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OFFICE OF RAIL AND ROAD

28 February 2018

Chris A'Barrow  
Head of Customer Relationship Management  
Network Rail Infrastructure Limited  
Basingstoke Campus  
Gresley Road  
Basingstoke  
Hampshire RG21 4FS

Lee Shuttlewood  
First MTR South Western Trains Limited  
Friars Bridge Court  
41-45 Blackfriars Road  
London  
SE1 8NZ

Dear Chris and Lee,

**Approval of the 76th supplemental agreement to the track access contract between Network Rail Infrastructure Limited and First MTR South Western Trains Limited**

1. The Office of Rail and Road (ORR) has today approved the 76th supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and First MTR South Western Trains Limited (South Western Railway "SWR"), submitted to us formally on 27 February 2018 under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission of a draft agreement for our consideration. The purpose of this letter is to set out the reasons for our decision.

**Purpose of the agreement**

2. This agreement extends SWR's track access contract from its current expiry date of December 2018, to the Principal Change Date in December 2019.

3. The contract extension includes quantum only rights and removes the journey time and interval protection in the existing contract. This is in line with Network Rail's policy since September 2015 of agreeing more flexible access rights for operators than it has previously.

4. The supplemental agreement also removes a number of rights between London Waterloo and Southampton which Network Rail felt it could not agree to extend at this stage due to the existing application from prospective open access operator Grand Southern for rights between those stations.



INVESTOR IN PEOPLE

5. The firm right for one peak Clapham Junction to Waterloo service, as recently added to contract through the 72<sup>nd</sup> supplemental agreement, has also been removed, as it was not included in the SWR section 17 consultation.

### **Background**

6. Network Rail consulted the industry on SWR's section 17 application for a new contract in August 2017. This application is currently under consideration by ORR.

7. In order for SWR to have firm rights in place to make an Access Proposal for the December 2018 timetable, SWR and Network Rail have submitted this section 22 application to extend their current contract whilst assessment of the new contract continues.

### **Consultation**

8. No issues were raised in the consultation in August 2017 on the SWR section 17 application relating to the continuation of existing services. For this reason we concluded that no new consultation would be necessary for this one year extension.

9. NR and SWR updated key stakeholders on the proposal by email on 21 February 2018.

### **ORR's review**

10. We reviewed the application and it did not raise any operational, performance or economic concerns.

### **ORR's conclusions**

11. Following our review of the application, we are content that there are no operational, performance or economic concerns which should preclude our approval.

12. 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 agreement is consistent with our section 4 duties, in particular those relating to:

- protecting the interests of users of rail services;
- promoting the use of the railway network in Great Britain for the carriage of passengers and goods, and the development of the railway network, to the greatest extent that ORR considers economically practicable;
- contributing to the development of an integrated system of transport of passengers and goods;

- promoting competition in the provision of railway services for the benefit of users of railway services; and
- enabling persons providing railway service to plan the future of their businesses with a reasonable degree of assurance.

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

13. 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 SWR. ORR's copy should be sent for my attention.

### **Public register and administration**

14. In accordance with section 72 of the Act, we will place a copy of the approval notice and the agreement on our public register. The parties have not asked us to redact anything (as provided for by section 71(2) of the Act) prior to placing it on the register.

15. Copies of this letter, the approval notice and the agreement will be sent to Keith Merritt at the Department for Transport. 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.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'David Reed', is written over a light blue horizontal line.

**David Reed**