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Keith Swallow  
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Dear Karen and Keith

**Consent to modify Appendix 1 of Schedule 8 –Network Rail Benchmark Per Train**

ORR has today issued a Notice of Consent to the request made by Network Rail and South Yorkshire Supertram Ltd (SSYL) (together, the parties) under paragraph 2.4 of Schedule 12 of the track access contract dated 4 May 2018 (the TAC), to modify retrospectively Appendix 1 of Schedule 8 of the TAC. As a result, the Network Rail Benchmark Per Train shall be amended to “0.16”. This letter explains the reasons for our decision.

The parties have jointly reviewed the benchmarks and are in agreement that, in Appendix 1 of Schedule 8 of the TAC, the Train Operator Benchmark should remain unaltered at 0.06 minutes and that the Network Rail Benchmark shall be revised from 0.35 minutes to 0.16 minutes.

The proposal submitted to ORR set out performance data from 19 periods of operation had been reviewed and the parties had agreed to use to use 13 consecutive periods of ‘normal’ performance data as the basis for the benchmark re-calibration calculations. This discounted periods impacted by the Covid 19 pandemic but included periods impacted by significant flooding incidents.



The parties further proposed the upper and lower review levels in Appendix 1 and paragraph 10 Reviews of Rates and Benchmarks in Schedule 8 are removed and replaced with paragraph 17 Amendments to Appendix 1 in Schedule 8 of the ORR model passenger contract

## **ORR review**

### Benchmarks.

The initial benchmarks used in the TAC were not be based on actual running data. This was due to SYSL being a new train operator through its tram-train service. Running data is now available from the tram-train pilot. We consider it reasonable and appropriate that the parties have used 13 periods of data for this calibration, rather than the 19 specified within the contract.

Schedule 12 of the TAC sets out that the parties can review the benchmarks and request ORR consent to amend them. The parties have correctly followed the procedure set out in schedule 12 of the TAC and ORR consents to this change. The change shall have retrospective effect from 1 April 2021.

### Future Amendments to Appendix 1

We note that the parties are in agreement that this section of the contract should be brought in-line with the industry standard terms, and do not object to that change. However, the TAC does not contain a mechanism that would allow this change to be made without the parties entering into a Supplemental Agreement for that purpose. It is therefore not possible for ORR to consent to this aspect of the proposal.

## **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 SSYL. ORR's copy should be sent for my attention.

## **Public register and administration**

Electronic copies of this letter, the approval notice and the agreement will be sent to the Department for Transport and Network Rail's Policy and Access Team. Copies of the approval notice and the agreement will be placed on ORR's public register (website) and copies of this letter and the agreement will be placed on the ORR website.

Yours sincerely

A handwritten signature in black ink, appearing to be 'J. Trippier', written over a light blue horizontal line.

**John Trippier**