

Application to the Office of Rail Regulation for approval of a freight framework agreement under The Railways Infrastructure (Access and Management) Regulations 2005

1. Introduction

This form should be used when making an application to the Office of Rail Regulation (ORR) for approval under The Railway Infrastructure (Access and Management Regulations) ("the Regulations") for a new framework agreement. The Regulations provide for ORR to approve framework agreements between an applicant, and the infrastructure manager, of the High Speed 1 network. This form should be completed up to section 6.5 before carrying out a pre-application consultation to inform potentially affected parties of the proposed contract. Following this consultation, the remainder should be completed before applying to ORR under the Regulations.

This form sets out our standard information requirements for considering such applications. It cross-refers throughout to our HS1 criteria and procedures ("C&Ps") and, where appropriate, to the Industry code of practice for track access application consultations ("the Code of Practice"), which is annexed to the C&Ps. The C&Ps explain the process and timing for our consideration of access applications and discuss the issues we will need to consider. Applicants should use the published template framework agreement as their starting point when drafting the contract they would like. Applicants are strongly encouraged to read the C&Ps before making an application.

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 C&Ps in this respect. We will be happy to discuss prospective applications.

A copy of this form, and of HS1's template framework agreement, can be accessed electronically and downloaded via the ORR website at <http://www.rail-reg.gov.uk/server/show/nav.2251>.

C&P para(s)

2. The application

2.1 Title of proposed contract:

Direct Rail Services 2nd Supplemental Agreement

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

<u>Infrastructure Manager</u>	<u>Train Operator</u>
Company: Network Rail Infrastructure Limited	Company: Direct Rail Services Limited
Contact individual: Nick Coles	Contact Individual: Chris Connelly
Job title: Customer Manager	Job title: Commercial Director
Address: Network Rail, Freight Team, Kings Place, 90 York Way, London, N1 9AG	Address: Kingmoor Depot, Etterby Road, Carlisle, CA3 9NZ
Telephone number: 07739 775610	Telephone number: 01228 406606
Fax number: NA	Fax number: 01228 406659
E-mail address: nick.coles@networkrail.co.uk	E-mail address: chris.connelly@drsl.co.uk

2.3 Licence and railway safety certificate: please state whether the applicant intends to operate the services itself or have them operated on its behalf.

Please state whether the proposed operator of the services (a) holds a valid European Licence and Statement of National Regulatory Provisions for operating the proposed services in Great Britain under the Railway (Licensing of Railway Undertakings) Regulations 2005, and (b) has 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 which the proposed operator has reached in obtaining a licence, exemption and/or safety certificate (as the case may be)

Direct Rail Services Limited (DRS) intends to operate the services itself and holds a valid operating licence under section 8 of the railways Act 1993. DRS also hold 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):

3.29

- 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);
- any respects in which the proposed contract contains bespoke provisions departing from template framework agreement as based on ORR's model freight track access contract; 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 relevant safety authorisation and operator's safety certificate).

3.29

6.2

4.8-4.10

The proposed 2nd Supplemental Agreement contains amendments to Schedule 5 of the Track Access Contract.

This includes:

- Deleting access rights that are longer required;
- Adding a new level 1 access right; and
- Amending characteristics of existing rights, for example timings, original, destination and intermediate points.

3.3 Duration of contract: please indicate the commencement date sought for the proposed contract, and provide justification for the proposed duration, where contracts would be for longer than five years).

<http://www.rail-reg.gov.uk/upload/pdf/240.pdf>

4.37

The commencement date of this proposed 2nd Supplemental Agreement would be the ORR's approval date.

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 agreement. 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.

4.22-4.27

Direct Rail Services Limited (DRS) requires the access rights proposed in the 2nd Supplemental Agreement in order to meet its obligation to its customers. Direct Rail Services has taken the opportunity to surrender access rights that are no longer needed, therefore releasing capacity.

The access rights are not expected to have any detrimental effect on existing operators, other than the general interaction that all services has on each other. The new level 1 access right has been offered in the December 2012 timetable.

4.2 Congested infrastructure: please state whether the part(s) of the network to which this application relates have been declared congested by the infrastructure manager, under regulations 23-25 of the Regulations.

4.38-4.39

None.

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 levels of rights for services in the proposed contract, and the implications for overall network performance and the infrastructure manager's maintenance and renewal activities.

4.13-4.39

The trains in this proposal currently operate in validated WTT paths.

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 Train 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.

4.35

The level 1 access right proposed in the 2nd Supplemental Agreement is necessary to support the freight haulage contracts held by DRS and they expect to continue to do so until the expiry of the Track Access Contract.

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 Train 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.

4.35

The proposed 2nd Supplemental Agreement does not contain any level 2 rights.

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 Train 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.

4.35

The proposed 2nd Supplemental Agreement does not contain any new level 3 rights.

4.7 Cordon caps: please explain any changes to existing cordon caps and/or whether any new cordon caps are proposed.

4.35

Not applicable, no changes are proposed.

4.8 Flexing rights: please provide a rationale for any departure from the default +/-30 minutes flex provision.

3.14-3.17

There are no changes to flexing rights as part of this supplemental agreement.

4.9 Other limitations on flexibility: please describe the extent to which the proposed contract contains any other restrictive obligations on the infrastructure manager (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.

4.28-4.39

None.

4.10 Route utilisation strategies (RUSs) or equivalent: if applicable, please also state which route utilisation strategies (RUSs) or equivalent are considered relevant to this application and whether the proposed rights are consistent with that RUS or equivalent (as appropriate). If the proposed rights are not consistent, please state the reasons for this.

4.3

None.

5. Incentives

5.1 Charges and performance: please set out, and explain the reasons for, any instances where the proposed contract departs from the charging and/or performance regimes established by ORR's initial review of charges (or subsequent interim reviews) as reflected in HS1's template framework agreement, including the financial implications (e.g. establishment of an access charge supplement or rebate).

5.1-5.16

There are no changes in the 2nd Supplemental Agreement to the DRS charging and performance regimes.

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 planned specific initiatives in association with the services proposed in this supplemental agreement. DRS continue to invest in its locomotive and wagon fleet to improve its own performance.

5.3 Infrastructure manager performance: please describe any planned initiatives associated with the operation of the services in the proposed agreement aimed at improving the infrastructure manager's own performance.

There are no planned initiatives relating to the alteration proposed in this supplemental agreement.

6. Other

6.1 Associated applications to ORR: please explain whether this application is being made in parallel with, or relates to, any other current or proposed applications to ORR (i.e. in respect of other track access contracts or agreements).

This is not applicable to this supplemental agreement.

6.2 Unregulated access: please comment on the extent to which any contracts are being negotiated for access to a facility adjoining HS1's network (e.g. to a freight light maintenance depot) where ORR's approval is not required¹.

This is not applicable to this supplemental agreement.

6.3 Supporting information: please state 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).

An excel spreadsheet and commentary, which includes the new right being sought and the rights to be removed, are attached. New right and alterations to existing rights in Schedule 5 are highlighted. Any rights that are to be removed are struck through.

6.4 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 purport to qualify or otherwise affect the proposed access contract. **6.18**

None.

6.5 Confidentiality exclusions: where applicable, please state clearly what elements of the application have been excluded, on the grounds of confidentiality, from the version of the proposed contract sent to consultees for the pre-application consultation process.

3.31-3.37

Applicants should be aware that ORR will make the final decision on what information is excluded from publication on its public register and website (following its decision on whether to approve this application) having regard to the grounds for confidentiality set out in the C&Ps. Accordingly, where the applicants make exclusions prior to consultation, they should provide a full justification for each instance by reference to those grounds. ORR will consider these justifications when making its decision on whether the information should be excluded from the public register and publication elsewhere. Further guidance on confidentiality is provided in the Code of Practice.

Code of Practice

15-18

DRS request that the customer column in the Schedule 5 rights table is redacted.

¹ As provided for in The Railways (Class and Miscellaneous Exemptions) Order 1994, SI 1994 No.606

Note: The remainder of this application should not be completed until after a pre-application consultation has been carried out in line with the Code of Practice

7. Pre-application consultation

**Code of
Practice
14-19**

8.1 Please confirm here that a pre-application consultation been carried out in line with the Code of Practice, and:

- list all train operators and other parties that you have consulted, stating which parties, if any, made representations (other than nil returns) in response and attach their responses and any associated documentation to this form; and
- state the period allowed for the consultation and, if less than 28 days, please explain the reasons for this.

Susie Northfield – dft;
Graham Cross - chilternrailways;
Simon Ball – colasrail;
Richard Devall - colasrail;
S Gear -harsco;
Nigel Oatway - DBS;
David Brailsford, - eurotunnel
G Hanson – British American Railways;
Richard Broughton
M Leadbetter - Freightliner;
J Bird - Freightliner;
A Wijeyewardena - freightliner;
Andy Moyle – GB Railfreight.com;
Ian Kapur – GB Railfreight.com;
James Shuttleworth – West Coast Railway
A Harston – Hutchison Ports
M Woorm Hutchison Ports;
Robert Ingram - dpworld
Mike Garratt - mdsTransmodal;
Roadways Container Logistics
Maggie Simpson – rail freight group;
Neil Sutton – firstgroup
London Travelwatch;
John Sears - Passengerfocus;
Michael Taylor – Transportscotland;
Sarah Cooper - Transportscotland;
RRAS - Transportscotland
Simon Taylor – Eastmidlandstrains;
Graham Cross - Chilternrailways;
Lanita Masi - eastmidlandstrains;
James Carter – Londonmidland;
Helen Cavanagh - Northernrail;
Rob Hodgkinson - Virgintrains;
Crosscountry Trains;
Tony Randall Crossrail;
Jon Ratcliffe – Arriva Trains Wales;
Catherine Rowe – Greater Anglia;
Robert Nichols - Londontravelwatch;
Steven Fisher – Centro
Ian Yeowart – Alliance Rail;
George Thomas – First Group;
Cc: Kevin Eccleston DRSL; Chris Connelly – DRSL
✂email addresses✂

7.2 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
24-29**

See attached letter from DB Schenker dated 15/05/13.

See attached letter with the response to DB Schenker dated 20/05/13.

7.3 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
24-29**

No issues remain unresolved.

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

None.

7.5 Please list here any further information being provided to ORR to support the application that was not made available to consultees in the 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.

None.

8. Certification

6.19

Warning: Under Regulation 37 of the Regulations, any person who, in giving any information or making any application under or for the purposes of any provision of the Regulations, 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.

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

the facility owner and the beneficiary are willing to enter into the attached contract as submitted.

<u>Infrastructure Manager</u>	<u>Train Operator</u>
Signed:	Signed:
Date:	Date:
Name (in caps):	Name (in caps): CHRIS CONNELLY
Job title:	Job title: Commercial Director
For (company): Network Rail	For (company): Direct Rail Services Limited

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.

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).

6.26

10.2 Where to send it

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

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