

TO BE EXECUTED AS A DEED

COOPERATION AND COLLABORATION AGREEMENT

SECRETARY OF STATE FOR TRANSPORT (1)

and

WELSH MINISTERS (2)

BETWEEN

- (1) **THE SECRETARY OF STATE FOR TRANSPORT** whose principal address is Great Minster House, 33 Horseferry Road, London SW1P 4DR (the "**Secretary of State**"); and
 - (2) **WELSH MINISTERS** whose principal place of business is Crown Building, Cathays Park, Cardiff, CF10 3NQ ("**Welsh Ministers**") (including, as appropriate, Affiliates or subsidiaries of Welsh Ministers acting on its behalf),
- each a "Party" and together the "Parties".

WHEREAS:

- (A) A Transfer of Functions Order under section 58(1) of the Government of Wales Act 2006 ("**TFO**") was made on 23 May 2018 to transfer certain Secretary of State franchising functions under the Railways Act 1993 (as amended) and the Railways Act 2005 (the "**Railways Acts**") to Welsh Ministers in order for Welsh Ministers to be the franchising authority in respect of the Welsh component of Welsh services and Wales-only services. The Secretary of State remains the franchising authority over English services insofar as they are specified in the Welsh franchise agreement.
- (B) By virtue of an agency agreement ("**Agency Agreement no. 3**") dated 31 May 2018, the Secretary of State agrees that Welsh Ministers may act as agent of the Secretary of State in respect of franchising, certain ancillary and related matters in relation to the Welsh franchise agreement.
- (C) The Parties agree to enter into this Co-operation and Collaboration Agreement (this "**Agreement**") to set out how Welsh Ministers will fulfil their obligations as set out in Agency Agreement no. 3 with regard to the management of rail services and rail assets under the Welsh franchise agreement, to promote equality of services regardless of the identity of the franchising authority and to agree the establishment of a Joint Strategic Board to discuss wider operational and policy matters of interest to both Parties insofar as those matters relate to the operation of rail services in the Wales & Borders Franchise Area.
- (D) Entry into this Agreement also demonstrates the Secretary of State's commitment under the St. David's Day Command Paper to give Welsh Ministers an enhanced role in the overall process of selecting Wales Area franchisees including the consultation on the specification of Wales Area services.

NOW IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless the context requires otherwise,
- (a) the definitions set out in the Definitions Agreement shall apply; and
 - (b) words and expressions defined in the Welsh franchise agreement have the same meanings when used in this Agreement.
- 1.2 Words expressed in the singular shall include the plural and vice versa. Words referring to a particular gender include every gender.
- 1.3 References to any statute or statutory provision shall include: (i) any subordinate legislation made under it; (ii) any provision which it has modified or re-enacted (whether with or without modification); and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification), whether made before or after the date of this Agreement.
- 1.4 References to any relevant franchising authority, franchisee, franchise agreement or invitation to tender in this Agreement are used as they are the terms used in the Railways Acts.

2 COMMENCEMENT VARIATION AND DURATION

- 2.1 The provisions of this Agreement shall commence, take effect and be binding on each of the Secretary of State and Welsh Ministers on and from 02:00 on 14 October 2018 and shall continue in force until the termination or expiry of the Welsh franchise agreement, unless otherwise terminated earlier by mutual written consent of the Parties. Following the termination of this Agreement the Parties will endeavour to negotiate and agree a new Co-operation & Collaboration Agreement which reconfirms the Secretary of State's commitment under the St David's Day Command Paper to give Welsh Ministers a role in the process for selecting Wales Area franchisees and to consult on material amendments to services operated by Wales Area franchisees and Other Franchisees.
- 2.2 The Parties acknowledge and agree that the Joint Parties Agreement shall terminate at 02:00 on 14 October 2018 whereupon this Agreement will govern the arrangements to facilitate the Secretary of State's relationship with Welsh Ministers in their management of the English services.
- 2.3 The Parties shall be entitled to review and amend this Agreement, provided that any amendment shall be in writing and agreed by both Parties.

3 OTHER RELATED AGREEMENTS

3.1 The Parties acknowledge their respective rights and obligations under:

- (a) Agency Agreement no. 3;
- (b) the Funding and Outputs Agreement; and
- (c) the OLR Subcontracting Agreement,

which (together with the Definitions Agreement) comprise the “**Wales & Borders Agreements**”. The Parties acknowledge each of the Wales & Borders Agreements has been drafted to account for its relationship in connection with other Wales & Borders Agreements. However, in the event of any inconsistency between Agency Agreement no. 3, the Funding and Outputs Agreement and the OLR Subcontracting Agreement and the Definitions Agreement and this Agreement, the other Wales & Borders Agreements take precedence over this Agreement.

4 CONFIDENTIALITY AND FREEDOM OF INFORMATION

4.1 Each Party undertakes that it shall not at any time during this Agreement disclose to any person any confidential information concerning the activities, business, affairs or suppliers of the other Party, except as permitted by this Clause 4. This includes tender documentation including ITTs or Requests for Proposals and also confidential information that may be supplied by bidders in connection with the letting of a Wales Area franchise.

4.2 Each Party may disclose the other Party’s confidential information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Party’s rights or carrying out its obligations under or in connection with this Agreement and under the Act provided that it ensures that the employees, officers, representatives or advisers to whom it discloses the other Party’s confidential information comply with this Clause 4;
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority;
- (c) where at the time of its disclosure, the confidential information is already in the public domain other than by a breach of this Agreement; or
- (d) with the other parties express written permission having been sought in advance and been granted.

- 4.3 No Party shall use any other Party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
- 4.4 Nothing in this Agreement shall prevent the Secretary of State or Welsh Ministers from disclosing and/or publishing under the provisions of the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 any term or condition or information contained in or relating to this Agreement.
- 4.5 Each Party shall co-operate with the other Party and supply all necessary information and documentation required in connection with any request received under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 and/or the Secretary of State's publication scheme requirements under the Freedom of Information Act 2000.

5 SECRETARY OF STATE DUTIES AND RESERVED MATTERS

- 5.1 The Parties acknowledge and agree that:
- (a) the Secretary of State has statutory duties and responsibilities, including without limitation pursuant to the Railways Acts and in relation to the proper expenditure of public monies (the "**Secretary of State Duties**");
 - (b) the Secretary of State Duties must be discharged by the Secretary of State and, except where expressly provided for in Agency Agreement no. 3, cannot be delegated to any other persons;
 - (c) the role of Welsh Ministers in respect of such Secretary of State Duties can only be advisory;
 - (d) Welsh Ministers have statutory duties, including without limitation pursuant to the Railways Acts and in relation to the proper expenditure of public monies (the "**Welsh Ministers Duties**"); and
 - (e) Welsh Ministers will act in a manner that is consistent with and supportive of the proper carrying out by the Secretary of State of the Secretary of State's Duties and the Secretary of State will act in a matter that is consistent with and supportive of the proper carrying out by Welsh Ministers of the Welsh Minister's Duties.
- 5.2 Nothing in this Agreement shall fetter the discretion of each party in the carrying out of the Secretary of State Duties and the Welsh Ministers Duties as applicable.

6 PURPOSE OF THIS AGREEMENT

6.1 The Parties acknowledge and agree that:

- (a) Welsh Ministers are acting as agent for the Secretary of State pursuant to Agency Agreement no.3; and
- (b) there are wider rail policy, rail strategy and rail operational matters that have an impact on the Welsh franchise agreement; and
- (c) the Secretary of State is granting to Welsh Ministers an enhanced role in the process for selecting Wales Area franchisees including consulting on the specification of Wales Area services; and
- (d) a cooperative and collaborative approach between the Parties, acting as separate rail franchising authorities, is paramount to ensure successful working arrangements,

(together being the “**Purpose**”).

6.2 In furtherance of the Purpose the Parties shall:

- (a) co-operate with each other (including promoting joint working and collaboration between the Parties and, to the greatest extent practicable, stakeholders) and shall use reasonable endeavours to perform their respective obligations set out in or identified pursuant to this Agreement;
- (b) establish a Joint Strategic Board,
- (c) establish arrangements for stakeholders in England to have their views on the operation of English services heard;
- (d) recognise the legal, managerial and financial constraints affecting each Party and shall have full regard to such constraints;
- (e) at all times act fairly and equitably as between themselves.

7 SECRETARY OF STATE RESPONSIBILITY IN RESPECT OF THE SPECIFICATION AND PROCUREMENT OF WALES AREA FRANCHISEES

7.1 Where the Secretary of State is considering the specification of a Wales Area Franchise Agreement, the Secretary of State shall engage fully with Welsh Ministers.

7.2 The Secretary of State’s engagement with Welsh Ministers shall include engagement along the following outline terms which may be varied according to circumstances prevailing at the time (“**Welsh Ministers Procurement Engagement**”):

- (a) sharing with Welsh Ministers the overall procurement process which shall include planned timings and key governance and approvals deadlines;
- (b) engaging with Welsh Ministers on the public consultation document prior to its release and, where requested, sharing those responses to the public consultation from stakeholders and individuals in Wales (subject to their prior agreement having been secured);
- (c) engaging with Welsh Ministers on the proposed specification for Wales Area services following the public consultation including the impact of such Wales Area services on the Welsh component of Welsh services;
- (d) engaging with Welsh Ministers on the proposed approach to rolling stock specification, service quality, operational performance, fares and ticketing in so far as they affect Wales;
- (e) advising Welsh Ministers of the proposed overall commercial approach;
- (f) if, during the bid phase, proposals are received from bidders proposing to operate beyond the current geographic scope of the Wales Area Franchise Agreement, the Secretary of State shall procure that bidders seek the views of Welsh Ministers to assist the Secretary of State's decision; and
- (g) any such other matters as may be agreed by the Parties from time to time.

7.3 If, during the Welsh Ministers' Procurement Engagement, the Secretary of State receives written representations from Welsh Ministers, the Secretary of State shall give consideration to such representations and respond in writing to them if so requested. Where the Secretary of State does not accept Welsh Ministers' representations, the Secretary of State shall provide the rationale for such non-acceptance and, where possible, the Parties shall discuss an alternative means of achieving Welsh Ministers' aims. The timing of the Secretary of State's response may need to reflect the Secretary of State's own approvals and communications timings.

7.4 Where the Secretary of State enters into any Wales Area Franchise Agreement after the Welsh franchise agreement Start Date, to the extent that it is possible to do so the Secretary of State shall include a provision in such Wales Area Franchise Agreement which requires the Wales Area Franchisee to fully and effectively co-operate with Welsh Ministers in relation to any proposal which may be promoted by (or on behalf of) Welsh Ministers during the term of the Wales Area Franchise Agreement for the provision by the Wales Area Franchisee of additional, varied and / or extended passenger services to and from destinations in Wales. Such co-operation shall include the provision of information to Welsh Ministers in respect of the implications of such proposals on the

operation of the Wales Area Franchisee's existing services, costs and revenues and any other impact on its obligations under the Wales Area Franchise Agreement.

8 SECRETARY OF STATE RESPONSIBILITY IN RESPECT OF WALES AREA FRANCHISEES DURING THEIR FRANCHISE TERM

8.1 The Secretary of State shall keep Welsh Ministers informed of any proposed material changes to Wales Area services.

8.2 The Secretary of State and Welsh Ministers shall discuss matters relating to Wales Area franchises at the Joint Strategic Board on a regular basis.

8.3 The Secretary of State shall keep Welsh Ministers informed of any consultation by Scottish Ministers on any passenger rail service which is proposed to make a scheduled call or scheduled calls in Wales and which is proposed to be included in a franchise agreement to which Scottish Ministers are a party.

9 OTHER FRANCHISED SERVICES

9.1 Notwithstanding that the Secretary of State remains the franchising authority for services in England that are operated by the Franchisee, he acknowledges that Welsh Ministers have an interest in the operation of Other Franchised Services. To the extent that the Secretary of State proposes material amendments to Other Franchised Services, the Secretary of State will inform Welsh Ministers of any such proposals.

9.2 If, during the procurement of Other Franchised Services, proposals are received from bidders proposing to operate beyond the current geographic scope of the relevant franchise and to operate services into Wales, the Secretary of State shall procure that bidders seek the views of Welsh Ministers to assist the Secretary of State's decision.

9.3 If the Secretary of State has included Devolved Transport Bodies within England within the franchising process (or delegated such powers to them) he will procure that the same obligation is passed to such Devolved Transport Bodies if appropriate.

10 THE PARTIES GENERAL RESPONSIBILITIES

10.1 The Secretary of State shall consult with Welsh Ministers before making a proposal as 'railway funding authority' under Section 30 of the Railways Act 2005 for closure of a station in Wales used by services provided under a Welsh franchise agreement.

10.2 The Secretary of State shall, as from the Welsh franchise agreement Start Date:

- (a) consult Welsh Ministers before exercising any of its functions under Sections 60 to 63 of the Act (railway administration orders) in respect of the Welsh franchise agreement;

- (b) have regard to any representations from Welsh Ministers in respect of his exercise of such functions in respect of the Welsh franchise agreement; and
- (c) endeavour to facilitate engagement between Welsh Ministers and any Devolved Transport Body in respect of any issues relating to the passenger services under the Welsh franchise agreement or wider rail services in Wales.

10.3 The Secretary of State shall consider any reasonable request of the Welsh Ministers to promote, or enter into agreements or other arrangements to promote, the provision of staff concessionary travel (as defined in Section 135(12) of the Act) to persons or their dependants which are:

- (a) resident in Wales; or
- (b) resident elsewhere in Great Britain and normally working in Wales; or
- (c) resident elsewhere in Great Britain and employed by, or providing health or welfare services for persons employed by, a business that provides railway passenger services under a Welsh franchise agreement or which are otherwise secured by the Welsh Ministers.

10.4 Welsh Ministers will negotiate in good faith with the Secretary of State on an appropriate division of responsibilities in the event of proposals for closures of any passenger networks in Wales under Sections 26-28 of the Railways Act 2005 of which Welsh Ministers are a railway funding authority.

11 PROVISION OF INFORMATION AND COMMUNICATIONS PROTOCOL

11.1 Welsh Ministers agree that during each Railway Period they will provide to the Secretary of State financial management information and operational and performance reports (the “**franchise information**”) in a format to be mutually agreed between the Parties. This may include such dis-aggregated information in respect of services and stations in England as is mutually agreed between the Parties, as well as details of fulfilment of the Franchisee’s Committed Obligations, Service Improvements and Milestones.

11.2 The Parties agree to co-operate fully with each other for the purposes of communication, publicity and liaison matters, including Ministerial correspondence, which relate to the Parties’ interests in the Welsh services or the wider activities, roles, responsibilities or obligations of the Parties under this Agreement or those agreements listed in Clause 3.1. All communications in respect of such matters shall be agreed in writing in advance by the Parties in accordance with the following principles:

- (a) the Parties’ policies in general; and

- (b) the operational or political sensitivity of the matters under discussion.
- 11.3 Where Members of Parliament for English constituencies write to Welsh Ministers on behalf of constituents about English services, Welsh Ministers agree that they will:
 - (a) respond to such correspondence within 15 working days, or such other time as is mutually agreed between the Parties; and
 - (b) report to the Joint Strategic Board on the volume of correspondence from English Members of Parliament, the matters or concern raised and how Welsh Ministers have responded to such correspondence, together with any other such information as the Secretary of State may reasonably request.
- 11.4 Welsh Ministers agree that any significant public announcements by Welsh Ministers in respect of the Welsh franchise agreement and the Franchisee (except such announcements which only affect the Welsh component of Welsh services or Wales-only services) shall be notified in confidence to the Secretary of State before the announcement is made and, where possible, in sufficient time for the Secretary of State to respond to Welsh Ministers on the content of the public announcement.
- 11.5 The Secretary of State shall use reasonable endeavours to notify Welsh Ministers of any public announcements by the Secretary of State regarding Welsh Area franchisees which affect Wales Area services, whilst having regard to any commercial sensitivities and subject to confidentiality undertakings (if required).

12 ESTABLISHMENT OF A JOINT STRATEGIC BOARD

- 12.1 The Parties shall establish and agree the terms of reference for the Joint Strategic Board including, but not limited to, chairing responsibilities, membership, meeting frequency and decision making. This Board shall (inter alia):
 - (a) discuss the operation of, and Parties' compliance with, the terms of the:
 - (i) Agency Agreement no.3;
 - (ii) Funding and Outputs Agreement;
 - (iii) OLR Subcontracting Agreement;
 - (iv) Parties' respective statutory obligations; and
 - (v) this Agreement;
 - (b) discuss the operation, service quality and financial performance of the Franchisee;

- (c) discuss the Franchisee's compliance with their obligations in respect of English services and stations under the Welsh franchise agreement, including Committed Obligations, Service Improvements and Milestones;
- (d) agree an appropriate stakeholder structure to provide a channel for passenger, elected representatives and other stakeholder issues to be addressed and consider the outputs from such structure as well as whether it is fit for purpose and could be improved;
- (e) give Welsh Ministers an enhanced role in the procurement of Welsh Area Franchisees together with any material proposed changes to Welsh Area services;
- (f) discuss any material issues regarding both Wales Area franchisees and Other Franchisees insofar as they affect the Franchisee;
- (g) discuss the development and delivery of both Parties' strategic network investment programmes and how the Parties might co-operate;
- (h) cooperate on any proposal which might affect any rail services that operate in Wales;
- (i) enable the Secretary of State and Welsh Ministers to consult each other before exercising their respective functions under the Railways Acts on matters of mutual interest; and
- (j) any other functions as agreed by the Joint Strategic Board.

13 NEW RAIL SERVICES

- 13.1 The rights and obligations in respect of new rail services are set out in Agency Agreement no.3.
- 13.2 Where Welsh Ministers identify any opportunity for new rail services to be delivered through the Welsh franchise agreement to operate in England (which are not currently included in the Welsh franchise agreement) and either within or outside of the Wales & Borders Franchise Area, Welsh Ministers shall notify the Secretary of State of the details of such proposed new rail service including any supporting rationale, evidence or information available to Welsh Ministers in respect of such proposal (a "**New Rail Service Proposal**").
- 13.3 Following receipt of a New Rail Service Proposal in Clause 13.2, the Secretary of State shall consider such proposal and shall consult other interested parties such as Devolved Transport Bodies and other train operators as appropriate.

- 13.4 Following receipt and consideration of the New Rail Service Proposal, the Secretary of State shall inform Welsh Ministers whether he is:
- (a) supportive of the relevant New Rail Service Proposal, following which the Parties shall work co-operatively to determine if it is possible to contract for the New Rail Service Proposal; or
 - (b) provisionally supportive of the relevant New Rail Service Proposal but requires further information and / or evidence to understand the New Rail Service Proposal and its impact on the rail network and Other Franchisees; or
 - (c) not supportive of the relevant New Rail Service Proposal following which the Secretary of State shall confirm such position to Welsh Ministers in writing, together with the rationale for the Secretary of State's decision.
- 13.5 Securing the Secretary of State's support to any New Rail Services does not guarantee that the Franchisee will secure requisite Track Access Options from the ORR in order to operate the New Rail Services.

14 FURTHER ASSURANCE

- 14.1 Each Party agrees to use all reasonable endeavours to do or procure to be done all such further acts and execute or procure the execution of all such documents as any other Party may from time to time reasonably require for the purpose of giving the other Party the full benefit of the provisions of this Agreement.

15 GOVERNING LAW AND JURISDICTION

- 15.1 This Agreement, and any non-contractual obligations arising out of or in connection with it, its subject matter and formation, shall be governed by and construed in accordance with the laws of England and Wales and, subject to the use of the Dispute resolution procedure set out in Clause 9 of Agency Agreement no. 3 the Parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any Disputes (including any non-contractual Disputes) which may arise out of or in connection with this Agreement.

16 THIRD PARTY RIGHTS

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

17 COUNTERPARTS

17.1 This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original and such counterparts or duplicates shall together constitute one and the same Agreement.

18 NO AGENCY OR PARTNERSHIP

18.1 Nothing in this Agreement shall be deemed to constitute a partnership between the Parties nor constitute any Party the agent of any other Party.

18.2 Neither Party shall act or describe itself as the agent of any other Party, nor shall it make or represent that it has authority to make any commitments on the behalf of any other Party except where expressly so permitted under Agency Agreement no. 3.

19 NO DELEGATION

19.1 No provision of this Agreement shall be construed as a delegation by any of the Parties of any of their respective functions or authority to any Party.

20 LEGALLY BINDING

20.1 The Parties agree that this Agreement shall be fully legally binding between the Parties.

21 STATUTORY POWERS

21.1 Nothing contained or implied in this Agreement shall prejudice or affect the rights, powers, duties and obligations of each of the Parties in the exercise of their respective functions as may be amended, supplemented or increased from time to time and the rights, powers, duties and obligations of each of the Parties pursuant to their respective functions may be as fully and effectually exercised as if this Agreement had not been made.

IN WITNESS whereof the Parties hereto have executed this Agreement as a Deed the day and year first before written.

The Secretary of State

The corporate seal of the
SECRETARY OF STATE FOR TRANSPORT
hereto affixed is authenticated by:

.....
Authenticated by authority of the
Secretary of State for Transport

Welsh Ministers

Executed as a deed by applying the seal of Welsh Ministers.

The application of the seal of Welsh Ministers is AUTHENTICATED by Michael Clarke who is duly authorised for that purpose by the Director of Legal Services by authority of Welsh Ministers under section 90(2) of the Government of Wales Act 2006

Authenticated by authority of the
Director of Legal Services