

## RAILWAYS ACT 1993

### 2023 PERIODIC REVIEW

#### REVIEW NOTICE: FREIGHT CUSTOMER TRACK ACCESS AGREEMENTS

TO:

- (1) the persons whose names are set out in Annex 1 to this Review Notice (the “**Freight Customers**”);
  - (2) Network Rail Infrastructure Limited (“**Network Rail**”); and
  - (3) the Secretary of State for Transport, the Scottish Ministers and the Treasury,
- together the “**Addressees**”.

#### 1 General

- 1.1 This review notice (the “**Review Notice**”) is given in accordance with paragraph 4 of Schedule 4A to the Railways Act 1993 (the “**Act**”).
- 1.2 The Office of Rail and Road (“**ORR**”) has undertaken a review of:
  - (a) the amounts payable by Network Rail and each of the Freight Customers to each other under each of the track access agreements listed in Annex 1 to this Review Notice (the “**Track Access Agreements**”); and
  - (b) the times at which, and the manner in which, those amounts are payable,(the “**Review**”).
- 1.3 ORR’s conclusions on the Review, and its reasons for those conclusions, are:
  - (a) set out in a series of documents referenced in the document entitled “**PR23 final determination: Consolidated list of decisions – England & Wales and Scotland**” and published by ORR on 31 October 2023; and

(b) hereby incorporated into this Review Notice.

1.4 By publishing this Review Notice and serving it on each of the Addressees, ORR is initiating the implementation of the Review.

## **2 Proposed Relevant Changes**

2.1 For or in connection with giving effect to ORR's conclusions on the Review, ORR proposes to direct the parties to each of the Track Access Agreements to amend their Track Access Agreement on the terms specified in Annex 2 to this Review Notice (the "**proposed relevant changes**").

2.2 ORR proposes that, subject to paragraph 3, the proposed relevant changes will come into operation on and from 1 April 2024.

## **3 Regulated Amendments**

3.1 Subject to paragraph 3.2 below, if, before the proposed relevant changes come into operation in relation to any Track Access Agreement, such 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 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.

3.2 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 Review Notice.

## 4 Objections

4.1 Subject to paragraph 4.2, any person specified in paragraph 4(4)(a) or (b) of Schedule 4A to the Act may make objections with respect to:

- (a) any of the proposed relevant changes; or
- (b) the date on which it is proposed that any such proposed relevant changes shall come into operation.

4.2 Any objection made under paragraph 4.1 must be:

- (a) made in writing;
- (b) received by ORR on or before 9 February 2024; and
- (c) addressed to ORR as follows:

Will Godfrey  
Office of Rail and Road  
25 Cabot Square  
London  
E14 4QZ

## 5 Definitions and Interpretation

5.1 In this Review Notice, unless the context otherwise requires:

- (a) references to “**this Review Notice**” include the Annexes to this Review Notice;
- (b) references to the singular include the plural and *vice versa*;
- (c) words and phrases defined in:
  - (i) the Act;
  - (ii) the Network Code (formerly known as the Railtrack Track Access Conditions 1995 (as amended)); or

(iii) each Track Access Agreement,

shall have the same meanings in this Review Notice; and

(d) any general rules of interpretation contained in:

(i) Condition A1 of the Network Code; or

(ii) each Track Access Agreement,

shall also apply to this Review Notice.



**Will Godfrey**

**Director of economics, finance and markets**

**FOR AND ON BEHALF OF**

**THE OFFICE OF RAIL AND ROAD**

Dated 20 December 2023

**ANNEX 1**

**FREIGHT CUSTOMERS AND TRACK ACCESS AGREEMENTS**

<b>Freight Customer Name</b>	<b>Freight Customer Company Number</b>	<b>Original Date of Track Access Agreement</b>
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**  
**STANDARD AMENDMENTS**

***Explanatory Note:***

*In order to give effect to ORR's conclusions on the Review, this Annex 2 sets out the standard form proposed relevant changes to be made to Schedules 7 and 9 and the clauses of each Track Access Agreement (the "**standard amendments**").*

*There are no bespoke amendments included in Annex 3 to this Review Notice.*

The following amendments shall be made to the Track Access Agreements:

**1 Consequential and other amendments to the clauses of each Track Access Agreement**

1.1 In clause 1.1 (Definitions) of **each** Track Access Agreement, delete the definitions of “Retail Prices Index” and “RPI”.

1.2 Delete sub-clause 16.1.2 (Delivery of invoices) of **each** Track Access Agreement and replace it with the following:

*“16.1.2 Delivery of invoices*

All invoices or statements of amounts payable issued under any provision of this contract shall be delivered by hand at, or sent by prepaid first class post, or by email to the address for service for the recipient specified in Schedule 1 and shall be deemed to have been received by the addressee in accordance with Clause 18.4.3.”.

1.3 In sub-clause 16.1.3 (Payment and content of invoices and other statements of amounts payable) of **each** Track Access Agreement, delete sub-clause (b) and replace it with the following:

“(b) contain such detail as to the constituent elements of the amounts stated to be payable as shall be necessary or expedient so as to enable the person to whom it is given to understand and check it and, where required by either party, include a purchase order number.”.

1.4 In sub-clause 18.4 (Notices) of **each** Track Access Agreement:

(a) delete sub-clause 18.4.1(b), and replace it with the following:

“(b) shall be duly given if signed by or on behalf of a person duly authorised to do so by the party giving the notice and delivered by hand at, or by sending it by prepaid first class post, recorded delivery, or by email, to the relevant address or email address as set out in Schedule 1.”.

(b) delete sub-clause 18.4.3(c), and replace it with the following:

“(c) not used; and”.

## **2 Schedule 7 to each Track Access Agreement**

2.1 In sub-paragraph 2.8 (Incremental Costs) of Schedule 7 to **each** Track Access Agreement, in sub-paragraphs 2.8.1(b) and (c) delete the date “1 April 2019” and replace it with the date “1 April 2024”.

## **3 Schedule 9 to each Track Access Agreement**

3.1 In paragraph 1 (Definitions) of Schedule 9 to **each** Track Access Agreement, delete the definition of “Liability Cap” and replace it with the following definition:

“**“Liability Cap”** means:

the sum calculated in accordance with the following formula:

$$C_t = C_1 \bullet \left( 1 + \left[ \frac{CPI_{t-1} - CPI_{2022}}{CPI_{2022}} \right] \right)$$

where:

- (i)  $C_t$  is the relevant figure in Relevant Year t;
- (ii)  $C_1$  is the sum £8,300,000;
- (iii)  $CPI_{t-1}$  is the Consumer Prices Index (as defined in Clause 1.1) published or determined with respect to the month of November in Relevant Year t-1; and
- (iv)  $CPI_{2022}$  is the Consumer Prices Index (as defined in Clause 1.1) published or determined with respect to November 2022.”.



**ANNEX 3**

**BESPOKE AMENDMENTS**

**PART 1 (MODIFICATIONS TO STANDARD AMENDMENTS AND OTHER BESPOKE  
AMENDMENTS)**

***Explanatory Note:***

*There are no modifications to any Track Access Agreements set out in this Part 1 of Annex 3.*

**NONE**

## ANNEX 3

### PART 2 (CONFIDENTIAL INFORMATION)

***Explanatory Note:***

*There are no modifications to any Track Access Agreements set out in this Part 2 of Annex 3.*

**NONE**