

DATED:

1st March 2012

Eleventh Supplemental Agreement

between

Network Rail Infrastructure Limited

and

Freightliner Limited

relating to

The amendment of a Track Access Agreement

THIS ELEVENTH SUPPLEMENTAL AGREEMENT is dated 1st March 2012 and made

BETWEEN:

- (1) **NETWORK RAIL INFRASTRUCTURE LIMITED** a company registered in England (number 2904587) having its registered office at Kings Place 90 York Way London N1 9AG (“Network Rail”); and
- (2) **FREIGHTLINER LIMITED** a company registered in England (number 3831229) having its registered office at The Podium, 1 Eversholt Street, London NW1 2FL (The “Train Operator”).

WHEREAS:

- (A) The parties entered into a Track Access Contract (Freight Services) dated 17 December 2007 in a form directed by the Office of Rail Regulation (“ORR”) pursuant to section 17 of the Act, which has subsequently been amended by various supplemental agreements, each in a form approved by ORR pursuant to Section 22 of the Act and hereafter referred to as the “Agreement”).
- (B) The parties propose to enter into this Eleventh Supplemental Agreement in order to vary the Agreement.

IT IS HEREBY AGREED as follows:

1. INTERPRETATION

In this Eleventh Supplemental Agreement:-

- (A) Words and expressions defined in and rules of interpretation set out in the Track Access Contract shall have the same meaning and effect when used in this Eleventh Supplemental Agreement except where the context requires otherwise; and
- (B) “Effective Date” means the date upon which the ORR issues its approval pursuant to Section 22 of the Act of the terms of this Eleventh Supplemental Agreement.

2. EFFECTIVE DATE AND TERM

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

3. AMENDMENTS TO THE AGREEMENT

- 3.1 Schedule 5 Rights Table – the Rights Table shall be deleted and replaced by the Rights Table as set out in Annex 1 to this Eleventh Supplemental Agreement.
- 3.2 Insertion of new paragraph, 5.6 A Modifying Provision to Schedule 5
Schedule 15 sets out a modification process whereby the parties meet and negotiate any necessary changes to Schedule 5 to implement ORR’s policy in relation to the structure and specification of access rights. Schedule 15 shall have effect. Schedule 15 as set out in Annex 2

4. GENERAL

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

5. LAW

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

6. COUNTERPARTS

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

7. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

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

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



SIGNED by)
)
for and on behalf of)
FREIGHTLINER LIMITED)



Annex 1

Schedule 5 Rights Table

Annex 2
Schedule 15