

DATED 11 November 2016

Network Rail Infrastructure Limited (1)

and

**London Overground Rail Operations Limited (2)
as Transferor**

and

**South Eastern Train Maintenance Limited (3)
as Transferee**

**DEED OF NOVATION
relating to a Connection Agreement at
London Willesden Depot**

THIS DEED OF NOVATION is made the 11 day of November 2016 BETWEEN

- (1) **NETWORK RAIL INFRASTRUCTURE LIMITED** (registered with company number 02904587) whose registered office is at 1 Eversholt Street, London NW1 2DN ("**Network Rail**");
- (2) **LONDON OVERGROUND RAIL OPERATIONS LIMITED** (registered with company number 05668786) whose registered office is Overground House, 125 Finchley Road, Swiss Cottage, London, NW3 6HY (the "**Transferor**"); and
- (3) **SOUTH EASTERN TRAIN MAINTENANCE LIMITED** (registered with company number 03341029) whose registered office is at Litchurch Lane, Derby, Derbyshire, DE24 8AD (the "**Transferee**").

RECITALS

- (A) This Novation is made pursuant to the terms of an agreement dated 9 November 2007 and made between (1) Network Rail Infrastructure Limited and (2) the Transferor (the "**Connection Agreement**") relating to the use of the light maintenance depot known as London Willesden Depot.
- (B) Network Rail, the Transferee and Rail for London Ltd intend to enter into a new tripartite connection agreement relating to the use of London Willesden Depot (the "**New Connection Agreement**") following the conclusion of a 28 day industry consultation period.
- (C) On and from 0200 on 13 November 2016, the Transferor ceases to be the facility owner of Willesden Depot. The Transferor wishes to (i) transfer its interest in the Connection Agreement to the Transferee and (ii) amend the Connection Agreement in the manner set out in this Agreement. Network Rail has agreed to give its consent to the transfer and the parties have agreed to give their consent to the amendment upon the terms contained in this Agreement.
- (C) The Office of Rail and Road has issued its approval and direction (as appropriate) pursuant to the powers vested in it under the Railways Act 1993 in respect of the terms of this Novation.

1 Definitions

- (i) “**Effective Date**” means on and from 0200 on 13 November 2016.

All terms, unless otherwise defined in this Novation, shall have the same meaning given to those terms in the Connection Agreement.

2 Operative Provisions

2.1 Network Rail now consents to the Transferor transferring all its interest in the Agreement to the Transferee.

2.2 As from the Effective Date:

- (a) The Transferee undertakes to Network Rail that it will discharge the obligations of the Transferor under the Connection Agreement as if the Transferee were a party to the Connection Agreement in lieu of the Transferor, it being acknowledged by the parties that the Transferee shall not be liable for any breaches by the Transferor of the Connection Agreement prior to the Effective Date;
- (b) Network Rail releases and discharges the Transferor from all liabilities, claims and demands of any kind arising from breaches which in each case occur after the Effective Date under or in connection with the Connection Agreement, Network Rail accepting in place of that performance and those liabilities, claims and demands the undertaking of the Transferee set out in Clause 2.2(a), it being acknowledged by all parties that Network Rail’s release and discharge of the Transferor is without prejudice to any liabilities, claims and demands of or made against the Transferor arising from breaches by the Transferor which occurred prior to the Effective Date, which shall continue to be the responsibility of the Transferor;
- (c) Network Rail undertakes to the Transferee that it will discharge its obligations under the Connection Agreement and otherwise observe all the provisions of the Connection Agreement and be liable to the Transferee for any breaches of the Connection

Agreement on its part, prior to, on or after the Effective Date, as if the Transferee had been party to the Connection Agreement and the obligations of Network Rail had been owed to the Transferee as well as the Transferor from the date on which the Connection Agreement was first made;

- (d) The Transferor shall cease to have any rights under the Connection Agreement in respect of any acts or omissions of Network Rail from and including the Effective Date; but this is without prejudice to the rights of the Transferor in respect of any breach of the Connection Agreement on the part of Network Rail prior to the Effective Date.

2.3 The parties agree that Clause 5 of the Connection Agreement shall be deleted in its entirety and replaced with the following:

"This Agreement shall continue in full force until the earlier to occur of:

5.1.1 the Depot Facility Owner ceasing to be the facility owner of Depot;

5.1.2 the Depot Facility Owner entering into a new connection agreement for the Depot with Network Rail and Rail for London Ltd; and

5.1.3 0200 on 13 February 2017."

2.4 The parties agree that paragraph 1 of Schedule 1 to the Connection Agreement shall be deleted in its entirety and replaced with the following:

"1. Depot Facility Owner

Name: South Eastern Train Maintenance Limited

Registered Office: Litchurch Lane, Derby, Derbyshire, DE24 8AD"

3 **Counterparts**

This Agreement may be executed in any number of counterparts each of which when executed and delivered is an original but all the counterparts together constitute the same document.

4 **Governing Law**

This Agreement shall be governed by and construed in accordance with English Law.

5 **Contracts Rights of Third Parties**

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

IN WITNESS whereof Network Rail, the Transferor and the Transferee have each executed this Novation as a deed on the date shown above.

EXECUTED as a deed by)
affixing the Common Seal of)
NETWORK RAIL)
INFRASTRUCTURE LIMITED)
in the presence of:)

EXECUTED as deed by
LONDON OVERGROUND
RAIL OPERATIONS LTD

SIGNED as a DEED by [*Mike Nelson*]
acting by

Mike Nelson

_____ a Director in the
presence of

[Signature]

Name *Amy Marin*
Address **DENTONS UKMEA LLP**
ONE FLEET PLACE
LONDON EC4M 7WS
Occupation *Trainee* **T +44 (0) 20 742 4212**

EXECUTED as deed by
SOUTH EASTERN TRAIN
MAINTENANCE LIMITED

SIGNED as a DEED by []
acting by

_____ two Directors or one
Director and the Company
Secretary

IN WITNESS whereof Network Rail, the Transferor and the Transferee have each executed this Novation as a deed on the date shown above.

EXECUTED as a deed by)
affixing the Common Seal of)
NETWORK RAIL)
INFRASTRUCTURE LIMITED)
in the presence of:)

EXECUTED as deed by
LONDON OVERGROUND
RAIL OPERATIONS LTD

SIGNED as a DEED by []
acting by

_____ a Director in the
presence of

Name
Address

Occupation

EXECUTED as deed by
SOUTH EASTERN TRAIN
MAINTENANCE LIMITED

SIGNED as a DEED by []
acting by

_____ two Directors or one
Director and the Company
Secretary

Authorized Signatory: *Sarah D. Cust.*
Authorized Signatory: *[Signature]*

IN WITNESS whereof Network Rail, the Transferor and the Transferee have each executed this Novation as a deed on the date shown above.

SEAL NO. 38577

EXECUTED as a deed by
affixing the Common Seal of
**NETWORK RAIL
INFRASTRUCTURE LIMITED**
in the presence of:

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)
)
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)

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ASSISTANT COMPANY SECRETARY

Authorised Signatory as approved
by a resolution of the board of
Network Rail Infrastructure Limited
on 19 October 2015

EXECUTED as deed by
**LONDON OVERGROUND
RAIL OPERATIONS LTD**

SIGNED as a DEED by []
acting by

_____ a Director in the
presence of

Name
Address

Occupation

EXECUTED as deed by
**SOUTH EASTERN TRAIN
MAINTENANCE LIMITED**

SIGNED as a DEED by []
acting by

_____ two Directors or one
Director and the Company
Secretary

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