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Dear Robert and Chris

Approval of the Thirty-fifth Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited and First TransPennine Express Limited

The Office of Rail and Road (ORR) has today approved the Thirty-fifth supplemental agreement to the Track Access Contract (TAC) dated 3 March 2016 between Network Rail Infrastructure Limited (Network Rail) and First TransPennine Express Limited (FTPE) (jointly the parties).

Purpose of the agreement and background

The agreement amends the TAC with the following changes:

- The extension of time limited contingent rights on the East Coast Main Line (ECML) and the Castlefield Corridor;
- The addition of expiry dates to pre-existing contingent rights. The parties explained that a Contract review highlighted that a number of rights added in May 2018 did not have an end date applied in line with Network Rail's current ECML and Castlefield Corridor access policies;
- Additional firm right: 1 x additional Saturday right between Manchester Piccadilly and Sheffield in Service Group EA01;



- Conversion of two existing Empty Coaching Stock paths into firm rights for passenger services in Service Group EA07. 1 x additional off-peak service on a Saturday and 1 x additional off-peak service on a Sunday;
- Amendment of the timing load for Service Group EA07 (Anglo Scottish). Class 397 units now fully operate the EA07 Anglo-Scottish services for FTPE.
- Amendment of Calling Patterns within Table 4.1. The parties explained that a review highlighted a number of FTPE services having already changed calling patterns. Table 4.1 has been updated to reflect this position.

Consultation

Network Rail undertook the industry consultation between 20 August and 20 September 2020. Responses were received from the following parties:

Avanti West Coast queried whether the Class 397 unit's interference issue could be confirmed as being fully resolved. It was confirmed that a software patch had been installed for FTPE prior to the vehicles entering service there would be no interference.

Cross Country Trains raised a number of specific queries concerning: the amendments to Table 4.1; the continuation of Class 185 units and operational mitigations; new Sheffield service stabling arrangements; and, Cass 68 Timing Load updates. All queries were responded to Cross Country's satisfaction and it confirmed that the application was supported.

Northern Trains (Northern) highlighted an error in the consultation version of the Form P, which was subsequently amended. It also queries whether two specified rights might create a service conflict, and sought confirmation that the additional Castlefield Corridor services had been assessed in line with Network Rail's standard approach for that route. All queries were resolved to Northern's satisfaction.

ORR review

We 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.

The draft supplemental agreement employed a novel format for Tables 2.1 and 2.2, within Schedule 5. Those tables were split into several versions according to the expiry date of the rights within each version of the relevant Table (reflecting rights sold under Network

Rail's ECML and Castlefield corridor access policies). Although this change was implemented in an effort to increase clarity, we consider that such clarity is best provided by using the format of the model contract. The parties accepted this guidance and have reverted to that format, with expiry dates of individual rights within each table being denoted by footnotes.

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