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Dear Rob

**Infrastructure Monitoring Testing for East London Line - consent under licence condition 5**

Rail for London (RfL) have approached Network Rail to undertake track monitoring testing using Network Rail's Infrastructure Monitoring Fleet on the East London line (ELL).

Network Rail's National Delivery Service (NDS) has been asked to provide specialist vehicles to undertake track recording utilising a Network Rail loco hauled Track Recording Coach; ultrasonic rail monitoring utilising Network Rail's Ultrasonic Testing Unit fleet, and other specific recording vehicles. As very specialised equipment, NDS is the only supplier which can provide the appropriate equipment.

In order to establish whether it was technically feasible to fulfil the service request of RfL, an initial test run was carried out on 6 July between New Cross Gate to Thames Tunnel Portal (4 miles 38 chains). Unfortunately, the test run was not a success due to access issues and the data was not collected and no charge was made. We did not consider it necessary to seek ORR's consent under LC5 for the initial test run stage as this was a scoping activity to establish whether a full service request could be carried out by Network Rail. NDS and RfL have now agreed that the work should be carried out on a larger section of the ELL in order to obtain the relevant data.

Due to uncertainty surrounding a DBS drivers strike (whose drivers operate the locos), we were unable to agree a start date until late last week. The first full service has been scheduled to run overnight this Sunday, 18 November. A Network Rail Recording Coach is expected to run between Highbury and Islington, through to Thames Tunnel North Portal, back to Shadwell station/crossovers and through the Thames Tunnel, eventually returning to Highbury and Islington. The vehicle is not being utilised for any Network Rail service during the time of this shift and therefore does not have any impact on Network Rail activity.



If this run is a success then RfL's annual requirements will be built into Network Rail's annual Infrastructure Monitoring plan utilising spare capacity of Network Rail's Infrastructure Monitoring Fleet.

Network Rail will charge RfL for the service provision at a standard commercial rate. The charge will cover the lease and maintenance payments; Network Rail on board staff; data analysis as well as a Network Rail overhead charge. Subject to obtaining any regulatory consents as may be required, Network Rail intends to deliver these services on the ELL over the next two years. Early indications have shown that this would equate to four track recording runs and four ultrasonic test runs over a twelve month period (i.e. 16 runs over a two year period).

### **Licence Condition 5 implications**

Unfortunately, and as we have previously discussed with you, LC5 (as currently drafted) does not enable Network Rail to respond quickly and flexibly to service requests by industry partners. We recognise that the above proposal will mean Network Rail will have an interest in the ownership of a railway vehicle not being used in the operation of the network. We are therefore seeking a consent which will enable us to fulfil the service requirements of RfL.

There is an available possession on the ELL this Sunday night and together with the vehicle and staff availability being confirmed, we are able to tentatively schedule in a run for that night. Whilst we appreciate that this gives ORR little time to consider our request for consent, for which we apologise, we would specifically note that undertaking the run on Sunday will mitigate the need for a future, potentially disruptive, possession.

We would therefore kindly request that ORR considers this matter by close of play on Friday 16 November 2012.

If ORR is unable to provide its consent before this date, we will need to cancel the planned service run in order to avoid a technical breach of our licence.

Network Rail shall be responsible for the insurance of its vehicles whilst operating on the East London line and shall keep in full force insurance of not less than £2m covering against the physical loss or damage to the locomotive on an all risks basis. This will include keeping in full force and effect for the duration of the hiring agreement, insurance of not less than:

- a) £10 million or any higher amount required to comply with applicable local regulatory insurance requirements against liabilities for death or personal injury to any persons arising out of the use or operation of the locomotive and against liabilities for loss of or damage to any property arising out of the use or operation of the locomotive ; and
- b) £5 million in respect of Employers' Liability insurance; and such other insurance cover as shall be necessary to cover any other risks RfL is accepting under the terms of the proposed agreement.

Accordingly, and on the basis as outlined above, Network Rail believes that it has taken all such steps as are appropriate to protect its legal interest in the vehicles.

#### **Licence Condition 4 implications**

As you will be aware LC4 prohibits Network Rail (except with the written consent of ORR) from conducting any business other than the Permitted Business (effectively operating and maintaining the network).

ORR has previously determined in relation to the hiring of wagons for use by a third party when they are not required by Network Rail, that this activity is not included in the definition of Permitted Business although such an activity would be permissible if carried on with consent or within our *de minimis* facility under licence condition 4.

It is our intention that the proposed hire arrangement will be carried out under the *de minimis* facility, and tracked as a 'turnover' activity. For the avoidance of doubt, Network Rail's actual 'investment' costs under the *de minimis* facility will be negligible - the costs to Network Rail being the staff costs of working up this transaction with RfL plus the costs of the individual shifts being undertaken. These will be tracked accordingly.

The proposed service run is currently scheduled to commence on 18 November 2012 and accordingly we would be grateful if you consider this matter before that date. As noted above, in addition to the planned service run on 18 November we also anticipate carrying out a number of additional runs for RfL on the ELL over the next two years. We would therefore request ORR's consent both for the 18 November run and the planned future runs.

Yours sincerely



Jon Haskins  
Head of Regulatory Compliance & Reporting