
2.3 Licence and Railway Safety Case/Safety Certificate

Please state whether the applicant intends to operate the services itself or have them operated on its behalf. **3.9-3.15**

Please state whether the proposed operator of the services:

- (a) holds a valid train operating licence under section 8 of the Act or an exemption under section 7; and
- (b) has an accepted Railway Safety Case under the Railways (Safety Case) Regulations 2000 or a 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 which that person has reached in their obtaining of the licence or exemption and Railway Safety Case or Safety Certificate (as the case may be).

3. The proposed contract

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): **3.23**

- 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. service characteristics, routes, intermediate points, rolling stock, commercial terms etc); **3.75**
- any respects in which the proposed contract contains bespoke provisions departing from the model freight track access contract and the charging, performance and restrictions of use regimes in the model freight track access contract; and **2.50-2.51**
6.2-6.3
- 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 operator's Railway Safety Case or Safety Certificate and, so far as is possible, the Railway Safety Case or Safety Certificate of the facility owner). **4.9-4.11**

3.2 Terms not agreed with the facility owner

Please set out here those specific areas of the proposed contract which the applicant has **not** been able to agree with the facility owner, the reasons for the failure to agree and the reasons for seeking these provisions.

2.30
3.73-3.75

3.3 Departure from ORR's model freight track access contract

Please set out here, with reasons, any areas where the drafting of the proposed contract omits, amends or adds to ORR's model freight track access contract (as appropriate, cross-referencing to the answers below). Where the change is one that we have invited through the model contract and is relatively self-explanatory (e.g. where the name of the operator has been added in the appropriate place) you may wish to confirm that this change has been made to give effect to the contract. Wherever the proposed contract contains a new process (e.g. a self-modification provision), we will wish to see a flowchart illustrating that the process is robust, internally consistent and leaves no loose ends.

2.50-2.51
6.2-6.3

3.4 Duration of contract

Please indicate the commencement date sought for the proposed contract, and provide justification for the proposed duration (in particular, referring to ORR's long-term access contracts policy³ where contracts would be for longer than five years).

4.69-4.75

³ *Long-term access contracts: final conclusions*, Office of Rail Regulation, June 2005 available at <http://www.rail-reg.gov.uk/upload/pdf/240.pdf>.

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 freight customers and their impact on existing operators. **4.31-4.36**

4.2 Congested infrastructure

Please state whether the part(s) of the network to which this application relates have been declared congested by Network Rail, under regulations 23-25 of the Railways Infrastructure (Access and Management) Regulations 2005. **4.79-4.80**

4.3 Adequacy

Please set out to what extent and by what process (if any) the applicant has satisfied itself that there is sufficient network capacity for the levels of rights for services in the proposed contract, and the implications for overall network performance and the facility owner's maintenance and renewal activities. **4.12-4.36**

4.4 Level 1 rights

Please state to what extent the level 1 rights in the proposed track access contract are required to service freight haulage contracts currently held by the operator and how the length of these contracts compare with the length of the proposed track access contract. Where rights are not proposed to be used fully, please provide a justification for why we should approve them as requested. **4.37-4.40**

4.5 Level 2 rights

Please state to what extent the level 2 rights in the proposed track access contract are required to service freight haulage contracts currently held by the operator and how the length of these contracts compare with the length of the proposed track access contract. Where rights are not proposed to be used fully, please provide a justification for why we should approve them as requested. **4.37-4.40**

4.6 Level 3 rights

Please comment on the extent to which the operator expects to use the level 3 rights in the proposed contract. In particular, the operator should state whether the rights requested are seasonal i.e. for 3 months each year, or whether they will be used occasionally e.g. Monday, Wednesday and Friday. **4.37-4.40**

4.7 Cordon caps

Please explain any changes to existing cordon caps and/or whether any new cordon caps are proposed. **4.63-4.66**

4.8 Flexing rights

Please provide a rationale for any departure from the default +/-30 minutes flex provision. **2.43-2.46
4.48-4.49**

4.9 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 ORR's criteria. **4.67-4.68**

4.10 Other limitations on flexibility

Please describe the extent to which the proposed contract contains any other restrictive obligations on the facility owner (e.g. a right that can only be exercised over a particular route), and explain the justification for any such provisions by reference to ORR's criteria. **4.37-4.54**

4.11 Route utilisation strategies

If applicable, please also state which route utilisation strategies (RUSs) are considered relevant to this application and whether the proposed rights are consistent with that RUS, and the freight route utilisation strategy. If the proposed rights are not consistent, please state the reasons for this. **2.28**
4.5-4.8

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 in the model freight track access contract including the financial implications (e.g. establishment of an access charge supplement or rebate). **5.1-5.18**
5.25-5.32

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. **4.31-4.33**
5.25-5.31

5.3 Facility owner performance

Please describe any planned initiatives associated with the operation of the services in the proposed amendment aimed at improving the facility owner's own performance.

4.31-4.33
5.25-5.31

5.4 Restrictions of use

Please indicate and explain the reasons for any instances where the proposed contract departs from the restrictions of use regime in the model freight track access contract.

5.33-5.36

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 ORR's enhancement reporting framework).

4.77-4.80

6.2 Enhancement charges

Please confirm that the arrangements for the funding of any network enhancements (outside the scope of the incremental costs provisions) are consistent with ORR's policy framework for investments⁴, and summarise the level and duration of payments, and the assumed rate of return.

5.19-5.21

⁴ *Policy framework for investments: conclusions*, Office of Rail Regulation, October 2005, available at <http://www.rail-reg.gov.uk/upload/pdf/255.pdf>.

7. Other

7.1 Associated applications to ORR

Please indicate whether this application is being made in parallel with, or relates to, any other current or proposed applications to ORR (e.g. in respect of track, station or other freight facilities access contracts or agreements). **3.18-3.19**

7.2 Unregulated access

Please comment on the extent to which 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 required⁵. **2.62-2.65**
3.19

7.3 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). **3.32**

7.4 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

⁵ As provided for in The Railways (Class and Miscellaneous Exemptions) Order 1994, SI 1994 No.606

7.5 Confidentiality exclusions:

Where applicable, please explain clearly what elements of the application have been excluded, on the grounds of confidentiality, from the version of the proposed amendment sent to consultees for the pre-application consultation process (if undertaken). Alternatively, where an application has not been subject to pre-application consultation, the applicant should state what elements of the application and proposed amendment they would wish ORR to exclude from publication. **3.25-3.29**
Code of Practice: 20-23

In excluding, or seeking the exclusion of, any information, the applicant should have regard to 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. Further guidance is provided in the Code of Practice. Subject to its decision on such exclusions, it is ORR's intention to publish this application and the proposed contract on the ORR website. (NB under the process established by Schedule 4 of the Railways Act 1993, ORR is obliged to send a copy of the application **in full** to the facility owner)

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

Code of Practice: 17-18, 38-43

8.1

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

- state whether Network Rail or you (the applicant) conducted the consultation;
- list all train operators and other parties that were consulted, stating which parties, if any, made representations (other than nil returns) and attach their responses and any associated documentation to this form; and
- state the period allowed for the consultation and, 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 what informal discussions have been held with those third parties who might be affected by this application and the nature of any concerns raised.

8.2 Resolved issues

please detail any issues raised in response to the consultation that have been resolved to the satisfaction of the consultee. You may wish to refer to responses attached to this form.

**Code of
Practice:
48-49**

8.3 Unresolved issues

Please detail any issues raised in response to the consultation that have not been resolved to the satisfaction of the consultee, including any correspondence with that consultee. You may wish to refer to responses attached to this form. Please explain why you do not think these issues should preclude ORR's approval of the application.

**Code of
Practice:
50**

8.4

Please explain any aspects of the application that have changed as a result of the consultation and why they have changed.

8.5

Please list here any further information being provided to ORR to support the application that was not made available to consultees in any pre-application consultation held as part of this application and listed in section 7.3. If the applicants wish ORR to consider excluding this information from subsequent publication they should justify why the information is of a confidential nature, following the guidance provided in section 7.5 above.

9. Certification

Warning: Under section 146 of the Act, any person who, in giving any information or making any application under or for the purposes of any provision of the Act (including section 17), makes any statement which they know 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.

3.33
6.22

I certify that the information provided in this form is true and complete to the best of my knowledge.

Signed

Date

Name (in caps)

Job title

For (company)

10. Submission

10.1 What to send

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

3.32

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).

3.30-3.31

10.2 Where to send it

Manager, Track Access Team
Directorate of Access, Planning & Performance
Office of Rail Regulation
One Kemble Street
London
WC2B 4AN

ORR Form 17 June2008