

# **Eighty-Eighth Supplemental Agreement**

between

**NETWORK RAIL INFRASTRUCTURE LIMITED**

as Network Rail

and

**ARRIVA RAIL LONDON LIMITED**

as Train Operator

relating to the Track Access Contract (Passenger Services) dated 9 November 2007

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**THIS EIGHTY-EIGHTH SUPPLEMENTAL AGREEMENT** is dated 23 /10 / 2023 and made

**BETWEEN:**

- (1) **NETWORK RAIL INFRASTRUCTURE LIMITED**, a company registered in England under number 2904587 having its registered office at Waterloo General Office, London, SE1 8SW ("**Network Rail**"); and
- (2) **ARRIVA RAIL LONDON LIMITED**, a company registered in England under number 04165861, having its registered office at 1 Admiral Way, Doxford International Business Park, Sunderland, Tyne & Wear, SR3 3XP (the "**Train Operator**").

**WHEREAS:**

- (A) The parties entered into a Track Access Contract (Passenger Services) dated 9<sup>th</sup> November 2007 in a form approved by the Office of Rail and Road ("ORR") pursuant to Section 18(7) of the Act, as amended by various supplemental agreements each in a form approved by ORR pursuant to Section 22 of the Act (which track access contract as subsequently amended is hereafter referred to as the "Contract").
- (B) The parties wish to amend Schedule 4 of the Contract in the terms described below.

**IT IS HEREBY AGREED** as follows:

1. **INTERPRETATION**

In this Supplemental Agreement:

- (A) Words and expressions defined in, and rules of interpretation set out in the Contract shall have the same meaning and effect when used in this Supplemental Agreement except where the context requires otherwise; and
- (B) "Effective Date" shall mean the date on which the ORR issues its approval pursuant to Section 22 of the Act, of the terms of this Supplemental Agreement.

2. **EFFECTIVE DATE AND TERM**

The amendments made to the Contract as set out in this Supplemental Agreement shall have effect from the Effective Date and shall cease to have effect at the Expiry Date or earlier termination of the Contract.

3. **AMENDMENTS TO THE CONTRACT**

- 3.1 Schedule 4, Part 3, under Clause 2, Paragraph 2.4 '*Network Rail payments*' of the Track Access Contract shall be deleted in its entirety and replaced by a new Paragraph 2.4 '*Network Rail payments*' as set out in Annex A to this supplemental agreement.

4. **EFFECTS OF THIS SUPPLEMENTAL AGREEMENT ON THE CONTRACT**

The Contract, as amended by this Supplemental Agreement, shall remain in full force and effect in accordance with its terms, and during the period in which the amendments made by this Supplemental Agreement are to have effect all references in the Contract to "the contract", "herein", "hereof", "hereunder" and other similar expressions shall, unless the context requires otherwise, be read and construed as a reference to the Contract as amended by this Supplemental Agreement.

5. **THIRD PARTY RIGHTS**

No person who is not a party to this Supplemental Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Supplemental Agreement.

6. **LAW**

This Supplemental Agreement shall be governed by, construed and given effect to in all respects in accordance with English Law.

7. **COUNTERPARTS**

This Supplemental Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original, but all the counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF Network Rail and the Train Operator have, by their duly authorised representatives, entered into this Supplemental Agreement on the date first above written.

**SIGNED by**

duly authorised for and on behalf of  
**NETWORK RAIL  
INFRASTRUCTURE LIMITED**

)  
)  
)  
)  
)



L. McAuliffe.

19/10/23

**SIGNED by**

duly authorised for and on behalf of  
**ARRIVA RAIL LONDON LIMITED**

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)  
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Paul Hutchings

20/10/2023 | 2:31 PM BST

## Annex A

### 2.4 Network Rail payments

- (a) Subject to paragraphs 2.3, 2.4 (b) and 2.4 (c), Network Rail shall make payments to the Train Operator (in accordance with the procedure outlined in paragraph 13) in respect of a Network Rail Restriction of Use, calculated in accordance with paragraphs 2.5 to 2.7 and 2.10, where applicable;
- (b) Network Rail shall not make payments to the Train Operator in respect of Restriction of Use notified by Network Rail between Highbury & Islington and Western Curve Connection Point, or on any part of that Route, when the possession is requested by TfL, RfL or by a third party working on the Core ELR infrastructure on TfL's or RfL's behalf.

Network Rail's 'Possession Planning System (the database of possessions which are planned to occur on the Network) contains details of the organisation that has requested a possession, and the details of work to be undertaken within the possession; such details will determine whether or not a possession is caused by TfL works; and

- (c) Network Rail shall not be liable to make payments to the Train Operator in respect of a Restriction of Use between Highbury & Islington and Western Curve Connection Point, or on any part of that Route, when such a Restriction of Use meets one of the following criteria:
  - i. the Restriction of Use is taken to execute works in the existing 'one week in eight' cyclical access on Sunday nights into Monday mornings; or
  - ii. the Restriction of Use is taken as part of the North London Line Type 6A cyclical access (22:30hrs Sunday to 04:45hrs Monday); or
  - iii. the Restriction of Use is taken in accordance with the North London Line Type 7 cyclical access, between 00:01hrs and 04:35hrs on a Monday, as published in the Engineering Access Statement and/or the Confirmed Period Possession Plan.

