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Dear Alexis and Lanita

19th 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. This letter outlines the decision ORR has made on this application under section 22A of the Railways Act 1993 (the Act) to Network Rail and EMR (jointly the parties) and, in due course, we will direct 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 between Crewe and Lincoln, 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. This application was submitted to us as part of that process on 20 May 2024.

Application

4. The purpose of this supplemental agreement is to grant EMR the rights necessary to operate the following services on a **contingent** basis:
 - 11 weekday and 11 Saturday services to be added from Lincoln to Newark Castle; and
 - 11 weekday and 10 Saturday services to be added from Newark Castle to Lincoln.
 - EMR must also relinquish four weekday and two Saturday rights from Newark Northgate to Lincoln, and four weekday and two Saturday rights from Lincoln to Newark Northgate.
5. In its original application, EMR applied for the following rights on a **firm** basis to commence upon the Principal Change Date (PCD) in December 2025 to the expiry date of its track access contract:
 - 11 weekday and 11 Saturday current services from Newark Castle to Crewe services to start from Lincoln; and
 - 11 weekday and 11 Saturday services from Crewe to Newark Castle to be extended to Lincoln.
 - This was to be achieved by adding weekday 11 rights between Lincoln and Crewe in both directions, 11 Saturday rights from Lincoln to Crewe and 10 Saturday rights from Crewe to Lincoln, while relinquishing the following: 11 weekday and 11 Saturday rights between Crewe and Newark Castle in both directions; four weekday and two Saturday rights from Newark Northgate to Lincoln; and four weekday and two Saturday rights from Lincoln to Newark Northgate.
6. ORR is granting the rights on a contingent basis only. The reasons for this decision and the changes from the request in the original application are explained later in this letter. 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

7. The initial industry consultation took place from 21 May to 24 June 2024. Comments in support or stating no objection were received from Great Western Railway, DB Cargo, Transport Focus, Lincolnshire County Council, Newark Business Club and Transport for East Midlands.
8. 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.

9. Cross Country, Freightliner, GB Railfreight, Grand Central and Transpennine Trains 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.
10. London North Eastern Railway (LNER) expressed concerns over the increase in traffic over the Newark Flat Crossing and the services' potential impact on other services using the ECML in this area.
11. West Yorkshire Combined Authority expressed no particular objection but asked for clarification that the application would not result in increased congestion or a negative impact on existing services.
12. Industry was then invited to comment on Network Rail's final representations from 1 to 15 August 2025, and during this time, LNER sent a further response where it expressed concerns about potential performance impacts on the ECML, requesting that the planned performance review following the introduction of these services examines whether EMR on LNER delays at Newark Flat Crossing increase from PCD 2025. Network Rail provided assurances that this work would be done in 2026.

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 provided on 22 May 2024.
14. Following the completion of Network Rail's capacity analysis on the ECML and the other interacting locations associated with this application, namely ECML and Leeds, it sent its final representations on 22 July 2025. Again, we forwarded these to EMR and asked for its comments, which it provided on 13 August 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 in the ECML and Leeds area, which was 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 the ECML as a whole. It stated that to support these rights for the duration of the contract could be perceived as unduly discriminating against other operators. It should be noted here that although the planned services do cross the ECML at Newark Flat Crossing, which is deemed to be a point of interaction by Network Rail, they do not traverse it.
16. In its response to the initial representations EMR detailed the benefits that the proposed services would bring in terms of easing overcrowding on current services,

and expressed disappointment that Network Rail had been unable to give its support at that time. It also stated that it had done its own capacity analysis on Newark Flat Crossing and was confident that the capacity to accommodate its aspirations existed.

17. In its final representations dated 22 July 2025 Network Rail stated that it was now in a position to support the quantum of rights requested, but only on a contingent basis for a period of 12 months with no expectation of continuity and not on a firm basis as EMR had requested. This was because of performance concerns caused by the additional traffic over the Newark Flat Crossing and the subsequent impacts on already-low punctuality baselines. Network Rail's plan is to monitor these factors over 2026 with a view to converting the rights to firm if it is deemed that the performance has not been negatively impacted by the services during that time.
18. In its response to the final representations EMR did not agree that only contingent rights should be supported, citing the view that any performance impacts are likely to be on its own services rather than on others on the ECML, and that all the services have already been accommodated in the timetable. It also stated it was not aware of any other operators having had the same restrictions put on them with regard to "no presumption of continuity" during this process.
19. EMR also expressed concern over the fact that Network Rail's proposed course of action would mean that it would be surrendering firm rights that it already holds and replacing them with contingent rights, to which it was not prepared to agree. It proposed a "compromise solution" that, if ORR was to agree with Network Rail that only contingent rights could be granted for those new services that would intersect with Newark Flat Crossing, EMR should be allowed to retain the firm rights it already held and the contingent rights should apply only to the extensions between Newark Castle and Lincoln.

ORR review

20. 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 these rights do not form part of the ECML ESG timetable but do interact with it when it crosses over the ECML at Newark Flat Crossing and therefore have the ability to impact on it. The considerations detailed below which relate to rights within the ECML ESG timetable consequently were of less importance to this application than for those that are directly affected but we have still been mindful of the possible effect on ECML performance that these services could have.
21. 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.

22. 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.
23. 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.
24. 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.
25. 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.
26. 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.
27. 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.
28. We considered Network Rail's offer of contingent rights only for 12 months against EMR's request for firm rights to the end of its contract. We believe that, given the nature of Newark Flat Crossing (the last remaining flat railway crossing on the Network Rail network in the United Kingdom where two standard gauge lines intersect, meaning trains cross paths on the same level rather than using bridges or tunnels), Network Rail's caution in granting firm rights is reasonable, and that asking to be allowed to review performance as the timetable embeds and progresses is sensible. We also do not believe that it can be stated with confidence at this stage that only EMR's own services would be impacted by any delays and that there would be no effect on other operators. We expect that the parties will work together to convert the rights to firm if this is feasible at a later date.
29. We also considered whether Network Rail had applied the "no presumption of continuity" approach to any other applications in the process. There was at least one other example (the Northern 59th supplemental agreement) where Network Rail stated

it would only support contingent rights for 12 months with no presumption of continuity, so we do not believe that it has acted in a discriminatory manner towards EMR's application. However, as contingent rights are accommodated only when the capacity to do so exists, we do not see the added value to Network Rail of these being time limited, so in this case we are granting them until the expiry of EMR's track access contract, currently the Subsidiary Change Date (SCD) in May 2028.

30. In considering the "compromise solution" that EMR proposed, we could understand the operator's reluctance to surrender firm rights and have them replaced with contingent ones. For this reason, we have concluded that EMR should retain the firm rights it holds between Crewe and Newark Castle and that only the "extensions" between Newark Castle and Lincoln will be granted on a contingent basis. This decision will result in EMR holding a greater quantum of rights to run services over the Newark Flat Crossing than it currently holds. However, we do not agree that the firm rights between Newark Northgate and Lincoln should also be retained. EMR asked to be able to do this so that it would still have firm rights from Newark Northgate to the part of the route where the service joins with the Newark Castle to Lincoln route, which is not at a station call. This would mean that EMR held both firm AND contingent rights for the part of the route between that point and Lincoln, which we do not view as an appropriate situation. EMR must therefore relinquish those firm rights in order to have the extensions granted.

31. We will now work with the parties on the details of the supplemental agreement that we will direct Network Rail to enter into. The parties will need to engage with us at pace to enable this to happen promptly to provide certainty for the December 2025 timetable.

Our duties under section 4 of the Act and our decision

32. We have considered this supplemental agreement and we have concluded that its direction 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))
- 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))



Conformed copy of the track access contract

33. 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

34. 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