

Dated

2 February 2021

WALES OLR DEED

SECRETARY OF STATE FOR TRANSPORT

(1)

and

THE WELSH MINISTERS

(2)

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THIS DEED is dated

2 February 2021

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) **THE WELSH MINISTERS** whose principal place of business is Crown Building, Cathays Park, Cardiff, CF10 3NQ (the "**Welsh Ministers**") (including, as appropriate, Affiliates or subsidiaries of the 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) (the "**Act**") and the Railways Act 2005 (together the "**Railways Acts**") to the Welsh Ministers in order for the 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 or delivered through a Welsh franchise agreement.
- (B) One of the functions of a franchising authority is the duty to secure the continued operation of passenger rail services pursuant to section 30 of the Act ("**Section 30 Duties**"). The TFO provides that the Welsh Ministers have powers to exercise Section 30 Duties in respect of the Welsh component of Welsh services and Walesonly services. The Secretary of State remains responsible for the Section 30 Duties in respect of the English services under the Act.
- (C) The Secretary of State and the Welsh Ministers entered into an agency agreement dated 31 May 2018 pursuant to which the Secretary of State appointed the Welsh Ministers as his agent to exercise, amongst other things, his Section 30 Duties in respect of the English Services ("**Agency Agreement no.3**").
- (D) The Welsh Ministers and the Secretary of State entered into an agreement dated 31 May 2018 pursuant to which the Welsh Ministers procured operator of last resort services from the Secretary of State in relation to the Wales and Borders franchise (the "**OLR Subcontracting Agreement**").
- (E) The Welsh Ministers entered into a Welsh franchise agreement with Keolis Amey Wales Cymru Limited dated 4 June 2018 (the "**ODP Grant Agreement**"). The Welsh Ministers and Keolis Amey Wales Cymru Limited have entered into a termination

deed pursuant to which the ODP Grant Agreement will terminate. In discharging their Section 30 Duties, the Welsh Ministers shall appoint Transport for Wales Rail Limited (a wholly owned subsidiary of Transport for Wales) to deliver the Wales-only services, the Welsh component of Welsh services and the English services pursuant to an agreement made between the Welsh Ministers and Transport for Wales Rail Limited (the “**OLR Grant Agreement**”). Given the exceptional circumstances, the appointment is being made in compliance with Article 5(3a) of Regulation (EC) No 1370/2007.

(F) The Welsh Ministers and Secretary of State now wish to terminate the OLR Subcontracting Agreement and the Welsh Ministers will procure their own technical, legal and financial advisers to assist the Welsh Ministers:

- a. in discharging their Section 30 Duties in respect of the Welsh component of Welsh services and Wales-only services; and
- b. as the Secretary of State’s agent, in discharging the Section 30 Duties of the Secretary of State in respect of the English services.

(G) This Deed sets out the terms agreed between the Parties relating to:

- a. the Welsh Ministers’ performance of the Section 30 Duties in respect of the English services (as the Secretary of State’s agent);
- b. the amendments to certain of the Wales & Borders Agreements and the amendment and restatement of the Funding and Outputs Agreement arising as a result of:
 - a) the termination of the ODP Grant Agreement;
 - b) the entry into the OLR Grant Agreement; and
 - c) the termination of the OLR Subcontracting Agreement; and
- c. the amendments to the brand licence dated 11 October 2018 and made between Secretary of State and the Welsh Ministers (the “**Brand Licence**”).

NOW IT IS AGREED as follows:

1 DEFINITIONS

In this Deed, unless the context requires otherwise:

- (a) the words and expressions defined in the Definitions Agreement between the Secretary of State and the Welsh Ministers dated 31 May 2018 shall have the same meanings when used in this Deed;

- (b) words and expressions defined in the Baseline Franchise Agreement have the same meanings when used in this Deed;
- (c) words and expressions defined in the Railways Acts shall have the same meaning when used in this Deed; and
- (d) words and expressions defined in the Interpretation Act 1978 shall have the same meaning when used in this Deed.

2 CONSTRUCTION AND INTERPRETATION

2.1 In this Deed, unless the context requires otherwise:

- (a) the words “including”, “include” and “in particular” are to be construed without limitation;
- (b) references to any person include its successors, transferees or assignees;
- (c) headings and references to headings shall be disregarded in construing this Deed;
- (d) 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 Deed;
- (e) references to an agreement or other document shall be construed as referring to that agreement or document as from time to time supplemented, varied, replaced, amended, assigned or novated;
- (f) words expressed in the singular shall include the plural and vice versa and words referring to a particular gender include every gender; and
- (g) all references in this Deed to Clauses and Schedules are to the clauses and schedules to this Deed unless otherwise stated.

2.2 The Parties’ acknowledge that the Welsh Ministers have their own terminology for their documentation, including ODP Grant Agreement for Welsh franchise agreement and Operator and Development Partner for Franchisee. The references in this Deed to the Welsh franchise agreement and Franchisee shall be deemed to include the ODP Grant Agreement and Operator and Development Partner (respectively).

2.3 This Deed is supplemental to and shall be read and construed together with the Wales & Borders Agreements (as amended).

3 COMMENCEMENT AND DURATION

This Deed shall commence on the date of this Deed and shall continue until:

- (a) the expiry or termination of the OLR Grant Agreement (whichever is the earlier);
or
- (b) any earlier date as agreed between the Parties in writing.

4 TERMINATION OF THE OLR SUBCONTRACTING AGREEMENT

The Parties agree that the OLR Subcontracting Agreement shall terminate on the Wales OLR Start Date in accordance with clause 2.1 of the OLR Subcontracting Agreement.

5 AMENDMENTS TO CERTAIN OF THE WALES & BORDERS AGREEMENTS

With effect on and from the Wales OLR Start Date:

- (a) the Agency Agreement no. 3 shall be amended as set out in Part A of Schedule 1 to this Deed;
- (b) the C&C Agreement shall be amended as set out in Part B of Schedule 1 to this Deed; and
- (c) the Definitions Agreement shall be amended as set out in Part C of Schedule 1 to this Deed.

6 AMENDMENT AND RESTATEMENT OF THE FUNDING AND OUTPUTS AGREEMENT

With effect on and from the Wales OLR Start Date, the Funding and Outputs Agreement shall be amended and restated as set out in Schedule 2 to this Deed so that the rights and obligations of the parties to the amended and restated Funding and Outputs Agreement shall, on and from that date, be governed by and construed in accordance with the provisions of the amended and restated Funding and Outputs Agreement.

7 AMENDMENTS TO THE BRAND LICENCE

With effect on and from the Wales OLR Start Date, the Brand Licence shall be amended as set out in Schedule 3 to this Deed.

8 CONTINUITY

Subject to the amendments made in this Deed and the terms of this Deed, all the provisions of the Wales & Borders Agreements and the Brand Licence shall remain in full force and effect in accordance with their terms and all references to each of the Wales & Borders Agreements and the Brand Licence shall be a reference to that agreement as

amended or, in the case of the Funding and Outputs Agreement, amended and restated pursuant to this Deed.

9 SECTION 30 DUTIES IN RESPECT OF THE ENGLISH SERVICES

- 9.1 The Parties acknowledge that the Secretary of State has appointed the Welsh Ministers to act as his agent and perform the Section 30 Duties in respect of the English Services under paragraph 8.1 of Schedule 3 to Agency Agreement no.3.
- 9.2 With effect from the Wales OLR Start Date, the Welsh Ministers shall comply with the terms set out in Schedule 4 to this Deed.
- 9.3 The Welsh Ministers acknowledge and agree that the Secretary of State shall not be obliged to reimburse the Welsh Ministers for any costs that they incur in complying with the terms set out in Schedule 4 to this Deed.
- 9.4 The Parties acknowledge and agree that the terms of this Deed shall be deemed to be the successor arrangements between the Secretary of State and the Welsh Ministers for the purposes of paragraph 8.2 of Schedule 3 to Agency Agreement no.3.
- 9.5 The Secretary of State shall (upon reasonable request from the Welsh Ministers) provide such support and assistance as is reasonable and appropriate to assist the Welsh Ministers in the implementation of their OLR arrangements.

10 CONFIDENTIALITY AND FREEDOM OF INFORMATION

- 10.1 Subject to Clause 10.4, each Party undertakes that it shall not at any time during this Deed disclose to any person any confidential information concerning the activities, business, affairs or suppliers of the other Party, except as permitted by this Clause 10.
- 10.2 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 Deed and under the Railways Acts 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 10;
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; or
 - (c) where at the time of its disclosure, the confidential information is already in the public domain other than by a breach of this Deed.

- 10.3 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 Deed.
- 10.4 Nothing in this Deed shall prevent the Secretary of State or the 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 Deed.
- 10.5 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.

11 GOVERNING LAW AND JURISDICTION

This Deed, 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 the Parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any Disputes (including any noncontractual Disputes) which may arise out of or in connection with this Deed.

12 THIRD PARTY RIGHTS

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

13 SURVIVAL

Termination or expiry of this Deed shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Deed which existed at or before the date of termination or expiry.

14 COUNTERPARTS

This Deed 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 instrument.

IN WITNESS whereof the Parties have executed this Deed on the day and year first before written.

SEAL REF No. 382

The Secretary of State

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



[Handwritten signature]
.....
[Handwritten signature]

Authenticated by authority of the
Secretary of State for Transport

The 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

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

IN WITNESS whereof the Parties have executed this Deed on 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

The 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

MAIR HUGHES
SENIOR LAWYER

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



Schedule 1

Amendments to the Wales & Borders Agreements

Part A

Amendments to the Agency Agreement no. 3

- 1 Clause 1.6 of the Agency Agreement no. 3 shall be deleted in its entirety and replaced with the following:

1.6 The Parties' acknowledge that the Welsh Ministers have their own terminology for their procurement documentation, including Invitation to Submit Final Tenders ("ITSFT") for ITT, ODP Grant Agreement for Welsh franchise agreement and Operator and Development Partner for Franchisee. The references in this Agreement to the ITT, Welsh franchise agreement and Franchisee shall be deemed to include the ITSFT, ODP Grant Agreement and Operator and Development Partner (respectively).

- 2 Paragraph 4.2 of schedule 3 to the Agency Agreement no. 3 shall be deleted in its entirety and replaced with the following:

4.2 oblige the Franchisee to provide disaggregated performance and soft quality data for all Welsh services, English services and Stations and supply this data, and any other reasonable requests for information, to the Secretary of State twice every Franchise Year or more frequently if reasonably requested;

Part B

Amendments to the C&C Agreement

- 1 Clause 2.1 of the C&C Agreement shall be deleted in its entirety and replaced with the following:

2.1 The provisions of this Agreement shall commence, take effect and be binding on each of the Secretary of State and the Welsh Ministers on and from 02:00 on 14 October 2018 and shall continue until the termination or expiry of the OLR Grant 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 the 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 The two references to the “*OLR Subcontracting Agreement*” in clause 3.1 of the C&C Agreement shall be deleted and replaced with references to the “*Wales OLR Deed*”.
- 3 Clause 11.1 of the C&C Agreement shall be deleted and replaced with the words “*Not used*”.
- 4 The reference to the “*OLR Subcontracting Agreement*” in clause 12.1(a)(iii) of the C&C Agreement shall be deleted and replaced with reference to the “*Wales OLR Deed*”.

Part C

Amendments to the Definitions Agreement

- 1 The definition of Deep Dive in clause 2 of the Definitions Agreement shall be deleted and replaced with the following:

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
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- 2 The definition of OLR Advisers in clause 2 of the Definitions Agreement shall be deleted and replaced with the following:

OLR Advisers	means the technical, financial and legal advisers procured by the Welsh Ministers to advise on their operator of last resort arrangements
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- 3 The following definition shall be inserted into the table in clause 2 of the Definitions Agreement in the correct alphabetical place:

OLR Grant Agreement	has the meaning given to that term in recital (E) of the Wales OLR Deed
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- 4 The definition of OLR Services in clause 2 of the Definitions Agreement shall be deleted and replaced with the following:

OLR Services	<p>means the services provided by the OLR Advisers to the Welsh Ministers to enable the Welsh Ministers to discharge their Section 30 Duties, such services to include:</p> <p>(a) advice on the terms of an OLR handbook for the Wales and Borders franchise;</p> <p>(b) Deep Dives; and</p> <p>(c) provision of rail industry expertise should the Welsh Ministers' operator of last resort be required or likely to be required to provide passenger rail services</p>
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5 The following definition shall be inserted into the table in clause 2 of the Definitions Agreement in the correct alphabetical place:

Section 30 Duties	has the meaning given to that term in recital (B) of the Wales OLR Deed
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6 The following definition shall be inserted into the table in clause 2 of the Definitions Agreement in the correct alphabetical place:

Wales OLR Deed	means the deed relating to the performance of the Section 30 Duties in respect of the English services dated <u>2 February 2021</u> and made between the Secretary of State and the Welsh Ministers
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7 The following definition shall be inserted into the table in clause 2 of the Definitions Agreement in the correct alphabetical place:

Wales OLR Start Date	means <u>2 February 2021</u> ;
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8 The definition of the Wales & Borders Agreements in clause 2 of the Definitions Agreement shall be deleted and replaced with the following:

Wales & Borders Agreements	<p>means:</p> <p>a) Agency Agreement no. 3;</p> <p>b) Funding & Outputs Agreement;</p> <p>c) Wales OLR Deed;</p>
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	<ul style="list-style-type: none"> d) C&C Agreement; and e) Definitions Agreement
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9 The definition of the Wales & Borders Agreements in clause 2 of the Definitions Agreement shall be deleted and replaced with the following:

Welsh franchise agreement	<p>means (as applicable):</p> <ul style="list-style-type: none"> a) a franchise agreement the franchised services under which consist of Wales-only services, the Welsh component of Welsh services and English services; and/or b) the OLR Grant Agreement (notwithstanding that it is acknowledged that the OLR Grant Agreement does not constitute a franchise agreement within the meaning of the Act
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Schedule 2

Amended and Restated Funding and Outputs Agreement

**AS AMENDED AND RESTATED ON
THE DATE OF THE WALES OLR DEED**

FUNDING AND OUTPUTS AGREEMENT

SECRETARY OF STATE FOR TRANSPORT (1)

and

THE WELSH MINISTERS (2)

THIS FUNDING AND OUTPUTS AGREEMENT is dated 31 May 2018 as amended and restated on the date of the Wales OLR Deed

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) **THE WELSH MINISTERS** whose principal place of business is Crown Buildings, Cathays Park, Cardiff, CF10 3NQ (the “**Welsh Ministers**”) (including, as appropriate, Affiliates or subsidiaries of the 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 the Welsh Ministers in order for the Welsh Ministers to be the franchising authority in respect of the Welsh component of Welsh services and Walesonly 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 dated 31 May 2018 **and** made between the Secretary of State and the Welsh Ministers (“**Agency Agreement no. 3**”), the Secretary of State agrees that the Welsh Ministers may act as agent of the Secretary of State in respect of franchising, certain ancillary and related matters concerning the England only services to the extent that they are specified in the Welsh franchise agreement.
- (C) The Welsh Ministers entered into a Welsh franchise agreement with Keolis Amey Wales Cymru Limited dated 4 June 2018 (the “**ODP Grant Agreement**”). The Welsh Ministers and Keolis Amey Wales Cymru Limited have entered into a Termination Deed pursuant to which the ODP Grant Agreement will terminate. In discharging their duties under section 30 of the Act, the Welsh Ministers shall appoint Transport for Wales Rail Limited (a wholly owned subsidiary of Transport for Wales) to deliver passenger services pursuant to the OLR Grant Agreement.
- (D) The Parties agree to enter into this Agreement to set out the terms on which the Secretary of State will fund the operation of England only services specified in the Welsh franchise agreement and other funding matters between the Parties. The Welsh Ministers and HM

Treasury will enter into a separate funding agreement(s) regarding HM Treasury's block grant and the divestment of CVL infrastructure from Network Rail to the Welsh Ministers.

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 the Welsh Ministers on and from the Effective Date and shall continue in force until the termination or expiry of the OLR Grant Agreement, unless otherwise terminated earlier by the mutual written consent of the Parties.
- 2.2 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) Wales OLR Deed; and
 - (c) the Co-operation & Collaboration Agreement,

(together with the Definitions Agreement) which comprise the Wales & Borders Agreements.

4 FUNDING FOR ENGLAND ONLY SERVICES

- 4.1 The funding settlement between the Secretary of State and the Welsh Ministers on 31 March 2006 in respect of the Current Franchise Agreement committed the Secretary of State to pay the Current Franchise Operator for those services at the time identified as being wholly within England, with all remaining subsidy being paid by the Welsh Ministers out of its Block Grant settlement that was increased accordingly.
- 4.2 In recognition of this long term funding settlement, which recognises the procurement of and payment for, England only services which will now be made by the Welsh Ministers to the Franchisee, during the term of the Welsh franchise agreement, the Secretary of State shall pay:
- (a) For the financial year 2019/2020 to the termination of the Welsh franchise agreement the annual sum of £4,830,248.12 (19/20 prices) (the “**England only services funding**”);
 - (b) For subsequent years, the England only services funding, indexed using the same methodology that applies to equivalent franchise payments for Wales & Border services in the Welsh franchise agreement; and
 - (c) Any other payments as agreed pursuant to Clauses 6, 7 and 8 of this Agreement.

5 ACCESS CHARGE ADJUSTMENT

Arrangements for the Welsh franchise – 1st April 2019 – 31st March 2024

- 5.1 The Parties agree that for the final year of the HM Treasury’s Comprehensive Spending Review for 2017-2020 (the “**CSR**”) the Welsh Ministers will pay the Baseline Access Charge Adjustment of £71.8 million. This is derived by taking the assumptions for the Access Charge within the ODP Grant Agreement of £44.5 million from the Access Charges for 2019/2020 of £116.3 million assumed within the CSR.
- 5.2 On 11 March 2019, the Office of Rail and Road (“**ORR**”) concluded the statutory implementation process for the Periodic Review 2018 (“**PR18**”) by serving and publishing review implementation notices pursuant to paragraph 7 of Schedule 4A to the Railways Act 1993 (the “**Review Implementation Notices**”). The Review Implementation Notices confirmed the changes that ORR proposed to make to access agreements with effect from 1 April 2019. The parties acknowledge that the changes to the regulated access charges made pursuant to the Review Implementation Notices affected the subsidy payable by the Welsh Ministers to the Franchisee. Under the devolution correspondence of 20 November 2014, the Secretary of State committed to take the risk on the impact of

the change of Control Period 6 rates (but not the impact of the changes to the volume of services).

- 5.3 The Secretary of State (in collaboration with the Welsh Ministers) has calculated the financial impact of the changes set out in the Review Implementation Notices and acknowledges that such changes result in the subsidy payable by the Welsh Ministers to the Franchisee being higher than the amount set out in the ODP Grant Agreement.
- 5.4 The Parties acknowledge and agree that the changes to the regulated access charges set out in the Review Implementation Notices result in the subsidy payable by the Welsh Ministers pursuant to the Welsh franchise agreement increasing (based on 2017/18 prices) by:
- (a) in respect of the period from 1 April 2019 to 31 March 2020, £12,251,637;
 - (b) in respect of the period from 1 April 2020 to 31 March 2021, £11,900,744;
 - (c) in respect of the period from 1 April 2021 to 31 March 2022, £15,735,833;
 - (d) in respect of the period from 1 April 2022 to 31 March 2023, £13,155,384; and
 - (e) in respect of the period from 1 April 2023 to 31 March 2024, £5,950,130, such sums when aggregated together being the “**PR18 Rates Adjustment**”.
- 5.5 Any impact on English services from PR18 will be captured through this adjustment for the whole franchise, with the England-only funding payment continuing unchanged.
- 5.6 The Secretary of State shall pay Welsh Ministers an amount equivalent to the PR18 Rates Adjustment.
- 5.7 The net sum of the PR18 Rates Adjustment will be paid by means of a DEL transfer.
- 5.8 The PR18 Rates Adjustment will continue to be paid each year for the remainder of Control Period 6 and indexed in accordance with same methodology that applies to the Franchisee's payments, subject to Clause 5.10 below.
- 5.9 On 28 March 2020, the Core Valley Lines assets (the “**CVL Assets**”) transferred from Network Rail to Transport for Wales and a new infrastructure manager (the “**CVL IM**”) was appointed in respect of the operation and management of such assets.
- 5.10 Notwithstanding that the access charges in respect of the Franchisee's use of the CVL Assets shall be payable to the CVL IM and not Network Rail from 28 March 2020, an amount equivalent to the PR18 Rates Adjustment shall continue to be payable by the Secretary of State in accordance with clause 5.6.

Arrangements for the Welsh franchise - 1st April 2024 onwards

- 5.11 From the start of Control Period 7 onwards (and any subsequent Control Periods), the arrangements as set out for Control Period 6 will apply for the Wales & Borders network, excluding the CVL Assets. Payments between the Parties will be re-calculated to reflect the impact of the changes to Access Charge rates for the Wales & Borders network (excluding CVL Assets) in line with the principles above. From the start of Control Period 7 onwards, CVL Assets will be the subject of a completely separate process with the ORR and any financial consequences would be for discussion between the Welsh Ministers and HMT, not the Secretary of State.
- 5.12 Similar arrangements will apply if the relevant Access Charge rates are amended outwith the five yearly Control Period cycle anticipated at the time of the agreement – for example if there is an Interim Charging Review.
- 5.13 If the Franchisee disputes the calculation performed by the Secretary of State with regards to Control Period changes, then the Welsh Ministers will act on instruction from the Secretary of State through any dispute resolution process.
- 5.14 Should changes be made to the overall structure of Access Charges, Franchisee payments, Control Periods or the structure of the wider GB rail industry (for example if the funding for rail infrastructure and franchises in England changes) the Parties will work to agree such changes so as to hold each Party financially harmless in line with these principles.

6 OTHER PAYMENTS - SECRETARY OF STATE INITIATED VARIATIONS AND FARES CHANGES

- 6.1 Pursuant to paragraph 4.5 to Schedule 3 to Agency Agreement 3 the Secretary of State may initiate, agree and implement Variations to the Welsh franchise agreement for example in respect of English Services or to promote wider policy and strategic objectives such as High Speed 2 or changes to fares regulations in England. It is possible that such Variations may be initiated by the Secretary of State on behalf of other devolved authorities such as Sub-National Transport Bodies.
- 6.2 It is expected that the subsidy level (positive or negative) paid to the Franchisee by the Welsh Ministers will be amended by the amount of the agreed impact of the Variation and that this would then be offset by matching payments or receipts between Secretary of State and the Welsh Ministers.
- 6.3 If reasonable extra costs of the Welsh Ministers from implementing such Variations are identified and agreed then these payments can be made by means of a DEL transfer.

6.4 It is acknowledged that if all the Parties, including the Welsh Ministers, agree, it may be possible that Secretary of State may agree to enter into direct agreements and payments with the Franchisee in which case the above arrangements in 6.1, 6.2 and 6.3 would not be required.

7 VALLEY LINES

7.1 The Secretary of State confirms that he will pay to the Welsh Ministers the sum of £125 million in 2014 prices to be used towards the costs of the Valley Lines scheme (the “**VL Payment**”).

7.2 The Secretary of State and the Welsh Ministers will agree the timing of the VL Payment but it is expected that the VL Payment will be made over time, proportionate to the rate of expenditure by the Welsh Ministers on the planned upgrade to the Valley Lines.

8 OUTPUTS

8.1 In consideration of the Secretary of State payment for the England only services to the Welsh Ministers, the Secretary of State is procuring, at a minimum

- (a) the provision of train services and station services within England as contractualised in the Welsh franchise agreement;
- (b) to the level of operational and service quality performance as contractualised in the Welsh franchise agreement; and
- (c) the supply each period of information on the financial, operational and service quality performance of the Welsh franchise and its performance against Committed Obligations, Milestones and Service Improvement Plans relevant to England as set out in paragraph 4 of Schedule 3 to Agency Agreement no. 3 as the Secretary of State may require from time to time.

9 DISPUTES

9.1 If either Party disputes the entitlement or amount of payment due under this Agreement the dispute shall be resolved in accordance with Clause 9 (Dispute Resolution Procedure) in Agency Agreement no. 3. Any such dispute shall not affect the obligation on either the Secretary of State or the Welsh Ministers to pay the sums due under this Agreement pending the resolution of such dispute.

10 INDUSTRIAL ACTION BY NETWORK RAIL EMPLOYEES

10.1 It is acknowledged that the Welsh Ministers and Network Rail have entered into certain agreements regarding the divestment of CVL infrastructure (the **CVL Divestment Agreements**). The Secretary of State acknowledges that Network Rail, through a Hold

Harmless Agreement, has secured certain indemnities from the Welsh Ministers in the event that Network Rail experiences industrial action as a result of the CVL divestment activities. By this Agreement the Secretary of State confirms that he does not expect the Welsh Ministers to indemnify Network Rail against all liabilities, costs, expenses, damages and costs suffered or incurred by Network Rail arising out of that industrial action, except in so far as those liabilities, costs, etc. relate only to the Wales Route.

11 FURTHER ASSURANCE

11.1 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.

12 GOVERNING LAW AND JURISDICTION

12.1 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.

13 THIRD PARTY RIGHTS

13.1 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.

14 COUNTERPARTS

14.1 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.

15 NO AGENCY OR PARTNERSHIP

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

15.2 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.

16 NO DELEGATION

16.1 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.

17 LEGALLY BINDING

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

18 STATUTORY POWERS

18.1 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

The 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

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

Schedule 3

Amendments to the Brand Licence

- 1 References to the "ODP Services" throughout the Brand Licence shall be replaced with references to the "Services".
- 2 Clause 1.1 of the Brand Licence shall be amended by replacing the words "*defined in the ODP Grant Agreement shall have the same meanings in this Deed unless the context otherwise requires and the following expressions*" with "*used in this Deed*".
- 3 The definition for "ODP Grant Agreement" at clause 1.1 of the Brand Licence shall be deleted in its entirety.
- 4 The following new definitions shall be inserted at clause 1.1 of the Brand Licence in the correct alphabetical place:

“**Infrastructure Manager**” means a party responsible for the delivery of infrastructure management services on the Wales and Borders franchise pursuant to an agreement with the Authority (as amended, updated or replaced from time to time);”

“**Operator**” means a party responsible for the delivery of passenger rail services on the Wales and Borders franchise pursuant to an agreement with the Authority (as amended, updated or replaced from time to time);” “**Services**” means any:

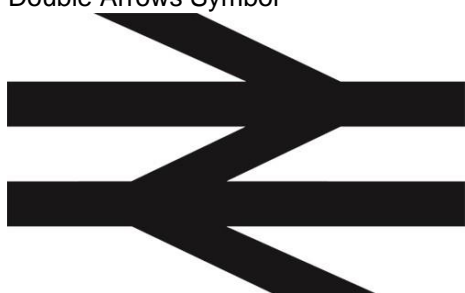
 - (a) passenger rail services provide by an Operator; or
 - (b) infrastructure related services provided by an Infrastructure Manager;”
- 5 The definition of "Sub-Licensees" at clause 1.1 of the Brand Licence shall be deleted in its entirety and replaced with the following:

“**Sub-Licensees**” means all or any of:

 - (a) Transport for Wales (Company Number: 09476013); and/or
 - (b) any Operator or Infrastructure Manager in relation to the Wales and Borders franchise from time to time;”.
- 6 The schedule to the Brand Licence shall be deleted in its entirety and replaced with the following:

SCHEDULE THE TRADE MARKS

1. Registered Trade Marks

Trade Mark	Registration No	Classes	Date of Filing
Double Arrows Symbol 	2107832	16,35, 37, 39, 41, 42	16 August 1996
Pullman	0550690	12	26 April 1934
Pullman	1275684	39, 43	1 October 1986
Pullman	1537902	32	9 June 1993
Pacer	1276981	39	1 October 1986
Sprinter	1276982	39	1 October 1986
Intercity	1277000	39, 43	1 October 1986
Intercity	1518859	16	14 November 1992

2. Unregistered Trade Marks

None

Schedule 4

The Welsh Ministers' performance of the Section 30 Duties in respect of the English services

- 1 The Welsh Ministers shall perform the Secretary of State's Section 30 Duties in respect of the English Services as his agent.
- 2 The Welsh Ministers shall:
 - (a) establish a company to act as the operator of last resort and an appropriate corporate framework; and
 - (b) procure that its operator of last resort company holds all necessary railway operating licences.
- 3 The Welsh Ministers shall:
 - (a) procure and maintain OLR Advisers to provide the OLR Services;
 - (b) ensure that the OLR Advisors are competent and have appropriate skills and knowledge to perform the OLR Services; and
 - (c) notify the Secretary of State in writing in advance of the expiry, early termination or material variation of its contractual arrangements with its OLR Advisers.
- 4 In accordance with clause 12.1 of the C&C Agreement, the Welsh Ministers shall ensure that:
 - (a) the Joint Strategic Board discusses the operation, service quality and financial performance of the Franchisee; and
 - (b) consultation occurs between the Secretary of State and the Welsh Ministers at the Joint Strategic Board before either party exercises their respective functions under the Railways Acts on matters of mutual interest.