

Dated

2021

SECRETARY OF STATE FOR TRANSPORT

WEST MIDLANDS RAIL LIMITED

COLLABORATION AGREEMENT
relating to rail operation in the
West Midlands

Contents

	Clause	Page
1	Definitions	1
2	Commencement, Term And Termination of 2017 Collaboration Agreement.....	5
3	Collaboration Objectives	6
4	Purpose of the Agreement	6
5	Secretary of State Duties and Reserved Matters	6
6	General Provisions.....	6
7	Meeting Structure.....	7
8	Commercial and Contract Management	7
9	Funding	8
10	Changes Proposed by WMRE	8
11	Attendance at Governance Meetings.....	10
12	Assignment, Transfer and Novation.....	10
13	Termination	11
14	Consequences of Termination	11
15	Confidentiality.....	11
16	Freedom of Information.....	13
17	Dispute Resolution Procedure	14
18	Notices	15
19	Waiver	16
20	Partial Invalidity	16
21	Further Assurance.....	16
22	Rights of Third Parties.....	16
23	Variation	17
24	Cumulative rights	17
25	No Partnership	17
26	Entire Agreement	17
27	Counterparts	17
28	Governing Law	17
1	Objectives	20
2	Joint Board Responsibilities	21
3	Management Team Responsibilities.....	22
4	Part 1 - Business Units Map	26
	Part 2 - WMRE Area Map	27
5	Funding Outputs.....	28

Between

- (1) **The Secretary Of State For Transport** whose principal place of business is at Great Minster House, 33 Horseferry Road, London, SW1P 4DR (**Secretary of State**); and
- (2) **West Midlands Rail Limited** (No. 08991160) whose registered office is at 16 Summer Lane, Birmingham B19 3SD and whose trading name is West Midlands Rail Executive (**WMRE**).

Whereas

- (A) The Secretary of State has confirmed his support for working together with WMR to develop proposals for how, by adopting a collaborative approach, local decision making could play a central role in defining future rail services in the West Midlands (**Agreed Position**).
- (B) In furtherance of the Agreed Position the Parties entered into a Collaboration Agreement on 6 April 2017 relating to rail operation in the West Midlands and in particular the operation of the rail franchise agreement for the West Midlands entered into by the Secretary of State on 8 September 2017.
- (C) The aforesaid rail franchise agreement is due to terminate during 2021 and is to be substituted by a new contract to be entered into by the Secretary of State providing for the operation of rail passenger services inter alia in the West Midlands.
- (D) This Agreement sets out revised terms upon which the Parties have agreed to continue to collaborate in relation to rail operation in the West Midlands in place of the aforesaid Collaboration Agreement.

It is agreed

1 Definitions

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

2017 WM Franchise Agreement means the franchise agreement entered into between the Secretary of State and West Midlands Trains Limited on 8 September 2017 for the operation of services in the West Midlands designated by the Secretary of State pursuant to Section 23 of the Act as franchise services

2021 WM National Rail Contract means the agreement to be entered into by the Secretary of State that will provide for the continued operation of the rail services provided under the 2017 WM Franchise Agreement following its termination

Act means Railways Act 1993 (as amended from time to time)

Business Units or **BU** means:

- (a) the West Midlands Railway Business Unit (WMRBU) and
- (b) the London Northwestern Railway Business Unit (LNRBU)

as established during the period of the 2017 WM Franchise Agreement

Commencement Date means the date of this Agreement

Contract Year means any period of twelve (12) months, beginning on 1 April and ending on 31 March, except that the first and last Contract Years under the 2021 WM National Rail Contract and/or under this Agreement may be for a period of less than twelve (12) months

Control Period means a railway investment period (currently a five year period from 2019 to 2024 for Control Period 6)

CEDR means the Centre for Effective Dispute Resolution

Confidential Information has the meaning given in clause 15

Coventry Corridor and Stafford Corridor means [the route coloured green and titled West Coast Separable Business Unit (WMR area) on the plan set out in part 1 of Schedule 4] **[Note: to be amended in line with amended plan]**

DfT or **Department for Transport** means the Department for Transport which is the organisation that discharges the duties of the Secretary of State

DfT Annual Funding Amount means:

- (c) in respect of each Contract Year containing 13 Reporting Periods, an aggregate amount of £500,000 (five hundred thousand pounds sterling) and
- (d) in respect of any Contract Year containing less than 13 Reporting Periods (which for the avoidance of doubt, shall apply to the first Contract Year being the period from the Start Date until the end of the last Reporting Period in the first Contract Year) an aggregate amount of not less than:

A x (B/13) where:

A means £500,000 (five hundred thousand pounds sterling) and

B means the number of Reporting Periods in the relevant Contract Year

Dispute has the meaning given in clause 17.1

Dispute Resolution Procedure means the procedure set out in clause 17

Environmental Information Regulations means the Environmental Information Regulations 2004 and any subordinate legislation made under them together with any guidance and/or codes of practice issued by relevant Government Department in relation to such legislation

Freedom of Information Act means the Freedom of Information Act 2000 and any subordinate legislation made under this Act together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation

Funding Outputs means the outputs set out in schedule 5 of this Agreement

Initial Dispute Board has the meaning given in clause 17.3

Insolvency Event means one of the following events:

- (a) a court makes an order that WMRE be wound up or a resolution for a voluntary winding-up of WMRE is passed
- (b) a receiver or manager in respect of WMRE is appointed
- (c) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 in respect of WMRE or
- (d) an administration order is made or an administrator is appointed in respect of WMRE

Joint Board means the board of senior representatives of each Party intended to meet on a quarterly basis, as referred to in clause 7.2

Joint Funding Account has the meaning given to it in clause 9.1

Law includes any enactment, subordinate legislation, rule, regulation, order, directive or other provision, including those of the European Community, and any judicial or administrative interpretation or application thereof, which has, in each case, the force of law in the United Kingdom or any part of it (including the Act, the Transport Act 2000, the Transport Safety Act 2003 and the Railways Act 2005)

LNRBU means the passenger services and station services in the London Northwestern Railway Business Unit, as identified in part 1 of schedule 4

Management Team means the management team from time to time established to perform the Management Team Responsibilities set out in schedule 3, as referred to in clause 8.1

Notice of Mediation has the meaning given in clause 17.8

Objectives means the joint objectives of the Parties as defined in clause 3

ORR means the Office of Rail and Road established by Section 15 of the Railways and Transport Safety Act 2003 and having duties and obligations as set out in the Act

Network Rail means Network Rail Infrastructure Limited, a company registered in England with registered number 02904587 whose registered office is at 1 Eversholt Street, London, NW1 2DN and any successor in title to the network or any relevant railway facility

Parties means WMRE and the Secretary of State

Purpose means the purpose defined in clause 4.1

Rail Network Enhancement Pipeline means the five stage rolling programme of investment in enhancements that has replaced the railway investment strategy and high level output specification

Reporting Period has the meaning given in the 2021 WM National Rail Contract

Request for Information means a request for information or an apparent request under the Freedom of Information Act or the Environmental Information Regulations

Reserved Matters means the following matters reserved to the Secretary of State:

- (a) decisions increasing net costs or net future costs to the Secretary of State

- (b) determination of events of default under the 2021 WM National Rail Contract
- (c) the content of the Rail Network Enhancement Pipeline and Statement of Funds Available
- (d) any action required to comply with the Secretary of State's duty under Section 30 of the Act and
- (e) enforcement against the rail operator under the 2021 WM National Rail Contract pursuant to Section 55 of the Act.

Secretary of State Duties has the meaning given in clause 5.1(a)

Statement of Funds Available means the statement issued by the Department for Transport in relation to the public funds that are or are likely to be available for delivery of the Rail Network Enhancement Pipeline

Start Date means the start date to be specified in the 2021 WM National Rail Contract

WMRBU means the passenger services and station services in the West Midlands Railway Business Unit (including station services at 2021 WM National Rail Contract stations to the west of the West Coast Main Line), as identified in part 1 of schedule 4

WMRE Annual Funding Amount means:

- (a) in respect of each Contract Year containing 13 Reporting Periods, an aggregate amount of £140,000 (one hundred and forty thousand pounds sterling) and
- (b) in respect of any Contract Year containing less than 13 Reporting Periods (which for the avoidance of doubt, applies to the first Contract Year being the period from the Start Date until the end of the last Reporting Period in the first Contract Year) an aggregate amount of not less than:

A x (B/13) where:

A means £140,000 (one hundred and forty thousand pounds sterling)

B means the number of Reporting Periods in the relevant Contract Year

WMRE Area means the West Midlands Rail Executive area shown on the map set out in part 2 of schedule 4

WMRE Change has the meaning given in clause 10.1

WMRE Fare Change has the meaning given in clause 10.2

Working Day means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London

1.2 Interpretation

Unless the context otherwise requires:

- (a) references to clauses and schedules are to clauses of, and schedules to, this Agreement;
- (b) use of any gender includes the other genders;
- (c) references to a "**company**" shall be construed so as to include any corporation or other body corporate, wherever and however incorporated or established;
- (d) references to a "**person**" shall be construed so as to include any individual, firm, company, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- (e) "**body corporate**" shall have the meaning given in section 1173 Companies Act 2006 and "**wholly-owned subsidiary**" shall have the meaning given in section 1159 Companies Act 2006;
- (f) a person is deemed associated with another person or an associated person if the person is an associate of the other person within the meaning of section 435 Insolvency Act 1986
- (g) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- (h) a reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated at any time;
- (i) headings and titles are for convenience only and do not affect the interpretation of this Agreement;
- (j) the rule known as the ejusdem generis rule shall not apply and accordingly general words introduced by the word "**other**" shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things; and
- (k) general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words.

2 Commencement, Term And Termination of 2017 Collaboration Agreement

- 2.1 This Agreement shall come into full force and effect on the Start Date.
- 2.2 This Agreement shall remain in full force and effect unless terminated by either Party in accordance with clause 13 of this Agreement.
- 2.3 For the avoidance of doubt, the Parties agree that the previous collaboration agreement entered into by them on 6 April 2017 shall expire upon the coming into force of this Agreement and further agree that clauses 9.7, 10.7 and 14 of that agreement shall not have effect in respect of that expiry. ***[Note: This clause is intended to enable continuation of the existing Joint Account Funding Account without distribution of monies***

accumulated in the Joint Funding Account, as is assumed to be the intention of the parties. It also disapplies provision in clause 14 for distribution of monies in the “Joint Savings Account” post termination, noting that the original provisions for this Account were removed in 2019 without amending that clause. The provision to terminate the existing agreement is to give contractual certainty that it has terminated, as it arguably only terminates on “expiry” of the 2017 WM Franchise Agreement (as opposed to early termination).]

3 Collaboration Objectives

- 3.1 The Parties shall collaborate with a view to achieving the objectives set out in schedule 1 (**Objectives**) for the duration of the 2017 WM Franchise.

4 Purpose of the Agreement

- 4.1 Rail services have a significant impact on the economy and lives of people living in the West Midlands. The purpose of this Agreement is to ensure meaningful local democratic influence over the operation and development of the rail network in that area and in particular to enable the Parties to collaborate on the running of rail services in that area for the benefit of passengers and the regional economy.
- 4.2 The Parties shall each use their respective reasonable endeavours to give effect to the Purpose through the operation of this Agreement.
- 4.3 The Parties shall carry out their obligations, and exercise their rights, under this Agreement with a view to achieving the Objectives and the Purpose.

5 Secretary of State Duties and Reserved Matters

- 5.1 The Parties acknowledge and agree that:
- (a) the Secretary of State has responsibilities and duties deriving by reason of statutory or regulatory requirements under Law including without limitation pursuant to the Act and in relation to the proper expenditure of public monies (**Secretary of State Duties**);
 - (b) such Secretary of State Duties must be discharged by the Secretary of State and cannot be delegated to any other persons.
 - (c) the role of WMRE in respect of such Secretary of State Duties can only be advisory.
- 5.2 Nothing in this Agreement shall fetter the discretion of the Secretary of State when carrying out the Secretary of State Duties and / or the Reserved Matters.
- 5.3 The Reserved Matters are a definitive list of matters in respect of which decisions are reserved to the Secretary of State. The Secretary of State shall be entitled to update the Reserved Matters by notifying WMRE in writing of the amendments required.

6 General Provisions

During the period of this Agreement:

- (a) WMRE shall work with the Secretary of State in partnership to manage the 2021 WM National Rail Contract, and in particular lead on matters regarding the WMRBU that are not Reserved Matters;

- (b) WMRE and the Secretary of State shall work together in a way which promotes rail as part of an integrated transport system in the WMRE Area consistent with the objectives of both Parties;
- (c) WMRE shall act as coordinator and enabler of collaboration between all Secretary of State rail-related contracts and Network Rail in the WMRE Area, working in partnership with DfT officials as appropriate in support of delivery of wider WMRE and Secretary of State objectives and operator contract obligations;
- (d) whilst recognising the constraints of the Reserved Matters, WMRE and the Secretary of State shall work together to enhance the capability of both Parties; and
- (e) the Parties shall do anything else which they jointly agree should be done.

7 Meeting Structure

- 7.1 The Secretary of State (or another Minister from the DfT) shall meet with the WMRE Board Chair and Vice Chairs on an annual basis to discuss progress in achieving the Objectives, the Purpose and the General Provisions.
- 7.2 Quarterly meetings shall take place between senior representatives of WMRE and senior representatives of the Secretary of State (**Joint Board**). The meetings shall be chaired by the Markets Director, North and shall include at least the Market Lead, Senior Commercial Manager, Commercial Manager and representatives from the Programme Director's team in Rail Infrastructure from the DfT and Executive Director WMRE and Lead on WMRBU Management. The meetings shall cover at least the current performance of the 2021 WM National Rail Contract and a forward look to strategically important matters over the forthcoming 12 months and shall be responsible for the matters set out in Schedule 2.
- 7.3 An annual meeting shall take place between the DfT's Managing Director Passenger Services and the Chair and Vice Chairs of WMRE to discuss matters relating to the performance of this Agreement, the further development of the relationship between the Parties and any other relevant rail matters relating to the WMRE area.
- 7.4 A meeting of the Management Team shall take place every four weeks. Items to be discussed at those meetings shall be agreed by the Management Team.

8 Commercial and Contract Management

- 8.1 The Parties agree that the management team established by them for the 2017 WM Franchise Agreement shall continue to perform the Management Team Responsibilities set out in schedule 3.
- 8.2 The composition and reporting structure of the Management Team shall be as set out in the diagram in the Appendix to schedule 3
- 8.3 Each Party shall continue to contribute available and relevant expertise (legal, finance, media/press/communications etc) to support the Management Team
- 8.4 The WMRE representatives at the meetings of the Joint Board and/or the WMRBU Manager are the primary conduits of information relating to any matters which may arise pursuant to the operation of the 2021 WM National Rail Contract relating directly or indirectly to the WMRE Area and they shall inform WMRE as soon as reasonably practicable on becoming aware of any such issues or matters which need to be brought to the attention of WMRE and liaise with WMRE as necessary in relation to those matters. The Secretary of State

representatives at the meetings of the Joint Board will support appropriate engagement with WMRE on the matters referred to in this clause 8.4.

9 Funding

- 9.1 WMRE shall continue to maintain the bank account in the joint names of WMRE and the Secretary of State into which (subject to compliance by WMRE with the notification provisions of this clause 9.1) the Secretary of State shall pay the DfT Annual Funding Amount and WMRE shall pay the WMRE Annual Funding Amount (the **Joint Funding Account**). Each Party shall provide notice to the other Party as soon as reasonably possible after a payment has been made by them of the amount and date of such payment. Payments shall be made:
- (a) in respect of the first Contract Year of the 2021 WM National Rail Contract, on the Start Date; and
 - (b) in respect of each subsequent Contract Year of the 2021 WM National Rail Contract, on or before the first day of the relevant Contract Year.
- 9.2 The DfT Annual Funding Amount and the WMRE Funding Amount shall be used solely in relation to the Funding Outputs and WMRE shall use all reasonable endeavours to achieve such Funding Outputs.
- 9.3 As soon as becoming aware that the DfT Annual Funding Amount has not been paid, or is not reasonably likely to be paid, in accordance with clause 9.1 of this Agreement, the Secretary of State shall notify WMRE.
- 9.4 As soon as becoming aware that the WMRE Annual Funding Amount has not been paid, or is not reasonably likely to be paid, in accordance with clause 9.1 of this Agreement, WMRE shall notify the Secretary of State.
- 9.5 Where notification is served under either clause 9.3 or 9.4, the Secretary of State and WMRE shall meet as soon as reasonably practicable to discuss how the deficit in funding can be best resolved between the Parties.
- 9.6 The Secretary of State and WMRE shall monitor and review the funding requirements under this Agreement and may reasonably amend the funding requirements under this Agreement by mutual agreement in writing. Neither Party shall be liable to the other Party to provide any funding under this Agreement beyond its respective funding commitments under clause 9.1 except where amended pursuant to this clause 9.6.
- 9.7 Where a Party fails to make payment on the due date in accordance with clause 9.1 (unless non-payment is due to the default of the other Party) interest shall accrue at the rate of 2% above the base rate of Royal Bank of Scotland plc from the due date until the date payment is received in full.
- 9.8 WMRE shall maintain the Joint Funding Account until 3 months following termination of this Agreement by whatever means and this clause 9.8 (and any other provisions necessary to give effect to it) shall survive the termination of the Agreement, irrespective of the reason for termination.

10 Changes Proposed by WMRE

[Note: The following clause has been derived from the agreed revised drafting for this clause agreed between the parties in 2019, rather than being derived from the original clause 10 of the 2017 Collaboration Agreement]

10.1 WMRE may propose and require the implementation of cost reducing, WMRE-funded or third party funded changes to the passenger services and station services provided by the WMRBU pursuant to the 2021 WM National Rail Contract (**WMRE Change**) provided always that:

- (a) where the agreement of the operator is required under the 2021 WM National Rail Contract, the WMRE Change shall be subject to such agreement of the operator;
- (b) subject to paragraph (c), the Secretary of State has a right to object to any WMRE Change that he reasonably considers is likely to have an adverse financial consequence to the Secretary of State;
- (c) the Joint Board shall decide if WMRE Change is likely to have an adverse financial consequence to the Secretary of State provided that it shall take into account any information or evidence provided by the Secretary of State in relation to such financial consequences of the WMRE Change; and
- (d) either Party may refer such decision of the Joint Board to the Dispute Resolution Procedure if it does not agree with the decision.

10.2 WMRE may propose and require the implementation of changes to fares within [the West Midlands Commuter Fares Basket (as defined in the 2021 WM National Rail Contract)] [**Note: Definition to be confirmed**] (including without limitation by requesting the use of the "flex" or changing the value of "k" in the 2021 WM National Rail Contract [**Note: References to "flex and "k" to be confirmed**] in relation to the fare controls applicable to those passenger services) (**WMRE Fare Change**) where such WMRE Fare Change does not:

- (a) have adverse consequences for the Secretary of State (including without limitation by increasing costs under the 2021 WM National Rail Contract or any rail franchise agreement, causing significant adverse changes to the Secretary of State's risk profile and by exposing the Secretary of State to the risk of successful legal challenges relating to breach of applicable public procurement legislation); or
- (b) conflict with any Secretary of State Duties.

provided always that:

- (i) where the agreement of the operator of the relevant rail services is required under the 2021 WM National Rail Contract, the WMRE Change shall be subject to such agreement of such operator;
- (ii) subject to paragraph (iii) the Secretary of State has a right to object to any WMRE Fare Change that he reasonably considers is likely to have an adverse financial consequence to the Secretary of State;
- (iii) the Joint Board shall decide if WMRE Fare Change is likely to have an adverse financial consequence to the Secretary of State or conflict with any Secretary of State Duties provided that it shall take into account any information or evidence provided by the Secretary of State in relation to such financial consequences of the WMRE Change or conflict with his Statutory Duty (as the case may be); and
- (iv) either Party may refer such decision of the Joint Board to the Dispute Resolution Procedure if it does not agree with the decision.

- 10.3 The Parties acknowledge and agree that West Midlands Combined Authority (**WMCA**) shall create and maintain a ring-fenced earmarked reserve into which all net savings generated by either WMRE Changes or WMRE Fares Changes proposed by WMRE as referred to in clauses 10.1 and 10.2 (after any required payments have been made to the operator of the relevant rail services by the Secretary of State pursuant to the 2021 WM National Rail Contract) shall be paid by the Secretary of State (the **Joint Savings Earmarked Reserve**). WMRE shall notify the Secretary of State of the value of any savings generated pursuant to this clause 10, accompanied by details of how those savings have been calculated, as and when it requires payment into the Joint Savings Earmarked Reserve (but not more frequently than once every three months and not in respect of trivial amounts), and following receipt of a valid notification of savings, the Secretary of State shall have a period of 14 days in which to make payment.
- 10.4 WMRE may (or may direct WMCA) to use the monies held in the Joint Savings Earmarked Reserve to fund WMRE Changes or WMRE Fare Changes as referred to in clauses 10.1 and 10.2 respectively. WMRE may also, with the prior written consent of the Secretary of State, direct WMCA to transfer approved amounts out of the Joint Savings Earmarked Reserve to another local authority member of WMRE designated by WMRE on the basis that those monies shall be used to improve rail passenger services and/or associated rail facilities in the WMRE Area.
- 10.5 Where the Joint Board have not decided that the WMRE Change or WMRE Fare Change is likely to have an adverse financial consequence to the Secretary of State, the Secretary of State shall consent to the transfer of approved amounts out of the Joint Savings Earmarked Reserve to the WMCA or another local authority member of WMRE designated by WMRE as set out in clause 10.4.
- 10.6 WMRE (with full assistance and cooperation from WMCA) shall be solely responsible for, and shall keep a full and accurate record of, any monies paid into and out of the Joint Savings Earmarked Reserve and shall be liable for any deficiencies identified within it (save where such deficiencies are as a consequence of the Secretary of State failing to pay net savings generated pursuant to clause 10.3 into the Joint Savings Earmarked Reserve or as a consequence of WMCA's failure to comply with its obligations). A deficiency shall be taken to have arisen where monies in the Joint Savings Earmarked Reserve are applied other than in accordance with this Agreement or as otherwise agreed by the WMRE and the Secretary of State in writing.
- 10.7 WMRE shall procure that WMCA shall maintain the Joint Savings Earmarked Reserve until 3 months following termination of this Agreement by whatever means and this clause 10.7 (and any provisions necessary to give effect to it) shall survive the termination of the Agreement, irrespective of the reason for termination.

11 Attendance at Governance Meetings

The Parties shall afford each other the opportunity to send representatives, as appropriate, to relevant governance meetings of each Party relating to matters of mutual interest (including without limitation WMRE Board meetings, DfT SIAP meetings and DfT SOAP meetings).

12 Assignment, Transfer and Novation

- 12.1 Unless required by law, neither party shall be entitled to assign or transfer its rights and/or obligations under this Agreement without the written consent of the other Party except that the Secretary of State shall be entitled to transfer his rights and/or obligations under this

Agreement to any person having the same legal capacity, power and authority of the Secretary of State.

- 12.2 WMRE may with the Secretary of State's consent assign, transfer or novate all of its rights and obligations under this Agreement to another suitable body assuming the responsibility of WMRE in respect of the delivery of rail services in the WMRE Area.

13 Termination

- 13.1 Either Party shall be entitled to terminate this Agreement with immediate effect in the event of material breach of the Agreement or fraud or gross negligence by the other Party.
- 13.2 The Secretary of State shall be entitled to terminate this Agreement with immediate effect:
- (a) where WMRE suffers an Insolvency Event; or
 - (b) in the event that WMRE ceases to be substantially representative of the local transport authorities within the WMRE Area.
- 13.3 The Parties shall be entitled to agree to terminate this Agreement where the Parties intend to enter into a new collaboration agreement which shall supersede this Agreement in which case the Parties shall consider whether it will be appropriate to enter into a new Licence of Intellectual Property Rights in respect of the branding developed by WMRE.
- 13.4 This Agreement shall terminate on the expiry or early termination of the 2021 WM National Rail Contract.
- 13.5 Notwithstanding termination of this Agreement, the provisions of this clause and of clauses 9.8 (duration of the Joint Funding Account), 10.7 (duration of the Joint Savings Earmarked Reserve), 14 (Consequences of Termination), 15 (Confidentiality) 16 (Freedom of Information), 17 (Dispute Resolution Procedure), 22 (Rights of Third Parties), 25 (No Partnership) and 28 (Governing Law) shall expressly survive such termination and continue in full force and effect along with any other clauses of and any schedules to this Agreement necessary to give full and proper effect to those clauses.

14 Consequences of Termination

- 14.1 If this Agreement is terminated or expires pursuant to clause 13, the Joint Funding Account shall be closed by WMRE after all monies standing to the credit of the Joint Funding Account have been returned by WMRE to the Parties in accordance with clause 14.2.
- 14.2 Any monies standing to the credit of the Joint Funding Account shall be distributed by WMRE within 3 months following termination of the Agreement to the Parties in proportion to their respective funding contributions as set out under Clause 9 of this Agreement. Promptly following notice by WMRE of any monies owing to the Secretary of State pursuant to this clause 14, the Secretary of State shall provide WMRE with details of the bank account to which such monies should be paid. ***[Note: provisions relating to the Joint Savings Account have been omitted, as there is no longer any such Account.]***

15 Confidentiality

- 15.1 Subject to the provisions of the Act, the Transport Act 2000, the Railways Act 2005, the Environmental Information Regulations, the Freedom of Information Act (and any code of practice or other guidance related to the same) and clauses 15.2 to 15.8 inclusive, each Party shall hold in confidence all documents, materials and other information, whether technical or

commercial, supplied by or on behalf of the other Party (all together the **Confidential Information**) and shall not, except with the other party's prior written authority, publish or otherwise disclose any Confidential Information otherwise than as expressly provided for in this Agreement unless or until the recipient Party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of the Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

15.2 Each Party may disclose any data or information acquired by it under or pursuant to the Agreement without the prior written consent of the other Party if such disclosure is made in good faith:

- (a) to any outside consultants or advisers engaged by or on behalf of such Party and acting in that capacity, upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in clause 15.1;
- (b) to the extent required by Law or pursuant to an order of any court of competent jurisdiction or the rules of any dispute resolution procedures to which a Dispute is referred in accordance with the Agreement; or
- (c) to any director, employee or officer of such Party, to the extent necessary to enable such Party to perform its obligations under the Agreement or to protect or enforce its rights under the Agreement;

15.3 The Secretary of State may disclose the Confidential Information of WMRE:

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Secretary of State or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Secretary of State (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis for the purpose of the exercise of its rights under this Agreement;
- (e) on a confidential basis to a proposed successor, transferee or assignee of the Secretary of State in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Secretary of State under this clause 15.3.

15.4 For the purposes of clause 15.3, the following defined term shall have the following meaning:

Central Government Body means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department

- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal)
 - (c) Non-Ministerial Department or
 - (d) Executive Agency.
- 15.5 Nothing in this clause 15 shall be deemed to prohibit, prevent or hinder, or render the Secretary of State liable for, the disclosure of any information by the Secretary of State to the ORR, Network Rail, the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, the Greater London Authority or any department or officer of any of them or of information which is otherwise disclosed for the purpose of facilitating the carrying out of his functions.
- 15.6 WMRE hereby authorises the Secretary of State to provide to the ORR, to the extent so requested by the ORR, such information as may be provided to the Secretary of State in relation to this Agreement.
- 15.7 The Parties recognise that the Comptroller and Auditor General may, in pursuance of his functions under the Exchequer and Audit Department Act 1921, the National Audit Act 1983 and the Government Resources and Accounts Act 2000, disclose information which he has obtained pursuant to those Acts and which a party to this Agreement would not be able to disclose otherwise than under this clause 15.
- 15.8 This clause 15 (and any other provisions necessary to give effect hereto) shall survive the termination of the Agreement, irrespective of the reason for termination.

16 Freedom of Information

- 16.1 The Parties acknowledge and shall procure that their agents and subcontractors acknowledge that the Parties are each subject to the requirements of the Freedom of Information Act and the Environmental Information Regulations and accordingly the parties shall, and shall procure that their agents and subcontractors shall, assist and co-operate with the other Party to enable that Party to comply with his information disclosure obligations under the Freedom of Information Act and/or the Environmental Information Regulations (save if prevented by law or by contractual obligations or in circumstances where the Assisting Party (as defined below) would be able to withhold such information legitimately were the same Request for Information to be made to such Party directly).
- 16.2 Where a Party receives a Request for Information (**Requested Party**) and the Requested Party is unable to respond to such Request for Information without the assistance of the other party (**Assisting Party**), the Requested Party shall notify the Assisting Party that assistance is required and the Assisting Party (save if prevented by law or by contractual obligations or in circumstances where the Assisting Party would be able to withhold such information legitimately were the same Request for Information to be made to such Party directly) shall and shall procure that its agents and subcontractors shall:
- (a) provide the Requested Party with a copy of all information in its (or their) possession or power in the form that the Requested Party requires within five Working Days of the Requested Party's request (or within such other period as he may specify); and
 - (b) provide all necessary assistance as reasonably requested by the Requested Party to enable him to respond to any Request for Information within the time for compliance

set out in section 10 of the Freedom of Information Act or regulation 5 of the Environmental Information Regulations as applicable.

- 16.3 The Requested Party shall be responsible for determining in his absolute discretion, and notwithstanding any other provision in this Agreement or any other agreement, whether Confidential Information and/or any other information is exempt from disclosure in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations.
- 16.4 Each Party acknowledges and shall procure that its agents and subcontractors acknowledge that notwithstanding any provision to the contrary in this Agreement each Party may be obliged under the Freedom of Information Act and/or the Environmental Information Regulations and any related Code of Practice or other guidance to disclose information concerning each Party and/or their respective agents and subcontractors:
- (a) in certain circumstances without consulting the other Party (or its agents and/or subcontractors where applicable); or
 - (b) following consultation with the other and having taken its views into account (and the views of its agents and/or subcontractors where applicable),

provided always that where applicable the Requested Party shall in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations take reasonable steps where appropriate to give the other Party advance notice or failing that to draw the disclosure to the other Party's attention after any such disclosure.

17 Dispute Resolution Procedure

- 17.1 The Parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute or difference of whatever nature between them arising under, out of, or in connection with this Agreement (each such dispute or difference a **Dispute**).
- 17.2 Following any referral of a Dispute to the Dispute Resolution Procedure in accordance with the terms of this Agreement, the provisions set out in this clause 17 shall apply.
- 17.3 The Dispute shall initially be referred for resolution to the Deputy Director Midlands, North & Wales Market (DfT) and the Chief Executive (WMRE) (**Initial Dispute Board**) who shall seek to resolve the matter as soon as reasonably possible and in any event within twenty (20) Working Days of escalation, or such other period as may be reasonable given the nature of the Dispute, and the urgency of resolution. The Initial Dispute Board shall be entitled to request such additional information as may be reasonably requested from either WMRE or the Secretary of State in respect of the Dispute, including, but not limited to, any information to be provided pursuant to the relevant provisions of this Agreement.
- 17.4 Both Parties shall be entitled to make oral and/or written representations to the Initial Dispute Board prior to the Initial Dispute Board making its final determination.
- 17.5 Where the Initial Dispute Board are not able to resolve the Dispute within twenty (20) Working Days of escalation pursuant to clause 17.3 the Initial Dispute Board shall refer the Dispute for resolution to the Managing Director, Passenger Services (DfT) and the Director of Law and Governance (West Midlands Combined Authority) (**Secondary Dispute Board**) who shall seek to resolve the matter as soon as reasonably possible and in any event within twenty (20) Working Days of escalation, or such other period as may be reasonable given the nature of the Dispute, and the urgency of resolution. The Secondary Dispute Board shall be entitled to

request such additional information as may be reasonably requested from either WMRE or the Secretary of State in respect of the Dispute, including, but not limited to, any information to be provided pursuant to the relevant provisions of this Agreement.

- 17.6 Both Parties shall be entitled to make oral and/or written representations to the Secondary Dispute Board prior to the Secondary Dispute Board making its final determination.
- 17.7 Where the Secondary Dispute Board are not able to resolve the Dispute within twenty (20) Working Days of escalation pursuant to clause 17.5, the Secondary Dispute Board shall refer the Dispute for resolution by the Director General (DfT Rail Executive) and the Mayor of the West Midlands who shall seek to resolve the Dispute within twenty (20) Working Days of escalation to them, or such other period as may be reasonable given the nature of the Dispute
- 17.8 If the Parties cannot resolve a Dispute in accordance with the above escalation procedure, either Party may at any time refer the Dispute for mediation by serving a written notice on the other Party to that effect (**Notice of Mediation**).
- 17.9 If a Notice of Mediation is given, then the Dispute shall be referred to the CEDR for mediation in accordance with the CEDR's model mediation procedure. If the Parties are unable to agree on the appointment of a mediator, or any other matter relating to the referral or conduct of the mediation, it shall be referred to the then president of CEDR who shall decide such matters.
- 17.10 Except where this Agreement has terminated, the parties shall continue to perform their obligations under the Agreement, regardless of the nature of the Dispute and notwithstanding the referral of the Dispute for resolution pursuant to this clause 17.
- 17.11 WMRE acknowledges and accepts that the decision of the Secretary of State in relation to this exercise of any of the Secretary of State Duties is final and binding.

18 Notices

- 18.1 Any notice, notification or other communication under or in connection with clause 13 (Termination) or clause 17 (Disputes) of this Agreement shall be in writing and shall be delivered by hand or recorded delivery or sent by pre-paid first class post to the relevant party at the address for service set out below, or to such other address in the United Kingdom as each party may specify by notice in writing to the other party:

Name: The Department for Transport
Address: 33 Horseferry Road, London SW1P 4DR
Attention: Senior Commercial Manager, Midlands

Name: West Midlands Rail Limited
Address: 16 Summer Lane, Birmingham B19 3SD
Attention: Programme Director

- 18.2 Any other notice, notification or other communication under or in connection with this Agreement shall be in writing and shall be delivered:
- (a) in accordance with clause 18.1 (except that it shall be marked for the attention of the Contract Manager (in the case of notices being sent to the Secretary of State) or the Programme Director of the West Midlands franchise (in the case of notices being sent to WMRE); or

(b) by electronic data transfer to:

westmidlandsfranchisemanagement@dft.gsi.gov.uk ; or

malcolm.holmes@wmre.org.uk

as appropriate.

18.3 Deemed Receipt

Any notice or other communication issued pursuant to clauses 18.1 or 18.2 shall be deemed to have been received by the party to whom it is addressed as follows:

- (a) if sent by hand or recorded delivery, when delivered;
- (b) if sent by pre-paid first class post, from and to any place within the United Kingdom, three Working Days after posting unless otherwise proven; and
- (c) if sent by electronic data transfer under clause 18.2(b) above, upon sending, subject to receipt by the sender of a “delivered” confirmation (provided that the sender shall not be required to produce a “read” confirmation).

19 Waiver

19.1 Either Party may at any time waive any obligation of the other Party under this Agreement and the obligations of the parties hereunder shall be construed accordingly.

19.2 No waiver by either Party of any default by the other Party in the performance of such Party's obligations under this Agreement shall operate or be construed as a waiver of any other or further such default, whether of a like or different character. A failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of any right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of such right or remedy or the exercise of any other right or remedy.

20 Partial Invalidity

If any provision in this Agreement is held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of Law, such provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of the Agreement shall not be affected.

21 Further Assurance

Each Party agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of this Agreement.

22 Rights of Third Parties

A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

23 Variation

This Agreement may only be varied in writing signed by each of the Parties.

24 Cumulative rights

The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by Law.

25 No Partnership

Nothing in this Agreement and no action taken by the Parties under this Agreement shall constitute a partnership, association or other cooperative entity between any of the Parties or constitute any Party the agent of any other Party for any purpose.

26 Entire Agreement

26.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

26.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

27 Counterparts

This Agreement may be executed in any number of counterparts, and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

28 Governing Law

This Agreement (and any non-contractual obligations arising out of or in connection with it) shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Agreement.

Executed as a deed by the Parties or their duly authorised representatives but not delivered until the date of this Agreement.

THE CORPORATE SEAL OF)
THE SECRETARY OF STATE FOR TRANSPORT)
is hereunto affixed:)

Authenticated by authority of the Secretary
of State for Transport

Executed as a deed by)
West Midlands Rail Limited)
acting by a director in the presence of) Director

.....
Signature of witness

Name

Address

.....

Schedule 1

Objectives

- 1 Better for the economy – Support the recovery of jobs, housing, industry, leisure and tourism and retail following the COVID-19 pandemic, with a distinct focus on each of the following markets:
 - West Midlands’ local and regional services;
 - long-distance services along the West Coast Mainline from Liverpool to Birmingham and from Crewe to London; and
 - Services to/from London including branch lines.

Ensure there are the right services and capacity to safely cater for current and returning users throughout the day and week.
- 2 Better for the passenger – Deliver high quality services and stations, reduce delays and cancellations, and achieve significant improvements in customer satisfaction. Provide affordable, clean, and easy to use services at the times and to the places that people want to travel both now and in the future supported by the provision of accurate and timely information and improved connectivity with other modes of transport.
- 3 Better for taxpayers – Make the most of the significant subsidy being provided to make value for money improvements to the rail network. Making sure the right level of service is provided to reflect post-pandemic travel patterns and demand, ensuring resources (funding, staff and trains) are used in the areas that need it most.
- 4 Better for communities – Increase engagement between the operator of the new contract and the communities it serves.
- 5 Better for staff – Deliver a contract which demonstrates a genuine pride in developing staff over the long term, aiming to improve staff satisfaction, motivation and retention, and deliver best in class customer service.
- 6 Maximising the benefits from investment in infrastructure – Supporting the development of a safe and accessible network to modernise and meet the requirements of a modern railway.
- 7 Supporting HS2 – Work with HS2 and Network Rail as a partner on relevant works to enable the delivery of the new high speed rail line between London, the Midlands and Crewe. Ensure that the foundations are in place for the West Midlands to be ready for the opening of HS2, supporting the HS2 Connectivity Programme being delivered through the recently announced West Midlands £8bn growth deal.
- 8 Supporting the Commonwealth Games – work with the rail industry to deliver a high quality rail response to the 2022 Commonwealth Games, characterise by a safe, reliable and clean network that provides sufficient capacity for spectators, workers and the general public during Games time.

Both the DfT and WMRE are also committed to ensuring that rail fully plays its part in supporting low carbon, environmental and wider sustainability objectives.

Schedule 2

Joint Board Responsibilities

Subject to the Reserved Matters, the Joint Board shall be responsible for:

- 1 overseeing contract management activity in respect of the WMRBU and providing appropriate input into the LNRBU insofar as that input concerns rail services in the WMRE Area;
- 2 preparing and approving the WMRBU annual business plans;
- 3 undertaking an annual (or more frequent if agreed by both parties) review of contract management responsibilities which have been delegated by the Secretary of State to WMRE;
- 4 developing and keeping under review investment options in respect of the WMRBU and providing appropriate input into the investment options for the LNRBU insofar as that input concerns rail services in the WMRE Area;
- 5 keeping WMRBU performance under review and making recommendations to the Secretary of State as to the taking of enforcement action and providing appropriate input in relation to the performance of the LNRBU insofar as that input concerns rail services in the WMRE Area;
- 6 making recommendations and providing guidance to the Secretary of State on the carrying out of other Secretary of State Duties and decisions on other Reserved Matters, to the extent relevant to WMRBU services;
- 7 discussing WMRE's proposals and representations relating to passenger services and station services in the WMRE Area that do not fall within the WMRBU (including any such services in the LNRBU and in franchises or rail service contracts other than the 2021 WM National Rail Contract) and where appropriate making recommendations or providing guidance thereon to the Secretary of State; and
- 8 consider proposals put forward by WMRE pursuant to the matters referred to in clauses 10.1 and 10.2 of this Agreement.

Schedule 3

Management Team Responsibilities

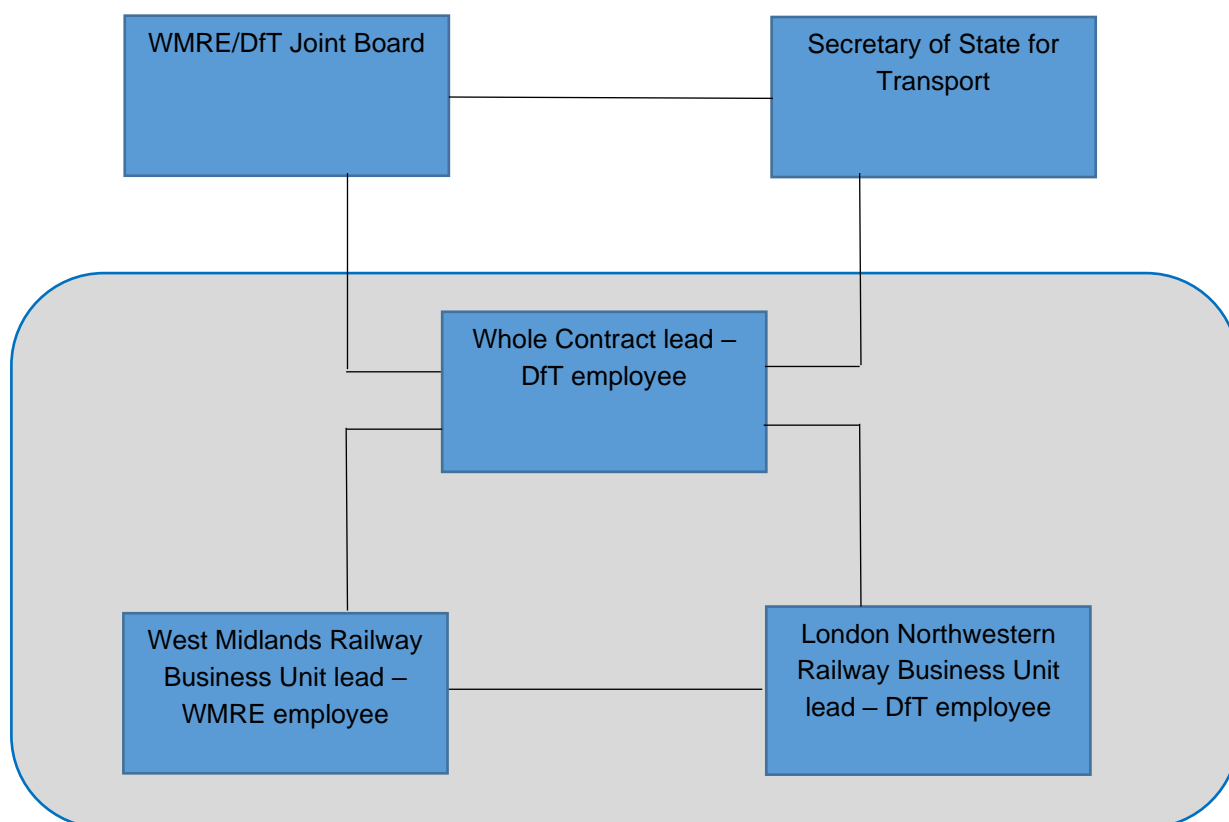
- 1 Subject to the Reserved Matters, the Management Team shall be responsible for:
- (a) implementation of the agreed business plans for the WMRBU;
 - (b) implementation of cost neutral or cost reducing changes in respect of the WMRBU in accordance with the delegated authority of the Joint Board and the terms of the Agreement;
 - (c) save in respect of Reserved Matters, day-to-day contact and commercial management of the WMBSU (on behalf of the Joint Board and the Secretary of State) including:
 - (i) appropriate contract administration;
 - (ii) performance monitoring (including any service quality regime); and
 - (iii) risk management and reporting.
 - (d) developing change proposals for consideration by the Joint Board in conjunction with the rail services operator, WMRE and other stakeholders including the changes referred to in clauses 10.1 and 10.2 of this Agreement;
 - (e) providing general briefing and support for ministers and the WMRE partner authorities relating to the WMRBU and the operation of the Joint Board and Management Team and in preparing for the annual reviews;
 - (f) in relation to rail investment in the WMRE Area:
 - (i) developing proposals for the Government's Rail Network Enhancement Pipeline for each Control Period, identifying related or necessary change proposals;
 - (ii) developing WMRE funded investment proposals, identifying related or necessary changes pursuant to clauses 10.1 and 10.2 of this Agreement;
 - (iii) overseeing the development of output statements and metrics for Network Rail setting out in more detail what is sought from Rail Network Enhancement Pipeline requirements and proposed changes having regard to the total Rail Network Enhancement Pipeline funding available;
 - (iv) where agreed by the Secretary of State, to act as Network Rail's 'Client' for such Rail Network Enhancement Pipeline schemes, as agreed between Secretary of State and WMRE, including finalising the detailed scheme output specifications and agreeing these with Network Rail and Secretary of State including budget provision and affordability;
- 2 Notwithstanding that the Joint Board shall have primary responsibility for the WMRBU and the Secretary of State shall have primary responsibility for the LNRBU, the Parties shall work together in respect of the two business units. In particular the Secretary of State recognises that WMRE has an interest in the Coventry Corridor and Stafford Corridor and the Secretary

of State shall have due regard to comments made by WMRE in respect of the Coventry Corridor and the Stafford Corridor.

Appendix to Schedule 3

Management Structure

- 1 Designed to be dynamic and to facilitate the development of local leadership of the WMRBU, with further responsibilities transferring to WMRE incrementally over time
- 2 A full-time manager of the LNRBU and a full-time manager of the WMRBU shall continue to be provided by each of DfT and WMRE respectively
- 3 DfT Commercial Manager of the 2021 WM National Rail Contract.



- 4 The WMRBU Manager shall continue to be based predominantly in the West Midlands, with co-location at Great Minster House as required and as workload dictates
- 5 The LNRBU Manager shall continue to be based predominantly in Great Minster House but with regular travel to and time spent in the West Midlands as required and as workload dictates
- 6 Accommodation in the West Midlands shall continue to be provided by WMRE

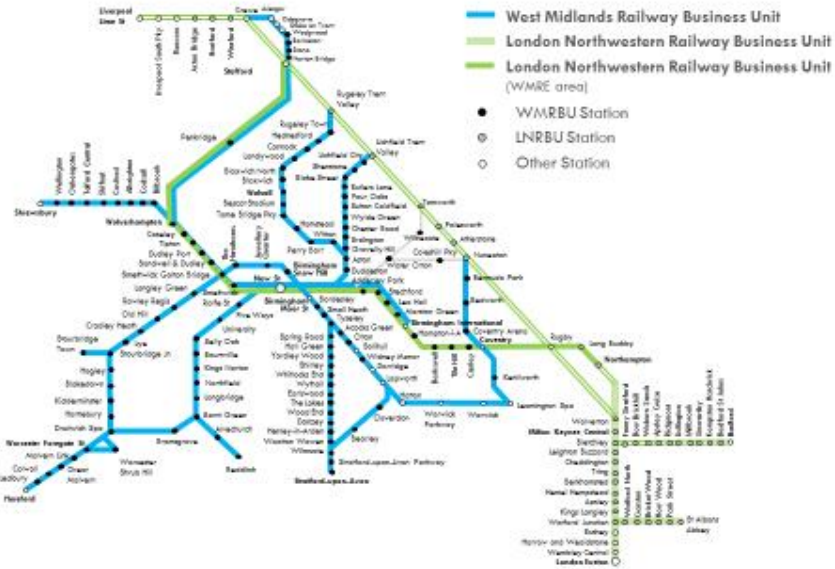
Reporting

- 7 Meetings shall be held during each Reporting Period between the Commercial Manager, the WMRE Director, the LNRBU Manager and the WMRBU Manager

- 8 Business unit reporting/meetings shall be held during each Reporting Period between the LNRBU Manager and the WMRBU Manager (each to lead for their BU)

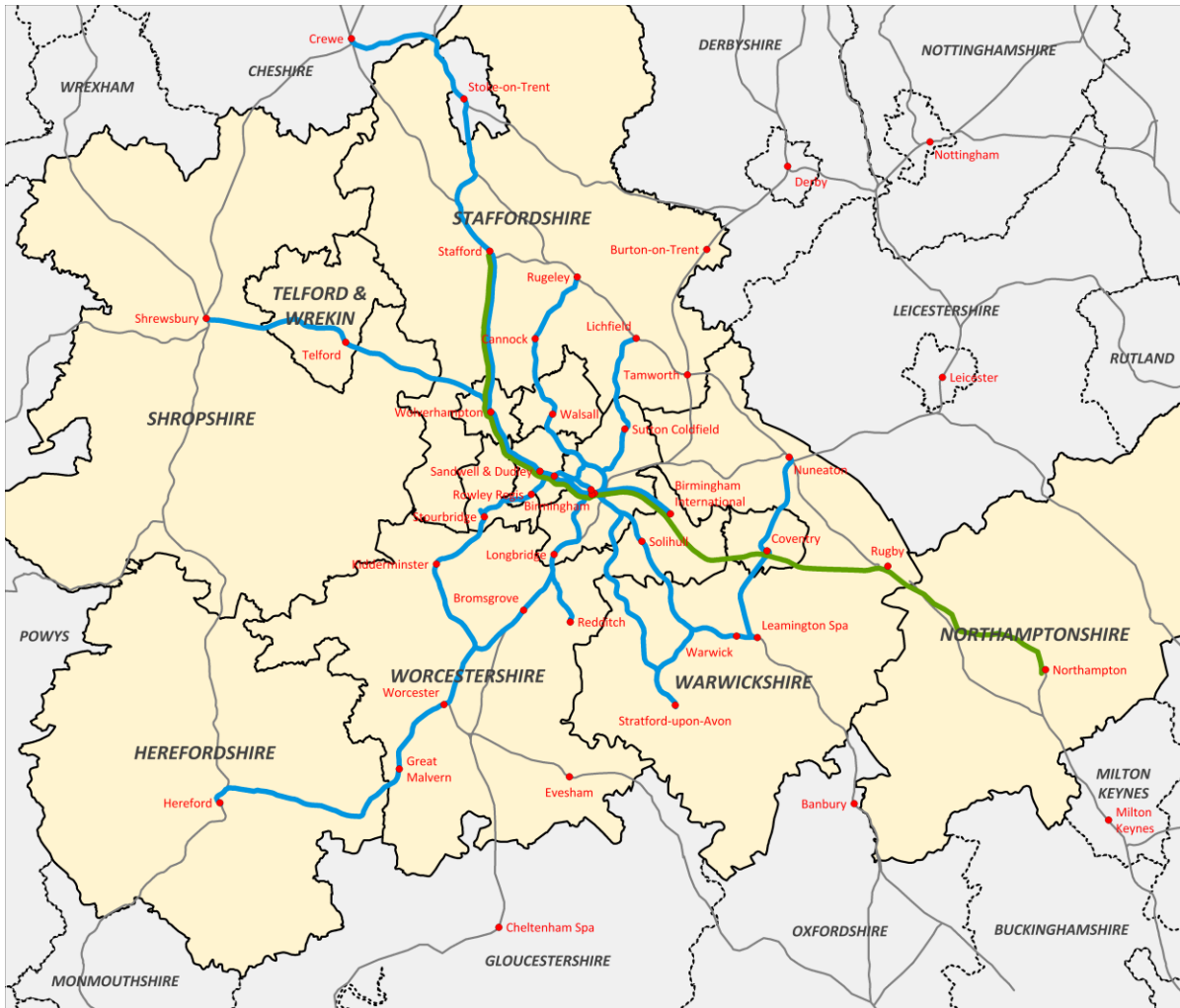
Schedule 4

Part 1 - Business Units Map



Part 2 - WMRE Area Map

[Note: The following diagram is to be amended as necessary to show the WMRE Area]



Schedule 5

Funding Outputs

[Note: Schedule to be further amended as necessary]

1 Key Outputs

- 1.1 Ensure staff (WMRE Director, WMSBU Manager and WMRE Contract/Admin) continue in-post;
- 1.2 Report progress against the Business Plan;
- 1.3 Update the Business Plan on an annual basis; and
- 1.4 Attendance at the Joint Board.

2 General

- 2.1 Establish clear roles and responsibilities regarding the services to be provided under the 2021 WM National Rail Contract and WMRBU and LNRBU monitoring and management;
- 2.2 Establish meeting structure to monitor the outputs of WMRBU and LNRBU; and
- 2.3 Ensure that obligations are understood and processes in place to manage outputs and outcomes to be consistent with the Purpose.