

TTP1746 Additional Information

1 TRACK ACCESS CONTRACT

- 1.1 Grand Central has been asked to confirm that the Track Access Contract contained on the ORR website is the correct version governing our relationship with Network Rail.
- 1.2 Unfortunately, it appears that the ORR has uploaded an older version of the contract. The current version is dated 14th August 2014, being the conformed copy as at 3rd October 2019. Whilst the relevant clauses are likely to remain the same, the relevant extracts are provided below.
- 1.3 Grand Central has been asked to confirm that the relevant clauses referenced in the ORR's determination of the appeal in TTP1520 are replicated word for word in Grand Central's Track Access Contract.
- 1.4 A comparison has been undertaken of the provisions within Grand Central's Track Access contract to the extracts contained within paragraph 64 of the ORR's determination document. There are some minor differences within the wording to reflect some differences between Passenger and Freight operators. The clauses match apart from the differences highlighted in yellow in the extracts from Grand Central's contract shown below.

"1.1...Relevant Losses" means, in relation to:

- (a) a breach of this contract; or
- (b) in the case of Clause 10, any of the matters specified in Clause 10.1(a), (b) or (c) or Clause 10.2(a), (b) or (c) (each a "breach" for the purpose of this definition); or
- (c) in the case of Schedule 8, the matter specified in paragraph 18 of Schedule 8 (a "breach" for the purposes of this definition only),

all costs, losses (including loss of profit and loss of revenue), expenses, payments, damages, liabilities, interest and the amounts by which rights or entitlements to amounts have been reduced, in each case incurred or occasioned as a result of or by such breach;

11.3 Restrictions on claims by Train Operator

Any claim by the Train Operator against Network Rail for indemnity for Relevant Losses:

- (a) shall exclude any Relevant Losses to the extent that they result from delays to or cancellations of trains (other than delays or cancellations in circumstances where the SPP Threshold has been exceeded as provided for in paragraph 18 of Schedule 8); and

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- (b) shall:
 - (i) include Relevant Losses only to the extent that these constitute amounts which the Train Operator would not have incurred as train operator but for the relevant breach; and
 - (ii) give credit for any savings to the Train Operator which result or are likely to result from the incurring of such amounts.

11.5 Limitation on liability ^{12TH}

Schedule 9 shall have effect so as to limit the liability of the parties to one another under the indemnities in Clauses 8.2 and 10, but:

- (a) does not limit any liability arising under Schedule 4, Schedule 5, Schedule 7 or Schedule 8 (other than under paragraph 18 of Schedule 8) or under the Traction Electricity Rules;
- (b) in relation to a failure to perform an obligation under the Network Code, only to the extent (including as to time and conditions) that the Network Code so provides; and
- (c) subject to Clause 18.3.3.

13.1 ADRR ^{12TH}

A Relevant Dispute shall be referred for resolution in accordance with the Access Dispute Resolution Rules in force at the time of the reference (the "ADRR"), as modified by this Clause 13, unless:

- (a) any Part of the Network Code or the Traction Electricity Rules provides for an alternative dispute resolution procedure for the Relevant Dispute, in which case such alternative procedure shall apply;
- (b) any Part of Schedules 4, 5, 7 or 8 provides for an alternative dispute resolution procedure for the Relevant Dispute, in which case such alternative procedure shall apply; or
- (c) Clause 13.2 applies.

2 NETWORK CHANGE VARIATION (NC/G1/2017/LNE/051V)

2.1 Grand Central has been asked to provide further information regarding the allegation that Network Rail is implementing the Network Change prior to completing the Network Change process.

2.2 The original Network Change notice for King's Cross remodelling (NC/G1/2017/LNE/051) was circulated for comment under Part G1 of the Network Code on 5th March 2018.

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- 2.3 At the time Grand Central accepted the Network Change proposal, anticipating it would be entitled to some compensation for the anticipated works.
- 2.4 Grand Central has continued to engage with Network Rail over its ability to compensate Grand Central for the significant impact of the associated Restrictions of Use that have been or are due to be taken in order to implement the King's Cross Network Change.
- 2.5 Following the decision at the Access Oversight Board (AOB) on 23rd July 2020, as detailed in Grand Central's Sole Reference Document, Network Rail issued Network Change Variation NC/G1/2017/LNE/051V (Appendix A).
- 2.6 The variation issued detailed changes to the timing of the relevant Restrictions of Use and specifically included a reference to Week 29 and other weekends not contained within the original plan.
- 2.7 Grand Central rejected the Network Change on 19th August 2020 using the standard form prescribed (Standard Form (d) – G2 Network Change rejection response from TOCs). Grand Central's rejection is included in Appendix B.
- 2.8 Part G of the Network Code requires an Access Beneficiary to notify Network Rail if it believes one of the conditions in 2.1.1(a) has been met. Grand Central objected on the basis of G2.2.1(a)(iii) that:

“the implementation of the proposed change would result in a material deterioration in the performance of that Access Beneficiary's trains which cannot adequately be compensated under this Condition G2 or (where that Access Beneficiary is a Train Operator) in respect of a Restriction of Use in connection with the implementation of the proposed change under that Train Operator's Access Agreement;”

- 2.9 Grand Central has not received any response to its rejection letter, however the closing date for the consultation was 15th September 2020, which has not yet passed, and we will further consider our position once a response is received on or after 15th September 2020.
- 2.10 Part G 10.1.1 states:

“Network Rail shall be entitled to implement a proposed Network Change if:

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(a) it has not received a notice from any Access Beneficiary under Condition G2.1 by the relevant response date; or

(b) it has received notice by the relevant response date from an Access Beneficiary under Condition G2.1(c) and either the amount of any compensation referred to in Condition G2.1 has been agreed, or resolved, or the method by which such compensation is to be calculated has been agreed or resolved under Condition G11; and

(c) there is no other unresolved dispute under this Part G (whether under this Condition G10 or otherwise) as regards the proposed change between Network Rail and any affected Access Beneficiary.”

- 2.11 Network Rail has not responded to Grand Central's rejection letter and engagement to date has not dealt with our concerns, and therefore not resolved our dispute raised under Part G. As a result, there remains an unresolved dispute.
- 2.12 We would expect that Under G10.1.2 Network Rail would issue a notice confirming if it believes condition G10.1.1 has been satisfied, providing further opportunity to for an Access Beneficiary to dispute Network Rail's entitlement to implement the Network Change under condition G10.1.1.
- 2.13 It would therefore appear to Grand Central that Network Rail has begun to implement the revised plan to the detriment of Grand Central consulted on in the Network Change Variation before it has confirmed an entitlement to implement. However, we will further consider our position when a response is received to our Network Change rejection.