

DATED

[INSERT DATE]

(1) [INSERT NAME OF FRANCHISEE]

- and -

(2) THE SECRETARY OF STATE FOR TRANSPORT

POWER OF ATTORNEY

relating to
the Franchise Agreement – West Coast Partnership Franchise

POWER OF ATTORNEY

This power of attorney is made on [INSERT DATE] by [INSERT FULL NAME OF COMPANY] (Company Number [INSERT NUMBER]) whose registered office is [INSERT ADDRESS] ("the Franchisee" or "we" or "our").¹

1. APPOINTMENT AND POWERS

The Franchisee appoints the Secretary of State for Transport whose principal place of business is at 33 Horseferry Road, London SW1P 4DR as its attorney ("**Attorney**") or otherwise and on its behalf to:

- (a) to execute on our behalf the assignment or novation or transfer of any lease, licence, contract or other arrangement or any interest of ours thereunder which is required to be so assigned or novated or transferred under the Franchise Agreement (including under paragraph 1 (*Novation of Access Agreements during the Franchise Term*) of Schedule 2.2 (*Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases*) and paragraphs 1 (*Novation of Access Agreements on Termination of the Franchise Agreement*), 4.5 (*Property Leases*) of Schedule 15.4 (*Provisions applying on and after Termination*) of the Franchise Agreement), paragraph 8.3 (*Functional Requirement Asset*) and paragraph 49.1 (*Customer Community and Development of Passenger Proposition*) of Schedule 18.2 (*Accepted Programme Specific Requirements*) of the Franchise Agreement;
- (b) to consent or to agree, on our behalf, to any assignment, novation or other transfer of any lease, contract or other arrangement or the interest of another Train Operator thereunder where such consent or agreement is required to be given under the Franchise Agreement (including under paragraph 1 (*Novation of Access Agreements during the Franchise Term*) of Schedule 2.2 (*Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases*) and paragraphs 1 (*Novation of Access Agreements on Termination of the Franchise Agreement*) and 4.5 (*Property Leases*) of Schedule 15.4 (*Provisions applying on and after Termination*) of the Franchise Agreement);
- (c) to exercise on our behalf any right to terminate a Key Contract (as defined in the Franchise Agreement), where so obliged to exercise any such right under the Franchise Agreement (including under paragraph 9 (*Termination of Key Contracts*) of Schedule 14.3 (*Key Contracts*) of the Franchise Agreement);
- (d) to enter into on our behalf any licence or licences required to be granted under paragraph 3 (*Brand Licence and Branding*) of Schedule 14.2 (*Maintenance of Operating Assets*) of the Franchise Agreement, paragraph 8 (*Franchisee's Intellectual Property*) of Schedule 15.4 (*Provisions applying on and after Termination*) of the Franchise Agreement or paragraph 14 (*Intellectual Property Rights*) of Schedule 18.1 (*Shadow Operations*) of the Franchise Agreement;
- (e) to novate, assign, transfer, terminate, surrender, cancel or undertake not to enforce any rights under a Key Contract in accordance with paragraph 4.3 (*Key Contracts*) of Schedule 15.4 (*Provisions applying on and after*

1 Note to Bidders: DfT will populate.

Termination) or paragraph 20.1 (*Obligations on Termination of the Shadow Operator Services*) of Schedule 18.1 (*Shadow Operations*) of the Franchise Agreement;

- (f) to execute on our behalf any Supplemental Agreement required to be executed by us under a Transfer Scheme or the Franchise Agreement;
 - (g) to enter into or execute on our behalf such agreements or other instruments as we may be obliged to enter into or execute in accordance with the terms of a Transfer Scheme;
 - (h) generally to execute, make and do in our name or otherwise on our behalf all deeds, instruments, acts and things which our attorney may consider necessary, expedient or desirable in connection therewith;
 - (i) to enter into or execute on our behalf such insurance policies as are required in accordance with paragraph 13.4 (*Insurance*) of Schedule 18.1 (*Shadow Operations*) of the Franchise Agreement;
 - (j) to execute on our behalf the assignment or novation or transfer of any lease, licence, contract or other arrangement or any interest of ours relating to any Primary Franchise Asset which is to be transferred to a Successor Shadow Operator or to the Secretary of State in accordance with paragraph 20.1(d) (*Obligations on Termination of the Shadow Operator Services*) of Schedule 18.1 (*Shadow Operations*) of the Franchise Agreement and/or paragraph 3.5 (*Transfer of Primary Franchise Assets to a Successor Shadow Operator*) of Schedule 15.4 (*Provisions Applying on and after Termination*); and
 - (k) to execute on our behalf any variation agreement to amend the Integrated Operator Provisions in accordance with the drafting agreed or determined by the Secretary of State in accordance with paragraph 8 (*Contractualisation of the IOC Confirmable Obligations*) of Schedule 18.1 (*Shadow Operations*).
2. This power of attorney is given by way of security to secure the performance of obligations owed to the Attorney under the Franchise Agreement.
3. As long as the obligations under the Franchise Agreement remain undischarged, this power of attorney shall, subject to Clause 8 below, not be revoked by the Franchisee without the consent of the Attorney or by the winding-up or dissolution of the Franchisee.
4. The Attorney may appoint one or more persons to act as substitute or substitutes in his place for the purpose referred to herein and may at any time revoke any such appointment.
5. In this power of attorney:
- (a) unless the context otherwise requires, capitalised terms shall have the meaning given to it under the Franchise Agreement;
 - (b) references to any schedules of the Franchise Agreement shall be construed in accordance with clauses 1.4 and 1.5 of the Franchise Agreement; and

- (b) **"Franchise Agreement"** means the franchise agreement (as amended from time to time) entered into between the Secretary of State and the Franchisee on **[INSERT DATE]**².
6. The Franchisee hereby undertakes to ratify and confirm whatsoever the Attorney shall in our name or on our behalf do or purport to do by virtue of or in the exercise of any power conferred by this power of attorney.
 7. The Franchisee hereby undertakes to indemnify and keep the Attorney indemnified against all costs, claims, expenses, proceedings, obligations and liabilities incurred or suffered by the Attorney by reason, directly or indirectly (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs including any cost incurred in enforcing this indemnity (calculated on a full indemnity basis) and all other professional costs and expenses), in connection with the exercise or purported exercise of any power conferred on the Attorney hereunder (including any cost incurred in enforcing this indemnity).
 8. This power of attorney shall be irrevocable but shall expire on the date which falls one (1) year after the date of expiry of the Franchise Term.
 9. The Franchisee declares that a person who deals with the Attorney in good faith may accept a written statement signed by that Attorney to the effect that this power of attorney has not been revoked as conclusive evidence of that fact.
 10. This power of attorney and any dispute or claim arising out of or in connection with it, its subject matter or its formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this power of attorney or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed by the Franchisee and is delivered and takes effect on the date stated at the beginning of it.

Executed as a Deed by)
[INSERT NAME OF COMPANY]³)
acting by **[FULL NAME OF DIRECTOR]**⁴)
in the presence of:)
)
)

.....
Signature of Director

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- 2** **Note to Bidders:** DfT will populate.
 - 3** **Note to Bidders:** DfT will populate.
 - 4** **Note to Bidders:** DfT will populate.

