

**TO BE EXECUTED AS A DEED**

**DEFINITIONS 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) The Secretary of State and Welsh Ministers propose to enter into a number of agreements (the “**Wales & Borders Agreements**”) in connection with Welsh Ministers acting as agent for the Secretary of State in respect of certain English services which are specified in a Welsh franchise agreement.
- (B) The Secretary of State and Welsh Ministers wish to set out in this Agreement, definitions of the terms used in the Wales & Borders Agreements.

**NOW IT IS AGREED** as follows:

**1. CONSTRUCTION AND INTERPRETATION**

In the Wales & Borders Agreements, except to the extent the context otherwise requires:

- (a) words and expressions defined in the Railways Act have the same meanings when used therein provided that, except to the extent expressly stated, “railway” shall not have the wider meaning attributed to it by Section 81(2) of the Act;
- (b) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in the Wales & Borders Agreements;
- (c) the words “include”, “including” and “in particular” are to be construed without limitation;
- (d) references to any person include its successors, transferees or assignees;
- (e) headings and references to headings shall be disregarded in construing the Wales & Borders Agreements;
- (f) references to any enactment include any subordinate legislation made from time to time under such enactment and are to be construed as references to that enactment as for the time being amended or modified or to any enactment for the time being replacing or amending it and references to any subordinate legislation are to be construed as references to that legislation as for the time being amended or modified or to any legislation for the time being replacing or amending it;
- (g) references to an agreement or any other document shall be construed as referring to that agreement or document as from time to time supplemented, varied, replaced, amended, assigned or novated; and
- (h) words importing the masculine gender include the feminine and vice-versa, and words in the singular include the plural and vice-versa.

## 2. DEFINITIONS

Affiliate	means any associated entity including subsidiaries, group companies, individuals representing or employed by the party, wholly owned entities or joint venture parties
Agency Agreements	means Agency Agreement no. 2, Agency Agreement no. 3 and any subsequent agency agreements between the Parties (as applicable)
Agency Agreement no 2	means the agency agreement dated 28 September 2017 entered into between the Parties
Agency Agreement no 3	means the agency agreement to be entered into between the Parties on or about the date of this Agreement
Baseline Franchise Agreement	means the Complete Green Baseline Franchise Agreement held by the Secretary of State
Bidder	means those persons who have been prequalified to receive an ITT and who are proposing to prepare a tender response to the ITT
C&C Agreement	has the meaning given to that term in clause 4.3 of Agency Agreement no.3;
Change	has the meaning given to that term in a Welsh franchise agreement
Control Period	means a Network Rail control period
Core Valley Lines	means the infrastructure in and around Cardiff which is proposed to be transferred from Network Rail to Welsh Ministers
Current Franchise Operator	means Arriva Trains Wales/Trenau Arriva Cymru Limited
Current Franchise Agreement	means the Franchise Agreement between the Strategic Rail Authority, Arriva Trains Limited and Arriva Trains Wales/Trenau Arriva Cymru Limited (the Current Franchise Operator) dated 18 October 2003
CVL network infrastructure	means: <ul style="list-style-type: none"> <li>a) Cardiff Bay station to Rhymney station;</li> <li>b) Heath Junction to Coryton Station;</li> <li>c) Ystrad Mynach South Junction to Cwmbargoed;</li> <li>d) Cardiff Queen St North Junction to Merthyr Tydfil Station;</li> </ul>

	<p>e) Abercynon Junction to Hirwaun;</p> <p>f) Pontypridd Junction to Treherbert; and</p> <p>g) a portion of the railway between Cardiff Queen Street South Junction and Cardiff West Junction to be determined by Welsh Ministers and Network Rail</p>
Deep Dive	means any OLR-related investigation needed to obtain further information from the Franchisee on any element of the Welsh franchise agreement in order to inform decisions on further action, which is carried out pursuant to and in accordance with clause 8 of the OLR Subcontracting Agreement
Definitions Agreement	means this Agreement
Devolved Transport Body	<p>means any of:</p> <p>a) Scottish Government;</p> <p>b) sub national transport body;</p> <p>c) local transport authority; or</p> <p>d) statutory or non-statutory body;</p> <p>which has or exercises devolved legal powers and duties in respect of transport</p>
Dispute	means any dispute arising out of or in connection with the Wales & Borders Agreements
Dispute Resolution Rules	<p>means the procedures for the resolution of disputes known as “The Railway Industry Dispute Resolution Rules”, as amended from time to time in accordance with the terms thereof. The rules are available at:</p> <p><a href="http://accessdisputesrail.org/RIDR/RIDR%20Rules.Pdf">http://accessdisputesrail.org/RIDR/RIDR%20Rules.Pdf</a></p> <p>(or such other applicable web address that is adopted from time to time)</p>
Effective Date	means the date on which this Agreement is executed and delivered by the Secretary of State and Welsh Ministers
England-only Services	means a railway passenger service which is procured as part of a Welsh franchise agreement but which operates solely in England and does not make any scheduled calls in Wales
English component of a Welsh service	means an English service (other than an England only service) so far as it involves the carriage of passengers by railway in England and is otherwise

	not a Welsh component of a Welsh service
English services	means that part of a Welsh service which is not a Welsh component of a Welsh service or a Wales-only service and which is specified in or delivered through the Welsh franchise agreement  English services includes England-only services
English station	means a Station in England at which the Franchisee calls as part of the Train Service Requirement specified in a Welsh franchise agreement
Fourth Railway Package	means: <ul style="list-style-type: none"> <li>(a) Regulation (EU) 2016/796 on the European Union Agency for Railways and repealing Regulation (EC) 881/2004;</li> <li>(b) Directive (EU) 2016/797 on the interoperability of the rail system within the European Union (Recast of Directive 2008/57/EC);</li> <li>(c) Directive (EU) 2016/798 on railway safety (Recast of Directive 2004/49/EC);</li> <li>(d) Regulation (EU) 1370/2007 as amended by Regulation (EU) 2016/2338, which deals with the award of public service contracts for domestic passenger transport services by rail;</li> <li>(e) Directive 2012/34/EU (Recast) as amended by Directive 2016/2370/EU, which deals with the opening of the market of domestic passenger transport services by rail and the governance of railway infrastructure; and</li> <li>(f) Regulation (EU) 2016/2337 repealing Regulation (EEC) 1192/69 on the normalisation of the accounts of railway undertakings</li> </ul>
Franchisee	means the party which Welsh Ministers propose to contract with, and subsequently contract with, pursuant to a Welsh franchise agreement
Funding and Outputs Agreement	means the funding and outputs agreement to be entered into between the Parties on or about the date of this Agreement
Hold Harmless Agreement	means the hold harmless agreement to be entered into between Welsh Ministers and Network Rail
HS2 Project	means the construction and development of a proposed high speed railway from London to Birmingham and the north and all related

	infrastructure works
ITT	means an Invitation to Tender and relates to Welsh Minister's planned procurement of the Franchisee to be a party to a Welsh franchise agreement
Joint Ministerial Committee	means a consultative body established by a memorandum of understanding between the UK Government and the devolved administrations in Wales, Scotland and Northern Ireland. The Joint Ministerial Committee seeks to act as a focus for the co-ordination of the relationships between these administrations
Joint Parties' Agreement	means the agreement signed as between the National Assembly for Wales (as Welsh Ministers were then) and the Secretary of State for Transport, dated 16 March 2006
Joint Steering Group	means the joint steering group to be established by the Parties in accordance with Agency Agreement no 3
Joint Strategic Board	means the joint strategic board to be established by the Parties in accordance with the Co-operation & Collaboration Agreement
Network Rail	means Network Rail Infrastructure Limited
OLR	means operator of last resort
OLR Advisers	means ARUP, EY or SNC Lavalin, or such other third party that the Secretary of State may appoint, or Welsh Ministers may approve, from time to time
OLR Services	has the meaning given to it in Recital D of the OLR Subcontracting Agreement
OLR Subcontracting Agreement	means the subcontracting of operator of last resort services agreement to be entered into between the Parties on or about the date of this Agreement
ORR	means the Office of Rail and Road
Other Franchised Services	means franchised passenger rail services operated by Other Franchisees
Other Franchisee	means the operators of those franchised passenger rail services which operate in England but within the Wales & Borders Franchise Area under a franchise agreement to which the Secretary of State is party
Passenger Transport Executive	means passenger transport executives who implement transport policy and public transport expenditure plans on behalf of passenger transport authorities
Performance Benchmark	means any of the Cancellations Benchmarks,

	Capacity Benchmarks and TOC Minute Delay Benchmark as defined in a Welsh franchise agreement
Project Manager	means a suitably qualified and experienced project manager
Rail Passenger Services Franchise Mobilisation Guide or Mobilisation Guide	means the document produced by the Department for Transport dated March 2017, including as subsequently amended
Reserved Right	has the meaning given to it under the Joint Parties' Agreement
Senior Commercial Manager	means a suitably qualified and experienced senior commercial manager
Station Facility Owner	means the "facility owner" (as defined in section 17(6) of the Railways Act 1993) of the applicable station
Train Service Requirement or TSR	means the quantity and quality of, and other specifications and requirements for, the passenger rail services described in paragraph 9 of Part 2 of Schedule 1.1 of a Welsh franchise agreement.
Transport for Wales	means a company wholly owned by Welsh Ministers to deliver transport projects in Wales
Wales & Borders Agreements	means: <ul style="list-style-type: none"> <li>a) Agency Agreement no. 3;</li> <li>b) Funding &amp; Outputs Agreement;</li> <li>c) OLR Subcontracting Agreement;</li> <li>d) subject to such agreement being entered into, the Co-operation &amp; Collaboration Agreement; and</li> <li>e) Definitions Agreement</li> </ul>
Wales & Borders Franchise Area	means the passenger rail services provided within the geographic scope of a Welsh franchise agreement
Wales Area Franchise Agreement	means any agreement between a Wales Area Franchisee and the Secretary of State
Wales Area franchisee	means the operator of passenger rail services under a franchise agreement to which the Secretary of State is a party and who operates services in Wales
Wales Area services	means franchised passenger rail services operated by Wales Area Franchisees
Wales-only service	means a railway passenger service which starts

	and ends in Wales but does not make any scheduled calls outside Wales and which is specified in or delivered through the Welsh franchise agreement
Wales Route	means the rail network in Wales & Borders as described in Appendix C (Route Context) to the Network Rail, "Wales Routes Strategic Plan", dated February 2018
Welsh component of a Welsh service	means a Welsh service (other than a Wales-only service) so far as it involves the carriage of passengers by railway in Wales and which is specified in or delivered through the Welsh franchise agreement, but the following parts of a service are excluded: <ul style="list-style-type: none"> <li>a) any part of the services after the last scheduled call wholly in Wales before each occasion when the service leaves Wales; or</li> <li>b) any part of the service before the first scheduled call wholly in Wales after each occasion when the service enters Wales; or</li> <li>c) any part of the service between two scheduled calls not wholly in Wales where there is no intervening scheduled call wholly in Wales</li> </ul>
Welsh franchise agreement	means a franchise agreement the franchised services under which consist of Wales-only services, the Welsh component of Welsh services and English services
Welsh service	means a railway passenger service which starts in Wales, ends in Wales or otherwise makes at least one scheduled call in Wales and which is specified in or delivered through the Welsh franchise agreement
Welsh station	means a station in Wales at which the Franchisee calls as part of the Train Service Requirement specified in a Welsh franchise agreement

### 3. GOVERNING LAW

This Agreement 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 this Agreement.

### 4. COUNTERPARTS

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.



**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 the Welsh Ministers.

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

Authenticated by authority of the  
Director of Legal Services