

Ninety-Third 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 NINETY-THIRD SUPPLEMENTAL AGREEMENT is dated 07 / 11 /2024 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 9th 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 extend the Expiry Date of the current Track Access Contract as detailed 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” means the date 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 Subsidiary Change Date 2027 or earlier termination of the Contract.

3. **AMENDMENTS TO THE CONTRACT**

- 3.1 Section 1 ‘Interpretation’, under sub-clause 1.1, the definition “Expiry Date” shall be amended to show Subsidiary Change Date May 2027 as shown in the Appendix 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)

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duly authorised for and on behalf of
NETWORK RAIL
INFRASTRUCTURE LIMITED

SIGNED by)
duly authorised for and on behalf of)
ARRIVA RAIL LONDON LIMITED)

7th November 2024

8 **APPENDIX**

1 **INTERPRETATION**

1.1 **Definitions** ^{57th, 64th, 92nd, 93rd}

In this contract unless the context otherwise requires:

“Access Agreement” has the meaning ascribed to it in Part A of the Network Code;

“Access Charges Review” has the meaning ascribed to it in Schedule 4A to the Act;

“Access Dispute Resolution Rules” and **“ADRR”** have the meaning ascribed to them in Part A of the Network Code;

“Access Proposal” has the meaning ascribed to it in Part D of the Network Code;

“Act” means the Railways Act 1993;

“Affected Party” has the meaning ascribed to it in Clause 17.1;

“Affiliate” means, in relation to any company:

- (a) a company which is either a holding company or a subsidiary of such company; or
- (b) a company which is a subsidiary of a holding company of which such company is also a subsidiary,

and for these purposes “holding company” and “subsidiary” have the meanings ascribed to them in section 1159 of the Companies Act 2006;

“Ancillary Movements” has the meaning ascribed to it in Part D of the Network Code;

“Applicable Engineering Access Statement” means the Engineering Access Statement in force in respect of the Routes on 11 November 2007, as from time to time amended or replaced under Part D of the Network Code;

“Applicable Timetable Planning Rules” means the Timetable Planning Rules in force in respect of the Routes on 11 November 2007, as from time to time amended or replaced under Part D of the Network Code;

“Applicable Timetable” has the meaning ascribed to it in Schedule 8;

“associate” has the meaning ascribed to it in section 17 of the Act;

“Claims Allocation and Handling Agreement” means the agreement of that name approved by ORR;

“Collateral Agreements” means the agreements and arrangements listed in Schedule 3;

“Concession Agreement” means the concession agreement with Rail for London Limited referred to in Schedule 3;

“Confidential Information” means information relating to the affairs of one party to this contract or any of its Affiliates which has been provided by any such person to the other party under or for the purposes of this contract, or any matter or thing contemplated by this contract or to which this contract relates, the disclosure of which is likely materially to compromise or otherwise prejudice the commercial interests of any such person;

“Contract” means this document including all schedules and appendices to it, the Network Code and the Traction Electricity Rules;

“Contract Year” means each yearly period commencing on 11 November 2007 and subsequently on each anniversary of such date;

“Core ELR Infrastructure”^{29th} means the railway facility owned by Rail for London Limited between (i) Western Curve Connection Point and New Cross station, (ii) Canal Junction and New Cross Gate Connection Points, and (iii) Silwood Junction and Old Kent Road Junction Connection Point;

“**D-X**” has the meaning ascribed to it in Part D of the Network Code;

“**Default Interest Rate**” is two percent above the base lending rate of Barclays Bank PLC as varied from time to time;

“**Environmental Condition**” has the meaning ascribed to it in Part E of the Network Code;

“**Environmental Damage**” has the meaning ascribed to it in Part E of the Network Code;

“**European licence**” has the meaning ascribed to it in section 6(2) of the Act;

“**Event of Default**” means a Train Operator Event of Default or a Network Rail Event of Default;

“**Expiry Date**” means the Subsidiary Change Date 2027; ^{57th, 93rd}

“**Force Majeure Event**” has the meaning ascribed to it in Clause 17.1;

“**Force Majeure Notice**” has the meaning ascribed to it in Clause 17.1;

“**Force Majeure Report**” has the meaning ascribed to it in Clause 17.1;

“**H&I Section**”^{21st} means the part of the Network connecting Highbury & Islington station and the Western Curve Connection Point, comprising the southernmost pair of tracks between those locations, otherwise known as the Up East London Line and the Down East London Line;

“**Innocent Party**” means, in relation to a breach of an obligation under this contract, the party who is not in breach of that obligation;

“**Insolvency Event**”, in relation to either of the parties, has occurred where:

- (a) any step which has a reasonable prospect of success is taken by any person with a view to its administration under Part II of the Insolvency Act 1986;
- (b) it stops or suspends or threatens to stop or suspend payment of all or a material part of its debts, or is unable to pay its debts, or is deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986, except that in the interpretation of this paragraph:
 - (i) section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there were substituted “£100,000” or such higher figure as the parties may agree in writing from time to time; and
 - (ii) it shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is satisfied before the expiry of 21 days from such demand;
- (c) its directors make any proposal under section 1 of the Insolvency Act 1986, or it makes any agreement for the deferral, rescheduling or other readjustment (or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors) of all or a material part of its debts, or a moratorium is agreed or declared in respect of or affecting all or a material part of its debts;
- (d) any step is taken to enforce security over or a distress, execution or other similar process is levied or sued out against the whole or a substantial part of its assets or undertaking, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) any step is taken by any person with a view to its winding up or any person presents a winding-up petition which is not dismissed within 14 days, or it ceases or threatens to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the other party before that step is taken (which approval shall not be unreasonably withheld or delayed); or
- (f) any event occurs which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above, unless:
 - (i) in any case, a railway administration order (or application for such order) has been made or such order (or application) is made within 14 days after the occurrence of such step, event, proposal or action (as the case may be) in relation to the party in question under

section 60, 61 or 62 of the Act and for so long as any such order (or application) remains in force or pending; or

- (ii) in the case of paragraphs (a), (d) and (e), the relevant petition, proceeding or other step is being actively contested in good faith by that party with timely recourse to all appropriate measures and procedures;

“Liability Cap” has the meaning ascribed to it in paragraph 1 of Schedule 9;

“Longstop Date” means 11 November 2007;

“Network” has the meaning ascribed to it in Part A of the Network Code;

“Network Code” means the document now known as the Network Code and formerly known as the Railtrack Track Access Conditions 1995;

“Network Rail Event of Default” has the meaning ascribed to it in paragraph 1.3 of Schedule 6;

“New Cross Gate Connection Point”^{15th} means a point in the vicinity of New Cross Gate station at which the Network and the network owned by Rail for London Limited (or any successor facility owner) connect, where:

- (a) for trains proceeding from the network to the network of Rail for London Limited (or any successor facility owner), this point is on a spur from the Up London Bridge Slow line north of New Cross Gate station; and
- (b) for trains proceeding from the network of Rail for London Limited (or any successor facility owner) to the Network, this point lies south of New Cross Gate station on the spur leading to the Down London Bridge Slow line;

“New Working Timetable” means, in respect of any day, the version of the Working Timetable for that day provided by Network Rail in accordance with Condition D2.7.1, as amended pursuant to Condition D2.7.4;

“North London Railway”^{21st} means a combination of the following parts of the Network:

- (a) the part of the Network between Richmond and Stratford stations via Kentish Town West station (**“North London Line”**);
- (b) the part of the Network between Watford Junction and Euston stations (via DC lines);
- (c) the part of the Network between Gospel Oak and Barking Riverside stations via Wanstead Park station;
- (d) the part of the Network between Willesden Junction (High Level) and Clapham Junction stations via Mitre Bridge Junction (**“West London Line”**); and
- (e) the **H&I Section**.

“Office of Rail and Road” has the meaning ascribed to it under section 15 of the Railways and Transport Safety Act 2003, and references to "ORR" shall be construed as references to the Office of Rail and Road;

“Old Kent Road Junction Connection Point”^{29th} means a point between Old Kent Road Junction and Silwood Junction, adjacent to the land boundary between Network Rail and Rail for London Limited, which connects the Core ELR Infrastructure to the Network and vice versa;

“Performance Order” has the meaning ascribed to it in Clause 13.3.2;

“Railway Code Systems” means necessary systems within the meaning of the Systems Code;

“railway facility” has the meaning ascribed to it in section 83 of the Act;

“Railway Infrastructure”^{21st} means the fixed assets used for the operation of a railway including its permanent way and plant used for signalling or exclusively for supplying electricity for operational purposes to the railway;

“Rail for London Limited” means a wholly-owned subsidiary of Transport for London, a Company registered in England with company number 05965930 (a subsidiary company of Transport Trading Limited), which has responsibility for letting the Concession Agreement”;

“relevant ADRR Forum” means the Forum, having the meaning ascribed to it in the ADRR, to which a Relevant Dispute is allocated for resolution in accordance with the ADRR;

“Relevant Dispute” means any difference between the parties arising out of or in connection with this contract;

“Relevant Force Majeure Event” has the meaning ascribed to it in Clause 17.1;

“Relevant Incident”^{21st} means an incident, wherever it so arises, which is caused directly or indirectly (whether or not the Train Operator is at fault) by, or which arises from, any act, omission or circumstance originating from, in connection with or affecting the Core ELR Infrastructure;

“Relevant Losses” means, in relation to:

- (a) a breach of this contract; or
- (b) in the case of Clause 10, any of the matters specified in Clause 10.1(a), (b) or (c) or Clause 10.2(a), (b) or (c) (each a “breach” for the purpose of this definition); or
- (c) in the case of Schedule 8, the matter specified in paragraph 18 of Schedule 8 (a “breach” for the purposes of this definition only),

all costs, losses (including loss of profit and loss of revenue), expenses, payments, damages, liabilities, interest and the amounts by which rights or entitlements to amounts have been reduced, in each case incurred or occasioned as a result of or by such breach;

“Relevant Obligation” has the meaning ascribed to it in Clause 17;

“Rolled Over Access Proposal” has the meaning ascribed to it in Part D of the Network Code;

“Routes” means that part of the Network specified in Schedule 2;

“safety authorisation” has the meaning ascribed to it by regulation 2 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

“safety certificate” has the meaning ascribed to it by regulation 2 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

“Safety Obligations” means all applicable obligations concerning health and safety (including any duty of care arising at common law, and any obligation arising under statute, statutory instrument or mandatory code of practice) in Great Britain;

“Services” means the railway passenger services specified in Schedule 5;

“SNRP” has the meaning ascribed to it in the Railways (Licensing of Railway Undertakings) Regulations 2005;

“Specified Equipment” means, in relation to each of the Routes, the railway vehicles which the Train Operator is entitled to use in the provision of Services on that Route as specified in Schedule 5;

“SPP Threshold” has the meaning ascribed to it in paragraph 18 of Schedule 8

“Stabling” means the parking or laying up of the Specified Equipment or such other railway vehicles as the Train Operator is permitted by this contract to use on the Network, such parking or laying up being necessary or reasonably required for giving full effect to the movements of Specified Equipment required for the provision of the Services;

“Suspension Notice” means a notice in writing served by the relevant party on the other party under paragraph 2 of Schedule 6;

“Systems Code” means the Code of Practice relating to the management and development of Railway Code Systems, as amended from time to time in accordance with its terms;

“Termination Notice” means a notice in writing served by the relevant party on the other party under paragraph 3 of Schedule 6;

“Timetable Participant” shall have the meaning ascribed to it in Part D of the Network Code;

“Track Charges” means the charges payable by or on behalf of the Train Operator to Network Rail, as set out in paragraph 1 of Part 2 of Schedule 7 or under the Traction Electricity Rules;

“Traction Electricity Rules” means the document known as the Traction Electricity Rules published by Network Rail on its website and as may be amended from time to time;

“Train Consist Data” means information as to the number(s) and type(s) of railway vehicle comprised in a train movement;

“Train Operator Event of Default” has the meaning ascribed to it in paragraph 1.1 of Schedule 6;

“Train Slot” has the meaning ascribed to it in Part D of the Network Code;

“Transport for London” means the statutory corporation established under s.154 of the Greater London Authority Act 1999;

“TW-X” has the meaning ascribed to it in Part D of the Network Code;

“Value Added Tax” means value added tax as provided for in the Value Added Tax Act 1994, and any tax similar or equivalent to value added tax or any turnover tax replacing or introduced in addition to them, and “VAT” shall be construed accordingly;

“Western Curve Connection Point”^{21st} means a point on the North London Railway, approximately 100 metres to the east of Kingsbury Road bridge and adjacent to the land boundary between Network Rail and Rail for London Limited, which connects Core ELR Infrastructure to the Network and vice versa;

“Working Day” has the meaning ascribed to it in Part D of the Network Code; and

“Working Timetable” has the meaning ascribed to it in Part A of the Network Code.