

NINTH SUPPLEMENTAL AGREEMENT

between

NETWORK RAIL INFRASTRUCTURE LIMITED

as Network Rail

and

MTR Corporation (Crossrail) Limited

as Train Operator

Relating to the Track Access Contract dated 29 May 2015

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THIS NINTH SUPPLEMENTAL AGREEMENT is dated 18 May 2018 and made

BETWEEN:

- (1) **Network Rail Infrastructure Limited**, a company registered in England under company number 2904587 having its registered office 1 Eversholt Street, London NW1 2DN ("Network Rail"); and
- (2) **MTR Corporation (Crossrail) Limited**, a company registered in England under number 08754715 having its registered office at Providence House, Providence Place, London N1 0NT (the "Train Operator").

WHEREAS:

- (A) The parties entered into a Track Access Contract (Passenger Services) dated 29 May 2015 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 and subsequently assigned pursuant to Section 12(2) of the Railways Act (2005) (which track access contract as subsequently amended is hereafter referred to as the "Contract").
- (B) The parties now propose to enter into this Supplemental Agreement in order to amend the Contract as described herein.

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;
- (B) "Effective Date" means the later of:
 - (1) 02.00 on 20th May 2018; and
 - (2) the date upon which the ORR issues its approval pursuant to section 22 of the Act of the terms of this Supplemental Agreement.

2. EFFECTIVE DATE AND TERM

The amendments made to the Contract as set out in paragraph 3 of this Supplemental Agreement shall have effect from the Effective Date and shall cease to have effect on the Expiry Date or earlier termination of the Contract.

3. AMENDMENTS TO THE CONTRACT

3.1 The heading of Clause 3 “**CONDITIONS PRECEDENT AND DURATION**” shall to be deleted and replaced with:

“**CONDITIONS PRECEDENT, CONDITIONS SUBSEQUENT AND DURATION**”.

3.2 Clause 3.2 (c) shall be deleted and replaced with:

“(c) each of the Collateral Agreements Listed in Part A of Schedule 3 is executed and delivered by all the parties to each such agreement and is unconditional in all respects (save only for the fulfilment of any condition relating to this contract becoming unconditional);”

3.3 After Clause 3.4(b) insert new Clauses 3.4A, 3.4B and 3.4C as follows:

3.4A Meaning of Condition Subsequent and Condition Subsequent Deadline

In this Clause 3:

“**Condition Subsequent**” means that each of the Collateral Agreements listed in Part B of Schedule 3 is executed and delivered by all the parties to each such agreement and is unconditional in all respects (save only for the fulfilment of any condition relating to this contract becoming unconditional); and

“**Condition Subsequent Deadline**” means the date falling 12 weeks after the Principal Change Date December 2018.

3.4B Obligation to satisfy Condition Subsequent

Each party shall use all reasonable endeavours to secure that the Condition Subsequent is satisfied as soon as practicable, and in any event not later than the Condition Subsequent Deadline.

3.4C Consequences of non-fulfilment of Condition Subsequent

If the Condition Subsequent has not been satisfied in full on or before 0200 on the Condition Subsequent Deadline:

- (a) this contract shall terminate automatically save for the obligations of confidence contained in Clause 14 which shall continue in force; and
- (b) neither party shall have any liability to the other except:
 - (i) in respect of any claim or demand that a party may have against the other party under or in connection with this contract which arose on or before termination of this contract;
 - (ii) as expressly set out in paragraph 4 of Schedule 6; or
 - (ii) in respect of any breach of its obligations under this contract.”

4. AMENDMENTS TO SCHEDULE 1

Schedule 1 Contract Particulars shall be deleted in its entirety and replaced by the text in **Annex 1** to this Supplemental Agreement.

5. AMENDMENTS TO SCHEDULE 3

Schedule 3 Collateral Agreements shall be deleted in its entirety and replaced by the text in **Annex 2** to this Supplemental Agreement

6. AMENDMENTS TO SCHEDULE 4

Schedule 4 Engineering Access Statement, Timetable Planning Rules and Restrictions of Use shall be amended as follows:

Annex A to Part 3 of Schedule 4 shall be deleted in its entirety and replaced by the version in **Annex 3** to this Supplemental Agreement;

Annex B to Part 3 of Schedule 4 shall be deleted in its entirety and replaced by the version in **Annex 4** to this Supplemental Agreement; and

Annex C to Part 3 of Schedule 4 shall be deleted and replaced by the version in **Annex 5** to this Supplemental Agreement.

7. AMENDMENTS TO SCHEDULE 5

In Schedule 5, Definitions, the definition of Peak Services shall be deleted and replaced with:

“Peak times” means Services Scheduled on any Weekday (excluding Public Holidays) (i) to arrive at London Paddington 0700 hours and 0959 hours or (ii) to depart from London Paddington between 1600 hours and 1859 hours”.

In Schedule 5, Table 2.1 Passenger Train Slots shall be deleted and replaced with the version in **Annex 6** to this Supplemental Agreement.

In Schedule 5, Table 4.1 Calling Patterns shall be deleted and replaced with the version in **Annex 7** to this Supplemental Agreement.

In Schedule 5, Paragraph 5 Specified Equipment, paragraph 5.1 (a) shall be deleted and replaced with:

“(a) Firm Rights to operate Class 315, 345 and 360 railway vehicles”.

8. AMENDMENTS TO SCHEDULE 7

In Schedule 7, APPENDIX 7C – DEFAULT TRAIN CONSIST DATA shall be deleted in its entirety and replaced with the version in **Annex 8** to this Supplemental Agreement.

9. 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 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.

10. 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.

11. LAW

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

12. 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 by

duly authorised for and on behalf of
**NETWORK RAIL
INFRASTRUCTURE LIMITED**

)
)
) *M Onymarz*
)
)

SIGNED by

duly authorised for and on behalf of
MTR Corporation (Crossrail) Limited

)
)
) *[Signature]*
)
)

ANNEX 1 – Schedule 1, Contract Particulars

SCHEDULE 1: CONTACT PARTICULARS

1. Network Rail's address for service of notices is:

Network Rail Infrastructure Limited
1 Eversholt Street
London
NW1 2DN

Tel: 020 7904 4001

Email: notices@networkrail.co.uk

All written notices to be marked:

“URGENT: ATTENTION THE COMPANY SECRETARY AND SOLICITOR”

and copied to:

The Route Director
Network Rail Anglia Route
One Stratford Place, 12th Floor
Montfitchet Road
West Stratford City
London
E20 1EJ

Tel: 0203 356 2540

2. The Train Operator's address for the service of notices is:

MTR Corporation (Crossrail) Limited
Providence House
Providence Place
London N1 0NT

Tel: 020 7288 4700

Fax: 020 7288 4701

All written notices to be marked:

“URGENT: ATTENTION THE COMPANY SECRETARY AND SOLICITOR”

and copied to:

Concession Director
MTR Crossrail
63 St Mary Axe
London EC3A 8NH

Tel: 020 7766 3500

ANNEX 2 – Schedule 3, Collateral Agreements

SCHEDULE 3: COLLATERAL AGREEMENTS

PART A

1. An access agreement between (1) the Train Operator and (2) Network Rail, granting the Train Operator permission to use Liverpool Street Station.
2. An agreement under which the Train Operator agrees to become a party to the Claims Allocation and Handling Agreement and, for the purpose of Schedule 6, the Claims Allocation and Handling Agreement.
3. A concession agreement dated 30 July 2014 between (1) the Train Operator and (2) Rail for London Limited, under which the Concessionaire undertakes to provide or procure the provision of all, or a material part, of the Services.
4. An accession agreement to the document entitled Emergency Access Code, as approved or directed by ORR and, for the purpose of Schedule 6, the Emergency Access Code.
5. An access agreement between (1) the Train Operator and (2) Network Rail granting the Train Operator permission to use London Paddington Station in respect of which Network Rail is the facility owner.
6. A track access agreement between (1) the Train Operator and (2) Heathrow Airport Limited granting the Train Operator access over the Heathrow Spur corresponding to the rights to use paths to and from Heathrow Airport set out in this contract.

PART B

7. A traction electricity charging agreement between (1) the Train Operator and (2) Network Rail and (3) Heathrow Airport Limited relating to the payment and administration of traction electricity charges on the Heathrow Spur.
8. A connection agreement between (1) Network Rail and (2) Rail for London (Infrastructure) Limited granting permission to Rail for London Limited to physically connect the Central Operating Section to the Network at Westbourne Park Junction Connection Point;
9. A right to connect under the Heathrow Express Track Access Agreement dated 16 August 1993 (unless superseded by another connection agreement) between (1) Network Rail and (2) Heathrow Airport Limited granting permission to Heathrow Airport Limited to physically connect the Heathrow Spur to the Network at Heathrow Tunnel Junction;
10. A connection agreement between (1) Network Rail and (2) Transport for London granting permission to Transport for London to physically connect to the Network at Old Oak Common Depot;

ANNEX 3 – Schedule 4, Annex A to Part 3 – Notification Factors

	A	B	C	D	E
Service Group Description	Service Group Code	Type	By D-26	By TW-22	After TW-22
MTR Crossrail					
Crossrail East	EX01	Off Peak	0.55	0.7	0.85
Crossrail East	EX01	Peak	0.55	0.7	0.85
Crossrail West	EX02	Off Peak	0.55	0.7	0.85
Crossrail West	EX02	Peak	0.55	0.7	0.85

MTR Crossrail VTP Map V0



○ Viable Transfer Point (VTP)

VTP suitable for transfer to buses

VTP suitable for transfer to other train

VTP suitable for transfer to LUL or Metro

VTP start of diversionary route

Normal passenger service

Diversionary route



Final version details
 Version Number 0
 21/09/2017
 Approved by (MTR Crossrail)
 Approved by (NR)



- Visible Transfer Point (VIP)
- VIP suitable for transfer to buses
- VIP suitable for transfer to other train
- VIP suitable for transfer to LUL or Metro
- VIP start of diversionary route
- Normal passenger service
- Diversionary route

Service Groups

HX10 (May 2018)



Final version details:

Version Number 3
 24/10/2017
 Approved by (MTR Crossrail)
 Approved by (NR)

ANNEX 5 – Schedule 4, Annex C to Part 3 – Payment rates per train mile

Annex C to Part 3 of Schedule 4 – payment Rate per train mile

Service Group	Description	Compensation Rate	Total Train Cost per Mile (Pence)
EX01	Shenfield – -Pudding Mill Lane Junction Connection Point/Liverpool Street (Off Peak)	LSE	
EX01	Shenfield – -Pudding Mill Lane Junction Connection Point/Liverpool Street(Peak)	LSE	
EX02	Paddington –Hayes & Harlington (Heathrow) (Off peak)	LSE	
EX02	Paddington – Hayes & Harlington (Heathrow) (Peak)	LSE	

ANNEX 6 – Schedule 5, Table 2.1 – Passenger Train Slots

Table 2.1: Passenger Train Slots

1						2					
Service Group EX01 Crossrail East											
Service description						Passenger Train Slots					
From	To	Via	Description	TSC	Timing Load	Peak times		Off-Peak times	Weekday ¹	Saturday	Sunday
						Morning Peak	Evening Peak				
Liverpool Street	Shenfield	Direct	Stopping (EX01.1)	Off-Peak: 21381001 Peak: 25381001	315	n/a	21	92	113	104	36
Liverpool Street	Gidea Park	Direct	Stopping (EX01.2)	Off-Peak: 21381001 Peak: 25381001	315	n/a	17	14	31	2	31
Liverpool Street	Ilford	Direct	Stopping (EX01.3)	Off-Peak: 21381001 Peak: 25381001	315	n/a	0	0	0	0	0
Seven Kings	Shenfield	Direct	Stopping (EX01.1)	Off-Peak: 21381001 Peak: 25381001	315	0	0	0	0	1	0

1						2					
Service Group EX01 Crossrail East											
Service description						Passenger Train Slots					
From	To	Via	Description	TSC	Timing Load	Peak times		Off-Peak times	Weekday ¹	Saturday	Sunday
						Morning Peak	Evening Peak				
Shenfield	Liverpool Street	Direct	Stopping (EX01.1)	Off-Peak: 21381001 Peak: 25381001	315	20	n/a	89	109	105	35
Gidea Park	Liverpool Street	Direct	Stopping (EX01.2)	Off-Peak: 21381001 Peak: 25381001	315	18	n/a	15	33	0	31
Ilford	Liverpool Street	Direct	Stopping (EX01.3)	Off-Peak: 21381001 Peak: 25381001	315	0	n/a	0	0	0	0

1						2					
Service Group: EX02 Paddington – Hayes & Harlington (Heathrow)											
Service description						Passenger Train Slots					
From	To	Via	Description	TSC	Timing Load	Peak times ¹		Off-Peak times ²	Weekday ³	Saturday	Sunday
						Morning Peak	Evening Peak				
London Paddington	Heathrow Tunnel Junction Connection Point	n/a	Stopping	25384001(peak) 21384001 (off-peak)	360	0	12	63	75	75	38
Heathrow Tunnel Junction Connection Point	London Paddington	n/a	Stopping	25384001(peak) 21384001 (off-peak)	360	12	0	63	75	75	38

Notes to Table:

1 Peak times – means Services Scheduled on any Weekday (excluding Public Holidays) (i) to arrive at London Paddington 0700 hours and 0959 hours or (ii) to depart from London Paddington between 1600 hours and 1859 hours.

2 Off-Peak times - arriving at and departing from a relevant station outside Peak times

3 Passenger Train Slots listed under the sub-headings “Peak times” and “Off-Peak times” are the constituent parts of, and are not in addition to, those listed under the sub-heading “Weekday”.

ANNEX 7 – Schedule 5, Table 4.1 – Calling Patterns

Table 4.1: Calling Patterns

2 Service Group: EX02 Paddington – Hayes & Harlington (Heathrow)					2	3
Service description						
Between	And	Via	Description	TSC	Regular Calling Pattern	Additional stations
London Paddington	Heathrow Tunnel Junction Connection Point	n/a	Stopping	21384001 (peak) 25384001 (off-peak)	Ealing Broadway, West Ealing, Southall, Hayes & Harlington	Acton Main Line, Hanwell,
Heathrow Tunnel Junction Connection Point	London Paddington	n/a	Stopping	21384001 (peak) 25384001 (off-peak)	Hayes & Harlington, Southall, West Ealing, Ealing Broadway	Hanwell, Acton Main Line

ANNEX 8 – Schedule 7, Appendix 7C

APPENDIX 7C – DEFAULT TRAIN CONSIST DATA

Service Group EX01 Crossrail East & EX02 Crossrail West		
TRAIN SERVICE CODE	TYPE OF TRAIN MOVEMENT	DEFAULT TRAIN CONSIST DATA
21381001	Train movement(s) between Liverpool Street, Gidea Park and Shenfield (Off Peak)	1 Class 345 RLU (6 motor units & 1 trailer)
25381001	Train movement(s) between Liverpool Street, Gidea Park and Shenfield (Peak) ¹	1 Class 345 RLU (6 motor units & 1 trailer)
25384001	Train movement(s) between Paddington and Heathrow Tunnel Junction (Off Peak)	1 Class 345 FLU (8 motor units & 1 trailer)
21384001	Train movement(s) between Paddington and Heathrow Tunnel Junction (Peak) ¹	1 Class 345 FLU (8 motor units & 1 trailer)

Notes to table

¹ Covers only those services which are planned to arrive at Liverpool Street or Paddington on or after 0700 hours and before 1000 hours on Mondays to Fridays (inclusive) and/or those services which are planned to depart from Liverpool Street or Paddington on or after 1600 hours and before 1900 hours on Monday to Fridays (inclusive).