

Collateral Agreement

Between

M40 Trains Limited

As M40 Trains

And

West Midlands Trains Limited

As Beneficiary

Relating to

Warwick Parkway Station (SSA/04/26/01/01)

COLLATERAL AGREEMENT

THIS AGREEMENT is made on

9 December

2017

BETWEEN:-

- (1) M40 TRAINS LIMITED, (company registration no. 03005018) ("M40 Trains") whose registered office is at ARRIVA PLC, 1 Admiral Way, Doxford International Business Park, Sunderland, SR3 3XP; and
- (2) The party whose name and address and other particulars are specified in paragraph 1 of Schedule 1 (the "Beneficiary").

WHEREAS:-

- (A) The Beneficiary has entered into the Station Access Agreement with the Station Facility Owner whereby the Station Facility Owner granted to the Beneficiary permission to use the Station for or in connection with the operation of trains by itself or its Associates.
- (B) M40 Trains has certain obligations to the Station Facility Owner in respect of the Station.
- (C) M40 Trains has agreed with the Beneficiary to undertake on the terms and conditions of this Agreement to perform certain obligations in respect of the Station set out in the Station Access Conditions.

IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement, where the context admits:

"Collateral Commencement Date" means the date on which the condition precedent in Clause 2.1 is satisfied;

"Station Access Conditions" means the Station Access Conditions and the annexes referred to in paragraph 2 of Schedule 1;

"Station Access Agreement" means the agreement referred to in paragraph 3 of Schedule 1 for permission to use the Station, as such agreement shall be modified from time to time; and

"Station Facility Owner" means the person whose name and registered office are specified in paragraph 4 of Schedule 1.

1.2 References to Schedules, etc.

References to this Agreement include its schedules and, unless otherwise indicated, references to recitals, Clauses, Sub-Clauses, Schedules and paragraphs are to recitals, clauses and sub-clauses of, and schedules to, this Agreement and paragraphs of such schedules. References to any Condition shall be construed as a reference to the relevant Station Access Condition.

1.3 Headings

Headings shall be disregarded in construing this Agreement.

1.4 Station Access Conditions

Where the context admits, words and expressions defined in (or of which the meanings are construed) the Station Access Conditions shall bear the same meanings in this Agreement and the rules of interpretation set out in the Station Access Conditions shall apply throughout this Agreement, and where the context requires, references to the Station Access Conditions in such words, expressions and rules shall be construed as references to this Agreement.

2. CONDITION

2.1 Condition precedent

Subject to Clause 2.2.1, the provisions of this Agreement shall have effect upon the Station Access Agreement becoming fully effective and enforceable in accordance with its terms;

2.2 Entry into effect

2.2.1 Clauses 1, 2, 3.1, 6, 7 and 8 shall come into effect and be binding on the parties immediately upon signature of this Agreement.

2.2.2 All other clauses shall come into effect and be binding on the parties on the Collateral Commencement Date.

2.3 Non-satisfaction

If the condition precedent in Clause 2.1 shall not have been satisfied in full on or before the Commencement Date, as defined in the Station Access Agreement, this Agreement shall lapse and neither party shall have any liability to the other under or in respect of it.

3. STATION ACCESS CONDITIONS

3.1 Incorporation

The Station Access Conditions are incorporated in and shall form part of this Agreement.

3.2 Performance

During the term of this Agreement, each party shall duly and punctually perform, observe and comply with:

3.2.1 its obligations to the other set out in the Station Access Conditions as incorporated in this Agreement pursuant to Clause 3.1; and

3.2.2 its other obligations under a Relevant Agreement insofar as failure to perform such obligations would, or would be likely to, operate to the detriment of the other party hereto.

4. TERM

4.1 By reference to Station Access Agreement

Subject to Clause 2.3, this Agreement shall terminate on the lapse, expiry or termination by any other means of the Station Access Agreement.

4.2 Notice

The Beneficiary shall forthwith notify M40 Trains of the occurrence of any event referred to in Clause 4.1.

4.3 Exclusion of common law termination rights

This Agreement shall terminate only in the circumstances set out in this Clause 4 and Clause 6.6. The parties shall have no other rights to terminate this Agreement whether pursuant to its terms or at law

5. TERMINATION OF STATION ACCESS AGREEMENT AND STATION FACILITY OWNER'S INTEREST

In the event that an Insolvency Event (as defined in the Station Access Agreement) occurs in relation to the Station Facility Owner and is continuing, the Beneficiary shall promptly upon the written request of M40 Trains exercise any rights it may have under the Station Access Agreement to terminate it in accordance with its terms on such minimum period of notice as the Station Access Agreement may permit.

6. WHOLE AGREEMENT, VARIATION AND ASSIGNMENT

6.1 Whole agreement

This Agreement contains the entire agreement between the parties in relation to the subject matter of this Agreement and supersedes all prior agreements and arrangements in respect thereof. This Clause 6.1 shall not have the effect of excluding any term implied by law.

6.2 Counterparts

This Agreement may be executed in counterparts, each of which will constitute one and the same document.

6.3 Amendment

6.3.1 No amendment of this Agreement (other than as expressly otherwise contemplated by this Agreement) shall be effective unless in writing and signed by duly authorised representatives of the parties;

6.3.2 The Beneficiary shall as soon as reasonably practicable notify M40 Trains of any amendments made to the Station Access Agreement (other than the Station Access Conditions) insofar as they affect its obligations referred to in Clause 3.2.2.

6.4 Assignment

Subject to Clauses 6.5 and 6.6, this Agreement shall be binding on and enure to the benefit of the parties and their successors and permitted assigns or assignees but neither party may assign or transfer all or any part of its rights or obligations under this Agreement without the prior written consent of the other party.

6.5 Novation of Beneficiary's rights and obligations

If the Beneficiary is a franchise operator, each party agrees to take all such steps as may be necessary to give effect to the novation of the Beneficiary's rights and obligations under this Agreement by and in favour of the Secretary of State or his nominee, if and to the extent necessary to enable the Secretary of State to perform his duty to secure the provision of services for the carriage of passengers by railway

pursuant to section 30 of the Act (including by means of an exercise of his powers under section 51 of the Act), provided that any such novation shall be on terms that:

- 6.5.1 the Station Access Agreement is novated to the Secretary of State or his nominee before or at the same time as this Agreement is novated to the Secretary of State;
- 6.5.2 the other party shall not be released from any accrued but unperformed obligation, the consequences of any breach of this Agreement which is the subject of arbitration or litigation between the parties or any liability in respect of duties performed under this Agreement prior to, or as at the date of, any such novation (except to the extent that the Secretary of State or his nominee agrees to assume and be responsible for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and
- 6.5.3 neither the Secretary of State nor his nominee shall be obliged, in connection with the novation, to agree to assume and be responsible for any unperformed obligation, liability or consequences of a breach referred to in Clause 6.5.2.

6.6 Termination and novation of M40 Trains' rights and obligations

6.6.1 **Termination**

Without prejudice to accrued rights and obligations, M40 Trains' rights and obligations under this Agreement shall terminate if both the following occur:

- (a) M40 Trains disposes of its freehold or leasehold interest in the Station to any transferee who is not at that time an Affiliate of M40 Trains; and
- (b) such transferee offers to assume M40 Trains' future obligations under this Agreement (provided that such transferee shall reasonably be acceptable to the Beneficiary).

6.6.2 **Novation**

M40 Trains undertakes to the Beneficiary that it shall take all such steps as may be reasonably necessary to novate (subject to the consent of the Beneficiary not to be unreasonably withheld or delayed) M40 Trains' rights and obligations under this Agreement to the person who has acquired its freehold or leasehold interest in the Station.

6.7 **Sub-contracting and agency**

The parties may sub-contract their respective rights and obligations under this Agreement provided that no such action shall release a contracting party of its obligations under this Agreement and such party shall remain responsible for the acts and omissions of any sub-contractor as if they were the acts and omissions of that party.

7. NOTICES AND COMMUNICATIONS

7.1 Any notice or other communication under or in connection with this Agreement shall be in writing and shall be delivered by hand or recorded delivery or sent by pre-paid first class post, or by facsimile, to the party on whom the notice is to be served at the relevant address for service set out in Schedule 2, or to such other address in the United Kingdom as that party may specify by notice to the other party to this Agreement.

7.2 Any such notice or other communication shall be deemed to have been received by the party to whom it is addressed as follows:-

7.2.1 if sent by hand, recorded delivery or pre-paid first class post, when so delivered; and

7.2.2 if sent by facsimile, upon sending (where such transmission occurs before 17.00 hours on the day of transmission) and (in any other case) on the day following the day of transmission, provided that the sender obtains, and if required to do so by the person to whom the notice is alleged to have been sent produces, confirmation of uninterrupted transmission by a transmission report generated by the facsimile machine in question, or other sufficient evidence of transmission.

8. GOVERNING LAW AND SUBMISSION TO JURISDICTION

8.1 Governing law

This Agreement shall be governed by and construed in accordance with English law.

8.2 Jurisdiction

Subject to the provisions of the Station Access Conditions the parties irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any dispute which may arise out of, or in connection with, this Agreement.

IN WITNESS whereof this Agreement has been duly executed.

SCHEDULE 1
Contract Particulars

1. Beneficiary

Name: West Midlands Trains Limited
(Company number: 09860466)

Registered office: 2nd Floor St Andrew's House
18-20 St Andrew Street
London
EC4A 3AG

2. Station Access Conditions

- (a) The M40 Station Access Conditions 2001; and
- (b) the annexes relating to the Stations listed in Appendix 1 to Schedule 1

as each is modified in respect of the Station from time to time with the approval of the ORR and as each is incorporated in the Station Access Agreement.

3. Station Access Agreement

Access Agreement dated *9 December* 2017 between the Station Facility Owner and the Beneficiary, granting the Beneficiary permission to use the stations listed in Appendix 1 as modified from time to time with the approval of the ORR.

4. Details of Station Facility Owner:

Name: The Chiltern Railway Company Limited
(Company number: 03007939)

Registered office: Arriva Plc
Admiral Way
Doxford International Business Park
Sunderland
SR3 3XP

APPENDIX 1 TO SCHEDULE 1

Warwick Parkway Station (SSA/04/26/01/01)

SCHEDULE 2

Addresses for Service

1. **Address for service on M40 Trains Limited**

(Attention: Company Solicitor)

Address: M40 Trains c/o Arriva plc
 1 Admiral Way
 Doxford International Business Park
 Sunderland, Tyne and Wear
 SR3 3XP

Email: companysecretary@arriva.co.uk

2. **Address for service on the Beneficiary**

(Attention: Station Contracts Manager)

Address: West Midlands Trains Limited
 5th Floor
 102 New Street
 Birmingham
 B2 4HQ

SIGNED by DAVID PENNEY
on behalf of M40 TRAINS LIMITED

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SIGNED by
on behalf of WEST MIDLANDS
TRAINS LIMITED

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SIGNED by)
on behalf of **M40 TRAINS LIMITED**)

SIGNED by)
on behalf of **WEST MIDLANDS**)
TRAINS LIMITED)

A handwritten signature in black ink, appearing to be 'ATL', is written next to the signature line for West Midlands Trains Limited.