

## APPLICATION TO THE OFFICE OF RAIL AND ROAD FOR A FREIGHT TRACK ACCESS CONTRACT, OR AN AMENDMENT, UNDER SECTIONS 17-22A OF THE RAILWAYS ACT 1993

### 1. Introduction

Please use this form to apply to the Office of Rail and Road (ORR) for:

- Directions under section 17 of *The Railways Act 1993* (the Act) for a new track access contract. This is for companies who want to use Network Rail's network where the parties are not able (for whatever reason) to reach agreement.
- Approval for a new track access contract under section 18 of the Act. This is for use where terms have been agreed by the parties.
- Approval of a proposed amendment to an existing track access contract, agreed by both parties, under section 22 of the Act.
- Directions under section 22A of the Act for an amendment to an existing track access contract. This is for someone seeking an amendment to an existing track access contract to permit more extensive use of the railway facility if the parties are not able, for whatever reason, to reach agreement.

Network Rail should normally take responsibility for the pre-application consultation, where the terms are agreed. Before a consultation is made, complete this form up to the end of section 7. You should fill in the rest of the form after the consultation and before applying to ORR.

If, in the case of section 17 and 22A applications, the beneficiary and Network Rail have been unable to agree terms, the beneficiary should:

- (a) ask Network Rail to conduct a pre-application consultation in line with the code of practice; or
- (b) conduct a pre-application consultation itself, in line with the code of practice; or
- (c) submit the application to ORR and ask ORR to conduct the consultation, in which case, please complete this form in full before submitting it to us.

The form sets out ORR's standard information requirements for considering applications. Our [track access guidance](#) explains the process, timings and the issues we will consider. You should use our current [model freight track access contract](#) as your starting point. Please read the guidance before completing the contract and this form.

We are happy to talk to you informally before you apply. Please contact us [here](#). You can download a copy of this form, and of our model track access contract, from our [website](#).

You may also use and adapt this form to apply to use railway facilities other than those of Network Rail. Do not use this form for HS1, for which a separate form is available on our [website](#).

## 2. The application

**2.1 Title of contract or supplemental agreement** (please also include the section of the Act under which you are applying):

Core Valley Lines Track Access Contract between Amey Keolis Infrastructure / Seilwaith Amey Keolis Limited and DB Cargo UK Limited

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

<u>Facility Owner</u>	<u>Beneficiary</u>
Company: Amey Keolis Infrastructure / Seilwaith Amey Keolis Limited (" <b>AKIL</b> ")	Company: DB Cargo (UK) Limited (" <b>the operator</b> ")
Contact individual: Nick Rowe	Contact individual: Nigel Oatway
Job title: Workstream lead	Job title: Access Manager
Telephone number: + 44(0)7885 225692	Telephone number: +44 (0)1302 577010
E-mail address: Nick.Rowe@amey.co.uk	E-mail address:
Address: Floor 5, 5 Callaghan Square, Cardiff, CF10 5GT	nigel.oatway@deutschebahn.com
	Address: Ground Floor, McBeath House, 310 Goswell Road, London, EC1V 7LW

**2.3 Licence and railway safety certificate:** please state whether you intend to operate the services yourself or have them operated on your behalf.

The operator intends to operate the services itself.

Does the proposed operator of the services (a) hold a valid train operating licence under section 8 of the Act or an exemption under section 7, or a European licence with a GB Statement of National Regulatory Provisions issued under the *The Railway (Licensing of Railway Undertakings) Regulations 2005* **and** (b) hold a valid safety certificate under the Railways and Other Guided Transport Systems (Safety) Regulations 2006?

If the answer to either (a) or (b) is no, please state the point reached in obtaining a licence, exemption and/or safety certificate (as relevant).

The operator holds valid operating licences under Section 8 of the Railways Act 1993 and regulation 6 of the Railway (Licensing of Railway Undertakings) Regulations 2005 (as amended) ('**the Licensing Regulations**') as well as a Statement of National Regulatory Provisions granted under Regulation 10 of the Licensing Regulations.

DB Cargo also has a Safety Certificate under regulation 7 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006

### 3. The proposed contract or amendment

**3.1 Executive summary:** please provide an executive summary of the proposed contract or amendment. This should cover the services, the commercial terms, and the reasons for making the application in the terms proposed. This information should be laid out clearly and concisely; and, in the case of an amendment, fully highlight the changes from the previous version of the contract.

Please also explain any important safety risks that have been identified arising from the proposal and how these will be controlled (by reference to the facility owner's safety authorisation and the train operator's safety certificate).

Please also state the commencement and expiry dates for the proposal, and, for new contracts or extensions to existing contracts, provide justification for the proposed duration of the contract where the total exceeds five years.

**Background:** This application is for a new track access contract between the operator and AKIL to allow for the continuation of services that currently run on the Network Rail network following the CVL Transfer (defined below). The application is an agreed joint application made under Section 18 of the Railways Act 1993.

By way of background, the operator currently has a track access contract with Network Rail to access the track on the CVL. Network Rail is transferring its interest in the CVL, which forms a small part of the wider Wales & Borders network, to Transport for Wales ("**TfW**") (this is known as the "**CVL Transfer**"). Pursuant to the terms of an ODP Grant Agreement between the Welsh Ministers and Keolis Amey Wales Cymru Limited ("**ODP**"), the responsibility to maintain the CVL has been contracted to the ODP. In turn, the ODP has entered into a sub-contract with AKIL which requires AKIL to perform the maintenance of the CVL. Following completion of the CVL Transfer, AKIL will become Infrastructure Manager of the CVL.

The track access contract between AKIL and the operator will provide the operator with business continuity following the CVL Transfer and will enable the operator to continue operating on the CVL.

The operator is not applying for any new rights of access over the CVL but is instead looking to ensure the rights it already has to access the CVL are replicated with the new Infrastructure Manager, i.e. AKIL. The agreement is being entered into as a result of the change in infrastructure manager of the CVL. Network Rail will separately be removing the CVL from the track access contract that it currently has in place with the operator.

For the avoidance of doubt, no new quantum or rights are sought other than those currently held by the operator.

**Date of commencement:** [To be confirmed.]

**Expiry date:** the earlier of (a) 23:59 on the Principal Change Date in the year 2026; and (b) unless all of AKIL's rights and obligations under the contract are novated or otherwise transferred in full to another infrastructure manager (and the ORR has

provided its approval to such novation), the date on which AKIL otherwise ceases to be the infrastructure manager of the Core Valley Lines Network ("CVL").

The contract duration is longer than 5 years. This is to align with the operator's track access contract it currently has with Network Rail over the Network Rail network. This currently includes the same rights that the operator is now applying for in respect of the CVL. The justification for the rights being sought for a duration of over 5 years was made by the operator in relation to the application for its Network Rail track access contract and such justification was accepted by the ORR when it was approved via the Network Rail track access contract.

**3.2 Terms not agreed with the facility owner (for applications under sections 17 or 22A only):** please set out here any areas of the application which have ***not*** been agreed, the reasons for the failure to agree and the reasons for seeking these provisions. Please state the efforts you are making to resolve any disputes.

[All terms agreed with the facility owner.]

**3.3 Departures from ORR's current model freight track access contract:** please set out and explain here any:

- Areas where the drafting is different to ORR's published template freight track access contract. Please explain why these departures have been made.
- Instances where the proposal departs from the charging and/or performance regimes established by ORR's latest periodic review (or subsequent interim reviews) as reflected in ORR's model freight track access contract, including the financial implications (e.g. establishment of an access charge supplement or rebate).
- New processes (e.g. self-modification provisions) which have been added. Please demonstrate how these new processes are robust and complete.

Please see Annex 1 attached to this application form.

#### **4. The expression of access rights and the use of capacity**

**4.1 Benefits:** Please provide full descriptions of any new rights required, as compared to the previous contract (in the case of an amendment). Why do you need these new rights (if any)? Please describe any significant changes in the pattern of services and any impact on other operators, including other freight operators. Please provide a fully marked-up version or document comparison of any tables in Schedule 5 which are being modified as a result of this application.

As detailed at section 3.1, the Access Rights sought by the operator are in relation to existing rights that the operator holds for services to and from Cwmbargoed and Tower Colliery. The rights sought are only between these points and the CVL Network Rail Boundary (the line between Aberdare and Hirwaun is currently out of service under the terms and conditions of a Short Term Network Change issued by Network Rail). These rights are currently contained in a track access contract between Network Rail and the operator and this application seeks to transfer the

rights in the current contract insofar as they apply to the CVL to the proposed track access contract.

On the date of the CVL Transfer, when AKIL takes over as the new Infrastructure Manager, the rights sought are to ensure that the operator has track access rights to operate its existing services.

The new track access contract will expire on the Expiry Date described at section 3.1 of this form F.

**4.2 Adequacy:** please set out how you have satisfied yourself that there is enough network capacity for the proposed and/or amended services (or will be at the time of service operation). Please also set out whether there are any implications for overall network performance and the facility owner's maintenance and renewal activities. Please confirm whether the proposed Rights will involve operation over an area subject to a Declaration of Congested Infrastructure, or whether the capacity requirement will result in a Declaration of Congested Infrastructure by Network Rail (under the Network Code).

The operator is currently operating the services and enjoy rights with Network Rail. Accordingly, the network capacity has been proven by actual operation.

AKIL is content to provide the same levels of capacity as previously agreed by Network Rail, and that the proposed Rights will not involve operation over an area subject to a Declaration of Congested Infrastructure.

**4.3 Firm Rights:** Do these Firm Rights in the proposal contract relate to service freight haulage contracts which you hold or will hold? If so, how? How does the duration of these haulage contracts compare with the duration of the proposed track access contract?

The rights sought as part of this application have been previously approved by the ORR pursuant to the operator's track access contract with Network Rail. No new rights of access are sought.

**4.4 Contingent Rights:** please set out the extent to which you expect to use the Contingent Rights in the application. In particular, please state whether the proposed rights are seasonal (eg 3 months each year) or occasional (eg MO, SX, etc).

The rights sought are firm rights.

**4.5 Window size:** Please set out the reasons for the origin and destination window sizes used in the Rights Table in Schedule 5.

The window size has been previously approved by the ORR pursuant to the operator's track access contract with Network Rail.

**4.6 Long term planning process:** please state which Route Studies are relevant and whether the proposed rights are consistent with them. If they are not consistent please give the reasons. See Network Rail's [website](#). What consideration has been given to

any issues emerging from relevant Events Steering Group concerning capacity on the routes covered by the application (if Network Rail network).

At the time of the CVL Transfer there are no Route Studies relevant to the CVL lines. Various future transformation works are anticipated on the CVL, an overview of current plans can be found at: [www.tfw.gov.wales](http://www.tfw.gov.wales).

## 5. Incentives

**5.1 Train operator performance:** please describe any planned projects or initiatives associated with the operation of the proposed services aimed at improving your performance (including faster or longer trains).

The application is for existing services so there are no planned projects.

**5.2 Facility owner performance:** please describe any planned projects associated with the operation of the proposed services aimed at improving the facility owner's performance.

Not applicable. This application is with regards to the provision of existing rights and services.

**5.3 Restrictions of Use:** set out and explain the reasons for any changes from the Restrictions of Use regime in the model freight track access contract (Schedule 4).

Please see Annex 1 attached to this application form.

## 6. Enhancement

**6.1 Enhancement details:** where the proposal provides for the delivery of any network enhancements, or the services in the proposal are subject to 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).

Not applicable. There are no network enhancements associated with this application.

**6.2 Enhancement charges:** please confirm that the arrangements for the funding of any network enhancements are consistent with ORR's [Policy Framework for Investments](#), and summarise the level and duration of payments, and the assumed rate of return (see chapter 3 of the Conclusions document).

Not applicable.

## 7. Other

**7.1 Associated applications to ORR:** please state whether this proposal is being made in parallel with, or relates to, any other current or forthcoming application to ORR (e.g. in respect of track, station or light maintenance depot access contracts).

As AKIL will be the new infrastructure manager of the CVL, a number of new agreement applications may be required, which are currently expected to include the following categories:

- Applications by AKIL for Freight track access contracts across the CVL
- Applications by Network Rail to amend the existing Freight track access contracts between Network Rail and relevant freight operators (including the operator).

**7.2 Unregulated access:** please comment on whether any contracts are being negotiated for access to a facility adjoining Network Rail's network (e.g. to a freight light maintenance depot), including where ORR's approval is not required. For more information, see [The Railways \(Class and Miscellaneous Exemptions\) Order 1994](#). (This is relevant in the context of clause 6.4 of the model contract.)

Not applicable.

**7.3 Supporting information, side letters and collateral agreements:** please:

- state here any relevant information in support of the proposal, including a list and explanation of any other material being submitted (and supply copies with the application).
- confirm here that the whole of the proposal between the parties has been submitted with this application and that there are no side letters or other documents which affect it.

The CVL Network Code (which forms part of the CVL track access contracts) will be made available on the consultation section of the TfW-RS website:  
<https://tfwrail.wales/about-us/consultation-centre>

**7.4 Confidentiality exclusions:** please list any parts of your application which you have excluded on the grounds of confidentiality, from the version of the application sent to consultees for any pre- application consultation process, and provide reasons. If there has been no pre-application consultation, you should state any parts of the application you want us to exclude from publication.

The following items have been redacted from the track access contract issued to consultation:

- the contact details of the parties in Schedule 1;
- the train operator cap and CVL IM cap in Schedule 8; and
- the liability cap at Schedule 9.

## 8. Pre-application consultation

~~Note: Where a pre-application consultation is to be undertaken in line with the Code of practice for industry consultations, the remainder of this application should not be completed until after that consultation has been completed.~~

**8.1 The consultation:** has a pre-application consultation been carried out in line with the [Industry code of practice for consultations](#)? If yes, please:

- state who conducted the consultation;
- list all train operators and any other parties that were consulted, stating which parties responded and attach their responses and any associated documentation to this form; and
- state the period allowed for the consultation. 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 the reasons and whether any informal discussions have been held with any third parties who might be affected by this application and the nature of any concerns which they raised.

Not applicable at this stage - to be completed following consultation.

**8.2 Resolved issues:** please set out any issues raised by consultees which have been satisfactorily resolved. You may wish to refer to responses attached to this form. Please explain any changes as a result of the consultation.

Not applicable at this stage - to be completed following consultation.

**8.3 Unresolved issues:** please set out any issues raised by consultees which have ***not*** been resolved to the consultee's satisfaction, including any correspondence with that consultee. You may wish to refer to responses attached to this form. Please explain why you think these issues should not stop ORR approving the application.

Not applicable at this stage - to be completed following consultation.

## 9. 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, 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*

***In the case of agreed applications under section 18 or 22, the facility owner should fill in the information in the box below. For disputed applications under section 17 or 22A, the applicant should fill in the required information.***

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) .....

For section 18/22 applications, please provide a letter of support from the beneficiary or ask them to sign here:

Signed .....	Date .....
Name (in caps) .....	Job title .....
For (company) .....	

**10. Submission**

**10.1 What to send:** please supply, in hard copy or electronic format, the signed application form, one copy of the proposed contract or amendment, with copies of any documents incorporated by reference (other than established standard industry codes or other documents) and any other attachments, supporting documents or information.

**10.2 Where to send it:**

Freight Track Access Manager  
Access and Licensing Team  
Directorate of Railway Markets and Economics  
Office of Rail and Road  
One Kemble Street  
London  
WC2B 4AN

Email: [track.access@orr.gov.uk](mailto:track.access@orr.gov.uk)