

Application for the Office of Rail Regulation's approval of an amendment to an HS1 passenger framework agreement under The Railways Infrastructure (Access and Management) Regulations 2005

1. Introduction

This form should be used when making an application to the Office of Rail Regulation (ORR) for provisional approval of a proposed amendment (agreed by both parties) to an existing HS1 passenger framework agreement under The Railways Infrastructure (Access and Management) Regulations 2005 ("the Regulations"). Where a pre-application consultation is to be undertaken prior to application to ORR, this form should be completed up to section 6.4 to inform potentially affected parties of the proposed amendment. For applications for ORR's provisional approval, the remainder of the form should be completed before making an application to ORR for provisional approval. Where an application to ORR is to be made without undertaking a pre-application consultation, the form should be completed fully before submission. Having taken account of our comments, the parties may then wish to submit an amendment formally for ORR's approval under the Regulations.

This form sets out our standard information requirements for considering such applications. It cross-refers throughout to our criteria and procedures ("C&Ps") and where appropriate to the Industry code of practice for track access application consultations ("the Code of Practice"), which is annexed to the C&Ps. The C&Ps explain the process and timing for our consideration of access applications and discuss the issues we will need to consider. Applicants are strongly encouraged to read the C&Ps and the Code of Practice before making an application.

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 C&Ps in this respect. We will be happy to discuss prospective applications.

A copy of this form can be accessed electronically and downloaded via the ORR website at <http://www.rail-reg.gov.uk/server/show/nav.2251>.

2. The application

2.1 Title of proposed amendment:

Second Supplemental Agreement to the Framework Track Access Agreement for Passenger Services between HS1 Limited and London & South Eastern Railway Limited as amended on 17 August 2011

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

<u>Facility Owner</u>	<u>Beneficiary</u>
Company: HS1 Ltd	Company: London & South Eastern Railway Ltd
Contact individual: Chinua Labor	Contact Individual: Clare Kingswood
Job title: Regulatory Contracts Manager	Job title: Access Contracts Team Manager
Address: 73 Collier Street, London N1 9BE	Address: Friars Bridge Court 41-45 Blackfriars Road London SE1 8NZ
Telephone number: 0207 014 2758	Telephone number: 0207 620 5211 Fax number: 0207 620 5547
E-mail : chinua.labor@highspeed1.co.uk	E-mail: clare.kingswood@southeasternrailway.co.uk

2.3 Licence and railway safety certificate: please state whether the beneficiary intends to operate the services itself or have them operated on its behalf.

Please state whether the proposed operator of the services (a) holds a valid European licence and Statement of National Regulatory Provisions for operating the proposed services in Great Britain under the Railway (Licensing of Railway Undertakings) Regulations 2005, and (b) has 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 which the proposed operator has reached in obtaining a licence, exemption and/or safety certificate (as the case may be).

London & South Eastern Railway Ltd (the "**Train Operator**") holds a valid European licence and Statement of National Regulatory Provisions for operating the proposed services in Great Britain under the Railway (Licensing of Railway Undertakings) Regulations 2005, and has a valid safety certificate under the Railways and Other Guided Transport Systems (Safety) Regulations 2006.

3. The proposed amendment

3.1 Executive summary: please provide an executive summary of the proposed contract. This should cover the services, the commercial terms, and the applicants' 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): **3.29**

- where there is an existing agreement in respect of the services in question, any differences between the existing agreement and the proposed contract (e.g. calling patterns, frequency, routes, rolling-stock, commercial terms etc); **3.29**
 - any aspects in which the proposed amendment contains bespoke provisions departing from the published framework agreement, or in respect of Schedule 5, departs from ORR's model passenger contract; and **6.2**
 - 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 relevant safety authorisation and the train operator's safety certificate). **4.11**
- 4.8-4.10**

HS1 Limited ("**HS1 Ltd**") and the Train Operator propose to submit to ORR an application under the Railways Infrastructure (Access and Management) Regulations 2005 for approval of an amendment to the Framework Track Access Agreement ("**the Framework Agreement**") dated 14th August 2009 as amended on 17 August 2011 between the Train Operator and HS1 Ltd. (the "**Supplemental**").

The main purpose of the Supplemental is as follows:

1. To increase the Firm Train Slots in order to operate additional services during the period of the London Olympic Games (27 July 2012 to 13 August 2012) & Paralympic Games (29 Aug 2012 to 10 Sept 2012) ("**Amendment 1**"). This will require an alteration to:
 - I. Table 2.1 of Schedule 5 of the Framework Agreement only during the period of the London Olympic and Paralympic Games.
 - II. Part 2 of Schedule 4 of the Framework Agreement only during the period of the London Olympic and Paralympic Games taking into account the Service Group to/from St. Pancras International & Stratford International.
2. To increase the Firm Train Slots in order to operate an additional Sunday service from the Principle Change Date 2011 for the duration of the Framework Agreement. ("**Amendment 2**"). This will require an alteration to Table 2.1 of Schedule 5 of the Framework Agreement for the duration of the Framework Agreement.
3. To introduce a provision to allow LSER to spot bid for services above the quantum captured in Table 2.1 of Schedule 5 of the Framework Agreement ("**Amendment 3**"). This will require a Contingent Right provision in Schedule 5 of the Framework Agreement.

3.2 Departure from HS1's template framework agreement or Schedule 5 of ORR's model passenger contract: please set out here, with reasons, any areas where the drafting of the proposed contract omits, amends or adds to HS1's published template framework agreement or Schedule 5 of ORR's model passenger contract (as appropriate, cross-referencing to the answers below). Wherever the proposed contract contains a new process, ORR will wish to see a flowchart illustrating that the process is robust, internally consistent and leaves no loose ends.

Amendment 1: The proposed amendment to Table 2.1 for the period of the London and Paralympic Games is being made without further changes to the remainder of Schedule 5 which would have brought the schedule closer to the ORR model contract.

Amendment 2: The proposed amendment to Table 2.1 for the period of Framework Agreement is being made without further changes to the remainder of Schedule 5 which would have brought the schedule closer to the ORR model contract.

Amendment 3: The proposed amendment to introduce a Contingent Right provisions is being made without further changes to the remainder of Schedule 5 which would have brought the schedule closer to the ORR model contract.

3.3 Duration of amendment: please state the commencement date sought for the proposed amendment, and provide justification for the proposed duration, where contracts would be for longer than five years. **4.37**

The proposed commencement date of the proposed amendments are:

Amendment 1: During the period of the London Olympic (12 August 2012 to 13 August 2012) and Paralympic Games (29 Aug 2012 to 10 Sept 2012).

Amendment 2: From the date the ORR approves the Supplemental – Effective Date being Principle Change Date 2011.

Amendment 3: From the date the ORR approves the Supplemental.

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 amendment. In particular, please describe any new rights sought or significant changes in the pattern of services, their benefits to passengers and their impact on existing operators. **4.22-4.27**

Amendment 1: The amendment will provide Firm Rights to train services required to meet the operational demands during the period of the London Olympic & Paralympic Games.

Amendment 2: The provision will provide a Firm Right to an additional Sunday service from Faversham to St. Pancras International station.

Amendment 3: The introduction of the provision will allow LSER to Spot Bid for Special/Seasonal events under the Framework Agreement.

4.2 Congested infrastructure: please state whether the part(s) of the network to which this application relates have been declared congested by the infrastructure manager, under regulations 23-25 of Regulations. **4.38-4.39**

No part or parts of the HS1 network has been declared congested by HS1 Ltd, under regulations 23-25 of the Railways Infrastructure (Access and Management) Regulations 2005.

4.3 Adequacy: please explain to what extent and by what process (if any) the applicants have satisfied themselves that there is sufficient network capacity for the services in the proposed amendment, and the implications for overall network performance and the infrastructure manager's maintenance and renewal activities. **4.13-4.39**

HS1 Ltd is satisfied that there is sufficient network capacity to operate these services. Network Rail (CTRL) Ltd, as an agent of HS1 Ltd, has reviewed current and future network capacity and confirms that the anticipated bid for these services from the Train Operator will be accepted with no significant alteration.

4.4 Flexing rights: please provide a general description of the extent of the infrastructure manager's flexing rights in the proposed amendment, and, the rationale for the extent of flex provided, including changes from that in the existing agreement in respect of the services in question. **3.14-3.17**

No specific flexing rights are to be applied to the additional Firm Train Slots.

4.5 Journey time protection: please describe the extent to which the proposed amendment affords or varies journey time protection to any services (by establishing maximum journey times, fastest key journey times or maximum key journey times), and explain the justification for the form and extent of protection sought by reference to ORR's criteria.

Journey time protection arrangements are not currently applied in the Framework Agreement.

4.6 Other limitations on flexibility: please describe the extent to which the proposed amendment contains any other restrictive obligations on the infrastructure manager (e.g. regular service intervals, clockface departures etc), and explain the justification for any such provisions by reference to ORR's criteria. **4.28-4.39**

The proposed additional services do not contain any restrictive obligations on HS1 Ltd as Infrastructure Manager.

4.7 Specified equipment: where the proposed amendment contains changes to specified equipment (rolling stock), please give full details, including timescales, and the extent to which the vehicle and route acceptance procedure in the HS1 Network Code (Part F) has been completed.

The proposed amendment does not seek to change the Specified Equipment.

4.8 Franchise obligations: please explain the extent to which the services in the proposed amendment are necessary to fulfil obligations under a franchise or concession agreement.

Amendment 1: The additional services being given effect are necessary in order for LSER to fulfil their franchise obligation.

Amendment 2: The additional service being given effect to by the Supplemental is necessary in order to fulfil obligations under the Integrated Kent Franchise Agreement (Service Level Commitment 2). They are not necessary in order to fulfil obligations under a concession agreement.

Amendment 3: Not Applicable for this application.

4.9 Public funding: please state whether (and if so to what extent) the services in the proposed amendment are subject to financial support from central or local government (other than the Department for Transport or Transport Scotland), and provide a point of contact at that body. **NB: this applies to GB operators only.**

Not applicable for this application.

4.10 Consumer organisations: please state whether (and if so to what extent) the services in the proposed contract have been discussed with Passenger Focus and London TravelWatch, and any other relevant consumer body, whether domestic or international, and provide copies of any relevant correspondence.

3.44

Amendment 1: LSER have carried out consultation on the timetable changes within this Supplemental with Passenger Focus and London Travelwatch

Amendment 2 & 3: The proposed Supplemental has not been discussed with Passenger Focus, London TravelWatch, or any other consumer body prior to this consultation but both Passenger Focus and London Travelwatch will be specifically consulted by the Operator during this process.

4.11 Route utilisation strategies (RUSs) or equivalent: if applicable, please also state which RUSs or equivalent are considered relevant to this application and whether the proposed rights are consistent with that RUS or equivalent (as appropriate). If the proposed rights are not consistent, please state the reasons for this.

4.3

Not applicable for this application.

5. Incentives

5.1 Charges and performance: please set out, and explain the reasons for, any instances where the proposed contract departs from the charging and/or performance regimes established by ORR's initial review of charges (or subsequent interim reviews) as reflected in HS1's template framework agreement, including the financial implications (e.g. establishment of an access charge supplement or rebate).

5.1-5.16

Not applicable for this application.

5.2 Train operator performance: please describe any planned initiatives associated with the operation of the services in the proposed amendment aimed at improving the train operator's own performance.

Not applicable for this application.

5.3 Infrastructure manager performance: please describe any planned initiatives associated with the operation of the services in the proposed amendment aimed at improving the infrastructure manager's own performance.

The proposed amendment does not include or imply any initiatives aimed at improving HS1 Ltd's own performance.

5.4 Performance regime issues

5.15-5.16

Changes to Schedule 8

- Where applicable, please provide justification for any changes to Schedule 8 of the framework agreement in the proposed amendment. If necessary, please provide any relevant information in support of the changes proposed.

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Not applicable for this application.

6. Other

6.1 Associated applications to ORR: please state whether this application is being made in parallel with, or relates to, any other current or proposed applications to ORR (i.e. in respect of other track framework agreements).

This application is not being made in parallel with, nor does it relate to, any other current or proposed applications to the ORR from HS1 Ltd.

6.2 Supporting information: please state 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)

No further information is submitted in respect of this application.

6.3 Side letters and collateral agreements: please confirm here that the whole of the proposed amendment between the parties has been submitted with this application and that there are no side letters or other documents which purport to qualify or otherwise affect the proposed amendment.

6.18

We confirm that the whole of the proposed amendment between the parties has been submitted with this application and that there are no side letters or other documents which purport to qualify or otherwise affect the proposed amendment.

6.4 Confidentiality exclusions: where applicable, please indicate clearly what elements of the application have been excluded, on the grounds of confidentiality, from the version of the proposed amendment sent to consultees for the pre-application consultation process (if undertaken). Alternatively, where an application has not been subject to pre-application consultation, the applicants should indicate what elements of the application and proposed amendment they would wish ORR to exclude from publication following its decision.

3.31-3.37

Code of Practice

15-18

Applicants should be aware that ORR will make the final decision on what information is excluded from publication on its public register and website (following its decision on whether to approve this application) having regard to the grounds for confidentiality set out the C&Ps. Accordingly, where the applicants make

exclusions prior to pre-application consultation, they should provide a full justification for each instance by reference to those grounds. ORR will consider these justifications when making its decision on whether the information should be excluded from the public register and publication elsewhere. Further guidance on confidentiality is provided in the Code of Practice.

Not applicable for this application.

Note: The remainder of this application should not be completed until after a pre-application consultation has been carried out in line with the Code of Practice, unless the applicants consider that such a consultation is not appropriate.

7. Details of the pre-application consultation

**Code of
Practice
14-19**

7.1 Please confirm here that a pre-application consultation been carried out in line with the Code of Practice, and:

- list all train operators, franchising authorities and other parties that you have consulted, stating which parties, if any, made representations (other than nil returns) in response and attach their responses and any associated documentation to this form; and
- state the period allowed for the consultation and, if less than 28 days, please explain the reasons for this.

If no, please explain why, having regard to paragraphs 13-19 of the Code of Practice and, if the beneficiary is a franchised or concessionary train operator, please confirm whether it has consulted separately and obtained the relevant franchising authority's agreement to the proposed amendment.

7.2 Resolved issues: please detail any issues raised in response to the consultation that have been resolved to the satisfaction of the consultee. You may wish to refer to responses attached to this form.

**Code of
Practice
24-29**

7.3 Unresolved issues: please detail any issues raised in response to the consultation that have not been resolved to the satisfaction of the consultee, including any correspondence with that consultee. You may wish to refer to responses attached to this form. Please explain why you do not think these issues should preclude ORR's approval of the application.

**Code of
Practice
24-29**

7.4 Please explain any aspects of the application that have changed as a result of the consultation and why they have changed.

7.5 Additional supporting information Please list here any further information being provided to ORR to support the application that was not made available to consultees in any pre-application consultation held as part of this application and listed in section 7.2. If the applicants wish ORR to consider excluding this information from subsequent publication they should justify why the information is of a confidential nature, following the guidance provided in section 7.4 above.

8. Certification

Warning: Under Regulation 37 of the Regulations, any person who, in giving any information or making any application under or for the purposes of any provision of the Regulations, 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 **6.19**

I certify that the information provided in this form is true and complete to the best of my knowledge and that the facility owner and the beneficiary are willing to enter into the attached proposed amendment as submitted

<u>Infrastructure Manager</u>	<u>Train Operator</u>
Signed:	Signed:

Date:

Date:

Name (in caps):

Name (in caps):

Job title:

Job title:

For (company):

For (company):

9. Submission

9.1: what to send

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

6.26

Please also supply the application, the proposed amendment 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

Manager, Track Access Team
Directorate of Railway Markets and Economics
Office of Rail Regulation
One Kemble Street
London
WC2B 4AN

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