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Dear Mark and Chris,

Approval of the fourteenth supplemental agreement to the track access contract between Network Rail Infrastructure Limited and Grand Central Rail Company Limited

1. The Office of Rail and Road (ORR) has today approved the fourteenth supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and Grand Central Railway Company Limited (Grand Central), submitted to us formally on 4 August 2020 under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission of a draft agreement for our consideration. This letter explains our decision.

Purpose of the agreement

2. This agreement provides a one-year extension to Grand Central's track access contract for services between London and the North East, from the Principal Change Date in December 2026 to the Principal Change Date in December 2027.

3. The extension of the contract is required in order to support the extension by one year of Grand Central's current rolling stock lease for Class 180 units. This has proved necessary as a result of the unprecedented financial impact on Grand Central of the suspension of passenger services due to the Covid-19 pandemic.





Consultation

4. Network Rail consulted the industry on this supplemental agreement in April and May 2020. Cross Country, London North Eastern Railway, Nexus, Transport Focus and West Yorkshire Combined Authority responded supporting the application.

5. In its response, the DfT said the Government wished to see Grand Central return to the network as soon as possible and, in these particular circumstances, it strongly supported Grand Central's application for a one-year extension.

6. Govia Thameslink Railway (GTR) opposed the application, as it believed the sale of these access rights was inconsistent with Network Rail's current ECML access policy not to sell additional firm access rights beyond December 2021. Network Rail responded to GTR saying it supported this specific proposal as it merely extends firm rights that were part of the ECML baseline prior to the ORR directions on 12 May 2016 and so are part of the base quantum for the ECML. Further, Network Rail noted that since 12 May 2016 it has offered operators additional access rights on top of the ECML baseline following a case-by-case review that is in place to protect the future rights that ORR directed on 12 May 2016. In response, GTR said that some of its ECML services were also in the baseline but Network Rail had not agreed to extend them beyond December 2021.

7. We note that GTR's application to extend its current contract to May 2022, but with ECML rights limited to May 2020, was an agreed application submitted and approved under section 22 in March 2019. GTR's ECML rights have subsequently been extended to December 2021 in line with the ECML policy through agreed section 22 applications.

8. While we note GTR's contention that Network Rail has not applied its ECML policy consistently with regard to GTR's ECML services we do not consider withholding approval of Grand Central's application until that is resolved would either benefit or adversely affect GTR. It would, however, frustrate the urgent need for Grand Central to extend its rolling stock contracts in order to mitigate the serious financial impact of Covid-19 on its business.

9. As Grand Central's access rights already extend to December 2026, 5 years beyond the December 2021 date which is relevant to the ECML policy, extending them further will have very little or no impact on how they will be treated in the review being undertaken by the Event Steering Group which is looking at ECML capacity from December 2021.

ORR's review and conclusions

10. We reviewed the application and a confidential financial submission made by Grand Central.

11. Under The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, contracts longer than 5 years must be justified by the existence of commercial contracts, specialised investments or risks. Grand Central's access contract



for North East services was extended in 2014 for a length of 10 years (2016 to 2026) based on proposed investment in rolling stock and station infrastructure, including enabling Grand Central to secure its fleet of Class 180s on a long-term basis.

12. We have reviewed the evidence submitted by Grand Central and accept that due to the unprecedented impact of the COVID-19 pandemic Grand Central has taken the decision to extend its current rolling stock lease for Class 180 units by one year and re-profile payments under the lease. We accept that the COVID-19 pandemic represents a material change to the basis on which we originally approved the contract duration, and that an additional year is required to support the extension of Grand Central's rolling stock lease.

13. For the reasons given in paragraphs 7 to 9 above, we do not consider that GTR's objection should preclude us from approving this application.

14. In considering the agreement and in reaching our decision, we have had to weigh and strike the appropriate balance in discharging our statutory duties under section 4 of the Act. We have concluded that approval of this agreement is consistent with our section 4 duties, in particular those relating to:

- protecting the interests of users of rail services;
- promoting the use of the railway network in Great Britain for the carriage of passengers and goods, and the development of the railway network, to the greatest extent that ORR considers economically practicable;
- contributing to the development of an integrated system of transport of passengers and goods;
- promoting competition in the provision of railway services for the benefit of users of railway services; and
- enabling persons providing railway service to plan the future of their businesses with a reasonable degree of assurance.

Conformed copy of the track access contract

15. Under clause 18.2.4 of the track access contract, Network Rail is required to produce a conformed copy, within 28 days of any amendment being made, and send copies to ORR and Grand Central. ORR's copy should be sent for my attention.

Public register and administration

16. In accordance with section 72 of the Act, we will place a copy of the approval notice and the agreement on our public register. The parties have not asked us to redact anything (as provided for by section 71(2) of the Act) prior to placing it on the register.



17. Copies of this letter, the approval notice and the agreement will be sent to Keith Merritt at the Department for Transport. Copies of this letter and the agreement will be placed on the ORR website. I am also copying this letter without enclosures to Peter Craig at Network Rail and Tom Causebrook at GTR.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Reed', written in a cursive style.

David Reed