

THIRD-PARTY DEPOT ACCESS & MAINTENANCE SERVICES AGREEMENT

This Agreement is made between:

(1) **Heavy Haul Rail Limited**, a company incorporated in England and Wales (company number 03831229) whose registered office is at 6th Floor The Lewis Building, 35 Bull Street, Birmingham, B4 6EQ ("**HHR**"); and

(2) [**•**], a company incorporated in [**•**] (company number [**•**]) whose registered office is at [**•**] ("**Third Party**").

Together, the Parties.

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions: In this Agreement:

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in London;

"**Charges**" means the charges for access to Sites and provision of Services as published on HHR's website at www.heavyhaulrail.co.uk and as amended from time to time in accordance with clause 5;

"**Confidential Information**" means all information disclosed by one Party to the other relating to its business, affairs or customers, including the terms of this Agreement;

"**Data Protection Laws**" means the UK GDPR and the Data Protection Act 2018;

"**Key Personnel**" means personnel of the Third Party or its contractors who access the Sites;

"**ORR**" means the Office of Rail and Road;

"**Railway Industry Standards**" means Railway Group Standards published by RSSB and all applicable safety regulations including ROGS 2006;

"**Services**" means the services described in clause 4;

"**Sites**" means the rail depots and facilities as published on HHR's website at www.heavyhaulrail.co.uk and as amended from time to time;

"**TOPS**" means Network Rail's Total Operations Processing System; and

"**Wagons**" means rail freight wagons not maintained by HHR.

1.2. Interpretation: References to clauses and Schedules are to this Agreement. Words in the singular include the plural and vice versa.

2. PURPOSE AND SCOPE

2.1. This Agreement governs the Third Party's access to the Sites and HHR's provision of Services.

2.2. No access is granted except in accordance with this Agreement.

3. REGULATORY STATUS

3.1. Certain Sites may constitute railway facilities requiring ORR approval under the Railways Act 1993.

3.2. Where ORR approval is required:

(a) this Agreement is conditional upon such approval;

(b) the Parties shall cooperate to obtain approval; and

- (c) either Party may request an ORR determination within thirty (30) days.
- 3.3. If approval is refused or granted with unacceptable modifications, either Party may terminate without liability save for accrued Charges.

4. ACCESS AND SERVICES

- 4.1. Access Conditions: Access is by prior booking only (in accordance with the booking process set out in the Tariff) and subject to:
 - (a) operational availability and capacity;
 - (b) safety and competence requirements;
 - (c) compliance with HHR site rules and Railway Industry Standards; and
 - (d) payment of Charges.
- 4.2. Refusal or Suspension: HHR may refuse, suspend or withdraw access for:
 - (a) safety or compliance reasons;
 - (b) lack of capacity;
 - (c) non-payment; or
 - (d) material breach.
- 4.3. Services Provided: Services may include:
 - (a) administrative release of Wagons on TOPS;
 - (b) site access for inspection, repair or maintenance;
 - (c) shunting and placement of Wagons; and
 - (d) temporary and strategic spares stabling.
- 4.4. No Obligation to Provide Services: HHR is not obliged to provide any Service. The Third Party remains solely responsible for all maintenance decisions and Wagon compliance.
- 4.5. Key Personnel Requirements: The Third Party shall ensure all Key Personnel:
 - (a) hold valid site inductions (within 12 months);
 - (b) comply with HHR site rules; and
 - (c) are competent for their tasks.
- 4.6. Removal of Personnel: HHR may refuse or remove any individual for safety or compliance reasons.
- 4.7. No Proprietary Rights: This Agreement does not create any tenancy, easement or proprietary interest.

5. CHARGES AND PAYMENT

- 5.1. Publication of Charges: The Charges applicable at any time are those published on HHR's website at www.heavyhaulrail.co.uk. HHR shall ensure that the current tariff is accessible on its website at all times.
- 5.2. Amendment of Charges: HHR may amend the Charges:
 - (a) annually on 1 April each year by an amount equal to the percentage increase (if any) in the Consumer Prices Index (CPI) over the preceding twelve (12) months; or
 - (b) at any time upon giving the Third Party not less than thirty (30) days' written notice.

- 5.3. Right to Terminate on Price Increase: The Third Party may terminate this Agreement in accordance with clause 16.2 if it does not wish to accept any increase in Charges under clause 5.2.2.
- 5.4. VAT: All Charges are exclusive of VAT, which shall be payable in addition at the prevailing rate.
- 5.5. Payment Terms: Payment is due within fourteen (14) days of invoice.
- 5.6. Late Payment: If the Third Party fails to pay any sum by the due date:
 - (a) interest shall accrue on the overdue amount at 4% per annum above Bank of England base rate; and
 - (b) HHR may suspend access and Services until all outstanding sums are paid.

6. NON-DISCRIMINATION

- 6.1. HHR shall apply access arrangements and Charges transparently and non-discriminately.
- 6.2. Materially equivalent users shall be treated on materially equivalent terms, with differences objectively justified.
- 6.3. Access is not conditional on purchasing haulage services from HHR.
- 6.4. HHR shall maintain compliance records and provide them to ORR upon request.

7. HEALTH, SAFETY AND COMPLIANCE

- 7.1. The Third Party shall ensure Key Personnel are competent, inducted and comply with all applicable laws and Railway Industry Standards.
- 7.2. The Third Party shall maintain and provide upon request competence records, risk assessments and method statements.
- 7.3. The Third Party shall report immediately any accident or incident on Site and cooperate with investigations.

8. LIABILITY AND INSURANCE

- 8.1. Risk Allocation: Access and Services are at the Third Party's risk.
- 8.2. Indemnity: The Third Party shall indemnify HHR against all losses arising from the Third Party's activities, except where caused by HHR's negligence or wilful misconduct.
- 8.3. Non-Excludable Liability: Nothing limits liability for death/personal injury, fraud, or other non-excludable liability.
- 8.4. Exclusion of Consequential Loss: Neither Party is liable for indirect or consequential losses.
- 8.5. Liability Cap: HHR's aggregate liability shall not exceed Charges paid in the preceding twelve (12) months.
- 8.6. Insurance Requirements: The Third Party shall maintain:
 - (a) public liability insurance of £5,000,000 per event;
 - (b) employer's liability insurance at statutory levels; and
 - (c) other insurance reasonably required by HHR.
- 8.7. Evidence of Insurance: Insurance certificates must be provided before first access and annually thereafter.
- 8.8. Suspension for Non-Insurance: HHR may suspend access if insurance lapses.

9. INTELLECTUAL PROPERTY

- 9.1. All intellectual property in the Sites and HHR's systems remains HHR's property.
- 9.2. The Third Party has a non-exclusive licence to use such information solely for this Agreement's purposes.

10. DATA PROTECTION AND CONFIDENTIALITY

- 10.1. Data Protection Compliance: Each Party shall comply with Data Protection Laws and implement appropriate security measures.
- 10.2. Confidentiality Obligations: Each Party shall keep confidential all Confidential Information, except:
 - (a) where disclosure is required by law or to ORR;
 - (b) to employees/advisers bound by confidentiality; or
 - (c) where information is in the public domain.
- 10.3. Survival: Confidentiality obligations survive termination for five (5) years.

11. AUDIT RIGHTS

- 11.1. HHR may audit the Third Party's compliance on ten (10) Business Days' notice, including safety systems, competence records and insurance.
- 11.2. If non-compliance is identified, the Third Party shall submit and implement a remedial action plan within the timeframe specified by HHR.
- 11.3. HHR may suspend access if remediation is not completed or if material safety risks exist.

12. FORCE MAJEURE

- 12.1. Neither Party is liable for failure to perform due to events beyond reasonable control.
- 12.2. The affected Party shall notify the other, mitigate effects and resume performance promptly.
- 12.3. Either Party may terminate if force majeure continues beyond ninety (90) days.

13. NOTICES

- 13.1. Form and Delivery: Notices shall be in writing and sent to:
 - (a) HHR: 6th Floor The Lewis Building, 35 Bull Street, Birmingham, B4 6EQ, Email: contracts@heavyhaulrail.co.uk; or
 - (b) Third Party: [●], Email: [●].
- 13.2. Deemed Receipt: Notices are deemed received: if hand-delivered, upon delivery; if posted, on the second Business Day; if emailed, upon transmission (if before 17:00 on a Business Day, otherwise 09:00 next Business Day).

14. ASSIGNMENT AND SUBCONTRACTING

- 14.1. Neither Party may assign without the other's consent.
- 14.2. The Third Party may subcontract with HHR's approval, provided subcontractors meet all applicable requirements and the Third Party remains fully liable.

15. DISPUTE RESOLUTION

- 15.1. Disputes shall first be negotiated between senior representatives.
- 15.2. If unresolved within twenty (20) Business Days, either Party may refer to CEDR mediation.
- 15.3. Either Party may refer regulatory disputes to ORR.

15.4. If mediation fails within thirty (30) Business Days, either Party may commence court proceedings.

16. TERM AND TERMINATION

16.1. Term: This Agreement continues until terminated.

16.2. Termination for Convenience: Either Party may terminate on thirty (30) days' notice.

16.3. Termination for Cause: HHR may terminate immediately if the Third Party:

- (a) commits unremedied material breach;
- (b) fails to remedy a remediable breach within fourteen (14) days of notice;
- (c) fails to pay within fourteen (14) days of due date;
- (d) poses a material safety risk; or
- (e) becomes insolvent.

16.4. Consequences of Termination: Upon termination, access ceases immediately, the Third Party shall remove equipment/personnel within five (5) Business Days, and all accrued Charges become due.

16.5. Survival: Clauses 8, 9, 10, 15 and 17 survive termination.

17. GENERAL

17.1. Entire Agreement: This Agreement is the entire agreement and supersedes all prior arrangements.

17.2. Variation: Variations must be in writing and signed by both Parties.

17.3. Governing Law and Jurisdiction: This Agreement is governed by English law and subject to English court jurisdiction.

17.4. Severability: Invalid provisions are severed; remaining provisions continue in force.

17.5. Third Party Rights: No third party has rights under the Contracts (Rights of Third Parties) Act 1999.

Signed for and on behalf of Heavy Haul Rail Limited

Name:

Title:

Date:

Signed for and on behalf of the Third Party

Name:

Title:

Date: