

Dispute Party – MTR Corporation (Crossrail) Limited

Timetable Dispute: HAL/TTP004

Claimant Submission

13 January 2022

1 Details of Parties

The names and addresses of the parties to the reference are as follows:-

- 1.1 **MTR Corporation (Crossrail) Limited**, whose Registered Office is at Providence House, Providence Place, London, N1 0NT (**MTR**);
- 1.2 **Heathrow Airport Limited**, whose Registered Office is at The Compass Centre, Nelson Road, Hounslow, Middlesex, TW6 2GW (**HAL**);
- 1.3 **Heathrow Express Operating Company Limited**, whose Registered Office is at The Compass Centre, Nelson Road, Hounslow, Middlesex, TW6 2GW (**HEOC**); and
- 1.4 **Network Rail Infrastructure Limited**, whose Registered Office is at 1 Eversholt Street, London NW1 2DN (**Network Rail**).

2 The Claimant's' right to bring this reference

- 2.1 This matter is referred to a Timetabling Panel (the **Panel**) for determination in accordance with Condition D5.1 of the HAL Network Code.

3 Contents of reference

3.1 This Sole Reference includes:

- (a) the background to the dispute in Section 4;
- (b) a detailed explanation of the issues in dispute in Section 5;
- (c) in Section 6, the decisions sought from the Panel in respect of legal entitlement and remedies; and
- (d) appendices and other supporting material.

4 Subject matter of Dispute

4.1 This dispute relates to the allocation of capacity on HAL infrastructure for the May 2022 Working Timetable.

4.2 This dispute arises over the decision by HAL to:

- (a) attempt to publish a revised May 2022 New Working Timetable which contradicted the New Working Timetable published by Network Rail on HAL's behalf pursuant to Condition D1.1.1(b) of the HAL Network Code (the **Network Code**); and
- (b) not to honour MTR's firm rights (as described in Condition D1.1.11 of the Network Code) between the Heathrow Airport Junction Connection Point and Heathrow Terminal 5, as reflected in Table 2.1 of Schedule 5 of the Track Access Contract between MTR and HAL dated 17 May 2018 (**MTR's Firm Rights**). These rights have been effective since the Principal Change Date in December 2019 and subsist until the Subsidiary Change date in May 2028.

4.3 In doing so, HAL has:

- (a) failed to comply with the Network Code;
- (b) failed to follow the previous decisions of the Access Disputes Committee (**ADC**); and
- (c) in attempting to incorrectly substitute a New Working Timetable, not made it clear that it has either followed the requirements of Condition D4.2 in development of the timetable or varied MTR's Firm Rights by correctly applying the Decision Criteria (Condition D4.6).

4.4 Background

4.4.1 Much of the historical context for this dispute is familiar to the interested parties and to the ADC, having been addressed in HAL Timetable Dispute HAL TTP/003 (see Appendix 1 for the determination in that dispute (the **Determination**)). In accordance with the ADC Chair's first directions, as issued on 24 December 2021, this document does not repeat the background in full but instead refers to the particular facts of the May 2022 timetable dispute and refers to previous submissions where relevant. Appendices have been used but also kept to a minimum, in accordance with previous ADC instructions.

4.4.2 MTR submitted an Access Proposal for the May 2022 timetable on 6 August 2021 (the D-40 Priority Date under the original terms of the Network Code), which consisted of:

- (a) a two trains per hour service in each direction, 7-days a week, between the Heathrow Airport Junction Connection Point and Heathrow Terminal 4 station via Heathrow Terminals 1-3 (CTA) station. This was on the assumption that Heathrow Terminal 4 station would reopen in January 2022, although this had not been confirmed; and
- (b) a two trains per hour service in each direction, 7-days a week, between Heathrow Airport Junction Connection Point and Heathrow Terminal 5 station via Heathrow Terminals 1-3 (CTA) station.

4.4.3 The ADC is familiar with the Change Strategy adopted by the industry in response to the COVID-19 pandemic, which is covered in detail in the TTP/003 Determination and accompanying submissions. The relevant Change Strategy dates for the purpose of this dispute are set out in paragraph 2 of the HAL assessment criteria document (the **HAL Assessment Criteria** - see Appendix 2). On 1 October 2021 (D-32), MTR made a further timetable submission to align with the Change Strategy, on the basis that this date constituted the revised Priority Date for the May 2022 timetable process. MTR understands that HEOC also submitted a timetable bid at this time. MTR acknowledges the ADC Chair's directions on 11 January 2022 that the Change Strategy does not have the effect of formally amending the Network Code without ORR consent.

4.4.4 MTR's 1 October 2021 submission maintained its request for a two trains per hour service in each direction, 7-days a week, between the Heathrow Airport Junction Connection Point and Heathrow Terminal 4 station via Heathrow Terminals 1-3 (CTA) station and a two trains per hour service in each direction, 7-days a week, between Heathrow Airport Junction Connection Point and Heathrow Terminal 5 station via Heathrow Terminals 1-3 (CTA) station.

4.4.5 On 29 September 2021, MTR appealed HAL's decision not to honour MTR's Firm Rights in the December 2021 New Working Timetable. Following a hearing on 13 October 2021, the ADC published its Determination, which required HAL to recognise and accommodate MTR's Firm Rights in the final December 2021 timetable. Whilst that decision is the subject of appeals from HAL and HEOC to the ORR, the Parties have effected the Determination for the purposes of the December 2021 timetable.

4.4.6 At 3.16pm on 17 December 2021, MTR received a letter from Network Rail which stated that it was issued on behalf of Network Rail and HAL and that Network Rail had published the New Working Timetable for May 2022 (the **First NR Letter** - see Appendix 3). This document confirmed that there were no Access Proposals which Network Rail had declined to include and therefore honoured MTR's Firm Access Rights.

4.4.7 At 7.44pm on 17 December 2021, MTR received a further letter from Network Rail (the **Second NR Letter** - see Appendix 4). The letter was issued by Iain McKenzie, a Customer Relationship Executive that MTR had not had any previous contact with. The letter suggested that HAL wanted to implement a different decision to the one articulated by Network Rail at 3.15pm. The letter also seemed to imply that Network Rail and HAL were not in agreement on the New Working Timetable. There was a vague reference to Network Rail and HAL meeting during the week commencing 4 January 2022 to discuss the matter. In addition, Network Rail did not explain how it intended to provide a replacement New Working Timetable, on what basis it felt entitled to do so, or the expected timescales.

4.4.8 At 8.42pm on 17 December 2021, HAL then provided the HAL Assessment Criteria in respect of the May 2022 New Working Timetable to MTR. The document fails to honour MTR's Firm Access Rights, instead only offering MTR rights to operate to and from Terminal 5 on weekday evenings and at weekends. The accompanying letter (the **HAL Letter** - see Appendix 5) acknowledged that Network Rail had issued an offer for the May 2022 timetable, which did not reflect Heathrow's

decision. HAL explained that Network Rail would write to MTR to explain that, in error and without Heathrow's instruction to do so, it had prepared and sent an offer based on Determination ref HAL/TTP003, rather than Heathrow's decision.

- 4.4.9 On 22 December 2021, MTR wrote to Network Rail and HAL seeking clarification on the status of the First NR Letter (see Appendices 6 and 7). On 23 December 2021 MTR also spoke verbally to Lucy Nalton of Network Rail to further request clarification.
- 4.4.10 On 13 January 2022, MTR received a letter from HAL indicating that a timetable solution may have been identified (see Appendix 10). Until that solution is agreed, MTR has concluded that the New Working Timetable published by Network Rail at 3.16pm on 17 December 2021 should stand (see paragraph 5.1 below), and responded to this on 7 January 2021 in line with the Change Strategy (see Appendix 9).
- 4.4.11 The documents in the Appendices are provided in support of the above comments.

5 Explanation of each issue in Dispute and the Claimant's arguments to support its case

5.1 Publication of New Working Timetable

- 5.1.1 As noted in paragraph 4.4.6 above, Network Rail published a New Working Timetable which accommodated MTR's Firm Access Rights and notified MTR of this in the First NR Letter. Later that day, MTR received the Second NR Letter which contradicted the First NR Letter. MTR also received the HAL Letter and the accompanying HAL Assessment Criteria. The HAL Letter stated that Network Rail had issued an offer for the May 2022 timetable that did not reflect HAL's decision.
- 5.1.2 The series of events described above is, in MTR's experience, unprecedented. They demonstrate a clear lack of coordination between HAL and Network Rail, leading to significant confusion for train operators and their timetable planners. They make it very difficult for MTR to plan its business with any certainty and do not represent an efficient and timely process that operators are reasonably entitled to expect. MTR is also concerned that they fall short of the standards expected of HAL under MTR's track access contract, in particular HAL's obligation to act with due efficiency and economy and in a timely manner with that degree of skill, diligence, prudence and foresight which should be exercised by a skilled and experienced network owner and operator.
- 5.1.3 MTR has always been led to believe that, as stated in the HAL Assessment Criteria, Network Rail is employed as HAL's subcontractor for the purposes of Condition D1.1.1 of the Network Code. MTR therefore considers the New Working Timetable indicated in the First NR Letter to constitute the New Working Timetable as defined in the Network Code. For the reasons given below, MTR does not believe the Network Code permits either:
 - (a) the publication of multiple New Working Timetables at D-26; or
 - (b) HAL to subsequently override the New Working Timetable published by Network Rail on its behalf because it does not agree with it.
- 5.1.4 Under Condition D1.1.1 HAL is permitted to sub-contract the undertaking of all activities relating to the establishment of the Working Timetable to a suitably competent and resourced organisation. MTR considers this to include the publication of the New Working Timetable at D-26 (noting that in this case the New Working Timetable was published late).

5.1.5 Condition D2.7.1 of the Network Code states that (emphasis added): "*The New Working Timetable shall be published by HAL at D-26, **subject only to variations made in the course of the appeal process described in this Condition D2.7.***"

5.1.6 Condition D3.1.2 of the Network Code permits HAL to make variations to the New Working Timetable but only in respect of a HAL Restriction of Use or a Network Rail Restriction of Use.

5.1.7 Consequently, MTR does not believe there is any basis for the publication of multiple New Working Timetables or for published New Working Timetables to subsequently be modified by an infrastructure manager who is dissatisfied with the actions of its nominated subcontractor. MTR considers the New Working Timetable referred to in the First NR Letter to be the only valid New Working Timetable. Whilst HAL claims in its response to the Chair's Directions that the New Working Timetable has yet to be published, MTR agrees with the ADC Chair's response on this point in his directions of 11 January 2022.

5.2 Accommodation of all Firm Access Rights

5.2.1 Notwithstanding MTR's position in paragraph 5.1 above, MTR disputes the approach and findings in the HAL Assessment Criteria and HAL's position that MTR's Firm Access Rights cannot be honoured in the May 2022 timetable.

5.2.2 Firstly, HAL's decision that MTR's Firm Access Rights cannot be accommodated in the May 2022 timetable runs contrary to the Determination, which took the view that they could be in the December 2021 timetable. As noted in the Chair's directions, it has proved possible to implement the decision of HAL/TTP003 and honour the Parties' firm rights with effect from this month and the Chair invites the Parties to comment on why the timetabling arrangements to achieve this should cease to be appropriate and workable from the Subsidiary Change Date in May 2022. It is MTR's position that they do not cease to be appropriate or workable and HAL has failed to demonstrate anything to the contrary.

5.2.3 Under Condition D4.2.2 HAL must endeavour wherever possible to comply with all Access Proposals submitted to it in accordance with Conditions D2.4 and D2.5 and accommodate all Rolled Over Access Proposals (**ROAPs**), subject to specified principles. These are that:

- (a) a New Working Timetable shall conform with the Rules applicable to the corresponding Timetable Period;
- (b) each New Working Timetable shall be consistent with the Exercised Firm Rights of each Timetable Participant; and
- (c) in compiling a New Working Timetable, HAL is entitled to exercise its Flexing Right.

Where the principles in paragraphs (a), (b) and (c) above have been applied but HAL is unable to include all requested Train Slots in the New Working Timetable, an order of priority is specified in Condition D4.2.2(d).

5.2.4 **Condition D4.2.2(a):** HAL acknowledges in the HAL Assessment Criteria (para 5.2.1) that MTR's Firm Rights could be accommodated whilst conforming to the Rules.

5.2.5 **Condition D4.2.2(b):** HAL argues that once MTR amended its original D-40 Proposal (by submitting a further propose at D-32) it was no longer Exercising its Firm Rights (see para 5.2.2 of the HAL Assessment Criteria). HAL is using the fact that the definition of "Exercised" only refers to original Priority Date submissions/ROAPs to argue that once a party amends a Priority Date Access Proposal it is no longer Exercising its Firm Rights. This is illogical. MTR is clearly

still Exercising its Firm Rights but is simply amending the way in which it proposes to exercise them by retiming them (in this case so that they could remain aligned with the future Crossrail Stage 5B timetable, which HAL & HEOC should have been aware of from discussions with MTR and their engagement with the ESG meetings). As a result D4.2.2(b) still applies and HAL cannot simply ignore it when making its assessment..

- 5.2.6 **Condition D4.2.2(c):** Even if the Parties' Firm Access Rights cannot be accommodated (and the December 2021 timetable demonstrates that they can be), HAL acknowledges it could use its Flexing Right but declines to do so for operational reasons. This issue is explored in more detail below but, in MTR's view, HAL has yet to demonstrate, at any point in these disputes, why HEOC needs a 52-minute turnaround time at Terminal 5 for a 15 minute interval service. This turnaround time could be flexed whilst still providing for turnaround allowances well in excess of Timetable Planning Rules.
- 5.2.7 **Condition D4.2.2(d):** As noted in the Determination, TTP1610 concluded that Condition D4.2.2(d) is only engaged when the decision maker has exercised its contractual rights to flex and still cannot accommodate all requested Train Slots. In MTR's view Condition D4.2.2(d) does not need to be engaged in this case as all Firm Access Rights can be accommodated. HAL has sought to utilise Condition D4.2.2(d) in order to give priority to HEOC's Firm Access Rights and, to the extent the Panel considers this relevant, MTR has commented on this approach at paragraph 5.4 below.
- 5.2.8 MTR is disappointed that it has had to once again dispute the HAL timetable. Whilst MTR acknowledges that appeals are ongoing, MTR believes that timetabling decisions should be consistent with, and reflective of, the most recently binding decision in any disputes that have taken place previously in relation to the same issues. If they are not then, as in the present situation, Timetable Participants are left with little option but to repeatedly dispute the process every six months, which is both expensive for operators and inefficient for the industry as a whole.

5.3 Application of Decision Criteria

- 5.3.1 In seeking to comply with Condition D4.2.2 HAL has sought to apply the Decision Criteria in accordance with Condition D4.2.1 to a limited number of operational solutions.

The five operational solutions

- 5.3.2 HAL has considered five solutions and considered three to be practical: "the standard solution"; "the stepping up solution"; and "the substitute solution", and two as impractical: "the shunting solution" and the "stabling solution". MTR has not been approached to discuss any of these options in detail or develop contingency plans. It would appear from the HAL Assessment Criteria that HAL has been in discussion with HEOC as its comments suggest a detailed understanding of the HEOC position.

Meeting the Objective

- 5.3.3 In MTR's view HAL's decision fails to meet the Objective. The decision does not result in any meaningful sharing of capacity in a non-discriminatory, efficient and economical manner in the overall interest of current and prospective users and providers of railway services.
- 5.3.4 MTR passengers will have to change trains at Heathrow CTA in order to travel to and from Terminal 5, and intermediate stations between Paddington and Heathrow CTA will lose their

direct services to Heathrow Terminal 5 (and the connections that they provide at places such as Ealing Broadway), which are introduced from 3 January 2022.

5.3.5 HAL also failed to properly consider the Objective itself in the same way the Considerations have been assessed. For example, the HAL Assessment Criteria fails to take into account:

- (a) the needs of current and prospective users who may not be able to afford the more expensive Heathrow Express service options; and
- (b) TfL's interests, as a provider of railway services, and in particular the importance of the Crossrail project and the value the project is designed to realise for the travelling public, wider economy and funders.

5.3.6 HAL cites service spread reflecting demand (Condition D4.6.2(b)) and performance risk (Condition D4.6.2(c)) as being key to its decision. For the reasons given below, MTR believes that these Conditions are given far too much weight in the assessment. The HAL Assessment Criteria also seems to place significant weight on protecting HEOC performance and revenue. As with previous HAL assessments, MTR is concerned that the approach implicitly affords a degree of priority to the historic incumbent, i.e. HEOC.

Consideration D4.6.2(a): Maintaining, developing and improving capability of infrastructure

5.3.7 In MTR's view HAL's decision to find in favour of HEOC on this Consideration is incorrect as this fails to improve the capability of the infrastructure by ultimately limiting the number of passengers directly served by that infrastructure (and, in so doing, failing to efficiently share capacity). Reduced infrastructure contingency is prioritised at the expense of any attempt to improve overall infrastructure capability. Yet capability improvements often come with a certain degree of risk and MTR does not consider that these risks are sufficient to justify HAL's decision.

5.3.8 HAL's assessment of this Consideration frequently moves into other Considerations, in particular (c) (performance risk), to justify its conclusion. MTR believes that 6tph can be accommodated at Terminal 5 (4 HEOC & 2 MTR) with turnaround times either meeting or exceeding the time required in the Timetable Planning Rules. MTR believes that operating 2tph to Terminal 5 reduces the number of passengers who will need to change train, making the overall operation more efficient. Any potential performance risk can be mitigated with robust contingency plans, such as placing a standby HEOC unit at Terminal 4. As far as MTR is aware, HEOC is failing to take advantage of this solution by placing the standby train at West Ealing without a driver.

Consideration D4.6.2(b): that the spread of services reflects demand

5.3.9 In assessing this Consideration HAL cites a lack of data to support the step up solution. HAL waited until 3 December 2021 to request information and only gave Parties a week to provide it (see MTR's response at Appendix 8). MTR also had difficulties in accessing the LENNON database during this week, something which was outside of its control. HAL states it was unable to undertake meaningful passenger demand analysis in the time available. HAL has had since August to collate relevant data. The lack of data leads HAL to conclude that the standard solution has the best evidence available to suggest it offers a spread of services that reflects demand. MTR is of the view that, having failed to take sufficient steps to collate data on the alternative solutions, HAL inevitably concludes that the pre December 2021 timetable position should be favoured, as this is the only one with any data to support it. The assessment is therefore fundamentally flawed.

- 5.3.10 MTR also questions the relevance of the data HAL sought. In most of the requested time period MTR was not able to serve Terminal 5 directly, so data was only relevant to general train journeys to and from Heathrow. MTR passenger numbers (and revenue data had it been available) may well have been greater had MTR serviced Terminal 5 directly. The data was also skewed by the pandemic and the closure of Terminal 4. HAL (and the airlines) have not been able to provide future airline passenger numbers or even confirm when Terminal 4 will reopen. HAL only seems to have considered the impact of MTR running services to Terminal 5 and has not considered the impact of HEOC running fewer services to Terminal 5.
- 5.3.11 HAL has advised, by its own admission, that the demographic of passengers travelling to and from Heathrow by air has changed as a result of the pandemic. MTR's main objective is to serve Terminal 5 whilst Terminal 4 is closed (or passenger numbers to Terminal 4 are reduced). Its long-term objective has always been to serve Terminal 5, which HAL has encouraged. If neither party has been able to provide credible historical or forecast passenger data that demonstrated that the spread of services will meet demand, then arguably any weight applied here is irrelevant anyway.
- 5.3.12 For the substitute solution HAL states this option does not reflect demand as HEOC would carry more passengers to Terminal 5 than would be carried by MTR. There is no evidence to support this assertion.

Consideration D4.6.2(c): Maintaining and improving train service performance

- 5.3.13 HAL once again seek to place significant weight on the perceived performance risk associated with accommodating MTR's Firm Rights. The Determination concluded that performance risk was weighed "*especially heavily*" by HAL and that there is inconsistency in HAL "*seeking to argue that it was able to sell Firm Rights to MTR but then to conclude (in its favour) that MTR should be constrained in the exercise of those Firm Rights as a result of safety/performance issues on its (HAL's) infrastructure.*" In MTR's view the position remains unchanged.
- 5.3.14 In assessing this Consideration HAL concludes the standard solution "*offers the best overall passenger proposition*". It is hard to see how this is the case when MTR passengers have no option for a direct service to Terminal 5 weekdays SX. The substitute solution is also described as providing a very poor passenger proposition but HAL does not justify this statement.
- 5.3.15 HAL argues in paragraph 7.2.7 of the HAL Assessment Criteria that none of the options for the fifth train excluded from HEOC's circuit provide sufficient mitigation to offset this performance risk. It is not clear whether Network Rail agree with this assessment across the wider network or whether any TREN0 modelling or similar has been undertaken to confirm HAL's assumptions. HAL has not entered into meaningful dialogue with MTR or developed contingency plans to mitigate this risk.
- 5.3.16 HAL also cites previous HEOC performance issues but it is not clear on what basis these are a factor in favour of not honouring MTR's Firm Rights. MTR should not be penalised as a result of historic performance issues affecting another operator.
- 5.3.17 HAL also cites the step up and substitute solutions as potentially causing passenger confusion as not every MTR service serves Terminal 5. This ignores the fact that similar confusion arises if MTR does not run to Terminal 5 weekdays SX as there is then crossover in the evenings. The step up solution assessment also disregards the option for a standby train at Terminal 4 and ignores the fact that the step up solution still provides for turnaround allowances well in excess of Timetable Planning Rules.

Consideration D4.6.2(d): That journey times are as short as reasonably possible

- 5.3.18 We note that HAL agrees that journey times would be extended for MTR passengers should MTR's direct trains to Terminal 5 not operate.

Consideration D4.6.2(e): Maintaining and improving an integrated system of transport for passengers

- 5.3.19 We note that HAL agrees that providing direct MTR trains to Terminal 5 (which is also part of its long-term strategy) provides an integrated system of transport.

Consideration D4.6.2(f): The commercial interests of HAL (apart from the terms of any maintenance contract entered into or proposed by HAL) or any Timetable Participant of which HAL is aware

- 5.3.20 MTR is again concerned that HAL has failed to apply this Consideration fairly and in a non-discriminatory manner. The assessment of the substitute solution describes this as "*commercially not acceptable, as HEOC's cancellation of two trains per hour in each direction means significant loss in HEOC's revenue and ineffective use of their (staff and rolling stock) assets.*" No consideration is given to MTR's revenue or efficient use of assets. Why does HAL, as an impartial infrastructure manager, consider it commercially unacceptable for HEOC to suffer a loss of revenue but commercially acceptable for MTR to be deprived from obtaining a share of that same revenue (which would ultimately be taxpayer money and help to recover the significant investment made by the Crossrail project in order to serve Heathrow)?

- 5.3.21 Whilst the two are obviously linked, HAL's conclusions on this particular Consideration for the step up solution are again based on perceived performance risk rather than commercial interests.

- 5.3.22 No credible evidence is presented that passenger numbers will be negatively impacted by MTR being given its Firm Access Rights or that HEOC's revenue will be disproportionately affected. Also, increased access charges for MTR is cited as a negative for MTR when in practice these are simply a cost of MTR doing business.

Consideration D4.6.2(g): Mitigating the effect on the environment

- 5.3.23 We note that HAL agrees that providing direct MTR trains to Terminal 5 (which is also part of its long-term strategy) will support a modal shift to rail.

Consideration D4.6.2(h): Enabling operators of trains to utilise their assets efficiently

- 5.3.24 HAL's assessment of this Consideration ignores the fact that only giving MTR 4tph to Terminal 4 weekdays before SX prevents it from using its assets efficiently. A consistent MTR service to Terminal 5 seven days a week makes passenger information and diagramming less complicated. MTR also notes that the "negatives" for HEOC on the substitute solution focus on the "expected" passenger proposition rather than efficient use of assets.

Fairness and appropriate weighting

- 5.3.25 MTR struggles to see how HAL's decision is fair and not unduly discriminatory. There is little evidence that MTR's position has been given appropriate weight. MTR believes HAL's application and assessment of the Considerations (as well as the whole timetabling process it has followed) does not meet the contractual and regulatory standard of conduct reasonably expected of it, particularly in terms of efficiency, timeliness, and skill, as well as fairness and non-discrimination.

5.4 Priority of Access Proposals

5.4.1 For the reasons given in paragraphs 5.1 to 5.3 above, MTR does not consider the timings of the "D-32 submissions" for the May 2022 timetable to be relevant to the outcome of this dispute. However MTR does note that, having determined that it could not accommodate both MTR's and HEOC's Access Proposals, HAL then seeks to afford HEOC's D-32 Access Proposal priority under Condition D4.2.2(d). MTR would offer the following observations on this approach:

- (a) on the issue of whether HEOC's D-32 Access Proposal amended its own Rolled Over Access Proposal, in MTR's view the Determination effectively amended the Prior Working Timetable for the purposes of the May 2022 timetable process. As a result, any Rolled Over Access Proposal would be rolling over the HEOC position that existed following the Determination. As MTR understands it, the HEOC D-32 Access Proposal must therefore be regarded as altering HEOC's D-40 position.
- (b) As noted above, MTR does not agree with the statement that "HEOC has Exercised its Firm Rights through its Rolled Over Access Proposal, but MTR has not because it submitted its D32 Access Proposal which revised its D-40 one". MTR is still Exercising its Firm Rights having made a submission at D-40. The D-32 Revised Access Proposal merely amends the way in which those rights are Exercised.

5.4.2 Whilst HEOC's Revised Access Proposal was apparently submitted 17 hours earlier than MTR's Revised Access Proposal, MTR would note that MTR only amended its D-40 submission out of necessity so that it could remain aligned with the future Crossrail Stage 5B timetable. MTR does not believe that either the substance of the amendments or the difference in timings is sufficiently material to justify giving HEOC priority in this case.

6 Decision sought from the Panel

6.1 For the May 2022 Timetable, MTR would like the panel to direct HAL to honour the existing MTR Firm Rights (of two trains per hour in each direction to and from Heathrow Terminal 5) on weekdays before 20:00.

The Claimant confirms that it has complied with Access Dispute Resolution Rule H21.

7 Signature

For and on behalf of *MTR Corporation (Crossrail) Limited*

Signed



Print Name

Jonathan James

Position

Head of Contract Management

APPENDICES

- (a) Appendix 1 – TTP/003 Determination.
- (b) Appendix 2 - HAL's May 2022 Assessment Criteria Document of 17 December 2021.
- (c) Appendix 3 – Network Rail new working timetable letter of 17 December 2021 (received at 3.15pm).
- (d) Appendix 4 – Network Rail letter of 17 December 2021 (received at 7.44pm).
- (e) Appendix 5 – HAL's letter of 17 December 2021 to MTR appending the HAL Assessment Criteria (received at 8.42pm).
- (f) Appendix 6 – MTR's 22 December 2021 response to Network Rail's letters.
- (g) Appendix 7 – MTR's 22 December 2021 response to HAL's Assessment Criteria Document and accompanying letter.
- (h) Appendix 8 – MTR's 14 December 2021 response to HAL's request for information (issued on 3 December 2021).
- (i) Appendix 9 – MTR's 7 January 2022 response to Network Rail re the New Working Timetable.
- (j) Appendix 10 – HAL letter to MTR received 13 January 2022.