

Dated 2011

between

HS1 LIMITED

and

LONDON & SOUTH EASTERN RAILWAY LIMITED

SECOND SUPPLEMENTAL AGREEMENT

relating to the

**FRAMEWORK TRACK ACCESS AGREEMENT
FOR PASSENGER SERVICES**

THIS SECOND SUPPLEMENTAL AGREEMENT is made on the day of 2011

BETWEEN:

- (1) **HS1 LIMITED**, a company registered in England and Wales under number 03539665 having its registered office at 73 Collier Street, London N1 9BE ("**HS1 Ltd**"); and
- (2) **LONDON & SOUTH EASTERN RAILWAY LIMITED**, a company registered in England and Wales under number 04860660 having its registered office at 3rd Floor, 41-51 Grey Street, Newcastle upon Tyne NE1 6EE (the "**Train Operator**").

WHEREAS

- (a) Pursuant to a framework track access agreement for passenger services dated 14 August 2009 made between HS1 Ltd and the Train Operator (as amended by a first supplemental agreement between HS1 Ltd and the Train Operator dated 17 August 2011) (the "**Track Access Agreement**"), HS1 Ltd granted the Train Operator permission to use certain track comprised in HS1.
- (b) HS1 Ltd and the Train Operator have agreed to amend the Track Access Agreement as set out in this Second Supplemental Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

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

2. AMENDMENT

- 2.1 With effect from 0159 hours on the Principal Change Date in December 2011, the Track Access Agreement shall be amended by deleting table 2.1 (*Firm Train Slots and Standard Specified Equipment*) of schedule 5 of the Track Access Agreement in its entirety and replacing it with the form of table 2.1 set out in Annex 1 (*Revised Table 2.1 – Principal Change Date (December 2011)*) of this Second Supplemental Agreement.
- 2.2 From and including 0200 hours on 27 July 2012 until and including 0159 hours on 13 August 2012 (the "**Olympic Period**"):
 - 2.2.1 schedule 4 of the Track Access Agreement shall be deemed to be replaced with the form of schedule 4 set out in Annex 2 (*Revised Schedule 4 – Olympics*) of this Second Supplemental Agreement; and
 - 2.2.2 table 2.1 of schedule 5 of the Track Access Agreement (as amended pursuant to this Second Supplemental Agreement) shall be deemed to be replaced with the form of table 2.1 set out in Annex 3 (*Revised Table 2.1- Olympics*) of this Second Supplemental Agreement.

- 2.3 The deemed replacements described in Clause 2.2 shall only have effect during the Olympic Period. Immediately following the end of the Olympic Period:
- 2.3.1 the form of schedule 4 of the Track Access Agreement shall revert to the form of schedule 4 of the Track Access Agreement which was set out in the Track Access Agreement immediately prior to the Olympic Period; and
- 2.3.2 the form of table 2.1 of schedule 5 of the Track Access Agreement shall revert to the form of table 2.1 of schedule 5 of the Track Access Agreement which was set out in the Track Access Agreement (as amended pursuant to this Second Supplemental Agreement) immediately prior to the Olympic Period.
- 2.4 From and including 0200 hours on 29 August 2012 until and including 0159 hours on 10 September 2012 (the “**Paralympic Period**”):
- 2.4.1 schedule 4 of the Track Access Agreement shall be deemed to be replaced with the form of schedule 4 set out in Annex 4 (*Revised Schedule 4 – Paralympics*) of this Second Supplemental Agreement; and
- 2.4.2 table 2.1 of schedule 5 of the Track Access Agreement (as amended pursuant to this Second Supplemental Agreement) shall be deemed to be replaced with the form of table 2.1 set out in Annex 5 (*Revised Table 2.1- Paralympics*) of this Second Supplemental Agreement.
- 2.5 The deemed replacements described in Clause 2.4 shall only have effect during the Paralympic Period. Immediately following the end of the Paralympic Period:
- 2.5.1 the form of schedule 4 of the Track Access Agreement shall revert to the form of schedule 4 of the Track Access Agreement which was set out in the Track Access Agreement immediately prior to the Paralympic Period; and
- 2.5.2 the form of table 2.1 of schedule 5 of the Track Access Agreement shall revert to the form of table 2.1 of schedule 5 of the Track Access Agreement which was set out in the Track Access Agreement (as amended pursuant to this Second Supplemental Agreement) immediately prior to the Paralympic Period.
- 2.6 With effect from the date on which the ORR approves this Second Supplemental Agreement, the Track Access Agreement shall be amended in the following respects:
- 2.6.1 by inserting, immediately following the definition of “Bid” in paragraph 1.1 of schedule 5 of the Track Access Agreement, new definitions of “Contingent Right” and “Contingent Train Slot” as follows:

““**Contingent Right**” means a right under this Schedule 5 which is not a Firm Right and which is subject to the fulfilment of all Bids in respect of competing Firm Rights and any additional contingency specified in this Schedule 5;

“**Contingent Train Slot**” means a Train Slot to which the Train Operator has Contingent Rights under the Contract as specified in paragraph 2.6A;” and

- 2.6.2 by inserting a new paragraph 2.6A immediately following paragraph 2.6 of schedule 5 of the Track Access Agreement, as follows:

“Contingent Train Slots

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

3. CONTINUATION

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

4. MISCELLANEOUS

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

5. COUNTERPARTS

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

6. GOVERNING LAW

- 6.1 This Second Supplemental Agreement and any non-contractual obligation arising out of or in connection with this Second Supplemental Agreement shall be governed by and construed in accordance with the laws of England.

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

EXECUTED as a **DEED**)
for and on behalf of)
HS1 LIMITED by:)
)
acting under a **POWER OF**)
ATTORNEY dated) Authorised Signatory
10 August 2011))

EXECUTED as a **DEED** by)
LONDON & SOUTH)
EASTERN RAILWAY)
LIMITED acting by:) Director

in the presence of:

Signature of witness:

Name of witness:

Address of witness:

Occupation of witness:

ANNEX 1

Revised Table 2.1 – Principal Change Date (December 2011)

Table 2.1: Firm Train Slots and Standard Specified Equipment

1					2			3
Service Description : LSER SLC2 HS1 Service					Firm Train Slots			
From	To	Description	TSC	Service Group	Week Day	Saturday	Sunday	Standard Specified Equipment
Ashford West Junction	St Pancras International	Morning Peak	24647000	Ashford West Junction and St Pancras	4	0	0	Class 395
St Pancras International	Ashford West Junction	Evening Peak	24647000	Ashford West Junction and St Pancras	4	0	0	Class 395
Ashford West Junction	St Pancras International	Off Peak	24647004	Ashford West Junction and St Pancras	33	36	32	Class 395
St Pancras International	Ashford West Junction	Off Peak	24647004	Ashford West Junction and St Pancras	31	35	32	Class 395

Springhead Road Junction	St Pancras International	Morning Peak	24648000	Springhead Junction and St Pancras	7	0	0	Class 395
St Pancras International	Springhead Road Junction	Evening Peak	24648000	Springhead Junction and St Pancras	7	0	0	Class 395
Springhead Road Junction	St Pancras International	Off Peak	24648004	Springhead Junction and St Pancras	31	33	27	Class 395
St Pancras International	Springhead Road Junction	Off Peak	24648004	Springhead Junction and St Pancras	32	33	26	Class 395
Ebbsfleet	St Pancras International	Morning Peak	24649000	Ebbsfleet and St Pancras Shuttle	4	0	0	Class 395
St Pancras International	Ebbsfleet	Evening Peak	24649000	Ebbsfleet and St Pancras Shuttle	3	0	0	Class 395
Ebbsfleet	St Pancras International	Off Peak	24649004	Ebbsfleet and St Pancras Shuttle	0	0	0	Class 395
St Pancras International	Ebbsfleet	Off Peak	24649004	Ebbsfleet and St Pancras Shuttle	1	0	0	Class 395

ANNEX 2
Revised Schedule 4 – Olympics

A	B	C	D	E	F	G	H	I
Service Group	Vehicle Category	IRC Per Train Per Minute	Discount Factor	Chargeable Journey Time (Minutes)	DI Costs OMRCA1	DI Costs OMRCA2	LTOP Costs OMRCB	Pass Through Costs OMRCC
Ashford - St Pancras	Class 395	£69.57	1	31	£2.47	£3.41	£22.65	£8.68
Springhead – St Pancras	Class 395	£69.57	1	16.5	£2.47	£3.41	£22.65	£8.68
Ebbsfleet – St Pancras	Class 395	£69.57	1	14	£2.47	£3.41	£22.65	£8.68
St Pancras - Ebbsfleet	Class 395	£69.57	1	15	£2.47	£3.41	£22.65	£8.68
St Pancras – Stratford	Class 395	£69.57	1	5.5	£2.47	£3.41	£22.65	£8.68
Stratford – St Pancras	Class 395	£69.57	1	5.5	£2.47	£3.41	£22.65	£8.68

ANNEX 3
Revised Table 2.1 - Olympics

Table 2.1: Firm Train Slots and Standard Specified Equipment

1					2			3
Service Description : LSER Javelin HS1 Service					Firm Train Slots			
From	To	Description	TSC	Service Group	Week Day	Saturday	Sunday	Standard Specified Equipment
Ashford West Junction	St Pancras International	Morning Peak	24647000	Ashford West Junction and St Pancras	4	0	0	Class 395
St Pancras International	Ashford West Junction	Evening Peak	24647000	Ashford West Junction and St Pancras	4	0	0	Class 395
Ashford West Junction	St Pancras International	Off Peak	24647004	Ashford West Junction and St Pancras	33	38	38	Class 395
St Pancras International	Ashford West Junction	Off Peak	24647004	Ashford West Junction and St Pancras	33	37	37	Class 395

Springhead Road Junction	St Pancras International	Morning Peak	24648000	Springhead Junction and St Pancras	3	0	0	Class 395
St Pancras International	Springhead Road Junction	Evening Peak	24648000	Springhead Junction and St Pancras	2	0	0	Class 395
Springhead Road Junction	St Pancras International	Off Peak	24648004	Springhead Junction and St Pancras	16	19	19	Class 395
St Pancras International	Springhead Road Junction	Off Peak	24648004	Springhead Junction and St Pancras	16	18	18	Class 395
Ebbsfleet	St Pancras International	Morning Peak	24649000	Ebbsfleet and St Pancras Shuttle	8	0	0	Class 395
St Pancras International	Ebbsfleet	Evening Peak	24649000	Ebbsfleet and St Pancras Shuttle	10	0	0	Class 395
Ebbsfleet	St Pancras International	Off Peak	24649004	Ebbsfleet and St Pancras Shuttle	104	108	108	Class 395
St Pancras International	Ebbsfleet	Off Peak	24649004	Ebbsfleet and St Pancras Shuttle	100	110	110	Class 395
St Pancras International	Stratford International	Morning Peak	TBA	Stratford and St Pancras Shuttle	0	0	0	Class 395
Stratford International	St Pancras International	Evening Peak	TBA	Stratford and St Pancras Shuttle	0	0	0	Class 395
St Pancras International	Stratford International	Off Peak	TBA	Stratford and St Pancras Shuttle	7	7	7	Class 395
Stratford International	St Pancras International	Off Peak	TBA	Stratford and St Pancras Shuttle	7	7	7	Class 395

ANNEX 4

Revised Schedule 4 - Paralympics

A	B	C	D	E	F	G	H	I
Service Group	Vehicle Category	IRC Per Train Per Minute	Discount Factor	Chargeable Journey Time (Minutes)	DI Costs OMRCA1	DI Costs OMRCA2	LTOP Costs OMRCB	Pass Through Costs OMRCC
Ashford - St Pancras	Class 395	£69.57	1	31	£2.47	£3.41	£22.65	£8.68
Springhead – St Pancras	Class 395	£69.57	1	16.5	£2.47	£3.41	£22.65	£8.68
Ebbsfleet – St Pancras	Class 395	£69.57	1	14	£2.47	£3.41	£22.65	£8.68
St Pancras - Ebbsfleet	Class 395	£69.57	1	15	£2.47	£3.41	£22.65	£8.68
St Pancras – Stratford	Class 395	£69.57	1	5.5	£2.47	£3.41	£22.65	£8.68
Stratford – St Pancras	Class 395	£69.57	1	5.5	£2.47	£3.41	£22.65	£8.68

ANNEX 5

Revised Table 2.1 - Paralympics

Table 2.1: Firm Train Slots and Standard Specified Equipment

1					2			3
Service Description : LSER Javelin HS1 Service					Firm Train Slots			
From	To	Description	TSC	Service Group	Week Day	Saturday	Sunday	Standard Specified Equipment
Ashford Junction	West St Pancras International	Morning Peak	24647000	Ashford West Junction and St Pancras	4	0	0	Class 395
St Pancras International	Ashford West Junction	Evening Peak	24647000	Ashford West Junction and St Pancras	4	0	0	Class 395
Ashford Junction	West St Pancras International	Off Peak	24647004	Ashford West Junction and St Pancras	33	37	30	Class 395
St Pancras International	Ashford West Junction	Off Peak	24647004	Ashford West Junction and St Pancras	32	36	32	Class 395

Springhead Road Junction	St Pancras International	Morning Peak	24648000	Springhead Junction and St Pancras	7	0	0	Class 395
St Pancras International	Springhead Road Junction	Evening Peak	24648000	Springhead Junction and St Pancras	7	0	0	Class 395
Springhead Road Junction	St Pancras International	Off Peak	24648004	Springhead Junction and St Pancras	31	34	31	Class 395
St Pancras International	Springhead Road Junction	Off Peak	24648004	Springhead Junction and St Pancras	33	35	29	Class 395
Ebbsfleet	St Pancras International	Morning Peak	24649000	Ebbsfleet and St Pancras Shuttle	4	0	0	Class 395
St Pancras International	Ebbsfleet	Evening Peak	24649000	Ebbsfleet and St Pancras Shuttle	4	0	0	Class 395
Ebbsfleet	St Pancras International	Off Peak	24649004	Ebbsfleet and St Pancras Shuttle	22	29	28	Class 395
St Pancras International	Ebbsfleet	Off Peak	24649004	Ebbsfleet and St Pancras Shuttle	23	29	27	Class 395
St Pancras International	Stratford International	Morning Peak	TBA	Stratford and St Pancras Shuttle	0	0	0	Class 395
Stratford International	St Pancras International	Evening Peak	TBA	Stratford and St Pancras Shuttle	0	0	0	Class 395
St Pancras International	Stratford International	Off Peak	TBA	Stratford and St Pancras Shuttle	5	3	4	Class 395
Stratford International	St Pancras International	Off Peak	TBA	Stratford and St Pancras Shuttle	7	3	3	Class 395