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CONSULTATION ON THE MODEL CONNECTION CONTRACT
AND
GENERAL APPROVAL

October 2013

The Model Connection Contract was agreed and published back in 2006 in the form of the currently used template, it is widely acknowledged by the rail industry and has been in frequent use ever since.

The consultation on the Model Connection Contract and General Approval published by ORR in October 2013, aims to update currently used template, reflecting recent changes to provisions in the track access agreements for freight train operations. Furthermore, some simplifications to the model contract are proposed to retain the advantages of positive attributes and to make it even more robust.

Since 2006 deviations from the model contract have effectively become commonplace, as the rail industry is ever expanding and changing. Network Rail welcomes proposed revisions which will have the effect of reducing the amount of "bespoking" required.

With the proposed revised template the parties involved will continue to base their connections agreements on a template model contract, filling in the blanks or deviating from that model where justifiable according to individual circumstances. In return, they will gain further advantages of simplicity, improved clarity, flexibility and consistency in their contractual relationships.

Network Rail hereby addresses in order of the following paragraphs the above mentioned consultation document:

Introduction:

Ref paragraph 1.9

Network Rail would like the ORR to assist where it has been unable, for whatever reason, to agree the terms of a connection contract with the Adjacent Facility Owner. The ORR in making their decision in respect of such applications, has the power to direct both parties to enter into a contract on the terms ORR specify.

Consultation issues:

Existing clauses

Default interest rate

Question 1: Is the default interest rate set at an appropriate level? If not, what should it be and why?

In our existing model connection contract the "default interest rate" is defined in clause 1.1 as *"two per cent above the base lending rate of Barclays Bank PLC, as varied from time to time"*.

The default interest rate is payable only when the Adjacent Facility Owner fails to conform to his contractual obligations, in paying connection charges due within agreed timescales as strictly stipulated by the connection contract.

Payment delay of our invoices, adds to our Bad Debt accumulation and increases our administration and legal costs. It also has a negative impact on our cash flow.

We believe that the higher default interest rate percentage, will stand as a stronger incentive to the Adjacent Facility Owners for prompt payments of contractually valid connection charges.

Therefore, our position is to either maintain current interest rate, or increase it to match up with our commercial property templates, to the level of four percent above the base lending rate of HSBC, as varied from time to time.

Question 2: Does the definition of initial condition statement need to be improved? If so, how and why?

Network Rail believes current definition of initial condition statement is fit for purpose and we do not anticipate making any changes to its current shape or form.

Network Rail has suggested to ORR to introduce (where practically possible), the photographic schedule as a supportive documentation to the Initial Condition Statement, as contained in the Schedule 1 of the Model Connection Contract.

Termination

Ref paragraph 2.18

Network Rail rarely execute termination clauses, additionally we are not aware of such instance having occurred in the recent past, however we do understand the wording ambiguity and legal incentive of the above statement, thus we appreciate and support added clarity to the paragraph.

Ref paragraph 2.20

Network Rail fully understands the need to secure operational provisions for long term developments in connected facilities and fully supports those.

We agree that those departures from the Model Connection Contract termination clause provisions, with full justification should be submitted to ORR under specific approval.

Dispute resolution

Since October 2012 Network Rail have been modifying connection contracts submitted to ORR, to reflect changes to the passenger and freight model track access contracts, to incorporate the current ADRR process.

Those changes are fully supported by Network Rail.

Payment of amount

Ref paragraph 2.23

Network Rail fully supports ORR's view, we do not believe that there is any need to amend wording in paragraph 15.1.1.

Ref paragraph 2.24

Network Rail agrees.

Adjustment factor formula

We continue to consider that the proposed formula used to adjust connection charges for inflation, taking with account the expected improvement in efficiency is appropriate.

New clauses and schedules

Question 4: Do you have any comments on the proposed new clauses and schedules?

Ref paragraph 2.28

Network Rail supports this approach.

Variation of amount

Ref paragraph 2.29

Network Rail does not propose any further changes.

Service of a notice

Network Rail agree with upgrading the "service of notice" to include email correspondence, however a formal form of the termination email should be preserved.

The plan

Network Rail is committed to provide as accurate and detailed plans as practically possible. We are happy to include the plan into the Schedule 1 within the contract, however attaching a very large dimension plan would be impracticable, due to the increased size of the overall connection document.

In circumstances like this we would like to reserve the right to provide the plan as a separate attachment.

Furthermore, the processing of industry consultations in the usual electronic manner would prove problematic, as some of our customers do not have servers with the capacity to accept such big email attachments. Hence idea of splitting contract into two parts is more practical.

The welcome initiative of including a photographic schedule has already been covered in "Question 2".

3. Proposed general approval

Consultation issues

Schedule 5 liability cap

Network Rail believe there should not be any changes in liability cap covered by the General Approval.

Parties will still be able to negotiate variation to the Liability Cap, those however will need to be covered by the Specific Approval.

The charging regime

The Cost Matrix calculation used by Network Rail to determine maintenance and renewals charges is fair and transparent, furthermore charges are agreed and accepted by both parties.

We believe that the threshold of annual charging level for connection contracts, currently set at £20,000.00, should be increased up to £50,000.00.

4. Application form for specific approvals

Question 7: Do you have any comments on the proposed new connection contract application form (*Form C*)?

The form should have flexibility for Network Rail to use it to apply for a new connection agreement.

Annex C- Table of changes

Recital "C"

Proposal in the consultation document:

Replace (C) with "ORR has issued a general approval that permits Network Rail to grant an Adjacent Facility Owner permission to use the Connecting Network on the terms and conditions of this contract"

Network Rail believe that below wording would be more reflective of the actual position in the contract:

"The Office of Rail Regulation has issued a general approval permitting Network Rail to grant to the Adjacent Facility Owner permission to connect track to the Connecting Network on the terms and conditions of this contract".

However in this instance we think that the heading of clause 4 "Permission to Use" should be amended to read "Permission to Connect".

Please do not hesitate to contact me should you have any queries to the above, equally I am more than happy to meet to discuss any aspects of this response.

Yours sincerely



Malgorzata Sztandera
Freight Connections Manager