

Form **F**

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](#).

DB Cargo holds valid operating licences under Section 8 of the Railways Act 1993 and regulation 6 of the Railway (Licensing of Railway Undertakings) Regulations 2005 (as amended) (**‘the Licensing Regulations’**) as well as a Statement of National Regulatory Provisions granted under Regulation 10 of the Licensing Regulations. DB Cargo also has a Safety Certificate under regulation 7 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006

2. The application

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

Fortieth Supplemental Agreement to the Track Access Contract (Freight Services) dated 11 December 2016 between Network Rail Infrastructure Limited and DB Cargo (UK) Limited (S22) (**‘the application’**)

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

<u>Facility Owner</u>	<u>Beneficiary</u>
Company: Network Rail Infrastructure Limited (‘Network Rail’)	Company: DB Cargo (UK) Limited (‘DB Cargo’)
Contact individual: Jules Graham	Contact individual: Quentin Hedderly
Job title: Customer Relationship Executive	Job title: Regulatory Specialist
Telephone number: [REDACTED]	Telephone number: [REDACTED]
E-mail address: [REDACTED]	E-mail address: [REDACTED]
Address: 1 Eversholt Street London NW1 2DN	Address: Lakeside Business Park Carolina Way Doncaster DN4 5PN

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

DB Cargo intends to operate the services itself.

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).

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.

The application seeks a 4-year extension to DB Cargo's existing Track Access Contract (Freight Services) with Network Rail dated 11 December 2016 ("the track access contract") which currently expires on Principal Change Date 2026. The application would, therefore, amend the expiry date of the track access contract to Principal Change Date 2030.

Services

For the reasons set out below and in Annexes 1,2 & 3 to this Form F, DB Cargo is making this application to enable it to continue to operate freight services on Network Rail's network beyond the expiry of the track access contract. The services concerned include, but are not limited to, the haulage of:

- Coal and Biomass (for electricity generation and other purposes).
- Raw materials for steel production.
- Semi-finished and finished steel products for the construction and manufacturing industry.
- Other metal products.
- Aggregates, cement, industrial minerals and other products for construction and industrial processes.
- Petroleum and chemical products.
- Consumer goods.
- Raw materials and output from manufacturing industry.
- High-speed mail and parcels.
- International trains to/from Western Europe via the Channel Tunnel.
- Empty passenger rolling stock for maintenance.
- Services to the rail industry.

The services include empty wagon movements, light-engine movements and other ancillary movements relating to DB Cargo's rail freight business.

The application does not result in any changes to the characteristics of DB Cargo's Freight Access Rights currently expressed in its Schedule 5 Rights Table to the track access contract. However, it should be noted that a number of DB Cargo's Freight Access Rights (specified in the Annex to the proposed 40th Supplemental Agreement) will not be extended beyond the current expiry date of the track access contract (i.e. PCD 2026). To reflect this, therefore, the application also seeks the insertion of the following wording in the Special Terms column of the Rights Table against each of the Freight Access Rights affected:

“Access Right expires on the last day of the Working Timetable before PCD 2026.”

The reason for the insertion of this wording is that Network Rail is not willing at this time to grant an extension to these Freight Access Rights as they all permit the conveyance of Heavy Axle Weight (RA10) wagons over the Anglia and Southern Regions where there are current concerns over the condition of a number of structures. DB Cargo will seek to extend these Freight Access Rights subsequently, where necessary, by way of a separate application once the concerns over the structures have been discussed and addressed.

The Williams-Shapps Plan for Rail

The application includes a provision for the insertion of a ‘break clause’ mechanism into the track access contract that can be triggered after PCD 2025 if changes are required to the track access contract resulting from the Williams-Shapps Plan for Rail which proposes a major restructuring of railways in the UK. The provisions of the ‘break clause’ mechanism can be found in the proposed 40th Supplemental Agreement.

Reasons for seeking an extension to the track access contract at this time

Rail freight plays an important part in the nation’s logistics and helps support the growth of the UK economy as a whole. To compete effectively with road haulage, rail freight operators need certainty about their access rights over the long-term and the cost of those rights. Rail freight operators, such as DB Cargo, are ongoing businesses that are not bound by a fixed term franchise, concession or management agreements as is the case with many passenger train operators. Rail freight operators, therefore, make significant investments in locomotives, wagons, freight facilities and systems the benefits of which are designed to be paid back over the long term (for example in excess of 30-years in respect of new locomotives). Therefore, long-term access agreements are essential to provide the certainty and stability needed by rail freight operators to secure commercial contracts with their customers and make long term investments in resources, facilities, systems and equipment.

Throughout the Covid-19 pandemic, despite the dramatic reduction in the number of passenger trains using the railway network, rail freight operators (including DB Cargo) continued to play a vital role in keeping the supply chain moving. Essential services continued to operate moving containers to and from the deep-sea ports and supermarkets domestically around Great Britain as well as aggregates and construction supplies being delivered by rail freight into urban areas to support the continued construction of important infrastructure. In addition, fuel for power stations continued by rail freight as was waste being moved out of major cities to recycling hubs. Rail freight operators also continue to support Network Rail’s engineering programme to keep the network reliable and open, supporting key workers to safely reach their places of work.

Nevertheless, despite these important contributions, the rail freight sector experienced significant commercial challenges during the early stages of the pandemic with a reduction in demand for many rail freight services owing to a decline in economic activity. As an asset heavy, high fixed cost sector, rail freight operators were unable to easily reduce their cost bases and therefore owners and shareholders were required to inject significant levels of capital into their businesses to provide liquidity. The sector has responded strongly and freight volumes had returned to 100% against pre-pandemic levels for most commodity groups during 2021, thus demonstrating the resilience and dynamism of private sector rail freight operators.

Looking forward, there are now real opportunities for rail freight to play an enhanced role in the freight and logistics sector, providing that there is an investable climate such that owners and shareholders have sufficient certainty on the future of the sector such that they can manage the risk associated with their investments.

In April 2021, research conducted by Deloitte on behalf of the Rail Delivery Group was published which shows that the rail freight sector contributes approximately £2.5bn in economic and environmental benefits to the UK each year, with around half of these benefits generated in the North of England. By creating jobs and stimulating economic activity across the UK, rail freight not only supports the levelling up agenda, but can also help the national economic recovery from Covid-19. The figures estimated in this analysis have been made possible by private sector investment; since privatisation rail freight operators have invested more than £3bn to improve the efficiency of their services. Continued private sector investment will help to increase rail freight's contribution further in the future.

The non-user benefits of transporting freight by rail are also significant and estimated by Deloitte to be worth approximately £800m to the UK economy in 2019. This includes the environmental benefits of moving freight by rail. Each tonne of freight transported by rail produces 76% less emissions than the equivalent transported by road. With the government now legally committed to decarbonising the UK economy by 2050, rail freight stands ready to play a central role in the decarbonisation of the logistics sector. Modal shift to rail will be an important aspect of reducing carbon emissions from surface freight transport, but to achieve net-zero rail freight operators will need to further decarbonise their operations. This will require significant private sector investment, particularly in research and development to design, develop and procure a new generation of locomotives to replace the majority of the existing diesel fleet.

However, the current market conditions are full of risk and therefore not conducive to significant private investment:

Owners and shareholders have already injected capital and taken additional debt to support the sector through the Covid-19 pandemic. These debts will need to be repaid in the coming years and during this period could limit the ability of rail freight operators to make for further investments.

Despite the resurgence of rail freight services, the wider national economic situation is challenging. Inflation is rising dramatically as is the cost of fuel and electricity adding additional pressure on rail freight operator cost bases.

The railway will be undergoing a period of reform through the Williams-Shapps Plan for Rail published last year which could recommend profound changes to industry framework. The Williams-Shapps Plan for Rail strongly recognises the importance and long-term sustainability of the rail freight market.

Lack of certainty on future capacity and opportunities for growth are preventing investment in new rail connected terminals.

Many of the rail freight operators are owned by international businesses and there are competing pressures for capital to be deployed in other countries, given the similar challenges posed by the pandemic.

It is against these risks that industry has identified a series of policy measures to help ensure rail freight remains an 'investible' sector. One of these key policy measures seeks to address the risk around access by proposing an extension of the FOCs' track access contracts by four years.

A paper setting out a fuller explanation of the key reasons and justifications for DB Cargo seeking an extension to the track access agreement at this time, together with a "Questions and Answers" section, can be found at Annex 1 to this Form F. This paper also includes a letter of support for the four-year extension to rail freight operator track access contracts from DfT.

Included at Annex 2 to this Form F is the full Deloitte "The role and value of rail freight in the UK" Report published in April 2021 on behalf of the Rail Delivery Group that is referred to earlier in this section.

Investments

Please see the confidential paper at Annex 3 to this Form F.

Long-term Customer Contracts

Please see the confidential paper at Annex 3 to this Form F.

Network Rail Sale of Access Rights Panel ("SOAR")

At its Sale of Access Rights Panel on Monday 26th April 2021, Network Rail formally advised that it would support the proposed FOC TAC Extensions from PCD 2026, through to PCD 2030. However, this support is given based on the inclusion of the 'Right of termination after extension of expiry date' break clause (see above) and also the removal of a specific number of existing Heavy Axle Weight RA10 related Access Rights the sale of which, Network Rail does not support, due to concerns over the long-term condition of a number of affected structures on the Anglia and Southern Regions. The applicable existing RA10 Access Rights will therefore expire on the last day of the Working Timetable before PCD 2026 at the latest.

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.

None

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.

The application includes a provision for the insertion of a 'break clause' mechanism into the track access contract that can be triggered after PCD 2025 if changes are required to the track access contract resulting from the Williams-Shapps Plan for Rail which

proposes a major restructuring of railways in the UK. This mechanism was agreed jointly between Network Rail and DB Cargo and supported by DfT. The provisions of the 'break clause' mechanism can be found in the proposed 40th 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 track access contract currently expires on the Principal Change Date 2026. For the reasons set out in section 3.1 of this Form F, DB Cargo is seeking a four-year extension to the track access contract so that it would instead expire on Principal Change Date 2030. As already stated in section 3.1 above, there are no proposed changes to the Rights Table contained in Schedule 5 of the track access contract as a result of this application, other than the addition of the following words in the Special Terms column of the Rights Table for each of the Freight Access Rights specified in the Annex to the proposed 40th Supplemental Agreement:

“Access Right expires on the last day of the Working Timetable before PCD 2026.”

The reason for the insertion of this wording is that Network Rail is not willing at this time to grant an extension to these Freight Access Rights as they all permit the conveyance of Heavy Axle Weight (RA10) wagons over the Anglia and Southern Regions where there are current concerns over the condition of a number of structures. DB Cargo will seek to extend these Freight Access Rights subsequently, where necessary, by way of a separate application once the concerns over the structures have been discussed and addressed.

Any changes that are required to the Freight Access Rights currently expressed in the Rights Table contained in Schedule 5 of the track access contract to meet the on-going changing requirements of end customers or to meet new business opportunities will be the subject of separate applications over the coming years pursuant to either sections 22 or 22A of the Railways Act as applicable.

The Freight Access Rights are expressed in the track access contract in terms of a departure window from the originating location and an arrival window at destination. These windows are of varying lengths from 30 minutes (for Royal Mail traffic only), 60 minutes (for most traffics) up to twenty-four hours (for some services that require greater flexibility either by DB Cargo or Network Rail). This varying window size follows ORR's directions issued when it approved the track access contract in December 2016 as follows:

“.....[ORR] expects the default position for window size of freight Firm Rights, backed by commercial contracts with end users, to effectively be one hour windows. This should not be regarded as precluding future windows being agreed at different sizes. Windows may be larger depending on the circumstances, including twenty-four hour windows if that is

appropriate. In exceptional cases they might be smaller. ORR will however expect consistency of treatment by Network Rail between train operators. Differences from the one-hour window should be explained and justified in any applications made to us. These should be on the basis of a study of the impact including on the FOC and the customers concerned."

In addition to the flexibility afforded to Network Rail through the departure and arrival windows as described above, the track access contract also provides further flexibility for the use of Network Rail by virtue of the fact that there are no Firm Rights to any particular routing between the origin and destination, nor are there any Firm Rights to timings at any intermediate calling points. The track access contract also includes a process whereby either party can propose an amendment to the extent of the departure and arrival windows with such amendments being subject to the approval and/or direction of ORR.

The above contractual mechanisms combined with (i) the mechanisms prescribed in Part J of the Network Code governing the 'Use It or Lose It', Voluntary Relinquishment and transfer of Freight Access Rights; and (ii) the extensive pathing time inherent in many freight Train Slots, should ensure that Network Rail has more than sufficient flexibility to avoid impacts on other train operators from continuing these Freight

Access Rights, thereby helping to maximise the use of capacity on its network whilst retaining a degree of certainty and stability for DB Cargo.

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).

In making this application, DB Cargo is seeking to extend the track access contract by four years from the Principal Change Date 2026 to Principal Change Date 2030. There are no proposed changes to the Rights Table contained in Schedule 5 of the track access contract as a result of this application other than the addition of the following words in the Special Terms column of the Rights Table for each of the Freight Access Rights specified in the Annex to the proposed 40th Supplemental Agreement:

"Access Right expires on the last day of the Working Timetable before PCD 2026."

The reason for the insertion of this wording is that Network Rail is not willing at this time to grant an extension to these Freight Access Rights as they all permit the conveyance of Heavy Axle Weight (RA10) wagons over the Anglia and Southern Regions where there are current concerns over the condition of a number of structures. DB Cargo will seek to extend these Freight Access Rights subsequently, where necessary, by way of a separate application once the concerns over the structures have been discussed and addressed.

Any changes to meet the on-going changing requirements of end customers or to meet new business opportunities that are required to the Freight Access Rights currently expressed in the Rights Table contained in Schedule 5 of the track access contract will be the subject of separate applications pursuant to either sections 22 or 22A of the Railways Act as applicable.

Therefore, the Freight Access Rights proposed for extension relate to freight train services that are already operating on the network and are subject to the Operating Constraints which include the Engineering Access Statement and the Timetable Planning Rules. They

have, therefore, also been taken into account by Network Rail in respect of the current declarations of 'congested infrastructure' (e.g. along the Castlefield Corridor).

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 proposed for extension are those currently set out in the Rights Table contained in Schedule 5 of the track access contract and have, therefore, already been approved by ORR and included in the Working Timetable to meet the contractual requirements of DB Cargo's end customers. Any changes that are required to these Firm Rights to meet the on-going changing requirements of end customers or to meet new business opportunities will be the subject of separate applications pursuant to either sections 22 or 22A of the Railways Act as applicable.

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).

Although the track access contract currently contains a number of Contingent Rights, all of these are time limited to expire long before the current Expiry Date of the track access contract (i.e. PCD 2026). Consequently, the application does not involve the proposed extension of any Contingent Rights.

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

All window sizes will be retained for all existing Freight Access Rights (i.e. those window sizes that have already been approved by ORR in respect of each service).

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).

This application is consistent with Network Rail's Long-Term Planning Process and in particular, the Freight Network Study published in 2017 and the MDS Transmodal forecasts for freight growth up to 2043 and has been the basis of CMSP recommendations since its publication. The forecasts contained in MDS Transmodal outputs were baselined at 2016/17 and refreshed over recent years for 2023/24, 2033/34 & 2043/44 and the Freight Access Rights covered by this application are consistent with these. This application is in line with the Freight Strategy document (Final Report) produced by Network Rail in December 2021. The application if approved will provide a platform for DB Cargo to contribute towards achieving the predicted rail freight growth forecasts, as it will give it the certainty and stability it needs to grow its business over the remainder of the decade with a reasonable degree of assurance.

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).

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 services included in the application are all existing services currently operating on the network and as such there are no specific planned projects associated with the proposals beyond continuing the close collaboration between DB Cargo, Network Rail and other relevant industry stakeholders to improve overall freight performance. proposals beyond continuing the close collaboration between DB Cargo, Network Rail and other relevant industry stakeholders to improve overall freight performance.

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).

Not applicable.

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).

The application concerns the Freight Access Rights of services already in operation on the network. Therefore, the application is not dependent upon the delivery of any specific enhancement works being completed.

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).

This section is 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).

In keeping with past practice, DB Cargo foresees that the Freight Access Rights contained in the Rights Table of the track access contract will be subject to many changes before the period of the proposed extension commences from PCD 2026. Any such changes will be progressed by way of separate applications pursuant to Section 22 or 22A of the Act as applicable.

The following applications on behalf of DB Cargo have been approved by ORR since the proposed 40th Supplemental Agreement for a TAC extension was issued for consultation 10/06/21:-

35th SA; Flows ex Cwmbargoed (CVL) – approved 10/06/2021

37th SA; Dollands Moor to Widnes - approved 10/06/2021

43rd SA; Aggregates flows from Newhaven - approved 27/04/2022

44th SA; Flows to Wolverhampton Steel Terminal - approved 25/06/2021

45th SA; Aggregates flows from Cliffe to Stewart's Lane, Battersea - approved 27/04/2022

46th SA; Aggregates/Chemicals flows from Dowlow, Peak Forest and Tunstead - approved 22/12/2021

51st SA; relinquishment of various redundant coal flows – General Approval consolidated on 14/09/2021

53rd SA; BIC Mids & North flows, principally from Middleton Towers – approved 06/07/2022

54th SA; ECML extension – approved 25/02/2022

60th SA; extension of Rights due to expire over the Castlefield corridor – approved 16/06/2022

DB Cargo and Network Rail currently have the following applications in progress alongside this proposed 40th SA;

47th SA; various Tarmac aggregates flows

59th SA; Intermodal flows serving Trafford Park

63rd SA; relinquishment of various redundant flows serving closed/dormant sites

Supplemental Agreements are not necessarily progressed in numerical sequence. There are occasions where an application is not progressed, having been allocated a number. Complexity is one of several variables which will affect preparation of a Supplemental Agreement and maybe responsible for submission outwith numerical sequence.

The rights contained within these applications will expire at PCD 2026 in line with DB Cargo's current TAA. However, provision is made within these applications that the rights will be extended to PCD 2030 in line with this 40th SA should it be completed first.

Should these proposed 43rd, 47th, 52nd, 53rd, 59th and 60th SA be completed prior to this 40th SA, the changes included would be added 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.)

Given that the application concerns freight train services that already operate on the network, there are no specific contracts being negotiated for access to facilities adjoining Network Rail's network as a direct result of the application beyond those arrangements currently in place.

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.

There are three Annexes to this Form F that are being submitted in support of the application. Annex 1 is a paper setting out a fuller explanation of the key reasons and justifications for DB Cargo seeking an extension to the track access agreement at this time, Annex 2 is the Deloitte “The role and value of rail freight in the UK” Report published in April 2021 on behalf of the Rail Delivery Group and Annex 3 is a confidential paper for ORR’s ‘eyes-only’ concerning specific investments and certain long-term customer contracts related to the application.

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.

Annex 3 to this Form F in its entirety has been redacted from pre-application consultation and must also be excluded from subsequent publication as it includes commercially sensitive information relating to specific investments planned to be carried out by DB Cargo and confidential details of long-term customer contracts.

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 days, please explain the reasons for this.

Consultation was carried out for one calendar month between 10th June 2021 and 11th July 2021. This was performed by Network Rail on behalf of DB Cargo and all Access Beneficiaries and rail stakeholders were included in the consultation.

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.

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.

Correspondence from Access Beneficiaries and rail stakeholders supporting this application or raising issues which were subsequently resolved are contained in Annex 4.

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.

Correspondence from an Access Beneficiary which remains unresolved is contained in Annex 5. For the reasons articulated in the e-mail from Mike Pybus to Catherine Rowe (23 August 2021 19:14) I think these issues should not prevent ORR approving the application.

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: 07/07/2022

Name (in caps) Jules Graham Job title CUSTOMER RELATIONSHIP EXECUTIVE
For (company) NETWORK RAIL INFRASTRUCTURE LIMITED

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

Signed 

Date 04/07/2022

Name (in caps) QUENTIN HEDDERLY Job title REGULATORY SPECIALIST

For (company) DB CARGO (UK) LIMITED

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 Where to send it:

Freight Track Access Manager

Access and Licensing Team

Directorate of Railway Markets and Economics

Office of Rail and Road

25 Cabot Square

London

E14 4QZ

Email: track.access@orr.gov.uk