
DATED

25/1/2011

**(1) THE SECRETARY OF STATE FOR
TRANSPORT**

(2) ARRIVA TRAINS CROSS COUNTRY LIMITED

**DEED OF AMENDMENT TO A FRANCHISE
AGREEMENT DATED 11TH November 2007 AND
DEED
for the PROVISION OF RAIL SERVICES
FOR THE LONDON OLYMPICS**

**Department for Transport
Great Minster House
London SW1P 4DR**

THIS DEED is made on

BETWEEN

- (1) **THE SECRETARY OF STATE FOR TRANSPORT** ("the Secretary of State");
and
- (2) **ARRIVA TRAINS CROSS COUNTRY LIMITED**, registered number 4402048,
whose registered office is at C/O Arriva PLC, 1 Admiral Way, Doxford International
Business Park, Sunderland SR3 3XP ("the Franchisee")

WHEREAS

- (A) By the Franchise Agreement, the Secretary of State and the Franchisee recorded their agreement as to the provision of certain services for the carriage of passengers by railway.
- (B) The Olympic Delivery Authority ("the ODA"), incorporated under section 3 London Olympic Games and Paralympic Games Act 2006, wishes to secure the provision of railway passenger services for the 2012 Olympic Games and Paralympic Games in London ;
- (C) The Secretary of State is content to facilitate the provision of the Olympic Services as set out in the schedule;
- (D) The parties to this Deed have agreed that the Olympic Services are to be provided by the Franchisee under the Franchise Agreement on the following terms:

NOW IT IS AGREED as follows:

1. **Interpretation**

1.1 In this Deed except as otherwise specified :

"Base Additional Service Provision" (BASP)

means the train services set out in paragraph 3 of the schedule including new services, existing services retimings and service extensions.

"Existing Services"

means the passenger rail services required to be provided by the Franchisee under its Franchise Agreement before the date of this Deed which shall comprise those services

within the published December 2009 timetable or as otherwise agreed with the Secretary of State;

“Franchise Agreement”

means the Franchise Agreement dated 11TH November 2007 and made between the Secretary of State and the Franchisee;

“Games-time”

means the periods of the 2012 Olympic Games and Paralympic Games between 27th July to 12th August 2012 and between 29th August to 9th September 2012;

“National Rail Product”

means a special fare under the ATOC National Ticket offer available only to a holder of an entry ticket to an event which is part of the 2012 Olympic Games and Paralympic Games;

“Olympics Cancellation”

means a train which is scheduled to be provided as part of the Olympic Train Services and which:

- a. is cancelled or does not operate for more than half its scheduled mileage;
- b. begins its journey after its scheduled departure point or terminates its journey before its scheduled destination point;
- c. does not call at any station at which it is scheduled to call; or
- d. is delayed at its point of destination by more than 120 minutes.

“Olympic Services”

means the services set out in the attached schedule (including the Olympic Train Services and amendments to Existing Services) or any amendments or additions agreed with the Secretary of State;

“Olympic Train Services”

means the Olympic Train Services defined in the attached schedule;

“Olympics Travelcard”

means the ticket [so named] issued free to holders of an

entry ticket to an event which is part of the 2012 Olympic, Games and Paralympic Games valid for travel on the date of the event on National Rail services;

“the relevant 42 Day Statement”

means a statement provided by Network Rail to the Franchisee under Schedule 8 of its track access agreement identifying and attributing responsibility for any Olympics Cancellations;

1.2 In this Deed except as otherwise specified

- 1.2.1 words and expressions defined in the Interpretation Act 1978 shall have the same meaning in this Deed;
- 1.2.2 words and expressions defined in the Franchise Deed shall have the same meaning in this Deed;
- 1.2.3 references to recitals and clauses are to recitals and clauses of this Deed, unless as otherwise stated;
- 1.2.4 headings and references to headings shall be disregarded in construing this Deed;
- 1.2.5 any reference to an act is a reference to the same as amended, substituted or amended from time to time;
- 1.2.6 words importing the plural shall include the singular and vice versa; and
- 1.2.7 a reference to a document includes that document as amended, restated, novated and supplemented from time to time.

1.3 This Deed is supplemental to and shall be read and construed together with the Franchise Agreement, which shall together constitute one and the same instrument. References to the Franchise Agreement in the Franchise Agreement shall refer to the Franchise Agreement as amended by this Deed.

2. Provision of Services

2.1 The Franchisee shall provide the Olympic Services set out in the Schedule but the Franchisee will not be in breach of this Deed for any failure to deliver the Olympic Services where such failure is a direct result of an event or circumstance not reasonably foreseeable and beyond its reasonable control. The Franchisee will use reasonable endeavours to mitigate the

effects of any such events or circumstances

2.2 Subject to clauses 2.4 and 3.2 below, the terms of the Franchise Agreement shall apply to the provision of the Olympic Services under this Deed. The Olympic Train Services are deemed to be approved for the purposes of any requirement contained in paragraphs 1.1 and 1.2 of Schedule 1 to the Terms.

2.3 The Olympic Train Services shall not be Additional Passenger Services and shall be included within the Train Plan for all purposes (including the operation of the performance regimes in Schedule 7 to the Terms) and subject to Network Rail granting the relevant access rights in a relevant Access agreement and will also be subject to the provisions of Clause 2.5 below.

2.4

2.5

3. Compensation

3.1 The Franchisee acknowledges that it has no claim for any payment in relation to the Olympic Services from the Secretary of State except as may be specifically provided in paragraph 9.6 of the schedule.

3.2 Notwithstanding the contrary provisions of paragraph 4 of Appendix 12 to the Franchise Agreement and any definition of Change in the Terms the parties have agreed that the changes effected by this Deed will not be treated as a Change.

4. Monitoring Systems

4.1 The Franchisee shall provide to the Secretary of State and the ODA a report setting out any Olympics Cancellations which are attributed to the responsibility of the Franchisee in the relevant 42 Day Statement by no later than 17 days after the end of the Reporting Period ending 19th August 2012, and (in respect of the Paralympic Games) by no later than 17 days after the end of the Reporting Period ending 16th September 2012.

4.2 The Franchisee hereby gives consent to the Secretary of State to disclose to the ODA any information available to the Secretary of State from time to time in respect of the Olympic

Services and/or their provision under this Deed.

5. Construction

5.1 Except as specifically provided in this Deed the Franchise Agreement shall continue to have full force and effect

5.2 Entry into this Deed satisfies any requirement for the Franchisee to enter into the Olympic Services Delivery Plan.

5.3 In the event of any inconsistency or conflict between the terms of this Deed and the Franchise Agreement, the terms of this Deed shall prevail.

6. Counterparts

6.1 This Deed may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument. Any party may enter into this Deed by executing any such counterpart.

7. Governing Law

7.1 This Deed shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed.

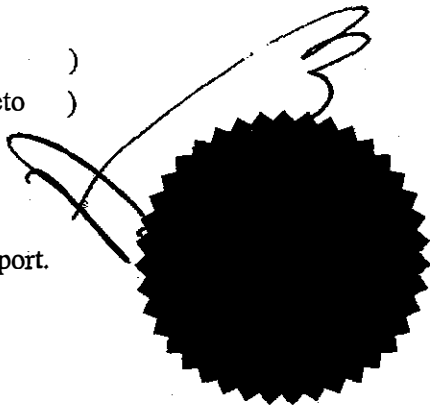
8. Rights of Third Parties

8.1 This Deed does not create any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to it other than the ODA in respect of specific obligations referred to in this Deed.

IN WITNESS whereof the parties to this Deed have executed this Deed the day and year first before written:

THE CORPORATE SEAL of)
THE SECRETARY OF STATE FOR TRANSPORT hereto)
affixed is authenticated by:

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Authenticated by authority of the Secretary of State for Transport.

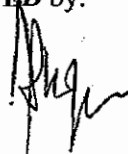


SEAL REF NO. 3068

EXECUTED and delivered)

on behalf of **ARRIVA TRAINS CROSS COUNTRY LIMITED** by:

Director



Director secretary

