



## 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](#).

## 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 Ltd 24<sup>th</sup> Supplemental Agreement (Section 22A 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., Waterloo General Office, London, SE1 8SW	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:** PCD 2016

**Expiry date:** 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 currently hold a multi year contract for operation of Mendip Rail services between the South West and terminals in London and the South East. This contract is the largest single bulk haulage contract in the UK and is of significant value to the UK economy, supporting the construction industry as well as major construction projects such as HS2, transporting in excess of 7 million tonnes of aggregate annually.

Freightliner completely recast the train plan for the Mendip Rail train plan in December 2023, following around 18 months of collaborative work between Network Rail, Mendip Rail and Freightliner. This timetable recast was intended to deliver the following:

- Better spacing of schedules departing origin, reducing congestion at the Quarries and the root cause for late starts.

- Ensuring a workable plan at Quarries between arrivals and departures, ensuring ground staff can cover all movements.

- Improving Train Planning Rules and Sectional Running Times to provide better quality schedules that reflect performance of trains and improve journey times.

- Ensuring capacity available to support customer demand for deliveries, removing requirement for short notice planning of additional services which typically cause performance issues, and providing room for growth, increasing modal shift to rail and furthering decarbonisation benefits of moving this traffic by rail.

Since implementation of the recast timetable, performance has significantly improved with Right Time Departures significantly higher than was previously the case, as well as there being a significant reduction in delay minutes caused to other operators.

Firm Access Rights for the recast timetable were formalised in December 2023 as part of FLHH’s 18<sup>th</sup> Supplemental Agreement. This 24<sup>th</sup> Supplemental Agreement seeks to amend these rights to reflect further work conducted on the timetable as originally offered by Network Rail and contractualise the finalised recast train plan.

As part of this application, Freightliner are seeking the following amendments to their rights table, as outlined in the attached Schedule 5 Rights Table extract:

2 Existing rights are discontinued

31 Existing rights are amended (of which 10 have no material impact on the timetable being headcode changes or changes to notes)

14 New rights are sought

\*Freightliner Heavy Haul Limited currently have the proposed 7<sup>th</sup> 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, to which Footnote 1 in the Rights Table does not apply. 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 7<sup>th</sup> Supplemental Agreement. Any rights included in this Supplemental Agreement with HAW characteristics running on Southern Region, to which footnote 1 does not apply, will expire PCD 2026.

**With which of the Regions does this application interact?**

Southern	Eastern	North West & Central	Wales & Western	Scotland’s Railway
x	x	x	x	

**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.

All aspects of this application remain at not-agreed status with Network Rail. This application was progressing through NR consultation but insufficient time has been available to complete this ahead of the ORR deadline to receive applications of 20<sup>th</sup> May 2024.

**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.

Not Applicable

#### 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 assurance of a stable train plan for the foreseeable future, ensuring the significant work completed to date to improve performance is not degraded, and providing end users with consistency in deliveries.

The trains included in this Supplemental Agreement are of significant value to the UK economy, and collectively deliver well in excess of 7 million tonnes of aggregate each year, with volumes forecast to grow in future in line with the UK's wider decarbonisation strategy and increasing demand for the movement of aggregates by rail.

The rights requested here will ensure that the core train plan required to operate the Mendip Rail contract is supported by Access Rights in line with the ORR guidance that freight schedules should not rely on running as TOVRs for more than 12 months.

**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 train slots included in this 24<sup>th</sup> Supplemental Agreement have paths offered in the December 2023 and June 2024 Working Timetables, and these have all been validated against other schedules bid by other operators to ensure capacity exists for these trains.

This application does not seek to gain any additional Firm Rights over Congested Infrastructure, nor will it result in any routes being declared Congested Infrastructure. Although not Congested Infrastructure, one additional Firm Access Right is requested over the North London Line (NLL) in each direction – 6L42 was included in the 18<sup>th</sup> SA but removed following Eastern Region concerns over TPR compliance at Harlow Mill (rather than Capacity issues on the NLL and subsequently resolved) while 6M58 was an existing Firm Access Right which was removed in error in the 18<sup>th</sup> SA and is now sought to be reinstated.

**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?

Freightliner holds multi year customer contracts for all traffic the train slots included in this 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 (e.g. 3 months each year) or occasional (eg MO, SX, etc).

Not Applicable – no contingent rights are sought

**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).

The recast of Mendip Rail services that is the driver for this supplemental agreement is based around the improvement of performance across this service group. This follows performance concerns raised by Network Rail and other stakeholders in response to previous applications for access rights for this traffic by Freightliner.

Network Rail and Freightliner have worked collaboratively with Mendip Rail to understand the root cause of delays on the network and late starts and this recast of services sets out to address those issues. Freightliner continue to be incentivised towards better performance due to the penalties laid out through Schedule 8 of our TAC.

In the last 3 years, Freightliner have introduced various measures to assist with improving performance including additional stabling facilities, reducing reliance on third party owned infrastructure where delays can be outside our control, and setting up new ways of working which reduce the number of shunt movements required at each end of the journey.

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.

Since implementation of the recast timetable Freightliner and Network Rail have conducted periodic reviews of performance as well as weekly performance reviews with the Quarries to understand and seek to rectify late starts.

**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.

The recast of Mendip Rail services that is the driver for this supplemental agreement is based around the improvement of performance across this service group. This follows performance concerns raised by Network Rail and other stakeholders in response to previous applications for access rights for this traffic by Freightliner.

Primarily, this sees a move to better spread departures from the Mendip Quarries and better cycle wagons, to remove congestion at the Quarries which can delay departures. Additionally, work has been undertaken to ensure robust times are provided at all discharge terminals to try and prevent issues such as late starts or returning loaded wagons when trains get caught up in network disruption.

**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). Where the application relies on another operator relinquishing access rights, please provide details.

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



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**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 extract of all Mendip services in the Schedule 5 Rights table
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**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.

Not applicable to this application
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**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 [Industry code of practice for 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 one calendar month, please explain the reasons for this.
- If the consultation was concluded some time ago, please explain why you consider it is still valid.
- Have there been any recent significant changes since consultation that could affect the validity of the responses received?

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.

TBC

**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.

TBC

**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.

TBC

**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.***

I certify that the information provided in this form is true and complete to the best of my knowledge

Signed ..... Date...07/05/24...

Name (in caps) .....CHRIS MATTHEWS..... Job title ...TIMETABLE STRATEGY AND RAIL INDUSTRY MANAGER....

For (company) .....FREIGHTLINER HEAVY HAUL LTD.....

For section 18/22 applications, please provide a letter of support from the beneficiary or ask them to sign here:

Signed ..... Date.....  
 Name (in caps) ..... Job title .....  
 For (company) .....

**10. Submission**

**10.1 What to send:** please supply, in hard copy or electronic format, the signed application form, one copy of the proposed contract or amendment, with copies of any documents incorporated by reference (other than established standard industry codes or other documents) and any other attachments, supporting documents or information.

**10.2. Checklist of documents attached to the application form:**

- Proposed new contract or supplemental agreement
- Marked up Schedule 5 (including key)
- Marked up comparison to model contract (where applicable)
- Consultation responses
- Replies to consultation responses
- Other supporting documents, side letters or collateral agreements (please list):


**10.2 Where to send it:**

Freight Track Access Manager Email: [track.access@orr.gov.uk](mailto:track.access@orr.gov.uk)

Access, Licensing and International Team  
 Directorate of Economics Markets and Strategy  
 Office of Rail and Road  
 25 Cabot Square  
 London E14 4QZ