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Dear Jules and Alistair,

**17th Supplemental Agreement to the Track Access Contract between
Network Rail Infrastructure Limited (Network Rail) Direct Rail Services
Limited dated 14 December 2019**

1. Today, we issued directions under section 22A of the Railways Act 1993 (the Act) to Network Rail and Direct Rail Services (jointly the parties) to enter into the above supplemental agreement. This letter explains the reasons for our decision.
2. ORR's approval of this application contributes to the support of intermodal and nuclear traffic for various end users and covers a variety of locations on the UK rail network. These directions provide Direct Rail Services certainty for the purposes of planning its business and its ability to deliver further benefits.

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, where Network Rail was not able to agree that there was sufficient capacity and therefore submit agreed applications for our approval.
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 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. On 16 May 2024, Direct Rail Services (DRS) submitted a S22a application requesting 34 new rights (that were previously running under TOVR), 3 speculative rights and 43 amendments to existing rights.
7. The rights relate to intermodal traffic centred on services serving Tesco to/from Daventry and established traffic for Great British Nuclear at Sellafield.
8. The rights are to commence on a firm basis upon the date that the supplemental agreement is entered into by the parties and will expire when the contract expires at Principal Change Date 2030.
9. DRS and Network Rail have produced an updated Schedule 5 rights table to reflect the final position. We have assessed these amendments and are content they are consistent with ORR's amendments policy.

Industry consultation

10. The initial industry consultation ran from 24 May - 24 June 2024. There were a number of comments, objections and concerns raised during the consultation. Many of the comments reflected on the lack of information provided which meant that operators could not fully assess the potential impact these services would have on their own operations. Similarly, part of the rights table was redacted so operators were not fully sighted on the access rights being applied for.
11. When industry was invited to comment on Network Rail's final representations from 4 July – 18 July 2025, LNER and Transport for Wales (TfW) responded.
12. TfW reiterated its previous concerns that some of the services would have an adverse impact on TfW Rail's services and enquired whether DRS is seeking rights to/from Valley NE. Our review found that there are 2 rights contained within this application, which are to/from Valley NR however one is not supported by Network Rail and the other is being relinquished. Therefore, ORR has deemed TfW's concerns effectively closed.
13. LNER asked whether any of the access rights contained within the application could have an impact on LNER's future plans for operating 2-hourly Middlesborough services

and we do not consider that those future aspirations prevent us from making a decision on this application.

Statutory Consultation

14. 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 DRS on 5 July 2024 and asked for its comments. On 1 August 2024, DRS confirmed that it has no comments.
15. On 9 July 2025, we invited DRS to provide a written response to Network Rail's final representations (submitted 27 June 2025). Following no response from DRS we provided an extension to 30 July and then a subsequent extension to 26 August. In the absence of any comments from DRS in relation to this supplemental agreement, Network Rail gave DRS one last opportunity to comment (1 October) in response to Network Rail's final representations. DRS did not respond to this last opportunity and so we have progressed this application on this basis.
16. DRS should note that its lack of engagement on this application has significantly delayed ORR being able to make a determination.

Network Rail's representations

17. In its initial representations dated 28 June 2024, Network Rail stated that not enough information was supplied by DRS for the aspirational rights for future traffic to include in its capacity/performance assessment. Network Rail said that following ORR's letter of 24 April 2024, DRS submitted this application ahead of the usual timescales for aspirational traffic and as a result, some of the early development work and due diligence that Network Rail would have completed with the operator ahead of submission had not been completed. As a result, a number of elements of the application were not fully mature, and further assessments may be required as the aspiration develops.
18. The application also seeks new and amended rights on ECML so Network Rail would only be in a position to assess the application following a decision on the ECML ESG implementation and an ECML Taskforce recommendation as to what Timetable the ECML ESG will be implementing.
19. Network Rail provided further representations on 22 November 2024 confirming that most of the services in this application are currently in the Working Timetable with some running as TOVRs – starting at various times between 2021 and 2024. Two of the aspirational services being applied for are not currently in the Working Timetable but were bid in as new traffic intended to start in January 2025.
20. To enable these services to run in the December 2024 timetable, a parallel General Approval (18th SA) was progressed for Contingent Rights for the December 2024 timetable only with no presumption of continuity. Network Rail said that it has undertaken analysis to understand whether any of these requested Rights could be progressed as a Section 22 application for Firm Rights until the end of the contract however to ensure consistency across applications, Network Rail confirmed that it

would continue to follow the process outlined in Network Rail's high-level plan of August 2024. As part of this analysis, Network Rail identified a number of interactions with other services, but also with several locations noted in ORR's letter of 24 April 2024, that prevented it from progressing the application further.

21. In its final representations dated 27 June 2025, Network Rail confirmed its partial support for the updated application. Network Rail can now support 62 Firm access rights with 1-hour windows and 6 Contingent access rights with 1-hour windows. There are 15 access rights that Network Rail supports subject to amendments being made so that they align with the Working Timetable (mostly small changes to the departure and/or arrival windows).
22. There are 5 access rights that DRS would like to relinquish and 5 access rights that Network Rail do not currently support. Out of the 5 that Network Rail does not support, 2 are for paths that have not been accommodated in the December 2025 Working Timetable. One path was requested to be removed through the D-40 access proposal and therefore Network Rail does not support a right where there is no corresponding path in the WTT. Finally, Network Rail does not support TWThO 6A73 and MO 6A73 because the existing rights that DRS hold already match the WTT.
23. There are 15 access rights in the application which are for train services that operate with electric locos. Network Rail does not have significant power supply concerns as they are either not routed through the areas or times where there are power supply concerns, or the rights are minor amendments that do not change the impact on power supply.
24. Although Network Rail identified applications that could present a conflict against the rights within DRS' 17th SA, our review found that these potential conflicts pose minimal risk. The applications that Network Rail identified were:
 - Freightliner Heavy Haul 27th – ORR has identified this conflict as low risk as Network Rail has already confirmed that the Freightliner Heavy Haul services are not in the current timetable nor in the access proposal for D-40.
 - Freightliner Heavy Haul 28th – This application has since been withdrawn therefore no longer presents a conflict.
 - Freightliner Intermodal 26th – ORR has identified this conflict at low risk as the application is not supported by Network Rail and has since been substantially changed. The rights that Freightliner Intermodal now seek do not interact with this application.
25. East Coast Trains (Lumo North West) – This application has been rejected by ORR and so no longer presents a conflict.
 - The Wrexham, Shropshire & Midlands Railway Company Ltd. – This application has been rejected by ORR and so no longer presents a conflict.

Performance

26. Network Rail has assessed the performance of each headcode against the following criteria:

- Right Time Departures - average above 80% over 13 periods = pass
- Freight Operating Company on Other Operators delay - less than 5 instances over 13 periods = pass

27. Most headcodes in the application passed the criteria and Network Rail is satisfied that those services perform well and that no further analysis is required. However, Network Rail has identified 6 rights that it would support on a contingent basis only due to the reasons set out below (which are noted as such under 'Special Terms' in the Rights Table):

- 4E49 Daventry DRS (Tesco) to Doncaster IPORT: 4 access rights.
- 4M51 South Bank Tees Dock (DRS) to Daventry DRS (Tesco): 2 access rights
- There were also some services that did not meet the performance criteria but have been supported by Network Rail with robust mitigation plans in place:
 - 4S44 Daventry INT RFT RECEP FL to Coatbridge (DRS)
 - 4L48 Daventry DRS (Tesco) to Tilbury2 Container

28. The Gloucester area was carefully considered by Network Rail as it is highly constrained however the 3 rights applied for in this application that pass through the area are not a concern for Network Rail, can be accommodated from a timetable capacity perspective and do not conflict with other applications.

29. The Cardiff area was also closely scrutinised by Network Rail however the 3 rights within this application are for paths that run to/from Wentloog which use the mainline between Newport and Cardiff Central only as far as the terminal so is not impacted by Network Rail's strategic workstream for the area around Cardiff Central.

ORR review

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

31. We are satisfied that Network Rail has followed a fair process that is in line with other competing applications submitted. We have reviewed the potential conflicts between this application and those highlighted by Network Rail, including the three access rights now being sought by Freightliner Intermodal in its 26th Supplemental Agreement, and do not foresee any conflicts. We agree with Network Rail's assessment on performance in that this application should not have an impact. Network Rail have identified the worst performing headcodes in this application and have mitigation in place to help support improvement in performance. Network Rail has also supported

two services (4E49 and 4M51) on a contingent basis only due to particularly poor performance at Daventry. This approach is in line with other applications where performance is a concern. In the absence of any comments from DRS, we see no reason not to support these access rights being applied for.

Conclusion

32. 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.
33. 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.
34. 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.
35. 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.
36. 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.
37. Overall, we concurred with Network Rail's assessment regarding capacity and performance and have directed the rights as included in the updated Rights Table provided by Network Rail on 5 November 2025. We would however like to be kept informed of future outputs of performance analysis particularly for the services which presented the biggest challenge.

Our duties under section 4 of the Act and our decision

38. 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)(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 and goods (section 4(1)(b))
- having regard to the funds available to the Secretary of State (section 4(5)(c))

39. 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

40. 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 Direct Rail Services Limited. ORR's copy should be sent for my attention.

Public register and administration

41. Electronic copies of the directions 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

Ryan Holt

