

# APPLICATION TO THE OFFICE OF RAIL AND ROAD FOR A FREIGHT TRACK ACCESS AGREEMENT, OR AMENDMENT TO A FREIGHT TRACK ACCESS AGREEMENT 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 for a new track access contract. Section 17 allows companies who want the right to use a railway facility (including Network Rail's network) to apply to ORR for access if they are not able (for whatever reason) to reach agreement with the facility owner.
- approval under section 18 of the Railways Act 1993 for a new track access contract. Section 18 allows companies to apply for approval if they have agreed terms with the facility owner.
- approval of a proposed amendment (agreed by both parties) under section 22 of the Railways Act 1993 to an existing track access contract.
- directions under section 22A of the Railways Act 1993 for an amendment to an existing track access contract. Section 22A allows anyone seeking an amendment to an existing track access contract which allows the operation of more extensive services to apply for a compulsory amendment if they are not able (for whatever reason) to reach agreement with the facility owner.

If it is the facility owner, Network Rail will carry out a pre-application consultation. In this case fill in this form up to section 7.4. You should fill in the rest of the form after the consultation and before applying to ORR. If you are unhappy with the facility owner carrying out the consultation, you should ask ORR to do so. If this is the case, you should complete this form in full before submitting it to us.

The form sets out ORR's standard information requirements for considering applications. It cross-refers throughout to our [criteria and procedures](#) (C&Ps). The C&Ps explain the process, timings and the issues we will expect to consider. You should use the published [model freight track access contract](#) as your starting point when drafting the contract or amendments you want. Please read the C&Ps and the Code of Practice before applying.

We are happy to talk to you before you apply. Please contact us [here](#).

You can download a copy of this form, and of ORR's model track access contract, from the ORR website: [www.rail-reg.gov.uk](http://www.rail-reg.gov.uk).

## 2. The application

**2.1 Title of contract or supplemental agreement** (please also include the section of the Railways Act 1993 under which you are applying):

DB Schenker Rail (UK) Limited Track Access Contract (Freight Services) – Section 17 Application

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

<u>Facility Owner</u>	<u>Beneficiary</u>
Company: Network Rail Infrastructure Limited	Company: DB Schenker Rail (UK) Limited
Contact individual: David Young	Contact individual: Nigel Oatway
Job title: Customer Relationship Executive	Job title: Access Manager
Address: Network Rail Infrastructure Limited Ground Floor Unit 3 Carolina Court, Lakeside Doncaster DN4 5RA	Address: Ground Floor McBeath House 310 Goswell Road London EC1V 7LW
Telephone number: 07711 602294	Telephone number: 01302 577010
E-mail address: David.Young6@networkrail.co.uk	E-mail address: nigel.oatway@dbschenker.eu

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

Does the proposed operator of the services (a) hold a valid train operating licence under section 8 of the Railways Act 1993 or an exemption under section 7, **and** (b) hold a valid safety certificate under the Railways and Other Guided Transport Systems (Safety) Regulations 2006. If the answer to (a) **or** (b) is no, please state the point reached in obtaining a licence, exemption and/or safety certificate.

**C&Ps paras 3.9-3.15**

DB Schenker Rail (UK) Limited ("DBSR") intends to operate the services itself and holds valid train operating licences 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. It also holds a valid 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 fully highlight the changes from the previous version of the contract (in the case of an amendment).

**C&Ps para 3.22-3.28**

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). **C&Ps paras 4.9-4.11**

Please also state the commencement and end dates for the proposal, and for new agreements or extensions to existing agreements, provide justification for the proposed length of the application, with reference to the [Railways Infrastructure \(Access and Management\) Regulations 2005](#). **C&Ps paras 4.72-4.79**

**Date of commencement:** Principal Change Date 2016 (December 2016)

**End date:** Principal Change Date 2026 (December 2026)

This application is for a new track access contract between Network Rail Infrastructure Limited ("Network Rail") and DBSR. With the exception of Schedule 5, the contract is based on the latest version of the Model Contract (Freight Services) published by ORR in November 2015. The Schedule 5 used in the proposed agreement follows the new format originally developed under the auspices of the Rail Delivery Group's Contractual and Regulatory Reform Working Group (Workstream 3b) and more latterly further revised and issued by ORR for consultation in November 2015.

### **Duration**

DBSR currently holds a 10-year Track Access Contract (Freight Services) dated 9 February 2006, that expires on the Principal Change Date 2016 (Sunday 11 December 2016) ("the current agreement"). It is, therefore, seeking a new replacement Track Access Contract (Freight Services), for a 10-year term, from Principal Change Date 2016 (11 December 2016) incorporating the Freight Access Rights contained in the current agreement as at 11 December 2015 (including any approved transfers of Freight Access Rights pursuant to Condition J7 of the Network Code that take effect after that date).

It is recognised that investment is necessary in the UK rail freight industry to facilitate and develop further growth which will in turn assist the economic growth of the UK as a whole. DBSR considers that freight track access contracts of this length (i.e. 10-years) will help provide the UK rail freight industry in general, and DBSR in particular, with the stability that is needed to give investors the necessary level of confidence that is required to make long-term commitments in the UK rail freight industry.

### **Services**

DBSR is making this application to enable it to continue to operate freight services on Network Rail's network (except where such services are covered by other track access agreements). The services concerned include, but are not limited to, the haulage of:

- Coal (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.
- Deep consumer goods.
- Raw materials and output from manufacturing industry.
- High-speed mail and parcels.
- International trains to 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 DBSR's rail freight business.

### **Commercial Terms**

As mentioned above, the commercial terms of the proposed agreement are based on the latest version of ORR's Model Contract (Freight Services) published in November 2015. Any deviations are shown as changes in the 'mark-up' version of the proposed contract included within this application. Although DBSR is seeking no new or amended Freight Access Rights under this application over and above those already contained in its existing track access contract, the Rights Table has been expressed in a different format which follows the revised Schedule 5 originally discussed and

developed under the auspices of the Rail Delivery Group's Contractual and Regulatory Reform Working Group (Workstream 3b) and more latterly further revised and issued for consultation by ORR in November 2015. The revised Schedule 5 is also consistent with the format of Freight Access Rights discussed in Network Rail's Access Rights Policy Document dated 23 September 2015. Given ORR's consultation mentioned above, DBSR believes that this new format for Freight Access Rights will eventually be incorporated into ORR's Model Contract (Freight Services).

### **Reasons for seeking the contract with the proposed duration**

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 DBSR, are ongoing businesses that are not bound by a fixed term franchise agreement as is the case with many passenger train operators. 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.

The current agreement expires on PCD2016 (11 December 2016). This contract, therefore, no longer provides certainty to DBSR's customers that DBSR will have the necessary access rights to operate on the network beyond the Expiry Date. Consequently, the terms of the proposed contract will help provide the stability and certainty that the rail freight industry in general, and DBSR in particular, is looking for over the next ten years and will maintain a 'level playing field' with other rail freight operators, the majority of which are also seeking long term track access agreements on substantially similar terms.

DBSR believes that this application for a 10-year agreement satisfies ORR's policy on the granting of long term track access contracts for freight services for a period of greater than five years and up to ten years as set out in its document entitled "Long Term Access Contracts – Final Conclusions". In its paragraphs 3.15 & 3.16 of this document, ORR states in respect of freight track access contracts:

*"We consider that a track access contract relating to freight business can be approved with a term longer than five and up to ten years if:*

- it is justified by the length and nature of any relevant commercial contracts that are proposed;*
- there is an underlying investment in railway assets which is primarily sunk (i.e. investment that cannot reasonably be recovered by selling those assets or using them elsewhere). In doing so, we will have regard to any evidence that specific investment could not be made (because of its size or payback period) without a longer-term track access contract; and*
- the beneficiary requires the access rights for the period of the application in order to secure the benefits of investment or other public interest benefits; and the rights do not provide the opportunity to eliminate competition from other operators in respect of a substantial part of the services in question; or*
- the operator faces a specialised risk profile, which could include for example risks arising from demand and costs, as well as competition from other transport modes. We will consider past investment made in the context of current risks providing the applicant can justify that it is relevant.*

*In every case, we will expect the contract to have enough flexibility to provide for the review of and transfer or loss of access rights where there is no longer a continuing contractual need for them.*

*We will be prepared to consider requests for the approval of extensions to current LTACs which are designed to maintain the long-term nature of the contract and can be justified in accordance with this policy. We expect that such an extension would be granted unless there had been a material change in circumstances, and subject to any detailed changes of access rights which might be appropriate."*

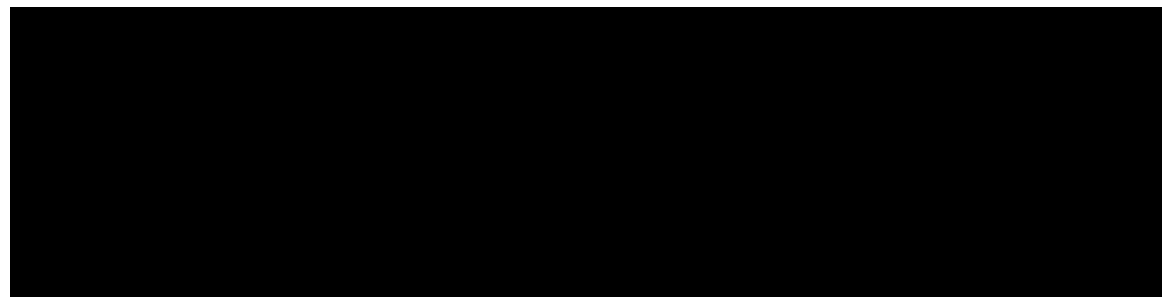
Since privatisation during the late 1990s, DB Schenker has invested █████ in █████ new locomotives and a further █████ in █████ new wagons as well as many other long term investments in freight

facilities (depots, yards, terminals, administration) and systems. These investments, which continue to be made, have helped enhance the productivity, efficiency, performance and reliability of DBSR's rail freight services and the majority were made on the expectation of DBSR having long term access to the network (i.e. beyond 30-years). Thus far, DBSR with its current and previous track access contracts with Network Rail and its predecessor Railtrack has had just over 15-years access.

Recently, DBSR has committed significant sums in order to construct new facilities and upgrade existing facilities. Examples include: a new automotive terminal at Barking [REDACTED], upgrading Bow East [REDACTED] and remodelling Chesterton [REDACTED].

[REDACTED] It has also invested in staff by creating a lean learning academy which will promote lean learning techniques throughout all levels of the business. This includes investment in new technology such as the provision of electronic mobile tablets to its train crew. DBSR is also an important part of DB's wider European network of freight transportation.

In addition it also has a number of long term commercial contracts with end customers. Some examples: include the following:



Therefore, DBSR considers that another track access contract with a further 10-year term is justified when considered against ORR's Long Term Access Contract policy outlined above.

[The redacted text relates to DBSR's investments and commercial contracts]

The Government also continues to invest heavily in the network for the specific benefit of encouraging and promoting the growth of rail freight services (e.g. Strategic Freight Network Fund). To ensure Government receives the benefits of its rail freight specific investments, it is essential that rail freight operators are able to operate in an environment that provides certainty and stability over the long term. Such an environment should include long-term track access contracts which are crucial to fostering investments by rail freight operators, customers, Government, Network Rail and relevant third parties to ensure rail freight is able to continue its growth since privatisation (including by attracting freight traffic from the nation's congested road system).

**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. **C&Ps para 3.102**

Although this application is in the form of a new long term track access contract, it is in effect a long-term extension of DBSR's current track access contract as its commercial terms are based on the latest version of ORR's Model Contract (Freight Services) published in November 2015 and the Freight Access Rights are those contained in DBSR's current agreement.

Notwithstanding these comments, Schedule 5 of the proposed agreement is expressed in a new format which follows the revised Schedule 5 originally discussed and developed under the auspices of the Rail Delivery Group's Contractual and Regulatory Reform Working Group (Workstream 3b) and more latterly further revised and issued for consultation by ORR in November 2015. Subject to the outcome of this consultation, DBSR believes that this revised Schedule 5 is likely to be incorporated

within ORR's Model Contract (Freight Services).

The key new feature of the revised Schedule 5 is the expression of Freight Access Rights in terms of arrival and departure windows rather than specific arrival and departure times which are subject to +/- a number of minutes flex (usually +/- 30 minutes for current Level One Rights). Although DBSR understands that Network Rail is broadly content with the revised format of Schedule 5 (indeed this format is discussed in Network Rail's Access Rights Policy Document dated 23 September 2015), agreement has not been reached between DBSR and Network Rail over the size of the arrival and departure windows for all the various Freight Access Rights contained within the Rights Table. In summary, DBSR believes the respective positions to be as follows:

- DBSR position: Current Level One Rights should be as a default expressed in terms of arrival and departure windows of 60 minutes whilst current Level Two Rights should be expressed as a default in terms of arrival and departure windows of 24 hours.
- Network Rail position: Current Level One Rights should be as a default expressed in terms of arrival and departure windows of 60 minutes for 'time sensitive' traffic flows or 120 minutes for less time-sensitive traffic flows (primarily bulk traffic) whilst current Level Two Rights should be expressed as a default in terms of arrival and departure windows of 24 hours.

As will be noted from the summary above, the difference between the parties amounts to the default size of the windows for 'non time sensitive traffic'. DBSR considers that the vast majority of freight traffic flows are now 'time sensitive' as customers no longer stock pile products as may have been the case a number of years ago. With bulk flows of steel, for example, the rail transportation is often considered part of the production line.

In any case, given that the Freight Access Rights contained in this application reflect traffic flows that already operate on the network, DBSR would argue that a 60 minute flex is more than sufficient to enable Network Rail to make more efficient use of the network without even taking into account the following factors which reinforces its view still further:

(1). The majority of freight Train Slots contain a significant amount of "hidden flex" which is additional time added into journey times to reflect pathing, performance and engineering allowances as well as time spent recessing in freight loops and other such facilities. Given that Freight Access Rights tend not to be granted until the train has operated in the Working Timetable, this additional time usually becomes contractualised within the Freight Access Rights adding a further 'buffer' for Network Rail to use when carrying out the Timetable Development process in accordance with Part D of the Network Code.

(2). The administrative mechanisms for the use of Freight Access Rights enshrined in Part J of the Network Code, which:

- allow Network Rail to remove Freight Access Rights that are not being used "use it or lose it"
- require the freight operator to voluntarily relinquish Freight Access Rights they no longer need.
- allow Network Rail to amend or remove Freight Access Rights (whether being used or not) in order to make better use of the network.

(3). The revised Schedule 5 includes a reopener provision that allows Network Rail or DBSR to seek to adjust the arrival or departure windows of any specific Freight Access Right from PCD 2019 onwards.

(4). In agreeing the revised Schedule 5, freight operators (including DBSR) have relinquished certain protections contained in the current agreement that limit the flexibility of Network Rail to adjust the timings of freight Train Slots. These include the removal of the:

- 'maximum variation' provision which prevented Network Rail adjusting the times of freight Train Slots from Working Timetable to Working Timetable by more than 30 minutes; and
- rights to specific timings at Intermediate Points.

(5). DBSR along with other rail freight operators have been working with Network Rail in order to identify and relinquish unused Train Slots in the Working Timetable so that this capacity can be retained by Network Rail as Strategic Capacity or returned to 'white space'. DBSR understands that since the beginning of CP5 nearly 1,900 Train Slots have been relinquished under this process with around 500 being retained as Strategic Capacity. Since the beginning of CP5, DBSR alone has relinquished over 1,000 Train Slots to Network Rail with around 250 of those being retained by Network Rail as Strategic Capacity.

(6). DBSR considers that Network Rail has not been able to demonstrate the need for more flexible Freight Access Rights over and above what it already has at present other than by a theoretical assumption that more flexible rights have got to be better than less flexible rights given an increasingly congested network. Network Rail has not presented any detailed evidence analysing whether it uses the full flexibility open to it currently let alone what level of flexibility it believes is actually required in the future.

In summary, therefore, after taken account of the factors listed above including the lack of detailed evidence from Network Rail to the contrary, DBSR submits that having two levels of default windows (i.e. 60 minutes or 24 hours) gives an appropriate balance between certainty and stability for DBSR and sufficient flexibility for Network Rail to maximise use of capacity on the network.

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

- areas where the drafting of the application changes ORR's published template freight track access contract (as appropriate, cross-referencing to the answers below). Please also explain why these departures have been made. **C&Ps paras 2.34-2.37**
- 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). **C&Ps paras 5.1-5.44**
- new processes (e.g. a self-modification provision) which have been added. Please also demonstrate fully how this new process is robust and complete. **C&Ps paras 6.2-6.3**

As mentioned in section 3.1 above, with the exception of Schedule 5 the proposed agreement is based on the latest version of the Model Contract (Freight Services) published by ORR in November 2015. The Schedule 5 used in the proposed agreement follows the new format originally developed under the auspices of the Rail Delivery Group's Contractual and Regulatory Reform Working Group (Workstream 3b) and more latterly further revised and issued by ORR for consultation in November 2015. DBSR believes that this new format for Freight Access Rights will eventually be incorporated into ORR's Model Contract (Freight Services).

Notwithstanding the above, DBSR has proposed a number of amendments to the Model Contract (Freight Services) (in addition to the revised Schedule 5) either to reflect bespoke requirements or to correct a number of errors and omissions found when drafting the proposed agreement. DBSR has included a mark-up version of the proposed agreement showing all of the variations from the Model Contract (Freight Services) but the key proposed changes can be summarised as follows:

- Contents: Revisions to reflect proposed bespoke changes and to include a detailed contents list for Schedule 7 which is omitted from the Model Contract (Freight Services). The page numbering, however, will require updating on finalisation of the proposed agreement.
- Clause 1.1 Definitions: Amendments to reflect various bespoke changes. Change to the definition of "Network" to remove the outdated reference to the section of track between Thorpes Bridge Junction to Rochdale Junction which is no longer part of the Network.
- Clause 1.4: New clause to give effect in the proposed agreement to Schedules 1 and 3.
- Clause 14.2: Addition of "London Underground Limited" ("LUL") to the list of organisations

that Confidential Information can be divulged to in certain circumstances. London Underground Limited has been added because of the possible interaction over certain parts of the network between DBSR's and LUL's services.

- Clause 19: New clause that replicates provisions inserted into the current contract at the commencement of regulatory Control Period 5.
- Schedule 4: Consequential revisions required as a result of the new format Schedule 5
- Schedule 5: new format originally developed under the auspices of the Rail Delivery Group's Contractual and Regulatory Reform Working Group (Workstream 3b) and more latterly further revised and issued by ORR for consultation in November 2015. (DBSR believes that this new format for Freight Access Rights will eventually be incorporated into ORR's Model Contract (Freight Services)). This includes a new Freight Access Rights re-opener mechanism at paragraph 5.
- Schedule 7: At paragraph 2.7.2(a), wording has been added to reflect the current convention of Network Rail rounding the Initial Indexation Factor to three decimal places. A similar amendment has been made to the 'Phased-In Charges Adjustment Factor' in paragraph 2.7.3(a).
- Schedule 8: In Appendix 1, the Baseline Annual Contract Mileage will require inserting when its value is known.
- Schedule 11: The CTRL provisions have been deleted as they are no longer applicable. They have been replaced with the Crossrail provisions which are contained in Schedule 14 of the current agreement.

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

**4.1 Benefits:** please set out what specific benefits the proposal will achieve, including a justification for requiring the rights and their characteristics. Please provide full descriptions of any new rights required, as compared to the previous contract (in the case of an amendment). Please also 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. **C&Ps paras 4.26-4.35**

DBSR currently holds a 10-year Track Access Contract (Freight Services) dated 9 February 2006, that expires on the Principal Change Date 2016 (Sunday 11 December 2016). It is, therefore, seeking a new replacement Track Access Contract (Freight Services), for a 10-year term, from Principal Change Date 2016 (11 December 2016) incorporating the Freight Access Rights contained in the current agreement as at 11 December 2015 (including any approved transfers of Freight Access Rights pursuant to Condition J7 of the Network Code that take effect after that date).

The Freight Access Rights in the proposed agreement reflect those already held by DBSR and, therefore, no additional access rights are sought over those already contained in DBSR's current agreement. Consequently, there are no changes to service patterns nor should there be any impacts on other train operators from continuing these Freight Access Rights. The proposed agreement will permit DBSR to continue to plan and develop its business with a reasonable degree of certainty and continue to recoup the benefits of its long term investments mentioned in section 3.1 above as well as contributing to the growth of the UK economy as a whole.

However, the Freight Access Rights have been expressed in a revised format which was originally developed under the auspices of the Rail Delivery Group's Contractual and Regulatory Reform Working Group (Workstream 3b) and more latterly further revised and issued by ORR for consultation in November 2015. DBSR believes that this new format for Freight Access Rights will eventually be incorporated into ORR's Model Contract (Freight Services). The key new feature of the revised Schedule 5 is the expression of Freight Access Rights in terms of arrival and departure windows rather than specific arrival and departure times subject to +/- a number of minutes of flex (usually +/- 30 minutes for current Level One Rights).

In addition to the revised format, DBSR has also removed any current rights to timings at intermediate



locations and has also removed the 'maximum variation' provision in the current agreement that limits Network Rail's flexing rights to a maximum of 30 minutes between successive Working Timetables. These amendments will allow Network Rail increased flexibility to maximise the use of capacity on its network whilst retaining a degree of certainty and stability for DBSR.

**4.2 Adequacy:** please set out how you have satisfied yourself that there is enough network capacity for the services in the proposal. Please also set out whether there are any implications for overall network performance and the facility owner's maintenance and renewal activities. **C&Ps paras 4.12-4.45**

In making this application, DBSR is seeking a new replacement Track Access Contract (Freight Services), for a 10-year term, from Principal Change Date 2016 (11 December 2016) incorporating the Freight Access Rights contained in the current agreement as at 11 December 2015 (including any approved transfers of Freight Access Rights pursuant to Condition J7 of the Network Code that take effect after that date). Therefore, the Freight Access Rights contained within the proposed agreement 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.

In addition, and as mentioned in section 4.1 above, DBSR has relinquished certain protections that apply to the Freight Access Rights in its current agreement which should give Network Rail further flexibility to help maximise use of capacity on its network. The protections relinquished by DBSR relate to the removal of timings at intermediate points and the removal of the 'maximum variation' provision which prevented Network Rail from flexing Train Slots by more than 30 minutes between successive Working Timetables. Furthermore, the proposed agreement includes a Freight Access Rights 're-opener' mechanism effective from PCD 2019 which will allow Network Rail (or DBSR) to seek to extend (or contract) any time-period window if it can be demonstrated that more (or less) flexibility is needed in respect of the Freight Access Right(s) concerned.

**4.3 Level 1 rights:** please set out to what extent the level 1 rights in the proposal are required to service freight haulage contracts which you currently hold, and how the length of these contracts compares with the length of the (proposed) track access contract. For rights which will not be used fully, please explain why we should approve them. **C&Ps paras 4.46-4.54, 4.61-4.63**

As mentioned in various sections above, the proposed agreement expresses Freight Access Rights in the revised format which was originally developed under the auspices of the Rail Delivery Group's Contractual and Regulatory Reform Working Group (Workstream 3b) and more latterly further revised and issued by ORR for consultation in November 2015. Therefore, the proposed agreement does not include the concept of Level 1 Rights. Instead, all Freight Access Rights that are currently denoted as 'Level 1 Rights' in DBSR's current agreement have been converted into 60-minute time windows at Origin and Destination within which the relevant freight train service should be timetabled to depart or arrive as appropriate. In converting Level 1 Rights into the new format, DBSR has constructed the time windows around the specific times currently specified in the Level 1 Rights. By way of example:

If a current Level 1 Right has a departure time from Origin at 10:00 and an arrival time at Destination of 12:00, then the Departure Window would be expressed as 09:30 to 10:30 and the Arrival Window as 11:30 to 12:30. Given the removal of the 'maximum variation' provision that currently applies to Level 1 Rights this means that Network Rail has the ability to flex the arrival and departure times over the full extent of the window.

Notwithstanding the above comments, there is an exception. Level 1 Rights contained in the current agreement that relate to freight train services conveying Royal Mail traffic have a flex of +/- 15 minutes rather than the default +/- 30 minutes. Consequently, the Freight Access Rights in the proposed agreement relating to those Level 1 Rights have been converted into 30-minute time windows at Origin and Destination. The commercial justification for this is as follows:

*"The Royal Mail Universal Service Obligation (USO) requires that at least [REDACTED] of all first class mail*

will be delivered by midday the following day.

For example, 1S55 currently leaves Warrington Royal Mail Terminal at 23:30 (Royal Mail operate a doors closed ■ minutes prior to departure policy on all Royal Mail Logistics Services) and arrives at Shieldmuir Mail Terminal at 02:08. All other services can convey first class and premium post on an as required basis.

The current Train Slots cannot arrive at their respective destinations any later due to fixed onward road connections. Shieldmuir Mail Terminal serves Royal Mail deliveries for much of Scotland. It takes approximately ■ minutes to sort the Yorks (roll cages) for onward delivery. In order to serve the hinterland, road vehicles must leave Shieldmuir Mail Terminal by ■ to allow for road delivery and sorting at the local sorting offices.

In effect, if the proposed trains were retimed to arrive later and Royal Mail missed a delivery, then Royal Mail will be exposed to financial penalties. On average around ■ of first class traffic is signed delivery, which could result in the potential for penalties amounting to around ■ per service.

Whilst acknowledging that a time window of 30 minutes is more restrictive than the 60-minute windows proposed for the majority of rail freight services in the proposed agreement, DBSR considers that this still gives an appropriate balance between the exacting commercial need to depart/arrive within a 'tight time window' and the ability for Network Rail to make efficient use of capacity on the network."

**4.4 Level 2 rights:** please set out to what extent the level 2 rights in the proposal are required to service freight haulage contracts which you currently hold, and how the length of these contracts compares with the length of the (proposed) track access contract. For rights which will not be used fully, please explain why we should approve them. **C&Ps paras 4.46-4.54, 4.61-4.63**

As already mentioned above, the proposed agreement expresses Freight Access Rights in the revised format which was originally developed under the auspices of the Rail Delivery Group's Contractual and Regulatory Reform Working Group (Workstream 3b) and more latterly further revised and issued by ORR for consultation in November 2015. Therefore, the proposed agreement does not include the concept of Level 2 Rights. Instead, all Freight Access Rights that are currently denoted as 'Level 2 Rights' have been converted into 24-hour time windows at Origin and Destination within which the relevant freight train service should be timetabled to depart or arrive as appropriate. In converting Level 2 Rights into the new format, DBSR has constructed the time windows as 00:00 to 24:00 on the days concerned.

**4.5 Level 3 rights:** please set out the extent to which you expect to use the level 3 rights in the application. In particular, please state whether the proposed rights are seasonal (i.e. for 3 months each year) or occasional (i.e. Monday, Wednesday, Friday only). **C&Ps paras 4.60-4.69**

The concept of Level 3 Rights in DBSR's current agreement is not included in the proposed agreement. It has been replaced with the concept of 'Contingent Rights' which are noted as such in the Rights Table.

**4.6 Cordon caps:** please explain any changes to existing cordon caps and/or whether any new cordon caps are proposed. **C&Ps paras 4.55-4.58**

The concept of Cordon Caps which applied to Level 2 Rights in DBSR's current agreement is not included in the proposed agreement. This section is, therefore, not applicable to this application.

**4.7 Flexing rights:** please set out the reasons for any changes to the default +/- 30 minutes flex provision. **C&Ps paras 2.27-2.33, 4.68-4.69, 7.36, 9.40**

The Freight Access Rights contained in the proposed agreement are no longer expressed in terms of specific times subject to a flex of +/- a certain number of minutes (usually 30 minutes). Instead, the Freight Access Rights are expressed with Arrival and Departure Windows giving periods of time at Origin and Destination within which the Train Slots should depart or arrive as appropriate. Although the Arrival and Departure Windows can be of any length, with the exception of freight train services conveying Royal Mail traffic, DBSR has based its application of providing current Level 1 Rights with windows of 60-minutes and current Level 2 Rights with windows of 24 hours. Freight Access Rights relating to the conveyance of Royal Mail traffic have windows of 30-minutes for which commercial justification is given in section 4.3 above.

**4.8 Route utilisation strategies (RUSs):** please state which RUSs are relevant to the proposal and whether the proposed rights are consistent with that RUS and the freight RUS. If the proposed rights are not consistent, please explain the reasons for this. **C&Ps paras 4.5-4.8**

This application is consistent Network Rail's Long Term Planning Process. The Freight Market Study provides forecasts for freight growth up to 2043 and has been the basis of planning all Route Studies since its publication in 2013. This will be supplemented by the on-going Freight RUS programme which will provide updated freight forecasts for specific commodity groups and is due to be published later this year. DBSR 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 rail freight growth. The proposed agreement will provide the platform for DBSR to contribute towards achieving the predicted rail freight growth forecasts as it will give DBSR the certainty and stability it needs to grow its business over the next 10-years with a reasonable degree of assurance.

## 5. Incentives

**5.1 Train operator performance:** please describe any planned projects associated with the operation of the proposed services aimed at improving your performance. **C&Ps paras 4.26-4.36, 5.38, 5.64-5.69**

DBSR has been working with Network Rail and other freight operators in contributing to the overall improvements in freight train performance on the network through the auspices of the Freight Joint Board ("FJB") and Freight Performance Improvement Steering Group ("FPISG"). This includes the measurement and reporting of the Freight Delivery Measure against Network Rail's relevant regulatory targets. Section 5.2 below contains information extracted from a recent FJB update on freight performance on the network for CP5.

DBSR is in the process of undertaking a trial involving the provision of electronic mobile tablet devices to its train crew which will enable timetabling and operational information both published and real-time (including WONs/PONs, Rule Book, Appendices, Loco Manuals, Pink and White Pages, and SOIs) to be sent electronically instead of relying on current paper based documents and notifications. These tablets will also enable train crew to upload information concerning the performance of their trains which would be used by DBSR for performance attribution and improvement purposes.

DBSR has also recently reorganised its performance improvement team with the particular aim of continuing the good work of improving off-network delay (including the improvement of right-time departures) so that less delay is imported onto the network.

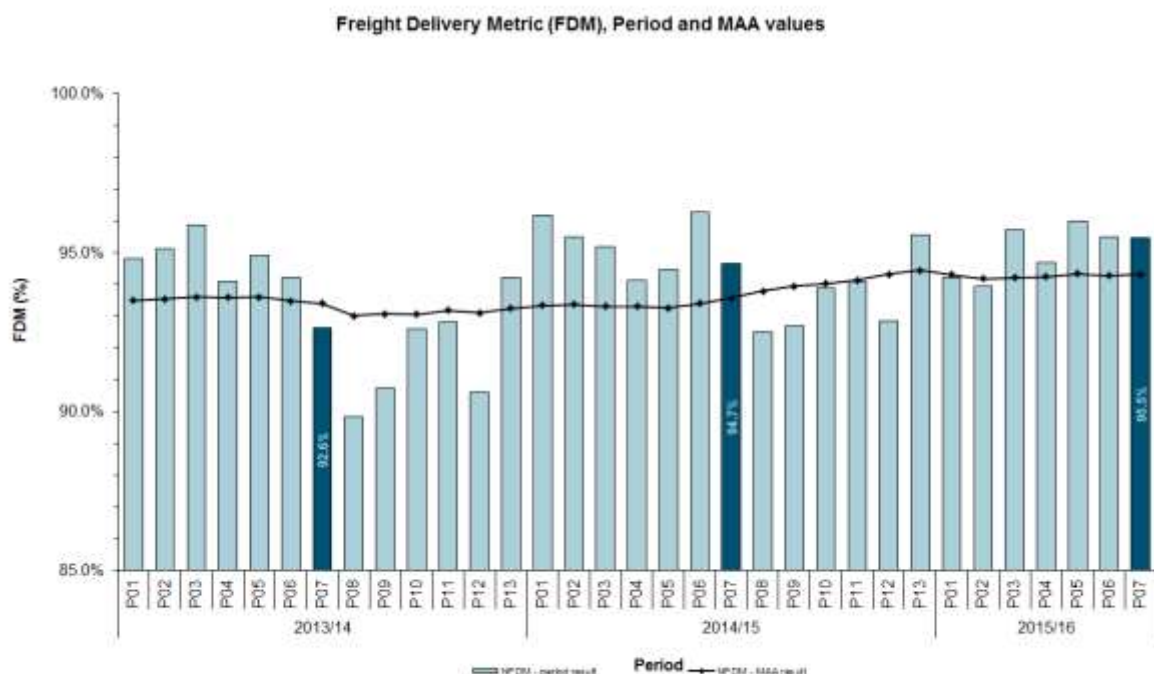
**5.2 Facility owner performance:** please describe any planned projects associated with the operation of the proposed services aimed at improving the facility owner's performance. **C&Ps paras 4.26-4.36, 5.38-5.40, 5.64-5.69**

As mentioned in section 5.1 above, DBSR has been working with Network Rail and other freight operators in contributing to the overall improvements in freight train performance on the network through the auspices of the FJB. This includes the measurement and reporting of the Freight Delivery Measure against Network Rail's regulatory targets. The following information uses data extracted from a recent FJB update on freight performance on the network for CP5:

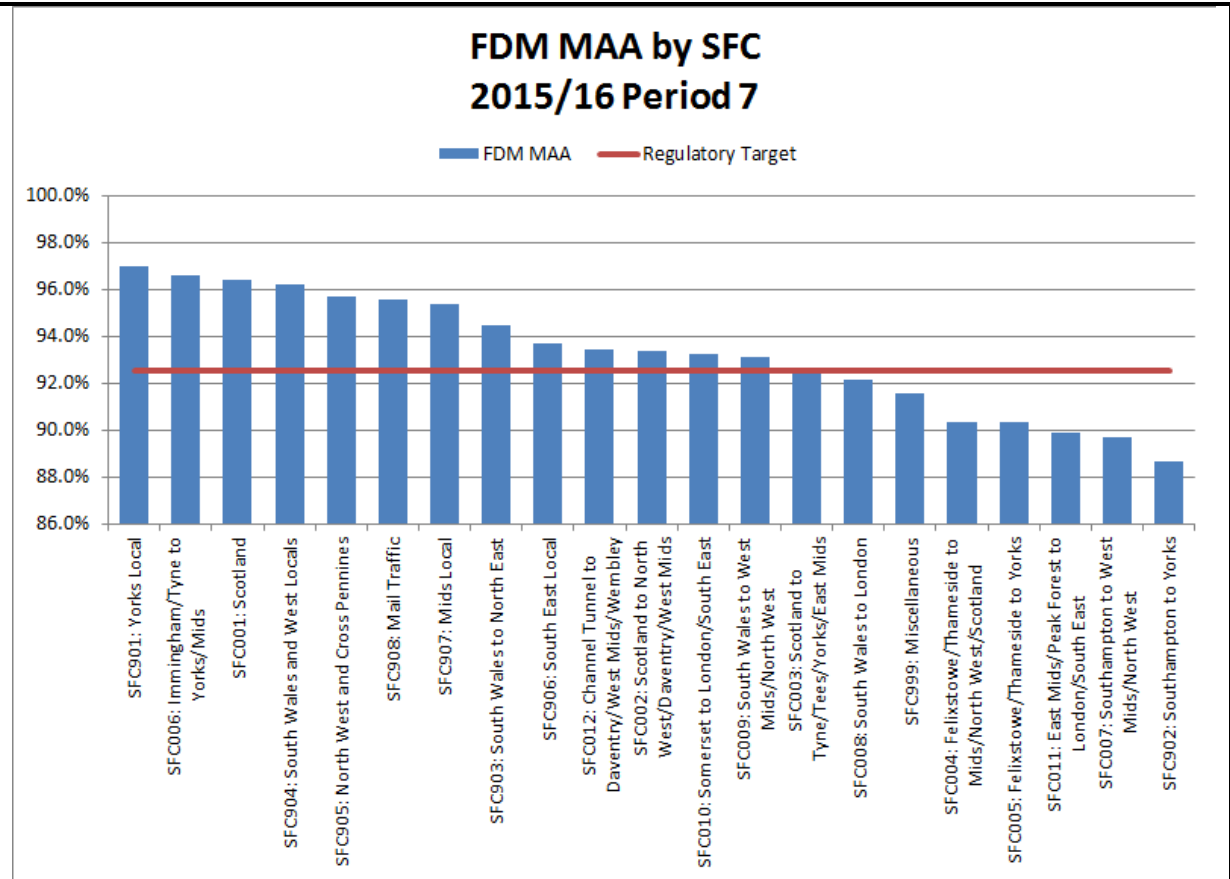
**Network Rail Performance**

FDM performance in the first year and a half of CP5 has been strong. At the end of 2015/16, Network Rail is forecasting to deliver 94.3% FDM MAA. This means it should outperform the FDM regulatory target of 92.5%, and should be 0.2 percentage points below the internal stretch target of 94.5%.

The chart below shows FDM by period, with the MAA fluctuating between 94.3% and 94.4% in recent months.



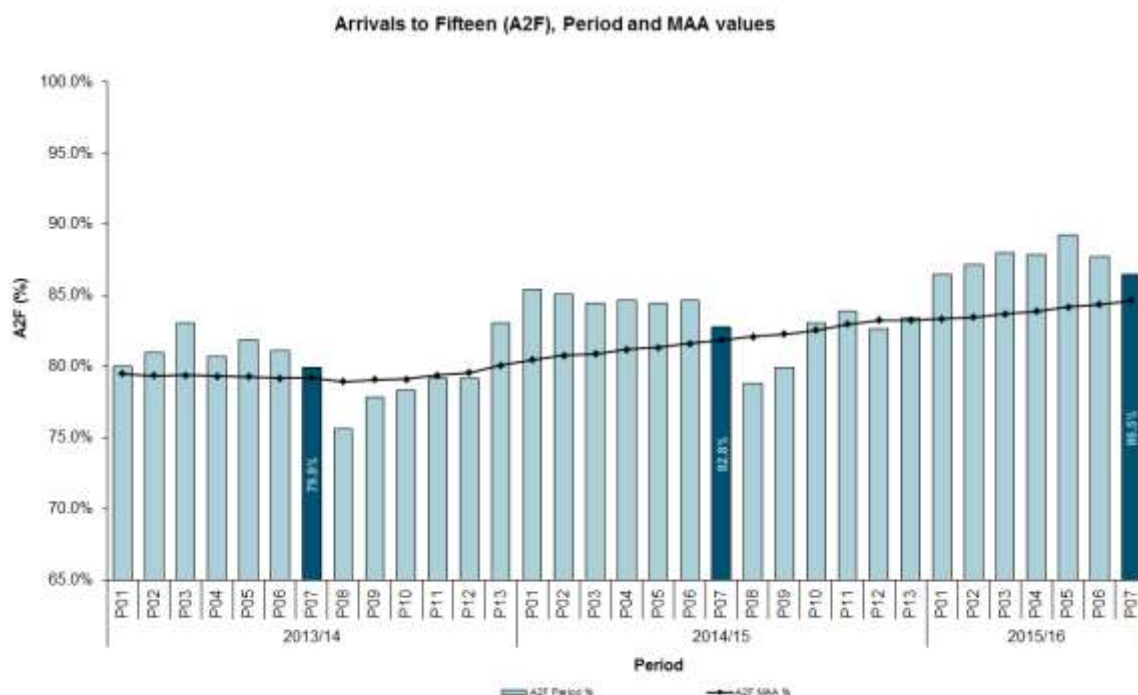
The following chart shows FDM MAA performance across strategic freight corridors as at Period 7 2015/16.



As can be seen from the above chart, the Southampton and Felixstowe intermodal corridors continue to present a challenge for FDM performance. However, action plans are being developed to tackle issues through the recently-established corridor performance improvement meetings.

Another indicator of freight performance on the network is “A2F” which measures the proportion of rail freight trains that arrive at destination within 15 minutes of booked time. It is similar to PPM for passenger in that it is a percentage of trains arriving at destination below a threshold. It measures all causes of delay to freight services (including Network Rail, Freight Operator on Self and F/TOC on FOC incidents) and has been introduced as a sector performance measure for CP5 in order to complement Freight Delivery Metric (FDM).

The chart below shows national A2F performance by period:



As is evidenced by the above chart, A2F MAA performance continues to improve with P7 recording 84.6%; the best MAA value throughout CP4 and CP5 to date. A2F is also being analysed at SFC level and the following table shows the trend for the last three periods, ranked by best to worst A2F.

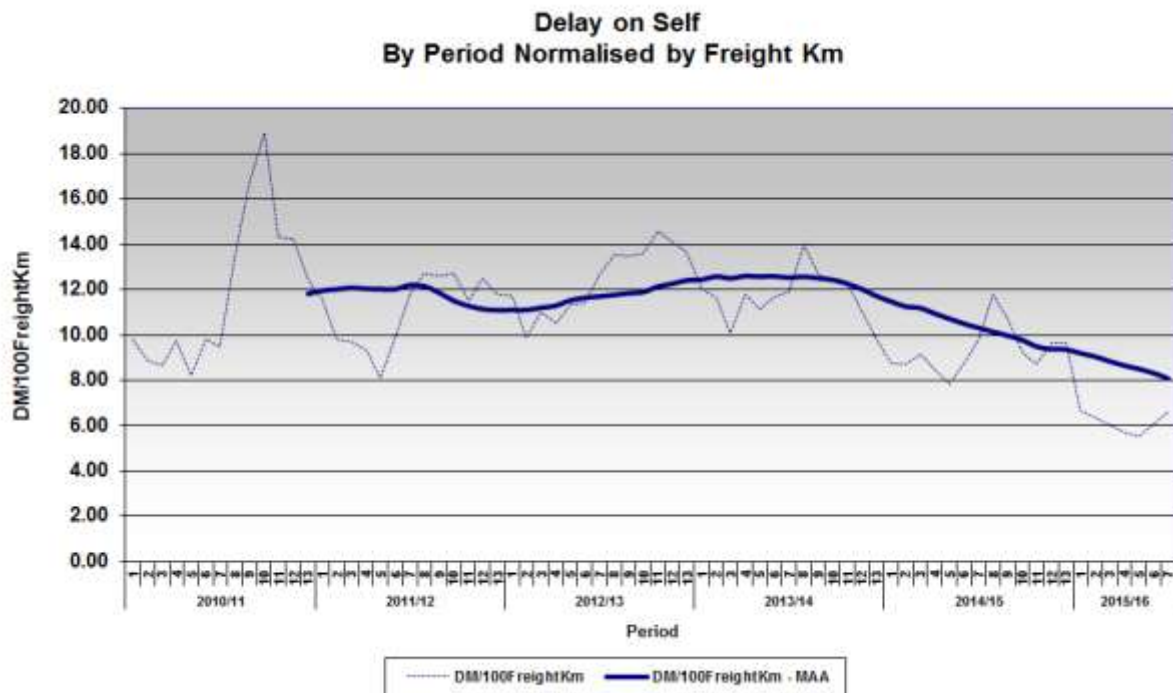
Strategic Freight Corridors	Train Count	A2F %	A2F Failures
SFC908 : Mail Traffic	509	95.5%	23
SFC001 : Scotland	1,652	94.9%	75
SFC003 : Scotland to Tyne/Tees/Yorks/East Mids	286	93.4%	19
SFC006 : Immingham/Tyne to Yorks/Mids	6,840	91.8%	560
SFC902 : Southampton to Yorks	397	89.9%	40
SFC002 : Scotland to North West/Daentry/West Mids	1,655	89.7%	168
SFC901 : Yorks Local	4,546	89.1%	490
SFC907 : Mids Local	1,261	88.9%	139
SFC009 : South Wales to West Mids/North West	1,311	88.7%	148
SFC903 : South Wales to North East	578	88.6%	66
SFC906 : South East Local	3,774	88.5%	419
SFC008 : South Wales to London	643	88.0%	77
SFC904 : South Wales and West Locals	3,373	88.0%	405
SFC905 : North West and Cross Pennines	3,909	85.7%	547
SFC005 : Felixstowe/Thameside to Yorks	1,820	84.8%	274
SFC007 : Southampton to West Mids/North West	2,645	84.3%	413
SFC999 : Miscellaneous	397	83.9%	58
SFC010 : Somerset to London/South East	1,459	83.0%	248
SFC012 : Channel Tunnel to Daentry/West Mids/Wembley	325	82.8%	56
SFC004 : Felixstowe/Thameside to Mids/North West/Scotland	3,313	82.2%	591
SFC011 : East Mids/Peak Forest to London/South East	1,936	82.1%	339

It should be noted that terminal or other non-network issues continues to be the worst category for A2F failures. However, this has been an area of significant focus over the last year by freight

operators, end customers and third party terminal operators. This attention has resulted in terminal-related delays accounting for 44% of A2F failures in Period 7, compared to 53% in the same period last year. An improving trend in rail freight train right-time departures from 73.4% MAA in P7 last year to 78.3% this year, has also contributed to the improvement in A2F.

### FOC on Self Performance

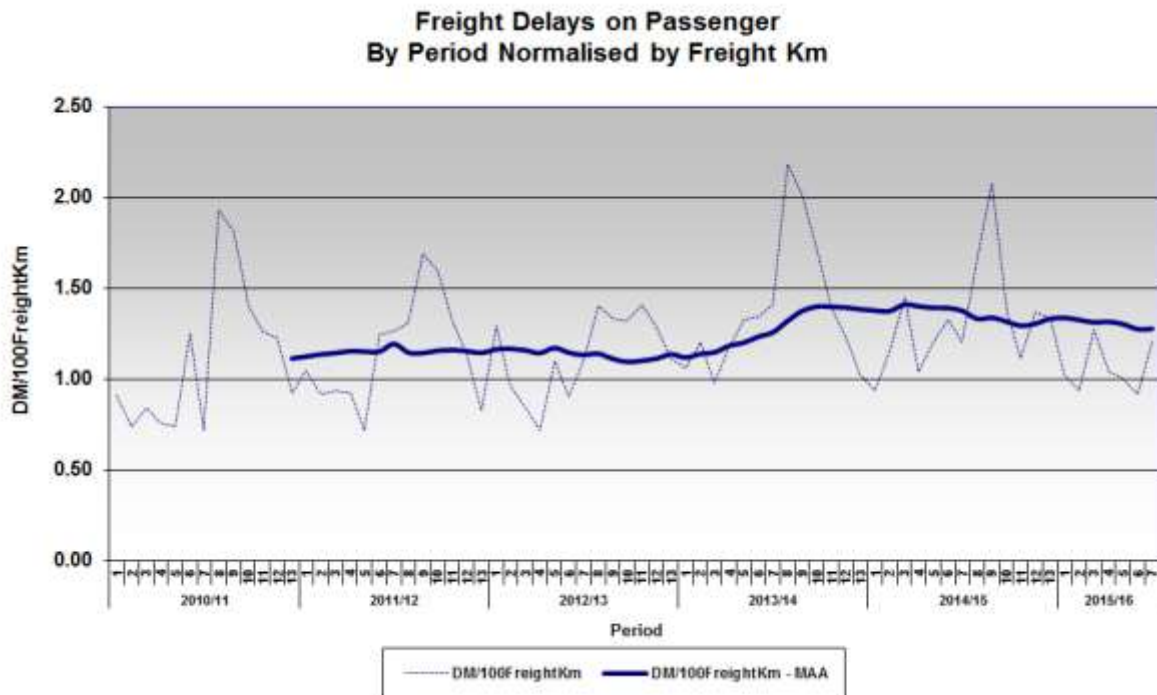
FOC on Self delay has continued to follow a consistently improving trend since the start of the control period as is shown in the following chart showing levels of FOC on Self delay by period, normalised by freight km.



### FOC on TOC Performance

FOC on TOC delay has been following an overall improving trend since the adverse performance in 2013/14. Year-to-date, FOC on TOC delay has reduced by 22%, accounting for over 50,000 less delay minutes to passenger trains this year. Almost half of this reduction is in terminal-generated delay, with further notable improvements in fleet reliability and operations delay. This improvement can be seen in the following chart:

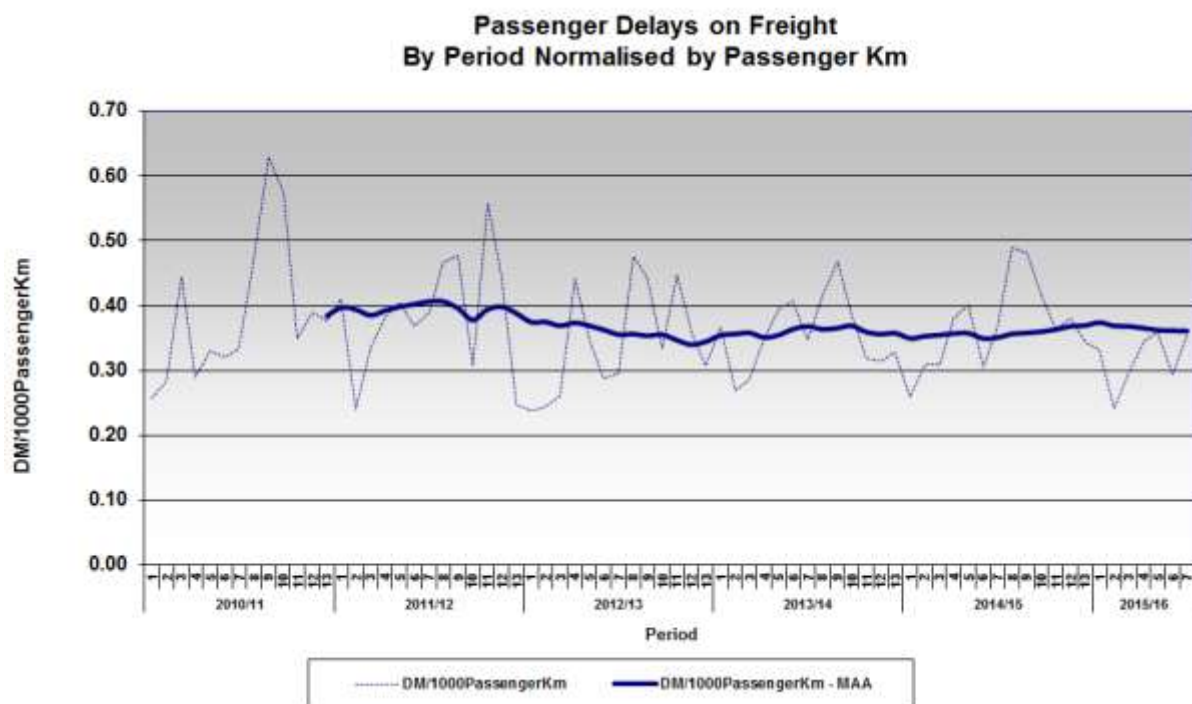




FOC on TOC delay continues to be a key priority for the freight sector. The corridor improvement meetings include a focus on FOC on TOC; specifically engaging at present with ATW, GWR and AGA. The FOC on TOC Plan remains a live document and is subject to review every six months. FOC on TOC delay continues to be a standing agenda item at the industry FPISG.

#### TOC on FOC Performance

In the Year-to-date, TOC on FOC delay minutes have improved by 2% on last year although the MAA has remained relatively stable since the marginal downturn in performance in the second half of 2014/15. This can be seen in the following chart:





The above summary of current freight performance demonstrates the significant work being undertaken by the rail freight industry (including DBSR and Network Rail) to improve overall freight performance on the network.

**5.4 Performance regime changes (for applications under sections 22 or 22A only):** where applicable, please provide justification for any changes to Schedule 8 of the track access contract in the proposal. If necessary, please provide any relevant information in support of the changes proposed. **C&Ps para 5.38-5.40, 5.64-5.69**

There are no changes sought to the Schedule 8 Performance Regime contained in the proposed agreement.

**5.5 Restrictions of use:** please set out and explain the reasons for any changes from the restrictions of use regime in the model freight track access contract. **C&Ps paras 5.70, 5.79-5.81**

There are no changes sought to the Schedule 4 Possessions Regime contained in the proposed agreement other than the amendment of certain terms and provisions that are necessary as a consequence of the revised Schedule 5 format.

## 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). **C&Ps paras 4.80**

This application concerns the Freight Access Rights of services already in operation on the network. Therefore, it 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). **C&Ps paras 5.6, 5.12-5.14**

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). **C&Ps paras 3.18-3.19**

There are no other current or forthcoming applications that are related to the proposed agreement. However, in keeping with past practice, DBSR foresees that the proposed agreement will be subject to many changes over the course of its life which will be progressed by way of the Supplemental Agreement process pursuant to Section 22 or 22A of the Act.

**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) where ORR's approval is not required (for more information, please see [The Railways \(Class and Miscellaneous Exemptions\) Order 1994](#). **C&Ps paras 2.58-2.61, 3.19**

Given that this 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.

**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). **C&Ps para 4.33**
- 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. **C&Ps paras 6.12-6.16, 6.21**

None.

**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. **C&Ps paras 3.29-3.34**

DBSR has included with the application a redacted version of the Form F and the proposed agreement.

In summary, the redactions are:

Form F

Section 3.1: Information on DBSR's investments and customer contracts.

Section 4.3: Commercial justification for smaller windows for services conveying Royal Mail traffic.

Proposed agreement

Clause 11.6.5 (i): The value of the Indemnity Incident Cap.

Schedule 8 Appendix 1: The values of the Train Operator Cap and the Network Rail Cap

Schedule 9 Paragraph 1: The value of the Liability Cap.

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

## 8. Pre-application consultation

**8.1 The consultation:** has a pre-application consultation been carried out in line with the Code of Practice? If yes, please:

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

If a pre-application consultation has not been carried out, please explain the reasons and whether any informal discussions have been held with any third parties who might be affected by this application and the nature of any concerns which they raised. **C&Ps paras: 3.62**

Not applicable.

**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. **C&Ps paras:**

Not applicable.

**8.3 Unresolved issues:** please set out any issues raised by consultees which have **not** been satisfactorily resolved, 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.

Not applicable.

## 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* **C&Ps para 3.40**

**In the case of agreed applications under section 18 or 22, Network Rail should fill in the required 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: 11 December 2015

Name (in caps): NIGEL OATWAY

Job title: ACCESS MANAGER

For (company) DB SCHENKER RAIL (UK) LIMITED

OFFICE OF RAIL AND ROAD  
ONE KEMBLE STREET, LONDON, WC2B 4AN

Switchboard 020 7282 2000 • Fax 020 7282 2041 • Website [www.rail-reg.gov.uk](http://www.rail-reg.gov.uk)

Form **F**

433536


## 10. Submission

**10.1 What to send:** please supply, in hard copy, 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. ***C&Ps para 3.39***

Please also supply the application form, the proposed contract or amendment and, where possible, any other supporting information, in electronic form, by e-mail or on disc, **in plain Microsoft Word format** (i.e. excluding any macros, auto-para or page numbering, or other auto-formatting). ***C&Ps para 3.37-3.38***

### 10.2 Where to send it:

Manager, Track Access Team  
Directorate of Railway Markets and Economics  
Office of Rail and Road  
One Kemble Street  
London  
WC2B 4AN