

**APPLICATION TO THE OFFICE OF RAIL REGULATION FOR  
A STATION ACCESS CONTRACT  
UNDER SECTION 17 OF THE RAILWAYS ACT 1993**

## 1. Introduction

This form should be used to apply to the Office of Rail Regulation (ORR) for directions under section 17 of the Railways Act 1993 (the Act) for a new station access contract. Section 17 is the means by which those seeking the right to use a railway facility apply for compulsory third party access if they have failed (for whatever reason) to reach agreement with the facility owner.

The form sets out the ORR's standard information requirements for considering such applications.

It is very important that the application is made in good time and prospective applicants are strongly advised to read (and if necessary take advice on) the procedures which are laid out in the Act, (Section 17 and Schedule 4).

The Stations and Depots Team at the ORR will be happy to discuss prospective applications. Applicants are strongly encouraged to contact the Office at an early stage, preferably before making an application, to discuss their likely requirements. Contact details are shown at the foot of this form.

A copy of ORR's template passenger station access contract, can be accessed electronically and downloaded via the ORR website ([www.rail-reg.gov.uk](http://www.rail-reg.gov.uk)). The office is hoping that the industry will implement the Stations Code by the end of this year. You might therefore also want to consider the template station access contracts under the Code (<http://www.rail-reg.gov.uk/server/show/nav.227>).

## 2. The application

### 2.1 Title of proposed contract:

Station Access Agreement between First Capital Connect Limited and East Midlands Trains Limited – Luton Airport Parkway Station

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

Company: East Midlands Trains Limited

Contact individual: Andy Peberdy

Job title: Contracts Manager

Address: 5<sup>th</sup> Floor, Friars Bridge Court, 41-45 Blackfriars Road, London, SE1 8NZ

Telephone number: 0207 620 5085

Fax number:

E-mail address: [Apeberdy@stagecoachrail.com](mailto:Apeberdy@stagecoachrail.com)

**2.3 Licence and safety certificate** Please state whether the applicant intends to use the station himself or whether someone else will use the station on his behalf.

Please state whether the proposed user of the station (a) holds a valid train operating licence under section 8 of the Railways Act 1993 or an exemption under section 7, and (b) holds a safety certificate or deemed 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 which that person has reached in his obtaining of the licence, exemption or railway safety certificate (as the case may be)

Licence:- The Licence application was submitted to ORR in July 2007. The ORR issued a consultation in August. No objections or comments were received and East Midlands Trains Limited expects the Licence to be granted by the beginning of October 2007.

Safety Certificate:- A Safety Certificate application was submitted to ORR in July 2007. ORR have reviewed and provided an issues log which East Midlands Trains Limited is in the process of closing out with ORR. East Midlands Trains anticipates being issued with a Safety Certificate in October.

### 3. The proposed contract

**3.1 Executive summary** Please provide an executive summary of the proposed contract. This should cover the services, the commercial terms, and the applicant's reasons for seeking the contract in the terms proposed. The summary in this section should also explain (here or by cross-reference to the answers in the sections below):

- where there is an existing agreement in respect of the services in question, any differences between the existing agreement and the proposed contract;
- any aspects in which the proposed contract contains bespoke provisions departing from the published template station access contract; and
- any material safety risks that have been identified arising from the proposed contract and the arrangements for their control and mitigation (by reference to the provisions of the operator's railway safety certificate and, so far as is possible, the safety authorisation / certificate of the facility owner)

East Midlands Trains Limited seeks a Station Access Agreement at Luton Airport Parkway Station to enable its timetabled services to call at the station from the commencement of the East Midlands Franchise on 11<sup>th</sup> November 2007. There is currently no existing access agreement between East Midlands Trains Limited and the Station Facility Owner. The access contract is based on the ORR's template station access contract with no bespoke provisions that depart from the published template.

There have been no material risks identified through the template contract.

**3.2 Terms not agreed with the facility owner** Please set out here those specific areas of the proposed contract which the applicant has **not** been able to agree with the facility owner, the reasons for the failure to agree and the reasons for seeking these provisions

East Midlands Trains Limited has applied to First Capital Connect Limited for a station access agreement at Luton Airport Parkway on the standard terms of the ORR Station Access Template. In bidding for the franchise, Stagecoach based its bid for station access agreements on the information supplied in the DFT data room. The data room contained a copy of the existing Multi Station Access agreement between First Capital Connect Limited and Midland Mainline Limited for Bedford, Luton and Luton Airport Parkway (ORR ref: SAA/215/13/M/06/01). This existing agreement is as per the ORR Template.

First Capital Connect Limited are prepared to offer East Midlands Trains Limited a station access agreement for Luton Airport Parkway but only on the basis that the agreement includes bespoke provisions for an additional charge based on a proportion of passenger footfall numbers. We believe that this provision exists in the Lease for the Station between Network Rail and First Capital Connect (although of course we are not party to this lease, nor did we know the provisions of this lease at the bidding stage), we also understand that First Capital Connect Limited are negotiating with the current beneficiary Midland Mainline Limited with a view to incorporating this bespoke provision in their Station Access Agreement by way of an amending agreement.

East Midlands Trains Limited is in the position of being asked to agree to an additional charge to use the station which was not apparent to Stagecoach when it was bidding for the franchise. This additional charge has a direct impact on the p&l of the new franchise and there is no mechanism in the franchise agreement to offset this unforeseen charge. We are therefore seeking an access agreement for the station on the standard ORR templated terms (and on the terms against which Stagecoach bid, and which the current Franchisee Midland Mainline Limited enjoy) through this application.

**3.3 Departure from ORR's template station access contract** Please set out here, with reasons, any areas where the drafting of the proposed contract omits, amends or adds to the ORR's published template station

access contract (as appropriate, cross-referencing to the answers below). Wherever the proposed contract contains a new process (e.g. a self-modification provision) the ORR will wish to see a flowchart illustrating that the process is robust, internally consistent and leaves no loose ends

There are no proposed departures from the ORR's template by East Midlands Trains Limited.

**3.4 Duration of contract** Please indicate the commencement date sought for the proposed contract, and provide justification for the proposed duration if appropriate

The Agreement is proposed to commence at the start of the new East Midlands Franchise on 11<sup>th</sup> November 2007. The agreement will be for the duration of the Franchise.

#### 4. The expression of access rights and the consumption of capacity

**4.1 Benefits** Please set out what specific benefits will result from the proposed contract. In particular, please describe any new rights sought or significant changes in the facilities or services to be used, their benefits to passengers and any impact on existing beneficiaries.

The Agreement will allow the service currently operated by Midland Mainline Limited to continue to call at the station from the start of the new franchise. As there are no changes to the existing train service from the start of the new franchise there will be no effect on either the Station Facility Owner or any other beneficiaries.

**4.2 Adequacy** Please set out to what extent and by what process (if any) the applicant has satisfied himself that the facilities and services required can be supplied at the station in question.

All infrastructure that East Midlands Trains require is already in existence at the station, and the services that East Midlands Trains wishes to stop at the station from the start of the new franchise are the same as those currently operated by the incumbent franchisee Midland Mainline Limited.

**4.3 Franchise obligations** Please indicate the extent to which the use of the station in the proposed contract is necessary to fulfil obligations under a franchise agreement.

It is a Condition Precedent of the Franchise Agreement that the Franchisee is or will be a party to Network Agreements. These Network Agreements are defined (amongst others) as "the Access Agreements (and associated Collateral Agreements) in the agreed terms in respect of the Stations and Franchisee Access Stations..."

**4.4 Public funding** Please indicate whether (and if so to what extent) the services in the proposed contract are subject to financial support from central or local government (other than the Secretary of State), and provide a point of contact at that body

N/A

**4.6 General guidance given by the Secretary of State and/or Scottish Ministers** Please state here any general guidance given by the Secretary of State or the Scottish Ministers considered relevant to this application and why

The Franchisee is required to stop services at Luton Airport Parkway and in bidding for the Franchise, Stagecoach has been required to rely on the information contained in the bidding data room.

## 5. Charges

Please indicate how, and explain the reasons for, the proposed charges were determined and in particular how the principles outlined in ORR's published guidance on station charges<sup>1</sup> have been applied, providing supporting documentary evidence where necessary.

We understand that the proposed additional charges arise as a result of a provision in the Station Lease between First Capital Connect Limited and Network Rail, although this bespoke provision is not reflected in the existing Station Access Agreement between First Capital Connect Limited and Midland Mainline Limited.

## 6. Enhancement

**6.1 Enhancement details** Where the proposed contract provides for the delivery of any station enhancements, or the services in the proposed contract are predicated on any planned station 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 station change procedure in the station access conditions (Part C) has been completed (where appropriate, by reference to submissions made under the ORR's enhancement reporting framework)

N/A

**6.2 Enhancement charges** Please confirm that the arrangements for the funding of any station enhancements are consistent with the ORR's enhancement framework, and summarise the level and duration of payments, and the assumed rate of return (see Chapter 18, *The Periodic Review of Railtrack's Access Charges: Final Conclusions, Volume 1*, Office of the Rail Regulator, London, October 2000)

N/A

## 7. Other

**7.1 Associated applications to the ORR** Please indicate whether this application is being made in parallel with, or relates to, any other current or proposed applications to the ORR (e.g. in respect of track, station or light maintenance depot access contracts or agreements)

A track Access Agreement is currently being negotiated between Network Rail and DFT to allow East Midlands Trains to operate the services. In parallel East Midlands Trains is applying for new Station Access Agreements at all stations in the new Franchise where it will be a beneficiary.

**7.2 Supporting information** Please indicate here any further justification or relevant information in support of the application, including a list and explanation of any other material being submitted (and supply copies with the application)

Three copies of the proposed agreement are included, along with a copy of the existing Station Access Agreement between First Capital Connect Limited and Midland Mainline Limited taken from the bidding data room.

**7.3 Side letters and collateral agreements** Please confirm here that the whole of the proposed contract between the parties has been submitted with this application and that there are no side letters or other documents which qualify or otherwise affect the proposed access contract

Confirmed.

**7.4 Confidentiality exclusions** Please indicate clearly any elements in the application and the proposed contract that the applicant would wish to exclude from wider consultation on the grounds of confidentiality specified in section 71(2) of the Railways Act 1993, and provide a full justification for each instance by reference to those statutory grounds. Subject to its decision on such exclusions, it is the ORR's intention to

<sup>1</sup> e.g. *A Fair Deal: Guidelines on Adjustments to Station Long Term Charges*, ORR, London, 1998  
<http://www.rail-reg.gov.uk/upload/pdf/76.pdf>

publish this application and the proposed contract on the ORR website. (NB under the process established by Schedule 4 of the Railways Act 1993, the ORR is obliged to send a copy of the application **in full** to the facility owner)

None.

## 8. 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 (including section 17), 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*

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) ...

## 9. Submission

### 9.1 What to send

Please supply, in hard copy, the signed top copy of this application form, three copies of the proposed draft contract, copies of any documents incorporated by reference (other than established standard industry codes or other instruments) and any other attachments, supporting documents or information.

Please also supply the application, the proposed contract and, insofar as it is 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).

### 9.2 Where to send it

Head of Stations and Depots  
Directorate of Access, Planning and Performance  
Office of Rail Regulation  
1 Kemble Street  
LONDON  
WC2B 4AN