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9 February 2021

Lysette Rowley  
Customer Support Manager  
Network Rail Infrastructure Limited  
Baskerville House  
Centenary Square  
Birmingham  
B1 2ND

Bevis Thomas  
Deputy Head of Train Planning  
The Chiltern Railway Company Limited  
Banbury ICC Higham Way  
(off Merton Street)  
Banbury  
Oxfordshire  
OX16 4RN

Dear Lysette and Paul,

## **Approval of the one hundred and thirty-seventh supplemental agreement to the track access contract between Network Rail Infrastructure Limited and The Chiltern Railway Company Limited**

1. The Office of Rail and Road (ORR) has today approved the one hundred and thirty--seventh supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and The Chiltern Railway Company Limited (Chiltern), submitted to us formally on 8 February 2021 under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission of a draft agreement for our consideration. This letter explains our decision.

### **Purpose of the agreement**

2. This agreement extends Chiltern's current track access contract from the Principal Change Date in December 2021 to the Subsidiary Change Date in May 2023. As part of the supplemental, Chiltern is relinquishing the Connections and Stabling Rights tables in Schedule 5 of the TAC, along with the Journey Time Protection for the Birmingham Service Group.

### **Consultation**

3. Network Rail consulted the industry on this application in September and October 2020. Transport Focus and CrossCountry responded supporting the application.

4. Great Western Railway queried why the Subsidiary Change Date in May 2023 was chosen as the Expiry date. Network Rail advised that the ORR guidance states that the total contract duration can include a period of up to two years after the end of the relevant franchise, and that through discussion between Chiltern and DfT, 18 months was agreed



as being an appropriate amount of time to allow DfT intentions to become known prior to having to reapply. Great Western Railway had no further comments or objections to the consultation.

5. East West Rail Company raised no concerns relating to the supplemental, but queried Chiltern's intentions for journey time protection beyond the end of this contract.

### **ORR's review and conclusions**

6. We reviewed the application and it did not raise any concerns.

7. We noted that the contract extension relinquished a number of rights protections held by Chiltern, but extended Maximum Journey Time Protection for some services in the Oxford Service Group. It is Network Rail's policy not to approve journey time protections without sufficient justification, and we queried with Network Rail the justification for the continuation of this specific protection. Network Rail confirmed that it believed it reasonable to accept the Oxford journey time protection as part of the 18-month extension, as Chiltern is still repaying the increased facility charge associated the Evergreen 3 business case. Without journey time protection the franchise is at risk of losing the additional revenue required to fund the facility charge. Network Rail noted that it will be looking to review this again at the time of the renewal of the contract when the extension expires.

8. 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**

9. 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 Chiltern. ORR's copy should be sent for my attention.

### **Public register and administration**

10. In accordance with section 72 of the Act, we will place a copy of the approval notice and the agreement on our public register. The parties have not asked us to redact anything (as provided for by section 71(2) of the Act) prior to placing it on the register.

11. Copies of this letter, the approval notice and the agreement will be sent to the Department for Transport. 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.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Reed', is positioned below the 'Yours sincerely,' text.

**David Reed**