

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:

XC Trains Ltd

1.2 Facility owner details:

Network Rail:	<input checked="" type="checkbox"/>				
Region:	Southern <input checked="" type="checkbox"/>	Eastern <input checked="" type="checkbox"/>	North West & Central <input checked="" type="checkbox"/>	Wales & Western <input checked="" type="checkbox"/>	Scotland's Railway <input checked="" 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:						38	
Current contract date:						8 th August 2017	
Current contract expiry date:						11 th December 2027	

1.4 Applicant status:

Public Service Operator <input checked="" type="checkbox"/>	Public service contract start date:	15 th October 2023	
	Public service contract end date:	October 2031	
	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 application is to replace the Section 17 application submitted in January 2024 following the completion of the 30th Supplemental under a Section 22 application which extended the XC TAC to PCD 2027.

The level of rights submitted in this 38th Supplemental are a copy of the additional rights submitted in the original Section 17, split across May 2025 and Dec 2025 timetables in line with the phased uplift of services.

Proposed commencement date:	SCD 2025
End date:	PCD 2027
Date approval or directions wanted by:	As soon as possible

1.6 Industry consultation:

Who carried out the consultation?	Network Rail		
Consultation start date:	26/01/2024	Consultation end date:	26/02/2024
Not carried out	<input type="checkbox"/>		

1.7 Applicant details

Facility Owner Company: Network Rail Infrastructure Ltd Contact name: Sophie Grieves Job title: Customer Manager Address: Baskerville House, Centenary Square, Broad St, Birmingham	Beneficiary Company: XC Trains Ltd Contact name: Lee Tuttle Job title: Head of Planning Address: Cannon House, 18 The Priory Queensway, Birmingham B4 6BS
--	--

B1 2ND

Phone:

E-mail:

Phone:

E-mail:

1.7 Date of application to ORR:

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:

--

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.

--

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).

This application includes the service uplift originally proposed in the Section 17 Application. The increase in rights have now been split between the May 2025 and December 2025 timetables. The quantum of additional rights remains the same as originally submitted and consulted in the Section 17 application. The application includes rights for services required to be reintroduced as part of our National Rail Contract and includes rights in alignment with the industry implementation of the East Coast Mainline ESG timetable.

On Tuesday 19th September 2023, XC Trains Ltd (XCTL) were awarded an eight-year National Rail Contract (NRC) to allow the continued operation and future development of CrossCountry services. The new NRC with the DfT began on the 15th October 2023 and will operate for eight years. We have been working collaboratively with Network Rail since the signing of our NRC in September 2023 to secure access rights for the future uplift in services.

We continue to work closely with Network Rail to work through validated train paths required for May 2025 and December 2025. The paths align with the associated ECML ESG TT. A full table of additional access rights sought has been included in the attached Rights Table document.

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).

There are no perceived safety risks arising from this proposal.

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 have been unable to support the uplift in rights for the May 2025 "Hydra" Timetable. The Section 17 and this subsequent 38th SA application are included in the "ORR Letter on managing complex and potentially competing aspirations for access to busy parts of the network" dated 24/04/2024.

We are confident that our paths comply with relevant ESGs, including the ECML work carried out in collaboration with Network Rail indicates that capacity does exist for our services.

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.

N/A

- 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).

N/A

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

N/A

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.

No – awaiting consolidation of 30th Supplemental Agreement

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.

The May 2025 timetable builds on the uplift in the May 2023 timetable by enhancing the journey opportunities and connectivity for our long-distance customers. The uplift in the Reading-Newcastle service group satisfies an increased level of passenger demand which will benefit XCTL and the industry, reducing crowding and associated performance issues with long station dwell times. There is a better industry business case by increasing the frequency of services on the Birmingham to Reading and Birmingham to the North-East corridors than by operating a single service per hour with a greater number of seats.

The increase in seating capacity across all routes has direct linkages to the comfort requirements of our Customer Proposition, with more choice of seats and luggage storage for customer journeys. It provides greater journey choice through frequency and connection opportunities across this route which supports the convenience element of our Customer Proposition.

We are expanding the size of our fleet with the acquisition of additional Class 221 Voyagers with the first sets entering service from the commencement of the June 2024 timetable. These will improve our total passenger capacity provided by our timetable in phases, with the largest increase aligning with the May 2025 timetable change. This enables some strengthening of existing services and sufficient rolling stock for the proposed additional services, improving industry revenue.

The new phased approach to the uplift of services gives more certainty around the inclusion of paths ahead of the likely introduction of the December 2025 ECML ESG TT and the ability to operate all services robustly. Work has continued at path on recruitment and training of traincrew, notably drivers and train managers. Plans are in place through to December 2025 to ensure the correct number of productive traincrew are available.

The reinstatement of an hourly service between Birmingham and Stansted Airport offers better direct journeys for customers along this core route and has been a stakeholder aspiration post COVID.

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.

We have carried out extensive work with Network Rail over the past 12 months to ensure our May 25 aspirations are compatible without the ECML ESGT TT by doing some preparatory work during the production of the December 24 timetable. We continue to work closely with NR during the May 25

timetable production period. The services to be introduced are in line with the quantum specified in the ECML ESG TT scope.

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.

The timetable change in May 2023 introduced a notable increase in services within our long distance service group. This increase was the most significant to occur since the COVID pandemic and re-introduced more direct services between Manchester and Bristol/Bournemouth and between Newcastle and Reading.

The service increase contributed to a positive improvement in punctuality, in particular services arriving within 3 minutes at all station calls. A comparison between the May 2023 timetable period and the equivalent period for May 2019 has seen a 4% uplift in punctuality on our Manchester to Bournemouth services and a 1.1% uplift to our Newcastle to Reading services. These improvements have been achieved against the backdrop of a performance year where a forecasted increase in Network Rail delay minutes and lateness had been projected within our Joint Performance Strategy.

To improve the reliability of our services, CrossCountry successfully negotiated and agreed a new Driver rest day working agreement for training with members of the ASLEF Driver union. This agreement came into effect towards the end of July 2023 and has played a vital role in helping us reduce the outstanding level of training days across most Driver depots, primarily Birmingham New Street. Following its introduction and during periods of where a reduced level of industrial action has been evident, we have seen a subsequent reduction in the level of all cancellations. A period on period reduction in the percentage of all cancellations followed the reintroduction of rest day working in rail period 2404, with a continued level of improvement through to the end of rail period 2407. Recent periods have demonstrated how more aggressive weather events and prolonged periods of industrial action can have a detrimental impact on train service delivery and resilience.

From the 1st of April 2024, a new 5 year control period begins and through Network Rail's own admission is likely to be challenging in respect of funding and improving train service punctuality. At the time of writing this paper the Network Rail regions are still finalising the delivery plans. It is expected that there will be minimal infrastructure renewals and increased focus on intelligent infrastructure and response. An anticipated and targeted increase in freight traffic is expected annually throughout the control period and whilst a 30% reduction in freight delay impact on CrossCountry has been achieved since 2019, increased collaboration and joint working with freight colleagues will form part of our focus during 2024. Given the anticipated challenges around the new control period, CrossCountry is committed to exploring joint opportunities with Network Rail and industry partners to improve operational performance through tactical forums and service recovery interventions.

Internally, an area of focus during 2024 will be reducing the number of Traincrew cancellations. To expedite this, a designated Senior Manager has been put in charge of managing and reducing Traincrew cancellations. We will continue to reduce the level of outstanding driver training days, an area which has already seen a 33% reduction since August 2023. To supplement the ongoing Traincrew Resilience Strategy, a temporary timetable will be in operation between August and November 2024 to facilitate increased driver training, reducing the number of training days by a further ~15%, further reducing future traincrew cancellations.

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

None that we are aware of

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.

See marked up table showing the increase in rights for May 2025 and December 2025 timetables

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.

N/A

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.

The proposed services are required to fulfil contractual obligations contained in the XC National Rail Contract signed October 2023 and form part of the Train Service Requirements (TSR).

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.

N/A

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.

N/A

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:

N/A

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.

Train Crew Position

The main impacts on Driver resilience over the past few years have been a loss of core and diversionary route and traction knowledge caused by Covid-19 cab access restrictions, emergency timetables and the loss of the Driver Rest Day Working Agreement. We reintroduced the Driver Rest Day Working agreement in July 2023 specifically for training purposes, noting this is a dated agreement which is standard practice and in line with many other TOCs. Extension to the dated agreement requires sanction from the Driver's Trade Union (ASLEF) to allow the practice to continue. Our mitigation strategy is to continue to engage with ASLEF proactively to deal with any issues or concerns arising which has been successful to date.

A recovery plan was initiated in Autumn 2022 and will be ongoing until mid-2024 to improve Driver route and traction knowledge. The recovery plan sees a risk-based targeted approach to addressing the route knowledge gaps. We have implemented Business Intelligence led solutions to spot competence gaps and quantify the level of risk these pose to operational resilience. The recovery plan is delivering results in line with expectations with a 6% improvement across the business in terms of Drivers signing the routes and traction required to support operation of the LTP timetable.

We have identified the required number of traincrew to deliver the May 2025 timetable and we have plans in place to deliver this ready for the timetable change.

Fleet Position

XCTL has informed the DfT that Fleet Reliability will reduce over time, noting the aging profile of our rolling stock. We have looked to mitigate this by installing Performance Regimes in our Contracts to incentivise our fleet maintainers.

The last 13 Periods have shown a gradual decline in Fleet Reliability using the now industry recognised Mp701D measure (Miles per 701D Incident). We anticipate the Voyager Mp701D MAA

will range between 26,000 and 27,000, and the Turbostar Mp701D MAA will range between 8,000 and 9,000. We will continue to look to improve these with Fleet Initiatives including refresh and refurbishment programs with heavy maintenance where appropriate.

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.

Nothing specific at a high level is required for the service uplift proposed.

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

The services will continue to be monitored in the same way as they currently are.

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.

N/A

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).

N/A

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.

N/A

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.

This is a supplemental application following the TAC extension contained within the 30th Supplemental Agreement and 2 rights included in the 35th Supplemental Agreement.

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.

N/A

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.

N/A

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.

Consultation has been carried out on these rights as they match the Section 17 application submitted in January 2024

Who conducted the consultation?

Network Rail

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

See responses to Section 17 application from January 2024

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

See responses to Section 17 application from January 2024

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.

See responses to Section 17 application from January 2024

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

N/A

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 ...21/10/2024.....

Name (in caps) ...LEE TUTTLE..... Job titleHead of Planning.....

For (company) ...CrossCountry Trains Limited (XCTL).....

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: [REDACTED]