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Dear John

### **Crossrail Access Option - Revenue Security**

As you are aware, Network Rail and officials from my Department have been negotiating the terms of a Crossrail Access Option – i.e. a regulated agreement under which Network Rail would enter into future access contracts with the Secretary of State's nominee for the purposes of operating Crossrail services.

In order to make use of existing industry processes, and thereby provide as much certainty to the rail industry as is possible at this time, we are seeking to agree the Crossrail Access Option during the passage of the Crossrail Bill. One consequence of this is that the Option, if approved by the Office of Rail Regulation, would be in place in advance of any final decisions as to how the Crossrail project would be funded and the respective responsibilities of central and London government. Without the full financing package, the Crossrail Access Option can not identify the project's underlying financial rights, obligations, risks or protections. The Option can only presuppose rail investment. Negotiation about the terms of the development will happen elsewhere.

Against this background, Network Rail has identified that revenue security is and will be an outstanding concern for it. We understand the issue of revenue security to reflect your desire to have an appropriate level of comfort that you will, over a period of time, be able to cover your indebtedness and commitments. Obviously, the role of the ORR and the existence of the periodic review provide major sources of comfort to you in this context.

The Department acknowledges that, in the context of the Crossrail project and generally, Network Rail wants not just the right to revenue but a suitable degree of predictability as regards this revenue. Network Rail has identified a particular concern if – and no decision has been made to this effect – future Crossrail services were to be operated under a track access contract “giving effect to” a franchise of which TfL is a co-signatory. If this happened then in certain circumstances section

30(1) of the Railways Act 1993 (*duty to secure provision of services in the absence of a franchise*) would not necessarily apply at the end of such a franchise. Such an eventuality could expose Network Rail to revenue risk if improved infrastructure were left unused.

However, section 30 of the Railways Act 1993 is just one element of the continuity (and confidence) relating to the rail network. The Secretary of State also has a particular duty under section 23 of the 1993 Act to designate services which ought to be provided under franchise agreements. Naturally, the desirability of ensuring that workers in, and visitors to, London have access to rail services of an appropriate and affordable capacity, quality and frequency must play an important part in the Secretary of State's discharge of his duties. Were Transport for London to be a co-signatory of a franchise agreement for Crossrail services then this would not necessarily mean an end to the Secretary of State's commitment to, and responsibilities in respect of, services to and from Greater London.

The Department acknowledges that if Network Rail acquires liabilities in the context of Crossrail, Network Rail will wish to have an appropriate level of revenue security. The appropriate comfort in this (and any similar) context would either arise, or would need to be given, on a case by case basis. What is needed in this case will depend on the way in which Crossrail is funded and operated, and by whom. The form of this revenue security could take several forms. It might be a contractual obligation from central or London government, the existence of a statutory obligation or duty, a political commitment, the inherent nature of rail operations, or a variation of these.

We expect that the ORR, as the economic regulator, will and must play a key role in evaluating what arrangements will be appropriate for Network Rail to enter into as regards both funding and security (as the ORR does generally). We acknowledge that in order to approve an access contract "drawn down" under the Crossrail Access Option, the ORR must be content with the financial terms of the access contract. The ORR will, presumably, not only consider the level of appropriate track access and other charges, but is likely to consider:

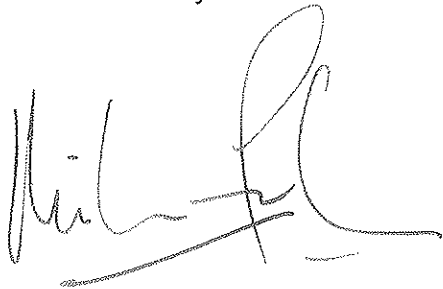
- (i) the security of revenue for Network Rail that will be represented by the access contract (whether or not in combination with any relevant franchise); and
- (ii) the effect on Network Rail and its operations that would, or might, arise as a result of its entry into the access contract.

In undertaking this analysis, the ORR must have regard to its statutory duties and, specifically, must give appropriate weight to the need to enable Network Rail to plan the future of its business with a reasonable degree of assurance (see section 4(1)(g) of the 1993 Act). So, although Network Rail will not be able to rely on specific financial terms in the context of the Access Option (nor will Network Rail be liable in this regard), it should take confidence from existing industry mechanisms and the role and responsibilities of both the Secretary of State and the ORR.

We hope that you take additional comfort from our acknowledgement that there will need to be appropriate confidence as regards Network Rail's obligations relating to

Crossrail, to be determined in the light of those obligations and the prevailing circumstances. We believe that the ORR will share this approach and I am copying this letter to Brian Kogan of the ORR in the hope that he may be able to advise.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mike Fuhr', with a large, stylized flourish at the end.

**MIKE FUHR**