

**David Reed**  
**Senior Executive, Access and Licensing**  
Telephone: 020 7282 3754  
Email: david.reed@orr.gsi.gov.uk



OFFICE OF RAIL AND ROAD

1 May 2018

Mark Garner  
Customer Manager  
Network Rail Infrastructure Limited  
George Stephenson House  
Toft Green  
York  
YO1 6JT

Louise Mendham  
Planning and Performance Manager  
First Hull Trains  
4<sup>th</sup> Floor, Europa House  
184 Ferensway  
Hull  
HU1 3UT

Dear Mark and Louise,

## **Approval of the ninth supplemental agreement to the track access contract between Network Rail Infrastructure Limited and Hull Trains Company Limited**

1. The Office of Rail and Road (ORR) has today approved the ninth supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and Hull Trains Company Limited (Hull Trains), submitted to us formally on 23 April 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. Since December 2016 Hull Trains has been running an additional Saturday service each way between London Kings Cross and Hull. This agreement extends the rights for this service from the Subsidiary Change Date in May 2018 until the Subsidiary Change Date in May 2019.

### **Consultation**

3. Network Rail consulted the industry on these services in January and February 2018. CrossCountry and Great Western Railway responded noting they had no objection to the application. Transport Focus supported the application.

4. Virgin Trains East Coast (VTEC) responded noting that it would expect the application to be subject to ORR's Not Primarily Abstractive (NPA) test, and that if ORR is



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satisfied that the proposal passes the test, it would have no objection to the application noting that the rights expire in May 2019.

### **ORR's review**

5. We reviewed the application and it did not raise any operational concerns.

#### *NPA test*

6. We conducted our Not Primarily Abstractive (NPA) test on these services during our assessment of the Hull Trains 6<sup>th</sup> supplemental agreement, which extended the rights between December 2017 and May 2018. This included an analysis of the revenue impact since the new services commenced, and also considered the impact of the services continuing beyond May 2018.

7. We were satisfied that the proposals would not be primarily abstractive. Further, the Department for Transport in its consultation response to the Hull Trains 6<sup>th</sup> supplemental agreement highlighted this service "as a good example of the market responding to passengers' needs and complementing the franchising system, whilst not significantly impacting on taxpayers".

### **ORR's conclusions**

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

9. 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**

10. 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 Hull Trains. ORR's copy should be sent for my attention.

### **Public register and administration**

11. 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.

12. 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 and Phil Dawson at VTEC.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Reed', is positioned above the printed name.

**David Reed**

