

**Railways Act 1993**

**Freight Customer**

**General Approval 2011**

**2011 No. \*\*\*\*\***

<i>Made</i>	<i>**/**/****</i>
<i>Coming into force</i>	<i>**/**/****</i>

The Office of Rail Regulation, in exercise of the powers conferred upon it by sections 18(1)(c) and 22(3) of the Railways Act 1993, gives the following general approval.

**Citation, commencement and revocation**

1. (1) This general approval may be cited as the Freight Customer General Approval 2011.
- (2) This general approval comes into force on *\*\*/\*\*/\*\*\*\**.

**Interpretation**

2. (1) In this general approval:

"access contract" means an agreement under which Network Rail grants a beneficiary permission to use its track for or in connection with the provision of services;

"Drawdown Notice" has the same meaning as defined in the Model Freight Customer Track Access Contract;

"Model Freight Customer Track Access Contract" means the model access agreement published under that name by the Office of Rail Regulation on 15 September 2010 as may be amended and re-issued by the Office of Rail Regulation from time to time;

"Model Freight Operating Company Customer Track Access Contract" means the model access agreement published under that name by the Office of Rail Regulation on 15 September 2010, as may be amended and re-issued by the Office of Rail Regulation from time to time;

"Model Track Access Contract (Freight Services)" means the model access agreement published under that name by the Office of Rail Regulation on 18 November 2009, as may be amended and re-issued by the Office of Rail Regulation from time to time;

"Model Track Access Contract (Freight Services) - Freight Customer Mark Up" means the model access agreement published under that name by the Office of Rail Regulation on the same date that this General Approval was issued, as may be amended and re-issued by the Office of Rail Regulation from time to time;

"Network Rail" means Network Rail Infrastructure Limited, a company registered in England under number 2904587;

"Revocation Notice" has the same meaning as defined in the Model Freight Customer Track Access Contract;

(2) In this general approval:

- (a) unless the context otherwise requires, terms and expressions defined in the Railways Act 1993 shall have the same meanings in this general approval;
- (b) the Interpretation Act 1978 applies to this general approval in the same way as it applies to an enactment; and
- (c) unless the context otherwise requires, any reference to a numbered paragraph is a reference to the paragraph in this general approval which bears that number.

3. The Office of Rail Regulation gives its approval to the matters set out in paragraphs 4, 5, and 6.

#### **Making of track access agreements – Freight Customer Track Access Contracts**

4. Network Rail and another party may enter into an access contract regarding the provision of access rights to a freight customer provided it is entered into on the same terms as the Model Freight Customer Track Access Contract in place at the time with the following exceptions:

- (a) the areas marked by square brackets must be completed as appropriate by the parties;
- (b) the "Expiry Date" inserted in the access contract is no more than five years from the effective date of the access agreement set out in paragraph 3.1 thereof; and
- (c) no cell in the Rights Table annexed to Schedule 5 is populated;
- (d) the values in the cordon cap table in paragraph 2.2.8 to Schedule 5 are set at "0".

#### **Making of track access agreements – Freight Operating Company Customer Track Access Contracts**

5. Network Rail and another party ("the Freight Operator") may enter into an access contract to reflect that rights have been drawn down to the Freight Operator in a Drawdown Notice, that is not subject to a Revocation Notice, provided it is entered into on the same terms as the Model Freight Operating Company Customer Track Access Contract in place at the time with the following exceptions:

- (a) the areas marked by square brackets must be completed as appropriate by the parties;
- (b) the “Expiry Date” inserted in the access contract reflects the last date of operation specified in the Drawdown Notice and, in any event, is no more than five years from the effective date of the access agreement set out in paragraph 3.1 thereof;
- (c) the cells in the Rights Table annexed to Schedule 5 are populated with the Firm Rights specified in the Drawdown Notice;
- (d) the values in the cordon cap table in paragraph 2.2.8 to Schedule 5 are populated with the cordon cap values specified in the Drawdown Notice;
- (e) the Indemnity Incident Cap and calculations in clause 11.6.5 are completed and mirror those in the access contract entered into between Network Rail and the Freight Operator on the same terms as the Model Track Access Contract (Freight Services);
- (f) the definition of “Liability Cap” in Schedule 9 is completed and mirrors the “Liability Cap” in the access contract entered into between Network Rail and the Freight Operator on the same terms as the Model Track Access Contract (Freight Services).

### **Approval of amendments to the Track Access Contract (Freight Services)**

6. Where Network Rail and another party have entered into an access contract on the same terms as the Model Track Access Contract (Freight Services) (“their Track Access Contract (Freight Services)”) and subsequently enter into an access contract on the terms of the Model Freight Operating Company Customer Track Access Contract, they may make to their Track Access Contract (Freight Services) the amendments marked up in clauses 1, 11 and Schedule 9 in the Model Track Access Contract (Freight Services) - Freight Customer Mark Up.

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**Duly authorised by the Office of Rail Regulation**

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**EXPLANATORY NOTE** (this does not form part of the general approval)

*Section 18(1) of the Railways Act 1993 ("the Act") enables the Office of Rail Regulation ("ORR") to give its approval in advance to the entering into of access agreements. As long as an access agreement falls wholly within the terms and conditions of a general approval, the parties may enter into it without seeking the approval of ORR. If the access agreement does not come within the scope of the general approval, directions under section 17 or 18 of the Act must be obtained from ORR.*

*Section 22(3) of the Railways Act 1993 ("the Act") enables the Office of Rail Regulation ("ORR") to give its approval in advance to the making of amendments to access agreements. As long as an amendment falls wholly within the terms and conditions of a general approval, the parties to the access agreement in question may amend it without seeking the approval of ORR to the amendment. If it does not come within the scope of the general approval, a specific approval under section 22 or directions under section 22A, section 22C or Schedule 4A to the Act must be obtained.*

*Access agreements and amendments to access agreements which have not been approved by ORR - either under a general approval or a specific one, or made pursuant to directions - are void.*

*This general approval enables Network Rail, freight customers and freight operators to enter or amend access contracts to put in place the contractual arrangements relating to the establishment of a new customer specific freight track access contract.*

*Specifically this general approval enables Network Rail and a freight customer to enter into a track access contract provided that:*

- *The contract is on the same terms as the Track Access Contract (Freight Customer)" then in force.*
- *The areas marked by square brackets in the model contract are completed by the parties as appropriate.*
- *The duration of the contract is no more than five years.*
- *Cordon caps set out in Schedule 5 are "0".*
- *There are no rights contained in the Schedule 5 table of rights.*

*This general approval also enables Network Rail and a freight operator to enter into a track access contract in order to operate services on behalf of a freight customer provided that:*

- *The contract is on the same terms as the model Freight Operating Company Customer Track Access Contract then in force.*

- *The areas marked by square brackets in the model contract are completed by the parties as appropriate.*
- *The duration of the contract reflects the duration specified in the drawdown notice and, in any event, is no more than five years.*
- *Cordon caps set out in Schedule 5 reflect cordon cap values specified in the drawdown notice;*
- *The rights contained in the Schedule 5 table of rights are the same as the rights specified in a valid drawdown notice from the freight customer to the freight operator;*
- *The Indemnity Incident Cap and calculations in clause 11.6.5 are completed and mirror those in the freight operator's own track access agreement;*
- *The definition of "Liability Cap" in Schedule 9 is completed and mirrors that in the freight operator's own track access agreement.*

*This general approval allows Network Rail and a freight operator to amend their track access contract (freight services) if they have entered into freight operating company customer track access contract to prevent the freight operator from having liability over both contracts at the same time and the Indemnity Incident Cap and the Liability Cap provisions are amended as required by the general approval.*

*Under section 72(5) of the Act a copy of all agreements entered into, including agreements approved under this general approval, must be sent to ORR within 14 days of being made. Subject to the requirement in section 72(3) of the Act to have regard to the need for excluding certain information, such copies will be entered into the public register.*