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Dear Mark and Malcolm

**34th Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited (Network Rail) and London North Eastern Railway Limited (LNER) dated 3 March 2017**

1. Today, we issued directions under section 22A of the Railways Act 1993 (the Act) to Network Rail and LNER (jointly the parties) to enter into the above supplemental agreement. This letter explains the reasons for our decision. ORR's approval of this application will ensure continuity of service for passengers between London King's Cross and the following destinations: Edinburgh, Leeds, Newcastle, York and Lincoln. It will also give LNER certainty for the purposes of planning its business.
2. Adjusting a significant number of rights for the East Coast Main Line's (ECML) largest operator is a necessary step which will bring clarity, transparency and certainty to open access, freight and public service operators on the ECML in advance of implementing the December 2025 timetable. ORR's decision will also provide greater certainty for industry over the required steps needed before additional LNER services between London and Leeds can be accommodated, given the different position Network Rail holds compared with DfT and LNER.

**Background**

3. On 24 April 2024, ORR wrote to industry setting out a process for access applications for December 2024, May 2025 and December 2025, given our expectation (as confirmed by Network Rail) that we would receive numerous complex and competing applications across that period. Applications were submitted to ORR for direction as

“unsupported” applications, as Network Rail was not able to agree that there was sufficient capacity and therefore submit agreed applications for our approval. As part of this process, LNER submitted five separate S22A (disputed) applications on 20 May 2025.

4. [DfT wrote to us](#) on 20 June 2025 referring to “the cumulative scale and impacts of abstraction when [ORR] assesses Open Access applications” and asking ORR that this should be “factored into all future decision-making”. To ensure that we were able to proceed with decision making for relevant public service operators, including LNER, in light of this, we had to clarify the DfT letter before finalising our decisions.
5. As we were already at an advanced stage in the decision-making process for this and many other applications by this point, [we wrote to DfT](#) stating that we intended to proceed with our established approach to access applications for the East Coast Main Line (ECML) in order to support the major timetable change coming up in December 2025 and to avoid risk to that timetable’s implementation. As we did not receive a response by Monday 7 July we have proceeded with decision making in line with our published policy.

## Application

6. The purpose of the 34th supplemental agreement is to grant LNER the rights necessary to operate its services as included in the East Coast Main Line Event Steering Group (ECML ESG) timetable, which will be introduced at the Principal Change Date (PCD) in December 2025. In general terms, LNER will provide the following weekday services in this timetable:
  - two trains per hour between London King’s Cross and Edinburgh (with some services extended to Aberdeen and Inverness);
  - two trains per hour between London King’s Cross and Leeds (with one service extended to Harrogate and Bradford Forster Square in alternating hours);
  - one train per hour between London King’s Cross and Newcastle;
  - one train every other hour between London King’s Cross and York; and
  - one train every other hour between London King’s Cross and Lincoln.
7. LNER’s 34th application also requested a contract extension to 2030. We have decided not to approve this contract extension and our reasons for this are set this out under ‘contract extension’ below. The rights are to commence on a firm basis on the PCD in December 2025 and will expire on the expiry date of LNER’s track access contract (currently the Subsidiary Change Date (SCD) in 2027).
8. LNER’s 35th application requested the right to run a total of eight extra return services per day between London King’s Cross and Leeds (the ‘future London-Leeds rights’)

from 2028. We have decided instead to direct through this 34th supplemental agreement the right for LNER to operate an extra five services each way per day between London King's Cross and Leeds from the completion of infrastructure works necessary to enable these services. We have set out in this decision letter our consideration and reasoning for why we have decided not to direct the full level of future London-Leeds rights requested by LNER.

9. The 34th and the 35th applications related to amendments to Schedule 5 (Part C) of LNER's track access contract (TAC), beginning in December 2025. Schedule 5 (Part B) will no longer be needed as from December 2025 it will refer to rights in the past, removing the need for the 36th, 37th and 38th applications which covered amendments before December 2025. We consider the 35th application has also been directed in deciding the 34th. This is because the key elements from the 35th application have been included in this directed 34th supplemental agreement.
10. We have considered all representations and consultation responses on LNER's 34th, 35th, 36th, 37th and 38th applications in reaching our decision. Below, we have only set out details of the consultations on the 34th and 35th applications, as these cover the entirety of the rights being directed.

### **Industry consultation**

11. The initial industry consultation took place on LNER's applications from 21 May to 21 June 2024. Industry was then invited to comment on Network Rail's final representations on the applications in April and May 2025.

#### ***34th application***

12. In the initial consultation, comments in support or raising no objections or concerns were received from Avanti West Coast, Great Western Railway, London TravelWatch, Northern, Transport Focus and West Yorkshire Combined Authority.
13. DB Cargo, Freightliner, GBRf, GTR, Hull Trains, Lumo, TransPennine all stated that they did not yet have enough information about other potential applications in the area and Network Rail's plans to accommodate them to be able to offer their support, nor about the final details of the ECML ESG timetable.
14. Grand Central, Hull Trains and Lumo were unable to support the application. Grand Central noted in its response concerns on LNER's 34th and 35th applications, questioning in particular the retained level of Leeds rights compared to ORR's 2016 ECML decision, and also the increase in LNER's weekend rights. In the further opportunity to comment in May 2025, GBRf also questioned whether LNER should still retain the future London-Leeds rights.

### *35th application*

15. Industry consultation responses on the 35th application largely corresponded with the responses made on the 34th application.
16. Lumo, Grand Central and Hull Trains also all specifically objected to the 35th application. Hull Trains and Lumo raised specific questions on the future London-Leeds rights in terms of how they are currently expressed as access rights and questioned what infrastructure works would be needed to accommodate them from 2028.
17. While Northern supported the 34th application, it could not support the 35th application as it believed the infrastructure works to deliver the future London-Leeds rights would not be completed by 2028, and that the rights should be temporarily surrendered until such time as the services can be implemented.

### **Statutory Consultation**

18. As required under the Act, on 30 May 2024, we sought Network Rail's representations on the applications, and it replied on 28 June 2024. We forwarded these representations to LNER and asked for its comments. LNER provided comments on 24 July 2024.
19. Following the completion of Network Rail's capacity analysis on the ECML and the other interacting locations associated with this application, it sent its final representations on the 34th application on 28 March 2025 and on the 35th application on 11 April 2025. Again, we forwarded these to LNER and asked for its comments, which it provided on 24 April 2025 and 2 May 2025 respectively.

### *Network Rail's representations*

20. In its initial representations dated 28 June 2024, Network Rail stated that it was unable to provide a final position on the application as it "had a number of assessments and analysis that needs to be undertaken to inform a position whether Network Rail supports or not the application that has been submitted by LNER".
21. In its final representations on the 34th application, Network Rail stated that it was now in a position to support the access rights sought in the 34th application and they are as it expected in the proposed December 2025 Timetable.
22. In its final representations on the 35th application, Network Rail stated that it could not support the future London–Leeds rights as "work undertaken for the ESG has shown definitively that this 0.5 tph [trains per hour] London King's Cross – Leeds service uplift cannot be accommodated alongside the other ESG outputs. As such the service cannot run in this timetable or future timetables, alongside the other industry endorsed aspirations without additional infrastructure and associated development activity, which is currently unfunded and uncommitted, and therefore we do not believe the 0.5 tph should continue to be represented in this TAC."

23. Network Rail also set out its position on the contract extension that “an unsupported TAC extension can only be undertaken via Section 17 of the Railways Act and not a Section 22A as per this 35th SA. As a consequence, Network Rail cannot support the TAC extension listed in this application however Network Rail will work with LNER to deliver any extension to their current TAC in line with the contract between LNER and DfT”.

### **ORR review**

24. We carried out a full review of the applications, taking into account issues that were being considered in relation both to this application and to the competing demands on capacity on the wider network.

### *34th supplemental agreement*

25. Access rights are approved or directed on a quantum basis. It is for Network Rail to produce a robust timetable to accommodate them. The rights included in the 34th supplemental agreement include services which Network Rail has included in the ECML ESG timetable for December 2025.

26. Since 2019, Network Rail has offered operators only contingent or time-limited rights, providing limited certainty for businesses. The ECML ESG was set up to transparently develop a timetable which considered the service specifications and aspirations of timetable participants for implementation. This process was cross-industry, involving public service, freight and open access operators.

27. For these reasons, in reaching our decision we have placed weight on reducing or ending the uncertainty of this period, in line with our duty of enabling operators to plan their businesses with a reasonable degree of assurance.

28. As referred to in the Network Rail representations, in late 2024, the Secretary of State and Department for Transport (DfT) accepted the recommendation to start the timetable in December 2025. This follows investment by the DfT in rolling stock and infrastructure to enable faster and more frequent services on the ECML. We consider directing the rights in this application supports our duty to have regard to guidance from the Secretary of State in terms of the value for money from public investment as well as the funds available to the Secretary of State.

29. Network Rail expects that implementing the ECML ESG timetable will lead to a limited reduction in train service punctuality. Network Rail is assuring us of the operational and timetable alterations it is leading with industry, to mitigate this reduction. It expects to be able to identify and implement further improvements following the introduction of the timetable.

30. In weighing all of our duties, reviewing the capacity and performance on the ECML and wider network, we consider directing rights which can be used to implement a longer-term baseline timetable, in this case the ECML ESG, is preferable to the alternative.

Furthermore, we will continue to hold Network Rail to account to ensure the proposed timetable delivers the expected benefits to passengers, funders and freight operators.

31. Overall, we concurred with Network Rail's assessment regarding capacity and performance and have directed the quantum rights as included in LNER's 34th supplemental agreement.

#### *35th supplemental agreement*

32. In 2016, ORR approved firm rights for LNER to operate '6.5 trains per hour' to/from London King's Cross on the ECML from May 2021. Due to changes in the funding and plans for the enhancements necessary to accommodate this level of services, successive agreed supplemental agreements have pushed back the start date of these rights in LNER's contract. In the current LNER contract, these rights are due to start from December 2025.
33. The specification included in the ECML ESG for the LNER service to/from London King's Cross was reduced from 6.5 trains per hour to 6 trains per hour with agreement from the DfT in 2021. Network Rail and LNER have not amended their track access contract to reflect this reduction. Currently LNER still holds London-Leeds rights from the PCD in December 2025 which are not in use.
34. LNER and DfT have confirmed to us their position that LNER need to retain their full firm rights (including those unable to be used while infrastructure is awaited). LNER's position is that in order for it to agree to the relinquishment of some rights in the 34th supplemental agreement, it must retain the 'future London-Leeds rights'. These relinquishments are required to enable ORR to direct other operators' rights needed for the ECML timetable in December 2025.
35. We have worked closely with LNER and Network Rail to review the level of rights applied for in the 34th and 35th supplemental agreements against the current rights held by LNER. We are satisfied that across service groups HB02 and HB04, LNER is relinquishing a total of five rights between London and ECML destinations each day as part of the December 2025 timetable, and this is reflected in the rights applied for in the 34th supplemental agreement. Therefore, we only consider it as justified for LNER to retain five future rights each way between London and Leeds each day rather than the eight included in its application.
36. DfT has provided us with evidence regarding the enhancements (as set out in the Integrated Rail Plan ECML (South) Phase 1) that are required to enable the delivery of the 'future London-Leeds rights'. While LNER applied for these rights, through the 35th supplemental agreement application, to start from 2028, we consider it is necessary for the activation of these rights to be linked to the completion of the necessary infrastructure works. We have therefore included a footnote in the directed 34th supplemental agreement to do this.



37. We discussed our proposal to include a footnote related to these rights with the parties. Both parties had the opportunity to comment on the drafting of the footnote. Network Rail stated that the footnote may be “unduly discriminatory against other interested operators”. We do not agree with this view because LNER already has the rights and we do not consider these rights should prevent Network Rail from allocating capacity to other operators. Network Rail also stated that the footnote may lead to a “legitimate expectation” that the infrastructure works will be undertaken. We do not consider (and do not intend) that including this footnote grants LNER or any other body some form of “legitimate expectation” which obliges Network Rail to complete these works, whether to a certain timescale or at all. We also note that the reason for linking the rights becoming effective to the delivery of the infrastructure works through this footnote is because there is uncertainty around their delivery.
38. Network Rail advised that the inclusion of these future rights may lead to it proposing to continue with a policy of only offering time-limited contingent rights on the ECML unless ORR states that our standard policy of a strong presumption of continuation of rights does not apply. Following these directions, we do not consider it necessary for Network Rail to continue its policy of time-limited contingent rights. We expect Network Rail to provide certainty to operators on the ECML through firm ongoing access rights wherever possible. This is because our policy is a ‘strong presumption’ and not a certainty; if Network Rail believes these access rights should not be extended beyond the dates of LNER’s existing access contract, Network Rail can make that case during any relevant future application by LNER. In addition, as the infrastructure manager, Network Rail has the legal power to assess and decide alternative uses of capacity and furthermore the enhancements required for these services will not be necessary for all future applications.

### *Contract extension*

39. When LNER submitted its applications on 20 May 2024, the expiry date of its contract was the PCD in December 2025. In November 2024 ORR approved an agreed supplemental submitted under Section 22 of the Act (the 40th supplemental agreement) to extend LNER’s contract to the SCD in May 2027, in line with LNER’s contract with DfT. Contract extensions are allowed under Section 22 of the Act.
40. Through the 34th supplemental agreement LNER applied for an extension to 2030, and through the 35th supplemental agreement LNER applied for an extension to 2035. Both of these applications were ‘non-agreed’ and submitted under Section 22A of the Act. Network Rail has taken a position that “an unsupported TAC extension can only be undertaken via Section 17 of the Railways Act and not a Section 22A”. LNER has not challenged this position. Our guidance confirms that Section 22A of the Act cannot be used to extend the duration of an existing contract, and in such circumstances, a new

contract under Section 17 would be required to take effect on the expiry of the existing contract.<sup>1</sup>

41. Noting the considerations above, and that we have subsequently agreed a shorter extension to LNER's contract which is in line with its current contract with DfT, we have advised LNER that a contract extension cannot be approved through this decision. LNER can pursue a separate application for a further extension in due course if it views this as necessary, either through an agreed S22 application or under Section 17 of the Act.

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

42. We have considered this supplemental agreement, and we have concluded that its approval is consistent with the discharge of our statutory duties under section 4 of the Act: in particular, those relating to:

- enabling persons providing railway services to plan their businesses with a reasonable degree of assurance (section 4(1)(g))
- promoting improvements in railway service performance (section 4(1)(b))
- 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))
- having regard to the funds available to the Secretary of State (section 4(5)(c)).

43. We have looked very closely at all the evidence submitted from the parties and consultees. We have concluded that we should approve the application in the form set out in this letter and accompanying directions notice.

### **Conformed copy of the track access contract**

44. 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 LNER. ORR's copy should be sent for my attention.

### **Public register and administration**

45. Electronic copies of this letter, the approval notice and the supplemental agreement will be sent to the Department for Transport and Network Rail's Policy and Access Team. Copies of the approval notice and the supplemental agreement will be placed on

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<sup>1</sup> [Making an application \(for track access\)](#), paragraph 136





ORR's public register (website) and copies of this letter and the supplemental agreement will be placed on the ORR website.

Yours sincerely



**David Reed**