Third Supplemental Agreement

between

Network Rail Infrastructure Limited

and

GB Railfreight Limited

relating to

The amendment of a track access agreement

THIS THIRD SUPPLEMENTAL AGREEMENT is dated 2c₁₹ and made

BETWEEN:

(1)   NETWORK RAIL INFRASTRUCTURE LIMITED a company registered in England (number 2904587) having its registered office at 1 Eversholt Street, London, NW1 2DN ("Network Rail"); and

(2)   GB RAILFREIGHT LIMITED a company registered in England (number 03707899) having its registered office at 3rd Floor, 55 Old Broad Street, London, EC2M 1RX (The "Train Operator").

WHEREAS

(A)   The parties entered into a Track Access Contract (Freight Services) dated 11 December 2016 in a form approved by the Office of Rail and Road ("ORR") pursuant to section 17 of the Act (which track access contract as subsequently amended is hereafter referred to as the "Contract").

(B)   The parties propose to enter into this Third Supplemental Agreement in order to vary the Contract as described below.

IT IS HEREBY AGREED as follows:

1.   **INTERPRETATION**

In this Third Supplemental Agreement:

(A)   Words and expressions defined in and rules of interpretation set out in the Agreement shall have the same meaning and effect when used in this Third 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 Third Supplemental Agreement.

2.   **EFFECTIVE DATE AND TERM**

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

3.   **AMENDMENTS TO THE AGREEMENT**

3.1   Paragraph 1 'Definitions' of Schedule 7 of the Contract shall be amended to include in the correct alphabetical order additional definitions as set out in Appendix A.

3.2　　Paragraph 2.4 'Track Electricity Charge' of Schedule 7 of the contract shall be deleted in its entirety and replaced with the amended version as set out in Appendix A.

4.　GENERAL

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

5.　LAW

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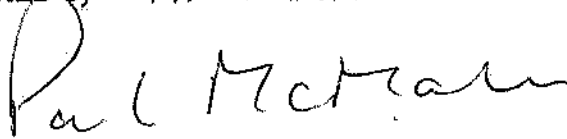
6.　COUNTERPARTS

This Third 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 Second Supplemental Agreement on the date first above written.

SIGNED by   PAUL McMAHON

for and on behalf of
NETWORK RAIL INFRASTRUCTURE LIMITED

SIGNED by   IAN KAPUR.

for and on behalf of
GB RAILFREIGHT LIMITED

GBRf S22 3rd SA Contract

Appendix A

"Bimodal Electric Multiple Unit" means an electric multiple unit that is capable of drawing current from the AC System and/or DC System and, in addition, being powered by an alternative source of energy, including but not limited to diesel;

"Bimodal Locomotive" means a locomotive that is capable of drawing current from the AC System and/or DC System and, in addition, being powered by an alternative source of energy, including but not limited to diesel;

"Traction Electricity Usage Occurrence Data" means information as to when a Bimodal Electric Multiple Unit or Bimodal Locomotive is either drawing current from the AC System and/or DC System, or is being powered by an alternative source of energy;

"Traction-Train Compatible" means a situation in which a Bimodal Electric Multiple Unit or Bimodal Locomotive is located on Network with a system of electricity traction supply that the Bimodal Electric Multiple Unit or Bimodal Locomotive is capable of drawing current from;

Amendments to paragraph 2.4 (additional wording <u>underlined</u> for information in this supplemental agreement only):

2.4   Traction Electricity Charge

2.4.1   If the Train Operator procures the supply of electricity from or through Network Rail (whether as its agent or otherwise) for the purpose of running trains under this contract, the Traction Electricity Charge in Relevant Year t shall be calculated in accordance with the following formula:

$$E_t = E_{tmo} + E_{tme} + E_{tmuAC} + E_{tmuDC}$$

where:

E_{tmo} means an amount calculated in accordance with paragraph 2.4.1.2 below;

E_{tme} means an amount calculated in accordance with paragraph 2.4.1.3 below;

E_{tmuAC} means an amount calculated in accordance with paragraph 2.4.1.4(a) below; and

E_{tmuDC} means an amount calculated in accordance with paragraph 2.4.1.4(b) below;

Circumstances in which calculation to be based on modelled data and circumstances in which calculation to be based on metered data

2.4.1.1 E_{tmo} shall be calculated in respect of all trains other than those identified in the table at Appendix 3, and E_{tme}, E_{tmuAC} and E_{tmuDC} shall be calculated in respect of the trains identified in the table at Appendix 3.

Calculation of modelled consumption

2.4.1.2 E_{tmo} is derived from the following formula:

$$E_{tmo} = \Sigma\ E_{tmog}$$

where:

Σ means the summation across all Geographic Areas g, as appropriate;

E_{tmog} is derived from the following formula:

$$E_{tmog} = \Sigma\ C_i \bullet EF_{git} \bullet UE_{igit}$$

where:

Σ means the summation across all relevant train categories i (determined in accordance with paragraph 2.4.1.1 above) and tariff bands j, as appropriate;

C_i means the modelled consumption rate :

   (a) in kWh per electrified Train Mile in relation to passenger electric multiple units (using the rate for the relevant number of units); and

   (b) in kWh per electrified kgtm in relation to locomotive-hauled units and all freight traffic,

for train category i shown in the Traction Electricity Modelled Consumption Rates List;

EF_{git} means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 19 of the Traction Electricity Rules; and

UE_{igit} means the actual volume of usage (in electrified Vehicle Miles in relation to passenger electric multiple units or electrified kgtm in relation to locomotive hauled units and all freight traffic), if any, of trains operated by or on behalf of the Train Operator in train category i, in Geographic Area g, in tariff band j and in Relevant Year t, pursuant to this contract.

Where train category i is a Bimodal Electric Multiple Unit or Bimodal Locomotive operating in a Traction-Train Compatible situation, all mileage (in Vehicle Miles in relation to passenger electric multiple units or kgtm in relation to locomotive-hauled units and all freight traffic), if any, of trains operated by or on behalf of the Train Operator in train category i, in tariff band j and in Relevant Year t is electrified shall be deemed for billing purposes to be electrified.

Calculation of consumption using metered consumption data

2.4.1.3 E_{tme} is derived from the following formula:

$$E_{tme} = \Sigma\ E_{tmeg}$$

where:

Σ means the summation across all Geographic Areas g, as appropriate;

E_{tmeg} is derived from the following formula:

$$E_{tmeg} = \Sigma\left[\left((CME_{mgjt} \bullet PF_m \bullet EF_{gjt}) - (RGB_{mgjt} \bullet PF_m \bullet EF_{gjt})\right) \bullet (1 + \delta_m)\right]$$

where:

Σ means the summation across all relevant Metered Trains m (determined in accordance with paragraph 2.4.1.1 above) and tariff bands j, as appropriate;

CME_{mgjt} means the consumption of electricity (in kWh) by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g, tariff band j and in Relevant Year t;

PF_m means the Power Factor Correction for the relevant train type for Metered Train m;

EF_{gjt} means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 19 of the Traction Electricity Rules;

RGB_{mgjt} means the electricity (in kWh) generated by braking by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g, tariff band j and in Relevant Year t; and

δ_m means the Tolerance Factor for the relevant train type for Metered Train m.

2.4.1.4

(a) E_{tmuAC} is derived from the following formula:

$$E_{tmuAC} = \Sigma E_{tmugAC}$$

where:

Σ means the summation across all Geographic Areas g, as appropriate;

E_{tmugAC} is derived from the following formula:

$$E_{tmugAC} = \Sigma\left[(CME_{mgjtAC} \bullet PF_m \bullet EF_{gjt}) \bullet (1 + \delta_m)\right] \bullet \lambda_{ACg}$$

where:

Σ means the summation across all Metered Trains m (determined in accordance with paragraph 2.4.1.1 above) and tariff bands j, as appropriate;

CME_{mgjtAC} means the consumption of electricity (in kWh) from the AC System by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g, tariff band j and in Relevant Year t;

PF_m means the Power Factor Correction for the relevant train type for

Metered Train m;

EF_{gjt} means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 19 of the Traction Electricity Rules;

δ_m means the Tolerance Factor for the relevant train type for Metered Train m; and

λ_{ACg} means the Network Rail Distribution System Loss Factor for the AC System in Geographic Area g.

(b) E_{tmuDC} is derived from the following formula:

$$E_{tmuDC} = \Sigma E_{tmugDC}$$

where:

Σ means the summation across all Geographic Areas g, as appropriate;

E_{tmugDC} is derived from the following formula:
$$E_{tmugDC} = \Sigma[(CME_{mgjtDC} \bullet EF_{gjt}) \bullet (1 + \delta_m)] \bullet \lambda_{DCg}$$

where:

Σ means the summation across all relevant Metered Trains m (determined in accordance with paragraph 2.4.1.1 above) and tariff bands j, as appropriate;

CME_{mgjtDC} means the consumption of electricity (in kWh) from the DC System by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the Traction Electricity Rules, in Geographic Area g, tariff band j and in Relevant Year t;

EF_{gjt} means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 19 of the Traction Electricity Rules;

δ_m means the Tolerance Factor for the relevant train type for Metered Train m; and

λ_{DCg} means the Network Rail Distribution System Loss Factor for the DC System in Geographic Area g.

(c) Where train category i is a Bimodal Electric Multiple Unit or Bimodal Locomotive, the Train Operator shall, as a minimum, within 14 days of the end of each of the third, fifth, tenth and thirteenth Periods, provide to Network Rail the Traction Electricity Usage Occurrence Data for train category i. The Traction Electricity Usage Occurrence Data provided: within 14 days of the end of the third Period shall cover Periods one, two and three; within 14 days of the end of the fifth Period shall cover Periods four, five and six; within 14 days of the end of the tenth Period shall cover Periods seven, eight, nine and ten; and within 14 days of the end of the thirteenth period shall cover Periods eleven, twelve and thirteen.

Where, after 14 days, any Traction Electricity Usage Occurrence Data is missing, all mileage (in Vehicle Miles in relation to passenger electric multiple units or kgtm in relation to locomotive hauled units and all freight traffic), if any, of Bimodal Electric Multiple Units or Bimodal Locomotives operated by or on behalf of the Train Operator shall be deemed, for billing purposes, to be electrified in Traction-Train Compatible situations.

2.4.2 Traction Electricity Reconciliation for the Relevant Year ending on 31 March 2014

2.4.2.1   For the purposes of the traction electricity reconciliation to be carried out for the Relevant Year ending on 31 March 2014, the provisions in paragraphs 2.4.2 to 2.4.4 (Traction Electricity Reconciliation) of Schedule 7 to this contract (and such definitions and other provisions as are relevant to paragraphs 2.4.2 to 2.4.4) in force as at that date shall continue to apply to the extent (and only to the extent) necessary to enable the calculation and payment of the supplementary amount S_t.

2.4.2.2   For subsequent Relevant Years, paragraph 18 of the Traction Electricity Rules shall apply.

2.4.3   Not used.

2.4.4   Not used.

Election to introduce On-Train Metering for a vehicle or vehicle type

2.4.5   If the Train Operator wishes to propose the introduction of On-Train Metering to measure traction electricity consumption for a vehicle or vehicles of a vehicle type that the Train Operator operates for the purposes of being invoiced by Network Rail for traction electricity, it shall notify Network Rail of any required changes to the contract in connection with that proposal.

2.4.6   Any notice under paragraph 2.4.5 shall be accompanied by information and evidence in reasonable detail supporting the changes proposed and setting out the reasons for those changes, and Network Rail shall respond in writing within 56 days of service of any such notice.

2.4.7   Promptly following any response served by Network Rail under paragraph 2.4.6, the parties shall endeavour to agree whether the contract should be amended in connection with that proposal and, if so, the amendments.

2.4.8   If the parties agree an amendment to the contract in connection with the proposal referred to in paragraph 2.4.5, that amendment shall take effect only when it has been approved by ORR under section 22 of the Act. Accordingly, as soon as reasonably practicable after any such amendment is agreed, the parties shall ensure that ORR is furnished with such amendment and such information and evidence as it shall require to determine whether or not to approve the amendment.

2.4.9   Any agreed amendment to the contract in connection with the proposal referred to in paragraph 2.4.5, which is approved by ORR under section 22 of the Act, shall apply with effect from the date agreed by the parties.

2.4.10   If the parties fail to reach agreement within 90 days after service of a notice under paragraph 2.4.5, or if prior to that date both parties agree that agreement is unlikely to be reached prior to that date, either party may notify ORR and request that ORR determines the matter. The parties shall, within such timescales as ORR may specify, furnish ORR with such information and evidence as ORR shall require to determine the matter. If a party fails to furnish such information and evidence within the specified timescale, ORR shall be entitled to determine the matter without that information and evidence and the party in default shall have no grounds for complaint in that respect.

2.4.11   Where ORR determines the matter pursuant to paragraph 2.4.10, it may issue a notice to the parties setting out the amendments to be made to the contract and the date, which may be retrospective, from which they shall take effect.

2.4.12 Electrification Asset Usage Charge

The Electrification Asset Usage Charge is an amount for electrification asset usage which is derived from the following formula:

$$\text{Electrification Asset Usage Charge} = \sum (EV_{tk} \cdot UV_{tk})$$

where:

$\sum$ means the summation across all Services using electric traction;

EV_{tk} means an amount in respect of the Electrification Asset Usage Rate;

UV_{tk} means the actual number of electrified kgtm on route type k in the relevant Charging Period in Relevant Year t operated by or on behalf of the Train Operator. Where the Train Operator operates a Bimodal Electric Multiple Unit or Bimodal Locomotive, the the actual number of electrified kgtm on route type k in Relevant Year t shall be calculated:

(i) where the Bimodal Electric Multiple Unit or Bimodal Locomotive is not a Metered Train m, in accordance with the second paragraph of the definition of UE_{tgit} in paragraph 2.4.1.2 above; or

(ii) where the Bimodal Electric Multiple Unit or Bimodal Locomotive is a Metered Train m, in accordance with paragraph 2.4.1.4 (c) above.