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21 July 2025

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Dear Alexis and Lanita

**21st Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited (Network Rail) and Transport UK East Midlands Limited (trading as East Midlands Railway (EMR)) dated 1 September 2020**

1. Today, we have issued directions under section 22A of the Railways Act 1993 (the Act) to Network Rail and EMR (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 improve passenger service connectivity within and between the East Midlands and East Anglia, and give the train operator certainty for the purposes of planning its business.

**Background**

2. 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.
3. [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 in light of this, we had to clarify the DfT letter before finalising our decisions.

4. 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**

5. The purpose of this supplemental agreement is to grant EMR the rights necessary to operate the following services:
  - Two additional Saturday services from Lincoln to Newark Northgate;
  - One additional weekday service from Cleethorpes to Newark Northgate;
  - One additional weekday and one additional Saturday service from Norwich to Sheffield;
  - One additional weekday from Nottingham to Peterborough; and
  - A total of two Sunday services from Sheffield to Norwich.
6. Network Rail proposed to grant EMR some of the rights sought in this application from the Principal Change Date (PCD) in December 2024 on a contingent basis only with no presumption of the continuation of these additional rights beyond PCD 2025. To maintain service continuity, the rights were granted on this basis as part of the agreed S22 23rd supplemental agreement, but EMR has upheld its application to hold them on a firm basis to the end of its contract.
7. The rights are to commence upon PCD 2025 and will expire on the expiry date or earlier termination of EMR’s track access contract.

## **Industry consultation**

8. The initial industry consultation took place from 21 May to 24 June 2024. Comments in support or stating no objection were received from Transport Focus, Northern, Great Western Railway, and DB Cargo.
9. West Yorkshire Combined Authority stated that it would be supportive of the application provided that it would not have a negative impact on existing service deliverability.

10. Transpennine Trains, GB Railfreight, Freightliner and CrossCountry 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 East Coast Mainline Event Steering Group (ECML ESG) timetable.
11. Grand Central had no specific concerns where requested services would fall within the scope of the ECML ESG timetable but asked that the interim approach be followed for any which did not.
12. Industry was then invited to comment on Network Rail's final representations from 8 to 29 April 2025, and during this time no further comments were received. We have concluded that its lack of response to the most recent opportunity to comment means that there are no outstanding objections to EMR's request at this stage.

### **Statutory Consultation**

13. As required under the Act, on 30 May 2024, we sought Network Rail's representations on the application and it replied on 28 June 2024. We forwarded these representations to EMR and asked for its comments, which it did not provide at that time.
14. Following the completion of Network Rail's capacity analysis on the ECML and the other interacting locations associated with this application, namely Sheffield, ECML and Leeds, and Derby-Sheffield, it sent its final representations on 4 April 2025. Again, we forwarded these to EMR and asked for its comments, which it provided on 24 April 2025.

### ***Network Rail's representations***

15. In its initial representations dated 28 June 2024, Network Rail stated that it was unable to support the application because it requested firm rights at Sheffield, ECML and Leeds, and Derby-Sheffield, which were included in the list of 10 interacting locations identified by Network Rail as containing competing aspirations and subsequently listed by ORR in its letter of 24 April 2024. As a result, there are several other applications which impact on both the ECML as a whole and Sheffield, ECML and Leeds, and Derby-Sheffield specifically. It stated that to support these rights for the duration of the contract could be perceived as unduly discriminating against other operators.
16. EMR did not provide a response to the initial representations. This was because it had been in discussions with Network Rail following the submission of its initial representations, and it had thought at that time that it might be able to support the 21st supplemental agreement. The position subsequently changed and Network Rail set out its views in its final representations dated 4 April 2025. In these, Network Rail stated that it was now in a position to support some, but not all, of the quantum of rights requested; namely, those that are in the ECML ESG timetable, but not the requested calling pattern for the Norwich to Sheffield and the Cleethorpes to Newark services.

17. EMR's response to the final representations concurred with Network Rail's conclusions, noting that, where the quantum of rights and calling patterns did not match that expected in the ECML ESG timetable, it will be applying to implement these rights in a separate supplemental agreement.

## **ORR review**

18. We carried out a full review of the supplemental agreement, 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. We noted that some of the rights being sought have been running on the network on a contingent basis since PCD 2024, but also that not all of these rights are part of the ECML ESG timetable.
19. Network Rail's assessment was that power supply may be an issue in this case; however, we did not agree with this, as the services are operated by Class 158 or Class 170 diesel trains. Power may be an issue in the future if EMR plans to use Class 810s on these services, as these are bi-mode trains, capable of running on diesel or using overhead electrical equipment, and we understand that EMR is planning to begin introduction of these vehicles in 2025. However, although Class 810s are on the list of Specified Equipment in Schedule 5 of EMR's access agreement, there is no indication in the application that it intends to start using these vehicles on the relevant routes and when it does, it will need to obtain route clearance with Network Rail before introducing them; therefore, if power supply is likely to be an issue at that time, Network Rail will be in a position to refuse route clearance.
20. Access rights are approved or directed on a quantum basis. It is for Network Rail to produce a robust timetable to accommodate them. This application includes services which Network Rail has included in the East Coast Mainline Event Steering Group (ECML ESG) timetable for December 2025.
21. 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.
22. 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.
23. 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.

24. 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.
25. 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.
26. We have looked more widely at other applications from both passenger and freight operators to run services in the same area and we do not believe that there is any direct conflict with their requests for capacity, such that the approval of this application would preclude us from approving any others.
27. Overall, we concurred with Network Rail's assessment on the basis that this is a relatively small increase in quantum across a limited number of routes, in line with the ECML ESG timetable, and we concluded that we would direct the application based on those rights that Network Rail is prepared to support.

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

28. 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 duties 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)(zb))
  - protecting the interests of users of railway services (section 4(1)(a))
  - promoting the use of the railway network for the carriage of passengers and goods (section 4(1)(b))
  - having regard to the funds available to the Secretary of State (section 4(5)(c))
29. We have looked very closely at all the evidence submitted from the parties and consultees. We have concluded that we should approve the application.



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

30. 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 EMR. ORR's copy should be sent for my attention.

### **Public register and administration**

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

Yours sincerely

**Louise Beilby**