

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

ORR ensures that train operating companies have fair access to the rail network and that best use is made of capacity. If a train operator wants to access the national railway network, it will need a track access agreement with Network Rail which requires ORR's approval under the Railways Act 1993. When determining access to the network, we must have regard to our [statutory duties](#), most of which are set out in section 4 of the Act. We must exercise our functions (which include the approval of access contracts) in a way that we consider best achieves those duties.

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](#) (and our [making an application](#) guidance in particular) 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 10 and sent to consultees along with a copy of the proposed contract or supplemental agreement. Sections 10 and 11 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:

Transport UK East Midlands Ltd trading as East Midlands Railway (EMR)

### 1.2 Facility owner details:

Network Rail:	<input type="checkbox"/>				
Region:	Southern <input type="checkbox"/>	Eastern <input checked="" type="checkbox"/>	North West & Central <input 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:						21 <sup>st</sup>	
Current contract date:						1 <sup>st</sup> September 2020	
Current contract expiry date:						SCD 2028	

### 1.4 Applicant status:

Public Service Operator <input type="checkbox"/>	Public service contract start date:	
	Public service contract end date:	
	Name of funder (e.g. DfT, Local Authority):	DfT
	Does the funder support this application?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Open Access <input type="checkbox"/>		
Charter Operator <input type="checkbox"/>		

### 1.5 Executive summary of the proposed contract or amendment:

This proposal is for EMR to convert the contingent rights it holds for EM01 East Midlands Local, EM02 East Midlands Regional and EM03 Liverpool – Norwich to firm rights in line with its Track Access Agreement expiry date.

Proposed commencement date:	PCD 2024
End date:	SCD 2028
Date approval or directions wanted by:	As soon as possible

### 1.6 Industry consultation:

Who carried out the consultation?	Network Rail (NR)		
Consultation start date:		Consultation end date:	
Not carried out <input type="checkbox"/>			

### 1.7 Applicant details

<u>Facility Owner</u>	<u>Beneficiary</u>
Company: Network Rail Infrastructure Limited ("Network Rail")	Company: Transport UK East Midlands Ltd – 'EMR' (the "Train Operator")
Contact individual: Alexis Xoufarides	Contact name: Lanita Masi
Job title: Customer Manager	Job title: Network Access Manager
Address: Floor 4B, George Stephenson House, Network Operations, Toft Green, York YO1 6JT	Address: Locomotive House Locomotive Way, Pride Park Derby DE24 8PU
Telephone number: [REDACTED]	Phone: [REDACTED]
E-mail address: [REDACTED]	E-mail: [REDACTED]

**1.7 Date of application to ORR:**

20<sup>th</sup> May 2024

**1.8 Checklist of documents attached to the application form:**

- Proposed new contract (S17 or S18) or supplemental agreement (S22 or S22A)
- Marked up Schedule 5 (where applicable)
- Marked up comparison to model contract (where applicable)
- All consultation correspondence
- Supporting documentation required for competing services (see section 6.2)
- Other supporting documents, side letters or collateral agreements (please list):


**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:

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**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.

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**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).

- |  |
|--|
| EMR currently holds contingent rights for: <ul style="list-style-type: none"><li>- 2 x Lincoln – Newark North Gate SO</li><li>- 1 x Cleethorpes – Newark North Gate SX</li><li>- 1 x Nottingham – Peterborough SX</li><li>- 2 x Norwich – Sheffield SX</li><li>- 1 x Norwich – Sheffield SO</li><li>- 1 x Sheffield – Norwich SX</li><li>- 1 x Sheffield – Norwich SUN</li></ul> |
|--|

The service using the existing contingent rights has been operating since December 2020. EMR has engaged fully with ECML ESG process and all access rights held, and associated services have been accommodated in the ESG timetable developed. This application seeks to convert the existing contingent rights in the Table 2.2 of Schedule 5 in EMR's Track Access Agreement to firm rights from the December 2024 timetable change.

**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).

Not applicable

**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](#).

To the end of the current contract

**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.

The Network Rail Customer Managers have been briefed and it is our intention to start industry consultation as soon as practically possible.

**3.5 Bespoke provisions (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.

Not Applicable

- 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).

Not Applicable

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

Not Applicable

### 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.

Yes, the consolidated contract is conformed as at 3<sup>rd</sup> May 2024.

## 4. The impacts of the proposal

**4.1 Benefits:** please set out what specific benefits the proposal will achieve. Please describe the benefits to passengers and any impact on other operators, including freight operators.

All of our contingent rights have been accommodated in the ESG timetable. This application seeks to convert these rights to become firm rights and in line with EMR's current Track Access Agreement.

**4.2 Capacity:** How have you satisfied yourself that there is enough network capacity for the services in the proposal? Please include details on all relevant capacity considerations, including but not limited to track, platform availability, and power supply traction.

The service using the existing contingent rights has been operating since December 2020; EMR do not anticipate any negative impact on capacity.

**4.3 Performance:** What is the impact on network performance? Please outline your assurance process that shows that any performance risk is tolerable in comparison to the benefits of the application. Please explain any risk mitigations. Please attach any associated evidence to support your case.

East Midlands Railway do not anticipate any negative performance impact with the rights being converted to firm rights.

**4.4 Maintenance and renewals:** Are there any implications for the facility owner's maintenance and renewal activities?

This application is compliant with the Network Rail Engineering Access Statement.

## 5. The expression of access rights

**5.1 Changes to rights:** please provide full descriptions of any new rights required, as compared to the previous contract (in the case of an amendment). Please attach a fully marked-up version or document comparison of any tables in Schedule 5 which are being modified as a result of this application.

To convert the contingent rights in Table 2.2 to firm rights in Table 2.1. There is no additional quantum required.

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

None

**5.3 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.

Not Applicable

**5.4 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.

Not Applicable

**5.5 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.

Not Applicable

**5.6 Long Term Planning Process:** Is the Long Term Planning Process (or similar devolved authority or regional service delivery project) relevant to this application? If so, please explain how the proposed rights are consistent or inconsistent with this.

EMR has been fully engaged in the development of the ECML timetable recast as a member of the Event Steering Group (ESG). EMR will continue working with Network Rail on the ECML timetable development recast for December 2024.

## 6. 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.

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

Not Applicable

**6.2** 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

## 7. Incentives

**7.1 Train operator performance:** please describe any planned performance improvement initiatives and/or enhancement projects associated with the operation of the proposed services aimed at improving operator performance.

East Midlands Railway, in partnership with East Midlands Route, has a published performance strategy for the network, which is fully aligned with the industry PIMS framework, and is delivering an ongoing programme of T-3 improvement focusing on timetable building blocks which has included changes to dwell and sectional running times.

**7.2 Facility owner performance:** please describe any planned performance improvement initiatives and/or enhancement projects associated with the operation of the proposed services aimed at improving the facility owner's performance.

Not Applicable

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

Yes

**7.4 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.

Not Applicable

## 8. Enhancement

**8.1 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

**8.2 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

## 9. Other

**9.1 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.

EMR's 18th Supplemental Agreement to update changes because of the remapping of EM05 and EM04 Service Groups as part of the PR23 Sch4/8 Recalibration. The drafting is underway and is expected to be submitted informally to the ORR for approval by end of May 2024

**9.2 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.

Not Applicable

**9.3 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.

Not Applicable



## 10. Pre-application consultation

### 10.1 The consultation:

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

In the letter issued on the 24<sup>th</sup> April 2024, ORR requested industry submit all applications for additional or amended rights by the 20<sup>th</sup> May 2024. It has therefore not been possible in the limited time available to carry out a consultation. However, we have discussed our proposal with Network Rail and will begin industry consultation as soon as reasonably possible.

Who conducted the consultation?

Not Applicable

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

Not Applicable

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

Not Applicable

**10.3 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.

Not Applicable

**10.4 Subsequent Changes:** Have any changes been made to the proposal following consultation?

Not Applicable

## 11. 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 .....

Name (in caps) ..... Job title .....

For (company) .....

## 12. Submission

**12.1 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).

### 12.2 Where to send it:

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