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2 December 2019

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Dear Robert and Chris

**Approval of the twenty eighth supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and First TransPennine Express Limited (FTPE)**

1. We have today approved the above supplemental agreement (SA) submitted to us formally on 5 November 2019 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 the reasons for our decision.
2. This agreement combines what had previously been proposed separately as the 28th and 29th SAs. As they were both making changes to Schedule 5, for practical reasons, and to ensure clarity in the amendments being made, we suggested they should be combined into one. The parties did this before formal submission. All rights are contingent and effective from the Principal Change Date (PCD) 2019 until the PCD 2020.
3. At consultation stage they were proposed to be submitted under Section 22A of the Act as Network Rail had not at that time agreed to them. They were subsequently authorised at Network Rail's Sale of Access Rights panel in July and submitted to us as agreed applications under Section 22 of the Act.
4. The 28th SA was for rights to extend LNER's hourly Liverpool to Newcastle service to Edinburgh. The 29th SA was for a wide variety of minor timetable enhancements.
4. Network Rail undertook the usual industry consultation, for both SAs from 10 June to 9 July 2019. The consultation was extended for 14 days after a correction to the

29th SA. A number of consultees responded, as summarised below, along with the parties' responses.

5. Nexus was supportive and said it wanted to work with the parties regarding future service improvements. It had some comments about services via Doncaster in the 29th SA, to which Network Rail responded.

6. Transport Focus supported both applications.

7. Transport for Wales Rail queried whether Network Rail's approach to FTPE's Castlefield Corridor rights was the same as it has been in one of their own recent applications. Network Rail confirmed that it was.

8. West Yorkshire Combined Authority responded with some concerns about capacity. FTPE replied and there was no further correspondence.

9. Arriva Rail North asked for train timings for specific services in the 29th SA and these were provided.

10. Cross Country queried the rolling stock FTPE would be using, contingency plans in case of service disruption and expressed concerns about performance risk in relation to the proposed Edinburgh services. FTPE and Network Rail jointly responded, addressing these issues and there has been no further correspondence.

11. GBRf said that it could not support the 28th SA as it would be "detrimental to further freight running". It also expressed concerns that the services in the 29th SA could not be accommodated alongside existing freight rights. Network Rail responded regarding all of these matters and there has been no further correspondence.

12. London North Eastern Railway (LNER) was concerned about capacity and performance in relation to the Edinburgh services in the 28th SA. It also queried whether there was sufficient capacity for the FTPE Liverpool - Newcastle services and also their own York – Newcastle services. It also raised concerns about performance at Portobello Junction but this was clarified and resolved quite quickly.

13. LNER was also concerned about power supply capacity and whether planned power supply improvements would be brought in quickly enough. The parties' solution to this is to have the Class 802 rolling stock running in diesel mode for as long as necessary until the power supply is upgraded.

14. Some of LNER's performance concerns related to whether the Class 802s would have the same performance as other rolling stock. FTPE explained that the Class 802s were as good as the other rolling stock and this was supported by Network Rail's Capacity Planning team. Regarding capacity, Network Rail said they were satisfied there was sufficient capacity for all the proposed FTPE services for the duration applied for.

15. We are satisfied with the manner in which both Network Rail and FTPE have responded to all of the queries and concerns raised during the consultation process, in particular, the more detailed issues raised by LNER.

16. Our own review did not identify any additional concerns with the proposed services for the duration requested. However, there are additional planned services on the ECML over the next few years, some of which, including LNER and East Coast Trains Ltd already have approved access rights. There is also an ECML ESG looking at how best to accommodate services from the December 2021 timetable. In these circumstances, we will consider any request to extend these rights in light of our statutory duties and the information available at the time and our usual presumption in favour of the extension of existing access rights should not be assumed.

17. 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 supplemental agreement is consistent with our section 4 duties, in particular those relating to protecting the interests of users of railway services (section 4(1)(a)), promoting the use of the railway network for the carriage of passengers (section 4(1)(b)) and enabling persons providing railway services to plan their businesses with a reasonable degree of assurance (section 4(1)(g)).

18. 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 the Train Operator. Please send the conformed copy to me at ORR.

19. Electronic copies of this letter, the approval notice and the agreement will be sent to Keith Merritt at Department for Transport to Peter Craig at Network Rail. Copies of the approval notice and the agreement will be placed on ORR's public register (website) and copies of this letter and the agreement will be placed on the ORR website.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Jonathan Rodgers', written in a cursive style.

**Jonathan Rodgers**