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6 December 2022

Mark Garner  
Customer Manager  
Network Rail Infrastructure Limited  
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York  
YO1 6JT

Andy Wylie  
Head of Regulation  
First Group Rail  
8<sup>th</sup> Floor, The Point  
37 North Wharf Road  
London W2 1AF

Dear Mark and Andy

**Approval of the 5th supplemental agreement to the track access contract between Network Rail Infrastructure Limited and East Coast Trains Limited dated 3 October 2016**

We have today approved the above supplemental agreement submitted to us formally on 5 December 2022 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 the reasons for our decision.

**Purpose**

This supplemental will provide East Coast Trains Limited (“ECTL”, trading as Lumo) with contingent rights for all its services to stop at Stevenage. Currently ECTL only has contingent rights for two stops at Stevenage in each direction. The rights will continue to be limited to pick up (North-bound) and set down (South-bound) only. The amendment has been proposed in order to provide Network Rail with additional flexibility in the construction and operation of the timetable. The rights fall under the ECML access rights policy and will expire in May 2023.

**Industry consultation**

Network Rail undertook the usual industry consultation in May and June 2022. Transport Focus, CrossCountry and First Great Western Railway supported the proposal. CrossCountry raised questions regarding impacts on services at Peterborough, which Network Rail responded to.

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## **ORR review**

Our review of the application raised no operational, performance or economic concerns. The parties provided additional evidence regarding the operational benefits of the application.

As a new open access service which would compete with franchised services and so may impact on the public sector funder's budget, we undertook the Not Primarily Abstractive test ("NPA test")<sup>1</sup> on the additional stops. The application passes our NPA test, in the range 0.31-0.34:1, with an absolute abstraction of £0.1m per annum.

## **Our duties under section 4 of the Act and our decision**

We have concluded that approval of this supplemental agreement strikes the appropriate balance in discharging our statutory duties under section 4 of the Act; 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 agreement**

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.

## **Public register and administration**

Electronic copies of this letter, the approval notice and the agreement will be sent to the Department for Transport and Network Rail's Policy and Access Team. 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 'David Reed', written over a light blue horizontal line.

**David Reed**

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<sup>1</sup> [ORR's Guidance on the Not Primarily Abstractive Test](#)