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Dear Sarah and Ian

**41st Supplemental Agreement to the Freight Track Access Contract
between Network Rail Infrastructure Limited (Network Rail) and GB
Railfreight Limited (GBRf) dated 11 December 2016**

1. Today, we issued directions under section 22A of the Railways Act 1993 (the Act) to Network Rail and GBRf (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 will provide GBRf the rights necessary to support many of its established freight flows. These directions provide GBRf certainty for the purposes of planning its business and its ability to deliver further benefits through future investment.

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.
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. The purpose of the 41st supplemental is to provide GBRf with the rights necessary to continue operation of its existing services.

7. The original application was for 16 firm access rights with 1 hour windows, to commence on approval until the end of GBRf's track access contract. These trains are currently running under contingent rights.

Industry consultation

8. The initial industry consultation took place from 28 May to 28 June 2024. Industry was then invited to comment on Network Rail's final representations on the applications in September and October 2025.

9. Comments in support or stating no objection were received from DB Cargo and East Midlands Railway. Arrive Rail London, Avanti West Coast, Freightliner, Grand Central and LNER 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 its support, nor about the final details of the ECML ESG timetable.

10. In the opportunity to comment, GTS and GWR confirmed support for the application. No other comments were received.

Statutory Consultation

11. 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 GBRf and asked for its comments. GBRf provided comments on 22 July 2024.

12. 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 31 July 2025. Again, we forwarded these to GBRf and asked for its comments, which it provided on 1 August 2025.

Network Rail's representations

13. In its final representations, Network Rail stated partial support for this application.

14. Network Rail supports 14 of the firm rights with one-hour arrival/departure windows – this is where the services have been accommodated in the December 2025 timetable. Network Rail confirmed it can support these rights until the end of GBRf's current access contract (the PCD in December 2030).

15. Network Rail does not support one of the requested rights, 6M83, as it has been found to be non-compliant with the Section 4 possession opportunities in the Engineering Access Statement.

16. GBRf responded on 19 September 2025 confirming that it accepts Network Rail's position as set out in its Final Representations on the above rights.

17. Network Rail partially supports one right, 6E46 (SX-Y) Ribbleshead VQ GBRF – Doncaster Down Decoy, but only as a Firm quantum only (24 hour window) right, with no presumption of continuity beyond the PCD in December 2025, due to "a small number of specific operational challenges at key locations at busy times of the day for this service". Since the submission of Network Rail's Final Representations, Network Rail has carried out further analysis on this service, and has confirmed that it would be able to support a 1 hour window Firm right from the SCD in May 2026, subject to acceptable performance of the service.

18. GBRf stated that it "cannot understand Network Rail's reasoning for not supporting this firm right given that the train slot has been offered in the December 2025 Timetable, given it has done so for other firm rights in the area". GBRf feels a firm right with a 1 hour window should be approved from PCD 2025, as "any non-compliance is already encompassed in the Dec '25 offer so, as with other offers, a 1 hour window should be approved."

ORR review

19. We carried out a full review of the application, 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. In general we concurred with Network Rail's assessment regarding capacity and performance on the majority of the rights.

26. Regarding 6E46, we did not view that Network Rail provided sufficient specific evidence to justify its position, or to justify why the service should be treated differently to other services accommodated in the December 2025 timetable. We did not view that it had been sufficiently demonstrated that there would be a performance risk with directing long-term firm rights with a 1 hour window from December 2025 for this right as applied for by GBRf, rather than with a 24 hour window as proposed by Network Rail, especially as the path has already been accommodated in the December 2025 timetable.

Our duties under section 4 of the Act and our decision

27. 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)); and
- having regard to the funds available to the Secretary of State (section 4(5)(c)).

28. 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

29. 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 operator. ORR's copy should be sent for my attention.

Public register and administration

30. 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

A large black rectangular box redacting the signature of David Reed.

David Reed