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Dear [Redacted]

Approval of the 6th supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and XC Trains Limited (XCT) (jointly, “the parties”)

1. We have today approved the above supplemental agreement submitted to us formally on 13 May 2019 under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission on 18 March 2019 of a draft agreement for our consideration. This letter explains the reasons for our decision.
2. This agreement adds a number of additional rights, in various locations, to the parties' track access contract from the Subsidiary Change Date 2019 until the expiry of the current contract on the Subsidiary Change Date. Further detail is set out in the attached Annex to this letter.
3. Network Rail undertook the usual industry consultation which ended on 12 March 2019 with no concerns raised apart from objections from Great Western Railway (GWR). GWR accepted that the services in the May 2019 timetable had been validated with no impact on GWR services but was concerned at how XCT's services around Exeter might impact on GWR's enhanced timetable for December 2019. GWR also questioned whether the proposed rights were in XCT's franchise agreement.
4. Responding to the latter point XCT said it did not consider this relevant as timetable participants often make changes and rights applications which are not strict franchise requirements. However in this case, it confirmed the service extensions were a requirement of XCT's current Direct Award for December 2018 but were not delivered then

due to available resource within Network Rail's capacity planning team being allocated by Network Rail and the & PMO to other work packages. XCT said it had full PMO support for these changes and had a green RAG status.

5. GWR listed a number of proposed timings for its enhanced December 2019 timetable which it said clashed with XCT proposed timings. XCT explained it did not have journey time protection and was willing to be flexible with station calls and specific timings in order for both operators' services to be accommodated. XCT mentioned that the work the Western Event Steering Group had undertaken for December 2019 had not highlighted any significant concerns about the compatibility of XCT's services and GWR's proposed December 2019 services. XCT said that it considered the potential timing clashes raised by GWR would be easily resolvable through the normal timetable process. XCT noted that GWR had not yet sought rights for the December 2019 timetable and observed that rights applications cannot reasonably be assessed against any number of future possible timetable iterations.

6. XCT said that there was no allegation that there was a shortage of capacity and that analysis on the corridor in question showed capacity utilisation, even with the new and extended XCT services together with the current and December 2019 GWR services, would not exceed 60% at its highest point and was more typically around 30% to 40%.

7. While we acknowledge GWR's is concerned to ensure that it reaps returns to the industry and the economy on the significant investment in infrastructure and rolling stock, we are not convinced that XCT's proposed service enhancements will adversely affect this to any great extent. The parties must now work together to ensure the December 2019 timetable and FGW's enhanced services can be introduced successfully. It is imperative the industry works better together to ensure more advance planning and consultation and end this 'just in time' access rights process.

8. 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)).

9. 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.

10. Electronic copies of this letter, the approval notice and the agreement will be sent to Keith Merritt at the DfT and to Peter Craig at Network Rail. 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. A copy of this letter will also be sent to Rob Holder at GWR.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jonathan Rodgers', written in a cursive style.

Jonathan Rodgers

Annex

- 1) Extensions to two of the current SX Bristol Temple Meads to Manchester Piccadilly services to begin at Exeter St. David's calling at Tiverton Parkway and Taunton.
- 2) A new service from Exeter St. David's to Birmingham New Street calling Tiverton Parkway, Taunton, Bristol Temple Meads, Bristol Parkway and Cheltenham Spa. This will apply to one train only in SX.
- 3) One current SO Leeds to Southampton via Doncaster service will now start at York. The current SX service from Newcastle to Birmingham via Doncaster will be amended to start from York to reflect the train path offered in the December 18 timetable offer, this is a contingent right. This will enable XCTL to serve new markets
- 4) Three of the current Manchester Piccadilly to Bristol Temple Meads trains will extend to Exeter St. David's calling at Taunton and Tiverton Parkway and will apply to SX services only. This will ease crowding on this route.
- 5) 1 call at Morpeth as additional station for Newcastle to Edinburgh services.
- 6) In the Nottingham to Cardiff services calls have been included for the new station Worcestershire Parkway with Bromsgrove calls being removed from the calling pattern.
- 7) One additional right between Bristol Temple Meads and Birmingham New Street via Gloucester (SX AM only) balanced by the removal of one right between Gloucester and Birmingham New Street SX. There will also be one additional right (SX PM only) between Leicester and Gloucester via Birmingham New Street, which will be balanced by the removal of one right between Leicester and Birmingham New Street. These changes are to facilitate one existing service starting at Bristol Temple Meads vice Gloucester in the morning, and one existing service from Leicester terminating at Gloucester vice Birmingham New Street in the evening.
- 8) Correction of timing loads from HST to 221 on the following routes: Exeter St. Davids to Bristol Temple Meads, Bristol Temple Meads to Exeter St. Davids and Leeds to Newcastle (Table 2.2).