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Dear Janet and Helen

Approval of the 12th supplemental agreement to the track access contract between Network Rail Infrastructure Limited and Arriva Rail North Limited (ARN) (jointly, “the parties”)

1. We have today approved the above supplemental agreement submitted to us formally on 4 December 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. The purpose of this agreement is to amend Schedule 5 of the track access contract to add new services and extend some others for the Principal Change Date (PCD) 2018 timetable change. The specific changes requested are as follows:

- Extend the duration of the contingent rights originally approved under the 10th SA from PCD 2018 until Subsidiary Change Date (SCD) 2019;
- Obtain contingent rights, from PCD 2018 until SCD 2019, for an additional service per hour between York and Leeds in both directions via Church Fenton on weekdays and Saturdays;
- Extend the existing contingent rights for one weekday service between Hebden Bridge and Leeds in both directions from PCD 2018 to SCD 2019. This service is formed of a Class 180 DMU, leased from Grand Central; and

- Extend the existing firm rights that interface with the East Coast Main Line from SCD 2019 to SCD 2020, in line with Network Rail's current policy (set out in its September 2018 letter ORR).

Industry Consultation

3. Network Rail undertook the industry consultation from 29 August to 26 September 2018. At the time, the application was proposed to be made under section 22A of the Act, as Network Rail initially did not support the proposed additional hourly services between York and Leeds. However, agreement was reached by the time of the informal submission which was made under section 22.
4. Transport Focus had a number of queries regarding the application but these were resolved via correspondence with ARN and it supported the application.
5. London North Eastern Railway (LNER) initially objected to the application, in particular the additional York – Leeds service, as they were concerned about the performance impact on LNER services. ARN responded to these concerns in writing and noted that this issue was resolved.
6. West Yorkshire Combined Authority (WYCA) also expressed performance concerns with the application and, after an exchange of detailed correspondence with ARN, said that it did not support the York – Leeds services and wanted them removed from the application. ARN met WYCA to discuss this further. ARN reemphasised that this was an agreed section 22 application, contingency plans were in place for all the Leeds – York shuttle services and that any risk to performance would be managed through its performance alliance with Network Rail. ARN also advised that the new shuttle services represented a package of measure developed with Network Rail and Transpennine which had been signed off through the national PMO to improve the deterioration in performance since the introduction of the May 2018 timetable. ARN could not undo these services as this would destabilise the delivery of the December 2018 timetable and have wider impact on Transpennine, and would negate the measures that have been put in place to improve performance. Whilst ARN expressed a desire to engage with WYCA over its future timetable process, the objections on the York – Leeds services remained unresolved.

ORR's review

7. When we consider access applications, we must do so in a way which we consider best fulfils our statutory duties which are set out in section 4 of the Railways Act 1993. The duties we consider most relevant in this context are to:

- protect the interests of users of railway services;
- promote the use of the railway network in Great Britain for the carriage of passenger and goods, and the development of that railway network, to the greatest extent that it considers economically practicable;

- promote measures designed to facilitate the making by passengers of journeys which involve use of the services of more than one passenger service operator; and
- enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

8. On the additional hourly service between York and Leeds, we note that this will boost capacity on this corridor in line with stakeholder requirements and will enable improved journey times on cross-Leeds services between York and Preston. We also note that this application is an agreed section 22 and that the new shuttle services are aimed at improving performance following the issues that arose after the May 2018 timetable and that removing these would have a negative impact on ARN and Transpennine's December 2018 timetable. We accept the contingency plans that are in place to mitigate risk on performance.

9. Having considered the reasons for WYCA's objections against the benefits for the new York and Leeds shuttle services, on balance, we believe that approving ARN's application best fulfils our statutory duties, in particular those listed in paragraph 7 above.

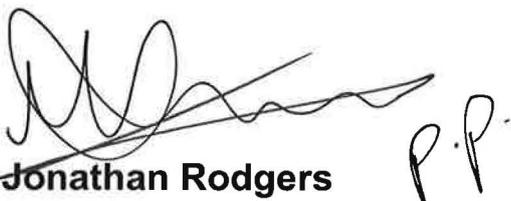
10. We do, however, welcome the willingness of ARN to work with WYCA for future timetable processes in the interest of all parties.

Administration and public register

11. 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.

12. Electronic copies of this letter, the approval notice and the agreement will be sent to Keith Merritt at Department for Transport and to Peter Craig at Network Rail. 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 read 'Jonathan Rodgers', is written over a printed name. To the right of the signature are the initials 'P.P.'.

Jonathan Rodgers P.P.