

RAILWAYS ACT 1993

2023 PERIODIC REVIEW

IMPLEMENTATION NOTICE:

FREIGHT CUSTOMER TRACK ACCESS AGREEMENTS

TO:

- (1) the persons whose names are set out in Annex 1 (the “**Freight Customers**”);
- (2) Network Rail Infrastructure Limited (“**Network Rail**”); and
- (3) the Secretary of State, the Scottish Ministers and the Treasury,

together, the “**Addressees**”.

1. This notice is a review implementation notice given under paragraph 7 of Schedule 4A to the Railways Act 1993 (the “**Act**”).
2. On 20 December 2023, the Office of Rail and Road (“**ORR**”) gave a review notice entitled “Review Notice: Freight Customer Track Access Agreements” (the “**freight customer track access review notice**”) specifying the relevant changes (within the meaning of Schedule 4A to the Act) which ORR proposed to make for or in connection with giving effect to its conclusions on a review of:
 - (a) the amounts payable by Network Rail and each of the Freight Customers to each other under each of the relevant track access agreements, which are listed in Annex 1 to this notice (the “**relevant track access agreements**”); and
 - (b) the times at which, and manner in which, those amounts are payable,

(the “**freight customer periodic review**”).

Copies of the freight customer track access review notice were served on each of the Addressees.

3. On 12 February 2024, ORR gave a notice of agreement entitled “Notice of Agreement: Freight Customer Track Access Agreements” (the “**notice of agreement**”) in respect of the freight customer track access review notice.
4. No relevant person gave a termination notice pursuant to paragraph 6 of Schedule 4A to the Act during a period of 28 days beginning with the day on which the notice of agreement was served on it.
5. ORR is therefore required by paragraph 7(1)(a) of Schedule 4A to the Act to give a review implementation notice, and ORR hereby:
 - (a) gives notice that its conclusions on the freight customer periodic review are to be implemented as proposed in the freight customer track access review notice; and
 - (b) directs Network Rail and each of the Freight Customers to amend the relevant track access agreements to which they are a party so that the proposed relevant changes specified in the freight customer track access review notice in relation to each relevant track access agreement come into operation on and from 1 April 2024.
6. Amendments made pursuant to the direction in paragraph 5(b) of this notice shall be made by means of an agreement in the form specified in Annex 2 to this notice.
7. Notwithstanding:
 - (a) the date on which any agreement is made pursuant to the direction in paragraph 5(b) of this notice; or
 - (b) the form in which any such agreement is made,any provision of any such agreement which gives effect to the relevant changes specified in the freight customer track access review notice shall come into operation on and from 1 April 2024.
8. If, before the proposed relevant changes come into operation in relation to any relevant track access agreement, such relevant track access agreement is amended in a manner which is:

- (a) approved by ORR under section 22 of the Act; or
 - (b) directed by ORR under section 22A or section 22C of the Act, (each a “**regulated amendment**”), then:
 - (i) the proposed relevant changes shall come into operation in relation to that relevant track access agreement subject to the regulated amendments; and
 - (ii) if there is any conflict between the proposed relevant changes and the regulated amendments, the regulated amendments shall take precedence.
9. Amendments made to the definition of “Liability Cap” in Schedule 9 of a Track Access Agreement under the General Approval for Freight Track Access Contracts dated 1 April 2019 will not be considered a regulated amendment for the purpose of this notice.
10. In this notice, unless the context otherwise requires:
- (a) words and phrases defined in the Act have the same meaning in this notice;
 - (b) words and phrases defined in the charter operator track access review notice have the same meaning in this notice;
 - (c) the singular includes the plural and *vice versa*.

WILL GODFREY
Director Economics, Finance and Markets
FOR AND ON BEHALF OF
THE OFFICE OF RAIL AND ROAD
Dated 13 March 2024



ANNEX 1: FREIGHT CUSTOMERS AND RELEVANT TRACK ACCESS AGREEMENTS

Freight Customer Name	Freight Customer Company Number	Original Date of Track Access Agreement
Associated British Ports	ZC000195	9 December 2019
Fishbone Solutions Group Limited	07198282	6 April 2023
Legge Infrastructure Services Limited	10675751	7 July 2023
London Gateway Port Limited	04341592	9 December 2019
Maritime Transport Limited	01160595	16 June 2023
Tarmac Trading Limited	00453791	9 December 2019

ANNEX 2: TEMPLATE SUPPLEMENTAL AGREEMENT

(ATTACHED)

[•]th SUPPLEMENTAL AGREEMENT

DATED

[insert date]

Between

NETWORK RAIL INFRASTRUCTURE LIMITED

-and-

[insert name of freight customer]

**relating to the implementation of the
2023 periodic review (PR23)**

THIS [●]th SUPPLEMENTAL AGREEMENT is dated the [●] day of [●] 2024 and made

BETWEEN

- (1) Network Rail Infrastructure Limited, a company registered in England under number 2904587, having its registered office at Waterloo General Office, London, SE1 8SW (“**Network Rail**”); and
- (2) [*insert name of freight customer*], a company registered in [●] under number [●], having its registered office at [●] (the “**Freight Customer**”).

WHEREAS

- (A) The parties entered into a track access agreement dated [●] (the “**Agreement**”).
- (B) The parties now propose to enter into this Supplemental Agreement in order to comply with and give effect to the directions set out in the review implementation notice given by the Office of Rail and Road on 13 March 2024 in connection with the implementation of the freight customer periodic review.

IT IS AGREED AS FOLLOWS:

1. INTERPRETATION

In this Supplemental Agreement, unless the context otherwise requires:

- (a) “**freight customer periodic review**” means the access charges review known as the 2023 periodic review, implementation of which was initiated by the Office of Rail and Road publishing and serving the freight customer track access review notice;
- (b) “**freight customer track access review notice**” means the document entitled “Review Notice: Freight Customer Track Access Agreements” given by the Office of Rail and Road on 20 December 2023 in relation to the proposed relevant changes to be made to, among other things, the Agreement;
- (c) “**regulated amendments**” has the meaning ascribed to it in paragraph 3.2;

- (d) “**relevant changes**” means the amendments specified, to the extent applicable to the Agreement, in Annex 2 of the freight customer track access review notice;
- (e) “**relevant date and time**” means 1 April 2024 at 02:00 hours; and
- (f) words and phrases defined in, and rules of interpretation set out in, the Agreement shall have the same meaning and effect when used in this Supplemental Agreement.

2. EFFECTIVE DATE

Notwithstanding the date on which the parties signed this Supplemental Agreement, it shall take effect on and from the relevant date and time.

3. AMENDMENTS TO THE AGREEMENT

3.1 Standard amendments

Subject to paragraph 3.2, the relevant changes shall be made to the Agreement.

3.2 Regulated amendments

If, before the relevant changes come into operation in accordance with this paragraph 3, the Agreement is amended in a manner which is:

- (a) approved by the Office of Rail and Road under section 22 of the Act; or
- (b) directed by the Office of Rail and Road under section 22A or 22C of the Act, (each a “**regulated amendment**”), then:
 - (i) the relevant changes shall come into operation in relation to the Agreement subject to the regulated amendments; and
 - (ii) if there is any conflict between a relevant change and a regulated amendment, the regulated amendment shall take precedence.

3.3 Amendments made to the definition of “Liability Cap” in Schedule 9 of a Track Access Agreement under the General Approval for Freight Track Access Contracts dated 1 April 2019 will not be considered a regulated amendment for the purpose of this paragraph 3.

3.4 Continuing Agreement

Except as provided in this paragraph 3, the Agreement, as amended by this Supplemental Agreement, shall remain in full force and effect in accordance with its terms.

4. GOVERNING LAW

This Supplemental Agreement shall be governed by and construed in accordance with the laws of England and Wales.

5. COUNTERPARTS

This Supplemental Agreement may be executed in two counterparts which, taken together, shall constitute one and the same document. Either party may enter into this Supplemental Agreement by signing either of such counterparts.

IN WITNESS of which the duly authorised representatives of Network Rail and the Freight Customer have executed this Supplemental Agreement on the date first above written.

Signed by
Print name
Duly authorised for and on behalf of
NETWORK RAIL INFRASTRUCTURE LIMITED

Signed by
Print name
Duly authorised for and on behalf of
[NAME OF FREIGHT CUSTOMER]