



OFFICE OF RAIL AND ROAD

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Dear Shivani and Kevin

**Fifty-fifth supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and NXET Trains Limited (c2c)**

1. We have today approved the fifty-fifth supplemental agreement which was submitted to us formally on 4 January 2017 following an informal submission on 28 November 2016. This letter explains our decision.

**Purpose of the agreement**

2. The agreement amends Schedule 5 of c2c's track access contract to reflect changes to the timetable. A key change is the introduction of 6 class 387/3 units which enables existing class 357 units to strengthen other services. Appendix 7D of Schedule 7 is amended as the new trains are metered. A number of other changes are also being made to further reduce the number of 4 coach services during the peaks. The agreement also extends rights originally approved under the fiftieth supplemental agreement in December 2015 for c2c to divert 2 trains per hour on weekends from Barking via Forest Gate Junction to Liverpool Street for one more year until December 2017. At c2c's request the timetable changes are being introduced from 8 January 2017 rather than the Principal Change Date in December 2016.

### Industry Consultation

3. Network Rail undertook a reduced, 14 day industry consultation that ended on 25 November 2016. They received the following responses:
4. *MTR Crossrail* wrote on 16 November 2016 expressing concerns about match days at Stratford station including station staffing, performance analysis and safety analysis.
5. The parties responded on 25 November 2016:
  - a. Concerns raised with overcrowding at Stratford when West Ham United played at home to Stoke were a result of there being no Abellio East Anglia service to Southend Victoria from Liverpool St due to engineering work, heightening the demand for c2c services.
  - b. The parties highlighted the customer service staff they provide at Stratford Station on both event days and non-event days.
  - c. On performance analysis, the concerns regarding sub-threshold delay were noted. However, where the engineering work results in routes between Barking Station and Liverpool St being unavailable, c2c services would be diverted to Fenchurch Street as per the agreed contingency arrangements.
  - d. On safety analysis, c2c confirmed that issues regarding passenger loading on event days would be managed through the event management processes. Travel advice will also be offered on event match days and align with the standard industry messaging that Stratford Station will be busy, that a queuing system will be in place of the station, and that passengers may not be able to board their first choice train.
6. *Transport for London (TfL)* wrote on 22 November 2016 reiterating concerns expressed when the rights were first proposed with overcrowding at Stratford station when West Ham United play at home, originally. TfL suggested diverting the 2tph services to Fenchurch St via West Ham to reduce the crowding and station management issues posed at Stratford and to provide additional capacity and resilience at West Ham post game. TfL also requested further discussions with c2c prior to the access rights being approved to identify how the services will be monitored and what mitigations will be put in place should overcrowding occur.
  - a. The parties responded on 25 November 2016 similarly advising on overcrowding that c2c managed Stratford station on match days through event management processes. Travel advice would also be offered on match days and align with the standard industry messaging.
  - b. In response to the suggestion of diverting the services to Fenchurch St via West Ham, the parties advised that this would lead to confusion for c2c passengers as they would be able to travel to Stratford Station for their inward travel, but

would not be able to return via Stratford Station. Therefore, such an approach would simply place additional pressure on a different part of the Stratford Station complex (the Jubilee Line / DLR concourse) as the passengers seek a route to return to West Ham Station.

7. *Greater Anglia* wrote on 25 November 2016 highlighting that they originally sought assurances regarding the impact on performance on GEML. They did not believe that the parties followed up on some of the requests made in our decision letter of 24 December 2015 including sending the outputs of a meeting between concerned TOCs and the parties early this year to us. Similarly, another meeting that was planned to evaluate the performance of the services after a sufficient period in operation had not happened. They expected the parties to undertake an assessment of the proposed 2017 period of operation, given the level of planned engineering disruption on the route next year.

a. The parties responded on 28 November 2016 enclosing both the December 15 and 16 performance modelling reports which formed part of the basis of the Network Rail SoAR panel approving the Liverpool St rights for an additional year.

b. c2c plan to use Tracsis to carry out the same task for the May 2017 timetable.

8. *Transport Focus* supported the application.

#### **ORR's review**

9. It was of considerable concern that this application was submitted to us so late and following a curtailed industry consultation. In our guidance we say the parties should allow 6 weeks for a straightforward application and 12 weeks for a more contentious application. This application was submitted 6 weeks before the start of services but this included the Christmas/New Year period. It was also contentious as there were unresolved objections from consultees. Given the concerns raised by consultees when the diversion of services to Liverpool St were introduced this time last year, objections should have been anticipated and more time allowed for both the consultation and our consideration. The parties must in future ensure that consultations and applications are made in ample time or they run the risk of the access rights not being approved.

10. With the application the parties submitted a performance analysis by Tracsis which showed that the proposed timetable changes would be performance neutral. When we approved the diversion of services to Liverpool St in December 2015, we said when considering any extension to their duration we would look at how they have performed. As there was little information on this provided in the Form P we asked the parties to provide information to demonstrate how the services have performed in practice. The parties responded: "... the PPM for all arriving and departing c2c services from Liverpool Street is 93.3% for 2016 to date. If you look purely at the weekend services, excluding weekday diversions, the PPM rises to 94.5% with a corresponding Right Time figure of 87.7%." Whilst we acknowledge the concerns that have been raised by MTR

Crossrail, TfL and Greater Anglia, on the evidence provided by the parties, we are satisfied with how the services have performed and do not consider performance a reason to withhold our approval

11. We note the issues raised by consultees in respect of managing crowding on match days but this is not something that needs to be specified in the access rights. As with all such situations where large crowds have to be managed, appropriate arrangements need to be adopted following discussions with all relevant transport providers. This has been done and should continue to be reviewed as and when necessary so that the proper mitigations can be applied.

12. We reviewed the proposal to introduce new metered rolling stock and sought confirmation from the parties that the metering arrangements on the new sub-fleet (357/3) is identical to the original installation and confirmation that the metering arrangements of the Class 387/3's are either in compliance to GMRT2132 or identical to the Class 387/1. The parties confirmed that they were both identical to the metering arrangements.

13. We advised the parties that their proposal to change Appendix 7C was not required as the appendix shows what rolling stock should be assumed to have operated if the TOC hasn't specifically allocated a unit or units to the train in the relevant systems. This was subsequently removed from the agreement formally submitted.

14. The effective date of the supplemental agreement is 8 January 2017 to reflect the later than usual changes to the timetable. However, in the fiftieth supplemental agreement, the rights to divert services to Liverpool St were time limited to the Principal Change Date 2016. This meant there would be a gap in the access rights between 11 December 2016 and 8 January 2017. We pointed this out to the parties and advised them to submit an additional supplemental agreement extending those rights to 8 January. They did this and we approved the necessary rights in the fifty-seventh supplemental agreement.

15. We noted some other discrepancies in the agreement including an oversight to continue the Schedule 4 disapplication in respect of the Liverpool St weekend services. There were also a number of typos in the agreement which we highlighted. The parties accepted our comments and amended the agreement accordingly.

16. 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 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)).

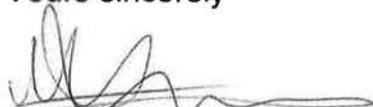
#### **Conformed copy of the agreement**

17. 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. ORR's copy should be sent for my attention.

**Public register and administration**

18. In accordance with section 72 of the Act, we will place a copy of the approval notice and the agreement on our public register. Copies of this letter, the approval notice and the agreement will be sent to Keith Merritt at the Department for Transport and Peter Craig at Network Rail. 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 'Michael Albon', is written over a horizontal line.

**Michael Albon**