
DATED

16/12/2010

- (1) **THE SECRETARY OF STATE FOR
TRANSPORT**
- (2) **EAST MIDLANDS TRAINS LIMITED**

**DEED OF AMENDMENT TO A FRANCHISE
AGREEMENT DATED 21st June 2007 AND DEED
for the PROVISION OF RAIL SERVICES
FOR THE LONDON OLYMPICS**

**Department for Transport
Great Minster House
London SW1P 4DR**

THIS DEED is made on

BETWEEN

- (1) **THE SECRETARY OF STATE FOR TRANSPORT** (“the Secretary of State”);
and
- (2) **EAST MIDLANDS TRAINS LIMITED** (Company Number 05340682) whose
registered office is at Friars Bridge Court, 41-45 Blackfriars Road, London SE1 8NZ
 (“the Franchisee”)

WHEREAS

- (A) By the Franchise Agreement, the Secretary of State and the Franchisee recorded their agreement as to the provision of certain services for the carriage of passengers by railway.
- (B) The Olympic Delivery Authority (“the ODA”), incorporated under section 3 London Olympic Games and Paralympic Games Act 2006 , wishes to secure the provision of railway passenger services for the 2012 Olympic Games and Paralympic Games in London;
- (C) The Secretary of State is content to facilitate the provision of the Olympic Services as set out in the schedule;
- (D) The parties to this Deed have agreed that the Olympic Services are to be provided by the Franchisee under the Franchise Agreement on the following terms:

NOW IT IS AGREED as follows:

1. **Interpretation**

1.1 In this Deed except as otherwise specified:

“Base Additional Service Provision” (BASP) has the meaning set out in the schedule to this Deed.

“Existing Services” means the Passenger Services required to be provided by the Franchisee under its Franchise Agreement before the date of

this Deed which during Games-time shall comprise those services within the Core Timetable as defined in the schedule;

“Franchise Agreement” means the Franchise Agreement dated 21st June 2007 and made between the Secretary of State and the Franchisee;

“Games-time” has the meaning set out in the schedule to this Deed.

“National Rail Product” means a special fare under the ATOC National Ticket offer available only to a holder of an entry ticket to an event which is part of the 2012 Olympic Games and Paralympic Games;

“Olympics Cancellation” means a train which is scheduled to be provided as part of the Olympic Train Services and which:

- (a) is cancelled or does not operate for more than half its scheduled mileage;
- (b) begins its journey after its scheduled departure point or terminates its journey before its scheduled destination point;
- (c) does not call at any station at which it is scheduled to call; or
- (d) is delayed at its point of destination by more than 120 minutes.

“Olympic Services” means all of the services to be provided by the Franchisee set out in the schedule;

“Olympic Train Services” has the meaning set out in the schedule to this Deed;

“Olympics Travelcard” has the meaning set out in the schedule to this Deed;

“the relevant 42 Day Statement” means a statement provided by Network Rail to the Franchisee under Schedule 8 of its track access agreement identifying and attributing responsibility for any Olympics

Cancellations;

1.2 In this Deed except as otherwise specified

- 1.2.1 words and expressions defined in the Interpretation Act 1978 shall have the same meaning in this Deed;
- 1.2.2 words and expressions defined in the Franchise Agreement shall have the same meaning in this Deed;
- 1.2.3 references to recitals and clauses are to recitals and clauses of this Deed, unless as otherwise stated;
- 1.2.4 headings and references to headings shall be disregarded in construing this Deed;
- 1.2.5 any reference to an act is a reference to the same as amended, substituted or amended from time to time;
- 1.2.6 words importing the plural shall include the singular and vice versa; and
- 1.2.7 a reference to a document includes that document as amended, restated, novated and supplemented from time to time.

1.3 This Deed is supplemental to and shall be read and construed together with the Franchise Agreement, which shall together constitute one and the same instrument. References to the Franchise Agreement in the Franchise Agreement shall refer to the Franchise Agreement as amended by this Deed.

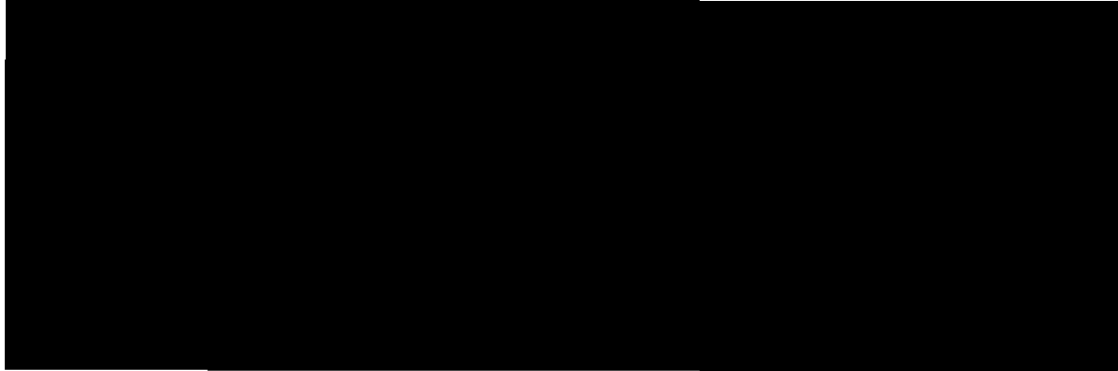
2. **Provision of Services**

2.1 The Franchisee shall provide the Olympic Services but the Franchisee will not be in breach of this Deed for any failure to deliver the Olympic Services where such failure is a result of an event or circumstance beyond its reasonable control. The Franchisee will use reasonable endeavours to mitigate the effects of any such events or circumstances.

2.2 Subject to clauses 2.4 and 3.2 below, the terms of the Franchise Agreement shall apply to the provision of the Olympic Services under this Deed. The Olympic Train Services are deemed to be approved for the purposes of any requirement contained in paragraphs 1.1 and 1.2 of Schedule 1 to the Terms.

2.3 The Olympic Train Services shall not be Additional Passenger Services and shall be included within the Train Plan for all purposes (including the operation of the performance regimes in Schedule 7 to the Terms), subject to Network Rail granting the relevant access rights, and in a relevant access agreement.

2.4



2.5

3. **Compensation**

3.1 The Franchisee acknowledges that it has no claim for any payment in relation to the Olympic Services from the Secretary of State except as may be specifically provided in paragraph 8.6 of the schedule.

3.2 Notwithstanding the contrary provisions of paragraph 4 of Appendix 12 to the Franchise Agreement and any definition of Change in the Terms the parties have agreed that the changes effected by this Deed will not be treated as a Change.

4. **Monitoring Systems**

4.1 The Franchisee shall provide to the Secretary of State and the ODA a report setting out any Olympics Cancellations which are attributed to the responsibility of the Franchisee in the relevant 42 Day Statement by no later than 17 days after the end of each of the Reporting Periods ending 19 August 2012 and 16 September 2012.

4.2 The Franchisee hereby gives consent to the Secretary of State to disclose to the ODA any information available to the Secretary of State from time to time in respect of the Olympic Services and/or their provision under this Deed.

5. **Construction**

5.1 Except as specifically provided in this Deed the Franchise Agreement shall continue to have full force and effect.

5.2 Entry into this Deed satisfies any requirement for the Franchisee to enter into the Olympic Services Delivery Plan.

5.3 In the event of any inconsistency or conflict between the terms of this Deed and the Franchise Agreement, the terms of this Deed shall prevail.

5.4 In the event of any inconsistency or conflict between the terms of the main body of this Deed and the schedule, the terms of the main body of this Deed shall prevail.

6. Counterparts

6.1 This Deed may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument. Any party may enter into this Deed by executing any such counterpart.

7. Governing Law

7.1 This Deed shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed.

8. Rights of Third Parties

8.1 This Deed does not create any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to it other than the ODA in respect of specific obligations referred to in this Deed.

IN WITNESS whereof the parties to this Deed have executed this Deed the day and year first before written:

THE CORPORATE SEAL of)
THE SECRETARY OF STATE FOR TRANSPORT hereto)
affixed is authenticated by:

SEAL REF NO
DFT/3357

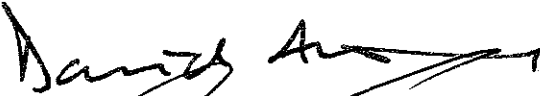
.....
Authenticated by authority of the Secretary of State for Transport.




EXECUTED and delivered)

on behalf of **EAST MIDLANDS TRAINS LIMITED** by:)

Director

A handwritten signature in black ink, appearing to read "David A. ...", written over a horizontal line.

Director/Secretary

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke, written over a horizontal line.