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APPLICATION TO THE OFFICE OF RAIL AND ROAD FOR A FREIGHT TRACK ACCESS CONTRACT, OR AN AMENDMENT, UNDER SECTIONS 17-22A OF THE RAILWAYS ACT 1993

1. Introduction

Please use this form to apply to the Office of Rail and Road (ORR) for:

- Directions under section 17 of The Railways Act 1993 (the Act) for a new track access contract. This is for companies who want to use Network Rail's network where the parties are not able (for whatever reason) to reach agreement.
- Approval for a new track access contract under section 18 of the Act. This is for use where terms have been agreed by the parties.
- Approval of a proposed amendment to an existing track access contract, agreed by both parties, under section 22 of the Act.
- Directions under section 22A of the Act for an amendment to an existing track access contract. This is for someone seeking an amendment to an existing track access contract to permit more extensive use of the railway facility if the parties are not able, for whatever reason, to reach agreement.

Network Rail should normally take responsibility for the pre-application consultation, where the terms are agreed. Before a consultation is made, complete this form up to the end of section 7. You should fill in the rest of the form after the consultation and before applying to ORR.

If, in the case of section 17 and 22A applications, the beneficiary and Network Rail have been unable to agree terms, the beneficiary should:

- (a) ask Network Rail to conduct a pre-application consultation in line with the code of practice; or
- (b) conduct a pre-application consultation itself, in line with the code of practice; or
- (c) submit the application to ORR and ask ORR to conduct the consultation, in which case, please complete this form in full before submitting it to us.

The form sets out ORR's standard information requirements for considering applications. Our [track access guidance](#) explains the process, timings and the issues we will consider. You should use our current [model freight track access contract](#) as your starting point. Please read the guidance before completing the contract and this form.

We are happy to talk to you informally before you apply. Please contact us [here](#). You can download a copy of this form, and of our model track access contract, from our [website](#).

You may also use and adapt this form to apply to use railway facilities other than those of Network Rail. Do not use this form for HS1, for which a separate form is available on our [website](#).

1

2. The application

2.1 Title of contract or supplemental agreement (please also include the section of the Act under which you are applying):

Freightliner Heavy Haul Limited 16th Supplemental Agreement to the December 2016 Track Access Contract – Section 22 Application.

2.2 Contact details (Company and named individual for queries):

<u>Facility Owner</u>	<u>Beneficiary</u>
Company: Network Rail Infrastructure Ltd	Company: Freightliner Heavy Haul Ltd
Contact individual: Robert Neep	Contact individual: Chris Matthews
Job title: Customer Relations Executive	Job title: Timetable Strategy and Rail Industry Manager
Telephone number: [REDACTED]	Telephone number: [REDACTED]
E-mail address: [REDACTED]	E-mail address: [REDACTED]
Address: Network Rail Ltd., 1 Eversholt Street, London. NW1 2DN	Address: Freightliner Heavy Haul Ltd., The Lewis Building, 35 Bull Street, Birmingham, B4 6EQ

2.3 Licence and railway safety certificate: please state whether you intend to operate the services yourself or have them operated on your behalf.

Freightliner Heavy Haul Limited intends to operate the services itself and holds a valid operating licence under Section 8 of the Railways Act 1993. Freightliner also holds safety certificates, Part A and B, under Regulation 7 of the Railways, and other Guided Transport Systems (Safety) Regulations 2006.

Does the proposed operator of the services (a) hold a valid train operating licence under section 8 of the Act or an exemption under section 7, or a European licence with a GB Statement of National Regulatory Provisions issued under the The Railway (Licensing of Railway Undertakings) Regulations 2005 and (b) hold a valid safety certificate under the Railways and Other Guided Transport Systems (Safety) Regulations 2006?

If the answer to either (a) or (b) is no, please state the point reached in obtaining a licence, exemption and/or safety certificate (as relevant).

Not applicable

3. The proposed contract or amendment

- 3.1 Executive summary: please provide an executive summary of the proposed contract or amendment. This should cover the services, the commercial terms, and the reasons for making the application in the terms proposed. This information should be laid out clearly and concisely; and, in the case of an amendment, fully highlight the changes from the previous version of the contract.

Please also explain any important safety risks that have been identified arising from the proposal and how these will be controlled (by reference to the facility owner's safety authorisation and the train operator's safety certificate).

Please also state the commencement and expiry dates for the proposal, and, for new contracts or extensions to existing contracts, provide justification for the proposed duration of the contract where the total exceeds five years.

Date of commencement: 11th December 2016

Expiry date: December 2026 (PCD 2026)*

Freightliner Heavy Haul Limited ('Freightliner') holds a new Track Access Contract (Freight Services), dated 11th December 2016, expiring on the Principal Change Date (PCD) of December 2026.*

Freightliner completed 2 Supplemental Agreements in 2020/2021 to establish Firm Rights for train slots associated with the Mendip Rail haulage contract, having commenced running this traffic in late 2019. These were the FLHH 9th SA (Section 22) and the FLHH 10th SA (Section 22A).

In their Decision on the 10th SA, the ORR granted Freightliner Firm Access Rights expiring at SCD 2023 for a number of train slots over which Network Rail and Freightliner could not reach agreement on performance and/or route availability. This proposed 16th SA removes the expiry date on these Rights where performance has improved, extending them through to PCD 2026*.

This is requested on the following basis:

-This traffic remains of significant value to the UK economy, supplying aggregate to the construction industry in the South East. As such there is an ongoing requirement for these train slots in the May 2023 timetable and beyond, for which Freightliner require Firm Access Rights to provide certainty to the customer and end user.

-Freightliner, Mendip Rail and Network Rail have put considerable time and resources into improving performance from the Mendip Quarries, working to understand and resolve very long standing issues that lead to late starts.

-Network Rail have led a number of workshops on the retention of RA10 capability on the South East Route, as well as the wider network, and have a clearer understanding of the work involved and the funding to retain this going forward to CP7. No further issues have been raised with Freightliner over maintaining Heavy Axle Weight capability over the structures in the Southern Region.

-Sufficient time has passed that should now permit Network Rail to apply a more informed view of Heavy Axle Weight capability, as opposed to the blanket policy that was in place in previous years. Freightliner considers that this more informed view should drive more sophisticated approach to Route Availability.

As part of this application:

14 existing firm rights are amended
1 existing firm right is removed
1 new foot note is added

Freightliner are requesting Firm Rights with one-hour windows in line with the ORR directions letter of 29th February 2016. Further details are provided in sections 4.1 and 4.3.

Freightliner Heavy Haul Limited currently have the proposed 7th Supplemental Agreement in progress to extend the expiry date of the Track Access Contract (Freight Services) from the PCD of December 2026 to the PCD of December 2030. This includes all rights with the exception of those with HAW characteristics running on the Southern region. The expiry date of the rights included in this Supplemental Agreement will be extended to align with the revised expiry date of the Track Access Contract on completion of the 7th Supplemental

Agreement. Any rights included in this Supplemental Agreement with HAW characteristics running on Southern Region will expire PCD 2026.

3.2 Terms not agreed with the facility owner (for applications under sections 17 or 22A only): please set out here any areas of the application which have not been agreed, the reasons for the failure to agree and the reasons for seeking these provisions. Please state the efforts you are making to resolve any disputes.

Not Applicable

3.3 Departures from ORR's current model freight track access contract: please set out and explain here any:

- Areas where the drafting is different to ORR's published template freight track access contract. Please explain why these departures have been made.
- Instances where the proposal departs from the charging and/or performance regimes established by ORR's latest periodic review (or subsequent interim reviews) as reflected in ORR's model freight track access contract, including the financial implications (e.g. establishment of an access charge supplement or rebate).
- New processes (e.g. self-modification provisions) which have been added. Please demonstrate how these new processes are robust and complete.

There are no departures from the ORR's model freight track access contract proposed in the 16th Supplemental Agreement.

4. The expression of access rights and the use of capacity

4.1 Benefits: Please provide full descriptions of any new rights required, as compared to the previous contract (in the case of an amendment). Why do you need these new rights (if any)? Please describe any significant changes in the pattern of services and any impact on other operators, including other freight operators. Please provide a fully marked-up version or document comparison of any tables in Schedule 5 which are being modified as a result of this application.

The Rights Table will reflect Freightliner's current operations, providing clarity to train planners, projects and strategic planning. It will provide the assurance of a stable train plan for the foreseeable future, allowing

Freightliner to focus on incremental improvements to the traffic, while ensuring valuable capacity is not utilised by train slots no longer required. Full details of the proposed changes are provided in the form of an updated and 'marked up' Rights Table.

The Rights sought are to continue to support the Mendip Rail haulage contract which was let on the basis serving existing aggregates markets as well as providing for growth and serving new locations. The Rights will support the movement of 9 million tonnes of construction materials to receiving terminals across the South of England. The traffic is of significant economic importance to the economy and as such has featured in all relevant Route Studies, the Freight Market Study, including the cross-London Freight Strategy and the Network Rail Freight Strategy that will feed into the Whole Industry Strategic Plan.

4.2 Adequacy: please set out how you have satisfied yourself that there is enough network capacity for the proposed and/or amended services (or will be at the time of service operation). Please also set out whether there are any implications for overall network performance and the facility owner's maintenance and renewal activities. Please confirm whether the proposed Rights will involve operation over an area subject to a Declaration of Congested Infrastructure, or whether the capacity requirement will result in a Declaration of Congested Infrastructure by Network Rail (under the Network Code).

All trains included in this proposed 16th Supplemental Agreement have validated paths in the May 2021 WTT.

4.3 Firm Rights: Do these Firm Rights in the proposal contract relate to service freight haulage contracts which you hold or will hold? If so, how? How does the duration of these haulage contracts compare with the duration of the proposed track access contract?

The Firm Rights being requested are required to run until the expiry date of the Freightliner Heavy Haul Track Access Contract – December 2026 (PCD 2026)*. The one-hour windows requested for the Firm Rights are in line with the ORR directions letter of 29th February 2016.

* Freightliner Heavy Haul Limited currently have the proposed 7th Supplemental Agreement in progress to extend the expiry date of the Track Access Contract (Freight Services) from the PCD of December 2026 to the PCD of December 2030. The expiry date of the rights included in this Supplemental Agreement will be extended to align with the revised expiry date of the Track Access Contract on completion of the 7th Supplemental Agreement.

4.4 Contingent Rights: please set out the extent to which you expect to use the Contingent Rights in the application. In particular, please state whether the proposed rights are seasonal (eg 3 months each year) or occasional (eg MO, SX, etc).

There are no Contingent Rights applicable to this proposed Supplemental Agreement.

4.5 Window size: Please set out the reasons for the origin and destination window sizes used in the Rights Table in Schedule 5.

The one-hour windows requested for the new Firm Rights are in line with the ORR directions letter of 29th February 2016. This ensures a stable train plan from one timetable to the next, allowing both Freightliner Heavy Haul and Third Parties to efficiently manage and optimise access to the network.

The majority of terminals served by services included within this supplemental are located in urban areas, as close as possible to the locations where aggregates are required by the construction industry, thus minimising onward transportation by road. However, this means that space within these terminals is extremely constrained and orders are processed on a 'just in time' basis, with a very short window between rail arrivals and the need to fulfil customer orders. One-hour windows are therefore essential to the end user, providing certainty on the time a train will arrive – without this, the customer may suffer from significant financial losses though being unable to satisfy demand, this leading to delays for the construction industry in completing projects.

Further, operations at both Whatley and Merehead Quarries require numerous shunting movements to take place to load wagon sets ready for departure. Without stable arrival times, there is potential for these sites to become heavily congested, leading to delays in loading wagons and departure times. Due to the nature of these quarries being located at the end of single-track branch lines, any delayed departure can have a knock on effect to later arrivals, as well as creating delays to other services on the mainline.

4.6 Long term planning process: please state which Route Studies are relevant and whether the proposed rights are consistent with them. If they are not consistent please give the reasons. See Network Rail's [website](#). What consideration has been given to any issues emerging from relevant Events Steering Group concerning capacity on the routes covered by the application (if Network Rail network).

The traffic is of significant economic importance to the economy and as such has featured in all relevant Route Studies on the UK rail network; including the Freight Market Study and the Freight Network Study, as well as the cross-London Freight Strategy and the Network Rail Freight Strategy that will feed into the Whole Industry Strategic Plan.

5. Incentives

5.1 Train operator performance: please describe any planned projects or initiatives associated with the operation of the proposed services aimed at improving your performance (including faster or longer trains).

Following the performance concerns raised by Network Rail in response to the 10th SA, Freightliner, Network Rail and Mendip Rail have spent significant time carrying out an extensive review of the operation of the trains included within this proposed SA, looking to understand and address reoccurring performance issues. This workstream is generally accepted to be making good progress improving the overall performance of this service group, including:

- Investment by Freightliner in additional stabling facilities at Westbury Cement Terminal to reduce congestion in the Quarries, as well as providing an alternative location for recessing trains in the event of service disruption.
- Amending the formation of services to reduce reliance on tight loading windows and critical wagon turnarounds.
- Developing innovative ways of working, such as locomotives mid-consist, to reduce reliance on shunting at yards prior to departure.
- Constant monitoring of late running services, with debriefing to understand what issues were encountered and how they can be prevented in the future.

Freightliner continues to work collaboratively with Network Rail on performance initiatives to drive further performance gains in line with our performance improvement plan. Freightliner have invested in a number of technological improvements intended to improve communication and the ability to react to delays and issues on the network, including:

- Provision of new iPads with Driver Advisory Software to train crew. This provides real time train running advice to drivers to assist them in right time running as well as to make it easier for them to report delays.
- Introduction of Mobile Train Consisting software technology on certain train flows to improve the efficiency and reduce the time taken to consist trains prior to departure.
- Investment in Power BI to analyse all performance data to better understand recurring performance issues and drive business cases for capital investment.

Additionally, Freightliner continue, on a National basis, to make significant investment in locomotive and rolling stock maintenance facilities, including a new multi million pound facility at Ipswich. These investments improve the availability and reliability of rolling stock nationally, and as such improve performance.

5.2 Facility owner performance: please describe any planned projects associated with the operation of the proposed services aimed at improving the facility owner's performance.

Freightliner are involved in multiple workstreams with Mendip Rail, the operator of Whatley Quarry, to improve performance and right time starts.

These workstreams include thorough analysis of operational issues leading to late starts, identifying the issues leading to these and amending staffing times to increase train preparation times during busy periods.

Freightliner have also made significant investments at Westbury to improve terminal performance by reducing congestion and reliance on constrained infrastructure, again improving performance.

Further detail is provided within Section 5.1.

5.3 Restrictions of Use: set out and explain the reasons for any changes from the Restrictions of Use regime in the model freight track access contract (Schedule 4).

There are no changes to the Restriction of Use regime.

6. Enhancement

6.1 Enhancement details: where the proposal provides for the delivery of any network enhancements, or the services in the proposal are subject to any planned network enhancements, please give full details of the relevant enhancement schemes, including a summary of outputs from the scheme, timescales and the extent to which the network change procedure in the Network Code (Part G) has been completed (where appropriate, by reference to submissions made under ORR's enhancement reporting framework).

There are no network enhancements associated with this application, nor are any of the proposed services subject to network enhancements.

6.2 Enhancement charges: please confirm that the arrangements for the funding of any network enhancements are consistent with ORR's [Policy Framework for Investments](#), and summarise the level and duration of payments, and the assumed rate of return (see chapter 3 of the Conclusions document).

Not applicable to this application.

7. Other

7.1 Associated applications to ORR: please state whether this proposal is being made in parallel with, or relates to, any other current or forthcoming application to ORR (e.g. in respect of track, station or light maintenance depot access contracts).

Not applicable to this application.

7.2 Unregulated access: please comment on whether any contracts are being negotiated for access to a facility adjoining Network Rail's network (e.g. to a freight light maintenance depot), including where ORR's approval is not required. For more information, see [The Railways \(Class and Miscellaneous Exemptions\) Order 1994](#). (This is relevant in the context of clause 6.4 of the model contract.)

Not applicable to this application.

7.3 Supporting information, side letters and collateral agreements: please:

- state here any relevant information in support of the proposal, including a list and explanation of any other material being submitted (and supply copies with the application).
- confirm here that the whole of the proposal between the parties has been submitted with this application and that there are no side letters or other documents which affect it.

Annex 1 – A fully marked up version of Schedule 5 Rights Table.

7.4 Confidentiality exclusions: please list any parts of your application which you have excluded on the grounds of confidentiality, from the version of the application sent to consultees for any pre- application consultation process and provide reasons.

If there has been no pre-application consultation, you should state any parts of the application you want us to exclude from publication.

No confidentiality exclusions are required.

8. Pre-application consultation

Note: Where a pre-application consultation is to be undertaken in line with the Code of practice for industry consultations, the remainder of this application should not be completed until after that consultation has been completed.

8.1 The consultation: has a pre-application consultation been carried out in line with the [Code of practice for industry consultations](#)? If yes, please:

- state who conducted the consultation;
- list all train operators and any other parties that were consulted, stating which parties responded and attach their responses and any associated documentation to this form; and
- state the period allowed for the consultation. If this was less than 28 days, please explain the reasons for this.

If a pre-application consultation has not been carried out, please explain the reasons and whether any informal discussions have been held with any third parties who might be affected by this application and the nature of any concerns which they raised.

Freightliner 14th Supplemental Agreement was endorsed by Network Rail Sale of Access Rights Panel (SoAR) on 18 July 2022 prior to external Industry consultation. Industry Consultation took place from 20 December 2022 to 23 January 2023.

MTREL, GWR and CrossCountry responded.

8.2 Resolved issues: please set out any issues raised by consultees which have been satisfactorily resolved. You may wish to refer to responses attached to this form.

Please explain any changes as a result of the consultation.

Please see 8.3 for the MTREL unresolved issue. No further issues were raised by other consultees.

8.3 Unresolved issues: please set out any issues raised by consultees which have not been resolved to the consultee's satisfaction, including any correspondence with that consultee. You may wish to refer to responses attached to this form. Please explain why you think these issues should not stop ORR approving the application.

One unresolved issue remains with the Freightliner 16th Supplemental Agreement from MTREL (see attached Annex 2A for full details). To summarise (extracted from the letter issued by Nick Westcott, Train Services Director on behalf of Mike Bagshaw, Managing Director, MTREL to Marcus Jones, Western Route Director, Network Rail:)

16th Freightliner Supplemental Agreement

The industry consultation commenced on 20 December 2022. On 30 December 2022 MTREL responded with concerns related to the following train (which TfL had previously challenged in the pre-consultation):-

- *6L21 Whatley Quarry to Dagenham Dock.*

MTREL commented on the poor performance of this train which resulted in 67 incidents and 2255 minutes in 2022/23. Our analysis suggests that most of the delay originates from Whatley Quarry.

In June 2023, MTREL were advised that a recast of the Mendip freight traffic would be undertaken for the December 2023 timetable change. Given that the related timetable work had not commenced, we are concerned that there is not sufficient time for performance modelling to be undertaken to demonstrate that the revised service will operate reliably.

9. Certification

Warning: Under section 146 of the Railways Act 1993, any person who, in giving any information or making any application under or for the purposes of any provision of the Railways Act 1993, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, is guilty of an offence and so liable to criminal prosecution

In the case of agreed applications under section 18 or 22, the facility owner should fill in the information in the box below. For disputed applications under section 17 or 22A, the applicant should fill in the required information.

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