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28 November 2019

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Dear Clive and Nicola

## **Approval of the Eighteenth Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited and Arriva Rail North Limited**

The Office of Rail and Road (ORR) has today approved the Eighteenth Supplemental Agreement to the Track Access Contract (TAC) dated 3 March 2016 between Network Rail Infrastructure Limited (Network Rail) and Arriva Rail North Limited (ARN) (jointly the parties).

The purpose of the agreement is to facilitate implementation of ARN's Train Service Requirement 3 (TSR 3), which is specified within its Franchise Agreement. The objective of TSR 3 is to contribute towards the delivery of an extra 2000 services per week which sees a 37% increase in seating capacity and an incremental uplift in services which were delivered as part of the May 2018, Dec 2018 and May 2019 timetables. TSR 3 also supports the introduction of 'Northern Connect' services over 12 routes from December 2019 onwards.

The agreement amends Tables 2.1, 2.2, and 4.1 of Schedule 5 of the contract in order to introduce new firm rights; new contingent rights; and extend some existing contingent rights. All relevant rights are effective from the Principal Change Date in December 2019.

Some rights introduced under this agreement (those between Middlesbrough and Whitby) were not included in the industry consultation, however, they were consulted upon separately as the 19th and 24th Supplemental Agreements. This was because, at the time of consultation for the 18th Supplemental Agreement, agreement had not been reached between the parties for these services. They are now agreed and included here.

The relevant rights are:

- From the 19th: Additional quantum of 1 per day Middlesbrough – Whitby SX and SO. Network Rail did not initially support this application as the planned additional service fell foul of Section 4 times and signal box opening hours. It was therefore consulted on as a proposed section 22A. Discussions between the parties led to Network Rail amending the Section 4 times and the signal box opening hours.
- From the 24th: Additional quantum of 1 per day Middlesbrough – Whitby and return SX and SO. As with the 19th this was initially a proposed section 22A, however the parties have now reached agreement.

## **Consultation**

The pre-application consultation was carried out between 7 June and 5 July 2019. Comments were received from West Yorkshire Combined Authority, Transport Focus, and, North East Combined Authority. Concerns were raised by East Midlands Railway (EMR) and GBRf, as set out below.

EMR raised concerns over potential direct and indirect operational performance impacts on EMR's services operating in the Manchester and Sheffield areas. In particular it noted that had objected to Contingent Rights introduced over the Castlefield Corridor in ARN's 16th Supplemental Agreement, which would be extended in this agreement - from PCD 2019 to SCD 2020. EMR noted that it had expected Network Rail to undertake performance modelling for the affected services following the introduction of the 16th Supplemental Agreement and was disappointed to find that this had not gone ahead.

GBRf suggested that the new Halifax to Hull rights, contingent until SCD 2020 would introduce 18 new rights across Whitehall Junction and queried whether this could be accommodated without having an adverse impact on freight services. It also queries how the firm rights for a new Newcastle to Middlesbrough service would be planned to run during planned engineering access periods.

ARN responded on these points. In the case of Halifax to Hull rights, it noted that compliant paths had been offered by Network rail, and also explained that the rights were not new, but were based on existing Rights which had been extended at their extremities in order to provide the through service. It was therefore not considered that there would be any impact on other rights.

For Newcastle to Middlesbrough, ARN agreed that engineering access would occur for four weeks per year between 06.00 and 13.00. ARN noted that discussions were ongoing

about how the route would be maintained in the future, and it was expected that TOCs and FOCs would be involved in those discussions with Network Rail.

As noted above, the industry consultation for additional rights between Middlesbrough and Whitby were conducted separately, but are now included in this Agreement. The 19th Supplemental Agreement was consulted on between 10 June and 8 July, with no adverse responses being received. The 24th Supplemental Agreement was consulted on between 28 August and 25 September, also with no adverse responses being received.

### **ORR review**

The agreement is particularly complex. Although we did not conduct a line by line review we wanted assurance that the agreement accurately reflected the intentions of the parties. To that end we reviewed a sample of the agreement. In addition, we gained further assurance during a discussion of the application with ARN's train planner and a narrative summary (provided after that discussion) of how the complex changes described in the Form P had been contractualised in the agreement. We are reassured that the parties are confident that the agreement properly reflects their intentions.

We noted that this agreement extended some of ARN's Contingent rights over the Castlefield Corridor – those which were introduced as part of the 16th Supplemental Agreement. In approving that earlier agreement, we noted in our [decision letter](#) that EMR's concerns had not been fully addressed. We said we would look closely at the performance impacts of ARN's services and would take that information into account when assessing any upcoming applications for the December 2019 and May 2020 timetables and any application to convert Contingent Rights to Firm rights.

Without the performance modelling that had been anticipated, we asked Network Rail to provide assurance that the services introduced as a result of the 16th Supplemental Agreement, and those that would result from this agreement, are not adversely affecting performance.

On 11 October Network Rail responded saying it had undertaken analysis of all service groups interacting with the Castlefield Corridor, before and after the May 2019 timetable change. It considered that in the main, services and performance had improved on this corridor, but there was still room and requirements for further improvements. Data was provided to support this position.

Network Rail went on to explain that it would continue to monitor performance in this area and engage with EMR, ARN and other affected operators through existing periodic performance forums where all TOCs and FOCs are invited to attend and participate. It also noted it had published the [Castlefield Corridor Congested Infrastructure Report \(Capacity Analysis\)](#) on 09 September 2019, and the ongoing work referred to would factor in any recommendations highlighted in the report.

We discussed Network Rail's approach to performance with EMR. EMR was supportive of ongoing collaborative engagement and considered that closely defining inputs and outputs would increase productivity.

We sought confirmation from ARN on the robustness of its plans to address the concerns raised by GBRf – those being how the new Newcastle to Middlesbrough service would be planned during planned engineering access periods. ARN now considers that the comment has particular relevance to section 5 maintenance times on that route. These occur twice during the timetable period in question. ARN has advised that it will continue to seek industry led solutions (for example, amending the section 5 times). However, if this is not possible, ARN would cancel or curtail, its services during the relevant periods.

### **ORR's conclusions**

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)).

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

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.

Copies of the approval notice and the agreement will be placed on ORR's public register and 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 Keith Merritt at DfT.

Yours sincerely



**John Trippier**