

NINETY-FIRST SUPPLEMENTAL AGREEMENT

between

NETWORK RAIL INFRASTRUCTURE LIMITED

and

KEOLIS AMEY OPERATIONS / GWEITHREDIADAU KEOLIS AMEY LIMITED

**relating to amendments to a Track Access
Contract (Passenger Services) dated 5th February 2004 –
Interim treatment of the 2018 Periodic Review**

THIS NINETY-FIRST SUPPLEMENTAL AGREEMENT is dated 13 December 2018 and made between:

- (1) **NETWORK RAIL INFRASTRUCTURE LIMITED**, a company registered in England under company number 02904587, having its registered office at 1 Eversholt Street, London NW1 2DN ("**Network Rail**"); and
- (2) **KEOLIS AMEY OPERATIONS / GWEITHREDIADAU KEOLIS AMEY LIMITED** (the "**Train Operator**"), a company registered in England under number 11389531, whose registered office is at Evergreen Building North, 160 Euston Road, London, NW1 2DX (the "**Train Operator**").

Background:

- (A) The parties entered into a Track Access Contract (Passenger Services) dated 5 February 2004 pursuant to Section 18 (7) of the Act as amended by various supplemental agreements in a form approved pursuant to Section 22 of the Act (which track access contract as subsequently amended is hereafter referred to as the "**Contract**");
- (B) The Contract was novated from Arriva Trains Wales/Trenau Arriva Cymru Limited to the Train Operator pursuant to a Deed of Novation dated 1 October 2018.
- (C) The parties wish to amend the Contract to incorporate a mechanism which will provide for the treatment of revised track access charges and certain other matters forming the subject of the Office of Rail and Road's 2018 periodic review pending the conclusion of the periodic review process. This Supplemental Agreement provides for the insertion of a new paragraph 4 of Part 7 of Schedule 7 in order to incorporate such a mechanism into the Contract.

IT IS HEREBY AGREED as follows:

1. INTERPRETATION

In this Supplemental Agreement 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.

2. EFFECTIVE DATE AND TERM

The amendments to the Contract made pursuant to this Supplemental Agreement shall have effect from the date on which the Office of Rail and Road gives its approval under section 22 of the Act to the terms of this Supplemental Agreement and shall cease to have effect at 23:59 hours on the Expiry Date or earlier termination of the Contract.

3. AMENDMENTS TO THE CONTRACT

- 3.1 Delete Clause 20: "Interim Treatment of 2013 Periodic Review" from the Contract.

- 3.2 In paragraph 1 of Part 1 (Definitions) of Schedule 7 of the Contract, insert the following new definitions in alphabetical order:

""**Current Control Period**" means the period of five years commencing at 0000 hours on 1 April 2014 and due to end at 2359 hours on 31 March 2019;"

""**Proposed Review Notice**" means the most recently proposed Review Notice given by ORR during the course of the Current Control Period, in accordance with Schedule 4A of the Act;"

""**Review Implementation Notice**" has the meaning given to "review implementation notice" in paragraph 7 of Schedule 4A of the Act;" and

""**Review Notice**" has the meaning given to "review notice" in paragraph 4 of Schedule 4A of the Act;"

- 3.3 In Part 7 (Future Access Charges Reviews) of Schedule 7 of the Contract, insert new paragraph 4 as follows:

"4 Interim treatment of 2018 Periodic Review

4.1 *Interim treatment prior to implementation*

If the terms of a Proposed Review Notice proposing amendments to the contract are not implemented in accordance with paragraph 7 of Schedule 4A to the Act on the date stipulated that they will come into operation in the Proposed Review Notice for any reason, then, irrespective of such terms not having been so implemented, each proposed amendment to the contract set out in the Proposed Review Notice shall have effect from the period (the "Interim Period") commencing on that date (or from any later date (or dates) specified in the Proposed Review Notice in respect of any individual amendment), in each case until such time as:

- (a) following the service of a Review Implementation Notice relating to the Proposed Review Notice, the changes specified in that Review Implementation Notice come into operation; or
- (b) following a reference to the Competition and Markets Authority in accordance with paragraph 9 of Schedule 4A to the Act, any amendments to the contract, made in accordance with paragraphs 12(8), 12(9) or 14(3) of Schedule 4A to the Act, come into operation.

4.2 *Reconciliation Payment*

- (a) Within 28 days after the end of the Interim Period, Network Rail shall calculate whether a reconciliation payment is due to or from the Train Operator. In order to calculate such reconciliation payment, Network Rail shall compare (i) the sums paid by the Train Operator during the Interim Period with (ii) the sums which would have been payable if the amendments required by either paragraphs 4.1(a) or (b) above

had taken effect on the date(s) stipulated in the Proposed Review Notice, and shall provide to the Train Operator:

- (i) a statement of the amount due to or from the Train Operator; and
 - (ii) such background data and workings as may reasonably be required for a proper understanding of the calculation.
- (b) Within 14 days after the date upon which Network Rail shall have provided to the Train Operator the information referred to in paragraph 4.2(a) above, the Train Operator shall notify Network Rail of any aspects of the statement which it disputes, giving reasons for any dispute. Save to the extent that disputes are so notified, the Train Operator shall be deemed to have agreed the contents of the statement.
- (c) If any dispute is notified under paragraph 4.2(b) it shall be resolved according to the following procedure:
- (i) within 7 days of service of the relevant notice, the parties shall meet to discuss the disputed aspects with a view to resolving all disputes in good faith;
 - (ii) if, for any reason, within seven days of the meeting referred to in paragraph 4.2(c)(i) above, the parties are still unable to agree any disputed aspects, each party shall promptly and in any event within seven days prepare a written summary of the disputed aspects and the reasons for each such dispute and submit such summaries to the senior officer of each party;
 - (iii) within 28 days of the first meeting of the parties, the senior officers of the parties shall meet with a view to resolving all disputes; and
 - (iv) if no resolution results before the expiry of 14 days following that meeting, then either party may refer the matter for resolution in accordance with the ADRR.
- (d) Within 28 days after the date upon which Network Rail shall have provided to the Train Operator the information referred to in paragraph 4.2(a) above (if not disputed) or 28 days of resolution or determination of any dispute in accordance with paragraph 4.2(c) above, any amount due shall be invoiced (or presented in a credit note, as the case may be) for payment, and payable, as provided under this contract."

4. EFFECT OF THIS SUPPLEMENTAL AGREEMENT ON THE CONTRACT

The parties agree that the Contract, as amended by this Supplemental Agreement, shall remain in full force and effect in accordance with its terms, and with effect from and including the date hereof 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. LAW

This Supplemental Agreement shall be governed by, construed and given effect to in all respects in accordance with the laws of England and Wales.

6. 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.

7. COUNTERPARTS

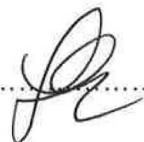
This Supplemental Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original, but all the counterparts shall together constitute one and the same instrument.

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

Signed by 

Print name *Avonien Brooks*

Duly authorised for and on behalf of
NETWORK RAIL INFRASTRUCTURE LIMITED

Signed by 

Print name *LETICIA FRANK*

Duly authorised for and on behalf of
KEOLIS AMEY OPERATIONS