

Dated 31 March 2020

between

HS1 LIMITED

and

LONDON & SOUTH EASTERN RAILWAY LIMITED

FIFTH SUPPLEMENTAL AGREEMENT
relating to the
FRAMEWORK TRACK ACCESS AGREEMENT
for Passenger Services dated 13 March 2014, as amended by
a First Supplemental dated 11 December 2014,
Second Supplemental Agreement dated 8 January 2015, Third Supplemental Agreement
dated 30 April 2015 and Fourth Supplemental Agreement dated 27 November 2015

THIS FIFTH SUPPLEMENTAL AGREEMENT is made the 31st day of March 2020

BETWEEN:

- (1) **HS1 LIMITED**, a company registered in England and Wales under number 03539665 having its registered office at 12th Floor, One Euston Square, 40 Melton Street, London, NW1 2FD ("**HS1 Ltd**"); and
- (2) **LONDON & SOUTH EASTERN RAILWAY LIMITED**, a company registered in England and Wales under number 4860660 having its registered office at 3rd Floor, 41-51 Grey Street, Newcastle Upon Tyne, Tyne & Wear, NE1 6EE (the "**Train Operator**").

WHEREAS

- (A) Pursuant to a framework track access agreement for passenger services dated 13 March 2014 (as amended) (the "**Track Access Agreement**") made between HS1 Ltd and the Train Operator, HS1 Ltd granted the Train Operator permission to use certain track comprised in HS1.
- (B) HS1 Ltd and the Train Operator have agreed to amend and restate the Track Access Agreement as set out in this Fifth Supplemental Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 Save as expressly provided to the contrary in this Fifth Supplemental Agreement, unless the context requires otherwise:
 - (a) words and expressions defined in the Track Access Agreement shall have the same meaning when used in this Fifth Supplemental Agreement; and
 - (b) the rules of interpretation set out in paragraph 1.2 of Section 1 to the Terms have effect in relation to this Fifth Supplemental Agreement.

2. EFFECTIVE DATE AND TERM

- 2.1 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.
- 2.2 Effective Date means 1 April 2020.

3. AMENDMENTS

- 3.1 The Track Access Agreement shall be amended and restated so that it shall be read and construed as set out in Appendix 1 to this Fifth Supplemental Agreement.

4. CONTINUATION

- 4.1 This Fifth Supplemental Agreement is supplemental to the Track Access Agreement.

4.2 Except as varied by the terms of this Fifth Supplemental Agreement, the Track Access Agreement will remain in full force and effect and any reference in the Track Access Agreement to the Contract or to any provision of the Contract will be construed as a reference to the Track Access Agreement, or that provision of the Track Access Agreement, as amended by this Fifth Supplemental Agreement.

5. MISCELLANEOUS

The provisions of paragraphs 1 (*Confidentiality*), 2 (*Assignment and Novation*), 3 (*Dispute Resolution*), 4 (*Railways Regulations*), 5.1 (*Non Waiver*), 5.2 (*Amendment*), 5.3 (*Entire Contract and Exclusive Remedies*), 5.4 (*Notices*), 5.7 (*Contracts (Rights of Third Parties) Act 1999*) and 5.8 (*Invalidity*) of Section 9 of the Terms shall apply to this Fifth Supplemental Agreement as though those paragraphs were set out in this Fifth Supplemental Agreement, but as if references in those paragraphs to "the Contract" were references to "this Fifth Supplemental Agreement".

6. COUNTERPARTS

This Fifth Supplemental Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts each of which, when executed and delivered, shall constitute an original but all the counterparts shall together constitute one and the same instrument.

7. GOVERNING LAW

This Fifth Supplemental Agreement and any non-contractual obligations arising out of or connected with this Fifth Supplemental Agreement shall be governed by and construed in accordance with the laws of England.

IN WITNESS whereof this **FIFTH SUPPLEMENTAL AGREEMENT** has been executed and delivered as a deed by the parties hereto on the day and year first written above.

EXECUTED as a DEED by)
HS1 LIMITED acting by:)
RICHARD THORP)
under a power of attorney)
dated 19 September 2019)


.....
Authorised signatory


.....
Witness

Witness name: CHARLOTTE DEANS
Witness address: HSI LTD, 5TH FLOOR,
KINGS PLACE,
90 YORK WAY,
LONDON N19AG

EXECUTED as a DEED by)
LONDON &)
SOUTH EASTERN)
RAILWAY LIMITED)
acting by)
)
)

.....
Director
.....
Director/Secretary

EXECUTED as a DEED by)
HS1 LIMITED acting by:)
under a power of attorney)
dated 19 September 2019)

.....
Authorised signatory

.....
Witness
Witness name:
Witness address:

EXECUTED as a DEED by)
LONDON &)
SOUTH EASTERN)
RAILWAY LIMITED)
acting by)
a director in the)
presence of:)


.....
Director

.....
Director/Secretary

Witness Signature:
Witness Name:
Witness Address:


STEVE WHITE
4 MORE LONDON ALBENSIDE SE1 2AV

Witness Occupation:

CONTRACTS MANAGER

APPENDIX 1

Amended and Restated Track Access Agreement

**FRAMEWORK TRACK ACCESS AGREEMENT
FOR PASSENGER SERVICES**

**Dated 13 March 2014, amended by a First Supplemental Agreement dated 11 December 2014,
Second Supplemental Agreement dated 8 January 2015, Third Supplemental Agreement dated
30 April 2015, Fourth Supplemental Agreement dated 27 November 2015 and amended and
restated by a Fifth Supplemental Agreement dated 31 March 2020**

Between

HS1 LIMITED

and

LONDON & SOUTH EASTERN RAILWAY LIMITED

THIS AGREEMENT is made the 31st day of March 2020

BETWEEN:

- (1) HS1 Limited, a company registered in England under number 03539665 having its registered office at 5th Floor, Kings Place, 90 York Way, London N1 9AG ("**HS1 Ltd**"); and
- (2) London & South Eastern Railway Limited, a company registered in England and Wales under number 04860660 having its registered office at 3rd Floor, 41-51 Grey Street, Newcastle upon Tyne, NE1 6EE (the "**Train Operator**").

WHEREAS:

- (A) HS1 Ltd is the owner of HS1.
- (B) HS1 Ltd has agreed to grant to the Train Operator permission to use certain track comprised in HS1 on the terms and conditions of the Contract.

IT IS AGREED AS FOLLOWS:

1 INTERPRETATION

- 1.1 In this Agreement, the "Terms" means the HS1 Passenger Access Terms being at the date of this Agreement the edition of the HS1 Passenger Access Terms initialled by the parties for the purpose of identification.
- 1.2 This Agreement shall be interpreted in accordance with the HS1 Network Code and the Terms, for which purpose terms defined therein shall have the same meaning in this Agreement, unless this Agreement expressly provides to the contrary.
- 1.3 Save to the extent expressly provided to the contrary, references to "the Contract" shall include this Agreement (including the Schedules to this Agreement), the Terms, the HS1 Network Code and the HS1 Operational Codes and a reference to a Schedule to the Contract shall be construed to mean a Schedule to this Agreement.
- 1.4 Reference to HS1 Ltd and the Train Operator is to their respective successors and permitted assigns.

2 TERMS, HS1 NETWORK CODE & HS1 OPERATIONAL CODES

2.1 Incorporation

Subject to Clause 2.4, the Terms, the HS1 Network Code and each of the HS1 Operational Codes are incorporated in and form part of this Agreement.

2.2 Modifications to the Terms, the HS1 Network Code & the HS1 Operational Codes

If the Terms, the HS1 Network Code and/or the HS1 Operational Codes are modified at any time, this Agreement shall have effect with the modification from the date that such modifications come into force.

2.3 Compliance by other operators

HS1 Ltd shall ensure that all operators of trains having permission to use any track comprised in HS1 agree to comply with the HS1 Network Code and each of the HS1 Operational Codes.

2.4 Modification of the Terms

The Terms shall be amended by replacing Paragraph 1.2 of Section 5 of the Terms with the following text:

"Subject to paragraph 2 and the other provisions of the Contract, HS1 Ltd shall indemnify the Train Operator against all Relevant Losses resulting from:

- (a) a failure by HS1 Ltd to comply with its Safety Obligations;
- (b) any Environmental Damage to HS1 arising:
 - (i) directly from any acts or omissions of HS1 Ltd;
 - (ii) from any Environmental Condition known to have existed prior to 24 June 2009;
- (c) any damage to the Specified Equipment or other vehicles or things brought onto HS1 in accordance with the permission to use granted by the Contract arising directly from HS1 Ltd's wilful default, negligence or failure to comply with its obligations under the Contract; and
- (d) a breach by HS1 Ltd of the Contract."

3 PRECEDENCE OF DOCUMENTS

3.1 In the event of any discrepancy, inconsistency, divergence or anomaly arising between the provisions of the Contract, the order of priority shall be as follows, save where expressly provided to the contrary:

- (a) first, the HS1 Network Code;
- (b) second, this Agreement;
- (c) third, the Terms; and
- (d) fourth, the HS1 Operational Codes.

4 SCHEDULES TO THIS AGREEMENT

4.1 Schedules 1 to 6 (inclusive) to this Agreement shall have effect.

SCHEDULE 1: CONTRACT PARTICULARS

1. HS1 Ltd's address for service of notices is:
HS1 Limited
5th Floor
Kings Place
90 York Way
London N1 9AG
All written notices to be marked:
"URGENT: ATTENTION THE GENERAL COUNSEL AND COMPANY SECRETARY"

2. The Train Operator's address for the service of notices is:
London & South Eastern Railway Limited
Friars Bridge Court
41 – 45 Blackfriars Road
London SE1 8NZ
All written notices to be marked:
"URGENT: ATTENTION FINANCE AND CONTRACTS DIRECTOR"

3. The Secretary of State's address for the service of notices is
The Secretary of State
Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR

4. Commencement Date: 31 December 2014

5. Expiry Date: 31 December 2024

6. Previous Access Agreement: Framework Track Access Agreement between HS1 Ltd and London & South Eastern Railway Limited dated 14 August 2009 (as amended)

SCHEDULE 2: THE ROUTES

1. The Routes comprise the Main Routes in each direction as described below:
 - (a) St Pancras International to Ashford West Boundary;
 - (b) St Pancras International to Springhead Road Junction;
 - (c) St Pancras International to Temple Mills Boundary; and
 - (d) Ebbsfleet International to Church Path Pit Siding.

2. The Routes comprise the Diversionary Routes in each direction as described below:
 - (a) Southfleet Junction to Fawkham Junction; and
 - (b) Ashford West Junction to Ashford East Junction.

SCHEDULE 3: COLLATERAL AGREEMENTS

1. An access agreement between (1) the Train Operator and (2) HS1 Ltd granting the Train Operator permission to use St Pancras International.
2. An access agreement between (1) the Train Operator and (2) HS1 Ltd granting the Train Operator permission to use Ebbsfleet International.
3. An access agreement between (1) the Train Operator and (2) HS1 Ltd granting the Train Operator permission to use Stratford International.
4. The CTRL Claims Allocation and Handling Agreement and the agreement under which the Train Operator agrees to become a party to the CTRL Claims Allocation and Handling Agreement.
5. The Disputes Resolution Agreement dated 18 February 1999 between the Secretary of State for the Environment, Transport and the Regions; London & Continental Railways Limited; Railtrack Group Plc and others ("Disputes Resolution Agreement"), and the agreement under which the Train Operator agreed to become a party to the Disputes Resolution Agreement.
6. The franchise agreement dated 10 September 2014 between (1) the Train Operator and (2) the Secretary of State under which the Train Operator undertakes to provide or procure the provision of all or a material part of the Services (or any other agreement with the Secretary of State which replaces such franchise agreement).
7. The Direct Agreement between the Secretary of State for Transport, the Train Operator and HS1 Ltd with respect to the Contract.

SCHEDULE 4: TRACK CHARGES

PART 1

Other Services Charge – None

PART 2

A	B	C	D	E	F	G	H	I	J
Service Group	Vehicle Category	IRC Per Train Per Minute	Discount Factor	Chargeable Journey Time (Minutes)	DI Costs (OMRCA1) (Per Train Per Kilometer)	Avoidable Long-Term (OMRCA2) (Per Train Per Minute)	Common Long-Term Costs (OMRCB) (Per Train Per Minute)	Pass Through Costs (OMRCC) (Per Train Per Minute)	Additional IRC Per Train Per Minute
Ashford - St Pancras	Class 395	£69.57	1	31	£1.58	£2.42	£30.51	£10.03	£0.31
Springhead – St Pancras	Class 395	£69.57	1	16.5	£1.58	£2.42	£30.51	£10.03	£0.31
Ebbsfleet – St Pancras	Class 395	£69.57	1	14	£1.58	£2.42	£30.51	£10.03	£0.31

St Pancras - Ebbfleet	Class 395	£69.57	1	15	£1.58	£2.42	£30.51	£10.03	£0.31
--------------------------	-----------	--------	---	----	-------	-------	--------	--------	-------

Notes to Table

1. The Additional IRC set out in Column J of the table above shall be levied by HS1 Ltd on the Train Operator between:

a. 1 April 2015; and

b. the earlier of:

i. the date of expiry or earlier termination of this Agreement; and

ii. 31 March 2025.

2. The Additional IRC to be levied by HS1 Ltd on the Train Operator shall at the commencement of each Relevant Year be multiplied by I, where I equals:

$$RPI_t \div RPI_0$$

where:

RPI_t means the RPI published or determined with respect to February in Relevant Year t-1; and

RPI_0 means the RPI published or determined with respect to February 2013 provided that where a value of RPI published or determined with respect to any February is lower than the value of RPI published or determined with respect to any previous February in or after 2013, RPI shall remain at the higher value.

3. The IRC set out in Column C is expressed in 2009/2010 prices.

4. The DI Costs OMRCA1 set out in Column F, the DI Costs OMRCA2 set out in Column G and the LTOP Costs OMRCB set out in Column H are expressed in 2018/2019 prices.

5. The Pass Through OMRCC set out in Column I is expressed in 2018/19 prices.

SCHEDULE 5: THE SERVICES AND THE SPECIFIED EQUIPMENT

1 Definitions

1.1 In this Schedule unless the context otherwise requires:

"Arrival"	means arrivals of the Specified Equipment at any of the Stations;
"Contingent Right"	means a right under this Schedule 5 which is not a Firm Right and which is subject to the fulfilment of all Bids in respect of competing Firm Rights and any additional contingency specified in this Schedule 5;
"Contingent Train Slot"	means a Train Slot to which the Train Operator has Contingent Rights under the Contract as specified in paragraph 2.6A;
"Day"	means any period of 24 hours beginning at 0200 hours and ending immediately before the next succeeding 0200 hours, and any reference in this Schedule to any named day of the week shall be to such period commencing on that named day;
"Departures"	means departures of the Specified Equipment from any of the Stations;
"Evening Peak"	means in relation to the Departures from St Pancras International, the period beginning at 1630 hours and ending at 1829 hours on each Week Day;
"Firm Right"	has the meaning ascribed to it in Part D of the HS1 Network Code;
"Firm Train Slot"	means a Train Slot to which the Train Operator has Firm Rights under the Contract and are as specified in Table 2.1;
"Morning Peak"	means in relation to the Arrivals to St Pancras International, the period beginning at 0700 hours and ending at 0859 hours on each Week Day;
"NR Network Boundary"	has the meaning ascribed to it in Part A of the HS1 Network Code;
"Off Peak"	means Arrivals at St Pancras International during the period other than the Morning Peak and Departures from St Pancras International during the period other than the Evening Peak;
"Scheduled"	has the meaning ascribed to it in Part A of the HS1 Network Code;;
"Service Group"	means any one or more (as the context may require) of the service groups described in this Schedule 5 to the Contract;
"Standard Specified Equipment"	means, in respect of any Service specified in column 1 of Table 2.1, the Specified Equipment listed opposite that service in column 3 of Table 2.1;
"Station"	means St Pancras International, Ebbsfleet International and/or Stratford International (as the case may be);
"Timetable Week"	has the meaning given to it in Part D of the HS1 Network Code;
"Train Service Code" or "TSC"	means the eight character code applied in the Performance Monitoring System and used to identify Services;
"Week Day"	means any Day (including a Public Holiday) falling within a Timetable Week, which is not a Saturday or a Sunday.

1.2 Unless otherwise stated, where in this Schedule a period is expressed to be between two

specific times that period shall be inclusive of both such times.

- 1.3 The Train Operator's rights under this Schedule as to numbers of Firm Train Slots per Day are calculated by reference to departures from the Scheduled start point on the Day in question, notwithstanding that a Service may not be Scheduled to arrive at its end point until the immediately succeeding Day.

2. Firm Train Slots and Standard Specified Equipment

Table 2.1: Firm Train Slots and Standard Specified Equipment

1					2			3
Service Description : LSER SLC2 HS1 Service					Firm Train Slots			
From	To	Description	TSC	Service Group	Week Day	Saturday	Sunday	Standard Specified Equipment
Ashford West Junction	St Pancras International	Morning Peak	24647000	Ashford West Junction and St Pancras	8	0	0	Class 395
St Pancras International	Ashford West Junction	Evening Peak	24647000	Ashford West Junction and St Pancras	8	0	0	Class 395
Ashford West Junction	St Pancras International	Off Peak	24647004	Ashford West Junction and St Pancras	34	36	31	Class 395
St Pancras International	Ashford West Junction	Off Peak	24647004	Ashford West Junction and St Pancras	35	36	31	Class 395

Springhead Road Junction	St Pancras International	Morning Peak	24648000	Springhead Junction and St Pancras	7	0	0	Class 395
St Pancras International	Springhead Road Junction	Evening Peak	24648000	Springhead Junction and St Pancras	7	0	0	Class 395
Springhead Road Junction	St Pancras International	Off Peak	24648004	Springhead Junction and St Pancras	32	33	27	Class 395
St Pancras International	Springhead Road Junction	Off Peak	24648004	Springhead Junction and St Pancras	32	34	27	Class 395
Ebbsfleet	St Pancras International	Morning Peak	24649000	Ebbsfleet and St Pancras Shuttle	1	0	0	Class 395
St Pancras International	Ebbsfleet	Evening Peak	24649000	Ebbsfleet and St Pancras Shuttle	0	0	0	Class 395
Ebbsfleet	St Pancras International	Off Peak	24649004	Ebbsfleet and St Pancras Shuttle	0	0	0	Class 395
St Pancras International	Ebbsfleet	Off Peak	24649004	Ebbsfleet and St Pancras Shuttle	0	0	0	Class 395

Firm Train Slots

- 2.1 The Train Operator has Firm Rights to the number of passenger Train Slots in the Working Timetable as listed against each Service specified in Table 2.1 under the heading "Firm Train Slots" during the time period specified under the heading "Description" in Table 2.1 and on the Days so listed.
- 2.2 Subject to paragraph 2.3, the Train Operator has Firm Rights to make Ancillary Movements of the Specified Equipment to the extent necessary or reasonably required to give full effect to other Firm Rights of the Train Operator, including:
- (a) movements of the Specified Equipment for the purpose of maintenance of the Specified Equipment to and from maintenance depots;
 - (b) movements for crew training purposes; and
 - (c) empty stock movements.
- 2.3 For the purpose of paragraph 2.2, Ancillary Movements shall not include movements of rolling stock for the purpose of crew training to the extent that the rolling stock concerned has not achieved vehicle and route acceptance necessary for its use in the carriage of passengers on the Route concerned.
- 2.4 Subject to paragraph 2.5, the entitlement of the Train Operator to Firm Train Slots on any Public Holiday will be in accordance with the Firm Train Slots specified in Table 2.1 for the Day of the Timetable Week on which the Public Holiday falls.
- 2.5 Save as otherwise agreed in writing, the Train Operator shall not have any rights to operate Services on 25 December and 26 December of each Relevant Year.
- 2.6 The exercise of a Stabling right or the making of an Ancillary Movement shall not count against the number of Firm Train Slots.

Contingent Train Slots

- 2.6A The Train Operator has Contingent Rights to relief Passenger Train Slots for special or seasonal events, whenever the Train Operator believes (acting in a reasonable and proper manner) that a relief Passenger Train Slot is necessary to accommodate anticipated customer demand. These Contingent Rights are subject to:
- (a) the whole of the relief Passenger Train Slot operating over the Routes as described in Schedule 2;
 - (b) the relief Passenger Train Slot operating using the Specified Equipment; and
 - (c) each relief Passenger Train Slot being allocated the relevant Train Service Code.

Standard Equipment

- 2.7 The Train Operator has Firm Rights to use the Standard Specified Equipment set out in column 3 of Table 2.1. Any Standard Specified Equipment may not be used until and unless the necessary route clearance has been obtained.

Train Length

- 2.8 The train length shall not be greater than 12 cars (2x6 unit sets) in the case of the Standard Specified Equipment.

Other rights

Station Calls

2.9 In respect of all Services, the Train Operator has Firm Rights to call at St Pancras International, Stratford International and Ebbsfleet International.

SCHEDULE 6: PERFORMANCE REGIME

A	B	C	D	E	F	G	H	I
Traffic Type	HS1 Poor Performance Threshold (average delay per train expressed in minutes)	Payment Rate (per minute of average delay)	HS1 Good Performance Threshold (average delay per train expressed in minutes)	Bonus Payment Rate (per minute of average delay)	Cancellation Minutes	Train Operator's Performance Benchmark (average delay per train expressed in minutes)	HS1 Ltd Performance Benchmark	TOC on TOC Receipt Benchmark
Domestic Passenger	0.29	£94.26	0.01	£23.57	30	0.33	0.11	0.35

Notes to Table

1. Values set out in Column C and E are expressed in 2018/2019 prices.

IN WITNESS whereof the duly authorised representatives of HS1 Ltd and the Train Operator have executed this Agreement on the date first above written.

Signed by 

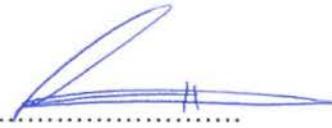
Print name R. E. THORP

Duly authorised for and on behalf of

HS1 LIMITED

acting under a Power of Attorney dated 19 September 2019

In the presence of:

Witness Signature 

Witness Name CHARLOTTE DEANS

Witness Address HS1 LTD, 5TH FLOOR, 90 YORK WAY,
LONDON N19 9AG

Signed by

Print name

Duly authorised for and on behalf of

LONDON & SOUTH EASTERN RAILWAY LIMITED

In the presence of:

Witness Signature

Witness Name

Witness Address

IN WITNESS whereof the duly authorised representatives of HS1 Ltd and the Train Operator have executed this Agreement on the date first above written.

Signed by

Print name

Duly authorised for and on behalf of

HS1 LIMITED

acting under a Power of Attorney dated 19 September 2019

In the presence of:

Witness Signature

Witness Name

Witness Address

Signed by 

Print name DAVID SATHAM

Duly authorised for and on behalf of

LONDON & SOUTH EASTERN RAILWAY LIMITED

In the presence of:

Witness Signature Steve White

Witness Name STEVE WHITE

Witness Address 4 MORE COMBON RIVERSIDE SE1 2AV