## Consultation – Crossrail Central Operating Section (CCOS)

Request for views on template contractual documents for use of the CCOS track



**MAYOR OF LONDON** 

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### 1 Background

### 1.1 The Crossrail project

The Crossrail project will improve journey times across London, ease congestion and offer better connections, changing the way people travel around the capital. It will offer crowding relief on the Underground and DLR networks, as well as at congested stations. Crossrail services will connect Reading and Heathrow to the west of London with Shenfield and Abbey Wood to the east, running through a new 13 mile (21km) twin-bore tunnel under central and east London. The tunnel under London (and associated infrastructure) will be the CCOS. The CCOS has been designed to facilitate high capacity metro passenger rail services, moving large numbers of people more easily, more quickly and more directly across London.

### 1.2 Transport for London

Transport for London (TfL) is a statutory body created by section 154 of the Greater London Authority Act 1999 (GLA Act). Section 154(3) of the GLA Act requires TfL to exercise its functions to facilitate the discharge of the general duty set out in section 141. This duty includes:

- in respect of the Mayor of London, a requirement to develop and apply policies to promote and encourage safe, integrated, efficient and economic transport facilities and services to, from and within Greater London; and
- in respect of the Greater London Authority, an obligation to use its power to secure the transport facilities and services mentioned above.

### 1.3 Rail for London (Infrastructure) Limited and the CCOS

TfL is currently the ultimate owner of the majority of the land comprising the CCOS and the infrastructure affixed to it. TfL has established a new wholly-owned subsidiary, Rail for London (Infrastructure) Limited (RfL(I)), which will be the infrastructure manager of the CCOS for the purposes of both The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (Rail Regulations 2016) and The Railways and Other Guided Transport Systems (Safety) Regulations 2006 (Safety Regulations 2006).

RfL(I) will be responsible for the day-to-day safe operation, maintenance and renewal of the CCOS. RfL(I) will also allocate capacity on the CCOS and will be responsible for charging for any capacity allocated.

Before RfL(I) grants access to run any services on the CCOS, TfL intends granting to RfL(I) a proprietary interest in the Crossrail land and the infrastructure. In addition, TfL notes that Network Rail Infrastructure Limited (NR) is the owner of:

- the South East Spur comprising that part of the CCOS from Plumstead portal to Abbey Wood (excluding Plumstead sidings, which will be owned by TfL/RfL(I)); and
- the land upon which the Train Reversal Facility at Westbourne Park (which is part of the CCOS) is being built.

TfL has agreed in principle with NR that RfL(I) will be the infrastructure manager for the South East Spur and the Westbourne Park Train Reversal Facility and TfL is in discussions with NR regarding the transfer of ownership of both to RfL(I), which will then form part of the CCOS.

Please refer to Appendix 1 for a route map of Crossrail, where the CCOS is highlighted in red.

The CCOS largely comprises that part of the Crossrail route that is not part of the existing NR network. It runs from Portobello Junction (exclusive) in the West to Abbey Wood Sidings (including Plumstead sidings) in the South East and Pudding Mille Lane Junction (exclusive) in the East.

There are ten stations served by the CCOS infrastructure:

**CTOC Stations**: Paddington (CCOS); Canary Wharf; Custom House; Woolwich and Abbey Wood<sup>1</sup> will be RfL(I)'s ultimate responsibility and will be operated by the Crossrail Concessionaire (CTOC<sup>2</sup>).

*LUL Stations*: Bond Street; Tottenham Court Road; Farringdon; Liverpool Street and Whitechapel are owned and operated by London Underground Limited (LUL).

# 2 Consultation on draft template track documentation

#### 2.1 Introduction and background

Train operators who wish to use the CCOS will need to buy some of the available capacity on the railway from RfL(I). The rights to use available capacity on the CCOS will be sold to train operators under a track access contract, which sets out the terms on which that train operator will be allowed to use the track. This is intended to satisfy the requirement in regulation 19(14) of the Rail Regulations 2016 to "*conclude the necessary agreements under… private law with the infrastructure manager of the railway infrastructure used*". In selling available capacity on the CCOS under a track access contract, RfL(I) may specify the frequency, volume and quality of the train paths being sold in certain circumstances but will not specify any train path in detail<sup>3</sup>.

The track access agreement will incorporate a number of other documents which set out some of the day-to-day practical arrangements for accessing the CCOS. For example, this includes the arrangements for how the capacity sold by RfL(I) will be translated into an actual timetable for the operation of trains on the CCOS.

<sup>&</sup>lt;sup>1</sup> Abbey Wood station is currently owned by NR. TfL has agreed in principle with NR that RfL(I) will be the infrastructure manager for Abbey Wood station. Certain land at the Paddington CCOS station is also owned by NR. In both cases TfL is in discussions with NR regarding the transfer of ownership/granting of a long term proprietary interest to RfL(I).

<sup>&</sup>lt;sup>2</sup> Currently MTR Corporation (Crossrail) Limited.

 $<sup>^{3}</sup>$  This is so that RfL(I) complies with the requirements of regulations 21(3) and 21(11) of the Rail Regulations 2016. In relation to regulation 21(11) this is because the CCOS has been designated as specialised infrastructure under regulation 25 – see section 2.8 below.

### 2.2 This consultation

TfL/RfL(I) have prepared a series of draft documents in relation to the sale of capacity, the use of the CCOS and the day-to-day practical arrangements for accessing the CCOS. These form part of this consultation, as follows:

- CCOS Track Access Agreement
- CCOS Network Code
- CCOS Access Dispute Resolution Rules
- CCOS Emergency Access Code
- CCOS Railway Systems Code (including the Catalogue of Railway Systems)
- CCOS Timetable Planning Rules
- CCOS Engineering Access Statement

An overview of each of these draft documents is set out in section 3 below. Links to:

- the draft documents; and
- a comparison between the document in question and the closest industry equivalent,

can be found on the consultation page for this consultation on the TfL website.

In the remainder of this consultation document, these draft documents are referred to collectively as the Consultation Documents.

The CCOS Railway Operations Code and CCOS Performance Data Accuracy Code are also referred to in the CCOS Network Code. TfL/RfL(I) intend to consult on the CCOS Railway Operations Code and the CCOS Performance Data Accuracy Code at a later date.

#### 2.3 Interface with Network Rail

The operation of the CCOS will need to interface closely with the operation of the NR network to ensure that services operate safely and seamlessly across both networks. The expected high frequency and high capacity services using the CCOS, together with the intensely used Great Western and Great Eastern Main Lines on the NR network, means that the interface arrangements between RfL(I) and NR will be essential.

The operational interfaces between the CCOS and the NR network extend beyond the scope of a "model form" connection agreement published by the ORR<sup>4</sup>. They

<sup>&</sup>lt;sup>4</sup> A "connection agreement" typically sets out the terms governing the physical connection between the NR network and a piece of railway infrastructure owned/operated by someone other than NR. Connection agreements require the approval of the ORR and the ORR has published a model form connection agreement: <u>http://orr.gov.uk/what-and-how-we-regulate/track-access/applications-decisions-appeals-and-agreements/forms-model-contracts-and-general-approvals</u>. Connection agreements will be required in relation to the physical connection between the CCOS and the NR network. TfL/RfL(I)'s current intention, working with NR, is to include the wider operational interface arrangements in a separate commercial agreement.

involve not only the physical connection between two highly utilised pieces of infrastructure but will extend to how RfL(I) and NR will work together for the benefit of train operators and their customers.

In addition to the transfer of the property interests listed in section 1.3 and a connection agreement referred to above, TfL/RfL(I) are also discussing interface arrangements with NR. By using existing industry documentation as a starting point for the Consultation Documents and adopting a reasonable, pragmatic and proportionate approach to the interface arrangements therein, TfL/RfL(I) anticipate that the CCOS proposals align with the NR network and can form the basis for effective management of the interface.

These proposals will form part of the discussions with NR. Depending on the outcome of those discussions, it is possible that certain amendments will be required to the Consultation Documents.

### 2.4 Basis of preparation

### 2.4.1 Assumptions

The Consultation Documents have been prepared to reflect what TfL/RfL(I) expects the prevailing position to be when services are anticipated to commence on the CCOS. In particular, the Consultation Documents assume:

- construction and testing of the CCOS has been completed and it is available for train services from the Principal Change Date in 2018 (ie 9<sup>th</sup> December 2018);
- RfL(I) will have a long term ownership or proprietary interest across the whole of the CCOS and in particular that the transfer of the interests listed in section 1.3 from NR to RfL(I) take place as planned;
- that RfL(I) is granted an exemption from the requirement to hold a Network Licence in relation to the CCOS<sup>5</sup>; and
- the interface arrangements contemplated in section 2.3 are finalised as expected by TfL/RfL(I).

If any of the latter three assumptions prove invalid then TfL/RfL(I) are likely to need to reconsider certain proposals set out in the Consultation Documents.

#### 2.5 Industry equivalents

In most cases, there are equivalent documents to the Consultation Documents elsewhere in the industry. For example, NR and HS1 Limited both have their own respective forms of these documents or have slightly different arrangements covering the same points. The ORR also has a "model form" track access agreement<sup>6</sup>.

<sup>&</sup>lt;sup>5</sup> On or about the date of this consultation, the Office of Rail and Road (ORR) will commence a consultation on the possibility of granting RfL(I) an exemption from the requirement to be licensed to operate the CCOS under a network licence.

<sup>&</sup>lt;sup>6</sup> <u>http://orr.gov.uk/what-and-how-we-regulate/track-access/applications-decisions-appeals-and-agreements/forms-model-contracts-and-general-approvals</u>

TfL/RfL(I) believe that, unless there is a good reason, the arrangements for accessing the CCOS track should reflect the position adopted elsewhere in the railway industry. In particular, as the CCOS will be connected to the railway operated by NR at Portobello Junction and Pudding Mill Lane Junction<sup>7</sup>, the arrangements should reflect those for accessing NR's network and the ORR's "model form" track access agreement. This will assist train operators in adopting a "whole industry approach" if they seek to use the CCOS.

At the same time, as described in this consultation, TfL/RfL(I) consider there are sometimes good reasons for not always replicating the approach used by NR. In general, these relate to the characteristics of the CCOS and the relative size of the CCOS compared with the size of NR's network. At all times, TfL/RfL(I) have sought to adopt an approach which is appropriate, proportionate and pragmatic to the CCOS.

In preparing the Consultation Documents, TfL/RfL(I) have considered the existing industry examples and, as far as possible in the context of the CCOS, have reflected these in the Consultation Document.

### **Question 1:**

## Do consultees agree that TfL/RfL(I) should, as far as practicable in the context of the CCOS, seek to reflect existing industry examples?

### 2.6 Proportionality

As noted above, TfL/RfL(I) acknowledge that the CCOS is connected to the network operated by NR at Portobello Junction and Pudding Mill Lane Junction and it will therefore often be appropriate to reflect NR's arrangements. At the same time, the CCOS does differ from the network operated by NR in a number of significant respects:

- it is new infrastructure;
- it is a small, simple network<sup>8</sup>;
- it will initially have one operator and is anticipated to only ever have at most a handful of passenger operators<sup>9</sup> (whereas the network operated by NR is multi use and multi operator);
- it will be highly utilised infrastructure at peak times it will be operating at maximum capacity of 24 x 205m trains per hour. The equivalent million gross tonne miles per annum for the section of CCOS between Paddington and Whitechapel is just under 90; and

<sup>8</sup> As noted in the Network Statement consultation: (1) the CCOS route length is 28km (in contrast to NR's which is more than 30,000 km); and (2) there are just 10 stations on the CCOS.

<sup>9</sup> As noted in previous consultations, the CCOS is not suitable for conventional freight traffic, although specialised (e.g. palletised or parcel freight) could be accommodated – albeit that this is not currently envisaged.

<sup>&</sup>lt;sup>7</sup> Whilst there will be a connection between the CCOS and the NR network at Abbey Wood, for various operational and signalling reasons, it will only be possible to use this connection when a possession of the railway is in place. For the purposes of the day-to-day operation of services, only the connections between the CCOS and the NR network at Portobello Junction and Pudding Mill Lane Junction will be used, which is why it is not included here.

• it is largely tunnelled, 22<sup>10</sup> of the 28 route kilometres being underground.

As the CCOS is a substantially smaller railway than the network operated by NR, it would therefore not be proportionate, pragmatic or cost effective to adopt exactly the same approach as NR in every case. The composition and proposed operation of the CCOS is also different from the network operated by NR and many other pieces of railway infrastructure. All of these factors have been taken into account by TfL/RfL(I) in preparing the Contractual Documentation in a proportionate and pragmatic manner.

### 2.7 Anticipated services on the CCOS

Initially, it is envisaged that only one operator, the CTOC, will provide services on the CCOS. This is because of: (1) the limited available capacity on NR's Great Eastern Main Line and Great Western Main Line, meaning that connecting train paths onto the CCOS are unlikely to be available in the short term; and (2) the technical requirements for trains operating on the CCOS, TfL/RfL(I) not being aware of other compatible trains currently in use.

In future, other operators may have aspirations to operate other services on the CCOS. If connecting paths can be secured on NR's network, RfL(I) may be able to accommodate further services on the CCOS. Accordingly, the contractual and regulatory framework for use of the CCOS is being prepared in such a way to facilitate future access, in compliance with the Rail Regulations 2016 and the Railways Act 1993 (the Act).

Services may run through the CCOS or terminate within the CCOS: at Westbourne Park if coming from the East or Abbey Wood if coming from the West.

## 2.7.1 Regulatory, contractual and charging frameworks and the impact of Brexit

The contractual, regulatory and charging frameworks described in the Consultation Documents are being prepared on the basis that the current legal requirements (both domestic and European in origin) will continue to apply. If this should change (whether as a result of the UK's decision to withdraw from the European Union or otherwise) TfL/RfL(I) reserve the right to revisit the regulatory and contractual framework.

In particular, it is anticipated that the requirements of the Fourth Railway Package of European legislation will be introduced into English law at or around the time that services are expected to commence on the CCOS. The contractual, regulatory and charging frameworks are therefore being designed accordingly. If, as a result of the United Kingdom's withdrawal from the European Union, the requirements of the Fourth Railway Package are not implemented into English law, TfL/RfL(I) also reserve the right to revisit these frameworks (and the associated contractual documentation).

<sup>&</sup>lt;sup>10</sup> This includes the re-used Connaught tunnel between Royal Victoria Dock and Royal Albert Dock, 0.55km in length.

### 2.8 Previous consultations

TfL/RfL(I) have previously undertaken a number of consultations which are relevant to this consultation:

- **Specialised infrastructure**: In August 2016, TfL/RfL(I) undertook a consultation<sup>11</sup> which proposed to designate the CCOS as specialised infrastructure. TfL/RfL(I) considered responses to the consultation and has designated the CCOS as specialised infrastructure<sup>12</sup>.
- **CCOS Network Statement**: In October 2016, TfL/RfL(I) undertook a consultation<sup>13</sup> on the draft 2019 CCOS Network Statement. TfL/RfL(I) has considered responses to this consultation and has published a report<sup>14</sup>.

Please see the consultation or report document for more information.

In preparing the draft documents which form part of this consultation, TfL/RfL(I) have taken into account the feedback and conclusions from these previous consultations. The Consultation Documents are intended to be consistent with the CCOS Network Statement published as part of that consultation.

### Question 2:

## Do consultees agree that the Consultation Documents are consistent with the CCOS Network Statement?

#### 2.9 Status

This consultation includes the Consultation Documents in draft form only. TfL/RfL(I) expect to revise each of the Consultation Documents to reflect the outcome of this consultation and further consideration which it intends to undertake.

The Consultation Documents are not intended to be an offer to prospective train operators to enter into a track access contract or to enter into a track access contract on specific terms. Following a request for capacity on the CCOS from a prospective train operator, TfL/RfL(I) would expect to discuss any requirements and the terms of access on a case-by-case basis. This would then allow the various tables and brackets to be completed in the Consultation Documents (in particular, in the CCOS Track Access Agreement for that train operator).

As required by the Act, the ORR must also approve the terms of every track access contract for use of the CCOS. As the CCOS track access contract incorporates the other Consultation Documents, the ORR must also be satisfied about the forms such documents will take. The ORR is also required to establish the charging framework

<sup>11</sup> <u>https://consultations.tfl.gov.uk/rail/crossrail-</u> cos/user\_uploads/16.08.09\_specialised\_infrastructure\_designation\_consultation.pdf

<sup>&</sup>lt;sup>12</sup> https://consultations.tfl.gov.uk/rail/crossrail-cos/user\_uploads/ccos-specialised-infrastructure-consultationreport.pdf

<sup>&</sup>lt;sup>13</sup> https://consultations.tfl.gov.uk/rail/ccos-network-statement/user\_uploads/ccos-draft-network-statement--request-for-views.pdf

<sup>&</sup>lt;sup>14</sup> <u>https://consultations.tfl.gov.uk/rail/ccos-network-statement/</u>

and the specific charging rules for use of the CCOS<sup>15</sup> and TfL continues to work with the ORR in this respect. The tables set out in the CCOS Track Access Agreement will also need to be populated to set out access rights, payment for those rights and performance benchmarks/payment rates. Work continues to be undertaken on these aspects.

TfL/RfL(I) have shared earlier drafts of certain of the Consultation Documents with the ORR and have reflected the ORR's comments in the documents which form part of this consultation.

# 3 Overview of the documents forming part of this consultation

For each of the Consultation Documents, this section sets out an overview of the purpose of the document in the context of accessing the CCOS track. To assist consultees, a summary of some of the key areas of change from the nearest industry equivalent document is set out in Annex 3 to this consultation. This is divided by Part or Schedule, where applicable. It assumes some prior knowledge of the industry equivalent documents upon which the Consultation Documents have been based.

Annex 3 is not intended to be comprehensive or describe every change which has been made. Consultees should refer to the Consultation Documents (and relevant comparison) for more detail.

### 3.1 CCOS Track Access Agreement

The CCOS Track Access Agreement sets out the terms and conditions under which a train operator can access the CCOS track. It describes, for example, the number of train movements a train operator is entitled to (which will be negotiated with a train operator on a case-by-case basis depending on the remaining available capacity), how much a train operator will pay RfL(I) for those train movements and how those charges can be modified in future. The CCOS Track Access Agreement also describes what happens when there is disruption – either as a result of planned engineering work or train/infrastructure issues – and when other things go wrong. Every CCOS Track Access Agreement must be approved by the ORR.

Once the template has been finalised following this consultation, RfL(I) will then negotiate bespoke CCOS Track Access Agreements with train operators who may request capacity on the CCOS from time to time.

The CCOS Track Access Agreement has been largely based on the ORR "model form" track access agreement. However, in certain parts, the way TfL/RfL(I) intends to operate the CCOS is more closely aligned with the HS1 Limited model and this is reflected in the draft document.

### 3.2 CCOS Network Code

The CCOS Network Code is a common set of rules which will apply across every train operator which accesses the CCOS. It forms part of every CCOS Track Access Agreement – and therefore all train operators are required to comply with the same

<sup>&</sup>lt;sup>15</sup> Regulation 14(1) of the Rail Regulations 2016.

procedures. It sets out, for example, how changes can be made to the CCOS infrastructure and the trains operating on the CCOS, how a timetable is developed by RfL(I) and how the environment is protected. It also describes the process for monitoring performance and the limited circumstances in which access rights can be lost.

For the most part, the CCOS Network Code has been based on the "Network Code" published by NR. Given the need for trains to operate smoothly across both the CCOS and the network operated by NR, there is a need for many of the processes to be aligned. However, as a much smaller network with fewer passenger operators, a more proportionate approach has been taken in certain areas, sometimes reflecting the approach HS1 Limited has adopted for its infrastructure.

### 3.3 CCOS Access Dispute Resolution Rules

Although TfL/RfL(I) generally hopes that disagreements which may arise between RfL(I) and a train operator will be resolved by discussion, negotiation and agreement, a formal dispute resolution process is needed in case this does not happen. NR has a set of access dispute resolution rules relating to disputes which occur on its network – HS1 Limited has its own set of very similar rules for its network. Having taken into account both existing industry precedents, TfL/RfL(I) has created its own set of access dispute resolution rules, with formal processes for the resolution of any disputes which may arise on the CCOS.

These rules are appended to the CCOS Network Code – but are important in their own right. At the time of this consultation, RfL(I)'s current intention is to use the Access Disputes Committee to provide the services but this remains subject to agreement between RfL(I) and the Access Disputes Committee. The Access Disputes Committee already provides services to NR and HS1 Limited. It is worth noting that the CCOS Access Dispute Resolution Rules are primarily intended to relate to access to the CCOS and are therefore separate to NR and HS1 Limited's equivalent documents.

### 3.4 CCOS Emergency Access Code

Very rarely, an emergency affecting the CCOS and/or the network operated by NR could occur. In such an emergency, it may become necessary for train operators who do not otherwise use particular sections of the track or particular stations on the CCOS to be granted access – for example, access to stations other than those at which the train operator normally calls.

The CCOS Emergency Access Code sets out what train operators who do use the CCOS may be required to do in such an emergency. Each train operator using the CCOS will be required to comply with it and it is intended that LUL, as owner of certain stations on the CCOS, will also sign up to it. The CCOS Emergency Access Code sets out the terms and conditions upon which emergency access will be granted.

The CCOS Emergency Access Code has been based on both the NR and HS1 Limited equivalents.

### 3.5 CCOS Railway Systems Code

RfL(I) will use a number of information technology systems in the operation of the CCOS, which train operators and others may wish to access. It is currently envisaged that some of these systems will be common to NR's information technology systems but there are also likely to be some specific systems for the CCOS itself. The CCOS Railway Systems Code sets out the scope of those systems, how users can access them and the circumstances where modifications can be made to the systems. Each train operator using the CCOS will be required to comply with the CCOS Railway Systems Code. The proposed Catalogue of Railway Systems, which is referred to in the CCOS Railway Systems Code, also forms part of this consultation.

### 3.6 CCOS Timetable Planning Rules

Once RfL(I) has sold capacity to train operators under a CCOS Track Access Agreement, there will need to be a process to translate that capacity into a timetable for the operation of trains. The CCOS Timetable Planning Rules are intended to set out the rules by which RfL(I) will develop the timetable for the operation of trains on the CCOS.

They include, for example, the amount of time RfL(I) expects it to take for a train to move from one location to another on the CCOS, how much time there needs to be between trains and how trains will be timetabled to ensure performance of the CCOS can be kept at an appropriate level.

This consultation is not intended to replace the formal consultation processes set out in Part D of the draft CCOS Network Code. As a result, this will remain a draft document following this consultation. It is intended to provide guidance only to consultees about the approach RfL(I) intends to take to the timetable planning rules – and are modelled on the NR equivalent document.

### 3.7 CCOS Engineering Access Statement

From time to time, RfL(I) will need to gain access to the CCOS to undertake vital engineering work, including inspections and maintenance. This may mean that trains cannot operate on the CCOS at those times. The CCOS Engineering Access Statement sets out the dates and locations where RfL(I) proposes to undertake this engineering work in the relevant period – which may restrict the availability of the CCOS for train services. Where payable, compensation for the CCOS being unavailable is calculated under the CCOS Track Access Agreement (schedule 4) and does not form part of this document.

This consultation is not intended to replace the formal consultation processes set out in Part D of the draft CCOS Network Code. As a result, this will remain a draft document following this consultation. It is intended to provide guidance only to consultees about the approach RfL(I) intends to take to the engineering access statement – and is modelled on the NR equivalent document.

### 4 Specific questions on the Consultation Documents

Section 3 above provides an overview of each of the Consultation Documents. Annex 3 describes some of the key areas where TfL/RfL(I) propose to depart from an existing industry position and the reasons why. Many of the proposals were set out in the CCOS Network Statement consultation and have been reflected, together with feedback received, in the Consultation Documents. Where this is the case, RfL(I) has not asked specific questions.

In this section, TfL/RfL(I) seek the views of consultees on some of its specific proposals. Cross references are to the row(s) of the table set out in Annex 3, which provides the relevant background.

### 4.1 Relationship between Schedule 4, Schedule 8 and Part G (row 1)

Under the CCOS Track Access Contract, there are various compensation mechanisms for when there is planned or unplanned disruption – for example, when engineering work takes place or there are modifications to the CCOS. RfL(I) intends to make clear in its documentation that where a party is entitled to compensation under one of those compensation mechanisms, it cannot then seek to recover further sums (which could potentially overcompensate that party). RfL(I) considers this to be a pragmatic approach to ensure that parties are adequately compensated for losses but do not use the compensation regimes as a way of making profit.

### **Question 3:**

Do consultees agree that no party should be able to over recover for the same losses which they may incur as a result of engineering work, performance issues and network changes?

### 4.2 Schedule 10 (row 7)

RfL(I) considers that Schedule 10 of the NR track access agreement allows modifications to be made to the contract and traction electricity rules following on from the periodic review process undertaken by the ORR. RfL(I) will not be subject to the same periodic review process but will have its own contractual review process involving the ORR. RfL(I) therefore considers that it does not need to include an equivalent schedule in the CCOS Track Access Agreement.

#### **Question 4:**

Can consultees think of any reason why an equivalent to Schedule 10 should be included in the CCOS Track Access Agreement?

## 4.3 CCOS Network Code and CCOS ADRR – Class Representative Committee (rows 8, 9 and 19)

On the NR network, the Class Representative Committee is a method by which all users of the network and NR are represented to make important decisions, reflecting the large number of organisations using the NR network. The CCOS is significantly smaller and fewer organisations are expected to use it and RfL(I) considers it would be disproportionate and costly to establish its own Class Representative Committee.

Instead, it proposes a different method of making important decisions – generally by discussion and agreement by all users, reflecting the approach HS1 Limited has taken.

### Question 5:

#### Do consultees agree that it would be disproportionate to establish a Class Representative Committee for the CCOS, given the expected number of users of the infrastructure?

### 4.4 Part J (row 15)

Part J of the CCOS Network Code sets out when access rights which have been sold to a train operator can be amended. In particular, this includes where:

- a train operator fails to request that the rights are included in the timetable;
- a train operator fails to use a train path which has been included in the timetable; and
- another train operator has a "better use" for a train path.

The second point is particularly relevant because RfL(I) is prevented from granting that train path to another train operator who may actually have used the train path. In the context of the CCOS, RfL(I) wishes to maximise use of the available capacity and therefore wishes to ensure that train paths which have been included in the timetable are in fact used.

### Question 6:

Do consultees think the proposal that capacity which has been reserved on the CCOS must be used at least 50% of the time (or become susceptible to surrender) is high enough to achieve the aim of maximising use of the CCOS?

### 4.5 Parts K and L (rows 16 and 17)

Part K of the NR Network Code relates to the provision of certain information to train operators (and vice versa). Part L relates to joint performance improvement plans. These are a number of requirements which could instead be better managed by good relationships at an operational level. Many of the obligations reflect NR's network licence, which is not expected to apply to RfL(I), or the operation of a much larger network, which again is not the case with the CCOS. RfL(I) therefore does not propose to include Parts K or L in the CCOS Network Code.

### **Question 7:**

## Do consultees agree that it is proportionate and pragmatic not to include in the CCOS Network Code equivalents to Parts K and L of the NR Network Code?

### 4.6 CCOS Access Dispute Resolution Rules (row 19)

RfL(I) recognises that the CCOS connects to the NR network and many services will operate across both networks. Whilst RfL(I) hopes that any disputes will be rare, when they do arise, an effective resolution process is required. Generally, a dispute

will clearly relate to either the CCOS or the NR network and so will be dealt with under the respective sets of access dispute resolution rules. There may be a small number of occasions where the dispute relates to both the CCOS and the NR network. In the interests of reducing the costs of the industry and business disruption in those circumstances, RfL(I) considers that the dispute should be resolved by one process, rather than two. It has therefore proposed provisions to ensure the dispute is resolved by one set of proceedings.

### Question 8:

## Do consultees agree that a dispute in relation to both the CCOS and the NR network should be resolved in one set of proceedings?

### 4.7 CCOS Emergency Access Code (row 20)

If an emergency occurs on the railway network, RfL(I) recognises that the whole industry needs to work together to mitigate the impact of that emergency. This may mean that, where an emergency affects the connection between the CCOS and the NR network, steps may need to be taken which affect both networks – which may include providing emergency access. At the same time, there is an appropriate and proportionate balance to be struck so that the protections only apply in a genuine emergency which affects the connecting point. In other circumstances, RfL(I) will need to manage the CCOS and NR will need to manage the NR network to mitigate the impact of any issues.

### Question 9:

Do consultees agree that only emergencies affecting a connection point between the CCOS and the NR network (and no wider circumstances) should entitle persons (other than RfL(I) and a train operator with the benefit of a CCOS Track Access Agreement) to access the CCOS?

### 4.8 Other comments

RfL(I) will also consider any further comments which consultees may have on the Consultation Documents as it finalises them.

### Question 10:

Do consultees have any additional comments on the Consultation Documents?

### 5 How to respond to the consultation

Each of the Consultation Documents, together with comparisons against the appropriate equivalent industry document, accompany this consultation document. In addition, there is an online consultation survey with a set of consultation questions for consultees to complete.

We would like to know what you think about our proposals. Please give us your views before 1700 on Friday 26 May 2017 by completing the online consultation survey<sup>16</sup>.

<sup>&</sup>lt;sup>16</sup> Alternatively, you can:

### 6 Next steps

Once TfL/RfL(I) have considered feedback received from consultees, it will revise each of the Consultation Documents as may be required.

TfL/RfL(I) expect to negotiate CCOS Track Access Agreements on a case-by-case basis. TfL/RfL(I) would welcome requests from potential users of the CCOS for a CCOS Track Access Agreement.

Subject to the views of consultees, once finalised, TfL/RfL(I) do not expect to make any modifications to the other Consultation Documents except through the formal modification processes set out in the Consultation Documents. These other Consultation Documents will then be incorporated into every CCOS Track Access Agreement in the same form and will not be open to negotiation on a case-by-case basis. This is to ensure that all operators are subject to – and implement – the same rules and processes, to ensure efficient operation of the CCOS by all users and no user is treated more favourably than another.

In general, TfL/RfL(I) would expect CCOS Track Access Agreements to follow the template form, with any modifications needing to be justified. The ORR may also expect this as part of its role in approving any CCOS Track Access Agreements.

Further work is ongoing in relation to:

- the charges for use of the CCOS; and
- the performance regime applicable to the CCOS.

This further work is being undertaken in accordance with the principles set out in the CCOS Network Statement consultation referred to in section 2.8 above and the feedback received from that consultation. It is expected that this work will impact on the values to be included in the relevant appendices in the CCOS Track Access Contract, but not on the terms of the contract itself. However, TfL/RfL(I) reserve the right to make modifications to any of the Consultation Documents as a result of this consultation or any further work which it may undertake. It will only be when the first CCOS Track Access Agreement has been entered into (and approved by the ORR) that the formal change control processes set out in the contract will apply.

<sup>•</sup> Email us at <u>consultations@tfl.gov.uk</u>

<sup>•</sup> Write to us at FREEPOST TFL CONSULTATIONS

<sup>•</sup> Call us on 0343 222 1155 (service and network charges may apply)

### **Appendix 1 Crossrail route**



### **Appendix 2 Glossary**

A number of acronyms have been used in this consultation, which are set out below for ease of reference:

Act	the Railways Act 1993
CCOS	the Crossrail Central Operating Section
Consultation Documents	the draft documents which are being consulted on as part of this consultation, as set out in section 2.2
СТОС	the Crossrail Train Operating Concessionaire from time to time, currently MTR Corporation (Crossrail) Limited
GLA Act	the Greater London Authority Act 1999
LUL	London Underground Limited
NR	Network Rail Infrastructure Limited, the owner and infrastructure manager of the majority of Great Britain's railway network
ORR	Office of Rail and Road, the railways regulator
Rail Regulations 2016	The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016
RfL(I)	Rail for London (Infrastructure) Limited, the wholly-owned subsidiary of TfL established to operate the CCOS
Safety Regulations 2006	The Railways and Other Guided Transport Systems (Safety) Regulations 2006 (Safety Regulations 2006)
TfL	Transport for London

### Appendix 3 Consultation Documents: Summary of key changes and rationale

	Consultation Document	Section	Industry equivalent document	Key changes only (consultees should review the documents for the detail)	Rationale
1	CCOS Track Access Agreement	Clauses 1 - 19	NR track access agreement	References to "network licence" have been deleted.	The documentation has been based on RfL(I) being exempt from the requirement to hold a network licence.
				Express incorporation of CCOS Emergency Access Code and CCOS Railway Systems Code into CCOS Track Access Agreement.	All parties should also be expressly bound by these key documents.
				The provisions of the contract bind from signature, with the permission to use having effect from the satisfaction of the conditions precedent.	The majority of the contract should apply from signature. The conditions precedent only relate to ability to operate trains – and therefore go to the permission to use. Charges/performance/possessions work from trains operated/to be operated and therefore in the absence of permission to use will not apply.
				Part G, schedule 4 and schedule 8 are expressed to be "sole entitlement" to compensation for losses falling within the scope of those provisions.	This is intended to prevent double recovery of losses under those provisions and, potentially, for a breach of the contract.
				Further exceptions to the confidentiality provisions have been included: (1) to other infrastructure managers; and (2) on RfL(I)'s website, subject to redactions.	<ul> <li>(1) As the CCOS connects to NR's network, it may be necessary to share information to ensure the services can operate cross-network.</li> <li>(2) This is intended to reflect the ORR public register position.</li> </ul>
				VAT invoice to be provided.	RfL(I) would require to be provided

	Consultation Document	Section	Industry equivalent document	Key changes only (consultees should review the documents for the detail)	Rationale
					with/to provide such an invoice in order to effect payment.
				Force Majeure Event relief extended to the performance of a Relevant Obligation, rather than just the obligation to indemnify.	This prevents a breach of contract from occurring if a Force Majeure Event happens.
2	CCOS Track Access Agreement	Schedule 4	HS1 track access agreement	Direct loss extended to include demonstrable revenue impact (so recoverable if a possession occurs).	Although the HS1 document is being used as a starting point, RfL(I) considers that the NR principle of compensating for reductions in revenue should be reflected – provided these are demonstrable.
				Possessions allowance of 104 hours per year Saturday to Sunday included (where no compensation payable to train operators).	An allowance for engineering access is considered essential – which train operators could build into their business planning in advance. This reflects the position set out in the CCOS Network Statement consultation and feedback therefrom.
3	CCOS Track Access Agreement	Schedule 5	NR track access agreement	The Peak/Shoulder Peak/Off Peak distinction has been included, with timings.	This has been included for consistency with the Crossrail track access option for use of NR's network. Given the need for trains to move onto/off of the NR network, these need to be aligned.
				Public Holiday entitlement to Train Slots is expressed to be the same as on a Saturday. No entitlement to Train Slots on Christmas Day.	This sets out RfL(I)'s expected operations for the CCOS.

	Consultation Document	Section	Industry equivalent document	Key changes only (consultees should review the documents for the detail)	Rationale
4	CCOS Track Access Agreement	Schedule 6	NR track access agreement	Distinction between payment of Track Charges and other payments introduced – with other payments having 28 days from the due date to pay before resulting in an Event of Default.	This is to ensure that other payments do eventually lead to an Event of Default being triggered if they are not paid.
5	CCOS Track Access Agreement	Schedule 7	N/A	Various revised drafting has been included to reflect the proposed elements of the charges for use of the CCOS. It also includes a contractual mechanism for periodically reviewing the asset management strategy and its link into charging.	These are consistent with the proposals set out in the CCOS Network Statement consultation and feedback received from that consultation. The charging review under the Railways Act does not apply to RfL(I) and therefore a contractual regime (based on the RfL Station Access Conditions periodic review mechanism) has instead been included – using an existing industry precedent with ORR involvement.
6	CCOS Track Access Agreement	Schedule 8	N/A	A bespoke performance regime for use of the CCOS has been included.	The regime better reflects the intended usage of the CCOS as specialised infrastructure for use by high capacity metro passenger rail services. It is also consistent with the proposals set out in the CCOS Network Statement consultation (and feedback received from that consultation).
7	N/A	Schedule 10	NR track access agreement	No Schedule 10 included.	RfL(I) considers that this schedule relates to the implementation of a charging review by NR. As noted in relation to Schedule 7 above, there is

	Consultation Document	Section	Industry equivalent document	Key changes only (consultees should review the documents for the detail)	Rationale
					an alternative contractual periodic review process, so this Schedule should not be required.
8	CCOS Network Code	Part B Performanc e Monitoring	NR Network Code	Deletion of references to Class Representative Committee.	This process is not appropriate for a considerably smaller network with fewer anticipated users.
				Inclusion of provisions relating to modifications to the (NR) Delay Attribution Guide.	A process has been included giving RfL(I) and CCOS users the right to propose and procure modifications via NR processes
9	CCOS Network Code	Part C Modification s to the CCOS	N/A	Inclusion of provisions relating to modifications to certain NR documents used on CCOS.	Processes have been included giving RfL(I) and CCOS users the right to make representations on proposed modifications via NR processes
		Network Code	HS1 Network Code	Deletion of references to Class Representative Committee (and inclusion of a modification process which works by consultation).	This process is not appropriate for a considerably smaller network with fewer anticipated users. It is akin to the process used for amendments to the equivalent HS1 document.
			N/A	Inclusion of new provision allowing RfL(I) to make certain modifications within the first two years without following the full Part C process.	This is intended to allow the arrangements to become embedded to ensure they work in practice and allow for flexibility if they do not. RfL(I) considers this appropriate in the context of a new railway with connections to the NR network.
10	CCOS Network Code	Part D Timetable Change	NR Network Code	Calendar of Events provisions have been amended so that there is just one calendar managed by NR.	Given the size of the CCOS and its connection into the NR network, it seems appropriate for there to be a

	Consultation Document	Section	Industry equivalent document	Key changes only (consultees should review the documents for the detail)	Rationale
					consolidated approach across networks.
				Provisions included relating to NR Restrictions of Use, coordination between NR and RfL(I) in relation to timetabling and its impact on the CCOS.	These will have an impact on use of the CCOS by train operators and so it is important to coordinate.
				Removal of references to international train slots and freight train slots.	Demand on CCOS is not expected from any international services or freight services.
				Decision Criteria includes "Order of Priority".	This reflects the Declaration of Specialised Infrastructure.
11	CCOS Network Code	Part E Environmen tal Protection	HS1 Network Code	This reflects the HS1 approach, including additional provisions relating to providing environmental policies and regular review thereof. Aside from these additions, it generally follows the NR approach	One of TfL's statutory duties relates to the environment and therefore higher standards of environmental protection and management are sought, whilst still using existing precedent.
12	CCOS Network Code	Part F Vehicle Change	NR Network Code	Requirement to produce standard form Vehicle Change documentation and model terms has been deleted.	Given the low numbers of expected train operators using the CCOS in the context of the size of the network and the expected number of Vehicle Changes, this is considered to be disproportionate. Terms will be agreed on a case-by-case basis.
				References to the Expedited Procedure have been removed.	It is not intended to include an expedited procedure given the size of the CCOS and expected number of operators using it.
				References to Compatibility Review	These provisions (adopted from the

	Consultation Document	Section	Industry equivalent document	Key changes only (consultees should review the documents for the detail)	Rationale
				forum have been included.	HS1 position) sets out what will happen in practice in relation to Vehicle Changes and is intended to facilitate the process.
13	CCOS Network Code	Part G Network Change	NR Network Code	A provision relating to CCOS Network Changes affecting multiple networks has been included.	This is included to offer a degree of protection to parties involved in the Network Change, recognising that the CCOS is connected to the NR network and services are likely to use both networks.
14	CCOS Network Code	Part H Operational Disruption	NR Network Code	One of the factors which RfL(I) must have regard to in seeking to restore the operation of Services in accordance with the Working Timetable is the efficient and economical operation of a network designated as specialised infrastructure for use by high capacity metro passenger rail services.	This reflects the declaration of specialised infrastructure in respect of the CCOS.
15	CCOS Network Code	Part J Changes to Access Rights	NR Network Code	Consistent with the NR approach, provisions have been included allowing access rights to be removed if a train operator fails to exercise rights to put train movements into a timetable and where rights in the timetable are not used. The NR approach allows the Train Slot to be removed if a Train Operator fails to make use of a Train Slot for less than	Capacity on CCOS is limited and it is important to make maximum use of it. If a train operator fails to exercise rights in consecutive timetable years or fails to use rights, it is appropriate to make that capacity available for others.

	Consultation Document	Section	Industry equivalent document	Key changes only (consultees should review the documents for the detail)	Rationale
				the "Use Quota" (one) during a consecutive 13- week period. This means, in effect, that it applies only if a Train Operator never uses the Train Slot in that period.	
				Removal of references to cordon caps.	Cordon caps are not appropriate on a network the size of the CCOS.
16	CCOS Network Code	Part K Information	NR Network Code	No Part K included.	In part, this reflects NR licence obligations, which RfL(I) does not expect to have. In part, the provisions are more suited to a larger network than the CCOS.
17	CCOS Network Code	Part L Performanc e	NR Network Code	No Part L included.	The approach to Part L is considered to be proportionate to the size of the CCOS. Performance will be managed at a local (non-contractual) level.
18	CCOS Network Code	Part M Appeals	NR Network Code	No Part M included.	Appeals provisions have instead been included in the CCOS ADRR (consistent with the HS1 approach).
19	CCOS Access Dispute Resolution Rules	General	HS1 Access Dispute Resolution Rules	References to the Class Representative Committee and various classes (e.g. "Franchised Passenger Class") included in the NR equivalent document have not been included – instead, a different constitution, governance and funding provision. However, some of these provisions have been aligned with the NR approach.	As noted above in relation to the CCOS Network Code, RfL(I) does not propose to include the Class Representative Committee arrangements in its documents for a network the size of the CCOS and the expected number of users. However, some parallels with the NR processes are recognised given the interfaces between the networks.

	Consultation Document	Section	Industry equivalent document	Key changes only (consultees should review the documents for the detail)	Rationale
				Provisions have been added clarifying what happens if there is a dispute which covers both the CCOS and the NR network (the dispute is addressed under the CCOS Access Disputes Resolution Rules).	This recognises the interface between the CCOS and the NR network – and that it is in the interest of the industry for there to be one process for resolving disputes relating to both networks (rather than having parallel disputes). As the CCOS is the new railway, it can include a regime in its documents setting out how disputes relating to both networks will be dealt with – it would be more difficult for NR to do so.
20	CCOS Emergency Access Code	General	HS1 Emergency Access Code	Distinction included between CCOS, LUL Stations and Concessionaire stations.	This reflects the various parties who will be responsible in practice for the various facilities on or adjoining the CCOS.
				The provisions are expressed to apply where an emergency affects a CCOS Facility or an emergency affecting a railway facility connected to the CCOS (provided the emergency affects such railway facility at or around the connection with CCOS).	This is intended to clarify that only in limited circumstances will an emergency affecting the NR network and its interface with the CCOS lead to the rights under the CCOS Emergency Access Code being triggered. Generally, RfL(I) expects NR to use its own network to resolve any emergencies.
21	CCOS Railway Systems Code	General	NR Railway Systems Code	User Groups for each Railway Code System to be established, with parties taking part as they see fit (there is no requirement to participate or for the groups to be funded by RfL(I)).	This is designed to ensure that there is ongoing dialogue in relation to the Railway Code Systems – but flexibility in the approach given the relative size of the CCOS.

	Consultation Document	Section	Industry equivalent document	Key changes only (consultees should review the documents for the detail)	Rationale
				Voting has been amended so that RfL(I) has 2 votes (NR has one vote for each region).	RfL(I) will not have "regions", reflecting the relative size of the CCOS. RfL(I) considers this to be a fair position given the likely number of users of the CCOS.
				CCOS Network Code amendment processes apply to the Railway Systems Code.	This simplifies the processes pragmatically and proportionately, ensuring a consistent approach to amendment of the documentation.
22	CCOS Timetable Planning Rules		NR Timetable Planning Rules	This adopts the NR format but reflects the specifics of the CCOS.	This is to ensure a consistent approach between the CCOS and the NR network, whilst recognising that there will be specific operational differences.
23	CCOS Engineering Access Statement		NR Engineering Access Statement	This adopts the NR format but reflects the specifics of the CCOS.	This is to ensure a consistent approach between the CCOS and the NR network, whilst recognising that there will be specific operational differences.