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OFFICE OF RAIL AND ROAD

19 December 2016

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Head of Commercial Freight  
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90 York Way  
London  
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Ian Yeowart  
Managing Director  
Alliance Rail Holdings Limited  
88 The Mount  
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Dear Rachel and Ian

### **Consent to amendment of dates in Clause 3.5: Great North Western Railway Company Limited**

1. We have today issued a notice of consent under Clause 3.7 of the Track Access Contract between Network Rail Infrastructure Limited (Network Rail) and Great North Western Railway Limited (GNWR) to amend the dates in Clause 3.5 of the contract. This followed a request made to us by GNWR on 2 December 2016. This letter explains our decision.

#### **GNWR's application**

2. GNWR explained that it was taking longer to obtain the necessary derogations from the applicable EU rolling stock standards from the European Commission than it had previously envisaged. This delay will necessarily impact on the date by which GNWR can enter into a procurement contract for the rolling stock, its subsequent delivery and the start of services.

3. GNWR therefore asked for the dates in the contract by which GNWR must:

- (a) enter into a rolling stock procurement contract, to be extended to 30 June 2017; and
- (b) commence services, to be extended to the Principal Change Date, December 2019.

#### **Consultation**

4. As required by the modification provisions in Clause 3.7 of the contract we consulted Network Rail which was content. There is no requirement for wider industry consultation but, following an earlier request from Virgin Trains West Coast (VTWC) to be

consulted on any request to extend these dates, we gave interested parties an opportunity to comment by 12 December 2016.

5. We received responses from:

- **GB Railfreight** – which requested further detail on why the changes were necessary. GNWR provided further detail to GB Railfreight and GB Railfreight confirmed it was content;
- **London Midland** – which was concerned with the achievability of the proposed timescales for starting services and concerned at the potential suppression of capacity on the route. It also requested we that we consider deferring the Effective Date to balance possible delays to service implementation.
- **VTWC** – which was also concerned with the achievability of the proposed timescales for starting services and the effect of potential suppression of much needed capacity on the route, and the potential financial effect on some of the conurbations along the route and the Government. VTWC sought assurance that, if ORR agreed to this extension, it would be the last one under this application, and also that we would refuse any request by GNWR to deviate from the requirements in the contract, for example in terms of rolling stock.

### **ORR review and conclusions**

6. Like VTWC and London Midland we are also concerned about the blocking of capacity which may ultimately not be used which is why we included the dates in GNWR's contract by which it must procure rolling stock and start services. It is unfortunate that obtaining the necessary rolling stock derogations is taking longer than originally envisaged but we do not feel it would be in the public interest to allow the contract to lapse at this point when there is still a prospect that a rolling stock procurement contract might be signed during the next 6 months.

7. However, we understand that the industry needs certainty and should be allowed to apply to use any capacity which may be available. As this is now the second time we have been asked to extend these dates, following an earlier extension granted in May 2016, we have made clear to GNWR that we would not expect to grant any further extensions to these dates. It accepted this and recognised the importance of clarifying the position as early as possible. The provisions under which the contract is being amended do not allow for amendment of the date when GNWR's access rights become effective (the Principal Change Date 2017) but the rights do not prevent any other train operator applying to use the capacity in the short-term if it is clear GNWR will not be exercising its rights.

8. The quality of rolling stock was an important element in our decision and the contract requires GNWR to procure a minimum of 4 Class 390 (Pendolino) 6-car trains or rolling stock with at least equivalent capacity and traction characteristics. VTWC can also



take assurance that Clause 3.7 of GNWR's contract only allows the amendment of the dates in Clause 3.5; any other change, for example to rolling stock, would require a supplemental agreement or new track access application, either of which would require industry consultation.

9. In conclusion, we have decided we should consent to one further extension.

10. In considering the request 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 issuing such a notice is appropriate and consistent with our section 4 duties, in particular those relating to:

- protect the interests of users of rail services;
- promote 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; and
- enable persons providing railway service to plan the future of their businesses with a reasonable degree of assurance.

#### **Conformed copy of the track access contract**

11. 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 GNWR. ORR's copy should be sent for my attention.

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

12. In accordance with section 72 of the Act, we will place a copy of the approval notice 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.

13. 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 notice will be placed on the ORR website. I am also copying this letter without enclosures to Peter Craig at Network Rail, Darren Horley at VTWC and James Carter at London Midland.

Yours sincerely

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

**David Reed**