

**Proposed Track Access Contract Between  
Network Rail Infrastructure Limited and East  
Coast Main Line Company Limited under Section  
17 of the Railways Act 1993**

**Network Rail's Representations**

**28 May 2014**

## **Executive Summary**

The East Coast Main Line is a valuable asset in the national transport system. It is a multi user route, combining freight, commuter services and long distance passenger service, both franchise and Open Access. Infrastructure enhancements have been completed in Control Period (CP) 4 and more are due to be completed in CP5.

Network Rail (NR) welcomes the opportunity to grow this service offering. Further discussions are required, due to the fact that there are elements of this Application that Network Rail may be able to support in the future, but can't at this time due to insufficient information. These are outlined below in NR's response.

NR is continuing to work constructively with East Coast Main Line Company Limited (EC) regarding this Application, and will keep ORR up to date as those discussions progress.

## Comments on the Form P application form

EC state that from May 2020 their daily services will increase “from 155 per day to almost 200 services per day with faster journey times to key destinations”.

To clarify, the Track Access Contract (TAC) proposed as part of this section 17 application provides the following:

- Part A, between the Principle Change Date 2016 to the Subsidiary Change Date in 2020: there are 155 trains per weekday (plus an additional service on a Friday from Newcastle to Edinburgh), 102 trains on a Saturday and 103 trains on Sunday.
- Part B, between the Subsidiary Change Date in 2020 to the Principal Change Date in December 2024: there are 193 trains per weekday, 103 trains on a Saturday and 103 trains on Sunday.

In the current TAC, there are 156 trains per weekday and 102 trains on a Saturday and 99 trains on a Sunday.

EC state that the agreement proposed is based upon the model contract. Whilst the model contract has been used as a base there are several bespoke elements to the TAC proposed which are discussed in more detail in the sections that follow.

EC state the “new contract commences at the Principal Change Date in December 2016 and is for eight years (from the expiry of the existing contract) based upon commercial justification supplied to ORR”. Elsewhere in the application it is stated that “Justification will be provided to Network Rail Sale of Access Panel & ORR for the additional specificity being sought.” This material has not yet been provided to NR.

In section 4.3 it is stated that : “The value of the business is vested in the quality of the rights held, allowing the business to be managed with a degree of certainty and to maximise premium payments back to government, thereby reducing the level of taxpayer support to the industry as a whole.”

NR understands the request for access rights in order to safeguard revenue generation (and maximise premium payments back to government), however, such rights can constrain NR’s ability to plan, develop and optimise future timetables.

Under 4.5: it is stated that “The fleet will consist of Class 800 (bi-mode) and Class 801 series (electric) and will have the following improvements (compared to the existing fleets):

Uniform operating characteristics (braking and acceleration), enhanced speed capability (140 mph), higher capacity (627 seats for 9 car Class 800/801 v 537 seats for a Mark IV) so can achieve improved journey times on all core routes.

The fleet consists of the following formation (with 2x 5 car operation in the peaks):

10 x 9 car bi-mode plus 3 x 9 car bi-mode spare sets (Class 800 series)

26 x 9 car electrics plus 4 x 9 car electric spare sets (Class 801 series)  
8 x 5 car bi-modes plus 2 x 5 car bi-mode spare sets (Class 800 series)  
10 x 5 car electrics plus 2 x 5 car bi-mode spare sets (Class 801 series)  
(54 diagrams per day) plus 11 spare sets per day.”  
NR would need to understand whether different unit formations performed differently in deriving and applying timing loads.

## Comments on the proposed contract

### Page numbering

NR notes that the page numbering in the document requires adjustment.

### FRONT END

#### CONTENTS:

- Page v:

#### *“SCHEDULE 4”:*

NR notes that “PART 3: COMPENSATION FOR RESTRICTIONS OF USE” needs to be added into the CONTENTS section, along with the applicable page number, as there is a section within the contract that covers this.

#### *“SCHEDULE 5”:*

NR notes that the contents of this section, along with the applicable page numbers for each sub-section (i.e. 1. Definitions, 2. Passenger Train Slots, etc), need correction to reflect the contents of Part A and Part B.

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#### *“SCHEDULE 7: TRACK CHARGES AND OTHER PAYMENTS”*

NR notes that the contents of this section needs correction as per the ORR model TAC, along with the applicable page numbers for each PART and sub-section.

### MAIN BODY

NR would expect the correct registered office to be inserted when the successful bidder for the franchise is known.

### 1 INTERPRETATION

#### 1.1 Definitions

*““Applicable Engineering Access Statement” means the Engineering Access Statement in force in respect of the Routes on the Principal Change Date 2014, as from time to time amended or replaced under Part D of the Network Code;”*

The ORR model recommends inserting the date on which Services may first be operated by the Train Operator under this contract, therefore this should be “the Principal Change Date 2016”.

*““Applicable Timetable Planning Rules” means the Timetable Planning Rules in force in respect of the Routes on the Principal Change Date 2014, as from time to time amended or replaced under Part D of the Network Code;”*

The ORR model recommends inserting the date on which Services may first be operated by the Train Operator under this contract, therefore this should be “the Principal Change Date 2016”.

“*Expiry Date*” means the Principal Change Date 2024”, i.e. 01:59 on the Principal Change Date in December 2024.

This application requests a contract length of 8 years (as the new contract commences from the expiry date of the existing contract, which is the Principal Change Date 2016). The application form states that the reason for making an application for a long term TAC is to provide the owner of EC with business continuity and an appropriate level of protection to enable it to plan its business with a degree of certainty.

The Railways Infrastructure (Access and Management) Regulations 2005 states (regulation 18.8) that ‘A framework agreement for a period of between five and ten years must be justified by the existence of commercial contracts, specialised investments or risks.’ NR recognises the importance of scrutinising applications to determine whether evidence of such contracts, investments or risks has been supplied by the applicant. In this case investments being made in new Specified Equipment are such that the case for this duration can be made. However, NR is undertaking a Capacity Study which is described below, which may indicate whether or not NR is able to agree to sell any proposed rights for the full duration sought or for a shorter timeframe.

NR wishes to see a break clause inserted in the contract that would curtail the duration of the rights to five years should this new Specified Equipment not enter service as planned.

*“Franchise Agreement” and “Franchisee”*

NR would expect these defined terms to be included.

*“Longstop Date” means [date to be added],”*

NR requires the insertion of an agreed date.

*“Stabling” means the parking or laying up of the Specified Equipment or such other railway vehicles as the Train Operator is permitted by this contract to use on the Network, such parking or laying up being necessary or reasonably required for giving full effect to the movements of Specified Equipment required for the provision of the Services; and “Stable” shall be construed accordingly.”*

NR would expect to see the model clause drafting.

### 3 CONDITIONS PRECEDENT AND DURATION

#### 3.1 Effective date

*“The provisions of this contract, other than Clause 5, take effect from the later of the signature of this contract and the Principal Change Date 2014.”*

The Model Contract recommends to “[insert the date on which Services may first be operated by the Train Operator under this contract]”. Therefore this should be “the Principal Change Date 2016”.

Contingency provisions in case of delay to implementation of future control periods

NR requests that the contract should include a bespoke provision to require the train operator to enter into a contingency provision in case of delay to the implementation of a future CP (given franchised operators’ charges effectively ‘time out’ at the end of each CP).

SCHEDULE 3: COLLATERAL AGREEMENTS

In part 1, the words “in respect of which Network Rail is the facility owner.” (as per the model TAC) has been deleted. NR would expect to use model clause drafting.

SCHEDULE 4: ENGINEERING ACCESS STATEMENT, TIMETABLE PLANNING RULES AND RESTRICTIONS OF USE  
PART 3: COMPENSATION FOR RESTRICTIONS OF USE

“3.12 Over-runs

(d)

(ii) *offsetting any benefit as a consequence of the Unplanned Over-run Period including:*

(A) *any reduction in RoU Variable Costs;*

(B) *any payments made as result of paragraph 2.12(c); and*

(C) *any payments received by the Train Operator under Schedule”*

NR notes that “8” needs to be inserted after “Schedule” in (C). This arises from a mistake in the ORR CP5 Review Notice.

“15.2 *Each of the EBMPR and TMPR (respectively defined in paragraph 4.2) shall be adjusted in respect of Periods in Relevant Year t in accordance with the formula set out in paragraph 14.1 except that in relation to the Relevant Year commencing on 1 April 2014,  $R_t$  shall have the value specified in:*

(a) *paragraph 4.2 in respect of the EBMPR, multiplied by the Initial Indexation Factor; and*

(b) *in Annex C to this Part 3 of Schedule 4 in respect of TMPR, multiplied by the Initial Indexation Factor,*

**(a)** *and in the next following Relevant Year  $R_{t-1}$  shall respectively have the same value.”*

Please remove the final (a) in red.

Annex C to Part 3 of Schedule 4 – Payment Rate per train mile

<b>Service Group</b>	<b>Description</b>	<b>Compensation Rate</b>	<b>Total Train Cost per Mile (Pence)</b>
HB01	ANGLO – SCOTTISH (All Trains)	Other	(redacted)
HB02	WEST YORKSHIRE (All Trains)	Other	(redacted)
HB04	WEST YORKSHIRE (Kings X - Bradford / Hull) (All Trains)	Other	(redacted)
HB05	ANGLO - SCOT (Aberdeen / Inverness) (All Trains)	Other	(redacted)
<b>Service Group</b>	<b>Description</b>	<b>Compensation Rate</b>	<b>Total Train Cost per Mile (Pence)</b>
HB11	ANGLO – SCOTTISH	Other	TBA
HB12	FAST WEST YORKSHIRE	Other	TBA
HB13	NEWARK PLUS	Other	TBA
HB14	YORKSHIRE EXTENSIONS	Other	TBA
HB15	ANGLO – SCOTTISH EXTENSIONS (Aberdeen / Inverness / Glasgow)	Other	TBA
HB16	NEWCASTLE / NORTHALLERTON	Other	TBA

NR is unable to agree to the following table in its current form at this time as the parties have yet to agree the Service Groups.



## SCHEDULE 5 –THE SERVICES AND THE SPECIFIED EQUIPMENT

Whilst NR is interested in further discussions with EC regarding its proposals in Schedule 5, it cannot yet confirm that the capacity exists to offer the sale of the track access rights described within it.

We are undertaking a Capacity Study in order to ascertain whether or not NR can support the rights requested by EC in this Schedule 5.

The objective of the study is to determine if capacity exists to provide for the rights requested in both this Application and any other relevant Applications. When this work is complete, it may provide a better indication of whether we can agree to any of the proposals listed in this Schedule 5. It is anticipated that the study will be complete by the end of July. This date is subject to change if the remit is changed.

### NR position on network wide sale of access rights

NR has recently reviewed its approach to the sale of access rights and as a result would only consider the agreement of more protection than table 2.1 provides, if the customer can provide evidence of a commercial need. Section 7.2 of the application form states:

*“Justification will be provided to NR Sale of Access Panel & ORR for the additional specificity being sought.”*

NR would like to see evidence of the commercial justification which has yet to be provided to NR. As such, NR cannot carry out an assessment of commercial justification.

## SCHEDULE 5 – Detailed Comments

The following comments are made regarding the drafting of the proposed rights, whilst noting that the provision of commercial justification would be prerequisite to any further discussion.

### *Comments relating to both Part 5A and 5B:*

The model contract provides a structure whereby there is an explicit link through cross-referencing between calling patterns, intervals, journey times and passenger train slots. This is achieved through the use of a unique descriptor against each line of entry in table 4.1 *Calling Patterns*.

In the draft contract each line of entry in table 4.1 merely has the generic descriptor “Northbound” or “Southbound” thus the cross-referencing is not achieved. In order for Network Rail to comment further regarding the tables EC would need to re-draft the tables making this cross-referencing explicit. In the tables, “ECML” is mentioned several times in the column “Via”. To provide clarity ECML should be defined in the definitions section at the start of part 5A and part 5B.

### Table 8.4: Stabling facilities:

Stabling rights are sought at Inverness. NR does not support such rights and would need to understand any commercial justification for East Coast seeking them.

### *Comments specific to Schedule 5, Part A:*

#### Section 2, Passenger Train Slots:

EC are asking for an increased number of passenger train slots. NR does not support the inclusion of firm rights for passenger train slots where the same rights are currently held on a contingent basis.

In table 2.1, there are unexplained suffixes after certain station names, for example “Edinburgh (AS)” and “Edinburgh (N)”. NR does not support the inclusion of unexplained suffixes.

There are other suffixes which are explained by means of footnotes regarding the calling patterns of services, however the references mention specific train times, for example “Leeds (A) – PBO (xx45 Leeds, xx05 King’s Cross)”. NR does not support such hardwiring of timetables and it is contrary to both ORR Criteria and Procedures and the Access and Management Regulations.

There are certain station names carrying routeing descriptions in brackets after the station name, for example “Leeds (via Micklefield)”. NR does not support the inclusion of routing descriptions in brackets after the station name and would suggest that this is addressed in the “Via” column.

There are 2 types of Specified Equipment shown in the timing load column for which NR uses different Sectional Running Times in the timetable planning process. NR requires certainty as to the timing load that is being sought in order to establish what capacity might exist. EC should clarify this.

Paragraph 2.6 (d):

This seeks a bespoke provision, not included in the Model Contract, for the use of a class 08 locomotive for ancillary moves. NR does not support this and believes that the locomotive should appear as a firm right under paragraph 5.1 (a) with the contingent right under 5.1 (b) being sufficient to cover any other vehicles that it might be hauling.

2.10 and 2.11:

Please can these be two separate paragraphs.

Table 3.1:

NR notes that EC has bespoke the table heading to include explicit reference to clockface rights. In its “Reform of Access Contractual Arrangements Schedule 5 Conclusions” ORR recognised that the revised Service Interval table could potentially be used for such one way flex, but did not contemplate bespokeing of the table heading. In the absence of commercial justification, it is merely noted that the proposed level of flex is minimal and is less than the signalling headway, thus it effectively hardwires the train path to an extent that NR would not support. There is a cross reference to “paragraph 3.5” although the paragraph appears to be absent. Furthermore paragraph 3.4 (b) appears to provide that consecutive trains should be at fixed intervals providing no scope for the effective use of the already limited flex.

Table 4.1:

As in the case of table 2.1, there are unexplained suffixes after certain station names, for example “Edinburgh (AS)” and “Edinburgh (N)”. NR does not support the inclusion of unexplained suffixes.

Table 5.1:

This table seeks firm rights to use Class 800 and Class 801 vehicles. Such rights would be subject to all processes concerning the introduction of these vehicles being completed and the agreement of any compensation due to NR associated with the costs of accommodating this new Specified Equipment. Use of the vehicles to operate the Passenger Train Slots in table 2.1 would be dependent upon their performance being equal to or exceeding that of the relevant timing load and the sufficiency of the traction current supply.

Paragraphs 5.3.1 (a)-(c)

This seeks a bespoke provision for the use of a class 67 locomotives for rescue purposes. NR suggests that the locomotive should appear as a firm right under paragraph 5.1 (a).

Table 6.1:

This table seeks journey time protection that is more extensive than that which is provided in the current TAC. NR would like to see evidence of the commercial justification so that it can consider whether it would be appropriate to negotiate the Maximum Journey Times described in Table 6.1.

*Comments specific to Schedule 5, Part B:*

The rights sought in Part B involve the use of Class 800 and Class 801 vehicles. Such rights would be subject to all processes concerning the introduction of these vehicles being completed and the agreement of any compensation due to NR associated with the costs of accommodating this new Specified Equipment and the sufficiency of the traction current supply.

NR notes that a new service group structure has been proposed. NR would need to understand the reasons for this structure being sought in order to determine whether it can support such a change.

Tables 2.1 and 2.2:

The rationale of constructing the tables in the manner proposed in the draft contract is understood. However, in the absence of a fully developed timetable, NR reserves its right to comment on the construction of the tables once a fully developed timetable is available.

Table 4.1:

It is noted that certain Additional Stations are shown in italics. The reason for this does not appear to be explained.

Table 5.1:

This table seeks firm rights to use Class 800 and Class 801 vehicles. Such rights would be subject to all processes concerning the introduction of these vehicles being completed and the agreement of any compensation due to NR associated with the costs of accommodating this new Specified Equipment. Use of the vehicles to operate the Passenger Train Slots in table 2.1 would be dependent upon their performance being applicable to or exceeding that of the relevant timing load and the sufficiency of the traction current supply.

Table 6.1:

NR would like to see evidence of the commercial justification so that it can consider whether it would be appropriate to negotiate the Maximum Journey Times described in Table 6.1.

### Proving period

NR believes that a proving period provision should be included within this contract with regard to the rights contained in Part B of Schedule 5. Such a provision needs to be negotiated between NR and EC and would essentially provide a mechanism for addressing any deterioration of network

performance caused by the introduction of the services contained within this application. This would provide that any train service performance disbenefits from the introduction of the new services do not outweigh the benefits of the additional services to passengers.

Any such mechanism should include an obligation on EC to remedy any significant deterioration as soon as reasonably practicable rather than at the end of the proving period. In the case of minor deterioration, the provision should oblige both East Coast and NR to meet promptly to take remedial action.

### ERTMS

The draft contract spans the period when ERTMS introduction is planned on the route. NR wishes to see a provision in the contract which makes it explicit that the train operator shall be liable for the costs of providing for this in relation to all of its Specified Equipment.

### Access Rights Modification Provision

NR would expect the contract to include the modification provision required in all new access contracts to provide for better use of capacity.