

Fifty-Ninth 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

Night Overground:

Additional Services in Service Group EK03, February 2018

- **Schedule 5, Table 2.1A – addition of various Firm Rights between Highbury & Islington and Western Curve Connection Point until Subsidiary Change Date May 2019; and**
- **Schedule 4 Part 3 – waiver for identified Night Overground Services, and other agreed circumstances until Subsidiary Change Date May 2019.**

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THIS FIFTY-NINTH SUPPLEMENTAL AGREEMENT is dated

19th February

2018

and is made **BETWEEN:**

- (1) **Network Rail Infrastructure Limited** ("Network Rail"), a company registered in England under number 2904587 having its registered office at 1 Eversholt Street, London, NW1 2DN; and
- (2) **Arriva Rail London Limited** (the "Train Operator"), a company registered in England under number 041658661 having its registered office at 1 Admiral Way, Doxford International Business Park, Sunderland, Tyne & Wear, SR3 3XP.

WHEREAS:

- (A) The Parties entered into a Track Access Contract (Passenger Services) dated 09 November 2007 in a form approved by the Office of Rail and Road pursuant to section 18(7) of the Act (which Track Access Contract is hereafter referred to as "the Contract").
- (B) The parties now propose to amend the Contract in the manner and on the terms described below.

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

- a) "Effective Date" means the later of:
 - i. the date upon which the Office of Rail and Road issues its approval, pursuant to Section 22 of the Act, of the terms of this Supplemental Agreement; and
 - ii. 00:01hrs on Saturday 24th February 2018;
- b) The amendments to Schedule 5 of the Contract, as set out in this Supplemental Agreement, shall have effect from the Effective Date and shall cease to have effect at 01:59hrs on the Subsidiary Change Date May 2019; and
- c) The amendments to Schedule 4 of the Contract, as set out in this Supplemental Agreement, shall have effect from the Effective Date and shall cease to have effect at 23:59hrs on the Subsidiary Change Date May 2019.

3 AMENDMENTS TO SCHEDULE 4

Schedule 4 Part 3 paragraph 2.4 shall be deleted in its entirety, and replaced with the following:

“

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 a 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 between 00:30hrs and 05:10hrs on a Saturday; or
 - ii. the Restriction of Use is taken between 00:30hrs and 06:30hrs on a Sunday; or
 - iii. 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
 - iv. the Restriction of Use is taken as part of the North London Line Type 6 cyclical access (22:30hrs Sunday to 04:45hrs Monday); or
 - v. the Restriction of Use is taken in accordance with access as defined in Section 4 of the Engineering Access Statement; or
 - vi. the Restriction of Use is taken in accordance with the North London Line Type 7 cyclical access, between 00:01hrs and 04:45hrs on a Monday, as published in the Engineering Access Statement and/or the Confirmed Period Possession Plan.

”.

4 AMENDMENTS TO SCHEDULE 5

a) The following definition shall be added to Schedule 5 paragraph 1.1:

“

**“Night Overground
Passenger Train Slots”**

means Services operating on the H&I Section, which are scheduled to terminate at Highbury & Islington between 00:40 and 06:00 on Saturdays, and between 00:40 and 07:25 on Sundays, and which are scheduled to originate from Highbury & Islington between 00:20 and 05:10 on Saturdays, and between 00:20 and 06:30 on Sundays

” ;

b) In Schedule 5, a new Table 2.1A, as contained in Appendix 1 to this Supplemental Agreement, shall be added to the Contract and inserted directly after Schedule 5 Table 2.1.

c) In Schedule 5 Paragraph 2.1, after the words “In Table 2.1” wherever they appear, insert the words “and Table 2.1A”.

5 EFFECT 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. 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.

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 LAW

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

8 COUNTERPARTS

This Supplemental Agreement may be executed in two counterparts which, taken together, shall constitute one and the same document. Either party may enter into this Supplemental by signing either of such counterparts.

IN WITNESS whereof the duly authorised representatives of Network Rail and the Train Operator have executed this Supplemental Agreement on the date first above written.

SIGNED by

MELIHA DUYMAZ
MANAGING DIRECTOR, ANGLIA

 M Dymaz
19/2/18

Duly authorised for and on behalf of

NETWORK RAIL INFRASTRUCTURE LIMITED

SIGNED by

W. Rogers 19/2/18

Will Rogers

Duly authorised for and on behalf of

ARRIVA RAIL LONDON LIMITED

Appendix 1: Schedule 5 Table 2.1A

“

2 Passenger Train Slots

Table 2.1A: Night Overground Passenger Train Slots

1						2	
Service Group							
Service description						Night Overground Passenger Train Slots	
From	To	Via	Description	TSC	Timing Load	Saturday	Sunday
Western Curve Connection Point	Highbury & Islington	Canonbury	All Stations	22215003	378	21	27
Highbury & Islington	Western Curve Connection Point	Canonbury	All Stations	22215003	378	19	24

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