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Dear Steven and Rob

**Approval of the 27th supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and First Greater Western Limited (GWR)**

1. We have today approved the above supplemental agreement submitted to us formally on 25 June 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.

**Purpose of the agreement**

2. The purpose of this agreement is to amend Paragraph 9.11 (a) of Part 2 in Schedule 7 of the parties' Track Access Contract (TAC) to enable the parties to supplement the Traction Electricity Consumption Rates List with Class 800 retrospectively to the 2017/2018 financial year only for the purposes of the 2017/2018 Electric Current for Traction (EC4T) volume reconciliation.

**Background**

3. During the 2017/2018 financial year, GWR began operating Class 800 vehicles. It was initially expected that these units would be billed based on meter readings. Consequently, a modelled consumption rate was not estimated for these vehicles. Instead, these vehicles were billed on the basis of a temporary consumption rate. Unfortunately, technical issues have prevented these vehicles from being opted-in to on-train metering.



In addition, it has not been possible to estimate modelled consumption rates for these vehicles using the standard methodology due to complex technical issues.

4. A joint application by Network Rail and GWR was planned for submission to ORR to supplement the Traction Electricity Modelled Consumption Rates List for Class 800 vehicles to be applied retrospectively to the 2017/2018 financial year.

5. We advised the parties that we would not be able to consent to this request as it sought a retrospective effective date to the 2017/2018 financial year and Paragraph 9.11 (a) of Part 2 in Schedule 7 in the Model Contract ensures that the volume reconciliation for previous years cannot be reopened.

6. The parties therefore proposed to amend these provisions under this supplemental agreement to permit the Class 800 modelled rate to be supplemented and applied retrospectively for the purposes of the 2017/2018 EC4T volume-reconciliation.

### **Industry Consultation**

7. As part of our review of the parties' application to supplement the Traction Electricity Consumption Rates List with Class 800 vehicles we requested a short consultation be undertaken with other operators in the same Energy Supply Tariff Areas (ESTAs) in respect of these applications to gather their view. Some queries were raised by Heathrow Express Limited but were closed out after a number of email exchanges with Network Rail.

### **ORR review**

8. Network Rail explained that without approved rates for Class 800s, its ability to carry out the volume reconciliation for ESTAs in which these vehicles operated would be compromised. There would therefore be a significant risk that EC4T cost incurred from the operation of Class 800s during the 2017/2018 financial year would be unfairly exposed to third parties undermining the integrity of the EC4T volume reconciliation process.

9. We carefully considered Network Rail's justifications to amend this provision in the parties' TAC and on balance, accepted its approach for this case. We agreed with the importance of completing the 2017/2018 volume reconciliation on time with the Traction Electricity Consumption Rates List up-to-date to ensure that no third parties would be adversely affected. We also advised the parties that we would only support a contractual change that applied solely to the 2017-18 financial year. The parties agreed with our view and the draft of the agreement was amended accordingly to ensure this is time limited and the supplemented rate cannot be used in the future. We also acknowledged that the risk of a future repeat of this case was mitigated in a change to EC4T policy for CP 6 where a default rate is being introduced for those vehicles operated on the network without a confirmed modelled rate on the Traction Electricity Consumption Rates List. For these reasons, we have agreed to this change.

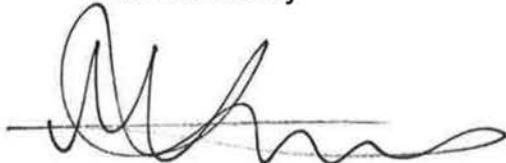
10. In considering the agreement and in reaching our decision, we have had to weigh and strike the appropriate balance in discharging our statutory duties under section 4 of the Act. We have concluded that approval of this supplemental agreement is consistent with our section 4 duties, in particular 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)).

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

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 the Train Operator. Please send the conformed copy to me at ORR.

9. 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 read 'Michael Albon', written over a horizontal line.

**Michael Albon**