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1 March 2018

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Dear Ian and Chris

Approval of the 85th supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and Arriva Trains Wales Limited (ATW), (jointly, “the parties”)

1. We have today approved the above supplemental agreement submitted to us formally on 1 March 2018 under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission of a draft agreement for our consideration. The purpose of this letter is to set out the reasons for our decision.
2. The purpose of this agreement is to extend the Expiry Date of the parties' Track Access Contract from 14 October 2018 to the December Principal Change Date 2019.
3. Network Rail undertook the normal industry consultation ending on 19 February 2018. First Greater Western Limited raised concerns over the extension of any rights that included interval, clockface or journey time protections. Network Rail responded advising that ATW had no interval, clockface or journey time protection elements in Schedule 5 of its Contract and that this therefore was not an issue. Responses were also received from Merseytravel, the Welsh Government and Transport Focus all offering support.
4. Network Rail advised on the informal submission that the agreement would also include a change to Appendix 1 Schedule 8 that did not figure as part of the application sent out to industry consultation. This was to ensure the payment rate figures for ATW and Network Rail reflected the annual inflationary up-lift since our final determination for the Periodic Review 2013. We advised that the figures in Appendix 1 Schedule 8 are set

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for the Control Period and are uplifted annually in accordance with the provisions in the contract so they do not need to be changed. Network Rail further suggested the proposed changes were linked with the amendments made under the 75th Supplemental Agreement. We advised the parties that the reasons for the change were not clear and that given the need to approve the extension of the Expiry Date for the Contract, the changes should be separated with a view to working out the issue at a later date and (if required) changed under a separate supplemental agreement. The parties agreed to this.

5. 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)).

6. 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.

7. 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

A handwritten signature in black ink, appearing to be 'Michael Albon', written over a horizontal line. The signature is fluid and cursive.

Michael Albon