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Dear Catherine and Shona

Approval of the sixty-second supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and Arriva Rail London Limited (ARL)

1. We have today approved the above supplemental agreement submitted to us formally on 14 May 2019 under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission on 6 March of a draft agreement for our consideration. This letter explains the reasons for our decision.

Purpose of the agreement

2. This agreement provides ARL with amended access rights for it to operate its May 2019 timetable. This includes extending the expiry date of the existing level of services in Service Group EK01 'Orbitals' to maintain the frequency of 8 trains per hour (tph) on London Overground services between Stratford and Richmond/Clapham. The 'Watford – Euston DC lines' service in Service Group EK02 is also increasing from 3tph to 4tph to meet customer demand and close. Network Rail has agreed to these rights for one year initially until the Subsidiary Change Date 2020 and will consider extending them in the light of operational performance.

Industry consultation

3. Network Rail undertook the usual industry consultation. Govia Thameslink Railway Limited sought some clarification on the proposals but did not object to them.

4. GB Railfreight Limited (GBRf) opposed the extension of the existing level rights in Service Group EK01 which interact with GBRf services on the West London Line and North London Line (NLL). It highlighted cases of non-compliance with timetable planning rules (TPR) and concerns about future capacity for freight in the short and long term.

5. In response, the parties acknowledged the concerns raised over TPR non-compliances by undertaking a full review of the Working Timetable and sharing the outputs (which they considered successful) with GBRf. Network Rail further advised that it would be commissioning a capacity study to understand the full scale of capacity options on the NLL and would take into account the forecast for future freight growth in the area. It would seek to collaborate with GBRf and other operators on this. Network Rail queried GBRf on any competing aspirations it might have for the May 2019 timetable and provided reassurance that it would do its best to accommodate any additional bids under the usual process. Finally, Network Rail advised that the current mitigation plans in place along the route addressed any performance risks and that data would be gathered from the start of the May 2019 timetable prior to any future permanent application.

6. GBRf welcomed the prospect of a capacity study on the NLL route but again expressed concerns on securing ad-hoc additional or amended slots for the duration of the May 2019 timetable due to the spacing of ARL services in the timetable. We sought GBRf's views on the parties' outputs to correct the TPR non-compliances. GBRf's response identified a list of TPR non-compliances, the majority it considered rectifiable and a few non-rectifiable. We shared this with the parties to review. Network Rail attempted to address the TPR non-compliances listed by GBRf, but some of these would have required ARL to re-issue its driver diagrams and rosters and it was too late in the process to do this. ARL also pointed out that the application was seeking a roll-over of rights for existing services and there had been no major performance issues to date. It suggested reviewing the issue for the December 2019 timetable. Network Rail agreed this approach. Despite this, GBRf's concerns 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. We acknowledge the concerns of GBRf and the steps that Network Rail and ARL have undertaken to address these, particularly in providing reassurance of their commitment to work collaboratively with GBRf in the short term to best accommodate any additional ad-hoc bids it may have for the May 2019 timetable. We also welcome the longer-term approach initiated by Network Rail to conduct a capacity study on the NLL that will provide all operators with a better understanding of the future capacity options available.

9. GBRf asked ORR's view of NR's obligations under The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 – particularly section 24(4). Under the Regulations Network Rail has a duty to “undertake an evaluation of the need for reserve capacity to be kept available within the final working timetable to enable it to respond rapidly to foreseeable ad hoc requests”. Network Rail fulfils this by following its Code of Practice for the Management of Strategic Capacity on the Network which aims to reserve capacity in the form of useable train paths where there is a reasonably foreseeable need. The onus is on freight operating companies to request the inclusion of Strategic Paths in the Strategic Capacity Statement where it foresees such a requirement. ARL's rights do not have interval protection so may be flexed to accommodate additional services.

10. We acknowledge the level of services under the 'Orbitals' Service Group have been in operation since the May 2018 timetable with no major reported performance issues and we accept the contingency arrangements that are in place to ensure that performance levels are sustained. We expect all parties to work together to ensure that services can be operated reliably.

11. We are satisfied that the amendments enabled by this supplemental agreement will bring about positive benefits to passengers by improving the frequency of services to meet passenger demand and will also continue to ease overcrowding across services under the Service Group 'Orbitals'.

12. Having therefore considered the concerns raised by GBRf against the benefits for the new services, on balance, we believe that approving ARL's application best fulfils our statutory duties, in particular those listed in paragraph 6 above.

13. The quality of the informal submission was lacking with a number of inconsistencies between the Form P and the draft agreement where they did not support each other in a way that we could easily understand or check the changes being sought. Only after highlighting this to the parties and a few iterations was a submission made that that we could approve. We expect the parties to take greater care when preparing and drafting future applications to ensure they are accurate, proportionately detailed, clear to understand, consistent and legally robust.



Public register and administration

14. 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.

15. 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. A copy of this letter will also be sent to Jason Bird at GBRf.

Yours sincerely

A handwritten signature in black ink, appearing to be 'M Albon', is positioned below the text 'Yours sincerely'. The signature is fluid and cursive.

Michael Albon