

John Trippier
Senior Executive, Access and Licensing
Telephone:[Redacted]
Fax: [Redacted]
Email: [Redacted]



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[Redacted]
Customer Manager
Network Rail Infrastructure Limited
4th Floor, George Stephenson House
Toft Green
York
YO1 6JT

[Redacted]
Track Access Manager
Northern Rail Limited
4th Floor, Northern House
9 Rougier Street
York YO1 6JT

Dear [Redacted]

Approval of the Sixteenth Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited and Arriva Rail North Limited

The Office of Rail and Road (ORR) has today approved the Sixteenth Supplemental Agreement to the Track Access Contract (TAC) dated 3 March 2016 between Network Rail Infrastructure Limited (Network Rail) and Arriva Rail North Limited (ARN) (jointly the parties).

The majority of changes introduced by this agreement were originally submitted to ORR under section 22A of the Railways Act 1993 (the Act) as ARN had not been able to reach agreement with Network Rail. However, following the industry consultation and further discussions between the parties, they reached an agreed position and ARN withdrew that application. A revised application with more Contingent Rights than in the previous application was submitted to ORR for approval under section 22.

Purpose of the agreement

The agreement introduces a mix of Firm and Contingent Rights from the Subsidiary Change Date 2019 mainly to the Principal Change Date 2025 (some rights time limited) in order to facilitate the full introduction of ARN's Train Service Requirement 2 (TSR 2) timetable. It had originally been intended to introduce these services from December 2017, however, due delays in the delivery of infrastructure works that was not possible.

ARN said that securing these rights from May 2019 and until 2025 will allow it to deliver the strategic objectives of the franchise and realise the following benefits:

- Transform the rail offering in the North; improving connectivity and realising the benefits of strategic infrastructure investments including the Northern Hub and North-West Electrification Programme. This is key to substantially increasing rail's market share in the North and in doing so unlocking major economic and social benefits.
- Provide ARN with the assurance it can maintain the delivery of its Train Service Requirement (TSR), committed to with DfT and Rail North as building blocks to deliver the above benefits.
- Provide the assurance to ARN that it can secure a return on its investment in the planned timetable enhancements through long term revenue benefits generated over the remainder of its franchise.

ARN explained that many of the services covered by this supplemental have been operating since May 2018/December 2018 under Contingent Rights that were due to expire at the Subsidiary Change Date 2019.

The agreement introduces substantial changes to quantum, calling patterns, and timing loads, in Tables 2.1, and 4.1 of Schedule 5, and, 7C of Schedule 7 (Default Consist Data).

It also adds Contingent rights within Tables 2.2. ARN had originally sought Firm Rights for these services. However, Network Rail would only agree to Contingent Rights over concerns in relation to capacity and longer term performance over the Castlefield Corridor.

In relation to the rights included as Contingent, ARN considers that Network Rail has not been able to substantiate its concerns. It has therefore informed us that it will look to submit a separate Section 22A application after the timetable change date in order to secure Firm Rights for those services.

Consultation

The pre-application consultation was carried out for 35 days ending on 25 January 2019, while the application was proposed to be submitted under section 22A. The views expressed in responses to that consultation remain valid after the application was withdrawn and re-submitted as an agreed application under section 22.

Consultees raised numerous issues which ARN has made reasonable efforts to address and where possible resolve. Several respondents voiced concerns over capacity and the potential for an adverse impact on performance in the short term and beyond.

The conversion of some rights sought as Firm in the section 22A, and changed to Contingent in the section 22 has in part assisted with addressing those concerns.

First Transpennine Express was largely content to accept the changes proposed. It sought assurance that the proposed timetable was compliant with the Train Planning Rules and that performance would continue to improve. ARN noted that it was engaged in the national industry PMO processes which provides assurance on timetable readiness and risk in a structured way prior to timetable change being implemented. It also provided an example of where the rights had been altered following the consultation: Blackpool to Macclesfield - which became Blackpool – Hazelgrove. The reason for this change was to protect performance by avoiding linking the Castlefield Corridor to the two-track main line section between Cheadle Hulme and Macclesfield.

Cross Country did not object to ARN's proposals but said it wanted to work closely with ARN and looked to formulate contingency plans which would assist both operators to deliver the best possible service. This was with particular regard to the extension of services between Blackpool and York and the additional Nottingham-Leeds services via Barnsley. ARN welcomed Cross Country's support and agreed to this request.

London North Eastern Railway was concerned that some rights sought were incompatible with its already approved rights and may need to be removed from 2021. It questioned the wisdom of introducing rights on this basis. This was in particular regard to Leeds – Doncaster services. ARN noted that although Network Rail had offered a fully validated timetable for the rights in question up to 2025, following further consideration it had been agreed that they would be included as Contingent Rights until May 2020 only. At that time, capacity will be reviewed with the intention of extending the rights further. Following this, LNER withdrew its objections.

West Yorkshire Combined Authority provided a lengthy response focussing on its strategic objectives for the passengers that it represents, in some parts advocating the introduction of further additional services. These points were all noted by ARN but they do not affect this application.

Transport Focus raised a number of queries relating to the expression of rights. ARN responded and clarifications were provided and corrections made where needed.

ARN was not able to fully address or resolve the concerns raised by East Midlands Trains (EMT). EMT's primary concerns were potential direct and in-direct operational performance impacts on EMT's services operating in the Manchester, Sheffield and Leeds areas. EMT asked for a comprehensive performance analysis showing the capacity and performance trade-offs of these proposals. We understand that although work is underway to provide this, it is not available at this time and will not be available until after the timetable change. As such, EMT considers that adequate assurances have not been provided that all key risks for the May timetable are identified and that there are not sufficient mitigation measures ready to be put in place to restore performance to as close to pre-May 2018 levels as is practicable.

EMT asked for further rights to be approved as Contingent Rights. ARN strongly objected to this suggestion. ARN said that in order to reach agreement with Network Rail it had already reluctantly agreed that its rights traversing the Castlefield Corridor in the Manchester Area and some of its services which interface with Leeds and Sheffield would be Contingent and time limited.

ORR review

We are particularly concerned by the late submission of this application (both as section 22A and section 22 applications). This made it very difficult for us to conduct an appropriate review of the agreement, or assess the validity of the concerns raised by respondents to the industry consultation. It is imperative that the industry resets the sale of access rights process and ensures that track access applications are submitted earlier, in line with ORR's published track access guidance. This will allow sufficient time for third party objections to be fully considered and for ORR to give full and appropriate consideration to future applications.

We note that EMT's concerns have not been fully addressed and that performance modelling that could have assisted doing this will not be available until after the timetable change. We have considered the extent to which ARN and Network Rail have sought to address these concerns, and what further steps could potentially be taken in order to remove the risks to performance that EMT considers will be introduced.

We note that Network Rail considers the new access rights are fully validated within the timetable and its view that performance will not be unacceptably affected. We also note that the new access rights Network Rail considers to be most contentious have been included in this agreement as Contingent. Network Rail will therefore have flexibility in how it deals with them in future timetables, and can remove relevant services from future timetables if that is required in order to maintain acceptable performance levels.

We have considered EMT's request to approve more of ARN's rights as Contingent and short term. However, ARN already have a significant number of rights limited in this way, and therefore we consider that agreeing to this would be disproportionate. This is consistent with our duty to enable persons providing railway services to plan their businesses with a reasonable degree of assurance

However, we expect ARN, EMT, Network Rail and any other relevant train operators to work closely together in order to identify any performance problems that may arise and do all they can to mitigate them. If mitigation is not successful we will expect ARN to consider amending its services for the December 2019 timetable where possible, and May 2020 if not.

Following the implementation of the May timetable, we will look closely at the performance impacts of ARN's services and we will take that information into account when assessing any upcoming applications for the December 2019 and May 2020 timetables and any application to convert Contingent Rights to Firm rights.

ORR's conclusions

In considering the agreement and in reaching our decision, we have had to weigh and strike the appropriate balance in discharging our statutory duties under section 4 of the Act. We have concluded that approval of this supplemental agreement is consistent with our section 4 duties, in particular those relating to 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)) and enabling persons providing railway services to plan their businesses with a reasonable degree of assurance (section 4(1)(g)).

Conformed copy of the track access contract

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 Train Operator. Please send the conformed copy to me at ORR.

Copies of the approval notice and the agreement will be placed on ORR's public register and copies of this letter and the agreement will be placed on the ORR website. I am also copying this letter without enclosures to Peter Craig at Network Rail and Keith Merritt at DfT.

Yours sincerely

A handwritten signature in black ink, appearing to be 'J. Trippier', written in a cursive style.

John Trippier