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Dear Mark and Nicola

## **Approval of the Twenty-fifth Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited and Northern Trains Limited**

The Office of Rail and Road (ORR) has today approved the twenty-fifth Supplemental Agreement to the Track Access Contract (TAC) dated 3 March 2016 between Network Rail Infrastructure Limited (Network Rail) and Northern Trains Limited (Northern) (jointly the parties).

### **Purpose of the agreement**

The purpose of the agreement is to:

- Amend Tables 2.1, 2.2 and 4.1 of Schedule 5 to support Northern's May 2020 timetable changes including changes to quantum, calling patterns and timing loads.
- Amends the footnotes within Tables 2.2 of Schedule 5 to extend the expiry date for a number of services introduced in May 2019 which interface with the Castlefield Corridor.

The agreement facilitates partial implementation of Train Service Requirement 3 (TSR 3) which is specified within the Northern Franchise Agreement. Due to issues with industry performance and capacity considerations, Northern, has been actively engaged in wider industry discussions and work-streams and it is recognised that trades offs would have to be made. For Northern this meant that elements of TSR 3 would not be able to be delivered in May 2020 and therefore these services were not bid. Northern will continue to

work with Network Rail and other industry parties seeking opportunities in the future to deliver further aspects of TSR3 as specified within the ARN franchise.

In addition to new firm rights, the agreement introduces the following changes to the contract:

#### *New contingent rights*

Newcastle-Middlesbrough service via Durham coast which fall within the Network Rail's ECML policy. Relevant rights are therefore contingent and expire on SCD 2021. This section includes an additional change as compared to the proposal at industry consultation - 1 x Newcastle-Morpeth service. This right was consulted specified in error as being a firm rights during the consultation. The error was noted by Network Rail and the right transferred to Table 2.2, expiring on SCD 2021 in line with the ECML.

#### *Extension of existing contingent rights*

Relevant rights interfacing with the Castlefield corridor are extended by 6 months, to PCD 2020.

#### *Conversion of contingent rights to firm rights – expiring PCD 2025*

As part of ARN's 16th SA a small number of new services were placed into contingent rights until the performance of the services was assessed and better understood. Network Rail agreed to review the performance of the services placed into contingent rights 16 weeks after the May 2019 timetable change. The review by Network Rail demonstrated that the services were running well and did not cause performance concern, as a result of this review Eastern Route are now able to support conversion of the contingent rights to firm rights with an expiry date of PCD 2025.

### **Consultation**

Network Rail undertook the industry consultation between 12 November and 12 December 2019.

Transport Focus, Transport for Greater Manchester, and West Yorkshire Combined Authority responded and noted their support for application.

North Yorkshire Moors Railway (NYMR), North East Combined Authority, and Avanti West Coast raised queries and following receipt of additional information, did not object to the application.

London North Eastern Railway (LNER) noted its concerns regarding the Newcastle-Morpeth right which was listed as firm. The parties confirmed that this was an error in the consultation and the relevant right has now been moved to contingent within Table 2.2. A concern was also expressed regarding firm rights for York-Leeds services.

Northern provided performance information to LNER in relation to the York-Leeds services to evidence that they do not cause significant delay to LNER services and that there should be no issues with capacity as Northern are not seeking to introduce any additional Doncaster-Leeds services. LNER also expressed concerns on capacity around the Micklefield area if their Harrogate-London services could not be routed via Wakefield Westgate as planned and instead required to be routed via Micklefield to join the ECML at Hambleton.

Network Rail and LNER have agreed to address this concern by amending LNER's track access contract to provide a firm right for relevant services to be routed via Wakefield. That agreement is at consultation (ending 17 May) as the LNER 20th Supplemental Agreement.

### **ORR review**

ORR reviewed the agreement and noted that industry consultation had been effective, drawing out various queries from consultees, with all of those having been addressed to the satisfaction of all parties prior to formal submission. A small number of drafting points were noted and also addressed by the parties.

ORR also note that this agreement's industry consultation occurred prior to ORR directing rights under section 22A of the Act in the 20th SA. Those rights were to extend a small number of contingent rights on the ECML until the SCD in 2021. With that direction having now taken effect, the parties have added them into Table 2.1 for ED01 for this agreement so as to avoid over-writing the directed rights.

### **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

A handwritten signature in black ink, appearing to read 'John Trippier', with a long horizontal stroke extending to the right.

**John Trippier**