

**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 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 ORR's standard information requirements for considering such applications. It cross-refers throughout to ORR's published document on its criteria and procedures for the approval of access contracts¹. That document explains the process and timing for ORR's consideration of access applications and discusses the issues that ORR will need to consider. Applicants should use the published model passenger track access contract as their starting point when drafting the contract they would like². Applicants are strongly encouraged to read our 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 ORR's published guidance in this respect.

The track access team at 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 ORR's model passenger track access contract, can be accessed electronically and downloaded via the ORR website (www.rail-reg.gov.uk).

2. The application

2.1 Title of proposed contract:

Track Access Contract (Passenger Services) between Network Rail Infrastructure Limited ("Network Rail") and North Yorkshire Moors Railway Enterprises PLC ("NYMR")

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

¹ *Criteria and procedures for the approval of passenger track access contracts: fourth edition*, Office of Rail Regulation, May 2006 available at <http://www.rail-reg.gov.uk/server/show/nav.202>

² This is available at <http://www.rail-reg.gov.uk/server/show/nav.202>

<u>Facility Owner</u>	<u>Beneficiary</u>
Company: Network Rail Infrastructure Limited	Company: North Yorkshire Moors Railway Enterprises PLC
Contact individual: Peter Robinson	Contact Individual: Philip Benham
Job title: Commercial Advisor, LNE Route	Job title: General Manager
Address: Floor 4A George Stephenson House Toft Green York YO1 6JP	Address: Pickering Station, Park Street Pickering North Yorkshire YO18 7AJ
Telephone number: 01904 383099	Telephone number: 01751 473799
Fax number: 01904 383262	Fax number: 01751 476970
E-mail address: peter.robinson@networkrail.co.uk	E-mail address: email_01@nymr.demon.co.uk

Criteria document para(s)

2.3 Licence and Railway Safety Case/Certificate Please state whether the beneficiary intends to operate the services itself or have them operated on its behalf

3.9-3.14

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 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 its obtaining of the licence or exemption and Railway Safety Case/Certificate (as the case may be)

This application is for a new track access contract for a new open access operator, NYMR. Whilst NYMR requires a train operating licence and an accepted railway safety case neither have currently been issued. However, NYMR has applied for both and the current status is that:

- The licence application is being reviewed by ORR, including a number of approved arrangements given by the DfT; Disabled Persons' Protection Policy, Complaints Handling Procedure and Network Benefits (the latter including derogation approval to certain conditions);
- NYMR has submitted its response to the issues logs prepared by Network Rail and HMRI.

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 applicants' 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):

3.21

- 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 restrictions of use regimes established through ORR's periodic review (or subsequent interim reviews) of access charges; and

3.53

**2.50-2.56
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 Case(s)/Certificate(s)) **4.9-4.11**

NYMR are seeking:

1. Firm rights to operate up to a total of 6 weekday services on the facility owners network between Whitby and Glaisdale; and
2. Contingent rights to operate up to 4 services on Weekdays and Saturdays between Glaisdale and Battersby and up to 10 services on Sundays between Whitby and Battersby.

These services will connect with NYMR's services on its own heritage railway that operates between Pickering and Grosmont.

The contract, through an Additional Route in Schedule 2, also provides for the possibility that at a future date a limited service of trains may be operated through to/from Middlesbrough, although such services would require to be spot bid and rights provided in Schedule 5.

The services will be operated using NYMR's rolling stock, predominately steam locomotives and Mark 1 carriages. Operation of the services will generally be limited to the period two weeks prior to Easter and late October/ early November inclusive in any one year, (with services not necessarily operating on each day between those two dates) and during the Christmas period (with the explicit exception of the 25 and 26 December on which NYMR does not have rights to operate). Commencement of services under the proposed access contract is expected to be the 1st September 2006.

Previously the same level of daily services was operated between Whitby and Battersby by the West Coast Railway Company ("WCRC") under contract to NYMR. The WCRC operated the services under its Charter Train Agreement with Network Rail, rather than a track access contract. Whilst the same level of daily services are initially proposed within the access contract accompanying this application that was previously operated by the WCRC, the number of days on which the services will operate could rise during the period of the contract to up to a approximately 150 in any one year. This compares to 50 days planned for operate during 2006 (by WCRC and NYMR together). Additionally NYMR has indicated that it may wish to increase the number of services operated, any such change will be dealt with through the normal industry procedures.

The commercial terms contained within the proposed access contract are those provided for in the ORR passenger model contract drafting with the exception of schedule 4 that has been deleted in its entirety, as the parties agreed it was not necessary, and schedule 8 that is based on the Freight model contract provisions as the parties agreed the principles underpinning the latter form of contract better suited NYMR as an open access operator. Specific details of how this schedule operates is given in section 5.1 of this application form.

Summarised below are the variations to the current passenger model contract drafting, full details are provided in section 3.2 of this application form:

- 1.1 Main Clauses – The current passenger Model Contract drafting has been used with the necessary data fields completed with the exception of:
 - 1.1.1 Definitions of the terms "Franchise Agreement" and "Franchisee" and the associated paragraphs in schedule 3 have been deleted, as NYMR is not a franchisee;
 - 1.1.2 Definition of the term "Insolvency Event" has been amended by deletion of (b)(i) and replaced with "not used", as the parties have agreed given the nature of the business there is not a requirement to apply a higher figure that that in section 123(1)(a) of the Insolvency Act 1986;

- 1.1.3 Definition of the terms “Class A Local Output”, “Local Output” and “Office of Rail Regulation’s LOC Criteria” and the associated clause 9 have been deleted as NYMR is not seeking use of the Local Output Commitments and has formally written to Network Rail confirming this;
- 1.1.4 Definition of the term “SRA” has been deleted as the term is not used in the contract;
- 1.1.5 Definition of the term “Stabling” and the associated clauses 5.2(d) and 5.8 have been deleted as NYMR are not intending to stable their services on the facility owner’s network;
- 1.1.6 Clause 1.2(m) has been deleted and replaced with “Not Used” as the contract does not contain a schedule 4;
- 1.1.7 Clause 5.5 has been deleted and replaced with “Not Used” as the contract does not contain a schedule 4
- 1.1.8 Clause 11.3(a) has been amended to reflect the fact that NYMR is not seeking use of the Local Output Commitments;
- 1.1.9 Clause 11.5(a) has been amended by deletion of the reference to schedule 4 as the contract does not contain a schedule 4;
- 1.1.10 Clause 13.1(b) has been amended by deletion of the reference to schedule 4 as the contract does not contain a schedule 4;
- 1.1.11 Clause 13.2(b) has been amended by deletion of the reference to schedule 4 as the contract does not contain a schedule 4;
- 1.1.12 Clause 13.4.2(b) has been amended by deletion of the reference to clause 9 as this has been deleted
- 1.1.13 Clause 14.2(b) is shown as “Not Used” as reference to the SRA is not relevant given that NYMR is not a franchisee;
- 1.1.14 Clauses 15.2 and 15.3 have been deleted and clause 15.1 renumbered to clause 15 as the former clauses are only relevant to the transfer of the contract if a franchisee changes hands, with the references to clause 15.2 being removed for existing clause 15.1;
- 1.1.15 Clause 16.1.2 has been amended by deletion of the reference to schedule 4 as the contract does not contain a schedule 4;
- 1.1.16 Clause 17.1, definition of “Force Majeure Event” has been amended by deletion of the reference to clause 17.9 as the latter has been deleted;
- 1.1.17 Clause 17.9 has been deleted as it applies to Local Outputs that NYMR has not sought;
- 1.1.18 Clause 18.6 has been amended by deletion of the references to clause 9 as the latter has been deleted;
- 1.1.19 Clause 18.7.3 has been deleted as it refers to deleted clauses 15.2 and 15.3; and
- 1.1.20 Clause 19 has been deleted, as it relates to the contract replacing a previous access contract when a franchise changes hands, and replaced with a new provision to enact the inclusion of a new schedule 11.
- 1.2 Schedule 1 – The necessary contact details have been inserted into the passenger Model Contract drafting;

- 1.3 Schedule 2 – No passenger Model Contract drafting is provided for this schedule. The route shown in the proposed access contract is that appropriate to allow operation of the proposed services; with the provision of an Additional Route to allow for NYMR to spot bid for services between Middlesbrough and Battersby.
- 1.4 Schedule 3 – The passenger Model Contract drafting has been used with the following exceptions:
- 1.4.1 Paragraph 1 has been deleted as NYMR does not require access to any Network Rail managed stations; and
- 1.4.2 Paragraph 3 has been deleted as NYMR is not a franchisee.
- 1.5 Schedule 4 – Has been deleted in its entirety as the parties agreed it was not appropriate.
- 1.6 Schedule 5 – The current passenger Model Contract drafting has been used with the following principal exceptions;
- 1.6.1 Definitions of the terms “Additional Specified Equipment”, “Clockface Departures”, “Fastest Key Journey Time”, “Journey Time”, “Journey Time Review Notice”, “Key Journey”, “Key Journey Time”, “Maximum Journey Time”, “Maximum Key Journey Time”, “Modification Notice”, “Off-Peak Services”, “Peak Services”, and “Period of 60 Minutes” have all been deleted as the terms are not used in the contract;
- 1.6.2 A new definition of the term “Steam Driven Equipment” has been inserted to provide for a new paragraph 9 in schedule 5;
- 1.6.3 Paragraph 2.1 has been amended by deletion of reference to Peak / Off-Peak Passenger Train Slots as the services operated by NYMR do not fall into such categories;
- 1.6.4 Paragraphs 2.2 and 2.3 have been deleted and shown as “not used” as there is no requirement for such provisions;
- 1.6.5 Paragraph 2.4 has been amended to reflect that the contingent rights to operate additional Passenger Train Slots on Sundays between Grosmont and Whitby and Battersby and Whitby are subject to Northern Rail not operating services on Sundays;
- 1.6.6 Paragraphs 2.5, 2.6, 2.7 and 2.8 have been deleted and shown as “not used” as there is no requirement for such provisions;
- 1.6.7 Paragraph 2.9 reflects the agreed position on the operation of services on the 25 and 26 December in any year;
- 1.6.8 Paragraph 2.10 reflects the agreed position on the type of service to be operated on Public Holidays;
- 1.6.9 Paragraph 2.11 has been deleted and shown as “not used” as there is no intention for NYMR to stable services on the Facility Owner;
- 1.6.10 Tables 3.1, 3.1(a), 3.1(b), 3.2 and 3.3 have been deleted as there is no requirement for such provisions;
- 1.6.11 Paragraphs 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7 and 3.8 have been deleted as there is no requirement for such provisions;
- 1.6.12 Paragraph 4.2(b) has been deleted and shown as “not used” as the tables referenced are not used;

- 1.6.13 Paragraph 4.4 has been deleted and shown as “not used” as the provisions to which this paragraph relates are not used;
- 1.6.14 Table 5.1 has been amended to reflect that NYMR has Firm Rights to operate any of the Standard Specified Equipment listed in the table with that list being sub-divided into Steam Driven and Non-Steam Driven Equipment as such a distinction is necessary given the new paragraph 9 in schedule 5;
- 1.6.15 Paragraphs 5.2 and 5.3 have been deleted and shown as “not used” as there is no Additional Equipment given in table 5.1 as all the Standard Specified Equipment, whilst not sharing the same performance characteristics, is able to maintain the service timings given the operating restrictions placed on services operated by steam traction;
- 1.6.16 Paragraphs 6 & 7 and their associated tables have been deleted in their entirety and shown as “Not Used” as NYMR has not sought any journey time protection; and
- 1.6.17 Paragraph 9 has been inserted as a new provision that allows Network Rail to withdraw permission for a Train Slot to be operated using Steam Driven Equipment where Network Rail considers there is a significant risk of fire. Under the provision the Train Operator can operate the slot with non Steam Driven Equipment, where such equipment is listed in table 5.1.
- 1.7 Schedule 6 – The current passenger Model Contract drafting has been used with the exception that sub paragraph 1.1(g) has been deleted, as NYMR is not a franchisee and replaced with a new provision. The new provision provides for a TOC event of default where they exceed a specific number of Minutes Delay caused to Third Party Trains and is necessary to limit Network Rail’s liability in the event that NYMR reach their cap in schedule 8 but continue to cause delays to third party operators;
- 1.8 Schedule 7 – The passenger Model Contract drafting has been amended to reflect that NYMR will only pay Variable Track Usage charges and change of Law, as well as Additional Permitted charges relating to costs incurred by Network Rail in training and monitoring of NYMR staff on signalling equipment, as well as costs incurred by Network Rail in the operation of services on a Sunday such as for the opening of signal boxes;
- 1.9 Schedule 8 – The passenger Model Contract drafting has been deleted in its entirety and replaced by a scheme reflecting freight contract performance regime, as this better reflects NYMR’s open access operation whilst still providing an appropriate level of performance incentives for the parties;
- 1.10 Schedule 9 – The current passenger Model Contract drafting has been used and the necessary details completed. A symmetrical liability cap has been agreed at £3m which whilst lower than the ORR standard minimum suggested cap of £10m reflects the level of risk associated with the proposed limited operation of the NYMR services;
- 1.11 Schedule 10 – The current passenger Model Contract drafting has been used;
- 1.12 Schedule 11 – A new schedule 11 has been inserted to allow for a review of schedule 8 after a year of operation.
- 1.13 Signature Page – The name of the parties to the contract have been inserted.

3.2 Departure from ORR's model passenger track access contract Please set out here, with **2.50-2.56** reasons, any areas where the drafting of the proposed contract omits, amends or adds to ORR's **6.2-6.3** 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) ORR will wish to see a flowchart illustrating that the process is robust, internally consistent and leaves no loose ends

See attached Appendix 1 to this application form

3.3 Duration of contract Please indicate the commencement date sought for the proposed contract, **4.74-4.79** and provide justification for the proposed duration (in particular, giving reference to ORR's policy on long-term access contracts³ where contracts would be for longer than five years)

The contract is intended to commence on the 1st September 2006, at which point NYMR will start operation of services, and expire on the Principal Change Date (December) 2009.

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, **4.30-4.36** please describe any new rights sought or significant changes in the pattern of services, their benefits to passengers and their impact on existing operators

The proposed contract provides for operation of additional services on the Whitby Branch line over those provided by Northern Rail.

The rationale behind the decision to seek to operate services on the Whitby Branch line is based on the potential of the Whitby tourist market to generate significant new business for NYMR to help fund future major expenditure requirements. In addition the following considerations are also relevant and support the proposal - opportunities created by the Government's *Community Rail Strategy* (including potential for inward investment); the logical extension to NYMR's current product offer to passengers and, ultimately, the chance to fulfil a long-term goal of returning a train service (albeit of a tourist nature) between Pickering and Whitby.

The service has been planned to minimise any direct impact on the franchised passenger service operated by Northern Rail.

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>

4.2 Congested infrastructure Please state whether the part(s) of the network to which this application relates have been declared congested by the facility owner, under regulations 23-25 of the Railways Infrastructure (Access and Management) Regulations 2005⁴? **4.84-4.85**

The parts of the network to which this application relates have not been declared congested by the facility owner.

4.3 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 **4.17-4.38**

The parties are satisfied that there is sufficient network capacity for the services in the proposed contract, as the level of services sought is broadly in line with that currently operated by the WCRC under contract to NYMR for which there is sufficient network capacity.

4.4 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 **2.44-2.49 4.51**

The facility owner's flexing rights in the proposed contract stem from the nature of the services to be operated by NYMR. NYMR's proposed contract does not incorporate the passenger Model Contract provisions relating to service intervals, clockface departures, first and last trains journey times or any of the optional paragraph 8 provisions.

4.5 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 **4.69-4.70**

No protection is sought.

4.6 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 ORR's criteria **4.52-4.66**

No protection is sought.

⁴ These regulations are available at <http://www.opsi.gov.uk/si/si2005/20053049.htm>

4.7 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 ORR's criteria **4.39-4.48**

None

4.8 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 **4.49-4.50**

The list of Specified Equipment within the proposed access contract will be compliant with the appropriate industry safety and operations standards or any duly authorised exemption. In accordance with the Railway Group Standard Code, a successful case has been made to RSSB for a deviation from the group standard requiring fitment of data-recorders to traction units for trains worked by steam locomotives operating between Whitby and Battersby only. Certificates of exemption have also been issued by HSE in relation to exemption from Railway Safety Regulations 4 and 5 to permit the use of Mark 1 rolling stock without central door locking. Discussion continues in relation to the use of locomotives not fitted with TPWS for the purposes of train recovery only., although HMRI have indicated that they are minded to give approval where the maximum speed of the assisting locomotive does not exceed 15 mph.

4.9 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 ORR's policy on moderation of competition **4.71-4.73**

No protection from competition is being sought.

4.10 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 Department for Transport or Transport Scotland **4.3-4.4**

Not applicable as NYMR is an open access operator.

4.11 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 Department for Transport or Transport Scotland), including Passenger Transport Executives, and provide a point of contact at that body **3.32 4.23 4.35-4.38**

Not applicable as NYMR is an open access operator.

4.12 Passenger Focus Please indicate whether (and if so to what extent) the services in the proposed contract have been discussed with Passenger Focus, and provide copies of any relevant correspondence **3.32 4.38**

Although Passenger Focus has not been consulted specifically on the basic principle to operate trains on the Whitby Branch line, they have been consulted where required by the Passenger Licence application process (i.e. in respect of certain Consumer Protection Licence Conditions). NYMR is committed to comply with the Consumer Protection Licence Condition stipulating that its must put formal liaison arrangements in place.

4.13 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. If the proposed rights are not consistent, please state the reasons for this. **2.29 4.5-4.8**

There is currently not a RUS published in relation to the routes over which NYMR are seeking to operate.

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 ORR's periodic review (or subsequent interim reviews) as reflected in ORR's model passenger track access contract, including the financial implications (e.g. establishment of an access charge supplement or rebate) **5.1-5.43**

The charging regime incorporated into the proposed access contract mirrors the principles proposed by the ORR for open access type operators in its Criteria and Procedures for the Approval of Passenger Track Access Contracts: Fourth Edition dated May 2006.

The performance regime is significantly altered from the model passenger track access contract as NYMR is not a franchised passenger operator, the parties have therefore agreed on a performance regime that is essentially designed to achieve two aims:

- (a) incentivise Network Rail to minimise delays to the NYMR, due to both Network Rail and other train operators (given Network Rail's overall role in performance management of the network); and
- (b) incentivise NYMR to minimise delays to other train operators on the network.

The parties have therefore selected an adapted version of the model freight contract performance regime – which is itself designed to meet the aims stated above. Performance benchmarks (on a 'per train' basis) have been agreed by the parties, based on comparator data for the previous 'charter' operation on the Whitby branch.

The parties have included the standard benchmarks/rates review provision from the model freight contract performance regime.

It was particularly important to the NYMR that their exposure should be limited under this regime; therefore incident and annual caps have been agreed. These have been set symmetrically to avoid the need for an access charge supplement. In order to provide a further incentive on NYMR should a cap or caps be reached, and hence protect overall network performance, an additional event of default has been included in Schedule 6, which could be used in the event of sustained poor performance.

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 **4.30 5.1**

None

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. **4.30 5.1**

None

5.4 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 ORR's periodic review of access charges and his subsequent interim review of the possessions incentives regime **4.44-5.51**

See attached Appendix 2 to this application form.

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) **4.82-4.83**

Not applicable

6.2 Enhancement charges Please confirm that the arrangements for the funding of any network enhancements are consistent with ORR's Policy Framework for Investments⁵, and summarise the level and duration of payments, and the assumed rate of return (see chapter 3 of the Conclusions document) **5.7 5.12-5.14**

Not applicable

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 light maintenance depot access contracts or agreements) **3.17**

Not applicable

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) **3.30**

Not applicable

7.3 Objections or unresolved concerns Please detail any objections or unresolved concerns arising from any pre-application consultation of train operators or other interested parties undertaken by the facility owner in respect of the proposed services **4.31**

Whilst Network Rail has not formally undertaken pre-application consultation with other train operators or other interested parties NYMR have informally consulted Northern Rail, in the context of both Station Access and through ticketing arrangements, and the community rail partnership for the Esk Valley line (the Esk Valley Railway Development Company). It is understood that both bodies support the proposed NYMR services - which as a chartered operation in 2005 helped to increase general patronage of the Esk Valley line. Discussion has also been held with West Coast Railway Company, who currently operate services under charter train arrangements on behalf of NYMR between Glaisdale and Whitby.

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**

Not applicable

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 its decision on such exclusions, it is ORR's intention to publish this application and the proposed contract on the ORR website **3.23-3.27**

⁵ *Policy Framework for Investments: Conclusions*, Office of Rail Regulation, October 2005, available at <http://www.rail-reg.gov.uk/upload/pdf/255.pdf>

The parties wish to exclude reference to the number of minutes stated in paragraph 1.1(g) of schedule 6, Appendix 1 of schedule 8 and the number in paragraph 1(a) and 1(b)(i) of schedule 8 on the grounds that such information is commercially sensitive.

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 **3.31**

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

Facility Owner

Beneficiary

Signed:

Signed:

Date:

Date:

Name (in caps):

Name (in caps): Philip Benham

Job title:

Job title: General Manager

For (company): Network Rail.....

For (company): North Yorkshire Moors Railway
Enterprises PLC

9. Submission

9.1 What to send

Please supply, in hard copy, the signed top copy of this application form, one copy of the proposed draft contract, with copies of any documents incorporated by reference (other than established standard industry codes or other instruments) and any other attachments, supporting documents or information. **3.30**

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). **3.28-3.29**

9.2 Where to send it

Manager, Track Access Team
Directorate of Rail Markets, Passengers & Freight
Office of Rail Regulation
One Kemble Street
London
WC2B 4AN

ORR Passenger Form S18 May 2006