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Franchise and Access Manager (Wessex)  
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Kerene Raymond  
Access Contracts Manager  
First MTR South Western Trains Ltd  
Friars Bridge Court  
41-45 Blackfriars Road  
London  
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Dear Alex and Kerene

## **Directions in respect of a track access contract between Network Rail infrastructure Limited and First MTR South Western Trains Limited**

1. We have today issued directions under section 18 of the Railways Act 1993 (the Act) to Network Rail Infrastructure Limited (Network Rail) to enter into a track access contract (TAC) with First MTR South Western Trains Limited (jointly the parties). The application was submitted to ORR by Network Rail on 15 February 2019.
2. The purpose of the new Track Access Contract (TAC) is to provide First MTR South Western Railway Limited (SWR) with commercial certainty of rights from April 2019 onwards. The end date provides the operator with rights throughout the existing franchise. As compared to the current contract, a number of quantum rights in Schedule 5 have been combined in order to improve the clarity of the rights held by the operator. There are some additional quantum rights above what is in the current SWR TAC however these are running in the current timetable.
3. Network Rail conducted an industry consultation between 24 December 2018 and 21 January 2019.
4. Transport Focus highlighted some errors in the draft TAC, including errors within Annex B to Part 3 of Schedule 4 and the corresponding errors on the map of viable transfer points (VTP). For example, services to Paignton and Plymouth were included but no longer run. These matters were amended prior to submission.

5. Cross Country queried an apparent significant rise in the number of trains passing via Eastleigh in Service Group HY08. Network Rail confirmed that the changes were in expression of rights only, with no additional service on top of the current timetable.
6. At the time of original submission, the new model contract had not been made available to the parties. Following its provision, the new Track Access Contract (TAC) was transferred into that format.
7. We noted that schedules 4 and 8 were not updated to reflect the figures directed in the December 20th Periodic Review Notice, which will be applicable to the contract from inception (as it is drafted, at the earliest, to be effective from 1 April 2019). The parties were asked to review the Periodic Review Notice and following a few exchanges have now entered the correct figures that will need to be in effect from 1 April 2019.
8. We raised several queries on the expression of rights in Schedule 5, relating to examples where noted routes for services were insufficient or inconsistent. For example: HY05 generic: some rights are via Brentford and others are via Hounslow. This is actually the same thing and we asked that it be normalised to all show one or the other.
9. The parties addressed these points to our satisfaction. In relation to Service Group HY07, the parties recognise that the level of detail is insufficient, and have undertaken to remedy this in their planned 1st Supplemental Agreement. We have accepted that solution and are expecting this to be submitted prior to the Subsidiary Change Date in 2019.
10. There are two bespoke charges included in Schedule 7 were directed by ORR as part of the PR18 Notice of 20 December 2018.
11. As submitted, the contract's Longstop Date was 1 April 2019. We viewed this as being unnecessarily restrictive, and the parties have now amended this to be 22 April. This provides reasonable time to address any practical matters that might otherwise prevent the parties entering the agreement before 1 April.
12. The parties are also reminded of the need to bring their current Track Access Contract (TAC) to an end by entering a section 22 agreement under general approval in order to amend its expiry date to match the effective date of this new contract. =
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 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)).
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 the Train Operator. Please send the conformed copy to me at ORR.



15. Electronic copies of this letter, the approval notice and the agreement will be sent to Keith Merritt at Department for Transport and 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

**John Trippier**