

**APPLICATION TO THE OFFICE OF RAIL REGULATION FOR
APPROVAL OF A PASSENGER TRACK ACCESS CONTRACT
UNDER SECTION 18 OF THE RAILWAYS ACT 1993**

1. Introduction

This form should be used to apply to the Office of Rail Regulation (ORR) for directions under section 18 of the Railways Act 1993 for a new track access contract. Section 18 provides for the ORR to approve track access contracts between those seeking the right to use a railway facility, and the facility owner, when both parties have agreed the terms of the contract.

The form sets out the ORR's standard information requirements for considering such applications. It cross-refers throughout to the ORR's published document on his criteria and procedures for the approval of access contracts¹. That document explains the process and timing for the ORR's consideration of access applications and discusses the issues the ORR will need to consider. It also contains the published model track access contract which applicants should use as their starting point when drafting the contract they want. Applicants are strongly encouraged to read the ORR's criteria document before making an application. Cross-references to this document have been included on this form.

It is very important that the application is made in good time and prospective applicants are strongly advised to read (and if necessary take advice on) the procedures which are laid out in the Railways Act 1993 and the ORR's published guidance in this respect.

The track access team at the ORR will be happy to discuss prospective applications. Applicants are strongly encouraged to contact the Office at an early stage, preferably before making an application, to discuss their likely requirements. Contact details are shown at the foot of this form.

A copy of this form, and of the ORR's model track access contract, can be accessed electronically and downloaded via the ORR website (www.rail-reg.gov.uk), or on disc or CD-Rom from the ORR.

¹ *Criteria and procedures for the approval of passenger track access contracts: third edition*, Office of the Rail Regulator, London, June 2003

2. The application

Criteria
document
para(s)

2.1 Title of proposed contract:

Track Access Agreement (Charter Passenger Services)

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

<u>Facility Owner</u>	<u>Beneficiary</u>
Network Rail Infrastructure Ltd	Direct Rail Services Ltd
Stephen Cornish	Chris Connolly
Business Manager Special Trains	Commercial Director
9 th Floor Piccadilly Tower	Kingmoor Depot, Etterby Road
Piccadilly Station	Etterby
Manchester M60 7RA	Carlisle
	Cumbria CA3 9NZ
Telephone number: 0161 228 4897	Telephone number: 01228 406600
Fax number: 0161 228 4958	Fax number: 01228 406601
E-mail address: Stephen.cornish@networkrail.co.uk	E-mail address: chris.connolly@bnfl.com

Criteria
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2.3 Licence and railway safety case Please state whether the applicant intends to operate the services himself or have them operated on his behalf **3.10-3.14**

Please state whether the proposed operator of the services (a) holds a valid train operating licence under section 8 of the Railways Act 1993 or an exemption under section 7, and (b) has an accepted railway safety case under the Railways (Safety Case) Regulations 2000. If the answer to (a) or (b) is no, please state the point which that person has reached in his obtaining of the licence, exemption or railway safety case (as the case may be)

DRS Ltd has been granted a passenger train operating licence, and is the holder of an accepted railway safety case.

3. The proposed contract

3.19

3.1 Executive summary Please provide an executive summary of the proposed contract. This should cover the services, the commercial terms, and the applicant's reasons for seeking the contract in the terms proposed. The summary in this section should also explain (here or by cross-reference to the answers in the sections below):

3.49

- where there is an existing agreement in respect of the services in question, any differences between the existing agreement and the proposed contract (e.g. calling patterns, frequency, routes, rolling-stock, commercial terms etc);
- any aspects in which the proposed contract contains bespoke provisions departing from the published model track access contract and the charging, performance and possessions regimes established through the ORR's periodic review (or subsequent interim reviews) of access charges; and
- any material safety risks that have been identified arising from the proposed contract and the arrangements for their control and mitigation (by reference to the provisions of the facility owner's and operator's railway safety cases)

2.43-2.47
6.2-6.3

4.5-4.6

DRS held a track access agreement for the operation of passenger charter trains from 1998 until 2005. In 2005, when the agreement expired, it was by oversight not renewed. DRS now wish to operate a limited number of charter trains in the second half of 2006, and have requested an access agreement.

The old agreement was a 1998 bespoke agreement, which is no longer considered by the parties to be fit for purpose. There is no model-clause agreement available for passenger charter train operations, but a new agreement between Network Rail and Advenza Freight Ltd was approved by the Office of Rail Regulation as recently as April 2006, and the parties consider that it would be appropriate to adopt the structure and commercial terms of this Advenza agreement

The Commercial Terms are based upon a Fixed Charge of £X being levied in respect of each train operated, together with a mileage-based variable charge of £X per mile for each mile of a loaded passenger train operation, and £X per mile for each mile of an associated ECS movement. The performance regime is based upon a Network Rail rate of £X per delay minute and a train operator rate of £X per delay minute. In addition, the contract makes provision for Network Rail to levy charges in respect of non-core operational costs incurred, and in respect of traction electricity costs.

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3.2 Departure from ORR's model track access contract Please set out here, with reasons, any areas where the drafting of the proposed contract omits, amends or adds to the ORR's published template track access contract (as appropriate, cross-referencing to the answers below). Wherever the proposed contract contains a new process (e.g. a self-modification provision) the ORR will wish to see a flowchart illustrating that the process is robust, internally consistent and leaves no loose ends

2.43-2.47
6.2-6.3

No model clause version of a contract applicable to charter train operations has yet been produced by the Office of Rail Regulation.

3.3 Duration of contract Please indicate the commencement date sought for the proposed contract, and provide justification for the proposed duration (in particular any factors that would support a contract longer than the standard five-year period contemplated by Directive 2001/14/EC)

The commencement date sought is the earliest possible, and expiry is shown as 30 June 2007.

4. The expression of access rights and the consumption of capacity

4.1 Benefits Please set out what specific benefits will result from the proposed contract. In particular, please describe any new rights sought or significant changes in the pattern of services, their benefits to passengers and their impact on existing operators **4.25-4.31**

The nature of the contract which is being sought is that of a "Rights to Bid only" contract, under which all train operations have to be bid into residual white space, and under which no firm contractual rights are conferred.

4.2 Adequacy Please set out to what extent and by what process (if any) the applicants have satisfied themselves that there is sufficient network capacity for the services in the proposed contract, and the implications for overall network performance and the facility owner's maintenance and renewal activities **4.12-4.31**

The contract confers only "Rights to Bid", and every proposed train operation under the terms of the contract has to be the subject of a Spot Bid. Any bid that is submitted will be considered by Network Rail in accordance with the provisions of the Network Code, and in the event that capacity cannot be identified to enable Network Rail to satisfy the bid, it will be modified or rejected as appropriate.

Criteria
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para(s)

4.3 Flexing rights Please provide a general description of the extent of the facility owner's flexing rights in the proposed contract, and the rationale for the extent of flex provided, including changes from that in any existing agreement in respect of the services in question **2.38-2.42**
4.44

Not applicable

4.4 Protected rights and obligations Please describe the extent to which the proposed contract contains any protected rights and/or protected obligations (*i.e.* protection from subsequent amendment of the network code under Condition C8), and explain the justification for the form and extent of protection sought by reference to the ORR's criteria

None

4.5 Journey time protection Please describe the extent to which the proposed contract affords journey time protection to any services (by establishing maximum journey times, fastest key journey times or maximum key journey times), and explain the justification for the form and extent of protection sought by reference to the ORR's criteria **4.45-4.59**

Not applicable

4.6 Other limitations on flexibility Please describe the extent to which the proposed contract contains any other restrictive obligations on the facility owner (*e.g.* regular service intervals, clockface departures, dedicated platforms etc), and explain the justification for any such provisions by reference to the ORR's criteria **4.32-4.41**

None

Criteria
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para(s)

4.7 Specified equipment Where the proposed contract contains changes to specified equipment (rolling stock), please give full details, including timescales, and the extent to which the vehicle and route acceptance procedure in the network code (Part F) has been completed **4.42-4.43**

The proposed contract seeks rights to operate all diesel and electric locomotives and passenger rolling stock that are shown as registered on the Rolling Stock Library. However, this is on the same basis as the existing passenger charter trains contracts held by other TOCs, which is that bids will only be accepted where the type of locomotive and the type of rolling stock concerned are compatible with the appropriate tables of the Network Rail Sectional Appendix and other relevant documentation.

4.8 Moderation of competition Where applicable, please describe the extent to which the proposed contract seeks contractual protection from the introduction of competing services on specific flows, and explain the justification for such protection by reference to the ORR's criteria **4.64**

Not applicable

4.9 Franchise obligations Please indicate the extent to which the services in the proposed contract are necessary to fulfil obligations under a franchise agreement with the Strategic Rail Authority

Not applicable

4.10 Public funding Please indicate whether (and if so to what extent) the services in the proposed contract are subject to financial support from central or local government (other than the Strategic Rail Authority), including Passenger Transport Executives, and provide a point of contact at that body

3.30
4.16
4.28-4.31

None

4.11 Rail Passengers' Committees Please indicate whether (and if so to what extent) the services in the proposed contract have been discussed with the relevant Rail Passengers' Committee(s), and provide copies of any relevant correspondence

3.30
4.31

Not applicable

Criteria
document
para(s)

4.12 SRA strategies Please state here which of the SRA's strategies are considered relevant to this application and why

2.15-2.19
4.23

None

5. Incentives

5.1 Charges and performance Please indicate, and explain the reasons for, any instances where the proposed contract departs from the charging and/or performance regimes established by the ORR's periodic review (or subsequent interim reviews) as reflected in the ORR's model track access contract, including the financial implications (e.g. establishment of an access charge supplement or rebate)

5.1-5.36

The Office of Rail Regulation has not yet proposed model clauses nor charging and/or performance regimes applicable to charter train operations. Thus the arrangements and charges contained in the proposed contract are based upon most recently-approved passenger charter train contract, which is the Advenza Freight Ltd (passenger charter train) contract approved by the ORR in April 2006.

5.2 Train operator performance Please describe any planned initiatives associated with the operation of the services in the proposed contract aimed at improving the train operator's own performance

4.25
5.1

Not applicable

5.3 Restrictions of use Please indicate and explain the reasons for any instances where the proposed contract departs from the restrictions of use (possessions) compensation regime established by the ORR's periodic review of access charges and his subsequent interim review of the possessions incentives regime

None

Criteria
document
para(s)

6. Enhancement

6.1 Enhancement details Where the proposed contract provides for the delivery of any network enhancements, or the services in the proposed contract are predicated on 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 the ORR's enhancement reporting framework) **4.71-4.73**

None

6.2 Enhancement charges Please confirm that the arrangements for the funding of any network enhancements are consistent with the ORR's enhancement framework, and summarise the level and duration of payments, and the assumed rate of return (see Chapter 18, *The Periodic Review of Railtrack's Access Charges: Final Conclusions, Volume 1*, Office of the Rail Regulator, London, October 2000) **5.7 5.9-5.10**

Not applicable

7. Other

7.1 Associated applications to the ORR Please indicate whether this application is being made in parallel with, or relates to, any other current or proposed applications to the ORR (e.g. in respect of track, station or light maintenance depot access contracts or agreements) **3.15**

None

7.2 Supporting information Please indicate here any further justification or relevant information in support of the application, including a list and explanation of any other material being submitted (and supply copies with the application) **3.28**

It is not considered that there is any supporting information relevant to this application

7.3 Side letters and collateral agreements Please confirm here that the whole of the proposed contract between the parties has been submitted with this application and that there are no side letters or other documents which qualify or otherwise affect the proposed access contract **6.12-6.16 6.21**

It is confirmed that that the whole of the proposed contract between the parties has been submitted with this application and that there are no side letters or other documents which qualify or otherwise affect the proposed access contract

7.4 Confidentiality exclusions Please indicate clearly any elements in the application and the proposed contract that the parties would wish to exclude from wider consultation on the grounds of confidentiality specified in section 71(2) of the Railways Act 1993, and provide a full justification for each instance by reference to those statutory grounds. Subject to its decision on such exclusions, it is the ORR's intention to publish this application and the proposed contract on the ORR website **3.21-3.25**

The parties would wish to exclude from wider consultation all financial values contained with Schedules 1 and 4.

8. 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 (including section 18), 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 **3.29**

I certify that the information provided in this form is true and complete to the best of my knowledge and that Network Rail and DRS Ltd are willing to enter into the attached contract as submitted

<u>Facility Owner</u>	<u>Beneficiary</u>
Signed:	Signed:
Date:	Date:
Name: IAIN COUCHER	Name: CHRIS CONNOLLY
Deputy Chief Executive	Commercial Director
For Network Rail	For DRS Ltd

9. Submission

9.1 What to send

Please supply, in hard copy, the signed top copy of this application form, three copies of the proposed draft contract, copies of any documents incorporated by reference (other than established standard industry codes or other instruments) and any other attachments, supporting documents or information.

3.28

Please also supply the application, the proposed contract and, insofar as it is 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).

3.26-3.27

9.2 Where to send it

Manager, Track Access Division
Directorate of Rail Markets & Access
Office of Rail Regulation
1 Waterhouse Square
138-142 Holborn
LONDON
EC1N 2TQ

ORR Passenger Form S18 July 2004 (Issue 3)