

FIRST SUPPLEMENTAL AGREEMENT

DATED

Between

NETWORK RAIL INFRASTRUCTURE LIMITED

and

MERSEYRAIL ELECTRICS 2002 LIMITED

relating to the implementation of the 2003 access charges review

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THIS FIRST SUPPLEMENTAL AGREEMENT is dated the day of March 2004 and made

BETWEEN

- (1) **Network Rail Infrastructure Limited**, a company registered in England under number 2904587, having its registered office at 40 Melton Street, London NW1 2EE ("**Network Rail**"); and
- (2) **Merseyrail Electrics 2002 Limited**, a company registered in England under number 04356933, having its registered office at Rail House, Lord Nelson Street, Liverpool, Merseyside L1 1JF (the "**Train Operator**").

WHEREAS

- (A) The parties entered into a Track Access Agreement dated 17 July 2003 on terms approved, and pursuant to directions issued, by the Regulator under section 18 of the Act and modified pursuant to a model clauses retrofit modification notice (the "**Agreement**").
- (B) The parties now propose to enter into this Supplemental Agreement in order to comply with and give effect to the directions set out in the review implementation notice given by the Regulator on 10 March 2004 in connection with the implementation of the 2003 access charges review.

IT IS AGREED AS FOLLOWS:

1. INTERPRETATION

In this Supplemental Agreement, unless the context otherwise requires:

- (a) "**2003 access charges review**" means the access charges review, implementation of which was initiated by the Regulator giving the review notice;
- (b) "**regulated amendments**" has the meaning ascribed to it in Clause 3.2;
- (c) "**relevant changes**" means the amendments specified in Annex 2 to the review notice, as modified by paragraph 10 of Annex 3 to the review notice;
- (d) "**relevant date and time**" means 1 April 2004 at 02:00;
- (e) "**review notice**" means the review notice given by the Regulator on 23 December 2003; and
- (f) words and phrases defined in, and rules of interpretation set out in, the Agreement shall have the same meaning and effect when used in this Supplemental Agreement.

2. EFFECTIVE DATE

Notwithstanding the date on which the parties signed this Supplemental Agreement, it shall take effect on and from the relevant date and time.

3. AMENDMENTS TO THE AGREEMENT

3.1 Standard amendments

Subject to Clause 3.2, the relevant changes shall be made to Schedules 4, 7 and 8 to the Agreement.

3.2 Regulated amendments

If, and to the extent that, before the relevant changes come into operation in accordance with this Clause 3, the Agreement is amended in a manner which is:

- (a) approved by the Regulator under section 22 of the Act; or
- (b) directed by the Regulator under section 22A or 22C of the Act,

(each a “**regulated amendment**”), then:

- (i) the relevant changes shall come into operation in relation to the Agreement subject to the regulated amendments; and
- (ii) if there is any conflict between a relevant change and a regulated amendment, the regulated amendment shall have priority.

3.3 Continuing Agreement

Except as provided in this Clause 3, the Agreement, as amended by this Supplemental Agreement, shall remain in full force and effect in accordance with its terms and with effect from the relevant date and time.

4. GOVERNING LAW

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

5. COUNTERPARTS

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

IN WITNESS of which the duly authorised representatives of Network Rail and the Train Operator have executed this Supplemental Agreement on the date first above written.

Signed by

Print Name

Duly authorised for and on behalf of

NETWORK RAIL INFRASTRUCTURE LIMITED

Signed by

Print Name

Duly authorised for and on behalf of

MERSEYRAIL ELECTRICS 2002 LIMITED