

First Supplemental Agreement

between

RAIL FOR LONDON (INFRASTRUCTURE) LIMITED

as RfL(l)

and

MTR CORPORATION (CROSSRAIL) LIMITED

as Train Operator

relating to the Track Access Contract (Trial Running and Trial Operations Services)
dated 25th March 2021

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THIS FIRST SUPPLEMENTAL AGREEMENT is dated 16th May 2022 and made

BETWEEN:

- (1) **RAIL FOR LONDON (INFRASTRUCTURE) LIMITED**, a company registered in England under number 09366341 having its registered office at 5 Endeavour Square, London E20 1JN ("**RfL(I)**"); 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) RfL(I) and the Train Operator entered into a Track Access Contract (Trial Running and Trial Operations Services) dated 25th March 2021.
- (B) The parties propose to enter into this Supplemental Agreement in order to make certain amendments to facilitate the ongoing maintenance and testing of the CCOS and the Specified Equipment.

In consideration of the payment of £1 by the Train Operator to RfL(I), receipt of which is hereby acknowledged, **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 otherwise specified or the context requires otherwise;
- 1.2 "**Contract**" means the Track Access Contract (Trial Running and Trial Operations Services) referred to in Recital (A);
- 1.3 "**Effective Date**" means the later of:
 - 1.3.1 the "Commencement Date", as defined in the Revenue Earning Services TAC; and
 - 1.3.2 the date upon which the ORR issues its approval pursuant to section 22 of the Act of the terms of this Supplemental Agreement; and
- 1.4 "**Revenue Earning Services TAC**" means the Track Access Contract (Passenger Services – Interim Charging Framework) dated on or about the date of this Supplemental Agreement between RfL(I) and the Train Operator.

2 EFFECTIVE DATE AND TERM

The amendments made to the Contract as set out in 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

The Contract shall be amended as follows:

3.1 in the Definitions set out in clause 1.1 of the Contract:

3.1.1 the definition of "Expiry Date" shall be deleted and replaced with the definition set out below:

"Expiry Date" means the earlier of:

- (a) the date on which revenue-earning passenger services first commence operation on the CCOS on a Sunday (other than Jubilee Sunday, as defined in Schedule 5) under the Revenue Earning Services TAC; and
- (b) the Principal Change Date occurring in December 2022;';

3.1.2 the definition of "Initial Indexation Factor" shall be deleted and replaced with the definition set out below:

"Initial Indexation Factor" means $(RPI_{2020}/RPI_{2019})^2$

where:

RPI_{2020} is the RPI published or determined with respect to the month of November 2020; and

RPI_{2019} is the RPI published or determined with respect to the month of November 2019;';

3.1.3 the definition of "Revenue Earning Services TAC" shall be inserted in the correct alphabetical position in the following form:

"Revenue Earning Services TAC" means the Track Access Contract (Passenger Services – Interim Charging Framework) between RfL(I) and the Train Operator;';

3.2 in Schedule 5 of the Contract, include the following additional definition in paragraph 1.1 in the correct alphabetical position:

"Jubilee Sunday" means Sunday 5 June 2022;

3.3 in Schedule 5 of the Contract, Table 2.1 and the Notes to Table 2.1 shall be deleted and replaced with Table 2.1 and the Notes to Table 2.1 in the form set out in Appendix 1 to this Supplemental Agreement;

3.4 in Schedule 5 of the Contract, Table 2.6 shall be deleted and replaced with Table 2.6 in the form set out in Appendix 2 to this Supplemental Agreement;

3.5 in Schedule 5 of the Contract, the section headed Ancillary Movements with paragraph numbers 2.6, 2.7 and 2.6 shall be deleted and replaced with the correct form of those paragraphs set out below:

"Ancillary Movements

2.6 The Train Operator has:

- (a) Firm Rights to make Ancillary Movements of Specified Equipment to the extent necessary or reasonably required to give full effect to the other Firm Rights of the Train Operator under this contract, including:
 - (i) movements for the purpose of maintenance of rolling stock to and from maintenance depots;
 - (ii) movements for driver training purposes; and
 - (iii) empty stock movements;
- (b) Firm Rights to the NR Ancillary Movements specified in Table 2.6 and
- (c) Contingent Rights to make other NR Ancillary Movements of Specified Equipment

2.7 For the purpose of paragraph 2.6, Ancillary Movements and/or NR Ancillary Movements shall not include movements of rolling stock for the purpose of trial running, trial operations or driver training to the extent that:

- (a) the rolling stock concerned has not achieved vehicle and route acceptance necessary for its use in the carriage of passengers on the route in question; or
- (b) where the route in question is not used by the Train Operator for carriage of passengers, the rolling stock concerned has not achieved vehicle and route acceptance necessary to operate on the route without passengers on board.";

3.6 in Schedule 5 of the Contract, paragraphs 2.8, 2.9 and 2.10 shall be deleted and replaced with the paragraphs set out below:

"2.8 RfL(I) and the Train Operator acknowledge and agree that:

- (a) during the period starting on the commencement of revenue-earning passenger services on the CCOS and until the Expiry Date (the "**Enhanced Testing Period**"), the CCOS will not be available on Sundays (other than Jubilee Sunday) for such revenue-earning passenger services;
- (b) on the Sundays described in paragraph 2.8(a), RfL(I) intends to undertake enhanced maintenance work in respect of the CCOS; and
- (c) there may be particular Sundays during the Enhanced Testing Period (in RfL(I)'s absolute discretion) where it does not need to undertake enhanced maintenance work in respect of the

CCOS, in which case RfL(I) may make the CCOS available to the Train Operator to undertake enhanced testing of the Specified Equipment using the access rights granted pursuant to this Contract ("**Testing Sundays**").

The Train Operator has Contingent Rights to relief Passenger Train Slots on Testing Sundays in the Enhanced Testing Period in connection with the testing of the Specified Equipment, whenever the Train Operator believes (acting in a reasonable and proper manner) that a relief Passenger Train Slot is reasonably required in connection with such testing. These Contingent Rights are subject to each relief Passenger Train Slot being allocated the relevant Train Service Code.

2.9 Subject to paragraph 2.10, the entitlement of the Train Operator to Passenger Train Slots on any Public Holiday under this Contract shall be zero and accordingly the Train Operator shall not have rights to operate Services on Public Holidays.

2.10 The CCOS will:

(a) be closed on 25 December every year and save as otherwise agreed in writing the Train Operator shall not have rights to operate Services on such date; and

(b) not be available for trial running and trial operations services on:

(i) Weekdays;

(ii) Saturdays; and

(iii) Jubilee Sunday,

and save as otherwise agreed in writing the Train Operator shall not have rights to operate any Services contemplated by this Contract on such days.";

3.7 in Schedule 7 of the Contract, paragraph 4.2 shall be deleted and replaced with paragraph 4.2 in the form set out below:

"4.2 Indexation of the CDIC per Service Group

From the Principal Change Date occurring in December 2021 until 31 March 2022 (in each case, inclusive), the CDIC per Network Services Train Slot for each Service Group *i* shall be derived from the following formula:

$$C_{i,2021} = IIF \times C_{i,2020}$$

where:

IIF is the Initial Indexation Factor; and

$C_{i,2020}$ is the CDIC per Network Services Train Slot set on 1 April 2020 for each Service Group i as set out in column F of Appendix 1 to this Schedule.

With effect from the Relevant Year commencing on 1 April 2022 (and 1 April in each Relevant Year thereafter) the CDIC per Network Services Train Slot for each Service Group shall be indexed. Prior to the commencement of each such Relevant Year, RfL(I) shall calculate the indexed CDIC and the indexed CDIC shall have effect from the first day of the applicable Relevant Year to which the calculation relates.

Indexation of the CDIC per Network Services Train Slot set on 1 April in any Relevant Year t for Service Group i shall be derived from the following formula:

$$C_{i,t} = \frac{RPI_{t-1}}{RPI_{t-2}} C_{i,t-1} \quad t \geq 2022$$

where:

RPI_{t-1} is the RPI published or determined with respect to the month of November in Relevant Year $t - 1$;

RPI_{t-2} is the RPI published or determined with respect to the month of November in Relevant Year $t - 2$; and

$C_{i,t-1}$ is the CDIC per Network Services Train Slot set on 1 April of Relevant Year $t - 1$ for each Service Group i .”;

3.8 in Schedule 7 of the Contract, Appendix 1 shall be deleted and replaced with the form of Appendix 1 to Schedule 7 set out in Appendix 3 to this Supplemental Agreement;

3.9 in Schedule 8 of the Contract, the wording immediately below the definition of RPI_{t-2} in paragraph 14.1 shall be deleted and replaced with the alternative form of wording set out below:

“but so that in relation to the Relevant Year commencing on 1 April 2021, R_t shall have the relevant value specified in the relevant column (either E or I) of Appendix 1, multiplied by the Initial Indexation Factor and in the next following Relevant Year, R_{t-1} shall have the same value.”.

4 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, 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 and any non-contractual obligations connected with it shall be governed by, construed and given effect to in all respects in accordance with the laws of England and Wales.

7 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 Agreement by signing either of such counterparts.

IN WITNESS whereof the duly authorised representatives of RfL(I) and the Train Operator have executed this Supplemental Agreement on the date first above written.

SIGNED by..........

Print name: Howard Smith

Duly authorised for and on behalf of

RAIL FOR LONDON (INFRASTRUCTURE) LIMITED

SIGNED by..........

Print name: Mark Eaton

Duly authorised for and on behalf of

MTR CORPORATION (CROSSRAIL) LIMITED

Appendix 1 – Updated Table 2.1 and Notes to Table 2.1

Table 2.1: Passenger Train Slots

1						2					
Service Group: EX85 Paddington (CCOS) – Abbey Wood											
Service description						Passenger Train Slots					
From	To	Via	Description	TSC	Timing Load	Peak times ¹		Off-Peak times ¹	Weekday ²	Saturday	Sunday
						AM Peak	PM Peak				
Paddington (CCOS)	Abbey Wood	Tottenham Court Road	Stopping	21382001	345	0	0	0	0	0	0
Paddington (CCOS)	Whitechapel	Tottenham Court Road	Stopping	21382001	345	0	0	0	0	0	0
Abbey Wood	Paddington (CCOS)	Tottenham Court Road	Stopping	21382001	345	0	0	0	0	0	0
Whitechapel	Paddington (CCOS)	Tottenham Court Road	Stopping	21382001	345	0	0	0	0	0	0

Notes to Table:

1 Passenger Train Slots listed under the sub-headings "AM Peak", "PM Peak" and "Off Peak Times" are the constituent parts of, and are not in addition to, those listed under the sub-heading "Total Weekday".

2 The number of Passenger Train Slots on a Public Holiday shall be zero. Accordingly the Train Operator shall have no rights under this Contract to any Train Slots on a Public Holiday.

Appendix 2 – Updated Table 2.6

Table 2.6: Ancillary Movements

1					2		
Service Group: EX99 All MTR Crossrail Empty Coaching Stock moves on CCOS							
Ancillary Movements and NR Ancillary Movements description					Quantum		
From	To	Via	Description	TSC	Weekday	Saturday	Sunday
Westbourne Park Junction Connection Point	Abbey Wood	n/a	n/a	21383208	0	0	0
Abbey Wood	Westbourne Park Junction Connection Point	n/a	n/a	21383208	0	0	0
Paddington (CCOS)	Pudding Mill Lane Junction Connection Point	n/a	n/a	21383208	0	0	0
Pudding Mill Lane Junction Connection Point	Paddington (CCOS)	n/a	n/a	21383208	0	0	0

Appendix 3 – Appendix 1 to Schedule 7 of the Contract

Appendix 1: Track Charges

A	B	C	D	E	F	G
Service Group	Not used	Not used	Not used	Not used	Costs Directly Incurred Charge (£) (per Passenger Train Slot used)	Not used
Paddington (CCOS) – Abbey Wood	N/A	N/A	N/A	N/A	166	N/A
Paddington (CCOS) - Whitechapel	N/A	N/A	N/A	N/A	75	N/A
Abbey Wood – Paddington (CCOS)	N/A	N/A	N/A	N/A	166	N/A
Whitechapel – Paddington (CCOS)	N/A	N/A	N/A	N/A	75	N/A

