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20 October 2020

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Customer Manager  
Network Rail Infrastructure Limited  
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York  
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Andy Wylie  
Head of Regulation  
Hull Trains Company Limited  
4th Floor, Capital House  
25 Chapel Street  
London  
NW1 6DU

Dear Mark and Andy,

## **Approval of the nineteenth supplemental agreement to the track access contract between Network Rail Infrastructure Limited and Hull Trains Company Limited**

1. The Office of Rail and Road (ORR) has today approved the nineteenth supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and Hull Trains Company Limited (Hull Trains), submitted to us formally on 19 October 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 three-year extension to Hull Trains' track access contract, from the Principal Change Date in December 2029 to the Principal Change Date in December 2032.

3. Hull Trains applied for the extension in order to continue the security of the investments made possible via the previous duration of rights. The Covid-19 pandemic has resulted in a financial impact to the business and the extension will return the overall business plan assumptions relating to its investment in new class 802 rolling stock to those submitted to ORR and granted for the previous contract term.





## **Consultation**

4. Network Rail consulted the industry on this supplemental agreement in June and July 2020.

5. Cross Country questioned why Hull Trains was requesting a three-year contract extension rather than a one-year extension as requested by other open access operators. Hull Trains responded noting that the contract extension was based on the ongoing cost of the class 802 fleet during the Covid-19 pandemic. On that basis, Cross Country was willing to support the contract extension.

6. The Department for Transport (DfT) said the Government wished to see Hull Trains return to the network as soon as possible and, in these particular circumstances, it supported the principle of an extension to Hull Trains' access contract. DfT asked us to consider the length of any extension granted in line with the appropriate access regulations and the best assessment of the scale of the commercial risks imposed by COVID-19. DfT also asked us to explore any scope for flexibility in granted access rights to ensure the effective use of long-term capacity. We have considered the extension in line with access regulations and the scale of commercial risks. Further detail of our review is set out below. In terms of flexibility, we note that Hull Trains' access rights are daily quantum-only rights, and thus already provide a great deal of flexibility when considering effective uses of long-term capacity.

7. Northern questioned how Network Rail had assessed the extension in relation to its current East Coast Main Line (ECML) access policy not to sell additional firm access rights beyond December 2021. Network Rail responded that it supported this proposal as it merely extends the duration of existing firm rights that are part of the base quantum for the ECML. We note that, as Hull Trains' access rights already extend to December 2029, 8 years beyond the December 2021 date which is relevant to the ECML policy, extending them further is unlikely to have any impact on how they will be treated in the review being undertaken by the Event Steering Group.

8. Transport Focus responded supporting the application.

## **ORR's review and conclusions**

9. We reviewed the application and a confidential financial submission made by Hull Trains.

10. 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.

11. Hull Trains' current access contract was approved in 2016 giving it an additional 10 years on top of its then existing contract from December 2019 to December 2029. This duration was justified on the need to secure a long-term contract in order to enable investment in a fleet of new class 802 bi-mode trains.



12. We have reviewed the evidence submitted by Hull Trains and 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 three years is required to support Hull Trains' rolling stock investment.

13. 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**

14. 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 Hull Trains. ORR's copy should be sent for my attention.

#### **Public register and administration**

15. 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.

16. 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 Nicola Eyre at Northern Railway.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Reed', is written over a light blue horizontal line.

**David Reed**