

DATED

3 April

2009

DERBY CITY COUNCIL

-and-

EAST MIDLANDS TRAINS LIMITED

AGREEMENT

Relating to the Gating of the
Footbridge at Derby Rail Station

Stuart Leslie
Chief Legal Officer
Derby City Council
The Council House
Corporation Street
Derby DE1 2ZL

THIS AGREEMENT is made the 3 day of April 2009
BETWEEN DERBY CITY COUNCIL ("the Council") of the Council House,
Corporation Street, Derby, DE1 2ZL and **EAST MIDLANDS TRAINS
LIMITED ("EMT")** whose registered office is Friars Bridge Court, 41 – 45
Blackfriars, London, SE1 8NZ.

BACKGROUND

- 1) Network Rail own the freehold of Derby Station and EMT leases the station and is Station Facilities Operator (SFO).
- 2) EMT as the SFO has the franchise to operate the railway station at Derby ("Derby Station") and the rail services from it until 1 April 2015.
- 3) The Council is the Local Authority for the City of Derby and Derby Station is within the Council's administrative area.
- 4) On 14 January 2001 the Council entered into an agreement ("The Funding Agreement") with Railtrack PLC and Midland Main Line Limited the respective predecessors of Network Rail and EMT.
- 5) Under the terms of the Funding Agreement the Council, contributed £270,000 ("The Council's Contribution") towards the costs of extending a footbridge ("The Footbridge") from the Derby Station main concourse to the newly developed business park ("Pride Park") and other capital costs associated with the station.

- 6) In return for the Council's Contribution Railtrack and Midland Main Line Limited gave commitments to the Council about the general public's entitlement to use the Footbridge. These commitments (The Previous Public Entitlement) are set out in the First Schedule to this Agreement.
- 7) In order to reduce unauthorised use of trains and improve security at Derby Station EMT wish to install gates at either end of the Footbridge ("The Gates").
- 8) The Council have agreed to the installation of the Gates on the terms set out in this Agreement.

IT IS AGREED

1. The Council agrees to give its written consent to the installation of the Gates on the signing of this agreement.
2. EMT agrees that in return for the Council's consent under Clause 1 it will;
 - 2.1 Carry out the publicity and consultation requirements set out in Schedule 2 of this Agreement.
 - 2.2 Operate the Gates in accordance with the method statement set out in Schedule 3 of the Agreement ("The Gate System").
 - 2.3 Use its reasonable endeavours with the Department of Transport or its successor to ensure that;

2.3.1 any successor operator of Derby Station is obliged to operate the Gates in compliance with the Gate System.

2.3.2 this Agreement is included in the handover pack which is provided to the Department of Transport by EMT as part of the process of re-tendering the franchise for the operation of Derby Station.

3. It is agreed that should EMT significantly depart from the Gate System and in particular withdraw the pass system referred to in Schedule 3 ("The Pass Scheme") without the written consent of the Council then the Council can require EMT to remove the Gates within 42 days of receiving notice from the Council to do so and the public use shall revert to the Previous Public Entitlement set out in Schedule 1 or such other arrangement as shall be agreed with the Council in writing.

4. **ARBITRATION CLAUSE**

4.1 The parties will attempt in good faith to negotiate any difference or dispute between them arising out of or in connection with this Agreement. If the matter is not resolved by negotiation, either party may refer the dispute to the arbitration of a person to be agreed upon between the parties.

4.2 Should the parties fail to appoint an arbitrator within 28 days of either party serving on the other party a written notice to concur in the

appointment of an arbitrator the matter will be referred to a person to be appointed on application of either party by the President for the time being of the Institute of Arbitrators.

4.3 Any such reference to arbitration shall be deemed to be a submission to arbitration with the meaning of the Arbitration Act 1996.

4.4 The procedure shall be agreed by the parties or, failing agreement, determined by the arbitrator.

4.5 If either party fails to comply with any procedural order made by the arbitrator, the arbitrator shall have power to proceed in the absence of that party and deliver the award.

4.6 The arbitrator will be entitled to make such decision with regard to the costs of arbitration as he in his absolute discretion thinks fit.

4.7 The award of the arbitrator will be final and binding on the parties.

SCHEDULE 1

THE COMMITMENTS GIVEN BY RAILTRACK AND MIDLAND MAIN LINE ABOUT THE PUBLIC USE OF THE FOOTBRIDGE

("The Previous Public Entitlement")

7.1 "In consideration of the Council entering into this Agreement Midland Main Line Ltd (MML) hereby covenants with the Council to exercise all its powers from time to time as tenant of the Footbridge so as:-

- (a) to ensure that in respect of each day when Derby Midland Station ("the Station") is open and is available for access to the public for rail travel purposes that the Footbridge is open for use by the public prior to the first passenger train in the morning arriving at the Station continually up to and until after the last passenger train in the evening has left the Station except on Christmas Day and Boxing Day and save in cases of emergency PROVIDED THAT in the event that MML either acting on advice from the police or where it reasonably apprehends that there may be concerns over public order or where temporary closure of the Footbridge or any part is required for safety purposes or in order to carry out essential works of safety maintenance repair and renewal of the Footbridge or any part, the Footbridge or any part thereof may be closed.

PROVIDED THAT nothing herein is intended to or shall create a public right of way over the Footbridge or any part thereof.

- (b) to ensure that the closures of the Footbridge is pursuant to paragraph (a) above are for as short a period as is reasonably practicable and that the Footbridge is re-opened as soon as reasonably practicable.

7.2 In consideration of the Council entering into this Agreement and subject to compliance by MML with its obligations under clause 7.1 Railtrack hereby covenants with the Council as follows:-

- (a) to ensure that in respect of each day when the Station is open and is available generally for access to the public for rail travel purposes that the Footbridge is open for use by the public prior to the first passenger train in the morning arriving at the Station continually up to and until after the last passenger train in the evening has left the Station except on Christmas Day and Boxing Day and save in cases of emergency PROVIDED THAT in the event that Railtrack either acting on advice from the police or where it reasonably apprehends that there may be concerns over public order or where temporary closure of the Footbridge or any part is required for safety purposes or in order to carry out essential works of safety maintenance repair and renewal of

the Footbridge or any part, the Footbridge or any part thereof may be closed.

PROVIDED THAT (i) nothing herein is intended to or shall create a public right of way over the Footbridge or any part thereof; (ii) Railtrack shall be entitled as against the Council to close the Footbridge either temporarily or permanently if required to do so by its statutory obligations under the 1993 Act and/or H.M. Railway Inspectorate/Health & Safety Executive' and (iii) nothing in this clause 7.2 shall have the effect as between Railtrack and MMI of interfering with or varying the rights, obligations, powers, remedies and privileges of MML under the Lease (as varied by the Supplemental Franchise Lease).

(b) to ensure that the closures of the Footbridge pursuant to paragraph (a) above are for as short as period as is reasonably practicable and that the Footbridge is re-opened as soon as is reasonable practicable.

PROVIDED THAT in the case of permanent closures as envisaged in sub-paragraph (ii) of the proviso to paragraph (a) above Railtrack shall use its reasonable endeavours to secure a re-opening of the Footbridge if reasonably practicable".

SCHEDULE 2

PUBLICITY AND CONSULTATION TO BE CARRIED OUT BY EAST MIDLANDS TRAINS BEFORE THE INSTALLATION OF THE GATES

1. CONSULTATIONS

EMT must have timely and meaningful consultations with the organisations listed below and must have regard to their views in relation to the introduction and operation of the Gates;

- Derby College
- Sustrans
- Business on Pride Park through the Pride Park business forums and other methods agreed with the Council.

2. PUBLICITY

The proposal to allow public use of the Footbridge by the Pass System must be given sufficient publicity prior to the Gates being installed, in particular;

- 2.1 Posters advertising the Pass System and its introduction must be prominently displayed on the Footbridge at least 3 weeks before the Gates become operational and the posters must make clear where applications for the Pass System and further details about it can be obtained.

2.2 The Pass System must be advertised and fully explained on the EMT's website at least 3 weeks prior to the Gates becoming operative.

2.3 A road show ("The Road Shows") must be held at Derby Station on two working days within the week prior to the Gates becoming operative.

SCHEDULE 3

THE METHOD STATEMENT FOR OPERATION OF THE GATES

("The Gate System")

Rail Passengers

1. Railway passengers with paper tickets will need to swipe their tickets through the reader at the Gates to access or egress the station.

Non Rail Users

2. EMT will operate a pass system as described below ("The Pass Scheme") for non-rail users of the Footbridge who wish to use it for pedestrian or cycle access from Pride Park to central Derby or vice versa.

Pass Scheme

3. Non rail users of the Footbridge must be able to put their pass through the Gates to enable them to walk over the Footbridge. The pass must allow them at least ten minutes to walk over the Footbridge and egress through the Gate at the other end.
4. Non rail users of the footbridge must, subject to paragraph 12 of this Schedule, apply for a pass to use the Gates by filling in an application form. Application forms must be readily available from:-
 - 4.1 The Road Shows
 - 4.2 Derby Station ticket office
 - 4.3 The EMT website.

5. The following information, but no more, can be requested by EMT on the application form for a pass:-

5.1 Name;

5.2 Address;

5.3 Contact details – phone number or email;

5.4 Picture;

5.5 Proof of I.D.;

5.6 A reason for requiring the pass which shows a demonstrable link to Pride Park or the National Cycle Park and the following must be accepted as a demonstrable link;

- employment in Pride Park
- local residency
- attending or working at Derby College
- commuting to Derby Station or the city via the riverside cycle route.

Information

6. The information supplied by applicants for the Pass Scheme must be held by EMT in a secure database. The data must not be used for marketing purposes or given to third parties.

Length of time to Process a Pass

7. In the case of ticket office applications a pass must be issued immediately on receipt of a completed application form. Applications

by post or email must be processed within 48 hours and dispatched by post.

Administration Charges

8. There must be no administration charge to issue a pass under the Pass Scheme but there may be a maximum £5.00 charge to replace the pass if it is lost.

Length of Life of the Pass

9. A pass issued under the Pass Scheme must last for at least one year and must be replaced free of charge after this time.

Withdrawal of a Pass

10. A pass may be withdrawn by EMT if it has reasonable grounds to suspect that the pass is being abused. If requested by the Council EMT must disclose the number of withdrawn passes and the reasons why any individual pass has been withdrawn.

Technology

11. The pass will be an ITSO card. In the case of the ITSO technology not being available on the "go live" date EMT may use magnetic strip technology or other methods agreed in writing with the Council.

Manned Gates

12. The Gates will, when in operation be manned at all times by EMT staff and if for any reason they are not manned they will be left open.

Ad hoc use

13. EMT staff will, at their reasonable discretion allow the use of the Footbridge by ad hoc users who do not have a pass unless (a) the staff have a reasonable belief that such a user may not make legitimate use of the Footbridge or (b) in the belief of EMT acting reasonably there are operational reasons for not allowing such use. Provided that the ad hoc facility shall only be withdrawn under ground (b) for the minimum period necessary and, except in emergencies, after giving the Council 5 working days written notice or if this is not achievable as long a notice period as practical.

Management of Special Events

14. For large events (for example football matches) or in the case of severe congestion, EMT can open the Gates to allow passengers to disperse, in accordance with the crowd control procedures for Derby Station. The existing procedures will be modified to include the operation of the Gates and will be reviewed by EMT with the British Transport Police.

Review of System

15. EMT will meet Council's representatives to review operation of the Gates System;

- (a) within 6 months of the Gates being installed.
- (b) within 21 days of receiving such a request from the Council and EMT will, as soon as reasonably practicable, act in good faith to attempt to agree any reasonable measures suggested by the Council to resolve any problems identified with the Gate System.

SIGNED BY

STUART LESLIE

On behalf of

DERBY CITY COUNCIL



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(CHIEF LEGAL OFFICER)

SIGNED BY



On behalf of

EAST MIDLANDS TRAINS LTD



.....
(CUSTOMER SERVICE DIRECTOR)