

APPLICATION TO THE REGULATOR FOR APPROVAL OF A FREIGHT TRACK ACCESS CONTRACT UNDER SECTION 18 OF THE RAILWAYS ACT 1993

1. Introduction

This form should be used to apply to the Rail Regulator for directions under section 18 of the Railways Act 1993 for a new track access contract. Section 18 provides for the Rail Regulator 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 Regulator's standard information requirements for considering such applications. It cross-refers throughout to the Regulator's published document on his criteria and procedures for the approval of access contracts¹. That document explains the process and timing for the Regulator's consideration of access applications and discusses the issues the Regulator will need to consider. The Regulator has also published a model freight track access contract which applicants should use as their starting point when drafting the contract they want². Applicants are strongly encouraged to read the Regulator'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 Regulator's published guidance in this respect.

The track access team at the Office of the Rail Regulator 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 Regulator'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.

2. The application

Criteria
document
para(s)

2.1 Title of proposed contract:

Track Access Agreement between Network Rail and Fastline Limited

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

<u>Facility Owner</u>	<u>Beneficiary</u>
Company: Network Rail	Company: Fastline Limited
Contact individual: Peter Sykes	Contact Individual: Leighton Williams
Job title: Track Access Contracts Manager	Job title: Lawyer
Address: ground floor, George Stephenson House, Toft Green, York YO1 6JT	Address: Meridian House, The Crescent, York YO24 1AW
Telephone number: 01904 521432	Telephone number: 01904 713741
Fax number: 01904 525676	Fax number: 01904 712001
E-mail address: peter.sykes@networkrail.co.uk	E-mail address: leighton.williams@jarvis-uk.com

¹ *Criteria and procedures for the approval of freight track access contracts: second edition*, Office of the Rail Regulator, London, March 2004.

² *Model Freight Track Access Agreement*, Office of the Rail Regulator, London, March 2004.

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)

The operator (a) holds a valid train operating licence under section 8 of the Railways Act 1993, and (b) has an accepted railway safety case under the Railways (Safety Case) Regulations 2000.

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): **3.19**

- 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); **3.48**
- any respects in which the proposed contract contains bespoke provisions departing from the published model track access contract and the charging, performance and possessions regimes in the Regulator's model freight track access contract; and **2.42-2.46**
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 facility owner's and operator's railway safety cases) **4.5-4.6**

The agreement broadly replicates the yellow plant agreement approved by the Regulator in 2005, with Carillion Rail. It differs from the agreement approved in 2002 with Jarvis Fastline as follows:

1. References

References to "The Railtrack Track Access Conditions", "Railtrack PLC", "Jarvis Fastline" and "The Regulator" have been amended to "The Network Code", "Network Rail Infrastructure Limited", "Fastline" and "The Office of Rail Regulation" respectively.

2. Train Operator Obligations

Part B, clauses 5.4 & 5.6 have been amended to aid clarity.

3. Schedule 5

An additional clause, 1.1(e), restricting movement of services south of Willesden to off-peak hours has been added. This has been introduced in order to reduce exposure to large 3rd party delays and keep the Access Charge Supplement (see 5 below) to a minimum.

4. Table of Charges

The above table in Schedule 8 has been amended to reflect the 3rd party costs incurred by Network Rail during 2003/2004.

Access Charge Supplement

An Access Charge Supplement and Incident Cap have been introduced.

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3.2 Departure from Regulator'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 Regulator's published template 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) the Regulator will wish to see a flowchart illustrating that the process is robust, internally consistent and leaves no loose ends

2.42-2.46
6.2-6.3

The purpose of the agreement varies considerably from standard freight agreements in that it is simply required for the purposes of transit moves on the Network Rail network in order to gain access to / from a 3rd part network. No goods or passengers are conveyed by the services.

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)

4.59-4.64

Contract to start as soon as possible and to expire 31st March 2011. This will bring it into line with a standard five-year period.

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

4.24-4.29

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

The agreement is intended to enable the operator to gain access to unregulated networks. They currently have no such contracts in place but require the agreement to be in place before bidding for any such work. It would enable the operator to fulfil their contract to maintain the relevant network to a high standard if awarded any such work.

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 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

4.7-4.29

It is not envisaged that there will be any additional movements on the network if the agreement is approved. Any work awarded to Fastline will be work currently carried out by another operator.

Criteria
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para(s)

4.3 Level 1 rights Please state to what extent the level 1 rights in the proposed contract are required to service freight haulage contracts currently held by the operator and how the length of these contracts compares with the length of the proposed contract

4.30-4.33

Level 1 rights are not required by the operator Due to the ad-hoc nature of the services likely to operate under this agreement and in line with all other regulated yellow plant track access agreements, the operator would have no level 1 rights.

4.4 Level 2 rights Please comment on the extent to which the operator expects to use the level 2 rights in the proposed contract. Where rights are not proposed to be used fully, please provide a justification for why the Regulator should approve them as requested

4.30-4.33

Level 2 rights will not be used by the operator. Due to the ad-hoc nature of the moves likely to operate under this agreement and in line with all other regulated yellow plant track access agreements, the operator would have no level 2 rights.

4.5 Cordon caps Please explain any changes to existing cordon caps and/or whether any new cordon caps are proposed **4.54-4.56**

No cordon caps are proposed under this agreement.

4.6 Flexing rights Please provide a rationale for any departure from the default +/-30 minutes flex provision **2.38-2.41**
4.41-4.42

No flexing rights are being applied for as the operator will only be bidding for services at STP timescales.

4.7 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 Regulator's criteria

4.57-4.58

No protected rights or protected obligations are being applied for.

4.8 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 be exercised over only a particular route), and explain the justification for any such provisions by reference to the Regulator's criteria

4.30-4.46

No restrictive obligations are placed upon the facility owner.

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

2.15-2.19
4.3-4.4

No SRA strategies are considered relevant to this application.

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)

5.1-5.17

5.22-5.29

The charging / performance regime is bespoke and reflects those already in place for other yellow plant operators.

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

No initiatives in place other than the performance regime.

5.3 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 **5.30-5.33**

The proposed contract is a bespoke agreement particularly tailored for the movement of yellow plant and does not mirror the model freight track access contract. It would be better for it to reflect the other regulated yellow plant agreements previously approved.

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 Regulator's enhancement reporting framework) **4.67-4.69**

No enhancements are included in the agreement.

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 the Regulator's enhancement framework, and summarise the level and duration of payments, and the assumed rate of return

No enhancement charges are included in the agreement.

7. Other

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

This application does not relate to any other current or proposed applications to the ORR.

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 the Regulator's approval is not required³ **2.54**
3.15

No agreements are currently being negotiated. All required agreements for unregulated access are already in place.

³ As provided for in The Railways (Class and Miscellaneous Exemptions) Order 1994, SI 1994 No.606

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)

3.28

No other documentation is being submitted with this application.

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**

We confirm 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.

7.5 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 his decision on such exclusions, it is the Regulator's intention to publish this application and the proposed contract on the ORR website

3.21-3.25

There are no elements we wish to exclude from wider consultation.

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

I certify that the information provided in this form is true and complete to the best of my knowledge and that [facility owner] and [beneficiary] are willing to enter into the attached contract as submitted

<u>Facility Owner</u>	<u>Beneficiary</u>
Signed:	Signed:
Date:	Date:
Name (in caps):	Name (in caps):
Job title:	Job title:
For (company):	For (company):

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 and Access
Office of the Rail Regulator
1 Waterhouse Square
138-142 Holborn
LONDON
EC1N 2TQ

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