

WMCA Board

Date	17 September 2021
Report title	West Midlands Rail Ltd Collaboration Agreement
Portfolio Lead	Transport - Councillor Ian Ward
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Report has been considered by	TfWM Leadership - 24 May 2021 STOG - 14 June 2021 SLT - 30 June 2021 & 25 August 2021 STB - 20 August 2021 Programme Board - 28 August TDC - 13 September

Recommendation(s) for action or decision:

The WMCA Board is recommended to:

- (1) Approve West Midlands Rail Ltd (WMR Ltd) entering into a new Collaboration Agreement with the Department for Transport (DfT).
- (2) Note the intention to enter into a side letter or memorandum of understanding with DfT to codify WMRE's existing 'soft powers' as a year 1 deliverable of the new Collaboration Agreement.

1. Purpose

1. The changes to rail franchising as a consequence of the COVID-19 pandemic mean that the existing Collaboration Agreement between WMR Ltd and DfT will terminate in September 2021. As such, a new agreement must be negotiated in order to protect WMR Ltd's ongoing role working in partnership with government to manage rail service in the region, as well as its grant income.

2. Background

- 2.1 The 2016 Collaboration Agreement (henceforth referred to as CA1) between WMR Ltd and the DfT is the primary agreement by which WMR Ltd's responsibilities for franchise management and government grant funding are set out and enshrined. CA1 was signed in April 2017 following Secretary of State and WMR Ltd approval (the latter by means of a Special Resolution).
- 2.2 By means of a high-level summary, CA1 includes provisions for:
 - i) A Strategic Board between WMRL and DfT officials;
 - ii) Sharing of franchise management responsibilities;
 - iii) The ability of WMRL to make changes and retain the benefits of those changes for reinvestment in the local rail network. This includes the powers to make adjustments to rail fares in the region;
 - iv) Funding of WMRL by means of a £500K grant each year; and
 - v) An annual meeting between WMRL Chair and Vice Chair and the Secretary of State or a Minister.
- 2.3 The executed version of CA1 is included as Appendix A for reference.
- 2.4 CA1 is coterminous with the West Midlands Franchise Agreement, originally intending to run until March 2026. However, the changes to passenger rail contracting by the DfT in response to the COVID crisis now mean that the Franchise Agreement is expected to terminate on 19 September 2021. As such it is now necessary to negotiate and enter into a successor agreement with the DfT to take effect from the termination of the existing Franchise Agreement.
- 2.5 Discussions with DfT officials have concluded that in general CA1 has worked effectively and is a solid foundation on which to build. Consequently, the revised Collaboration Agreement (henceforth referred to as CA2), represents an evolution of its predecessor.
- 2.6 The main areas of amendment in CA2 reflect the changing landscape of rail franchising and the meeting structure. The latter was based on the model used by Transport for the North for the Northern and Trans Pennine Franchises, but experience has shown that it is not as effective for the West Midlands Franchise. The structure proposed in CA2 is more closely aligned to DfT's governance arrangements, which should help speed up decision making and give WMR Ltd a stronger voice within DfT.

- 2.7 There are no proposed changes to the grant WMR Ltd receive from DfT, or to the arrangements in place for the savings account held jointly between WMR Ltd and DfT. The Heads of Terms for CA2 be found in Appendix B. Since these were written one change has been made. Following feedback from WMR Ltd partner authorities Schedule 1 has been reinstated with minor amendments. This had originally been removed on the grounds of brevity. The final version of CA2 can be found in Appendix C.
- 2.8 WMR Ltd and DfT are also using this an opportunity to incorporate a change to CA1 that was made by side letter in March 2019. This was a technical amendment to permit the WMCA to hold any monies earned or saved by WMR Ltd and DfT from the Franchise.

Collaboration Agreement Side Letter/Memorandum of Understanding

- 2.9 Since the June WMRE Board, WMRE and DfT officials have been working together to establish greater clarity around the powers that WMRE has exercised on behalf of the Department.
- 2.10 Since the start of the Franchise in 2017, DfT has in practice afforded WMRE broad autonomy in matters pertaining to the WMSBU. In fact, during periods of annual leave and sickness WMRE have at times even acted on behalf of the Department on Franchise wide issues.
- 2.11 These existing practices are not currently codified, but it is the intention that they will be, as one of the year 1 deliverables of the new Collaboration Agreement via a Memorandum of Understanding or side letter. This will necessitate a further paper to WMCA Board to seek consent to enter into this side letter or memorandum of understanding.
- 2.12 This would be the first stage in a process that could conclude with WMRE exercising delegated financial authority over an Annual Business Plan established on the basis of two Separable Business Units.
- 2.13 A more detailed note outlining the existing powers - both 'hard' and 'soft' – and the proposed direction of travel can be found in Appendix D to this paper.

Governance Approvals

- 2.14 As with CA1, under the terms of the WMR Ltd Articles of Association (clause 8.3), a Special Resolution of the Members of the company will be required:
- 8.3 *The Directors shall ensure that the Company will not do and will not enter into any agreement to do any of the following acts or things without the prior approval of the Members by special resolution:*
- (a) *enter into a partnership agreement or other formal agreement with the Secretary of State for Transport providing for the involvement of the Company in the specification, letting process or management of any rail franchise agreement; and*
- (b) *make any substantial amendment to any such agreement.*
- 2.15 Under the provisions of the Articles, Members are defined as the seven Shire and Unitary authorities plus WMCA. A Special Resolution requires a majority of 75% to pass (a minimum of six votes).

- 2.16 CA2 was approved in principle by the WMR Ltd Board at its meeting on 15th June 2021.
- 2.17 CA2 was originally due to be presented at the July WMCA Board. However, this was deferred to September to better align with DfT approval processes.

3. Financial Implications

- 3.1 There is no change to the expected grant value received from DfT to WMR Ltd. The grant value expected remains at £500K per annum, in addition to the £140K per annum contribution from WMRE member authorities.
- 3.2 It is understood that the changes as a result of the update from CA1 to CA2 are non-financial in nature with an improved governance set up and recognition of the National Rail Contract in replacement for the franchise.
- 3.3 Further to the written changes to the Collaboration Agreement, it is understood that further acknowledgement and partnership working between the DfT and WMRE is in progress in order to explore further devolution options in the future (see paras 2.11 and 2.12 above).

4. Legal Implications

- 4.1 The CA2 draft has been reviewed by Pannone Corporate, the WMR Ltd external legal advisors, and by WMCA internal Legal.

5. Equalities Implications

- 5.1 There are no equality implications in relation to this report.

6. Inclusive Growth Implications

- 6.1 None.

7. Geographical Area of Report's Implications

- 7.1 The proposed changes to the Collaboration Agreement will have implications for all WMR Ltd's partner authorities across its entire geographical coverage (Birmingham, Coventry, Dudley Herefordshire, Northamptonshire, Sandwell, Shropshire, Solihull, Staffordshire, Stoke-on-Trent, Telford and Wrekin, Walsall Warwickshire, Wolverhampton, Worcestershire, Cheshire East,) and therefore inherently includes the entire CA area.

8. Other Implications

- 8.1 None.

9. Schedule of Background Papers

- 9.1 None.