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Dear Megan and Chris

21st Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited (Network Rail) and Freightliner Limited (Freightliner) dated 11 December 2016

1. Today, we issued directions under section 22A of the Railways Act 1993 (the Act) to Network Rail and Freightliner (jointly the parties) to enter into the above supplemental agreement. This letter explains the reasons for our decision.
2. ORR's approval of this application contributes to fully realising the benefits of the Southampton Freight Train Lengthening Event Steering Group (SFTL ESG). The purpose of this group was to oversee and coordinate efforts to increase the length, and therefore the capacity, of freight trains operating to and from the Port of Southampton, one of the UK's busiest deep-sea ports, reducing the number of train paths needed by transporting more containers per train. These directions provide Freightliner certainty for the purposes of planning its business and its ability to deliver the strategic benefits of the SFTL ESG.

Background

3. On 24 April 2024, ORR wrote to industry setting out a process for access applications for December 2024, May 2025 and December 2025, given our expectation (as confirmed by Network Rail) that we would receive numerous complex and competing applications across that period. Applications were submitted to ORR for direction as "unsupported" applications, as Network Rail was not able to agree that there was sufficient capacity and therefore submit agreed applications for our approval.

4. [DfT wrote to us](#) on 20 June 2025 referring to “the cumulative scale and impacts of abstraction when [ORR] assesses Open Access applications” and asking ORR that this should be “factored into all future decision-making”. To ensure that we were able to proceed with decision making for relevant public service operators in light of this, we had to clarify the DfT letter before finalising our decisions.
5. As we were already at an advanced stage in the decision-making process for this and many other applications by this point, [we wrote to DfT](#) stating that we intended to proceed with our established approach to access applications for the East Coast Main Line (ECML) in order to support the major timetable change coming up in December 2025 and to avoid risk to that timetable’s implementation. As we did not receive a response by Monday 7 July we have proceeded with decision making in line with our published policy.

Application

6. The purpose of this supplemental agreement is to amend 6 existing one-hour window firm rights, add one new one-hour window firm right and relinquish 3 firm rights.
7. Network Rail proposed to grant Freightliner the one new right sought in this application on a contingent basis under its [interim approach](#) until the end of the May 2025 timetable. The right was granted as part of the agreed 27th supplemental agreement. Freightliner has upheld its application to hold this right on a firm basis to the end of its contract.
8. The rights are to commence on a firm basis upon the date that the supplemental agreement is entered into by the parties and will expire when the contract expires at Principal Change Date 2026.
9. Freightliner submitted two applications for these rights following ORR’s letter to industry in April 2024 – the 21st and 22nd. The 21st application includes increases to both timing load and maximum length of train while the 22nd application only applied for increased maximum train length. Freightliner’s strategy was that if Network Rail would only agree to the 22nd application (train lengthening) it would incorporate firm rights for this change into its rights table to provide some certainty for its business but retain the 21st application as a live case and continue to pursue the increase to tonnage.
10. We consider that in directing the 21st application, the 22nd application is superseded and is no longer required.

Industry consultation

11. The initial industry consultation took place from 7 May to 7 June 2024. Industry was then invited to comment on Network Rail’s final representations from 13 May to 27 May 2025.
12. In the initial consultation, comments in support or raising no objections or concerns were received from First Greater Western Limited (GWR), Transport Focus and DB Cargo (UK) Ltd.

13. London North Eastern Railway Ltd (LNER) raised concerns about the impact of the increased tonnage and length of the trains and how this would impact on sectional running times and the time to clear critical junctions. Freightliner responded to LNER to clarify that the application is not to introduce additional services but seeks to contractualise weights and lengths already operating in the working timetable since 2021. LNER restated its concerns in May 2025 in response to Network Rail's final representations, in particular performance and capacity concerns for services that Network Rail support with mitigation plans in place, but that have not met the performance criteria. These are not new to rail services, having run for several years and the mitigation plans detailed in Network Rail's representations are based on real-world operational information. ORR has reviewed the plans and found that they appear appropriate and offer a reasonable level of reassurance.
14. XC Trains Ltd (CrossCountry) did not support the application due to a conflict with services requested in its 38th application. In its final representations Network Rail addresses this conflict which relates to one right with headcode 4O90. Freightliner already has a firm weekday (4O54) and Saturday (4O54) right, which it is combining to EWD (Monday to Saturday inclusive) and uplifting to 1800 tonne timing load, within the 21st application. The only change to timing windows is by 30 mins on the Saturday departure, other timings are consistent with the existing right. Were these rights not supported, Freightliner would likely withdraw the relinquishment from their application of the corresponding Saturday right. Therefore, there would be limited impact on available capacity for other operators should the amendment to this right not be directed.
15. MTR Elizabeth Line (MTREL – operator of the Elizabeth Line at the time of consultation) requested confirmation that the application had taken into account the Crossrail Track Access Option and asked for performance analysis and modelling information. Network Rail responded that this was not available at the time (June 2024) and referred to the 'High Level Plan' issued by Network Rail on 5 June 2024 for timescales. MTREL also requested additional time to review the applications due to the large number received and this was agreed. No further comments were received from MTREL on this case when Network Rail's final representations were shared with industry in May 2025.

Statutory Consultation

16. As required under the Act, on 30 May 2024, we sought Network Rail's representations on the application, and it replied on 28 June 2024. We forwarded these representations to Freightliner on 4 July 2024 and asked for its comments. Freightliner provided comments on 18 July 2024.
17. Following the completion of Network Rail's capacity analysis on the East Coast Main Line (ECML) 14 March 2025 and the other interacting locations associated with this application, namely Birmingham area, Derby-Birmingham, Oxford, Sheffield area and Sheffield to Derby, it sent its final representations on 9 May 2025. Again, we forwarded these to Freightliner and asked for its comments, which it provided on 20 May 2025.

Network Rail's representations

18. In its initial representations dated 28 June 2024, Network Rail stated that it was unable to support the application because it requested new and amended firm rights that pass through 5 of the interacting locations identified by Network Rail as containing competing aspirations and subsequently listed by ORR in its letter of 24 April 2024.
19. Network Rail also noted that it recognises *“this application does not seek to establish Rights for new traffic, but to contractualise those already running. However, considering the ORR’s letter, and the volume of applications subsequently received, we require further assessment and analysis of the application and as such cannot provide a final view at this stage.”*
20. The representations highlighted that the application seeks new and amended rights in the case of the East Coast Main Line Event Steering Group (ECML ESG) being implemented on the ECML and that it *“will only be in a position to assess this application post a decision on ECML ESG implementation and ECML Taskforce recommendations as to what Timetable the ECML ESG will be implemented.”*
21. Freightliner was not satisfied with Network Rail’s argument that it could not fully assess the application at the time as the rights sought had been included in all ECML ESG work and that the timing loads being applied for reflect those already running in the working timetable (as Train Operator Variation requests). It also considered the non-support to be an *‘overly bureaucratic application of the ‘East Coast Access Rights Policy’* in place at the time and showed a *‘fragmented approach from different Network Rail Routes’* when assessing changes whose impact was understood to be minor and were the outcome of the well-supported, cross-industry SFTL ESG.
22. Following the ECML taskforce recommendation to implement the ECML ESG timetable towards the end of last year, ORR contacted Network Rail requesting an update on its position. Network Rail responded that there was still much analysis to do as the rights contained in the application are cross-route and *“Hence, any decision concerning the ECML will have an impact on how those services run and their performance resilience”*. It concluded that *“To ensure consistency across applications (and to avoid any prejudicial decision that could unduly favour one party where aspirations interact), the process outlined in NRs high-level plan of August 2024, continues to be the approach by which we are assessing applications for upcoming timetable periods.”*
23. In its final representations, Network Rail stated that it was now in a position to support the access rights sought in this application with some minor changes to align the rights with the Working Timetable which required a shift in the arrival window of 4O95 [Weekdays] and that service 4E91 [Tuesday to Friday] could not be agreed with the uplift to 1800 tonne timing load.
24. Network Rail set out that it could not support this tonnage uplift *‘primarily due to a junction margin conflict at Hare Park Junction. Network Rail can continue to support a 1600t timing load. Assessments have shown that retimings are not possible to accommodate this around other existing services.’*

25. In its response Freightliner was pleased to see Network Rail now supporting most of the increased timing loads. It noted frustration that Network Rail does not support the increase in timing load for 4E91 [Tuesday to Friday], highlighting this as '*an example of the ECML timetable change undoing the value of previous government investment schemes with little consideration for the impact.*' Freightliner subsequently updated its application to remove the timing load amendment to 4E91 [Tuesday to Friday] and adjust the arrival window of 4O95 [Weekdays] to align with the Working Timetable.

ORR review

26. We carried out a full review of the application, taking into account issues that were being considered in relation both to this application and to the competing demands on capacity on the wider network.

27. The rights in this application have been running in the timetable since 2021. Network Rail has assessed the performance of each headcode against the following criteria:

- Right Time Departures - average above 80% over 13 periods = pass
- Freight Operating Company on Other Operators delay - less than 5 instances over 13 periods = pass

Three of the services, 4090 [Monday to Saturday inclusive] 4095 [Weekdays] 4E96 [Weekdays], have not met the criteria but are supported by Network Rail with 'robust mitigation plans in place'. Our review noted that there are a number of general and targeted performance improvement activities in place and these appear appropriate and offer a reasonable level of assurance.

28. The rights in this application pass through Oxford where Network Rail has stated it is unable to accommodate additional services at Sandy Lane, Yarnton and Tackley Level Crossings without mitigation measure in place. It is able to support the rights in this application as it contains amendments to existing rights and thus does not overall demonstrate an uplift. We agree that this is a proportionate assessment.

29. Since 2019, Network Rail has offered operators only contingent or time-limited rights, providing limited certainty for businesses. The ECML ESG was set up to transparently develop a timetable which considered the service specifications and aspirations of timetable participants for implementation. This process was cross-industry, involving public service, freight and open access operators.

30. For these reasons, in reaching our decision we have placed weight on reducing or ending the uncertainty of this period, in line with our duty of enabling operators to plan their businesses with a reasonable degree of assurance.

31. As referred to in the Network Rail representations, in late 2024, the Secretary of State and Department for Transport (DfT) accepted the recommendation to start the timetable in December 2025. This follows investment by the DfT in rolling stock and infrastructure to enable faster and more frequent services on the ECML. We consider directing the rights in this application supports our duty to have regard to guidance from

the Secretary of State in terms of the value for money from public investment as well as the funds available to the Secretary of State.

32. Network Rail expects that implementing the ECML ESG timetable will lead to a limited reduction in train service punctuality. Network Rail is assuring us of the operational and timetable alterations it is leading with industry, to mitigate this reduction. It expects to be able to identify and implement further improvements following the introduction of the timetable.
33. We recognise Freightliner's frustration that the increase in timing load for 4E91 [Tuesday to Friday] Southampton Maritime Container Terminal to Leeds Freightliner Terminal has not been supported and Freightliner states that the right appears to have had characteristics amended during the preparation of the December 2025 timetable without discussion with the operator. While we understand the complexity of building the ECML timetable and the number of moving parts, it is surprising that the increased timing load for this service was not included as it was a known outcome of the SFTL ESG and seems to have been integrated into the timetable since December 2021.
34. In weighing all of our duties, reviewing the capacity and performance on the ECML and wider network, we consider directing rights which can be used to implement a longer-term baseline timetable, in this case the ECML ESG, is preferable to the alternative. Furthermore, we will continue to hold Network Rail to account to ensure the proposed timetable delivers the expected benefits to passengers, funders and freight operators.
35. While a number of conflicts or interactions with other operators were originally identified, most of these have been independently resolved as the cases have been amended, withdrawn or rejected. The conflict between headcode 4O90 and a service in CrossCounty's 38th application has been addressed in paragraph 14 of this letter.
36. Overall we concurred with Network Rail's assessment regarding capacity and performance and have directed the rights as included in Freightliner's 21st supplemental agreement.

Our duties under section 4 of the Act and our decision

37. We have considered this supplemental agreement, and we have concluded that its approval is consistent with the discharge of our statutory duties under section 4 duties of the Act: in particular, those relating to:
 - enabling persons providing railway services to plan their businesses with a reasonable degree of assurance (section 4(1)(g))
 - promoting improvements in railway service performance (section 4(1)(zb))
 - protecting the interests of users of railway services (section 4(1)(a))
 - promoting the use of the railway network for the carriage of passengers and goods (section 4(1)(b))



- having regard to the funds available to the Secretary of State (section 4(5)(c))

38. We have looked very closely at all the evidence submitted from the parties and consultees. We have concluded that we should approve the application.

Conformed copy of the track access contract

39. Under clause 18.2.4 of the track access contract, Network Rail is required to produce a conformed copy, within 28 days of any amendment being made, and send copies to ORR and Freightliner Limited. ORR's copy should be sent for my attention.

Public register and administration

40. Electronic copies of the directions notice and the supplemental agreement will be placed on ORR's public register (website) and copies of this letter and the supplemental agreement will be placed on the ORR website.

Yours sincerely

Margret Haswell