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Contracts Adviser  
First ScotRail Limited  
Atrium Court  
50 Waterloo Street  
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Dear Nicholas and Sam

## **Approval of the Fifty-Eighth Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited and First ScotRail Limited**

1. The Office of Rail Regulation (ORR) has today approved the Fifty-Eighth Supplemental Agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and First ScotRail Limited (ScotRail) (jointly the parties), submitted to us formally on 21 April 2014 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. The purpose of this agreement is to permit First ScotRail Limited (FSR) to amend Schedule 7 of its Track Access Contract to permit the extension of on-train metered (OTM) billing of EC4T charges.
3. This application is to add further units as follows:
- Class 334 x 3 cars (40 units)



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4. Class 334 is currently not included in the Traction Electricity Rules (TERs). The parties have therefore also submitted an application to amend Appendix 2 and Appendix 4 of the TERs in respect of the operation of this class to be backdated to take effect from 1 April 2014

### **Consultation**

5. FSR and Network Rail took the view that consultation of 14 days was suitable since that this application was only to add a further class of stock to that which was already listed in the Appendix 7D of Schedule 7. Consultation closed on 21 April 2014. No issues were raised by the consultees.

### **ORR review**

6. We considered the submission from an engineering perspective and raised several technical queries relating to the compliance statement and the conformity assessment, particularly the calculation relating to the tolerance factor in the TERs.

7. In resolving our concerns we engaged in lengthy technical discussion direct with First ScotRail and their technical consultants. They were able to forward technical information that aligned with the figures submitted and we considered this sufficient for the matter be approved on the basis of the formal statement from the parties.

8. The Form P was amended on that basis and resubmitted.

### **ORR's conclusions**

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 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**

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

11. Copies of this letter, the approval notice and the agreement will be sent to Ray Harris at DfT. 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 Chris Armitage at Network Rail.

Yours sincerely

**Andrew Whittington**