users of the Facility and Premises to comply with any contracts to which they are party, in each case to the extent that the Facility Owner has been informed of such contracts;
3. enabling the Facility Owner to comply with any contracts to which it is a party; and
4. maintaining, renewing and carrying out other necessary work on or in relation to the Facility or the Premises;

“**Default Interest Rate**” is two percent above the base lending rate of Barclays Bank PLC, as varied from time to time;

“**Dispute**” has the meaning attributed to it in Clause [12.1;](#_bookmark33)

“**Disruptive Event**” means any event or circumstance which materially prevents or materially disrupts the operation of trains on any relevant part of the Facility, but which is not a Force Majeure Event;

“**Effective Date**” means the date on which the provisions of this Contract take effect in accordance with Clause [2.1;](#_bookmark2)

“**Environmental Damage**” means any injury or damage to persons, living organisms or property (including offence to man’s senses) or any pollution or impairment of the environment resulting from the discharge, emission, escape or migration of any substance, energy, noise or vibration;

“**Event of Default**” means a Train Operator Event of Default or a Facility Owner Event of Default as the context requires;

“**Expiry Date**” means the date falling two years after the Effective Date of this Contract.

“**Facility**” means, in each case, the railway network located on the Premises of which the Facility Owner is the facility owner, and which is more particularly described in [Schedule 2](#_bookmark60) and depicted on the Plan and Facilities means two or more of them (including any additions to or deletions from Schedule 2 made in accordance with this Contract);

“**Facility Operating Constraints**” means in the physical and operational constraint of the Facility to accommodate the operation of trains as specified in paragraph 5 of Schedule 2 or as published from time to time by the Facility Owner;

“**facility owner**” has the meaning ascribed to it under section 17(6) of the Act;

“**Facility Owner Event of Default**” has the meaning attributed to it in paragraph 1.3 of [Schedule 4;](#_bookmark62)

“**Facility Services**” are those services to be provided by the Facility Owner to the Train Operator at a Facility and which are included in the Access Sum for that Facility, as more particularly described in paragraph 6 of Schedule 2;

“**Force Majeure Event**” has the meaning attributed to it in Clause [16;](#_bookmark44)

“**Goods**” means cargo of any description whatsoever, together with any package, case, pallet, container or other thing which contains, protects or supports cargo or is designed or made to do so;

“**Insolvency Event**”, in relation to either of the parties, has occurred where:

1. any step which has a reasonable prospect of success is taken by any person with a view to its administration under Part II of the Insolvency Act 1986;
2. it stops or suspends or threatens to stop or suspend payment of all or a material part of its debts, or is unable to pay its debts, or is deemed unable to pay its debts under Section 123(1) or (2) of the Insolvency Act 1986, except that in the interpretation of this paragraph:
	1. Section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there were substituted “£100,000” or such higher figure as the parties may agree in writing from time to time; and
	2. it shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in Section 123(1)(a) of the Insolvency Act 1986 is satisfied before the expiration of 21 days from such demand;
3. its directors make any proposal under Section 1 of the Insolvency Act 1986, or it makes any contract for the deferral, rescheduling or other readjustment (or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors) of all or a material part of its debts, or a moratorium is agreed or declared in respect of or affecting all or a material part of its debts;
4. any step is taken to enforce security over, or a distress, execution or other similar process is levied or sued out against the whole or a substantial part of its assets or undertaking, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
5. any step is taken by any person with a view to its winding-up or any person presents a winding-up petition which is not dismissed within 14 days, or it ceases or threatens to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the other party before that step is taken (which approval shall not be unreasonably withheld or delayed); or
6. any event occurs which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above, unless:
	1. in any case, a railway administration order (or application for such order) has been made or such order (or application) is made within 14 days after the occurrence of such step, event, proposal or action (as the case may be) in relation to that party pursuant to Sections 60, 61 or 62 of the Act and for so long as any such order (or application) remains in force or pending; or
	2. in the case of paragraphs (a), (d), and (e), the relevant petition, proceeding or other step is being actively contested in good faith by that party with timely recourse to all appropriate measures and procedures;

“**Liability Cap**” means the sum contained in Clause [10.4.2;](#_bookmark29)

“**Method of Work**” means in relation to a Facility an agreed statement of the procedures to be followed by the Facility Owner and the Train Operator in respect of the safe operation of the Facility and trains thereon;

“**Network**” means the mainline network in respect of which Network Rail is the facility owner and which is situated in England, Wales and Scotland and, for the purposes of Clause [5.3.1](#_bookmark16) only, any network which connects a Facility to the mainline network in respect of which the Facility Owner is the facility owner;

“**Network Rail**” means Network Rail Infrastructure Limited, incorporated in England and Wales under registered number 2904587;

“**Office of Rail and Road**” has the meaning ascribed to it under Section 15 of the Railways and Transport Safety Act 2003, and “ORR” shall be construed accordingly;

“**Operational Stabling**” means any parking or laying up of Specified Equipment which is not an express part of the Specification but which the Facility Owner at the request of the Train Operator agrees is necessary or reasonably required for giving full effect to the Train Services;

“**RPI**” has the meaning attributed to it in Clause [9.1.6.](#_bookmark26)

“**Plan**” means in relation to a Facility the plan of the Facility, appended to Schedule 2 (as Schedule 2 may be amended from time to time);

“**Premises**” means in relation to a Facility the land shown edged red on the Plan and briefly described in [Schedule 2](#_bookmark60) (as Schedule 2 may be amended from time to time) which is in the ownership or control of the Facility Owner;

“**Related Parties**” means, with respect to the Train Operator, any of its direct and indirect shareholders, Affiliates, directors, agents, employees, subcontractors, or any person acting on behalf of the Train Operator in relation with this Contract.

“**Restricted Person**” means a person:

1. listed on the U.S. Department of Treasury’s Office of Foreign Assets Control (OFAC), or any other similar list maintained by the Council of the European Union, the State Secretariat for Economic Affairs of Switzerland, His Majesty’s Treasury of the United Kingdom, the Foreign, Commonwealth and Development Office (FCDO) or any other relevant sanctions authority; or
2. targeted by Sanctions whether designated by name or by reason of being included in a class of persons;
3. owned, controlled, or acting on behalf or for the benefit of any of the foregoing.

“**Safety Obligations**” means all applicable obligations concerning health and safety (including any duty of care arising at common law, and any obligation arising under statute, statutory instrument or mandatory code of practice) in Great Britain;

“**Sanctions**” means Swiss, UK and EU sanctions, U.S. extraterritorial sanctions, and any other applicable sanctions;

“**Special Instruction**” means an instruction issued by the Facility Owner to the Train Operator in respect of any short term operational or safety requirement not covered by a Method of Work or a Standing Instruction;

“**Specification**” means information provided to the Facility Owner by the Train Operator regarding the Train Services in accordance with Clause [7.1](#_bookmark20) and in the form appended to [Schedule 3;](#_bookmark61)

“**Specified Equipment**” means railway vehicles registered for operation on the Network, and which the Train Operator is therefore permitted to use on the track comprised in a Facility, as more particularly described in [Schedule 3;](#_bookmark61)

“**Stabling**” means any parking or laying up of Specified Equipment between the time of its delivery to a Facility and the time of its collection from that Facility, together with any marshalling, and “Stabled” and “Stable” shall be construed accordingly;

“**Standing Instruction**” means an instruction issued by the Facility Owner to the Train Operator to cover any permanent operational or safety requirement not covered by a Method of Work;

“**Suspension Notice**” means a notice served by one party on the other pursuant to paragraph 2 of [Schedule 4;](#_bookmark62)

“**Terminal**” means a terminal on or adjacent to a Facility on the Premises at which Goods are loaded onto or unloaded from railway vehicles;

“**Termination Notice**” means a notice served by one party on the other pursuant to paragraph 3 of [Schedule 4;](#_bookmark62)

“**Train Operator Event of Default**” has the meaning attributed to it in paragraph 1.1 of [Schedule 4;](#_bookmark62)

“**Train Services**” means the services for the carriage of Goods by railway listed and described by the Train Operator in a Specification, including both inward and outward movement of the Specified Equipment on a Facility and any Ancillary Movements, and “Train Service” shall be construed accordingly;

“**Unauthorised Stabling**” means Stabling of locomotives, wagons or any other thing not previously agreed in writing between the Facility Owner and the Train Operator.

“**Weekly Terminal Train Plan**” means the weekly plan drawn up by the Facility Owner in respect of train movements on a Facility and provided to the Train Operator in accordance with Clause [6.5;](#_bookmark18) and

“**Working Day**” means each of Monday to Friday (inclusive) excluding common law and statutory public holidays.

* + - 1. Interpretation

In this Contract, unless the context otherwise requires:

1. the singular includes the plural and vice versa;
2. any one gender includes the other;
3. all headings are for ease of reference only and shall not be used in the construction of this Contract;
4. reference to an item of primary or secondary legislation is to that item as amended or replaced from time to time;
5. reference to a contract, instrument or other document is to that contract, instrument or other document as amended, novated, supplemented or replaced from time to time;
6. reference to a party is to a party to this Contract, its successors and permitted assigns;
7. reference to a Clause or Schedule is to a clause or schedule of or to this Contract;
8. reference in a schedule to a Part of or an Appendix to a schedule is to a part of or an appendix to the schedule in which the reference appears; and reference in a Part of a Schedule to a paragraph is to a paragraph of that part;
9. where a word or expression is defined, cognate words and expressions shall be construed accordingly;
10. references to the word “person” or “persons” or to words importing persons include individuals, firms, corporations, government agencies, committees, departments, authorities and other bodies incorporated or unincorporated, whether having separate legal personality or not;
11. “otherwise” and words following “other” shall not be limited by any foregoing words where a wider construction is possible;
12. the words “including” and “in particular” shall be construed as being by way of illustration or emphasis and shall not limit or prejudice the generality of any foregoing words; and
13. words and expressions defined in the Act shall, unless otherwise defined in this Contract, have the same meanings in this Contract.
	* + 1. Schedules

The Schedules to this Contract shall have effect.

## Effective date and duration

* + - 1. Effective Date

The provisions of this Contract shall take effect when the following conditions precedent, which cannot be waived by the parties, have been satisfied in full:

1. The Facility Owner has been granted a lease over the Premises;
2. the Contract has been signed by, or on behalf of, the parties; and
3. the Facility Owner has, within 14 days of such signature, sent a signed copy of the Contract to ORR.
4. The Facility Owner shall notify the Train Operator immediately upon sending a signed copy of the Contract to the ORR.
	* + 1. Duration

Subject to the provisions for earlier termination in paragraph 3 of [Schedule 4,](#_bookmark62) this Contract shall continue in force from the Effective Date until 2359 hours on the Expiry Date.

## Standard of Performance

* + - 1. General Standard

Without prejudice to all other obligations of the parties under this Contract, each party shall, in its dealings with the other for the purpose of, and in the course of performance of its obligations under, this Contract, act with due efficiency and economy and in a timely manner with that degree of skill, diligence, prudence and foresight which should be exercised by a skilled and experienced:

1. facility owner and operator (in the case of the Facility Owner); and
2. train operator (in the case of the Train Operator).
	* + 1. Good Faith

The parties to this Contract shall, in exercising their respective rights and complying with their respective obligations under this Contract (including when conducting any discussions or negotiations arising out of the application of any provisions of this Contract or exercising any discretion under them), at all times act in good faith.

* + - 1. Compliance with Laws
				1. The parties to this Contract shall at all times comply with all relevant legislation, regulations and bye-laws.
				2. Each party shall:

comply with Anti-Bribery Laws; and

not do, or omit to do, any act that may cause to the other Party to breach of any Anti- Bribery Laws.

* + - * 1. The Train Operator represents and warrants that neither it nor any of its Related Parties is a Restricted Person.
				2. The Train Operator warrants and covenants that in relation to this Contract:

no Restricted Person has an interest in any Goods or container shipped; and

no Goods, no container shipped or no Specified Equipment, no trains used is subject to any restriction under Sanctions laws.

* + - * 1. The Train Operator shall comply with Sanctions laws and shall not cause the Facility Owner to violate any Sanctions.
				2. If any of the representations and warranties made by the Train Operator in this clause subsequently proves to have been or be incorrect or untrue, or if the Train Operator becomes aware of a breach of this clause [3.3,](#_bookmark5) the Train Operator shall promptly (meaning no later than 2 Business Days after becoming aware) notify the Facility Owner in writing.
				3. Each Parties shall have and shall maintain in place policies and procedures to ensure compliance with the applicable sanctions and laws and regulations related to anti-bribery and anti-corruption.

## Permission to use the Facility

* + - 1. Permission to use

The Facility Owner grants the Train Operator non-exclusive permission to use each Facility in accordance with and subject to the terms of this Contract.

* + - 1. Meaning

References in this Contract to permission to use a Facility shall, except where the context otherwise requires, be construed to mean permission:

1. to use the track comprised in the Facility for the provision of the Train Services using the Specified Equipment;
2. to make Ancillary Movements;
3. to Stable;
4. to marshal the Train Services;
5. for the Train Operator and its associates to enter upon and leave the Facility with or without railway vehicles; and
6. for the Train Operator and its associates to bring such things onto the Facility as are required in connection with the provision of the Train Services and keep them there.

and such permission is subject, in each case and in all respects, to the provisions of this Contract, the Facility Operating Constraints, the Decision Criteria and its Safety Obligations, or as a result of a Disruptive Event.

* + - 1. Permission under Clauses [4.2(b),](#_bookmark7) [4.2(c),](#_bookmark8) [4.2(d),](#_bookmark9) [4.2(e)](#_bookmark10) and [4.2(f)](#_bookmark11)
				1. Restrictions

In relation to the permissions specified in Clauses [4.2(b),](#_bookmark7) [4.2(c),](#_bookmark8) [4.2(d),](#_bookmark9) [4.2(e)](#_bookmark10) and [4.2(f):](#_bookmark11)

the Train Operator shall, and shall procure that its associates shall, first obtain the consent of the Facility Owner, which consent shall not be unreasonably withheld or delayed;

the Train Operator shall, and shall procure that its associates shall, remove any railway vehicle or other thing so brought onto any part of a Facility, as soon as reasonably practicable, when reasonably directed to do so by the Facility Owner; and

the Train Operator shall, and shall procure that its associates shall, whilst exercising any rights conferred by Clauses [4.2(b),](#_bookmark7) [4.2(c),](#_bookmark8) [4.2(d),](#_bookmark9) [4.2(e)](#_bookmark10) and [4.2(f)](#_bookmark11), comply with such reasonable restrictions or instructions as the Facility Owner shall specify.

* + - * 1. Failure to comply with directions

If the Train Operator fails to comply with any directions given under Clause 4.3.1[4.3.1(b),](#_bookmark12) the Facility Owner shall be entitled to remove from a Facility any railway vehicle or other thing or to instruct a third party to do so and any reasonable costs incurred by the Facility Owner in taking such steps shall be paid promptly by the Train Operator.

* + - * 1. Evidence of costs

The Facility Owner shall provide such evidence of such costs as are referred to in paragraph

[4.3.2](#_bookmark13) as the Train Operator may reasonably request.

* + - 1. Stabling
				1. The Facility Owner shall use its reasonable endeavours, having regard to the Facility Operating Constraints, the Decision Criteria and its Safety Obligations which relate to the relevant Facility, to provide such Stabling (including Operational Stabling and Crippled Wagon Stabling) facilities at each Facility as are necessary or expedient for or in connection with the provision of the Train Services at that Facility but subject always to the provisions of clause [4.4.3.](#_bookmark14)
				2. Requests for Stabling (**including Operational Stabling, or Crippled Wagon Stabling**) by the Train Operator shall be submitted in advance to the Facility Owner stating the nature and quantity of the Specified Equipment. The Facility Owner’s written consent for Stabling must be obtained before Stabling is undertaken.
				3. Any Stabling that occurs without such prior consent will be deemed Unauthorised Stabling and will incur charges
			2. Additional Facilities

The Facility Owner and the Train Operator may agree in writing to add a further Facility or Facilities to this Contract or to remove a Facility or Facilities from this Contract. Any such addition shall be by an addendum to the contract signed by or on behalf of the Facility Owner and the Train Operator which shall include (without limitation) a description and plan of each additional Facility, the Premises relating to it, the relevant Access Sum or Access Sums, any related Facility Services or Ancillary Services, a Method of Work and Facility Operating Constraints relating to each additional Facility or Facilities. Save as specifically set out in such addendum, any additional Facilities shall become a Facility or Facilities for the purposes of this Contract and any Facility or Facilities to be removed shall cease to be a Facility or Facilities for the purposes of this Contract, in each case with effect from the date on which the relevant addendum is stated to come into effect.

## Operation and Maintenance

* + - 1. General

Without prejudice to the other provisions of this Contract:

1. the Train Operator shall maintain and operate the Specified Equipment used on its Facility in accordance with Clause [3.1](#_bookmark4) with a view to permitting the provision of the Facility Services on that Facility in accordance with the permission to use under this Contract; and
2. the Facility Owner shall maintain and operate its Facility in accordance with Clause

[3.1](#_bookmark4) with a view to permitting the provision of the Train Services on that Facility using the Specified Equipment in accordance with the permission to use under this Contract.

* + - 1. Safety

In relation to Safety Obligations:

1. the Train Operator shall comply with the Facility Owner's safety standards and procedures, and any reasonable request by the Facility Owner in relation to any aspect of the Train Operator’s operations which affects or is likely to affect the performance of the Facility Owner's Safety Obligations; and
2. the Facility Owner shall comply with any reasonable request by the Train Operator in relation to any aspect of the Facility Owner’s operations which affects or is likely to affect the performance of the Train Operator’s Safety Obligations.
	* + 1. Movements of trains onto and off the Facility
				1. Suitable access

The Facility Owner shall use its reasonable endeavours to ensure that its Facility remains connected to the Network.

* + - * 1. Prompt presentation

Where railway vehicles under the control of the Train Operator will move onto and off the Facility, the parties shall ensure that they facilitate (to the extent they are able) the prompt presentation of such railway vehicles onto and off their Facility.

## Facility Owner Obligations

* + - 1. The Facility Owner shall permit the Train Operator to use each Facility at such times and for such Train Services as, in each case, the Train Operator may request in a Specification, except where and to the extent that the Facility Owner reasonably determines, having regard to the Facility Operating Constraints, the Decision Criteria and its Safety Obligations which relate to that Facility, or as a result of a Disruptive Event, it is unable to do so. Train Services includes wagon maintenance.
			2. The Facility Owner shall, as soon as reasonably practicable, permit the Train Operator to use each Facility for any Train Service not running in accordance with a Specification, except where, and to the extent that the Facility Owner reasonably determines, having regard to that Facility’s Operating Constraints, the Decision Criteria and its Safety Obligations, or as a result of a Disruptive Event, it is unable to do so.
			3. The Facility Owner shall provide the Facility Services in accordance with the Specification, provided always that if it is unable to do so, it shall use its reasonable endeavours to provide them at a time that it is reasonably convenient for the Train Operator except where, and to the

extent that, the Facility Owner shall, having due regard to the Decision Criteria, determine that any Facility Services should not be carried out.

* + - 1. The Facility Owner shall inform the Train Operator if any Specified Equipment in respect of which access to a Facility is to be granted is, in the Facility Owner’s reasonable opinion, in an unsafe condition. The Facility Owner shall be under an obligation to provide access to any Facility or Facility Services in respect of any such Specified Equipment.
			2. The Facility Owner shall ensure that the Train Operator is provided with a copy of each Weekly Terminal Train Plan for its Facility and informed promptly of any changes to it.
			3. The Facility Owner shall give the Train Operator at least 28 Working Days’ notice of planned possessions at its Facility and shall inform the Train Operator of any Disruptive Event or emergency possessions on each Facility as soon as reasonably practicable.
			4. The Facility Owner shall supply suitably competent staff to undertake shunting and train preparation responsibilities in accordance with the agreed Method of Work.
			5. The Facility Owner shall ensure that it provides enough reliable container handling equipment to ensure that vehicles achieve a turn round of no more than 60 minutes from arrival to departure at the Facility Owner.
			6. The Facility Owner will be open from 0600hrs Monday to 1400hrs Saturday and 16.00hrs through 24.00hrs Sunday, inclusive of Bank Holidays for Road Vehicles.
			7. The Facility Owner will be open for the hours necessary to service the rail timetable.

## Train Operator's Obligations

* + - 1. The Train Operator shall provide the Facility Owner with a Specification in accordance with the provisions of [Schedule 3](#_bookmark61) paragraph 4 after it becomes aware that Facility Service(s) will be required. The Train Operator shall use its reasonable endeavours to ensure that any Specification provided in accordance with this Clause [7.1](#_bookmark20) conforms to the Facility Operating Constraints which apply to the relevant Facility.
			2. The Train Operator shall notify the Facility Owner as soon as reasonable practicable of any changes to a Specification in accordance with the provisions of [Schedule 3](#_bookmark61) paragraph 4 and shall use its reasonable endeavours to ensure that any such changes conform to the Facility Operating Constraints, the Decision Criteria and its Safety Obligations, which apply to the relevant Facility.
			3. The Train Operator shall inform the Facility Owner in advance of any Dangerous Goods which will or might be carried in any of the Specified Equipment comprised in the Train Services and of any known or suspected defects in any of the Specified Equipment or any unusual specification or characteristic of any Goods carried in any of the Specified Equipment which might materially affect the operation of the Train Services or the Facility or adversely affect the Facility.
			4. The Train Operator shall operate the Train Services and manage any activity it carries out in connection with the Train Services at all times in such a way as to:
1. minimise, by taking all reasonable steps, any nuisance to or disturbance of the Facility Owner or any other person on any Premises or the owners or occupiers of other land whether within or outside any Premises; and
2. prevent the escape of any Goods or other items or substances within the possession or control of the Train Operator from the Specified Equipment.

## Goods

* + - 1. Risk

Risk in the Goods (including, without limitation, all risk of theft, loss or damage to the Goods) shall at all times, whilst loaded on the Specified Equipment of the Train Operator, remain with the Train Operator and the Facility Owner shall not be under any obligation to insure the Goods or any part thereof and shall have no liability in respect of the same unless and to the extent the Facility Owner is in breach of its obligations under this Contract, except for the Train Operator's prior default.

* + - 1. Dangerous Goods
				1. Dangerous Goods shall not be brought onto any Facility or dealt with at any Terminal unless and until a declaration by the Train Operator in writing shall have been given to the Facility Owner of their nature and quantity, including details of special handling requirements in the event of an emergency, and the Facility Owner’s consent shall have been first obtained, and then only upon such terms and conditions as the Facility Owner acting reasonably may require, or as may be prescribed in the Facility Owner’s bye-laws or by or under statute.
				2. When Dangerous Goods are carried in the Speciﬁed Equipment comprised in a Train Service, the Train Operator shall be obliged, on arrival of the Train Service at the Facility, to deliver to the Facility Owner the appropriate and relevant Dangerous Goods documentation.
				3. Subject to Clause [13,](#_bookmark36) the Facility Owner shall be permitted by the Train Operator to give any particulars furnished under Clause [8.2.1](#_bookmark22) or [8.2.2](#_bookmark23) to whomsoever the Facility Owner reasonably believes necessary either as a matter of law or for health and safety reasons.
			2. Ability to reject Dangerous Goods

The Facility Owner reserves the right to refuse to accept Dangerous Goods onto a Facility where it reasonably believes that they may cause damage to the Premises, the Facility, the environment, harm to human health or otherwise pose a health and safety risk.

## Access Charges

* + - 1. Obligation on Train Operator to pay

In respect of each Charging Period, the Train Operator shall pay the Charges.

* + - * 1. Following the first anniversary of the Effective Date, the Access Sum and the Ancillary Charges for the forthcoming Contract Year shall be revised by the parties if there is a material change in the cost to the Facility Owner of fulfilling its obligations under this Contract. On or before 1st December in each Contract Year, the Facility Owner shall give notice that either it wishes to revise the Access Sum and the Ancillary Charges, or that no such revision is required.
				2. For the purposes of revising the Access Sum:

a material change in the cost to the Facility Owner shall be defined as a forecast increase or decrease of 10 percent or more in the Access Sum for the relevant year

(t+1) compared to the Access Sum for the then current year (t) (after taking into account the Adjustment Factor) where “relevant year t+1 “ means the Contract Year for the purposes of which any calculation falls to be made and “relevant year t” means the then current Contract Year preceding relevant year t+1; and

the Access Sum for the relevant year t+1 equals the forecast cost to the Facility Owner of fulfilling its obligations under this Contract for the relevant year 2+1 divided by the forecast number of trains for the relevant year t+1.

* + - * 1. Following a notice being given in accordance with Clause [9.1.1](#_bookmark25)above, the Facility Owner shall provide such evidence in support of the material change or in support of its contention that there has been no material change in the cost (as the case may be) as the Train Operator may reasonably request.
				2. The figure(s) agreed by the parties for the purpose of Clause [9.1.1](#_bookmark25) from the start of the relevant year t+1 (which, for the avoidance of doubt, shall not be before the first anniversary of the Effective Date of this Contract).
				3. If the parties fail to agree Access Sum and Ancillary Charges figure(s) for the relevant year t+1 within 28 days of a notice being given in accordance with Clause [9.1.1](#_bookmark25) above, either party shall be entitled to refer the determination of the Access Sum and Ancillary Charges either to arbitration in accordance with the Access Dispute Resolution Rules or to ORR for determination. The Facility Owner shall notify ORR of the revised figure(s) within 28 days of them being agreed or determined.
				4. Where there is no material change in the cost to the Facility Owner of fulfilling its obligations under this Contract then on 1 January in each Contract Year, commencing 2024 the Access Sum and the Ancillary Charges shall be adjusted by multiplying each of them by the Adjustment Factor (rounded to three decimal places) which shall have been calculated in accordance with the following formula:

Adjustment Factor = 1 + (RPI t-1 – RPI t-2)

RPI t-2

Where:

RPl,1 means the average value of the monthly ﬁgures of the General Index of Retail Prices All Items measured by CHAW (“RPI”) for the 12 months up to and including the month of September immediately preceding the relevant 1 January; and

RPI; means the average value of the monthly ﬁgures of RPI for the 12 months up to and including the month of September which is 12 months before the relevant 1 January.

* + - * 1. If RPI for the month of September shall not have been published, or there is a material change in the base composition of RPI, then the parties may agree to such other index as they deem appropriate with the object of placing both parties in the position in which they would have been had there been no change in the base composition of RPI.
			1. Unpaid sums

If either party fails to pay:

1. any invoice issued to it under this Contract in respect of the Charges; or
2. any sum which has fallen due in accordance with any other provision of this Contract, then, subject to Clause [15.1.1:](#_bookmark41)
	1. the amount invoiced or sum due, as referred to in Clause 9.4(a) or (b), shall immediately constitute a debt due and owing from the party who has failed to pay the invoice or sum due to the other party (and to any assignee of a party’s right to payment in respect of any Charges or other sum due);
	2. such debt shall be recoverable by any means available under the laws of England and Wales; and
	3. unless both parties to this Contract agree otherwise, the dispute resolution procedures in Clause [12](#_bookmark32) shall not apply to proceedings commenced under this Clause [9.2.](#_bookmark27)

## Indemnities and Limitation of Liability

* + - 1. Facility Owner's indemnity

The Facility Owner shall (on an after tax basis) indemnify the Train Operator, and keep it indemnified, against all damage, losses, claims, proceedings, demands, liabilities, costs, damages, orders and reasonable out of pocket expenses (including costs reasonably incurred in investigating or defending any claim, proceedings, demand or order and any expenses reasonably incurred in preventing, avoiding or mitigating loss, liability or damage) incurred or suffered by it as a result of any breach by the Facility Owner of any of its obligations in performing the services under this Contract. Liability under this indemnity is limited under clause [10.4.2](#_bookmark29) and this indemnity shall not cover the Train Operator to the extent that a claim under it results from the Train Operator’s negligence or wilful misconduct.

* + - 1. Train Operator's indemnity

The Train Operator shall (on an after tax basis) indemnify the Facility Owner, and keep it indemnified, against all damage, losses, claims, proceedings, demands, liabilities, costs, damages, orders and reasonable out of pocket expenses (including costs reasonably incurred in investigating or defending any claim, proceedings, demand or order and any expenses reasonably incurred in preventing, avoiding or mitigating loss, liability or damage) incurred or suffered by it as a result of any breach by the Train Operator of any of its obligations in performing the services under this Contract. Liability under this indemnity is limited under clause [10.4.2](#_bookmark29) and this indemnity shall not cover the Facility Owner to the extent that a claim under it results from the Facility Owner’s negligence or wilful misconduct.

* + - 1. Mitigation

A party wishing to claim under any indemnity provided for in this Contract shall take all reasonable steps to prevent, mitigate and restrict any circumstances giving rise to that claim and any losses or indemnifiable damages or amounts connected with that claim.

* + - 1. Notification of claims, limitation on liability and restriction on claims
				1. Notification of claims and limitation on liability

Save as otherwise expressly provided in this Contract, neither party shall be liable in respect of any breach of this Contract:

unless notice of such breach is given by or on behalf of the claimant to the respondent, setting out detailed particulars of the grounds on which the relevant claim is based, within six months after the facts giving rise to the claim first became known by the claimant or could, with reasonable diligence, have become so known; and

arising from any single occurrence or circumstance (or connected series of occurrences or circumstances), if the amount of the relevant claim exceeds the Liability Cap, to the extent it so exceeds this amount.

* + - * 1. Liability Cap

The Liability Cap means the sum of £5,000,000.

* + - * 1. NOT USED
				2. Exclusion of Environmental Damage

In respect of any material breach of this Contract for Environmental Damage arising directly from their negligence and/or breach of this Contract. The liabilities of the parties shall be limited to the higher of the Liability Cap or any insurance level maintained in accordance with clause [10.5.2.](#_bookmark30)

* + - * 1. Restriction on claims

Save as otherwise expressly provided in this Contract, neither party may recover or seek to recover from the other party any amount in respect of any loss of revenue, loss of profits, goodwill, reputation or other consequential, indirect or special damages in connection with the subject matter of this Contract, which is or is alleged to be caused to it by the other party, save in respect of death or injury to persons or physical damage to property.

* + - * 1. Exclusion of Property Damage

The Facility Owner’s total liability to the Train Operator, arising under or in connection with this Contract in accordance with this clause [10,](#_bookmark28) for damage to the Train Operator’s property (whether owned or leased) caused by the Facility Owner’s gross negligence shall be limited to the higher of the Liability Cap or any insurance level maintained in accordance with clause [10.5.2.](#_bookmark30)

* + - 1. Insurance
				1. The Train Operator will always during which this Contract is in force maintain in place insurance of the type and to the levels required by all relevant statutes or regulations that apply to train operating companies.
				2. During the term of this Contract, the Facility Owner shall maintain in force insurance policies with reputable insurance companies, against all risks that would normally be insured against by a prudent company in connection with the risks associated with this Contract, including but

not limited to damage to the Train Operator’s property and produce to the Train Operator on request full particulars of that insurance.

## Governing Law

This contract shall be governed by and construed in accordance with the laws of England and Wales.

## Dispute Resolution

* + - 1. All disputes or matters in difference between the parties of whatever nature arising out of or in connection with this Contract (“**Disputes**”) shall, except when otherwise expressly provided in this Contract, be resolved in accordance with the terms of this Clause [12.](#_bookmark32)
			2. Any Dispute shall be notified by either party to the other promptly and then, in the first instance, be the subject of an extraordinary meeting between the parties. Such extraordinary meeting shall be held as soon as practicable after notification of a Dispute (and, in any event, within seven days of such notification being received). Each party agrees to procure that an authorised representative shall attend an extraordinary meeting called in accordance with this Clause [12.2,](#_bookmark34) and those representatives of the parties attending the extraordinary meeting shall use all reasonable endeavours to resolve the Dispute.
			3. If the Dispute cannot be resolved at the extraordinary meeting, it shall be referred by the parties to a person of director level at each of the Facility Owner and the Train Operator who shall co-operate in good faith to resolve the Dispute as amicably as possible within seven days of its referral (or such longer period as the parties may agree).
			4. Any Disputes not resolved under Clause [12.3](#_bookmark35) may be referred by either party to arbitration in accordance with the Access Dispute Resolution Rules or may, if appropriate and ORR consents, be referred by either party to ORR for determination.
			5. Each party shall bear its own costs in relation to the proceedings described in Clauses [12.2](#_bookmark34) and [12.3.](#_bookmark35)

## Confidentiality

* + - 1. Confidential Information
				1. General obligation

Except as permitted by Clause [13.2,](#_bookmark37) all Confidential Information shall be held confidential during and after the continuance of this Contract and shall not be divulged in any way to any third party without the prior written approval of the other party.

* + - * 1. Affiliates

Except as permitted by Clause [13.2,](#_bookmark37) each party shall procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information.

* + - 1. Entitlement to divulge

Either party, and its Affiliates, and its and their respective officers, employees and agents, shall be entitled in good faith to divulge any Confidential Information without the approval of the other party in the following circumstances:

1. to ORR;
2. to the Secretary of State;
3. to any Affiliate of either party;
4. to any officer or employee of the party in question or any person engaged in the provision of goods or services to or for him if disclosure is necessary or reasonably required to enable the party in question to perform its obligations under this Contract, upon obtaining an undertaking of strict confidentiality from such officer, employee or person;
5. to any professional advisers or consultants of such party engaged by or on behalf of such party and acting in that capacity, upon obtaining an undertaking of strict confidentiality from such advisers or consultants;
6. to any insurer or insurance broker from whom such party is seeking insurance or in connection with the making of any claim under any policy of insurance, upon obtaining an undertaking of strict confidentiality from the insurer or insurance broker;
7. to any lender, security trustee, bank or other institution from whom such party is seeking or obtaining finance or credit support for such finance, or any advisers to any such entity, or any rating agency from whom such party is seeking a rating in connection with such finance or credit support, upon obtaining an undertaking of strict confidentiality from the entity, advisers or rating agency in question;
8. to the extent strictly required by the Act, any licence under section 8 of the Act or regulation 6 of the Railway (Licensing of Railway Undertakings) Regulations 2005 held by the party in question, any other applicable law, the rules of any recognised stock exchange or regulatory body;
9. to the extent that it has become available to the public other than as a result of a breach of confidence; or
10. under the order of any court or tribunal or government agency of competent jurisdiction.

Notwithstanding the above, prior to making any disclosure pursuant to a valid order issued by a court or governmental agency of competent jurisdiction (a "Legal Order"), to the extent legally permitted, the required Party shall provide the other Party with (a) prompt written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy; and (b) reasonable assistance, at the other Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

If, after providing such notice and assistance as required herein, the required Party remains subject to a Legal Order to disclose any Confidential Information, the required Party shall disclose no more than that portion of the Confidential Information which, on the advice of the other Party's legal counsel, such Legal Order specifically requires the required Party to disclose.

* + - 1. Return of Confidential Information

Subject to Clause 17.10, both the Facility Owner and the Train Operator shall promptly return to the other party any Confidential Information requested by the other party if such request:

1. is made on or within two months after the Expiry Date or, if this Contract is terminated earlier, is made within two months after the date on which this Contract is terminated;
2. is reasonable; and
3. contains a sufficient description of the relevant Confidential Information to enable such information to be readily identified and located.
	* + 1. Retention or destruction of Confidential Information

If the Facility Owner or the Train Operator, as the case may be, has not received a request to return any Confidential Information to the other party under and within the time limits specified in Clause 13.3, it may destroy or retain such Confidential Information provided that such information shall remain subject to the confidentiality obligations in Clause [13.2](#_bookmark37)

* + - 1. Ownership of Confidential Information

All Confidential Information shall be and shall remain the property of the party which supplied it to the other party.

##### Data Protection

Both the Facility Owner and the Train Operator warrant that they shall comply with all applicable data protection laws and regulations, including but not limited to (i) the provisions of Data Protection Act 2018, the UK General Data Protection Regulation (Regulation (EU) 2016/679) - ("**UK GDPR**") as updated from time to time and (ii) any other applicable federal, state, regional or national law, regulation, code of practice or guidance, with respect to all Personal Data (as defined by the UK GDPR) to be processed under the contract.

## Assignment and Sub-Contracting

* + - 1. Assignment
				1. Neither party may assign, transfer, novate or create any encumbrance or other security interest over the whole or any part of its rights and obligations under this Contract except to the extent approved by ORR following consultation with the other party, and subject to the conditions (if any) of ORR’s approval.
			2. Sub-contracting
				1. Either party may sub-contract the performance of any of its obligations under this Contract with the prior written agreement of the other party (such agreement not to be unreasonably withheld or delayed) without thereby relieving it of any such obligations to the other party.
				2. Where a party has sub-contracted its rights or obligations under this Contract to any third party in accordance with Clause [14.2.1,](#_bookmark39) references to that party in this Contract shall, with the exception of Clause [10](#_bookmark28) and without prejudice to Clause [14.2.1,](#_bookmark39) include references to any sub- contractor so appointed.

## Payments, Interest and VAT

* + - 1. Payment
				1. No Deduction

All amounts due or payable by either party under this Contract shall be paid free and clear of any deduction, withholding or set off, except:

as may be required by law; or

as expressly provided in this Contract.

* + - * 1. Delivery of Invoices

All invoices, or statements of amounts payable, issued under any provision of this Contract shall be delivered by hand at, or sent by prepaid first class post or electronically to, the appropriate address for service for the recipient specified in Schedule 1 and shall be deemed to have been received by the addressee in accordance with Clause [17.4.3.](#_bookmark57)

* + - * 1. Payment and content of invoices and other statements of amounts payable

Each invoice and statement of amounts payable shall, unless otherwise stated in this Contract:

be paid within 28 days of the date of its receipt; and

contain such detail as to the constituent elements of the amounts stated to be payable as shall be necessary so as to enable the person to whom it is given to understand and check it.

* + - * 1. Method of payment

All payments shall be made by direct debit mandate or standing order mandate, CHAPS transfer, BACS transfer or other electronic or telegraphic transfer to a London clearing bank or such other financial institution as may be approved by the party entitled to the payment, such approval not to be unreasonably withheld or delayed.

* + - * 1. Credit notes

Where a credit note has been issued in accordance with any provision of this Contract, the party in receipt of the credit note shall be entitled to apply the amount specified in it against any amount payable by it under this Contract or any future invoice or statement of amounts payable it may receive under this Contract.

* + - 1. Disputed amounts

Except as otherwise provided in this Contract, within 21 days of receipt of an invoice or statement of amounts payable issued under any provision of this Contract, the recipient shall notify the issuer of any aspects of the invoice or statement which it disputes, giving reasons for any dispute, and shall pay the undisputed amount in accordance with the terms of the invoice. Except to the extent that disputes are so notified, the recipient shall be deemed to have agreed the contents of the invoice or statement.

* + - 1. Interest

Without prejudice to any other rights or remedies which one party may have in respect of the failure of the other party to pay any amount on the due date, amounts payable under this Contract and not paid by the due date shall carry interest (to accrue daily and to be compounded monthly) at the Default Interest Rate from the due date until the date of actual payment (as well after judgment as before), except to the extent that late payment arises from any failure by the invoicing party to comply with Clause [15.1.2](#_bookmark42) or Clause [15.1.3(b).](#_bookmark43)

* + - 1. VAT
				1. Payment of VAT

Where any taxable supply for VAT purposes is made under or in connection with this Contract by one party to the other the payer shall, in addition to any payment required for that supply, pay such VAT as is chargeable in respect of it.

* + - * 1. Reimbursement of VAT

Where under this Contract one party is to reimburse or indemnify the other in respect of any payment made or cost incurred by the other, the first party shall also reimburse any VAT paid by the other which forms part of its payment made or cost incurred to the extent such VAT is not available for credit for the other party (or for any person with whom the indemnified party is treated as a member of a group for VAT purposes) under sections 25 and 26 of the Value Added Tax Act 1994.

* + - * 1. VAT credit note to be issued on repayment

Where under this Contract any rebate or repayment of any amount is payable by one party to the other, and the first party is entitled as a matter of law or of HM Revenue and Customs practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made, and the first party shall issue an appropriate VAT credit note to the other party.

## Force Majeure Events

* + - 1. A “**Force Majeure Event**” shall be deemed to occur if and to the extent that there occurs, at the Facility or affecting the Facility, any event or circumstance or any combination of events or circumstances beyond the reasonable control of either party to this Contract which is either unforeseeable or, if foreseeable, could not have been avoided by any reasonable means, and which prevents, materially impedes or materially delays that party from performing any of its obligations under this Contract.
			2. Without prejudice to the generality of Clause [16.1,](#_bookmark45) a “**Force Majeure Event**” shall include the following events (and any circumstances arising as a direct consequence of any of the following events):
1. an act of the public enemy or terrorists or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
2. acts of theft, vandalism, wilful damage or accidental damage or destruction of machinery, equipment, track or other infrastructure;
3. natural disasters or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);
4. nuclear, chemical or biological contamination;
5. pressure waves caused by devices travelling at supersonic speeds;
6. discovery of fossils, antiquities or other items of archaeological interest or explosives or suspected items of explosive ordnance.
7. strike or other industrial action which is a single circumstance, and which also is a strike or industrial action in sectors of the economy other than the railway ;
8. acts, restrictions, byelaws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; and
9. any act of the Facility Owner, its servants,agents or subcontractors which, though deliberate, is reasonably necessary for the safety or preservation of persons, the Premises, the Facility, Terminals or Goods.
	* + 1. Neither party to this Contract shall be responsible for any failure to fulfil an obligation under this Contract if and to the extent that such failure shall be caused by, or directly or indirectly is by reason of, a Force Majeure Event which makes it impossible or impracticable for that party to comply with such obligation, and if the affected party complies with Clauses [16.4](#_bookmark47) to [16.6](#_bookmark48) below.
			2. A party affected by a Force Majeure Event shall promptly upon becoming aware of the occurrence of a Force Majeure Event use all reasonable endeavours to:
10. minimise, and where practicable avoid, the effects of the Force Majeure Event on its ability to perform its obligations under this Contract; and
11. minimise the duration of the Force Majeure Event.
	* + 1. As soon as reasonably practicable after the commencement of the Force Majeure Event (and, in any event, within 72 hours of becoming aware of it), the affected party shall notify the other party of the Force Majeure Event and its consequences, the effects of the Force Majeure Event on its ability to perform any obligation(s) under this Contract, the likely duration of such consequences and effects, and the remedial measures it proposes to avoid or remove the Force Majeure Event or to mitigate its consequences and effects.
			2. The affected party shall give the other party all other information concerning the Force Majeure Event and the steps which could reasonably be taken, and which the affected party proposes to take, to avoid or remove the Force Majeure Event or to mitigate its consequences and effects as may reasonably be requested by the other party from time to time, and inform the other party of any material developments in relation to the Force Majeure Event.
			3. The right of a party affected by a Force Majeure Event to relief under Clause [16.3](#_bookmark46) shall cease on the earlier of:
12. the date on which its performance of any obligation(s) under this Contract is no longer prevented, materially impeded or materially delayed by the Force Majeure Event; and
13. the date on which such performance would no longer have been prevented, materially impeded or materially delayed if that party had complied with its obligations under Clause [16.4.](#_bookmark47)
	* + 1. Neither party to this Contract shall be entitled to claim that a Force Majeure Event has prevented it from paying any monies which it would otherwise be liable to pay under this Contract.
			2. If the event a Force Majeure Event continues for more than 30 (thirty) days starting on the date of the Force Majeure Event starts, either party may terminate this Agreement immediately by written notice to the other party.

## Miscellaneous

* + - 1. Non waiver
				1. No waiver

No waiver by either party of any failure by the other to perform any obligation under this Contract shall operate or be construed as a waiver of any other or further default, whether of a like or different character.

* + - * 1. Failure or delay in exercising a right or remedy

The failure to exercise or delay in exercising a right or remedy under this Contract shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies, and no single or partial exercise of any right or remedy under this Contract shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

* + - 1. Variations
				1. Amendments to be in writing and to be approved

No amendment of any provision of this Contract shall be effective unless:

such amendment is in writing;

such amendment is signed by, or on behalf of, the parties; and either

if it is an amendment which:

requires ORR’s approval under section 22 of the Act; or

is made under section 22A or 22C of the Act or Schedule 4A to the Act, the amendment has been so approved or directed by ORR as applicable; or

where this Contract was made pursuant to the general approval issued by ORR under section 22 of the Act, a signed copy of the amendment has been sent by the Facility Owner to ORR within 14 days of its signature.

* + - * 1. Exception to Clauses [17.2.1(b),](#_bookmark51) [17.2.1(c)](#_bookmark52) and [17.2.1(d)](#_bookmark53)

Clauses [17.2.1(b),](#_bookmark51) [17.2.1(c)](#_bookmark52) and [17.2.1(d)](#_bookmark53) do not apply to a modification made by virtue of Clause [17.4.2](#_bookmark56) as which constitutes the removal of a Facility from this Contract and relevant modifications under paragraph 3.4 (e) of [Schedule 4.](#_bookmark62)

* + - 1. Conformed copy of contract
				1. The Facility Owner shall produce and send to the Train Operator and to ORR a conformed copy of this Contract within 28 days of the making of any amendment or modification to it (not including amendments to the Access Sum and the Ancillary Charges in accordance with Clause [9](#_bookmark24)).
			2. Entire contract and exclusive remedies
				1. Entire contract

Subject to Clause [17.3.1:](#_bookmark54)

this Contract contains the entire agreement between the parties in relation to the subject matter of this Contract;

each party acknowledges that it has not been induced to enter into this Contract in reliance upon, nor has it been given, any warranty, representation, statement, agreement or undertaking of any nature whatsoever other than as expressly set out in this Contract and, to the extent that this is not the case, the relevant party unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to any such matter; and

neither party shall have any right to rescind or terminate this Contract either for breach of contract or for misrepresentation or otherwise, except as expressly provided for in this Contract.

* + - * 1. Exclusive remedies

Subject to Clause [17.3.1](#_bookmark54) and except as expressly provided in this Contract:

neither party shall have any liability (including liability arising as a result of any negligence, breach of contract or breach of statutory obligation) to the other in connection with the subject matter of this Contract; and

the remedies provided for in this Contract shall be the sole remedies available to the parties in respect of any matters for which such remedies are available.

* + - * 1. Fraud, death and personal injury

Without prejudice to the generality of this Clause [17.4,](#_bookmark55) nothing in this Contract shall exclude, restrict or limit, or purport to exclude, restrict or limit:

any liability which either party would otherwise have to the other party, or any right which either party may have to rescind this Contract, in respect of any statement made fraudulently by the other party before the execution of this Contract;

any right which either party may have in respect of fraudulent concealment by the other party;

any right which either party may have in respect of a statement of the kind referred to in section 146 of the Act, whether or not proceedings have been instituted in that respect; or

any liability which either party may have towards the other party for death or personal injury resulting from its negligence or the negligence of any of its officers, employees or agents.

* + - 1. Notices
				1. Giving of notices

Any notice to be given under this Contract:

shall be in writing; and

shall be duly given if signed by or on behalf of a person duly authorised to do so by the party giving the notice and delivered by hand at, or by sending it by prepaid first class post or by facsimile or electronically (with confirmation copy by prepaid first class post) to the relevant address, facsimile number set out in Schedule 1.

For the purposes of this Clause [17.5](#_bookmark58) and Clause [15.1.2,](#_bookmark42) delivery by hand shall include delivery by a reputable firm of couriers.

* + - * 1. Right to modify contact details

A party shall be entitled to modify in any respect the contact details which relate to it and which are set out in [Schedule 1](#_bookmark59)by giving notice of such modification:

to the other party as soon as reasonably practicable; and

to ORR within 14 days of such modification.

* + - * 1. Deemed receipt

A notice shall be deemed to have been given and received:

if sent by hand or recorded delivery, at the time of delivery;

if sent by prepaid first-class post from and to any place within the United Kingdom, three Working Days after posting unless otherwise proven; and

if sent electronically (subject to confirmation of uninterrupted transmission by a transmission report.) before 1700 hours on a Working Day, on the day of transmission and, in any other case, at 0900 hours on the next following Working Day.

* + - * 1. Copies

If [Schedule 1](#_bookmark59) specifies any person to whom copies of notices shall also be sent:

the party giving a notice in the manner required by this Clause [17.4](#_bookmark55) shall send a copy of the notice to such person at the address for sending copies as specified in

[Schedule 1,](#_bookmark59) or to such other person or address as may, from time to time, have been notified by the party to be notified to the notifying party under this Clause [17.4;](#_bookmark55) and

such copy notice shall be sent immediately after the original notice.

* + - 1. Counterparts

This contract may be executed in two counterparts which, taken together, shall constitute one and the same document. Either party may enter into this Contract by signing either of such counterparts.

* + - 1. Survival

Those provisions of this Contract which by their nature or implication are required to survive expiry or termination of this Contract (including the provisions of Clauses [9.2](#_bookmark27) (Unpaid Sums), [10](#_bookmark28) (Indemnities and Limitation of Liability), [11](#_bookmark31) (Governing Law), [13](#_bookmark36) (Confidentiality), [15](#_bookmark40) (Payments, Interest and VAT), [16](#_bookmark44) (Force Majeure Events), paragraph 4 of [Schedule 4](#_bookmark62) (Consequence of Termination)) shall so survive and continue in full force and effect, together with any other provisions of this Contract necessary to give effect to such provisions.

* + - 1. Contracts (Rights of Third Parties) Act 1999
				1. Application to third parties
				2. Save as expressly provided elsewhere in this Contract, no person who is not a party to this Contract shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.
				3. Contract amendments

Subject to Clause [17.2,](#_bookmark50) the Facility Owner and the Train Operator shall not enter into any agreement with a third party that requires the consent of any third party in order to amend this Contract.

* + - 1. Freedom of Information
				1. The Facility Owner acknowledges that the Train Operator is subject to the requirements of the Freedom of Information Act 2000 (FOIA), as amended, and the Environmental Information Regulations 2004 (EIR), as amended. The Facility Owner shall:

provide all necessary assistance and cooperation as reasonably requested by the Train Operator to enable the Train Operator to comply with its obligations under the FOIA and EIRs;

provide the Train Operator with a copy of all information belonging to the Train Operator requested in a request for information (RFI) which is in its possession or control in the form that the Train Operator requires within 5 Working Days (or such other period as the Train Operator may reasonably specify) of the Train Operator’s request for such information; and

not respond directly to a RFI unless authorised in writing to do so by the Train Operator.

* + - * 1. The Facility Owner acknowledges that the Train Operator may be required under the FOIA and EIRs to disclose confidential information (including Commercially Sensitive Information) without consulting or obtaining consent from the Facility Owner. The Train Operator shall take reasonable steps to notify the Facility Owner of a RFI (in accordance with the Cabinet Office’s Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Train Operator shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs. Commercially Sensitive Information is defined in this Clause as information of a commercially sensitive nature relating to the Facility Owner, its intellectual property rights or its business or which the Facility Owner has indicated to the Train Operator that, if disclosed by the Train Operator, would cause the Facility Owner significant commercial disadvantage or material financial loss.
			1. Records
				1. The Facility Owner shall keep and maintain until 6 years after the Contract has been completed, or as long a period as may be agreed between the parties, full and accurate records of the Contract including:

the Services provided under it;

all expenditure reimbursed by the Train Operator;

all payments made by the Train Operator.

# Schedule 2 – The Facility, Facility Operating Constraints, Facility Services and Ancillary Services

Freight Terminal

1. The Facility

The Facility is the track between the Terminal and St Cathrines Loop and onto South Yorkshire Joint line.

1. The Plan

The Plan is appended to this [Schedule 2.](#_bookmark60)

1. Exchange point

The relevant boundary between the Network and the Facility as depicted on the Plan.

1. Opening hours

The Facility is currently open continuously from 06.00 Monday to 14.00 Saturday. Extended working outside this time can be arranged by mutual agreement.

1. Facility Operating Constraints and Capabilities

The Capability Statement is appended to this [Schedule 2.](#_bookmark60)

1. Facility Services

The Facility Owner shall provide the following Facility Services to the Train Operator:

* 1. the development and provision of agreed Methods of Work;
	2. the development and provision of Standing and Special Instructions;
	3. the consideration of Specifications, the allocation of capacity and the preparation and provision of a Weekly Terminal Train Plan;
	4. maintenance of the Facility;
	5. provision of suitable welfare facilities for Train Operator personnel;
	6. access provision for road fuel tankers.

Provision of the Facility Services is included in the Access Sum set out in paragraph 1 of [Schedule 5.](#_bookmark63)

1. Ancillary Services

If requested, the Facility Owner may provide the following Ancillary Services to the Train Operator subject to available capacity:

* the provision of Operational Stabling
* the provision of Cripple Wagon Stabling

DocuSign Envelope ID: 8E96A959-64AA-4FA6-B2E9-62340B76C843



34

# Schedule 3 – The Train Services

1. Train Services

The Train Services shall be listed and described by the Train Operator in a Specification in the form appended to this [Schedule 3.](#_bookmark61)

1. Specified Equipment

The Specified Equipment will include:

* + diesel-powered locomotives suitable for haulage of the Train Services; and
	+ wagon types suitable for the carriage of Containerised Goods.
1. Input and information

The Train Operator shall also provide the following input and information to the Facility Owner:

* + consultation during the development of Methods of Work;
	+ consultation during the development of Standing and Special Instructions;
	+ the provision of forward planning information for the purpose of compiling the Weekly Terminal Train Plan;
	+ attendance at Facility operations meetings; and
	+ attendance of authorised personnel at specified incidents.
	+ assistance with incident investigation involving the Train Operator at the Facility and sharing of completed reports.
	+ Competency Management at an agreed sum.
1. Scheduling of services

The parties shall agree a base specification of train services to apply from 1st January each year and this base specification will be included in [Schedule 5](#_bookmark63) of this Contract and form the basis of the access charges for the following twelve months. Ninety days notification of permanent changes to the base specification must be given by the train operator.

Requests for short notice changes to the base specification should be submitted by the Train Operator as soon as possible and such changes will be accommodated by the Facility Owner on a “best endeavours” basis and included in the Weekly Terminal Train Plan in accordance with Clause [6](#_bookmark17) of this Contract and any additional charges arising from these variations will be raised accordingly.

Appendix B- Form of Specification

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Rep No** | **Dep** | **Days** | **Origin** | **Destination** | **Arr** |  | **Sun** | **M** | **T** | **W** | **TH** | **F** | **S** |
| 4M51 | 0930 | SUN | TeesDock | Daventry | 1621 |  | R |  |  |  |  |  |  |
| 4E49 | 1710 | SUN | Daventry | Doncaster | 2214 |  | R |  |  |  |  |  |  |
| 4N50 | 0035 | MON | Doncaster | Tees Dock | 0325 |  |  | R |  |  |  |  |  |
| 4E49 | 1645 | MON -FRI | Daventry | Doncaster | 2136 |  |  | R | R | R | R | R |  |
| 4N50 | 0030 | TUES -SAT | Doncaster | Tees Dock | 0249 |  |  |  | R | R | R | R | R |
| 4M51 | 0635 | MON -FRI | TeesDock | Daventry | 1502 |  |  | R | R | R | R | R | R |

# Schedule 4 – Events of Default, Suspension and Termination

1. Events of Default
	1. Train Operator Events of Default

The following are Train Operator Events of Default:

1. The Train Operator ceases to be authorised to be the operator of trains for the provision of the Train Services by a Non-Passenger Train Operator’s Licence granted under section 8 of the Act or a European Freight Licence and a valid Statement of National Regulatory Provisions granted under regulations 6 and 10 respectively of the Railway (Licensing of Railway Undertakings) Regulations 2005, unless it is exempt from the requirement to be so authorised;
2. an Insolvency Event occurs in relation to the Train Operator;
	1. any breach by the Train Operator of this Contract or its Safety Obligations; or
	2. any event or circumstance which is reasonably likely to result in any such breach,

which, by itself or taken together with any other such breach, event or circumstance, the Facility Owner reasonably considers constitutes a threat to the safe operation of any part of the Facility or the Premises;

1. any Charges or other amount due by the Train Operator to the Facility Owner under this Contract remain unpaid for more than fourteen days after their due date;
2. any breach of this Contract by the Train Operator which, by itself or taken together with any other such breach, results, or is likely to result, in material financial loss to the Facility Owner; and
3. any breach of this Contract by the Train Operator which, by itself or taken together with any other such breach, results, or is likely to result, in material disruption to the operation of the Facility or the Premises.
	1. Notification

The Train Operator shall notify the Facility Owner as soon as reasonably practicable on becoming aware of the occurrence of a Train Operator Event of Default.

* 1. Facility Owner Events of Default

The following are Facility Owner Events of Default:

1. The Facility Owner ceases to be authorised to be the operator of the Facility by a Network Licence granted under section 8 of the Act, unless exempt from the requirement to be so authorised;
2. an Insolvency Event occurs in relation to the Facility Owner;
3. any breach by the Facility Owner of this Contract or its Safety Obligations or any event or circumstance which is reasonably likely to result in any such breach, which,

by itself or taken together with any other such breach, event or circumstance the Train Operator reasonably considers constitutes a threat to the safe operation of the Train Services; and

1. any breach of this Contract by the Facility Owner which, by itself or taken together with any other such breach, results, or is likely to result, in material financial loss to the Train Operator.
	1. Notification

The Facility Owner shall notify the Train Operator promptly on becoming aware of the occurrence of a Facility Owner Event of Default.

1. Suspension
	1. Right to suspend

Either party may serve a Suspension Notice on the other if an Event of Default has occurred and is continuing, provided the relevant Event of Default is reasonably capable of remedy.

* 1. Contents of Suspension Notice

A Suspension Notice shall specify:

1. the nature of the relevant Event of Default;
2. the date and time at which suspension is to take effect;
3. in the case of a Suspension Notice served on the Train Operator, reasonable restrictions imposed on the permission to use the Facility or any parts of it while the Suspension Notice is in force;
4. in the case of a Suspension Notice served on the Facility Owner, details of any necessary suspension of the Train Services while the Suspension Notice is in force;
5. the steps reasonably required to remedy the Event of Default; and
6. (a reasonable grace period for the defaulting party to remedy it (where the Event of Default is a failure by the Train Operator to pay any part of the Charges or other amounts due under this Contract, seven days shall be a reasonable grace period).
	1. Effect of a Suspension Notice served by the Facility Owner

Where the Facility Owner has served a Suspension Notice on the Train Operator:

1. the Train Operator shall comply with any reasonable restrictions imposed on it by the Suspension Notice;
2. the Suspension Notice shall remain in full force and effect in accordance with its terms until it has been revoked either in whole or in part by notice from the Facility Owner to the Train Operator under paragraph 2.5.4; and
3. service of the Suspension Notice shall not affect the Train Operator’s continuing obligation to pay the Charges.
	1. Effect of a Suspension Notice served by the Train Operator

Where the Train Operator has served a Suspension Notice on the Facility Owner:

1. it shall have the effect of suspending the Train Operator’s permission to use the Facility to operate the Train Services to the extent specified in the Suspension Notice; and
2. the Suspension Notice shall remain in full force and effect in accordance with its terms until it has been revoked either in whole or in part by notice from the Train Operator to the Facility Owner under paragraph 2.5.4.
	1. Suspension to be proportionate to breach
		1. A Suspension Notice served under paragraph 2.1 in respect of any of the Train Operator Events of Default specified in paragraphs (a) and (c) to (f) (inclusive) of paragraph 1.1 shall, so far as reasonably practicable, apply only to the:
			1. Specified Equipment; and
			2. Train Services,

or part or parts of them, to which the relevant Train Operator Event of Default relates.

* + 1. A Suspension Notice served under paragraph 2.1 in respect of any of the Facility Owner Events of Default specified in paragraphs 1.3 (a), (c) and (d) shall, so far as reasonably practicable, apply only to the Facility or part or parts of any Facility to which the relevant the Facility Owner Event of Default relates.
		2. The party served with a Suspension Notice shall, with all reasonable diligence, take such steps as are specified in the Suspension Notice to remedy the Event of Default and keep the party which served the Suspension Notice fully informed of its progress.
		3. Where a party served with a Suspension Notice has complied with its obligations under paragraph 2.5.3, whether in whole or in part, and it is reasonable for the suspension effected by the Suspension Notice to be revoked, whether in whole or in part, the party which served the Suspension Notice shall revoke the suspension to that extent. Such revocation shall be affected as soon as practicable after the remedy in question by notice to the other party specifying the extent of the revocation and the date on which it is to have effect.
1. Termination
	1. Facility Owner right to terminate

The Facility Owner may serve a Termination Notice on the Train Operator:

1. where, except during the period of a Suspension Notice relating to it, a Train Operator Event of Default has occurred and is continuing;
2. where the Train Operator fails to comply with any material restriction in a Suspension Notice provided that the relevant Train Operator Event of Default is continuing;
3. where the Train Operator fails to comply with its obligations under paragraph 2.5.3, provided that the relevant Train Operator Event of Default is continuing;
4. where the Facility Owner ceases to be authorised to be the operator of a Facility due to the termination of the Facility Connection Contract granted either to the Facility Owner or any third party (where the Facility does not have a direct connection to the national rail network) under section 18 of the Act with Network Rail Infrastructure Limited;
5. in relation to any Facility, where the Facility Owner ceases to be the facility owner of that Facility or ceases to be entitled to occupy or operate that Facility for any reason; or
6. where the Facility Owner can demonstrate a material change in relation to the Facility or this Contract, 3 months’ notice can be given.

Notwithstanding the above, the Facility Owner shall have the right to terminate this Contract with immediate effect and without any liability whatsoever in case of breach of clause [3.3](#_bookmark5) by the Train Operator.

* 1. The Train Operator’s right to terminate

The Train Operator may serve a Termination Notice on the Facility Owner:

1. where, except during the period of a Suspension Notice relating to it, a Facility Owner Event of Default has occurred and is continuing;
2. where the Facility Owner fails to comply with its obligations under paragraph 2.5.3, provided that the relevant Facility Owner Event of Default is continuing;
3. at any time without reason or liability by giving the Facility Owner no less than 30 Working Days written notice.

3.2.2. Notwithstanding the above, the Train Operator shall have the right to terminate this contract with immediate effect and without any liability whatsoever in case of breach of clause

* 1. of the Contract by the Facility Owner. (d)
	2. Contents of Termination Notice

A Termination Notice shall specify:

* + 1. the nature of the relevant Event of Default or other matter entitling termination under paragraphs 3.1 or 3.2 as the case may be;
		2. a date and time, which shall be reasonable in the circumstances, at which termination is to take effect; and
		3. where the Event of Default is capable of remedy:
			1. the steps reasonably required to remedy the Event of Default;
			2. a reasonable grace period within which such steps may be taken (and where the Event of Default is a failure by the Train Operator to pay any part of the

Charges or other amounts due under this Contract, seven days shall be a reasonable grace period); and

* + 1. In the case of a Termination Notice served by the Facility Owner, whether the termination is to be effective to terminate this Contract or to terminate the Train Operator’s permissions to use a specified Facility or specified Facilities only.
	1. Effect of Termination Notice

Where the Facility Owner or the Train Operator has served a Termination Notice on the other:

* + 1. the service of the Termination Notice shall not affect the parties’ continuing obligations under this Contract or in relation to the Facility or Facilities to which the Termination Notice relates (as appropriate) up to the date of termination, which date shall be determined in accordance with paragraph 3.4(e);
		2. the party which has served the Termination Notice shall withdraw it by notice to the other party, upon being reasonably satisfied that the relevant Event of Default has been remedied; and
		3. if the Termination Notice is served by the Train Operator, or if the Termination Notice is served by the Facility Owner and is stated to be effective to terminate this Contract, this Contract shall terminate on the Termination Date.:
		4. if the Termination Notice is served by the Facility Owner and is stated to be effective to terminate the Train Operator’s right to use a specific Facility or specific Facilities only, each of:
			1. the Train Operator’s permission to use the Facility of Facilities specified in such Termination Notice; and
			2. the Facility Owner’s other obligations under clause 6 of this Contract

shall terminate on the Termination Date and such Facility or Facilities set out in such Termination Notice shall, with effect from the Termination Date, cease to be a Facility or Facilities for the purposes of this Contract.

* + 1. For the purposes of this paragraph 3.4, the Termination Date shall be the later of:
			1. the date and time specified in the Termination Notice for the contract to terminate or for it to cease to apply to a specific Facility or specified Facilities only (as appropriate) (or such later date and time as the party which served the Termination Notice notifies to the other before the date and time so specified); and
			2. the date on which a copy of the Termination Notice is given to ORR.
1. Further consequences of termination
	1. Directions regarding location of Specified Equipment etc

Immediately before, upon or following termination or expiry of this Contract, the Train Operator shall comply or procure compliance with all reasonable directions given by the

Facility Owner concerning the location of the Specified Equipment and other things left on the Facility.

* 1. Failure to comply with directions

If the Train Operator fails to comply with any directions given under paragraph 4.1, the Facility Owner shall be entitled to remove from the Facility any Specified Equipment and other things left on the Facility or to instruct a third party to do so and any reasonable costs incurred by the Facility Owner in taking such steps shall be paid promptly by the Train Operator.

* 1. Evidence of costs

The Facility Owner shall provide such evidence of such costs as are referred to in paragraph

4.2 as the Train Operator shall reasonably request.