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Dear Shivani and Phil

Directions in respect of a track access contract between Network Rail Infrastructure Limited and NXET Trains Limited

1. We have today issued directions under section 18 of the Railways Act 1993 to Network Rail Infrastructure Limited to enter into a track access contract with NXET Trains Limited (c2c). The application was submitted to the ORR by Network Rail on 20 February 2017. This letter sets out the reasons for our decision.

Purpose of the agreement

2. The parties had initially proposed to extend the duration of their existing contract under a proposed 56th supplemental agreement and carried out the usual industry consultation. Given the existing contract dated from 2003 and already had 55 supplemental agreements we suggested this would be a good opportunity to start afresh with a new contract covering the same duration. The parties agreed to our suggestion and submitted a draft new contract on 20 February 2017. Following our review we provided some minor drafting comments and a revised version was submitted on 28 February 2017. Our directions refer to that final version of the draft contract. The 56th supplemental agreement will be used to terminate the existing contract when the parties enter into the new contract.

3. The purpose of the new contract is to replace the parties' original contract which was due to expire at the Principal Change Date (PCD) 2017 with a new contract containing

the same access rights that will enable c2c to continue operating its existing services. The new contract will commence on 3 March 2017 and expire at PCD 2022.

Industry Consultation

4. As the new contract will have the same effect as extending the original contract, we advised the parties that no further consultation would be required. In respect of the consultation of the 56th supplemental agreement, comments were received from the following:

- a. *MTR Crossrail* emailed on 20 December 2016 raising similar concerns it raised regarding the 55th supplemental agreement including West Ham Football at Stratford Station, future timetable, performance analysis and track access option. The parties provided their response on 1 February 2017. *MTR Crossrail* confirmed on 3 February 2016 they had no objections.
- b. *Transport for London* emailed on 11 January 2017 with a query on the Schedule 4 arrangements relating to Crossrail and whether this would be replicated under the 56th supplemental agreement. The parties confirmed that the bespoke Schedule 4 element within the track access contract had been extended to PCD 2017. No further issues were raised.
- c. *DB Cargo* emailed on 14 December 2016 seeking to understand whether the proposed continuation of current rights would retain sufficient flexibility to ensure that the proposed services that operate through Barking Platforms 7 & 8 and along the Tilbury Loop Line would permit any necessary timing adjustments to fit in with both future planned London Overground extensions to Barking Riverside and allowing the retention of regular standard freight paths to/from Barking and along the Tilbury Loop Line. The parties responded on 22 December 2016 stating they would continue to work together to flex schedules, as far as is feasible to the overall train plan to accommodate other operators. No further issues were raised.

ORR's review

5. We are satisfied that the parties' request for an additional 5-year contract at the current specification of its original contract raises no capacity or performance concerns. Our review of the contract highlighted a number of drafting issues including formatting, typos and missing information. The parties have made the necessary amendments to improve the quality of the draft and have updated the contract where changes have been made to the model contract since their original contract was directed in 2003. There were no further issues.

Conformed copy of the agreement

6. 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 promoting improvements in railway service performance (section 4(1)(b)), 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)).

Public register and administration

7. A copy of the Directions and the signed contract will be placed on our public register, copies of this letter and the contract will also be placed on the ORR website. I am also copying this letter to Peter Craig at Network Rail and Keith Merritt at Department for Transport.

8. Once the agreement is signed, in accordance with Section 72(5) of the Act, you must send a copy to ORR within 14 days.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Michael Albon', with a long horizontal flourish extending to the right.

Michael Albon

