

Annex C

Proposed changes to the model freight operating company customer track access contract:

Amend Schedules 4 and 8 of the template as at Annexes A and B but in addition

1) at Schedule 4 insert at 4.5.1:

- (d) Network Rail fails to comply with its obligations under Clause 5.10.6 to notify the Train Operator of any Train Slot for which there has been a successful Access Proposal, Rolled Over Access Proposal, Train Operator Variation Request by or on behalf of the Freight Customer and, as a result of such failure to notify, the Train Operator determines (acting reasonably) that it has not received sufficient notice of such Train Slot to enable it to operate the relevant Freight Customer Service as planned,

2) at Part 8 of Schedule 4 include:

Part 8

(Freight Customer Schedule 4 rights)

10. Application of Schedule 4 to Freight Customer Services and Freight Customer Alternative Train Slots

10.1 Where the Freight Customer notifies the Train Operator that, in respect of any Freight Customer Service:

(a) the Freight Customer has, on or before the date of the Drawdown Notice relating to that Freight Customer Service, started to exercise its rights under paragraph 4 or 5 of schedule 4 to the Freight Customer Access Contract (the "**Freight Customer Schedule 4 Rights**") in respect of that Freight Customer Service; but

(b) as at such date, no Freight Customer Alternative Train Slot has been established in respect of such Freight Customer Service in accordance with those Freight Customer Schedule 4 Rights, then the Train Operator shall only be entitled to exercise its rights under paragraph 4 or 5 (as the case may be) in respect of such Freight Customer Service to the extent that the Freight Customer has not already exercised its Freight Customer Schedule 4 Rights in respect of such Freight Customer Service, provided that:

(i) if the Freight Customer has started to exercise its rights under paragraph 4 of schedule 4 to the Freight Customer Access Contract, the Train Operator shall not be entitled to exercise any of its rights under paragraph 5 in relation to such Freight Customer Service; and

(ii) if the Freight Customer has started to exercise its rights under paragraph 5 of schedule 4 to the Freight Customer Access Contract, the Train Operator shall not be entitled to exercise any of its rights under paragraph 4 in relation to such Freight Customer Service.

10.2 Nothing in paragraph 10.1 shall, in respect of any Freight Customer Service or Freight Customer Alternative Train Slot incorporated into this contract in accordance with Clause 5.10.1:

(a) prevent the Train Operator from operating a Service using any such Freight Customer Alternative Train Slot;

(b) relieve Network Rail from any of its obligations and/or liabilities in respect of any such Freight Customer Alternative Train Slot; or

(c) prevent the Train Operator from exercising any of its rights under this Schedule 4 in relation to any such Freight Customer Service in respect of which the Freight Customer has not exercised any of its Freight Customer Schedule 4 Rights.