

**Dated**

**2014**

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**THE SECRETARY OF STATE FOR TRANSPORT**

**[FRANCHISEE]**

**DIRECTLY OPERATED RAILWAYS LIMITED**

**EAST COAST MAIN LINE COMPANY LIMITED**

**[GUARANTOR]**

**AND**

**NORTON ROSE FULBRIGHT LLP**

**UMBRELLA DEED**

 **NORTON ROSE FULBRIGHT**

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**THIS DEED** is dated [●] 2014

**BETWEEN:**

- (1) **THE SECRETARY OF STATE FOR TRANSPORT**, whose principal address is at 33 Horseferry Road, London SW1P 4DR (the **Secretary of State**);
- (2) **[FRANCHISEE]** (Company Number: [●]), whose registered office is at [●] (the **Franchisee**);
- (3) **DIRECTLY OPERATED RAILWAYS LIMITED** (Company Number: 06950819), whose registered office is at 4th Floor, 5 Chancery Lane, London EC4A 1BL (the **Seller**);
- (4) **EAST COAST MAIN LINE COMPANY LIMITED** (Company Number: 04659708), whose registered office is at 4th floor, 5 Chancery Lane, London EC4A 1BL (**ECML**);
- (5) **[GUARANTOR]** (Company Number: [●]), whose registered office is at [●] (the **Guarantor**); and
- (6) **NORTON ROSE FULBRIGHT LLP**, a limited liability partnership whose registered office is at 3 More London Riverside, London SE1 2AQ (the **Escrow Agent**),

each a **Party** and together the **Parties**.

**WHEREAS**

- (A) The Secretary of State and the Franchisee have on the date of this Deed entered into a franchise agreement relating to the Intercity East Coast franchise (the **Franchise Agreement**) which sets out the terms on which a wholly owned subsidiary of the Franchisee (the **Franchise Operator**) will provide the Franchise Services.
- (B) The Seller and the Franchisee have on the date of this Deed entered into an agreement for the sale and purchase of the entire issued share capital of ECML (the **Share Sale Agreement**) with a view to ECML becoming the Franchise Operator.
- (C) The parties wish to record in this Deed certain conditions to be satisfied prior to the issue of the Certificate of Commencement and to co-ordinate the sale and purchase of the entire issued share capital of ECML.
- (D) The Franchisee wishes to make certain representations and warranties to the Secretary of State.

**1 Interpretation and definitions**

- 1.1 This Deed and the Franchise Agreement together constitute a single agreement, which is a "franchise agreement" for the purposes of the Act.

1.2 The interpretation provisions set out in clause 1 of the Franchise Agreement shall be deemed to be incorporated in this Deed, mutatis mutandis, and terms defined in the Franchise Agreement shall have the same meanings where used in this Deed, unless this Deed expressly provides to the contrary. In this Deed, the following terms will have the following meanings:

**Account Bank** has the meaning given to it in clause 5;

**Agreed Form Document** means those documents referred to in clause 1.1(f) of the Franchise Agreement which have been approved by the Secretary of State;

**Angel Guarantee** means the guarantee or form of security to be provided to Angel Trains Limited to become effective on the Start Date in respect of the lease of certain rolling stock between Angel Trains Limited and ECML dated 13 December 2002 (as amended, novated and supplemented from time to time);

**Change of Control Letters** means the letters to be provided by ECML to the ORR in respect of the change of ownership of ECML and including but not limited to ECML's European Passenger Licence, Statement of National Regulatory Provisions, and its Safety Certificate in such form as the ORR may require;

**Competition Authority** means any relevant government, governmental, national, supranational, competition or antitrust body or other authority, in any jurisdiction, which is responsible for applying merger control or other competition or antitrust legislation in such jurisdictions and, for the avoidance of doubt, includes the notion of "competent authority" as that term is used in the EU Merger Regulation;

**Contract Award Date** means the date of this Deed;

**Contract Award Documents** has the meaning given to it in clause 3.1;

**Effective Time** means 2:00 on 1 March 2015, or such later date as may be specified by the Secretary of State in any notice issued to the Franchisee pursuant to clause 11.2(a) and/or clause 11.3(a);

**Escrow Documents** means signed but undated originals of:

- (a) the Deed of Adherence;
- (b) the DRA accession letter;
- (c) the POA;
- (d) the Innovation Account Charge;
- (e) the Maintenance Account Charge;

- (f) a transfer of the Sale Share together with the existing share certificate in respect of the Sale Share;
- (g) the Voting POA (as defined in the Share Sale Agreement);
- (h) letters of resignation from the non-executive directors of ECML (and David Walker as company secretary of ECML) signed by those resigning but expressed to take effect at the Effective Time and subject to the Escrow Release Notice being given in accordance with this Deed;
- (i) consents to act from the new directors of ECML to be appointed by the Franchisee with effect from the Effective Time and subject to the Escrow Release Notice being given in accordance with this Deed;<sup>1</sup>
- (j) the Taxation Deed (as defined in the Share Sale Agreement);
- (k) [a written resignation of the existing auditors of ECML in accordance with the Share Sale Agreement, expressed to take effect at the Effective Time and subject to the Escrow Release Notice being served in accordance with this Deed;]<sup>2</sup>
- (l) [rolling stock related contracts]<sup>3</sup>
- (m) [other Key Contracts]<sup>4</sup>
- (n) [Direct Agreements]<sup>5</sup>

**Escrow Release Notice** means the notice in the form of Schedule 1;

**Franchisee Pre-Completion Date Documents** means those documents referred to in clauses 5.1(c) and 5.1(d);

**IEP Documents** means:

- (a) the Train Availability and Reliability Agreement; and
- (b) the RODA;

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<sup>1</sup> Note to Bidders: Bidder to confirm whether it wishes to appoint new directors with effect from the Effective Time.

<sup>2</sup> Note to Bidders: Bidders to confirm proposed arrangements with auditors.

<sup>3</sup> Note to Bidders: Bidder to confirm if any new rolling stock contracts are proposed.

<sup>4</sup> Note to Bidders: To the extent any new key contracts are proposed, the Secretary of State will require, as a minimum, heads of terms for those key contracts to be signed after the Start Date to be provided as Franchisee Pre-Completion Date Documents. Please confirm if any new key contracts are proposed.

<sup>5</sup> Note to Bidders: Please confirm if any new key contracts are proposed.

**Insurance Documentation** means evidence satisfactory to the Secretary of State that the Franchise Operator has placed third party liability insurance in an amount not less than £155 million per incident in respect of the rail operations of the Franchise Operator on the Start Date;

**Nominated Account** means the client account of the Escrow Agent held with The Royal Bank of Scotland plc, with account number 16122869, sort code 15 10 00 and IBAN number GB72 RBOS 151000 16122869;

**Pre-Completion** means completion of those matters set out in clause 5 of this Deed in accordance with the terms of this Deed;

**Pre-Completion Date** means the date falling four Business Days prior to the Scheduled Start Date;

**Pre-Completion Date Conditions** means:

- (a) the Escrow Agent has confirmed receipt of the Escrow Documents;
- (b) the Secretary of State has received the Franchisee Pre-Completion Date Documents;
- (c) the Secretary of State is satisfied that no event has occurred which has or ought to have been notified to the Secretary of State by the Franchisee under clause 2.2(b) (including, a change in identity of any one person, or two or more persons acting by agreement, who may Control the Franchisee as at the Start Date, other than as agreed with the Secretary of State prior to the date of the Franchise Agreement) and which, if it had been known to the Secretary of State before the signature of the Franchise Agreement, would, in his reasonable opinion, have resulted in:
  - (i) his not entering into the Franchise Agreement with the Franchisee; or
  - (ii) his entering into a franchise agreement with the Franchisee on materially different terms from the Franchise Agreement; and
- (d) the Secretary of State has received evidence in form and substance satisfactory to him that the Franchise Operator will comply, on and from the Start Date, with its obligations in respect of the financial covenants set out in paragraph 2 of Schedule 12 (Financial Obligations and Covenants) of the Franchise Agreement;

**Purchase Price** has the meaning given to it in the Share Sale Agreement;

**Rail Franchise** means any rail franchise in respect of which a franchisee has been awarded the right to operate under the Railways Act 1993;

**Review Date** has the meaning given to it in the Franchise Agreement;

**Scheduled Start Date** means 1 March 2015 or such later date as may be specified by the Secretary of State in any notice issued to the Franchisee pursuant to clause 11.2(a) and/or 11.3(a);

**Transaction** means:

- (a) the Franchisee's proposed acquisition of ECML; and
- (b) the award of the InterCity East Coast Franchise to the Franchisee; and

**Working Capital Facility Sum** has the meaning given to it in clause 5.1(d).

- 1.3 References in this Deed to the Franchisee satisfying any condition precedent shall, where applicable, be read as including a reference to the Franchisee procuring satisfaction of that condition precedent.
- 1.4 If there is any conflict between the terms of this Deed and the Franchise Agreement, the terms of this Deed shall prevail.

## **2 Representations and warranties**

- 2.1 The Franchisee represents and warrants to the Secretary of State, subject only to any matter fully and fairly disclosed to him in writing (and accepted by him):
  - (a) that it has not acted in breach of any of the terms of the Franchise Letting Process Agreement; and
  - (b) that all of the information, representations and other matters of fact communicated in writing to the Secretary of State and/or his advisers by the Franchisee, its officers, employees or agents in connection with or arising out of the Franchisee's proposal to enter into this Deed and/or to secure the provision and operation of the Franchise Services by the Franchise Operator were at the dates submitted to the Secretary of State or such advisers and remain as at the date of this Deed, in all material respects, true, accurate and not misleading.
- 2.2 The Franchisee further undertakes to the Secretary of State, subject to clause 2.3, that:
  - (a) the representations and warranties contained in clause 2.1 will be in all material respects, as at the Start Date, true, accurate and not misleading as if they had been given on the Start Date with reference to the facts and circumstances then subsisting; and
  - (b) if after the signing of the Franchise Agreement and before the Start Date any event occurs or matter arises which results or may result in any of the representations and warranties in clause 2.1 being unfulfilled, untrue, misleading or incorrect in any material

respect as at the Start Date, the Franchisee shall immediately notify the Secretary of State in writing thereof and the Franchisee shall provide such information to the Secretary of State concerning the event or matter as he may require.

2.3 No right to damages or compensation shall arise in favour of the Secretary of State under clause 2.2 in consequence only of an event occurring or matter arising after the signing of the Franchise Agreement but before:

- (a) the Start Date; or
- (b) if the Secretary of State gives notice terminating the Franchise Agreement in accordance with clause 11.2(b) or clause 11.3(b), the effective date of termination specified in such notice,

which constitutes a breach or non-fulfilment of any of the representations and warranties in clause 2.1 (whether or not the Franchise Agreement is terminated in consequence thereof) if:

- (i) the event or matter could not reasonably have been avoided or prevented by the Franchisee; and
- (ii) the event or matter was duly notified to the Secretary of State (together with any related information required by the Secretary of State) in accordance with clause 2.2(b).

### **3 Contract Award**

3.1 On the Contract Award Date:

- (a) the Secretary of State and the Franchisee shall enter into the Franchise Agreement;
- (b) the Seller and the Franchisee shall enter into the Share Sale Agreement;
- (c) ECML, the Guarantor and the Secretary of State shall enter into the Funding Deed;
- (d) the Franchisee shall deliver to the Secretary of State a bond in the form specified in Schedule 2 of the Funding Deed;
- (e) the Franchisee shall deliver to the Secretary of State the Performance Bond duly executed by the Bond Provider;
- (f) the Seller shall deliver to the Franchisee a duly executed Disclosure Letter (as defined in the Share Sale Agreement);
- (g) each of the Franchisee and the Secretary of State shall initial a copy of each Agreed Form Document,



(together the **Contract Award Documents**),

provided that the Secretary of State's obligation to enter into the Franchise Agreement shall be subject to receipt by the Secretary of State of each of the documents specified in Schedule 3, satisfactory (in form and in substance) to the Secretary of State in his sole discretion.

## **4 Competition**

4.1 In so far as the Transaction is:

- (a) notified to the European Commission under Council Regulation (EC) 139/2004 concerning the control of concentrations between undertakings as amended from time to time (the **EU Merger Regulation**); or
- (b) within the jurisdiction of the Competition and Markets Authority (**CMA**) in the United Kingdom (including as a result of a referral under Article 4(4) or Article 9 of the EU Merger Regulation),

the Franchisee shall use all reasonable endeavours expeditiously to progress the consideration of the Transaction by the relevant Competition Authority.

4.2 Without prejudice to the generality of clause 4.1, the Franchisee shall use all reasonable endeavours

- (a) to make or cause to be made any applications, notifications or filings to any relevant Competition Authority promptly; and
- (b) to respond at the earliest date reasonably possible to any requests for additional information or documentary material made by any relevant Competition Authority.

4.3 The Franchisee undertakes to report to the Secretary of State on the progress of the consideration of the Transaction by any relevant Competition Authority either on request by the Secretary of State, in writing or otherwise, or if there is a development which materially affects the prospects of the Transaction being approved by the relevant Competition Authority.

4.4 At any time before the Scheduled Start Date, if the Secretary of State is not satisfied of any of the following:

- (a) the Transaction will not be referred for a second phase investigation either by the CMA (under section 22, section 33, section 45 or section 62 of the Enterprise Act 2002) or by the European Commission (under Article 6(1)(c) of the EUMR);
- (b) the impact of any intervention by the CMA or European Commission will not prejudice the ability of:

- (i) the Franchise Operator or the Franchisee to commence operation of the Franchise on the Scheduled Start Date;
- (ii) the Franchise Operator or the Franchisee otherwise to operate the Franchise in accordance with the Franchise Agreement;
- (iii) any Affiliate of the Franchisee to continue to operate any other Rail Franchise of which it is the franchisee,

the Secretary of State shall have the right immediately to terminate the Franchise Agreement on giving written notice to the Franchisee.

## 5 Pre-Completion

### 5.1 Not later than the Pre-Completion Date:

- (a) each Party hereto shall deposit with the Escrow Agent signed but undated originals of the Escrow Documents to which it is a party;
- (b) each of the Franchisee and the Guarantor shall deliver to the Secretary of State a certificate of an authorised signatory of it certifying that each document relating to it specified in Schedule 3 remains correct, complete and in full force and effect as at a date no earlier than a date approved for this purpose and that any resolutions or power of attorney referred to in Schedule 3 in relation to it have not been revoked or amended;
- (c) the Franchisee shall deliver to the Secretary of State:
  - (i) a duly executed and dated original of the Season Ticket Bond;
  - (ii) a copy, certified by an officer of the Franchisee as being true and correct, of the duly executed and dated Angel Guarantee;
  - (iii) the Insurance Documentation; and
  - (iv) evidence that the Maintenance Account and the Innovation Account have been opened in the name of the Franchise Operator with a Bank satisfactory to the Secretary of State (the **Account Bank**) and each credited with an amount of at least £1.
- (d) ECML shall deliver to the Secretary of State a duly executed and dated original of each IEP Document;
- (e) the Secretary of State shall confirm to the Franchisee the amount outstanding or projected to be outstanding under the Working Capital Facility (as such term is defined in

the Share Sale Agreement) as at the Scheduled Start Date (the **Working Capital Facility Sum**); and

- (f) Pre-Completion shall take place in accordance with schedule 4 of the Share Sale Agreement.

## **6 Deposit of the Purchase Price and repayment of Working Capital Facility**

6.1 Subject to Pre-Completion having occurred, not later than the Business Day prior to the Scheduled Start Date:

- (a) the Franchisee shall deposit an amount equal to the aggregate of the Purchase Price and the Working Capital Facility Sum with the Escrow Agent to the Nominated Account; and
- (b) the Secretary of State shall, subject to satisfaction of the Pre-Completion Date Conditions, deposit a signed but undated Certificate of Commencement with the Escrow Agent.

## **7 Escrow Release Notice**

7.1 On confirmation from the Escrow Agent that:

- (a) all Escrow Documents and the Certificate of Commencement have been deposited in escrow; and
- (b) the amounts referred to in clause 6.1(a) have been received,

each of the Parties hereto (other than the Escrow Agent) shall sign the Escrow Release Notice and deliver the same to the Escrow Agent not later than the Business Day prior to the Scheduled Start Date authorising the Escrow Agent to release the Escrow Documents at the Effective Time.

## **8 Completion**

8.1 Subject to receipt by the Escrow Agent of an Escrow Release Notice duly executed by all parties hereto other than the Escrow Agent not later than the Business Day prior to the Scheduled Start Date, the Escrow Agent shall:

- (a) date and release from escrow the Escrow Documents and the Certificate of Commencement at the Effective Time; and
- (b) instruct its bankers to remit the amounts referred to in clause 6.1(a) to the Seller on the first Business Day following the Effective Time.

and the Escrow Agent shall confirm to each Party, with effect from the Effective Time, that such action has been taken.

## **9 Post-Completion**

9.1 On the first Business Day following the Effective Time:

- (a) ECML shall issue the Change of Control Letters to the ORR;
- (b) the Guarantor shall ensure that the Franchise Operator's issued share capital is at least [*amount offered in Financial Model*]<sup>6</sup> and that it is fully paid up in cash; and
- (c) the Franchise Operator shall provide to the Secretary of State an original of the acknowledgement from the Account Bank pursuant to each of the Innovation Account Charge and the Maintenance Account Charge, in each case duly executed by the Account Bank.

9.2 Promptly following the Effective Time, the Parties to this Deed (other than the Escrow Agent) shall send counterpart originals of those documents to which it is a party in the quantities specified in Schedule 2.

## **10 Escrow**

10.1 Appointment

The Parties to this Deed (other than the Escrow Agent) hereby appoint the Escrow Agent to act as documentary escrow agent upon the terms of this Deed and the Escrow Agent accepts its appointment.

10.2 Document Custody

The Escrow Agent agrees to retain custody of the signed and undated Escrow Documents from the date of signing by each party thereto until the Effective Time when the Escrow Agent is authorised to date and release such Escrow Documents pursuant to the Escrow Release Notice.

10.3 Back Stop Date

If the Escrow Agent has not received the Escrow Release Notice prior to the Effective Time, the Escrow Agent shall be released from its obligations as escrow agent under this Deed provided that the Escrow Agent (a) either destroys the Escrow Documents which remain in escrow or

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<sup>6</sup> Bidders to populate

returns one counterpart of each Escrow Document to the parties thereto (if sufficient numbers of counterparts have been placed into escrow) and (b) where any amounts referred to in clause 6.1(a) have been deposited with the Escrow Agent and following receipt of the Franchisee's account details, instruct its bankers to remit such amounts to the Franchisee.

#### 10.4 Reliance

- (a) The Escrow Agent will not be required to enquire whether a notice has been validly given or executed nor shall the Escrow Agent be under any liability to any person if the notice has not been validly given or executed. The Escrow Agent is entitled to assume that signatures on any notice are authentic and are those of the persons stated in it to be the signatories.
- (b) The Escrow Agent shall not in any circumstances be responsible or liable for:
  - (i) any delay or failure on the part of any other Party or anyone else in receiving or executing any instructions sent or given by the Escrow Agent including, without limitation, the Escrow Agent's bank (**Bank**);
  - (ii) any loss or damage suffered by any person as a result of any fraud, negligence or default on the part of any other Party or the Bank;
  - (iii) any loss or damage suffered by any person as a result of the insolvency, bankruptcy, winding-up, administration, receivership, reorganisation or any other event relating to any other Party or the Bank; or
  - (iv) any consequential, punitive or special loss or damage (however caused).
- (c) If at any time the Escrow Agent:
  - (i) is uncertain as to its duties, obligations or responsibilities under this Deed; or
  - (ii) receives instructions which in its opinion are not clear or are contradictory or which conflict with any provision of this Deed,

the Escrow Agent may refrain from taking any action until directed otherwise in writing by the Secretary of State and the Franchisee.
- (d) The Escrow Agent shall not liable for any loss or damage in respect of any act or omission by the Escrow Agent in relation to any matter which is the subject of this Deed except any loss or damage directly arising out of fraud or wilful default on the part of the Escrow Agent.

10.5 The Parties (other than the Escrow Agent) jointly and severally indemnify the Escrow Agent, its partners, staff and agents separately against all actions, proceedings, claims, demands, liabilities and expenses which any of them may suffer or incur in connection with the performance of the Escrow Agent's obligations under this Deed, except any arising out of the Escrow Agent's fraud or wilful default.

10.6 Notices

Every notice, request, demand or other communication under this Deed shall be delivered in accordance with paragraph 3 of Schedule 19 of the Franchise Agreement and, for the purposes thereof, the Escrow Agent's address is:

Norton Rose Fulbright LLP  
3 More London Riverside  
London SE1 2AQ

Facsimile No: +44 20 7283 6500  
Attention: Tom Johnson

## 11 Extension and termination

11.1 On or prior to the Review Date, the Franchisee shall demonstrate to the Secretary of State (in a manner satisfactory to him in form and substance) the status of the Escrow Documents to which it is a party and the Franchisee Pre-Completion Date Documents.

11.2 If the Secretary of State is not so satisfied at the Review Date, he may by service of a notice on the Franchisee:

- (a) set, by specifying in that notice, any or all of a new Review Date, a new Scheduled Start Date and/or a new Effective Time; or
- (b) terminate the Franchise Agreement on the Scheduled Start Date or such earlier date as the Secretary of State may specify in that notice.

11.3 If the Pre-Completion Date Conditions have not been fulfilled by the Pre-Completion Date, the Secretary of State may promptly afterwards by service of a notice on the Franchisee either:

- (a) set, by specifying in that notice, any or all of a new Pre-Completion Date, a new Review Date, a new Scheduled Start Date and/or a new Effective Time; or
- (b) terminate the Franchise Agreement on the Scheduled Start Date or such earlier date as the Secretary of State may specify in that notice.

- 11.4 On service of a notice by the Secretary of State pursuant to clause 4, 11.2(b) or 11.3(b), the Franchise Agreement shall terminate on the date specified in that notice.
- 11.5 With effect from the date of any termination referred to in clause 11.4 and without prejudice to the Secretary of State's rights under the Performance Bond, no Party shall have any liability to any other Party (including, for the avoidance of doubt, any liability for costs incurred by the Franchisee in connection with the termination of the Franchise Agreement or the Franchisee's bid for the Franchise), save in respect of:
- (a) its respective obligations as to confidentiality under Schedule 17 (Confidentiality and Freedom of Information) of the Franchise Agreement;
  - (b) any other obligations which either expressly or by their nature survive the termination of the Franchise Agreement; and
  - (c) any breach of its respective obligations hereunder or under the Franchise Agreement arising in respect of the period prior to (and including) the date of termination of the Franchise Agreement.

## **12 Governing law**

This Deed (and any non-contractual obligations arising out of or in connection with it) 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.

IN WITNESS whereof the Parties hereto have executed this Deed the day and year first before written.

The Corporate Seal )  
of **THE SECRETARY OF** )  
**STATE FOR TRANSPORT** )  
is hereunto affixed )

.....

Authenticated by authority of the Secretary of State  
for Transport

EXECUTED AS A DEED BY )  
**[FRANCHISEE]** )

Director:

Director/Secretary:

.....

Director

.....

Director/Secretary

EXECUTED AS A DEED BY )  
**DIRECTLY OPERATED** )  
**RAILWAYS LIMITED** )

Director:

Director/Secretary:

.....

Director



.....

Director/Secretary

EXECUTED AS A DEED BY )

**EAST COAST MAIN LINE** )

**COMPANY LIMITED** )

Director:

Director/Secretary:

.....

Director

.....

Director/Secretary

EXECUTED AS A DEED BY )

**[GUARANTOR]** )

Director:

Director/Secretary:

.....

Director

.....

Director/Secretary

EXECUTED AS A DEED BY )

**NORTON ROSE FULBRIGHT LLP** )

.....

.....

**Schedule 1**  
**Form of Escrow Release Notice**

To: The Escrow Agent

[●] 2015

**Intercity East Coast Franchise**

- 1 We refer to the Umbrella Deed dated [●] 2015 between the Secretary of State, the Franchisee, the Seller, ECML, the Guarantor and the Escrow Agent (the **Umbrella Deed**).
- 2 We hereby irrevocably instruct the Escrow Agent to:
  - (a) date and release the Escrow Documents and the Certificate of Commencement at the Effective Time; and
  - (b) instruct its bankers to remit the amounts referred to in clause 6.1(a) of the Umbrella Deed to the Seller on the first Business Day following the Effective Time.
- 3 Terms not defined in this notice shall have the meanings given to them in the Umbrella Deed.

Signed by:

.....

For and on behalf of the **Secretary of State for Transport**

.....

For and on behalf of **Directly Operated Railways Limited**

.....

For and on behalf of the **[Franchisee]**

.....

For and on behalf of **East Coast Main Line Company Limited**

.....

For and on behalf of the **[Guarantor]**



**Schedule 2**  
**Originals**

<b>Documents</b>	<b>Quantity of counterparts required/Parties</b>

*[To be populated in due course.]*

### **Schedule 3**

### **Conditions Precedent**

#### **Franchisee**

- 1 A copy, certified by a director of the Franchisee to be a true, complete and up-to-date copy, of the Memorandum and Articles of Association of the Franchisee.
- 2 A copy, certified by a director of the Franchisee to be a true copy, and as being in full force and effect and not amended or rescinded, of resolutions of the board of directors of the Franchisee:
  - (a) approving the transactions contemplated by this Deed, the Contract Award Documents, the Escrow Documents and the Franchisee Pre-Completion Date Documents to which it is a party; and
  - (b) authorising a person or persons to sign and deliver on behalf of the Franchisee this Deed, the Contract Award Documents, the Escrow Documents and the Franchisee Pre-Completion Date Documents to which it is a party and any notices or other documents to be given pursuant thereto.
- 3 Specimen signatures, authenticated by a director of the Franchisee, of each of the authorised signatories referred to in paragraph 2(b) of this Schedule 3.
- 4 Written confirmation from a director of the Franchisee that:
  - (a) the Franchisee has taken all corporate and other action to authorise the execution and delivery of this Deed, the Contract Award Documents, the Escrow Documents and the Franchisee Pre-Completion Date Documents to which it is a party; and
  - (b) this Deed, the Contract Award Documents, the Escrow Documents, the Franchisee Pre-Completion Date Documents to which it is a party and the resolutions referred to in paragraph 2 of this Schedule 3 do not exceed any limit of authority or financial commitment binding on the Franchisee contained in its constitutional documents or in any trust deed or other agreement or instrument to which it is a party.

#### **Guarantor**

- 5 A copy, certified by a director of the Guarantor to be a true, complete and up-to-date copy, of the Memorandum and Articles of Association of the Guarantor.
- 6 A copy, certified by a director of the Guarantor to be a true copy, and as being in full force and effect and not amended or rescinded, of resolutions of the board of directors of the Guarantor:

- (a) approving the transactions contemplated by this Deed, the Contract Award Documents, the Escrow Documents and the Franchisee Pre-Completion Date Documents to which it is a party; and
  - (b) authorising a person or persons to sign and deliver on behalf of the Guarantor this Deed, the Contract Award Documents, the Escrow Documents and the Franchisee Pre-Completion Date Documents to which it is a party and any notices or other documents to be given pursuant thereto.
- 7 Specimen signatures, authenticated by a director of the Guarantor, of each of the authorised signatories referred to in paragraph 6(b) of this Schedule 3.
- 8 Written confirmation from a director of the Guarantor that:
- (c) the Guarantor has taken all corporate and other action to authorise the execution and delivery of this Deed, the Contract Award Documents, the Escrow Documents and the Franchisee Pre-Completion Date Documents to which it is a party;
  - (d) this Deed, the Contract Award Documents, the Escrow Documents, the Franchisee Pre-Completion Date Documents to which it is a party and the resolutions referred to in paragraph 6 of this Schedule 3 do not exceed any limit of authority or financial commitment binding on the Guarantor contained in its constitutional documents or in any trust deed or other agreement or instrument to which it is a party.