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Felix Beeson  
Finance Director  
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Dear Andrew, Gareth, and Felix,

## **Approval of the side letter dated 11 February 2021 to the track access contracts between HS1 Limited and Eurostar International Limited and HS1 Limited and London and South Eastern Railway Limited**

1. The Office of Rail and Road (ORR) has today approved the side letter dated 11 February 2021 to the track access contracts between HS1 Ltd and Eurostar International Limited (EIL) and HS1 Ltd and London and South Eastern Railway Limited (LSER) (the parties), submitted to us formally on 11 February 2021 under the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the 2016 Regulations). This follows an earlier informal submission of a draft side letter for our consideration. The purpose of our letter is to explain the reasons for our decision.

### **Purpose of the side letter**

2. The HS1 Passenger Access Terms ("HS1 PAT") requires HS1 Ltd to reappportion the Avoidable Long-Term Costs (OMRCA2) and Common Long-Term Costs (OMRCB) promptly following the occurrence of a "Review Event" – this mechanism is known as the "Volume Re-Opener". A Review Event occurred on 12 December 2020. As such, HS1 Ltd is obliged to reappportion OMRCA2 and OMRCB between EIL and LSER for the 2020



Timetable Year by reference to the “expected train minutes” of each operator on High Speed 1 for the remainder of Control Period 3 (between 12 December 2020 and 31 March 2025).

3. The change in passenger demand resulting from the coronavirus pandemic and the associated public health measures have resulted in significant uncertainty regarding the number of domestic and international passengers and, consequently, the ability of train operators to plan and operate their respective passenger services with any degree of certainty.

4. In response to ongoing uncertainty and the effects of the coronavirus pandemic, EIL did not exercise any of its Firm Rights for train paths for the 2020 Timetable Year and has proposed to operate Spot Services in order to more closely align the level of international passenger services with the level of passenger demand. In these circumstances, it is difficult for HS1 Ltd to determine the “expected train minutes” for the purposes of the Volume Re-Opener.

5. In consideration of the above, HS1 Ltd, EIL and LSER (as supported by the Department for Transport, pursuant to its role under the Franchise Agreement with LSER as amended by the Emergency Measures Agreement) have negotiated the Side Letter to help clarify the appropriate approach to the reapportionment of OMRCA2 and OMRCB for the 2020 Timetable Year and to deem the occurrence of a Review Event at each Principal Change Date for the remainder of CP3.

### **Consultation**

6. No consultation on the arrangements contained in the side letter was required as the arrangements are of a financial nature only and will have no effect on any third parties (including the access rights of other train operators).

### **Our review**

7. We have been in discussions with HS1 Ltd, the Department for Transport, EIL, LSER and other users of the HS1 network about proportionate and effective responses to the consequences of the coronavirus pandemic. HS1 Ltd, EIL and LSER proposed this side letter following discussions with us on the potential ways to deal with the ongoing uncertainty on traffic volumes created by the coronavirus pandemic.

8. We reviewed a draft version of the side letter and suggested some drafting changes. The parties reflected these suggestions in a revised version of the side letter which they submitted formally to us. We also reviewed a cost modelling submission from the parties.

### **ORR’s conclusions**

9. Pursuant to Regulation 31(1) of the Regulations, in considering the application and in reaching our decision, we are required to weigh and strike the appropriate balance in

discharging our statutory duties under section 4 of the Railways Act 1993. Approval of this application is consistent with these duties; in particular our duties to:

- protect the interests of users of rail services;
- promote the use of the railway network in Great Britain for the carriage of passengers and goods, and the development of the railway network, to the greatest extent that ORR considers economically practicable;
- contribute to the development of an integrated system of transport of passengers and goods; and
- enable persons providing railway service to plan the future of their businesses with a reasonable degree of assurance.

10. We will place a copy of the side letter on our website and public register.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Reed', written in a cursive style.

**David Reed**