

21st SUPPLEMENTAL AGREEMENT

between

NETWORK RAIL INFRASTRUCTURE LIMITED
as Network Rail

And

GOVIA THAMESLINK RAILWAY LIMITED
as Train Operator

relating to the Track Access Contract (Passenger
Services) dated 02 March 2016

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THIS 21ST SUPPLEMENTAL AGREEMENT is dated *23rd May* 2018 and made

BETWEEN:

- (1) **NETWORK RAIL INFRASTRUCTURE LIMITED**, a company registered in England under number 2904587 having its registered office at 1 Eversholt Street, London, NW1 2DN ("Network Rail"); and
- (2) **GOVIA THAMESLINK RAILWAY LIMITED**, a company registered in England under number 07934306, having its registered office at 3rd Floor, 41-51 Grey Street, Newcastle upon Tyne, NE1 6EE (the "Train Operator").

WHEREAS:

- (A) The parties entered into a Track Access Contract (Passenger Services) dated 02 March 2016 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 the Contract in the terms described below.

IT IS HEREBY AGREED as follows:

1. INTERPRETATION

In this Supplemental Agreement:

- 1.1 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
- 1.2 "Effective Date" means the later of:
 - (1) 0200 hours on the 27th May 2018 ; and
 - (2) 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.

2. EFFECTIVE DATE AND TERM

- 2.1. The amendments to the Contract pursuant to this Supplemental Agreement shall have effect from the Effective Date and shall cease to have effect on the expiry or earlier termination of the Contract.

3. AMENDMENTS TO THE CONTRACT

The existing Schedule 11: Relevant Schedule 8 Modifications will be deleted in its entirety. A new Schedule 11: Relevant Schedule 8 Modifications will be inserted in its place as set out in Annex A to this Supplemental Agreement.

4. GENERAL

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 document.

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 

Print name J. Halwell

Duly authorised for and on behalf of
NETWORK RAIL INFRASTRUCTURE LIMITED

SIGNED by 

Print name Nick Brown

Duly authorised for and on behalf of
GOVIA THAMESLINK RAILWAY LIMITED

Annex A

SCHEDULE 11: RELEVANT SCHEDULE 8 MODIFICATIONS

1. Automatic effect

1.1 General

This contract shall have effect:

- (a) with the Relevant Schedule 8 Modifications; and
- (b) from the date,

specified by ORR in a Notice of Consent or Notice of Determined Relevant Schedule 8 Modifications.

1.2 Retrospective effect

A Notice of Consent or Notice of Determined Relevant Schedule 8 Modifications may have retrospective effect.

2. Procedures governing Relevant Schedule 8 Modifications

2.1 Negotiation of Relevant Schedule 8 Modifications

In respect of the Relevant Schedule 8 Modifications:

- (a) the parties shall, within 28 days from the Start Date, meet and negotiate and use reasonable endeavours to agree the Relevant Schedule 8 Modifications;
- (b) each party shall ensure that:
 - (i) such negotiations are conducted in a timely, efficient and economical manner, with appropriate recourse to professional advice; and
 - (ii) ORR's Criteria are applied in the negotiations; and
- (c) the negotiations shall not continue after the Backstop Date.

2.2 Relevant Schedule 8 Modifications - failure to agree

If the parties fail to agree the Relevant Schedule 8 Modifications on or before the Backstop Date:

- (a) the matter shall be submitted to arbitration in accordance with Part C of the Access Dispute Resolution Rules; and
- (b) Network Rail shall within five Working Days notify ORR in writing of such submission to arbitration.

2.3 Use of the Office of Rail Regulation's Criteria in arbitration

If a matter is referred to arbitration under paragraph 2.2, the arbitrator shall be required by the parties to:

- (a) determine the Relevant Schedule 8 Modifications in accordance with ORR's Criteria and make such orders in his award as he considers necessary to establish the requisite Relevant Schedule 8 Modifications;
- (b) provide reasons for his award; and
- (c) state the extent to which and ways in which ORR's Criteria have been applied in determining the Relevant Schedule 8 Modifications and, in any case where they have not been applied, give the reasons.

2.4 Relevant Schedule 8 Modifications – notice to the Office of Rail Regulation

Not later than seven days after the Backstop Date or the conclusion of arbitration, as the case may be, the Relevant Schedule 8 Modifications shall be sent by the parties to ORR for its consent, together with a statement, signed by or on behalf of both parties:

- (a) stating the reasons for the Relevant Schedule 8 Modifications;
- (b) stating the extent to which and ways in which ORR's Criteria have been applied in determining the Relevant Schedule 8 Modifications and, in any case where they have not been applied, the reasons; and
- (c) giving such other information as ORR may have requested.

2.5 Relevant Schedule 8 Modifications – the Office of Rail Regulation's consent

If ORR is satisfied with the Relevant Schedule 8 Modifications submitted to it pursuant to paragraph 2.4, and it gives a notice to that effect, such modifications shall have effect as provided for in paragraph 1.1.

2.6 Relevant Schedule 8 Modifications – the Office of Rail Regulation's refusal of consent

If:

- (a) the parties fail to submit to ORR for its consent the Relevant Schedule 8 Modifications in accordance with paragraph 2.4; or
- (b) ORR gives notice to the parties that it is not satisfied with any or all of the proposed Relevant Schedule 8 Modifications,

ORR may:

- (i) require the parties again to follow the procedure or any part of the procedure set out in paragraphs 2.1 to 2.4 for agreeing Relevant Schedule 8 Modifications (with such modifications as to time limits as it specifies), in which case they shall do so; or

- (ii) following such consultation with the parties as it considers necessary, determine the Relevant Schedule 8 Modifications itself and give a notice specifying such Relevant Schedule 8 Modifications.

2.7 *Payment adjustments*

- (a) Within ten Working Days of the date of any notice referred to in paragraph 1.1, and in order to give effect to the Relevant Schedule 8 Modifications specified in such notice, Network Rail shall issue to the Train Operator a statement showing the necessary adjustments to the payments already made under Schedule 8; and
- (b) any statement issued by Network Rail under paragraph 2.7(a) shall be accompanied by an adjusting invoice or credit note.

3. Procedural matters

3.1 *Co-operation and information*

If ORR gives notice to either or both of the parties that it requires from either or both of them information in relation to the Relevant Schedule 8 Modifications or proposed Relevant Schedule 8 Modifications:

- (a) the party of whom the request is made shall provide the requested information promptly and to the standard required by ORR; and
- (b) if that party fails timeously to do so, ORR shall be entitled to proceed with its consideration of the matter in question and to reach a decision in relation to it without the information in question and the party in default shall have no grounds for complaint in that respect.

3.2 *The Office of Rail Regulation's Criteria*

Any Relevant Schedule 8 Modifications shall:

- (a) ensure that Schedule 8 will maintain appropriate financial incentives on both parties in relation to Services, such that both parties are encouraged to maintain and improve operational performance, seeking to minimise lateness and cancellations;
- (b) be drafted to meet a high standard of simplicity, clarity and legal precision;
- (c) use definitions, terminology and numbering, including any bespoke provisions based on previous track access contracts, which are consistent with the defined terms, terminology and numbering used in this contract;
- (d) take account, where relevant, of ORR's latest policy statements on the performance regime; and
- (e) take account of the duties of ORR under section 4 of the Act.

3.3 *Procedural modifications*

In relation to the procedure in paragraph 2 for the Relevant Schedule 8 Modifications (including the times within which any step or thing requires to be done or achieved):

- (a) such procedure may be modified by ORR by a Notice of Procedural Modifications; but
- (b) ORR may only give a Notice of Procedural Modifications if it is satisfied that it is necessary or expedient to do so in order to promote or achieve the objectives specified in section 4 of the Act or if it is requested by both parties.

3.4 *Dates*

In this Schedule:

- (a) where provision is made for a date to be specified or stated by ORR, it may, instead of specifying or stating a date, specify or state a method by which a date is to be determined, and references to dates shall be construed accordingly; and
- (b) any notice given by ORR which states a date may state different dates for different purposes.

3.5 *Consolidated contract*

Not later than 28 days after the giving of a Notice of Consent or Notice of Determined Relevant Schedule 8 Modifications, Network Rail shall prepare and send to the Train Operator and ORR a copy of this contract as so modified.

3.6 *Saving*

Nothing in this Schedule affects the right of either party to approach and obtain from ORR guidance in relation to Relevant Schedule 8 Modifications.

4. *Definitions*

In this Schedule 11

“Backstop Date” means 11th November 2018 (or such later date as may be established under paragraph 2.6 or 3.3);

“Notice of Consent” means a notice given by ORR to the parties under paragraph 2.5;

“Notice of Determined Relevant Schedule 8 Modifications” means a notice given by ORR to the parties under paragraph 2.6 (b);

“Notice of Procedural Modifications” means a notice given by ORR to the parties under paragraph 3.3 modifying any aspect of the procedures in this Schedule;

“ORR’s Criteria” means the criteria set out in paragraph 3.2;

“Relevant Schedule 8 Modifications” means:

- (a) any modifications to [insert Appendix 1 and/or Appendix 3 as appropriate] of Schedule 8, to reflect the alterations to the Services from [insert timetable change date] in Service Groups [insert Service Group names] which are necessary or desirable to achieve the objectives set out in ORR’s Criteria in the most efficient and economic manner; and
- (b) any modifications to any other part of Schedule 8 of this contract which are necessary as a consequence of any modifications under paragraph (a); and

“Start Date” means 27th May 2018