

8th Supplemental Agreement

between

NETWORK RAIL INFRASTRUCTURE LIMITED

as Network Rail

and

FIRST GREATER WESTERN LIMITED

as Train Operator

relating to the Track Access Contract (Passenger Services)
dated 4th March 2016

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THIS 8TH SUPPLEMENTAL AGREEMENT is dated 27 September 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) **FIRST GREATER WESTERN LIMITED**, (the “Train Operator”), a company registered in England under number 05113733 having its registered office at Milford House, 1 Milford Street, Swindon SN1 1HL.

WHEREAS:

- (A) The parties entered into a Track Access Contract (Passenger Services) dated 4th March 2016 on terms approved, and pursuant to directions issued, by ORR under section 18 of the Act.
- (B) The parties agree to enter into this 8th Supplemental Agreement in order to make the following amendments to the contract:
 - Amend Schedule 7 Parts 1 and 2.

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

2. EFFECTIVE DATE AND TERM

2.1 “Effective Date” means the date on which the Office of Rail and Road issues its approval of the terms of this Supplemental Agreement pursuant to Section 22 of the Act.

2.2 Notwithstanding the Effective Date, the amendments to the contract as set out in this Supplemental Agreement shall be applied retrospectively from 1 October 2017 and shall cease to have effect at the Expiry Date or earlier termination of the Contract.

3. AMENDMENTS TO THE CONTRACT

3.1. In Schedule 7 "PART 1: INTERPRETATION"

"Bimodal Electric Multiple Unit" means an electric multiple unit that is capable of drawing current from the AC System and/or DC System and, in addition, being powered by an alternative source of energy, including but not limited to diesel"

"Bimodal Locomotive" means a locomotive that is capable of drawing current from the AC System and/or DC System and, in addition, being powered by an alternative source of energy, including but not limited to diesel;"

shall be inserted immediately after,

"Basic Value" has the meaning ascribed to it in paragraph 1.1(a) of Part 3A;"

and immediately before,

"Capacity Charge" means a variable charge, calculated in accordance with paragraph 6 of Part 2;"

and

"Traction Electricity Usage Occurrence Data" means information as to when a Bimodal Electric Multiple Unit or Bimodal Locomotive is either drawing current from the AC System and/or DC System, or is being powered by an alternative source of energy."

shall be inserted immediately after,

"Traction Electricity Modelled Consumption Rates List" means the document entitled "Traction Electricity Modelled Consumption Rates List" published by Network Rail on or about 20 December 2013 and specifying freight and passenger traction electricity modelled consumption rates which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 9.10 of Part 2 of Schedule 7 to this contract;"

and immediately before,

"train category i" means train category i as identified in the relevant section of the Traction Electricity Modelled Consumption Rates List, being either:"

3.2. In Paragraph 4.1.2 of Schedule 7 PART 2: TRACK CHARGES

"Where train category i is a Bimodal Electric Multiple Unit or Bimodal Locomotive that has a corresponding modelled consumption rate listed in the Traction Electricity Modelled Consumption Rates List, it shall be deemed that all mileage (in Vehicle Miles in relation to passenger electric multiple units or kgm in relation to locomotive-hauled units and all freight traffic), if any, of trains operated by or on behalf of the Train Operator in train category i, in Geographic Area g, in tariff band j and in Relevant Year t is electrified."

shall be inserted immediately after,

“UEigt means the actual volume of usage (in electrified Vehicle Miles in relation to passenger electric multiple units or electrified kgtm in relation to locomotive-hauled units and all freight traffic), if any, of trains operated by or on behalf of the Train Operator in train category i, in Geographic Area g, in tariff band j and in Relevant Year t, pursuant to this contract.”

and immediately before,

“*Calculation of consumption using metered consumption data*”;

3.3 In Paragraph 4.1.4 of Schedule 7 PART 2: TRACK CHARGES

“(c) Where train category i is a Bimodal Electric Multiple Unit or Bimodal Locomotive, the Train Operator shall, as a minimum, within 14 days of the end of each of the third, sixth, tenth and thirteenth Periods, provide to Network Rail the Traction Electricity Usage Occurrence Data for train category i. The Traction Electricity Usage Occurrence Data provided: within 14 days of the end of the third Period shall cover Periods one, two and three; within 14 days of the end of the sixth Period shall cover Periods four, five and six; within 14 days of the end of the tenth Period shall cover Periods seven, eight, nine and ten; and within 14 days of the end of the thirteenth period shall cover Periods eleven, twelve and thirteen.

Where, after 14 days, any Traction Electricity Usage Occurrence Data is missing, all mileage (in Vehicle Miles in relation to passenger electric multiple units or kgtm in relation to locomotive hauled units and all freight traffic), if any, of Bimodal Electric Multiple Units or Bimodal Locomotives operated by or on behalf of the Train Operator shall be deemed, for billing purposes, to be electrified when the train is on electrified Network that it is capable of drawing power from.”

shall be inserted immediately after,

“λDCg means the Network Rail Distribution System Loss Factor for the DC System in Geographic Area g.”

and immediately before,

“*Election to introduce On-Train Metering for a vehicle or vehicle type*”;

3.4 In Paragraph 8 of Schedule 7 PART 2: TRACK CHARGES

“Where the Train Operator operates a Bimodal Electric Multiple Unit or Bimodal Locomotive, the actual number of electrified Vehicle Miles on route type k in Relevant Year t shall be calculated:

(i) where the Bimodal Electric Multiple Unit or Bimodal Locomotive is not a Metered Train m, in accordance with the second paragraph of the definition of UEigt in paragraph 4.1.2 above; or

(ii) where the Bimodal Electric Multiple Unit or Bimodal Locomotive is a Metered Train m, in accordance with paragraph 4.1.4 (c) above.”

shall be inserted immediately after,

“UVtk means the actual number of electrified Vehicle Miles on route type k in Relevant Year t operated by or on behalf of the Train Operator, provided that, notwithstanding any value provided for in the Track Usage Price List, for so long as the track access contract between Network Rail and Heathrow Express Operating Company Limited relating to the operation of the Hayes & Harlington Shuttle is in full force and effect, the value of EVtk shall be deemed to be nil (0) in respect of each any electric multiple units operated (including Ancillary Movements) by or on behalf of the Train Operator in Service Group EE01 on the route between London Paddington and Hayes & Harlington.”

and immediately before Paragraph 9 of Schedule 7 PART 2: TRACK CHARGES.

4. GENERAL

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” or, as the case may be, the “Agreement”, “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 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 of which the duly authorised representatives of Network Rail and the Train Operator have executed this Supplemental Agreement on the date first above written.

SIGNED by Mark Langman

Print name MARK LANGMAN

Duly authorised for and on behalf of
NETWORK RAIL INFRASTRUCTURE LIMITED

SIGNED by.....

Print name.....

Duly authorised for and on behalf of

FIRST GREATER WESTERN LIMITED

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and immediately before,

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and

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and immediately before,

"train category i" means train category i as identified in the relevant section of the Traction Electricity Modelled Consumption Rates List, being either;"

3.2. In Paragraph 4.1.2 of Schedule 7 PART 2: TRACK CHARGES

"Where train category i is a Bimodal Electric Multiple Unit or Bimodal Locomotive that has a corresponding modelled consumption rate listed in the Traction Electricity Modelled Consumption Rates List, it shall be deemed that all mileage (in Vehicle Miles in relation to passenger electric multiple units or kgm in relation to locomotive-hauled units and all freight traffic), if any, of trains operated by or on behalf of the Train Operator in train category i, in Geographic Area g, in tariff band j and in Relevant Year t is electrified."

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IN WITNESS of which 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.....

Duly authorised for and on behalf of
NETWORK RAIL INFRASTRUCTURE LIMITED

SIGNED by..... 

Print name..... *MATTHEW GOLTON*

Duly authorised for and on behalf of
FIRST GREATER WESTERN LIMITED