

APPLICATION TO THE OFFICE OF RAIL AND ROAD FOR A PASSENGER TRACK ACCESS CONTRACT, OR AN AMENDMENT TO AN EXISTING CONTRACT

Use this form to apply to the Office of Rail and Road (ORR) for a passenger track access contract, or an amendment to an existing contract by a supplemental agreement, under sections 17-22A or the Railways Act 1993.

It sets out ORR's standard information requirements for considering applications. Our [track access guidance](#) explains the process, timescales and the issues we will consider. Please read the guidance before completing the contract and this form.

If the facility owner and beneficiary have agreed terms, the facility owner should fill in the form. If not, the beneficiary should fill in the form.

A pre-application industry consultation is usually required before submitting an application. Please see the industry [code of practice for track access application consultations](#) for more information.

This form should be completed up to section 9 and sent to consultees along with a copy of the proposed contract or supplemental agreement. Sections 9 and 10 should be filled in after the consultation and before applying to ORR.

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](#). Please ensure that you are using the latest version of this form as published on our website. We may ask for applications which have not used the latest version to be resubmitted.

You may also use and adapt this form if necessary 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](#).

1. Application Summary

1.1 Beneficiary company name:

| |
|------------------------------|
| WEST MIDLANDS TRAINS LIMITED |
|------------------------------|

1.2 Facility owner details:

| | | | | | |
|-----------------------|--------------------------------------|-------------------------------------|---|---|--|
| Network Rail: | <input checked="" type="checkbox"/> | | | | |
| Region: | Southern <input type="checkbox"/> | Eastern <input type="checkbox"/> | North West & Central <input checked="" type="checkbox"/> | Wales & Western <input type="checkbox"/> | Scotland's Railway <input type="checkbox"/> |
| Other Facility Owner: | <input type="checkbox"/> | Please state: | | | |

1.3 Application under the Railways Act 1993 section:

| | | | |
|-----------------------------|-----------------------------|-------------------------------|---|
| 17 <input type="checkbox"/> | 18 <input type="checkbox"/> | 22 <input type="checkbox"/> | 22A <input checked="" type="checkbox"/> |
| | | Supplemental Number: | 15th |
| | | Current contract date: | 15th May 2019 as amended: 2nd Supplemental Agreement dated 21st October 2019 3rd Supplemental Agreement dated 10th December 2019 1st Supplemental Agreement dated 13th December 2019 6th Supplemental Agreement dated 18th February 2020 7th Supplemental Agreement dated 8th December 2020 8th Supplemental Agreement dated 16th December 2020 11th Supplemental Agreement dated 1st March 14th Supplemental Agreement dated 16th May 2022 |
| | | Current contract expiry date: | PCD 2026 |

1.4 Applicant status:

| | | |
|--|-------------------------------------|---|
| Public Service Operator <input type="checkbox"/> | Public service contract start date: | National Rail Contract 19 th September 2021 |
| | Public service contract end date: | National Rail Contract 20 th September 2026 |
| Open Access <input type="checkbox"/> | | |
| Charter Operator <input type="checkbox"/> | | |

1.5 Executive summary of the proposed contract or amendment:

The purpose of this proposed Supplemental Agreement is to update the Track Access Contract ('the Contract') between West Midlands Trains and Network Rail to provide West Midlands Trains with the right to operate train services from the Principal Change Date December 2022.

WMT is seeking alter Firm Rights to operate the following services:

- 1 additional SX PM peak slot from London Euston to Northampton.

In Service Group 5.6 in Table 2.1 of Schedule 5, West Midlands Trains was granted ten weekday slots. 9 of these were allocated in the "off-peak". One remaining slot was omitted in error. This application seeks to alter the constituent parts of Service Group 5.6 by moving one off-peak slot to the PM peak. There is no change to the overall quantum of rights granted.

No safety risks have been identified as part of this proposal.

| | |
|--|----------------------------|
| Proposed commencement date: | Principal Change Date 2022 |
| End date: | Principal Change Date 2023 |
| Date approval or directions wanted by: | ASAP |

1.6 Industry consultation:

| | | | |
|--|--|------------------------|------------------------------------|
| Who carried out the consultation? | Network Rail Infrastructure Limited on behalf of West Midlands Trains Limited | | |
| Consultation start date: | 22 nd July 2022 | Consultation end date: | 23rd August 2022 |
| Not carried out <input type="checkbox"/> | | | |

1.7 Applicant details

| | |
|---|--|
| <u>Facility Owner</u> Company: Network Rail Infrastructure Limited Contact name: Paul Harris Job title: Franchise & Access Manager Address: Baskerville House Centenary Square Broad St Birmingham B1 2ND | <u>Beneficiary</u> Company: West Midlands Trains Limited Contact name: Navdeep Brahmhatt-Gold Job title: Network Access Manager Address: West Midlands Trains Limited 134 Edmund Street Birmingham B3 2ES |
|---|--|

1.7 Date of application to ORR:

TBC

2. Licence and railway safety certificate

2.1 Please state whether:

- you intend to operate the services yourself; or
- have them operated on your behalf.
 - if so, please name the proposed operating company:

2.2 Does the proposed operator of the services:

- (a) hold a valid train operating licence under section 8 of the Railways Act 1993 or an exemption under section 7, **and**
- (b) hold 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 reached in obtaining a licence, exemption and/or safety certificate.

N/A

3. The proposed contract or amendment

3.1 Application overview: Please detail 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 fully highlight the changes from the previous version of the contract (in the case of an amendment).

The Beneficiary is seeking one additional PM peak slot to operate an additional service from London Euston to Northampton. This additional service would relieve overcrowding, improve journey times. This fits in with the overall theme of the Beneficiary's December 2022 timetable which provides a repeating and easy to follow timetable.

It is the Beneficiary's view that the change is relatively minor or more simply, a change in the constituent parts. The Beneficiary holds firm access rights to operate nine services during off-peak times departing London Euston for Northampton. This application seeks to move one slot from the off-peak to the peak for the benefit of customers and overall performance.

This change was discussed at the Event Steering Group recently concluded and has been offered to the Beneficiary by Facility Owner through the timetable bid and offer process as set down Part D in the Network Code.

The Beneficiary is aware of other applications and has made reasonable endeavours to engage with those applicants. It is through this engagement that the Beneficiary is satisfied and, has satisfied those applicants, that their future applications are unaffected by the fact that the Beneficiary is seeking these rights until PCD 2023 only.

3.2 Safety risks: Please 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).

This proposal does not present any additional safety risks.

3.3 Contract duration: For new agreements or extensions to existing agreements, please provide justification for the proposed duration and, if more than 5 years, with reference to the [Railways \(Access, Management and Licensing\) Regulations 2016](#).

N/A

3.4 Terms not agreed with the facility owner (for applications under sections 17 or 22A only): Please explain any areas of the application which have **not** been agreed, the reasons for the failure to agree and the reasons for seeking these provisions.

“Network Rail believes this application conflicts with aspirations for GUT and Avanti on the WCML who declared their interests and have ongoing applications with the ORR.”

3.5 Departures from ORR's model access contracts

Does the proposed contract include any departures from ORR's model access contract:

Yes

No

If yes, please set out and explain any:

- areas where the drafting of the application changes ORR's published template access contracts (as appropriate, cross-referencing to the answers below). Please also 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 access contracts, including the financial implications (e.g. establishment of an access charge supplement or rebate).

- new processes (e.g. a self-modification provision) which have been added. Please also demonstrate fully how this new process is robust and complete.

3.6 Consolidated contract

For amendments to existing contracts, is the version of the consolidated contract on our [website](#) fully up to date? If not, please explain why not.

Current version of the Beneficiary's consolidated TAC incorporates changes made via the 14th Supplemental Agreement.

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

4.1 Benefits: please set out what specific benefits the proposal will achieve, including a justification for requiring the rights and their characteristics. Please provide full descriptions of any new rights required, as compared to the previous contract (in the case of an amendment). Please also describe any significant changes in the pattern of services, their benefits to passengers and any impact on other operators, including 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.

Th change detailed above is being sought to standardise the calling patterns and services offered throughout the day in response to changing demand and travel habits following the Covid-19 pandemic. This change has been fully consulted and discussed at the Event Steering Group which concluded on 24th March 2022.

4.2 Adequacy: How have you satisfied yourself that there is enough network capacity for the services in the proposal? Are there any implications for overall network performance and the facility owner's maintenance and renewal activities?

The Beneficiary has worked with the Facility Owner and other Operators through the Even Steering Group process and the slot has for and offered via the timetable bid process. In the Beneficiary's view, there is no additional maintenance and renewal burden. One of the main purposes of this change is to improve performance by reducing overcrowding on following services thus reducing station dwell time. This service is planned to call at principle stations only and so would make use of maximum line speed/rolling stock speed.

4.3 Flexing rights: Please explain any limitations on the facility owner's flexing rights in the proposal and the rationale for such limitations.

N/A

4.4 Specified equipment: Please explain any changes to specified equipment (rolling stock). Has the vehicle and route acceptance procedure in the Network Code (Part F) has been completed? Please explain whether you have, or will have, the rolling stock necessary to exercise the rights.

The Beneficiary currently operates a fleet of Class 350 vehicles. These operate on the West Coast Mainline and are incorporated into the Rolling Stock Library and the Beneficiary's TAC.

4.5 Contractual obligations: Are the proposed services necessary to fulfil obligations under a public service contract? For publicly contracted operators seeking additional access rights, we will expect to see evidence of funder support for the specific rights and of operators' intent and ability to operate the new services.

The service is in compliance with the Train Service Requirements as associated with the Beneficiary's National Rail Contract.

4.6 Public funding: Other than the DfT, Welsh Government or Transport Scotland, are the proposed services subject to financial support from central or local government including PTEs. If so, please give details.

N/A

4.7 Long Term Planning Process: Is the Long Term Planning Process relevant to this application? If so, please explain how the proposed rights are consistent or inconsistent with this.

N/A

5. Competing passenger services:

We would expect to apply the 'not primarily abstractive' test to:

- (i) a new open access service which would compete with franchised services and so impact on the public sector funder's budget;
- (ii) a new franchised service which would compete with an existing franchised service, where we would expect to focus the test on areas where the competing franchised services are operated on behalf of different funders or where for some other reason there are particular concerns over the impact on a funder's budget; and
- (iii) a new service, which might be open access or franchised, which would compete with an existing open access service and which, if it caused the existing open access operator to withdraw from the market, could reduce overall competition on the network.

5.1 Please state if your application is for a competing passenger service, and if so please describe the nature of the competition:

In the Beneficiary's view, this service does not compete with any other service currently in operation. As detailed above, there are other open applications neither of which plan to call at the same stations or in the same service pattern.

5.2 For competing services, please also confirm that you have attached as part of your submission to ORR the following:

- Business plan, including details of:
 - forecasts of passenger traffic and revenues, including forecast methodology;
 - pricing strategies;
 - ticketing arrangements;
 - rolling stock specifications (e.g. load factor, number of seats, wagon configuration);
 - marketing strategy;
 - estimated elasticities of the services (e.g. price elasticity, elasticity with respect to quality characteristics of the services).
- Demand forecasting (including associated spreadsheet models) demonstrating modelled generation : abstraction ratio.
- Indicative timetables, including associated .spg files

6. Incentives

6.1 Train operator performance: please describe any planned projects associated with the operation of the proposed services aimed at improving your performance.

N/A

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

N/A

6.3 Monitoring of services: Will all proposed services be monitored for performance throughout their journey? If not, please explain.

Service monitoring will continue as it currently does.

6.4 Performance regime changes (for applications under sections 17 or 22A only): where applicable, please provide justification for any changes to Schedule 8 of the track access contract in the proposal. If necessary, please provide any relevant information in support of the changes proposed.

N/A

7. Enhancement

7.1 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 to this proposal

7.2 Enhancement charges: please confirm that the arrangements for the funding of any network enhancements are consistent with the [investment framework](#), and summarise the level and duration of payments, and the assumed rate of return.

Not applicable to this proposal

8. Other

8.1 Associated applications to ORR: please state whether this application 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). Where the application is being made in parallel with any other application from the same operator, please ensure the applications are consistent with one another. Where the application relies on another operator relinquishing access rights, please provide evidence that this process has been completed.

None applicable to this proposal

8.2 Side letters and collateral agreements: please 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.

This application should be read in conjunction with the following documents:

- Draft 15th Supplemental Agreement.
- Table 2.1 proposed amendments - Marked up versions of Service Group EJ05

8.3 Confidential redactions: please list any information that you have redacted from any documentation sent to consultees. If there has been no pre-application consultation, please list any information you want us to exclude from publication. Please provide full reasons for any redactions.

No redactions or exclusions are specifically requested other than any personal/contact details which are not relevant or necessary to share.

9. Pre-application consultation

9.1 The consultation:

If consultation has not been carried out, explain why not. If it has, please list the consultees.

Consultation commenced on 22nd July 2022 and concluded on 23rd August 2022

Who conducted the consultation?

The Facility Owner

List all consultees who responded and include their responses and any associated documentation or correspondence between the parties.

Particulars of consultees are detailed in the Industry Consultation email attached.

9.2 Resolved issues: please explain any issues raised by consultees which have been resolved.

Copies of correspondence attached Comments were received from:
Liverpool City Region Combined Authority
First Greater Western Limited
East West Railway Company Limited

9.3 Unresolved issues: Please explain any issues raised by consultees which have **not** been satisfactorily resolved and why you think these issues should not stop ORR approving the application.

None

9.4 Have any changes been made to the proposal following consultation?

None required

10. 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.

For agreed applications under section 18 or 22, Network Rail should complete the information below. For disputed applications under section 17 or 22A, the beneficiary should complete it.

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

Signed  Date 16th September 2022

Name (in caps) Navdeep Brahmhatt-Gold Job title Network Access Manager

For (company) West Midlands Trains Limited

11. Submission

11.1 What to send: please supply the application form, the proposed contract or amendment and, where possible, any other supporting information, in electronic form by e-mail, **in plain Microsoft Word or Open Document Text format** (i.e. excluding any macros, auto-para or page numbering, or other auto-formatting).

11.2 Where to send it:

Email: track.access@orr.gov.uk

Annex: Checklist of documents attached to the application form:

- Proposed new contract or supplemental agreement
- Marked up Schedule 5 (where applicable)
- Marked up comparison to model contract (where applicable)
- Consultation responses
- Replies to consultation responses
- Supporting documentation required for competing services (see section 5.2)
- Other supporting documents, side letters or collateral agreements (please list):

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