

**Margret Haswell**  
Executive, Access and Licensing



5 October 2022

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Dear Megan and Quentin,

**Amendment of a track access contract between Network Rail Infrastructure Limited and DB Cargo (UK) Limited: Forty Seventh Supplemental Agreement.**

1. On 5 October 2022 the Office of Rail and Road (ORR) approved the Forty Seventh Supplemental Agreement (SA) to the track access contract (TAC) between Network Rail Infrastructure Limited (Network Rail) and DB Cargo (UK) Limited (DBC) under section 22 of the Railways Act 1993 (the Act), submitted to us 5 October 2022. This letter sets out the reasons for our decision.

**Background**

2. The SA makes the following changes:
  - 16 additional one-hour window firm rights;
  - 7 additional one-hour contingent rights (agreed in line with the ECML policy);
  - 37 amended one-hour window firm rights;
  - 3 amended twenty-four-hour firm rights;
  - 44 relinquished rights.

**Consultation**

3. The draft SA went out to consultation between 28 February 2022 and 28 March 2022. Notably there were challenges raised at consultation by Arriva Rail London Limited and GB Railfreight Limited. Both issues were closed out satisfactorily by the parties before submission to ORR. There are no outstanding or unresolved issues.

**ORR Review**

4. We received an informal submission from the parties on 26 July 2022. All services are conveying construction materials, many of them between Mountsorrel and Angerstein Wharf.
5. We note that one-hour windows have been agreed for the 16 additional firm rights. The parties have explained that this is due to the large number of services running from Mountsorrel and Angerstein Wharf and their respective proximity to

the Busy Midland Main Line and South Eastern suburban network. One-hour windows provide security for the customer, as material changes to departure or arrival times would jeopardise the efficient running of the 2 terminals, while still allowing Network Rail sufficient flexibility to manage network capacity.

6. We note that one-hour windows have been agreed for the 7 new contingent rights. Contingent rights are normally agreed on a quantum basis to provide the flexibility associated with this type of right. The parties explained that these services interact with the East Coast Mainline (ECML) and that Network Rail's ECML Policy at the time of consultation only allowed rights to be sold on a contingent basis. Having one-hour contingent, rather than the default 24-hour contingent rights, helps ensure that future timetable changes do not diverge excessively from pathways established in the current Working Timetable for services that are already running. DB Cargo intend to convert these rights to firm rights as soon as the ECML Policy and circumstances allow. Normally contingent rights should be allocated on a 24-hour basis, but we have accepted the parties' points in this instance, noting the particular circumstances of this case.
7. Five new rights and six amended rights in the SA require RA10 capability which is only granted provided Network Rail has issued the appropriate dispensation – this is noted in the Special Terms column.

#### **ORR Decision**

8. This application is under section 22 of the Act and therefore is agreed between the parties and there are no outstanding issues. We are content to approve this agreement.
9. In making this decision, we are satisfied that this decision reflects our duties under section 4 of the Act, in particular:
  - (i) to protect the interests of users of railway assets;
  - (ii) to promote the use of railway network in Great Britain for the carriage of passengers and goods and the development of that railway network, to the greatest extent ...economically practicable;
  - (iii) to promote efficiency and economy on the part of the persons providing railway services; and
  - (iv) to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

#### **Conformed copy**

10. Under clause 18.2.4 of the TAC, Network Rail is required to produce a conformed copy, within 28 days of any amendment being made, and send copies to ORR and DBC. I look forward to receiving the conformed copy.

Yours sincerely



**Margret Haswell**