

Application to the Office of Rail Regulation for a passenger track access agreement, or amendment to a passenger track access agreement under sections 17-22A of the Railways Act 1993

1. Introduction

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

- directions under section 17 of the Railways Act 1993 for a new track access contract. Section 17 allows companies who want the right to use a railway facility (including Network Rail's network) to apply to ORR for access if they are not able (for whatever reason) to reach agreement with the facility owner.
- approval under section 18 of the Railways Act 1993 for a new track access contract. Section 18 allows companies to apply for approval if they have agreed terms with the facility owner.
- approval of a proposed amendment (agreed by both parties) under section 22 of the Railways Act 1993 to an existing track access contract.
- directions under section 22A of the Railways Act 1993 for an amendment to an existing track access contract. Section 22A allows anyone seeking an amendment to an existing track access contract which allows the operation of more extensive services to apply for a compulsory amendment if they are not able (for whatever reason) to reach agreement with the facility owner.

If it is the facility owner, Network Rail will carry out a pre-application consultation. In this case fill in this form up to section 7.3. You should fill in the rest of the form after the consultation and before applying to ORR. If you are unhappy with the facility owner carrying out the consultation, you should ask ORR to do so. If this is the case, you should complete this form in full before submitting it to us.

The form sets out ORR's standard information requirements for considering applications. It cross-refers throughout to our [criteria and procedures](#) (C&Ps). The C&Ps explain the process, timings and the issues we will expect to consider. You should use the published [model passenger track access contract](#) as your starting point when drafting the contract or amendments you want. Please read the C&Ps and the Code of Practice before applying.

We are happy to talk to you before you apply. Please contact us [here](#).

You can download a copy of this form, and of ORR's model track access contract, from the ORR website: www.rail-reg.gov.uk.

2. The application

2.1 Title of proposed contract or supplemental agreement

Application for a Track Access Contract between XC Trains Limited and Network Rail Infrastructure Limited, made under Section 17 of the Railways Act 1993.

2.2 Contact details:

<u>Facility Owner</u>	<u>Beneficiary</u>
Company: Network Rail Infrastructure Limited (NRIL)	Company: XC Trains Limited (XCTL)
Contact individual: Aiden Martin	Contact individual: Tamzin Cloke
Job title: Customer Manager	Job title: Track Access and Possession Strategy Manager
Address: Floor 11	Address: Floor 5
The Mailbox	Cannon House
100 Wharfside Street	18 The Priory Queensway
Birmingham	Birmingham
B1 1RT	B4 6BS
Telephone number: 07710 960760	Tel: 07824 545309
E-mail address: aiden.martin@networkrail.co.uk	Tamzin.Cloke@crosscountrytrains.co.uk

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

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.

C&Ps paras 3.9-3.15

The parties confirm that;

(a) XCTL holds a valid train operating licence under Section 8 of the Railways Act 1993. This came into force on 11 November 2007, and

(b) XCTL, as a Transport Undertaking has an accepted safety certificate and authorisation as required under the Railways and Other Guided Transport Systems (Safety) Regulations 2006.

XCTL is investigating the possibility of submitting a letting proposal to the Secretary of State to operate these services ourselves under a direct award franchise.

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 fully highlight the changes from the previous version of the contract (in the case of an amendment).

C&Ps para 3.22-3.28

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). **C&Ps paras 4.9-4.11**

Please also state the commencement and end dates for the proposal, and for new agreements or extensions to existing agreements, provide justification for the proposed length of the application, with reference to the [Railways Infrastructure \(Access and Management\) Regulations 2005](#). If you are a franchised operator, please state the expiry date of your franchise. **C&Ps paras 4.72-4.79**

Date of commencement: Principal Change Date 2017

End date: Subsidiary Change Date 2020

This application is being made to secure access rights for the proposed direct award CrossCountry franchise, which would expire in October 2019. Following a pre-consultation meeting with the ORR we are applying for access until Subsidiary Change Date 2020 as per standard procedure for the end of a franchise.

The proposed contract varies little from the existing XCTL contract. It contains the same quantum of services as currently operate, over the same routes with the same rolling stock. The existing journey time protection, between Derby and Leeds/Newcastle, has been included.

Of note is that, with the expiration of the WCML 'quantum only' rights policy (letter dated 22nd May 2014 from R. Plaskitt, ORR, to P. McMahon, NRIL), XCTL is applying for the reinstatement of intervals at Birmingham New Street in their pre 'quantum only' policy expression. This is in exchange for surrendering the interval protection at Nottingham, Leicester and Bristol, which was put in following the introduction of the WCML 'quantum only' policy.

These rights are required to provide continuity and certainty of travel opportunities for customers, a topic which is further expanded upon in Sections 3.2 and 4.1.

No safety risks have been identified as these services run currently and safely.

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. **C&Ps para 3.102**

Capacity on the East Coast Main Line between Sheffield and Edinburgh (exclusive) for all services. This is part of the current issue surrounding access to the East Coast Main Line (ORR 'Letter to stakeholders' dated 6th February 2015). The DfT has indicated that the level of service sought will be the minimum it requires the franchise holder to operate to 2019. This quantum is reflected in the relevant industry capacity and 'Indicative Train Service Specification' work that has been undertaken to date.

Interval protection at Birmingham New Street. NRIL were unable to agree these protections beyond 2016 owing to the current Railway Delivery Group workstream on access rights having not yet concluded. Both parties are hopeful that once an industry consensus has been reached we will be able to come to agreement on this issue. XCTL's business centres on two key products that our timetable can offer our customers: a) connecting people and b) offering a competitive long distance journey alternative. A critical aspect of the former is the ability to offer pairs of destinations and journey options to customers. XCTL therefore regards interval protection at Birmingham New Street to be a core part of any contract between XCTL and the infrastructure manager.

Journey time protection between Derby and Leeds/Newcastle. NRIL were unable to agree to sell this protection owing to both issues above. XCTL requires journey time protection to provide some surety that we can fulfil product (b) above in a consistent and improving manner as our business develops.

If the Regulator is unable to approve the specificity of these rights owing to ongoing industry workstreams, XCTL would be willing to seek some form of compromise agreement or amendment to the proposed Contract in the interim so long as the urgent need to resolve the workstreams is not compromised and NRIL is formally committed to engaging with XCTL on the contractualisation of any items of specificity that are excluded from the Contract by the Regulator, once the workstreams are concluded.

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

- areas where the drafting of the application changes ORR's published template passenger track access contract (as appropriate, cross-referencing to the answers below). Please also explain why these departures have been made. **C&Ps paras 2.34-2.37**
- 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 passenger track access contract, including the financial implications (e.g. establishment of an access charge supplement or rebate). **C&Ps paras 5.1-5.44**
- new processes (e.g. a self-modification provision) which have been added. Please also demonstrate fully how this new process is robust and complete. **C&Ps paras 6.2-6.3**

Not applicable to this application.

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. Where appropriate, 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. **C&Ps paras 4.26-4.35**

These rights are required to provide continuity and certainty of travel opportunities for customers.

In addition to the benefits outlined above in Section 3.2, XCTL considers that the protections sought in respect of intervals are essential to match the supply of train services to demand, particularly ensuring that the spread of services reflects demand so as to manage passenger loadings and reduce crowding, which is a key issue for XCTL.

Journey time protection is justified in order to maintain and improve the flow of revenue into the industry farebox, supported by NRIL's investment in infrastructure enhancements throughout the XCTL network during Control Period Five. Optimised journey times are also essential in deriving efficient deployment of rolling stock, again ensuring that the capacity is maximised for passengers.

We do not consider that there will be any negative impact on other operators, or potential operators, whose aspirations or rights we are aware of. We consider that the proposals contain a balance of enough protection to make the industry and markets competitive – boosting industry revenue, particularly considering the proportion of our customers (40%) that interchange with other services – and enough flexibility to enable the best use of capacity to be found by skilled planners.

4.2 Adequacy: please set out how you have satisfied yourself that there is enough network capacity for the services in the proposal. Please also set out whether there are any implications for overall network performance and the facility owner's maintenance and renewal activities. **C&Ps paras 4.12-4.45**

XCTL is not seeking to run more services than exist currently, nor are we seeking tighter Journey Time Protection or Interval Protection. It is our considered view that the enhancements that have, and will be, delivered in Control Period Five make the existing levels of protection entirely deliverable until 2019.

Through internal dialogue with timetable planners, Network Rail has satisfied itself that the existing quantum of XCTL services can be supported until 2019, with the exception of the items outlined in Section 3.2, which are currently not agreed due to policy decisions rather than timetabling constraints.

4.3 Flexing rights: please provide a general description of the extent of any limitations on the facility owner's flexing rights in the proposal. Please provide the rationale for the extent of any limitation on the flex provided, including any changes to pre-existing services, and the extent to which the provisions have been agreed with the facility owner. **C&Ps paras 2.27-2.33**

The only limits on flexing rights are the caps on journey time protection flexing, which were agreed with NRIL as part of the 31st Supplemental Agreement, and a five minute flex limitation on the service interval protection at Birmingham New Street. This is what was originally in the contract and reflects the level of flex that was agreed with NRIL at other locations as part of the 31st Supplemental Agreement in 2013. XCTL believes it remains robust.

4.4 Journey time protection: please describe whether the proposed contract gives journey time protection to any services (by establishing maximum journey times, fastest key journey times or maximum key journey times), and explain the reasons for this, with reference to ORR's criteria. **C&Ps paras 8.90-8.103**

The proposed contract contains Journey Time Protection for some key legs as outlined in Section 4.1. In recognition of the need for NRIL to have the "greatest flexibility" possible (C&Ps para 8.97) the protection proposed is Maximum Journey Time only, expressed as per the best practice outlined in C&Ps para 8.99, namely a maximum journey time with a certain number of trains timetabled at a lower time. All times have been based on those currently achievable and the inclusion of Table 6.1 represents an aspiration by both parties, and an obligation under XCTL's franchise commitment, dating back to 2007 to include these protections in the contract. They have been included in the contract since 2013.

Prior to their introduction they were fully validated and supported by NRIL Operational Planning team at Milton Keynes.

4.5 Specified equipment: please give full details of any changes to specified equipment (rolling stock), including timescales, and how much of 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 being sought. **C&Ps paras 8.87-8.90**

XCTL is not seeking any changes to the rolling stock that currently operates. This is a mixture of Class 221, Class 220 and HST sets on the EH01 routes and 170 sets on the EH02 routes.

4.6 Franchise obligations: please explain whether the proposed services are necessary to fulfil obligations under a franchise or concession agreement. **C&Ps paras 4.3-4.4**

This application is being made at the behest of the Department for Transport and in light of the current discussion over the future of access on the East Coast Main Line, in order to secure access rights for the proposed direct award CrossCountry franchise, which would expire in October 2019

4.7 Public funding: please state whether (and if so to what extent) the proposed services are subject to financial support from central or local government (other than the Department for Transport or Transport Scotland), including Passenger Transport Executives. Please also provide a point of contact at that body. **C&Ps paras 3.52, 4.25, 4.35-4.39**

This is not applicable.

4.8 Passenger Focus and, where applicable, London TravelWatch: please state whether (and if so to what extent) the proposed services have been discussed with these bodies. Please also provide copies of any relevant correspondence. **C&Ps para 4.39**

London TravelWatch is not applicable to this application.

Passenger Focus will be surveyed as part of the external consultation process.

4.9 Route utilisation strategies (RUSs): if applicable, please state which RUSs (including the Freight RUS) are considered relevant to this application and whether the proposed rights are consistent with that RUS. If the proposed rights are not consistent, please explain the reasons for this. **C&Ps paras 4.5-4.8**

As fully validated and currently operating services, the proposed rights are relevant to and consistent with the RUSs of the regions they operate within. They also feature in the relevant Indicative Train Service Specifications up to 2019 for XC's regions as an integral part of the national spread of services required to satisfy passenger demand.

5. Incentives

5.1 Train operator performance: please describe any planned projects associated with the operation of the proposed services aimed at improving your performance. **C&Ps paras 4.26-4.36**

During the next four years Network Rail will undertake a series of major project enhancements to the network that CrossCountry operate over. This will include Stafford and Norton Bridge re-signalling and re-modelling in 2016/17, phased re-signalling schemes around the West Midlands area including Birmingham New Street Station, the re-modelling work at Nottingham, Derby, Leicester along with the possibility of electrification workstream within the East Midlands area. During the last year we have seen the completion of the major enhancement works at Reading which will provide a level of capacity benefits and an increased level of flexibility during disruption.

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 own performance. **C&Ps paras 4.26-4.36, 5.1**

In 2014 a seven section Performance Strategy was developed jointly by Network Rail and CrossCountry Trains which set out a five year improvement strategy. The plan included a suite of performance action plans and risks, targets and management arrangements to deliver performance improvement on all of the routes operated by CrossCountry Trains. The targets outlined within the plan include those for the Public Performance Measure (PPM) and Cancellations and Significant Lateness (CASL). Some of the key workstreams that CrossCountry Trains will undertake during this period will be to explore continued improvement enhancements with Integrale, getting to the root cause of LIR/Sub-threshold delay by the using the data which is derived from on train reporting tools. Within Fleet there will be wheel lathe improvements at Central Rivers and the introduction of AVIS will reduce the time taken to carry out exams and therefore reduce the number of failures in service.

5.3 Monitoring of services: would all proposed services be monitored for performance throughout their journeys, consistent with our policy in paragraph 5.50 of the criteria and procedures? If not, please state the reasons for this is in line with the permissible circumstances described in paragraph 5.51 of the criteria and procedures. **C&Ps paras 5.50-5.56**

Yes.

5.4 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. **C&Ps para 5.38-5.40**

None proposed.

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). **C&Ps paras 4.80**

Not applicable to 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). **C&Ps paras 5.6, 5.12-5.14**

Not applicable to this application.

7. Other

OFFICE OF RAIL REGULATION
ONE KEMBLE STREET, LONDON, WC2B 4AN

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Form **P**

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7.1 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). **C&Ps paras 3.18-3.19**

Not at present.

7.2 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). **C&Ps para 4.33**
- 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. **C&Ps paras 6.12-6.16, 6.21**

We anticipate a supporting statement from the Department for Transport to be included as part of this application shortly.

7.3 Confidentiality exclusions: please list any parts of your application which you have excluded on the grounds of confidentiality, from the version of the proposed contract 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 and proposed contract you want us to exclude from publication. **C&Ps paras 3.29-3.34**

The proposed version of the Contract that was sent out for consultation excluded, for reasons of confidentiality, the existing aspects of Schedules 4 and 8 that are redacted in the existing Contract.

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

8. Pre-application consultation

8.1 The consultation: has a pre-application consultation been carried out in line with the Code of Practice? If yes, please:

- state who conducted the consultation;
- list all train operators, franchising authorities 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. **C&Ps paras 3.62**

A 28 day consultation period is currently being undertaken by NRIL on behalf of XCTL. Once the consultation period is complete we will submit a full list of consultees and their responses to the Regulator.

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.

A 28 day consultation period is currently being undertaken by NRIL on behalf of XCTL. Once the consultation period is complete we will submit a full list of consultees and their responses to the Regulator.

8.3 Unresolved issues: please set out any issues raised by consultees which have **not** been satisfactorily resolved, 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.

A 28 day consultation period is currently being undertaken by NRIL on behalf of XCTL. Once the consultation period is complete we will submit a full list of consultees and their responses to the Regulator.

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 **C&Ps para 3.40***

In the case of agreed applications under section 18 or 22, Network Rail should fill in the required 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 15th May 2015

Name (in caps) TAMZIN CLOKE

Job title: Track Access and Possession Strategy Manager

For (company) XC Trains Limited

10. Submission

10.1 What to send: please supply, in hard copy, 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. ***C&Ps para 3.39***

Please also supply the application form, the proposed contract or amendment and, where 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). ***C&Ps para 3.37-3.38***

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