



HS1 Revised DRA Deed (Draft)

Network Statement & Related Arrangements Consultation

June 2009

THIS DEED dated 2009

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR TRANSPORT (the "Secretary of State")**, of Great Minster House, 76 Marsham Street, London, SW1P 4DR;
- (2) **LONDON & CONTINENTAL RAILWAYS LIMITED ("LCR")**, a company incorporated in England and Wales under number 2966054 whose registered office is at 3rd Floor, 183 Eversholt Street, London, NW1 1AY;
- (3) **NETWORK RAIL LIMITED ("Network Rail")**, a company incorporated in England and Wales under number 4402220 whose registered office is at Kings Place, 90 York Way, London, N1 9AG; and
- (4) **[[ADDITIONAL PARTY] / [TRAIN OPERATOR] / [CONNECTED AGREEMENT PARTY]]**.

collectively referred to as the "**Parties**" and each referred to as a "**Party**".

WHEREAS

- (A) The Disputes Resolution Agreement dated 18 February 1999 was entered into between, inter alia, the Secretary of State, LCR and Railtrack Group PLC and provides for the resolution of disputes arising out of or in connection with a number of agreements relating to the Channel Tunnel Rail Link in accordance with the Disputes Resolution Procedure set out in Schedule 8 thereto. By a series of agreements certain amendments were made to, certain parties were released from and certain parties added to the Disputes Resolution Agreement. In this Agreement the expression "DRA" means the Disputes Resolution Agreement dated 18 February 1999 as amended for the time being by such agreements (including by the substitution, addition and release of parties thereto).
- (B) The Parties acknowledge that train operators are required to accede to the DRA as a condition to having access to the Channel Tunnel Rail Link and access to CTRL Stations;
- (C) By an Amendment Agreement dated [] 2009 (the "**DRA Amendment Agreement**"), the parties to that agreement agreed as between themselves to make certain amendments to the DRA in order to institute revised procedures for the resolution of operational related disputes arising out of or in connection with the Channel Tunnel Rail Link, which are subject to determination by the Operational Panel. The parties to the DRA Amendment Agreement further agreed to give their consent to the provisions of the HS1 Concession Agreement (as therein defined) for certain matters the responsibility of the Office of Rail Regulation being decided pursuant to the provisions of that agreement, and acknowledged and confirmed the amendments to the Disputes Resolution Agreement dated 18 February 1999.
- (D) The *[Additional Party] [Train Operator] [Connected Agreement Party]* has agreed to accede to the DRA, as amended by the DRA Amendment Agreement.;
- (E) The parties to the DRA Amendment Agreement irrevocably authorised the Core Parties to execute the Revised DRA Deed on their behalf; and
- (F) This Deed is the Revised DRA Deed.



IT IS HEREBY AGREED AS FOLLOWS:

This Deed shall take effect from and upon execution.

1. DEFINITIONS AND INTERPRETATIONS

Unless the context requires otherwise, expressions defined in the DRA and the DRA Amendment Agreement shall have the same meanings when used in this Deed.

2. AMENDMENTS TO THE DRA

- 2.1 The Parties agree that with effect from Completion, the DRA will be amended to incorporate the amendments set out in Schedule 1 to the DRA Amendment Agreement.
- 2.2 The Parties Agree that at all times after Completion, they will observe and perform their obligations under the DRA, as amended by the provisions of Schedule 1 to the DRA Amendment Agreement.
- 2.3 The Parties agree that with effect from the date of execution of this Deed, **[ADDITIONAL PARTY] / [TRAIN OPERATOR] / [CONNECTED AGREEMENT PARTY]** shall become a party to the DRA Amendment Agreement and shall be bound by the terms thereof including the acknowledgements confirmations and consents contained in it.

3. DEED SUPPLEMENTAL

- 3.1 This Deed is supplemental to the DRA.

THE CORPORATE SEAL of the)
Secretary of State for Transport hereunto)
affixed is authenticated by:)

.....
Authorised by the Secretary of State
**For and on behalf of all other parties to the
DRA Amendment Agreement**

SIGNED)
for and on behalf of **LONDON**)
& **CONTINENTAL RAILWAYS**)
LIMITED and all other parties to)
the DRA Amendment Agreement by:)

.....
Director

In the presence of:

.....
Witness

SIGNED)
for and on behalf of **NETWORK RAIL**)
LIMITED and all other parties to)
the DRA Amendment Agreement by:)

.....
Director

In the presence of:

.....
Witness

SIGNED)
for and on behalf of [])
by:)

.....
Director

In the presence of:

.....
Witness

Note: The following definitions are included in the DRA Amendment Agreement referred to in clause 1 of the Revised DRA Deed

4. DEFINITIONS AND INTERPRETATION

- 4.1 Expressions defined in the DRA (as defined below) shall (unless the context otherwise requires) have the same meanings when used in this Agreement.
- 4.2 "**Additional Party**" means any of the parties listed in Part B of Schedule 2 to this Agreement and "Additional Parties" shall be construed accordingly.
- 4.3 "**Completion**" means the date when the amendments to the DRA set out in Schedule 1 to this Agreement shall take effect being the later of (i) [1 August 2009]; and (ii) the Effective Date;
- 4.4 "**Core Party**" means each of the Secretary of State, Network Rail and LCR and "**Core Parties**" shall be construed accordingly.
- 4.5 "**DRA**" means the Disputes Resolution Agreement dated 18 February 1999 as amended for the time being by the parties to the agreements and deeds set out in Recitals (B) to (G) (including by the substitution, addition and release of parties thereto).
- 4.6 "**Effective Date**" means the date by which all of the Core Parties have executed this Agreement and delivered it as a deed to one another.
- 4.7 "**HS1**" means the Channel Tunnel rail link between St Pancras and Cheriton as contemplated by the CTRL Act and the orders under TWA for Stratford Station, the works related to the use of Stratford Station as a Combined Station on the basis of a Stratford Box, the works carried out in relation to connections to the North London Line and the approach to St Pancras and in respect of Boarley Lane, Boxley in Kent.
- 4.8 "**HS1 Concession Agreement**" means the agreement between the Secretary of State for Transport and HS1 Limited whereby the Secretary of State grants to HS1 Limited the HS1 Concession as therein defined in accordance with and subject to the terms of that agreement
- 4.9 "**HS1 Station**" means any one or more of London St Pancras station, Stratford Station or Ebbsfleet Station, as the context requires.
- 4.10 "**Revised DRA Deed**" means a deed materially in the form of the draft deed annexed to this Agreement at Schedule 3.

Note: The following provisions constituted "Schedule 1 to the DRA Amendment Agreement" as referred to in clause 2 of the Revised DRA Deed

Schedule 1 – Amendments to DRA

These paragraphs shall be added to the DRA, which shall be read and construed to include them.

1. DEFINITIONS

- "Delay Attribution Dispute"** shall mean any Dispute which is wholly or substantially concerned with the attribution of a delay to or cancellation of any train on the CTRL as the responsibility of any Train Operator; or of HS1;
- "Train Access Dispute"** shall mean any Dispute which arises in relation to or in connection with the grant of permission to operate a train on the CTRL, the right or opportunity to do so at a particular time or for a particular purpose or the grant of access to a station on the CTRL..
- "Overlapping Dispute"** shall mean a dispute which, if it involved only Parties to this DRA Amendment Agreement, would fall to be determined in accordance with the provisions of the DRA as amended by this DRA Amendment Agreement but which also involves one or more Non-Signatories and is a dispute which would have to be determined in accordance with the Disputes Resolution Agreement or the DRA;
- "Non-Signatory"** shall mean a party to the Disputes Resolution Agreement dated 18 February 1999, a party to the DRA, a Train Operator, or a party to a Connected Agreement which, in each case, at the relevant time, has not executed a counterpart of the Revised DRA Deed;

2. OVERLAPPING DISPUTES

- 2.1 The Parties agree that when an Overlapping Dispute arises, the Parties involved in the Dispute shall use reasonable endeavours to convene a meeting as soon as is reasonably practicable after the Dispute arises attended by representatives of each Party and of each of the Non-Signatories involved in the Overlapping Dispute (the "Preliminary Dispute Meeting").
- 2.2 The Parties involved in the Overlapping Dispute shall be represented at the Preliminary Dispute Meeting by []¹ representatives who are []².
- 2.3 At the Preliminary Dispute Meeting, the Parties involved in the Overlapping Dispute shall use reasonable endeavours to agree among themselves and with the other parties to the Overlapping Dispute whether it should be determined:
- 2.3.1 in accordance with the provisions of the DRA as amended by the DRA Amendment Agreement;

¹ Number of representatives.

² Position of the representatives, e.g. director, company secretary etc.

- 2.3.2 in accordance with the DRA; or
 - 2.3.3 by any other means agreed between the parties to the Overlapping Dispute.
- 2.4 In the event that the parties to the Overlapping Dispute cannot reach an agreement under paragraph 2.3, the Overlapping Dispute shall be determined:
- 2.4.1 as between the Parties, in accordance with DRA as amended by the DRA Amendment Agreement; and
 - 2.4.2 as between the Parties and the Non-Signatories in accordance with the whatever procedures had been agreed with the Non-Signatories prior to the Overlapping Dispute arising.

3. OTHER MATTERS RELATING TO THE PRELIMINARY DISPUTE MEETING

- 3.1 Any statement, concession or waiver made by any party to an Overlapping Dispute in the course of or in connection with a Preliminary Dispute Meeting shall be without prejudice and shall not be raised by any party in any subsequent proceedings before any Panel or in any subsequent arbitration, whether pursuant to this Schedule, the DRA or otherwise. The Parties involved in the Overlapping Dispute shall use reasonable endeavours to procure that any Non-Signatory attending the Preliminary Dispute Meeting signs an undertaking to that effect prior to attending the Meeting.

4. AMENDMENTS TO THE DRA

- 4.1 The DRA shall be amended as follows:

- 4.1.1 Clause 8.7 shall read:

- (A) "IC1 and its permitted assignees or successors under the Section 1 Conditional Track Access Agreement shall ensure that all Train Operators and their permitted assignees are required to accede to the Disputes Resolution Agreement and the DRA Amendment Agreement as a condition of a Train Operator having access to Section 1 pursuant to the terms of an Access Agreement."

- 4.1.2 Clause 8.8 shall read:

- (A) "IC2 and its permitted assignees or successors under the Section 2 Conditional Track Access Agreement or the relevant Conditional Station Access Agreement (as the case may be) shall ensure that all Train Operators and their permitted assignees are required to accede to the Disputes Resolution Agreement and the DRA Amendment Agreement as a condition of a Train Operator having access to Section 2 or to a CTRL Station pursuant to the terms of an Access Agreement. LCR, Network Rail and the Secretary of State agree to enter into an Accession Agreement with each Train Operator within seven days of a written request so to do by one of them. In the event that one of them fails for whatever reason to enter into the relevant Accession Agreement, the other parties to the Accession Agreement are hereby authorised to enter into such Accession Agreement on behalf of that party."

- 4.1.3 Clause 8.9 shall read:

- (A) "The parties to this Dispute Resolution Agreement agree that any Train Operator (and any assignees of such Train Operator) who enters into an Access Agreement with an Infrastructure Operator for access to any Section of the CTRL or any CTRL Station may become a party to this Disputes Resolution Agreement and the DRA Amendment Agreement. To that end, the parties hereby authorise each relevant Infrastructure Operator to execute on their behalf an accession agreement in the form set out in Schedule 5 (the "Train Operator Accession Agreement") and a deed in the form set out as Schedule 3 to the DRA Amendment Agreement and undertake not to withdraw, qualify or revoke such authority at any time."

5. AMENDMENTS TO THE DRP AT SCHEDULE 8 TO THE DRA

5.1 The Disputes Resolution Procedure set out at Schedule 8 to the DRA shall be amended as follows:

- 5.1.1 Paragraphs 3 to 3.10 shall be deleted and no party shall have the right to refer any Dispute to arbitration except as provided in paragraphs 12, 13 and 14.
- 5.1.2 The words: "..., or where paragraph 3 applies.", at the end of paragraph 13 shall be deleted.
- 5.1.3 The words in paragraph 14 "under paragraphs 3 and 12" shall be deleted and "under paragraphs 12, 13 and 14" inserted in their place.
- 5.1.4 The words in paragraphs 4.1 and 4.2: ",or to arbitration under paragraph 3" shall be deleted.
- 5.1.5 The words in paragraph 4.3 "... or as to whether a party has the right to refer a Dispute or any particular issue in a Dispute to arbitration under paragraph 3, ..." shall be deleted.
- 5.1.6 The words in paragraph 4.4 "... any any arbitrator appointed pursuant to paragraph 3" shall be deleted.
- 5.1.7 The words in paragraph 4.5 "... appointed pursuant to paragraph 3 ..." shall be deleted.
- 5.1.8 A new paragraph 5.6 shall be inserted as follows: "5.6 a decision of a Panel member that has become final and binding pursuant to paragraph 8.3 of Schedule 1 to the DRA Amendment Agreement."

6. AMENDMENTS TO PANEL PROCEDURE TO APPLY TO OPERATIONAL PANEL

6.1 The amendments to the Panel Procedure set out in paragraphs 7, 8 and 9 of this Schedule 1 shall apply only in cases where the Panel Procedure is being applied to a dispute before the Operational Panel and shall not apply in cases where the Panel Procedure is being applied to a dispute before the Financial Panel.

7. CHAIRMAN'S CLASSIFICATION OF DISPUTES

7.1 This paragraph shall apply after the Panel has received the reference notice, original notice and counter notice referred to in paragraph 2 of the Panel Rules. The chairman of the Panel shall review the original notice and counter notice and:

- 7.1.1 if it shall appear to the chairman of the Panel that the Dispute between the parties is a Delay Attribution Dispute, then the chairman of the Panel may notify the parties in writing of such fact and may direct that the Delay Attribution Dispute be subject to the procedure in paragraph 8 of this Schedule 1; or
- 7.1.2 if it shall appear to the chairman of the Panel that the Dispute between the parties is a Train Access Dispute, then the chairman of the Panel may notify the parties in writing of such fact and may direct that the Train Access Dispute be subject to the procedure in paragraph 9 of this Schedule 1.
- 7.2 The parties may state in the original notice and counter notice referred to in paragraph 2 of the Panel Rules whether, in their opinion, the Dispute is a Delay Attribution Dispute or is a Train Access Dispute but the chairman of the Panel shall not be bound to attribute any weight to such statements unless it appears to him that the parties agree.

8. DELAY ATTRIBUTION DISPUTES

- 8.1 The chairman of the Panel shall designate one member of the Operational Panel to investigate each Delay Attribution Dispute.
- 8.2 The member of the Operational Panel so designated shall contact the parties as soon as practicable to investigate the Delay Attribution Dispute and ascertain any relevant facts and matters. The parties shall provide him with such information as he may reasonably require for the purposes of his investigation. The Panel member shall act as an expert and not as an arbitrator. He may speak to the parties separately from one another. He shall not be required to observe the rules of natural justice. He shall issue a draft decision to the parties and the other members of the Panel in writing within three working days of the chairman's direction referred to in Paragraph 8.1 above.
- 8.3 If the parties accept the draft decision they may so indicate in writing to the chairman of the Panel and the decision shall then become final and binding upon the parties.
- 8.4 If any party gives notice to the chairman of the Panel that it is dissatisfied with the draft decision referred to in paragraph 8.3 above, or if after five working days from the chairman's direction referred to in Paragraph 8.1 above the parties have not all indicated in writing to the chairman of the Panel that they accept the draft decision, then the Panel shall proceed as set out in the Panel Rules save that:
- (a) the Panel will not hear evidence from witnesses orally unless the parties have jointly agreed in writing that the Panel will hear such evidence; and
 - (b) the period of 21 days referred to in paragraph 7.1 of the Panel Rules shall commence on the date on which any party notified its dissatisfaction to the Panel or five working days from the chairman's direction referred to in Paragraph 8.1, whichever is the earlier
- 8.5 The Panel may take account of any draft decision issued by the member of the Operational Panel designated to investigate as provided in paragraphs 8.1 and 8.2 above.

9. TRAIN ACCESS DISPUTES

- 9.1 Paragraphs 4, 5 and 6 of the Panel Rules shall not apply to the Train Access Dispute.
- 9.2 The members of the Panel shall consider the Train Access Dispute referred to them and undertake such procedures and investigations as they see fit to ascertain the facts and the law.

For this purpose, the Panel may give such directions or further directions as to the conduct of the Dispute as the Panel may see fit. In the event of a dispute as to the procedural rules the Panel shall have the power to determine the procedure and such determination shall be final and binding on the parties to the Dispute. The members of the Panel shall act as experts and not as arbitrators. They shall act impartially.