



## 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 Limited – 7<sup>th</sup> 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 Limited | Company: Freightliner Heavy Haul Limited  |
| Contact individual: Simon Bennett            | Contact individual: Peter Graham  |
| Job title: Customer Relationship Executive   | Job title: Head of Policy & Regulatory Affairs  |
| Address:                                     | Address:  |
| 1 Eversholt Street, London, NW1 2DN          | Freightliner Heavy Haul Ltd., The Lewis Building,<br>35 Bull Street, Birmingham, B4 6EQ |
| Telephone number: ✕                          | Telephone number: ✕   |
| E-mail address: ✕                            | Fax number: ✕   |
|  | E-mail address: ✕   |

### 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 (FLHH) 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).

FLHH holds a valid operating licence under Section 8 of the Railways Act 1993 and Regulation 6 of the Railway (Licensing of Railway Undertakings) Regulations 2005 ('the Licensing Regulations') as well as a Statement of National Regulatory Provisions granted under Regulation 10 of the Licensing Regulations. FLHH also has a Safety Certificate under Regulation 7 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006.

### 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 2026

End date: PCD 2030

This is a Supplemental application to extend FLHH's present Track Access Contract (Freight Services) dated 17th December 2016, as amended, consulted and approved in the 10<sup>th</sup> Supplemental Agreement dated 10<sup>th</sup> August 2021, from the existing end date of the Principal Change Date (PCD) of 2026 to the PCD of 2030, a period of four years, and the access rights contained in the Schedule 5 table therein.

No material safety risks have been identified as arising from the extension of the Track Access Contract.

At Sale of Access Rights Panel on Monday 26th April 2021, Network Rail formally advised that it would support the proposed FLHH TAC Extensions from PCD December 2026, through to PCD December 2030. However, this support is given based on the inclusion of the 'Right of termination after extension of expiry date' break clause 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. The applicable existing RA10 Access Rights will therefore expire on the last day of the Working Timetable before PCD December 2026.

The Department for Transport (DfT) have also provided written support to the principle of an extension of Freight Operating Companies track access contracts. This letter is included within Appendix D.

FLHH considers that it satisfies the requirements under Regulation 21(8) of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, and the accompanying ORR Guidance, for a contract duration exceeding five years.

The justification broadly falls into four areas, each of which are discussed in more detail below:

- Since the current contract was issued in 2016, FLHH has continued to make substantial specialised investments in assets, many of which have a life-span beyond 30 years.
- Supporting decarbonisation. The extension of the FLHH TAA will promote an investible climate, enabling continued investment in R&D to further reduce rail freight's carbon footprint and support a green recovery.
- The impact of COVID-19 on the rail freight sector is also a relevant consideration for a contract duration in excess of five years. The pandemic caused significant challenges for the rail freight sector, with investment required to recapitalise businesses and to maintain liquidity following the downturn in volumes. While the rail freight sector has demonstrated strong resilience, taking on additional debt is not an insignificant investment risk.
- Consideration of the further private sector investment that the proposed TAA will help support.

#### Specialised investments

Against the backdrop of the current ten-year TAA FLHH has made substantial investments over recent years. Many of these investments have been in bespoke assets with a life-span beyond 30 years. These investments have helped enhance capacity, and improve performance and reliability. Investments made in specialised long-term assets, since the current contract was entered into in 2016, are contained

in the commercially sensitive and confidential Appendix C, which will be submitted to the ORR for their consideration.

#### Supporting decarbonisation

In order to support the legislative target of net zero greenhouse gas emissions by 2050, the rail freight sector is working hard to identify ways to reduce its carbon emissions further and is actively challenging the supply chain to do the same. To do that the FOCs will need to continue to invest considerable amounts of capital in Research and Development (R&D) to design, develop and ultimately procure locomotives to replace the current diesel fleet. This will support further decarbonisation of the logistics chain.

Certainty over long-term access is needed for FOCs and their owners to commit to invest more in assets and R&D to further reduce the carbon footprint and support a green recovery. The focus on decarbonisation has never been stronger and the environmental benefits that a successful and sustainable rail freight sector can deliver over the next generation, within an investable climate, are substantial. The extension of the FLHH TAA is a key pillar in helping to unlock that investment.

#### Risk

COVID-19 created a significant challenge for the rail freight sector, and while rail freight recovered resiliently, significant investment was required to recapitalise businesses and to maintain liquidity. Taking on additional debt is not without investment risks and extending the TAA will help address the concerns and wider risk around network access, directly influencing and supporting the on-going investments required at this time.

#### Catalyst for private sector investment

Extending the TAA will also support private sector investments in assets and infrastructure to enable the use of rail freight. This includes investments from customers, ports and other end-users in terminals and handling equipment and other capital assets. Many of these businesses have also been impacted by the current market conditions, the reduction in volumes and increased uncertainty. Ultimately the extension to the TAA will support the long-term sustainability of the rail freight sector, which in turn will mean that rail freight is well positioned to support the recovery of the wider economy.

#### Further details

Further information on the rationale for the proposed TAA extension, including further information on the macro-economic environment, investment risk, investments to support decarbonisation and wider private sector investment was compiled in a recent RDG briefing paper with input from all the Freight Operating Companies and is attached in Appendix A.

**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.

The Supplemental Agreement includes the addition of a jointly agreed 'post-extension termination notice'. This acts a break-clause to enable a reopening of discussions on aspects of freight operators track access

agreements that are inconsistent with any changes to the contractual process implemented as a result of the Williams-Shapps plan for rail. On this condition the DfT are supportive of the principle of an extension of Freight Operating Companies track access contracts, with the proviso that there is sufficient flexibility to ensure space for future reform. Network Rail and the Freight Operators have jointly agreed the wording for the break-clause provision (“post-extension termination notice”) included in the Supplemental to provide for that flexibility.

#### 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.

This application seeks to extend FLHH’s current TAA and the rights contained in the Schedule 5 Rights Table. While the application does not seek to apply for new rights, a number of existing rights are modified to include a footnote to confirm that FLHH are not seeking extension beyond PCD 2026. This relates to existing Heavy Axle Weight RA10 related Access Rights, where Network Rail does not support their extension, due to concerns over the long-term condition of a number of affected structures. A marked-up copy of FLHH’s Schedule 5 Rights Table showing these modifications is included in Appendix F.

There are no changes to the pattern of services, nor will there be any impact on other operators, including other freight operators.

Against the backdrop of the current ten-year TAA, FLHH has made significant long-term investments over recent years, many in bespoke assets with a life span that exceeds 30 years. FLHH considers that these investments alone justify a TAA of ten years, but what is also driving the timing of this application is the investment risk triggered by COVID-19 and the wider attempt to unlock further private sector investment and support decarbonisation.

While volumes recovered resiliently, COVID-19 caused significant challenges for the rail freight sector, with investment required to recapitalise businesses following the initial downturn in freight volumes. There is a degree of investment risk involved in taking on additional debt. Securing access rights for a longer period will provide some certainty to FLHH over efficient future access to the UK rail network and in turn reassure investors in the long-term sustainability of the sector.

Now more than ever it is essential that there is a long-term sustainable sector to provide confidence for the private sector to make long-term investments in capital assets and infrastructure. Rail freight has the potential to play a key role in supporting the requirement to bring all greenhouse gas emissions to net zero by 2050 in the UK. To do that FLHH will be required to invest considerable amounts of capital in Research and Development to design, develop and ultimately procure locomotives to replace the current diesel fleet and support further decarbonisation of the logistics chain.

The extension of the FLHH TAA will help minimise investment risk and promote confidence at a time when securing liquidity for the sector remains a challenge. FLHH believes that it will provide a platform to invest and ensure the on-going viability of the sector.

A competitive rail freight sector will have much wider economic benefits. Recent research by Deloitte for the Rail Delivery Group’s Value of Rail Freight report found that rail freight delivers £2.5 billion in economic and social benefits to the UK economy each year, including productivity gains for businesses the length and breadth of Great Britain and by cutting congestion, reducing carbon emissions and wider environmental benefits. The extension of the FLHH TAA will provide a platform for further investment,

This application is for an extension of the existing FLHH TAA. There are corresponding train slots in the Working Timetable, which have all been subject to the Operating Constraints which are detailed in the FLHH Track Access Contract. The Operating Constraints include the Engineering Access Statement, which is provided to support and facilitate the facility owner's maintenance and renewal activities.

Given that no additional rights are sought as part of this Supplemental application nor are FLHH seeking any modifications to existing access rights, together with ORR's "*strong presumption in favour of the rollover of existing access rights*"<sup>1</sup>, FLHH is content over the adequacy of capacity. It should be noted however that a key part of the rationale is to provide certainty around future access to efficient paths to support required on-going investments and act as a catalyst for wider private sector investment, as outlined in the RDG briefing paper (see Appendix A).

A number of rights do cover parts of the network that are currently subject to a Declaration of Congested Infrastructure, however, no additional capacity is sought in this application. Furthermore, as the extension period proposed is from PCD 2026 to PCD 2030, FLHH would expect these declarations to have been addressed before this timeframe. This application was discussed by Network Rail's Sale of Access Rights (SOAR) panel on 26th April 2021 and the panel approved and were supportive of the application being progressed.

supporting growth and further increasing these economic benefits. A copy of the Rail Delivery Group's Value of Rail Freight report can be found in Appendix E.

Further information on the rationale for the proposed TAA extension was compiled in a recent RDG briefing paper with input from all the Freight Operating Companies and is attached in Appendix A.

**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).

**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?

This application seeks to extend FLHH's existing TAA and the access rights contained in the Schedule 5 rights table. No new access rights are sought, however 28 existing Firm Rights are amended to reference a new footnote in the rights table, confirming these rights are not extended beyond PCD 2026.

The rights within the Schedule 5 rights table are frequently updated to reflect changes in traffic and were last changed in the 10<sup>th</sup> Supplemental Agreement dated 10<sup>th</sup> August 2021. The rights will continue to be updated over the duration of the contract to ensure that they reflect the traffic as it changes. They will of course also be subject to Network Code Part J provisions, including Condition J7

<sup>1</sup> [https://orr.gov.uk/\\_data/assets/pdf\\_file/0019/27433/ORRs-conclusions-on-track-access-issues-arising-from-High-Speed-2-HS2.pdf](https://orr.gov.uk/_data/assets/pdf_file/0019/27433/ORRs-conclusions-on-track-access-issues-arising-from-High-Speed-2-HS2.pdf)

– Freight transfer mechanism – to transfer rights between operators in the event that freight customers change haulier.

**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).

This application seeks to extend FLHH's existing TAA and the access rights contained in the Schedule 5 rights table. No new access rights are sought, however 28 existing Firm Rights are amended to reference a new footnote in the rights table, confirming these rights are not extended beyond PCD 2026.

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

This application seeks to extend FLHH's existing TAA and the access rights contained in the Schedule 5 Rights Table. No new access rights are sought, nor are any modifications proposed, to the origin and destination window sizes used in the Rights Table in Schedule 5.

Justification for the one-hour windows for firm rights was provided in the FLHH Track Access Application under Section 17 in 2016 and following consideration, it was determined by the ORR that the *"default position for window size of freight Firm Rights, backed by commercial contracts with end users, to effectively be one-hour windows"*. *"Differences from the one-hour window should be explained and justified in any applications"* and *"should be on the basis of a study of the impact including on the FOC and the customers concerned"*<sup>2</sup>.

FLHH is not seeking to make any changes and continue to believe that one-hour windows provide the appropriate balance for Network Rail to optimise future timetables, whilst allowing FOCs and their customers the ability to plan their business with a reasonable degree of certainty. Further justification for the retention of one-hour windows is outlined in the recent RDG briefing paper contained in Appendix A.

**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 Network Rail's Long Term Planning Process (LTPP) including the Route Studies and more recently the Continuous Modular Strategic Planning (CMSP) process. The updated 2019 Freight Market Study (FMS) provides forecasts for freight growth up to 2043 and remain the basis for Network Rail's strategic planning process.

The rights contained in the proposed Schedule 5 Rights Table are consistent with these strategic studies and are typically used to provide a baseline of existing freight capacity within the studies. No additional rights are sought as part of this application, although the forecasts suggest significant opportunity for rail freight growth over the next couple of decades. With the recently legislated commitment to net zero carbon emissions by 2050, the opportunities for rail freight growth are even greater.

Examples of relevant Route Studies and CMSPs include:

<sup>2</sup> [https://orr.gov.uk/\\_data/assets/pdf\\_file/0010/21520/fl-dec-letter.pdf](https://orr.gov.uk/_data/assets/pdf_file/0010/21520/fl-dec-letter.pdf)

- Freight Market Study
- Freight Network Study
- London Rail Freight Strategy CMSP
- Leicester Area CMSP
- Church Fenton to Newcastle CMSP
- Essex Thameside CMSP
- South East Freight CMSP
- Scotland Route Study
- West Coast Main Line North CMSP
- West Coast Main Line South released capacity CMSP
- Cumbrian Coast DSG

FLHH has, and continues to work collaboratively with Network Rail and the rest of the industry to input into these publications, which all forecast the opportunity for significant unconstrained rail freight growth.

With respect to Event Steering Groups (ESGs), FLHH continues to work collaboratively with Network Rail and the rest of the industry to input into these. Train slots associated with the rights included in this supplemental agreement are included in the outputs of the below ESG's, the timetable structure of which should form the baseline timetable on commencement of this extension:

-East Coast Mainline ESG

-West Coast Mainline ESG

-Great Eastern Mainline ESG

-Great Western Mainline ESG

-Wales and Borders ESG

As such the capacity within this application is consistent with the expected outcomes of on-going ESGs.

## 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).

FLHH is liable for any minutes delay; diversions or cancellations caused to third party operators for which it is responsible through the Schedule 8 performance regime. The benchmarked regime provides a financial incentive to better benchmarked performance. The regime is becoming increasingly punitive, with payment rates now at ~£58 per minute, significantly increasing the cost of any delay caused.

While FLHH's business model is based on achieving high levels of customer service, which drives a consistent push towards improving performance, the change in the performance regime has also incentivised improvements in performance.

FLHH is also striving to further improve performance and is working collaboratively with Network Rail on a number of performance initiatives, including through Joint Performance Improvement Plans.

Examples of projects, initiatives or investments associated with the operation of the proposed services aimed at improving performance include:

- Fitment of Timetable Advisory Systems in locomotive cabs (MTISA system) to alert driver to time against schedule and collect delay information following journey.
- Roll-out of Mobile Consisting Application for certain commodities to speed-up consisting process and improve right time departures.



- Current development of wagon maintenance facility at Ipswich. Furthermore the relocation of the fuel point at Ipswich will reduce crossing moves at Ipswich and further improve Right Time Departures.
- Development of a Class 66 reliability improvement programme.
- Opening of the AC electric traction depot at Crewe in November 2017.
- Opening of the Guide Bridge wagon overhaul facility opened in 2017.
- Detailed analysis of train performance by key Headcode. Joint working groups to analyse trends and consider improvement initiatives, involving all parties – Freightliner, Network Rail, customers etc.

**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.

Year To Date Network Rail is operating at 92.5% against the Freight Delivery Metric (FDM). While lower than the regulated target of 94%, it meets the regulatory floor for FDM.

While performance levels remain high FLHH continues to work with Network Rail to deliver further gains through joint performance programmes.

**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 departures from the model TAC with regards to restrictions of use.

## 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).

This application is not predicated on enhancement works. This application is in essence an extension of the existing FLHH TAA as amended, consulted and approved in the 10<sup>th</sup> Supplemental Agreement dated 10<sup>th</sup> August 2021.

**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.

## 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).

FLHH and Network Rail currently have the following applications in progress alongside this proposed 7<sup>th</sup> SA:

Proposed 14<sup>th</sup> SA, covering additional aggregates traffic

Proposed 15<sup>th</sup> SA, amendments to services from Woking

Proposed 16<sup>th</sup> SA, covering Mendip rights

The rights contained within these applications will expire at PCD 2026 in line with FLHH's current TAA (subject to the exceptions noted within those proposed Supplemental Agreements. However provision is made within these applications that the rights will be extended to PCD 2030 in line with this 7<sup>th</sup> SA should it be completed first.

Should the proposed 14<sup>th</sup>, 15<sup>th</sup> and/or 16<sup>th</sup> SAs be completed prior to this 7<sup>th</sup> 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.)

This application is in essence an extension of the existing FLHH TAA as amended, consulted and approved in the 10<sup>th</sup> Supplemental Agreement dated 10<sup>th</sup> August 2021.

The application is not contingent on access being negotiated for a facility adjoining Network Rail's network.

**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.

Accompanying this application are 10 appendices:

1) Appendix A is the RDG paper outlining the rationale for the proposed TAA extension.

2) Appendix B is the proposed FLHH 7<sup>th</sup> Supplemental Agreement

3) Appendix C is a commercially sensitive and confidential appendix that is submitted to ORR to support their consideration of whether sufficient justification has been provided for a contract in excess of five years, in line with the Access and Management Regulations. It outlines investments, risks and customer contracts in line with the legislative requirements.

4) Appendix D is a letter from the DfT providing support for the principle of an extension of Freight Operating Companies track access contracts.

5) Appendix E is a copy of the Rail Delivery Group Value of Rail Freight technical report.

- 6) Appendix F is an extract of the Schedule 5 Rights Table, showing the 28 Firm Rights that are not being extended as part of this Supplemental Agreement.
- 7) Appendix G contains the unresolved issue from the industry consultation, pertaining to the objection from Greater Anglia.
- 8) Appendix H contains the general responses and resolved issues from the industry consultation.
- 9) Appendix I is a copy of the ORR's Instructions issued in respect of the FLHH 10<sup>th</sup> SA.
- 10) Appendix J is a marked-up copy of the Schedule 5 Rights Table showing the amendments made in respect of the FLHH 10<sup>th</sup> SA after consultation of the FLHH 7<sup>th</sup> SA.

**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.

Appendix C is commercially sensitive and confidential and is entirely redacted, and will be shared with the ORR. The entirety of the appendix is redacted given the sensitivity and confidentiality of the investments, customer contracts and risks therein. Sharing this publicly would seriously and prejudicially affect FLHH's interest given the confidential material contained.

Nothing contained in this Form F or in Appendices A, B, D, E, F, G, H, I or J is confidential.

## 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 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.

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

FLHH note that at the time of consultation, the FLHH 10<sup>th</sup> SA had not been confirmed, and as such the amendments included in this Supplemental Agreement were not in the consultation. The instructions from the ORR in relation to this are included in Appendix I, and a marked-up copy of the changes that have been consolidated since the consultation are included in Appendix J.

**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.

Any issues raised by consultees as part of the consultation (with the exception of that included in section 8.3) have been resolved. Appendix H contains the general responses and resolved issues from the industry consultation.

**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.

Abellio Greater Anglia (AGA) raised an objection to this Supplemental Agreement on the basis (See appendix G) on the following grounds:

-Network Rail not supporting the extension of AGA's TAC beyond a couple of years at a time, due to a Network Rail Access Rights Policy on the Great Eastern Main Line. FLHH believe this policy is no longer in place.

-There was no clear strategy in place to facilitate future freight traffic on the GEML. Network Rail have since established the GEML ESG to address this.

-That more freight loops were required to accommodate freight growth. This Supplemental Agreement relates only to existing freight traffic which is currently accommodated on existing infrastructure, and therefore, while this concern may be taken into consideration for future growth, it is not relevant to this application.

-That there is a requirement to allow the implementation of the outputs of the Williams-Shapps review. Provision for this is included within this Supplemental Agreement.

## 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 31/03/2022

Name (in caps) SIMON BENNETT 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: 30 March 2022

Name (in caps) PETER GRAHAM

Job title: Head of Policy & Regulatory Affairs

For (company) Freightliner 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  
One Kemble Street  
London  
WC2B 4AN

Email: [track.access@orr.gov.uk](mailto:track.access@orr.gov.uk)