

TO BE EXECUTED AS A DEED

AGENCY AGREEMENT NUMBER 3

**Pursuant to section 83(1) of the Government of Wales Act 2006
authorising the Welsh Ministers to exercise certain functions of the
Secretary of State for Transport under the Railways Act 1993 (as
amended) and the Railways Act 2005**

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) Pursuant to Section 108 of the Government of Wales Act 2006 ("**GOWA**") the National Assembly for Wales may not legislate in areas regarding the provision and regulation of railway services except for specified forms of financial assistance.
- (B) A Transfer of Functions Order under section 58(1) of GOWA ("**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 TFO transfers franchising functions to Welsh Ministers only insofar as they relate to the Welsh component of a Welsh service and Wales-only services, and certain ancillary and related matters within Wales. The Secretary of State shall remain the franchising authority over English services insofar as they are specified or delivered through a Welsh franchise agreement.
- (C) In advance of that TFO coming into force, Welsh Ministers are acting with the consent and, as legally necessary, as agent for the Secretary of State, as principal, to commence and conduct a procurement process under the Act to procure a new Franchisee for a Welsh franchise agreement which consists of Wales-only services, a Welsh component of Welsh services and English services (the "**Welsh franchise agreement**").
- (D) Following relevant provisions of the TFO coming into force, Welsh Ministers shall continue to act as agent of the Secretary of State in respect of the English services to the extent that such services are specified in the Welsh franchise agreement.
- (E) By virtue of Section 83 of the GOWA, arrangements may be made between Welsh Ministers and the Secretary of State for the Secretary of State's franchising procurement functions to be exercised by Welsh Ministers.
- (F) Accordingly the Parties have already entered into two agency arrangements made under Section 83 of the GOWA to facilitate Welsh Government's procurement of a Welsh franchise agreement. The first Agency Agreement dated 11 October 2016 ("**Agency Agreement no. 1**") was to enable Welsh Ministers to down select Bidders for a Welsh franchise agreement. The second Agency Agreement dated 28 September 2017 ("**Agency Agreement no. 2**") recorded the scope of agency arrangements which the Parties agreed between them, including confirmation from the Secretary of State that Welsh Ministers could issue to down-selected Bidders an Invitation to Tender ("**ITT**").
- (G) This Agreement ("**Agency Agreement no. 3**" or "**Agreement**") is necessary because:

- a. as the TFO will not come into force before Welsh Ministers propose to enter into a Welsh franchise agreement, a third agency agreement is required to give Welsh Ministers contractual authority to execute a Welsh franchise agreement, to prepare for the mobilisation of a Welsh franchise agreement and manage the Welsh franchise agreement for and on behalf of the Secretary of State; and further
 - b. once the relevant provisions of the TFO come into force, Welsh Ministers require agency powers to exercise certain of the Secretary of State's appropriate franchising authority powers, appropriate national authority and appropriate authority functions in respect of any Welsh franchise agreement (which could include the Current Franchise Agreement if extended).
- (H) This Agreement therefore sets out the scope of the agency arrangements which the Parties have agreed between them including confirmation from the Secretary of State that Welsh Ministers may execute a Welsh franchise agreement.
- (I) This Agreement will be executed on the same date as the other Wales & Borders Agreements (save for the C&C Agreement as defined in clause 4.3 of this Agreement).

NOW IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1. In this Agreement, unless the context requires otherwise,
- 1.1.1. the definitions set out in the separate Definitions Agreement shall apply; and
 - 1.1.2. words and expressions defined in the Baseline 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. All references in this Agreement to Clauses and Schedules are to the Clauses and Schedules to this Agreement unless otherwise stated.
- 1.5. 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.
- 1.6. The Parties' acknowledge that 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. COMMENCEMENT

- 2.1. Save for the rights and obligations in Schedule 3 which will come into force on the Start Date (as defined in the Welsh franchise agreement) (excluding paragraph 8 of Schedule 3 which shall take effect on 14 October 2018), the provisions of this Agreement shall commence, take effect and be binding on each of the Parties on and from the Effective Date.
- 2.2. From the Effective Date, Agency Agreement no. 2 shall terminate (Agency Agreement no. 1 having already terminated on the execution of Agency Agreement no. 2).

3. CONFIDENTIALITY AND FREEDOM OF INFORMATION

- 3.1. Subject to Clause 3.4, 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 3.
- 3.2. Each Party may disclose the other Party's confidential information:
 - 3.2.1. 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 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 3;
 - 3.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; or
 - 3.2.3. where at the time of its disclosure, the confidential information is already in the public domain other than by a breach of this Agreement.
- 3.3. 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.
- 3.4. Nothing in this Agreement 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 Agreement.
- 3.5. 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.

4. CO-OPERATION

- 4.1. It is recognised by both Parties that the need for partnership working is paramount. The Parties shall, subject to the proper performance by each of them of their respective legal and statutory duties, co-operate with the other Party and act reasonably in the exercise of each other's rights pursuant to this Agreement. Where the Secretary of State's consent is required under this Agreement such consent shall not be unreasonably withheld or delayed.

- 4.2. In the event that the Current Franchise Agreement is extended beyond seven (7) Reporting Periods, the Parties shall work collaboratively to conclude new terms with the Current Franchise Operator.
- 4.3. On or before 15 June 2018 (or such later date as the Parties may agree) the Parties shall enter into a legally binding Co-operation & Collaboration Agreement (the "**C&C Agreement**") which shall:
 - 4.3.1. set out the terms upon which Welsh Ministers will exercise the agency powers granted to them under this Agreement, promote equality of services whether they operate in Wales or England provided they are specified in a Welsh franchise agreement and set out the constitution and functions of a Joint Strategic Board; and
 - 4.3.2. deliver the Secretary of State's commitment under the 2015 Command Paper "Powers for a purpose: Towards a lasting devolution settlement for Wales" in relation to the way in which Welsh Ministers shall be consulted on the specification of Wales Area services.
- 4.4. Where no agency powers are granted to Welsh Ministers by the Secretary of State under this Agreement, to the extent that Welsh Ministers wish to exercise a Secretary of State Railways Acts function or functions in relation to the Welsh franchise agreement, the Secretary of State undertakes to consider Welsh Ministers' proposals in respect of such function(s) and provide a written response, as soon as reasonably practicable, on whether the Secretary of State proposes to grant those agency powers sought by Welsh Ministers, including the imposition of any conditions he considers appropriate.

5. PROCESS, TIMING AND PURPOSE

- 5.1. The Parties acknowledge that Welsh Ministers, or Transport for Wales on behalf of Welsh Ministers, have been engaging in carrying out a single procurement process to appoint a Franchisee to:
 - 5.1.1. enter into and deliver its obligations under, a Welsh franchise agreement;
 - 5.1.2. facilitate the proposed transfer of ownership of the Core Valley Lines assets;
 - 5.1.3. design and manage the development and implementation of capital works to deliver a metro style service on the Core Valley Lines;
 - 5.1.4. perform (or procure the performance of) subsequent infrastructure management of the Core Valley Lines; and
 - 5.1.5. design and develop further schemes to improve rail travel in the Wales & Borders Franchise Area in accordance with European Union and domestic legislation (to the extent applicable).
- 5.2. In anticipation of Welsh Ministers acquiring franchising authority powers in relation to the Welsh component of Welsh services and / or Wales-only services after Welsh Ministers enter into a Welsh franchise agreement, this Agreement also sets out the basis (including relevant consents and conditions) upon which Welsh Ministers may exercise franchising authority and related functions on behalf of the Secretary of State under a Welsh franchise agreement.
- 5.3. The Secretary of State confirms that he has laid a TFO and all such other relevant papers which are, in the reasonable opinion of the Secretary of State, necessary to make Welsh Ministers the relevant franchising authority for the Welsh component of a Welsh service and Wales-only services.

6. SECRETARY OF STATE'S CONSENT

6.1. Subject to the following:

6.1.1. undertakings and positive obligations given by Welsh Ministers set out in Schedules 1 and 3 to this Agreement; and

6.1.2. the Parties agreeing the terms of a separate Funding and Outputs Agreement, OLR Subcontracting Agreement and Definitions Agreement,

the Secretary of State agrees that Welsh Ministers may exercise, on his behalf and as his agent, the Secretary of State's powers under the Act to procure a Franchisee to enter into a Welsh franchise agreement.

7. SECRETARY OF STATE DUTIES

Welsh Ministers:

7.1. agree that the Wales & Borders Agreements and any agreements Welsh Ministers come to with Network Rail regarding the transfer, operation and funding of the Core Valley Lines set out the agreed cost and risk allocation between the Parties and Network Rail and Welsh Ministers accordingly agree that they shall not act in a manner that directly or indirectly alters or amends such agreed risk allocation;

7.2. acknowledge and agree that they shall not act in a manner that directly or indirectly unfairly prejudices the interests of passengers using English services in favour of the interests of passengers using the Welsh component of a Welsh service or a Wales-only service; and

7.3. acknowledge:

7.3.1. the constitutional duties of the Secretary of State arising out of his office including under the Railways Acts;

7.3.2. the duties of the Secretary of State in relation to the proper expenditure of public monies; and

7.3.3. the duties of the Secretary of State as the funder and specifier of the railway network in England and Wales subject to the transfer of functions under Section 26(3) of the Act pursuant to Section 83(1) of GOWA,

(the "**Secretary of State Duties**"),

and Welsh Ministers agree that they shall generally act in a manner that is fully consistent with and supportive of the proper carrying out by the Secretary of State of the Secretary of State Duties.

8. PARTIES UNDERTAKINGS AND POSITIVE OBLIGATIONS

8.1. Schedule 1 of this Agreement sets out Welsh Ministers' undertakings and positive obligations in respect of:

8.1.1. the procurement of the Franchisee; and

8.1.2.the mobilisation activities necessary in advance of the commencement of rail passenger services to be operated by the Franchisee under the Welsh franchise agreement.

8.2. Schedule 2 of this Agreement sets out:

8.2.1.those dates from which Welsh Ministers may exercise certain Railways Acts functions for an on behalf of the Secretary of State under a Welsh franchise agreement (subject to certain conditions) under this Agreement;

8.2.2.the Secretary of State's Railways Acts powers that Welsh Ministers will be able to exercise on behalf of the Secretary of State under a Welsh franchise agreement (subject to certain conditions) under this Agreement; and

8.2.3.those Railways Acts functions of the Secretary of State which transfer to Welsh Ministers under the TFO and over which no agency powers are granted to Welsh Ministers.

8.3. Schedule 3 of this Agreement sets out Welsh Ministerial undertakings and positive obligations in respect of the management of a Welsh franchise agreement.

9. DISPUTE RESOLUTION PROCEDURE

9.1. Where this Agreement provides that the Secretary of State may reasonably determine any matter (including whether the Secretary of State's consent is required), Welsh Ministers may, unless this Agreement expressly provides otherwise, dispute whether a determination made by the Secretary of State is reasonable, but the Secretary of State's determination shall prevail unless or until it is agreed or determined to have been unreasonable in accordance with the dispute resolution procedure set out in Clause 9.2 or pursuant to a reference to the Courts of England and Wales. Any dispute relating to matters specified in this Clause 9.1 may be referred to the High Court of England.

9.2. Subject to Clause 9.3, where a Dispute arises, either Party may refer that Dispute for resolution or determination in accordance with the Dispute Resolution Rules, following such referral such Dispute shall, unless the Parties otherwise agree, be resolved or determined pursuant to the Dispute Resolution Rules.

9.3. The mediator in any Dispute referred for resolution or determination under the Dispute Resolution Rules in accordance with Clause 9.2, shall be a suitably qualified person chosen by agreement between Parties, or in default of agreement, selected on the application of either Party by the President of the Law Society or the President of the Institute of Chartered Accountants in England and Wales from time to time (or such other person to whom they may delegate such selection).

9.4. Notwithstanding Clauses 9.1 to 9.3 above, either Party may raise and attempt to resolve any Dispute at some other forum at which the Parties participate, for example the Joint Ministerial Committee.

10. DURATION, VARIATION AND TERMINATION

10.1. This Agreement shall continue until Welsh Ministers require powers to commence the procurement of a further franchisee for a further Welsh franchise agreement upon the termination or expiry of the Welsh franchise agreement.

10.2. The Joint Parties' Agreement will terminate on 14 October 2018, after which date the provisions of Schedule 3 to this Agreement will apply to the management of the Welsh franchise agreement.

- 10.3. This Agreement shall be reviewed by the Parties in the event that the Current Franchise Agreement is extended and Welsh Ministers become the franchising authority for the Welsh component of Welsh services and Wales-only services under the TFO. In such circumstances, the Parties will consider if there are any provisions in the Joint Parties' Agreement which would assist the Parties to manage the Current Franchise Agreement for the duration of any such extension.
- 10.4. The Parties shall be entitled to review and amend this Agreement, provided that any such amendment shall be in writing and agreed by both Parties.

11. INDEMNITY

- 11.1. Subject to Clauses 11.2 and 11.3, Welsh Ministers shall indemnify the Secretary of State against all liabilities, costs, expenses, damages and losses and all other reasonable professional costs and expenses suffered or incurred by the Secretary of State arising out of or in connection with:
- 11.1.1. any claim by a third party made against either Party arising out of the Welsh Ministers' performance of their agency obligations exercisable by virtue of this Agreement;
 - 11.1.2. the enforcement of this Agreement by the Secretary of State; or
 - 11.1.3. the termination of the procurement exercise by Welsh Ministers prior to a Welsh franchise agreement being entered into.
- 11.2. Welsh Ministers' indemnity in Clause 11.1 shall not apply in the event that the Secretary of State acts unreasonably in respect of:
- 11.2.1. the TFO not coming into force because of a decision by Parliament not to proceed with Welsh devolution and where the Secretary of State does not consent, or does not make alternative arrangements for Welsh Ministers to execute and/or manage the Welsh franchise agreement;
 - 11.2.2. a failure by the Secretary of State to grant his consent under this Agreement;
 - 11.2.3. a failure by the Secretary of State to notify any relevant Claim to Welsh Ministers in accordance with Clause 11.4;
 - 11.2.4. the Secretary of State acts in such a way as to lead to Welsh Ministers committing a breach of procurement and/or any applicable law; or
 - 11.2.5. where Welsh Ministers have acted on the instructions of the Secretary of State (including any instructions to act in accordance with any Secretary of State policy, guidance or process) or within the conditions of this Agreement.
- 11.3. Notwithstanding the provisions of Clauses 11.1 or 11.2, Welsh Ministers' indemnity shall not apply to any liabilities, costs, expenses, damages or losses the Secretary of State may incur should Welsh Ministers' procurement of a Franchisee for a Welsh franchise agreement be unsuccessful, no Welsh franchise agreement is executed and the Secretary of State is obliged to exercise his franchising authority powers under Section 26 of the Act or Regulation (EC) no. 1370/2007 to appoint an operator for a Welsh franchise agreement (other than in respect of Wales-only services).
- 11.4. If any third party makes a claim, or notifies an intention to make a claim, against either Party which may reasonably be considered likely to give rise to a liability under this indemnity (a "Claim"), that Party shall:

- 11.4.1. as soon as reasonably practicable, give written notice of the Claim to the other Party, specifying the nature of the Claim in reasonable detail;
 - 11.4.2. not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the other Party (such consent not to be unreasonably conditioned, withheld or delayed); and
 - 11.4.3. give the other Party such assistance and information as they may reasonably require for the purpose of assessing the Claim.
- 11.5. The Parties agree that Welsh Ministers shall be entitled to control all proceedings, actions or challenges in relation to any Claim. The Secretary of State agrees to act in accordance with Welsh Ministers' reasonable requests in respect of the conduct of any such Claim including its resolution or settlement, and agrees to provide reasonable information and support to Welsh Ministers in connection with such Claim.
- 11.6. Welsh Ministers agree that the Secretary of State shall not incur liability towards Welsh Ministers for the accuracy of any information or advice which the Current Franchise Operator or any third party may or has provided to the Secretary of State and which is subsequently passed to Welsh Ministers.

12. HM TREASURY STATEMENT OF FUNDING POLICY

Nothing in this Agreement, or any of the other Wales & Border Agreements, shall supersede or alter the obligations of the Parties insofar as they are set out in the HM Treasury Statement of Funding Policy (funding the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly), dated November 2015 (or any subsequent reissue of the HM Treasury Statement of Funding Policy).

13. GOVERNING LAW AND JURISDICTION

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, 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.

14. THIRD PARTY RIGHTS

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.

15. SURVIVAL

- 15.1. On termination or expiry of this Agreement, the following clauses shall continue in force: Clause 11 (Indemnity).
- 15.2. Termination or expiry of this Agreement 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 Agreement which existed at or before the date of termination or expiry.

16. 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:



A handwritten signature in black ink that reads 'S.J. White'.

.....
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

SCHEDULE 1

WELSH MINISTERIAL UNDERTAKINGS AND POSITIVE OBLIGATIONS IN RESPECT OF PROCUREMENT AND MOBILISATION FUNCTIONS IN RESPECT OF A WELSH FRANCHISE AGREEMENT

PROCUREMENT PRACTICES AND PROCESSES

1. Welsh Ministers undertake that they:
 - 1.1. have, or will, consult with the Secretary of State on the terms of the proposed Welsh franchise agreement and related procurement documentation (including any Certificate of Commencement) ;
 - 1.2. will issue a Certificate of Commencement to the Franchisee provided that:
 - 1.2.1. either the terms of any Conditions Precedent Agreement have been satisfied; or
 - 1.2.2. unless otherwise agreed by the Parties, if any condition precedent (“CP”) has not been satisfied, a waiver of the CP has been granted, provided that any such waiver would not, of itself, prevent the delivery of the Train Service Requirement;
 - 1.3. have complied with all relevant procurement and railway sector legislation, including the Fourth Railway Package;
 - 1.4. have complied with the terms of Schedule 1 to Agency Agreement no. 2 as regards the procurement of a Welsh franchise agreement; and
 - 1.5. will not materially amend the terms of the Welsh franchise agreement after the Secretary of State's consent has been granted to its terms, in so far as the terms relate to the provision and operation of English services, without the Secretary of State's consent. In circumstances where such a material amendment is made and the Secretary of State's consent has not been secured, the Parties' will work together to resolve the issue provided always that, if instructed to do so by the Secretary of State, Welsh Ministers shall revoke such material amendments to the Welsh franchise agreement in accordance with the Change mechanism in the Welsh franchise agreement and all costs associated with such Change shall (as between the Parties) be borne solely by Welsh Ministers.

MOBILISATION FUNCTIONS

2. The exercise of mobilisation functions is a Reserved Right (as defined in the Joint Parties' Agreement) for the Secretary of State under the Joint Parties' Agreement. To facilitate the mobilisation of the Welsh franchise agreement, the Secretary of State consents to Welsh Ministers exercising functions to facilitate the engagement between the Current Franchise Operator and the Franchisee to enable the commencement and operation of the Welsh franchise agreement (the “**Mobilisation Functions**”).
3. The Parties have agreed as follows:
 - 3.1. the Secretary of State has offered, and Welsh Ministers have agreed, that the Secretary of State will assist Welsh Ministers with the mobilisation of the Welsh franchise agreement;
 - 3.2. both Parties may jointly instruct Welsh Ministers' external advisors;

- 3.3. a project management group and a Joint Steering Group will be established by the Parties to oversee the exercise of the Mobilisation Functions. Nomination of a chair(s), constituent members, meeting cycle, compliance with the terms of this Agreement etc. will be agreed between the Parties as soon as reasonably practicable;
 - 3.4. the Rail Passenger Services Franchise Mobilisation Guide (the "**Mobilisation Guide**") will provide the basis for guidance in exercising Mobilisation Functions. The Mobilisation Guide however is not definitive and the Parties will have to exercise their judgement in circumstances where the Mobilisation Guide does not provide any or sufficient instructions on how to exercise Mobilisation Functions. The governance processes as set out in the Mobilisation Guide will apply for the period that Mobilisation Functions are exercised;
 - 3.5. the project management group will meet with both the Current Franchise Operator and Franchisee to exercise the Mobilisation Functions;
 - 3.6. the conditions precedent review meeting(s) and completion meeting(s) will be chaired by Welsh Ministers; and
 - 3.7. should any disagreement arise between the Parties regarding the exercise of the Mobilisation Functions and the Parties are unable to resolve that dispute in good faith Welsh Ministers' views will prevail on any mobilisation issues concerning the Franchisee.
4. Welsh Ministers will:
 - 4.1. provide a full time franchise management team for the period that the Mobilisation Functions are exercised. As a minimum the Welsh Ministers' franchise management team will consist of a senior commercial manager, a contract manager and a finance manager. These resources will be identified and in place before the Mobilisation Functions are obliged to be exercised; and
 - 4.2. ensure external advisor (legal, technical and financial) contracts are in place throughout the period that the Mobilisation Functions are exercised. Welsh Ministers shall be solely responsible for these external advisor costs.
5. To assist in the exercise of Mobilisation Functions from the Effective Date and for the period that Mobilisation Functions are exercised, the Secretary of State will provide:
 - 5.1. one Project Manager providing part-time support, increasing to full time support after execution of the Welsh franchise agreement and until commencement of the Welsh franchise agreement; and
 - 5.2. support from a Senior Commercial Manager on a case-by-case basis by agreement between the Parties.
6. The Secretary of State reserves the right to withdraw the granting of agency powers in respect of the exercise of Mobilisation Functions in the event that the Secretary of State reasonably considers that he may be required, or is obliged, to exercise his functions under Section 30 of the Act.

SCHEDULE 2

THE ACT AND RAILWAYS ACT FUNCTIONS

1. For the purposes of establishing on which dates Welsh Ministers shall have agency powers to exercise certain of the Secretary of State's Act and Railways Act 2005 functions, the following table sets out:

1.1 the relevant legislative provision under the Act and Railways Act;

1.2 whether the agency powers exercisable by Welsh Ministers come into force on either the Effective Date, a date being twenty-one (21) days after The Welsh Ministers (Transfer of Functions) (Railways) Order 2018 ("TFO") is made or at 2.00 am on 14th October 2018; and

1.3 those Act and Railways Act functions of the Secretary of State which transfer to the Welsh Ministers under the TFO and over which no agency powers are granted to Welsh Ministers.

Relevant legislative provision in relation to Secretary of State function	Description of relevant Secretary of State function	Date agency powers to exercise relevant function is exercisable by Welsh Ministers or if no agency powers are granted: E – the Effective Date; F- twenty one (21) days after TFO is made; C – 2.00am on 14 th October 2018; or No agency powers	Scope of relevant agency powers exercisable by Welsh Ministers until relevant function is transferred to Welsh Ministers pursuant to the TFO	Scope of agency powers exercisable by Welsh Ministers after relevant function is transferred to Welsh Ministers pursuant to the TFO	Notes/Conditions
The Act					
23	Designation of services for franchising	E	All services to be provided under the	All services other than Wales-only and the Welsh component of	Conditions set out in Schedule 3 of this Agreement

*No agency power from the Effective Date to 2.00am on 14th October 2018

Relevant legislative provision in relation to Secretary of State function	Description of relevant Secretary of State function	Date agency powers to exercise relevant function is exercisable by Welsh Ministers or if no agency powers are granted: E – the Effective Date; F- twenty one (21) days after TFO is made; C – 2.00am on 14 th October 2018; or No agency powers	Scope of relevant agency powers exercisable by Welsh Ministers until relevant function is transferred to Welsh Ministers pursuant to the TFO	Scope of agency powers exercisable by Welsh Ministers after relevant function is transferred to Welsh Ministers pursuant to the TFO	Notes/Conditions
	(functions as 'appropriate designating authority')		Welsh franchise agreement.	Welsh services to be provided under the Welsh franchise agreement	
24	Exemption of services from franchising	No agency powers	No agency powers	No agency powers	Clause 4.4 of this Agreement
26 – 28 RA05	Network Closure provisions	On the CVL Asset Transfer Date	All functions of the Secretary of State as a national authority in relation to the Network comprised of the Core Valley Lines	All functions of the Secretary of State as a national authority in relation to the Network comprised of the Core Valley Lines	Proposed to be referenced in a Co-operation & Collaboration Agreement between the Parties
26(1)	Selection of franchisee	E	All duties of the 'appropriate franchising authority' in relation to the Welsh franchise agreement	No agency powers	Selection of franchisee is assumed to have occurred before the relevant function transfers

*No agency power from the Effective Date to 2.00am on 14th October 2018

Relevant legislative provision in relation to Secretary of State function	Description of relevant Secretary of State function	Date agency powers to exercise relevant function is exercisable by Welsh Ministers or if no agency powers are granted: E – the Effective Date; F- twenty one (21) days after TFO is made; C – 2.00am on 14 th October 2018; or No agency powers	Scope of relevant agency powers exercisable by Welsh Ministers until relevant function is transferred to Welsh Ministers pursuant to the TFO	Scope of agency powers exercisable by Welsh Ministers after relevant function is transferred to Welsh Ministers pursuant to the TFO	Notes/Conditions
					to the Welsh Ministers and therefore no agency powers are granted after the relevant function transfers. Clause 7 of this Agreement sets out the agency powers of Welsh Ministers to procure a Franchisee to enter into a Welsh franchise agreement.
26(2)/(3)	Issue of ITT	No agency powers	No agency powers	No agency powers	Clause 4.4 of this Agreement

*No agency power from the Effective Date to 2.00am on 14th October 2018

Relevant legislative provision in relation to Secretary of State function	Description of relevant Secretary of State function	Date agency powers to exercise relevant function is exercisable by Welsh Ministers or if no agency powers are granted: E – the Effective Date; F- twenty one (21) days after TFO is made; C – 2.00am on 14 th October 2018; or No agency powers	Scope of relevant agency powers exercisable by Welsh Ministers until relevant function is transferred to Welsh Ministers pursuant to the TFO	Scope of agency powers exercisable by Welsh Ministers after relevant function is transferred to Welsh Ministers pursuant to the TFO	Notes/Conditions
26(4A)-(4F)	Statement of franchising policy	No agency powers	No agency powers	No agency powers	Clause 4.4 of this Agreement
26ZA	No adequate tender received	No agency powers	No agency powers	No agency powers	Clause 4.4 of this Agreement
27	Transfer of franchise assets and shares	E	All duties of the 'appropriate franchising authority' in relation to the Welsh franchise agreement	All duties of the 'appropriate authority' in relation to the Welsh franchise agreement	Conditions set out in Schedule 3 of this Agreement
28	Fares and approved discount fares schemes	E	All duties of the 'appropriate franchising authority' in relation to the Welsh franchise agreement	All duties of the 'appropriate franchising authority' in relation to the Welsh franchise agreement to the extent that the franchised services under it are services other than Wales-only services or	

*No agency power from the Effective Date to 2.00am on 14th October 2018

Relevant legislative provision in relation to Secretary of State function	Description of relevant Secretary of State function	Date agency powers to exercise relevant function is exercisable by Welsh Ministers or if no agency powers are granted: E – the Effective Date; F- twenty one (21) days after TFO is made; C – 2.00am on 14 th October 2018; or No agency powers	Scope of relevant agency powers exercisable by Welsh Ministers until relevant function is transferred to Welsh Ministers pursuant to the TFO	Scope of agency powers exercisable by Welsh Ministers after relevant function is transferred to Welsh Ministers pursuant to the TFO	Notes/Conditions
				Welsh components of Welsh services	
29	Other terms and conditions in a franchise agreement	E	All functions of the 'appropriate franchising authority' in relation to the Welsh franchise agreement	All functions of the 'appropriate franchising authority' in relation to the Welsh franchise agreement to the extent that the franchised services under it are services other than Wales-only services or Welsh components of Welsh services	Conditions set out in Schedule 3 of this Agreement
30	Duty of relevant franchising authority	C	No agency powers	All functions of the 'relevant franchising authority' in relation to the Welsh franchise agreement to the extent that the franchised services under it are	Clause 7 of this Agreement

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Relevant legislative provision in relation to Secretary of State function	Description of relevant Secretary of State function	Date agency powers to exercise relevant function is exercisable by Welsh Ministers or if no agency powers are granted: E – the Effective Date; F- twenty one (21) days after TFO is made; C – 2.00am on 14 th October 2018; or No agency powers	Scope of relevant agency powers exercisable by Welsh Ministers until relevant function is transferred to Welsh Ministers pursuant to the TFO	Scope of agency powers exercisable by Welsh Ministers after relevant function is transferred to Welsh Ministers pursuant to the TFO	Notes/Conditions
				services other than Wales-only services or Welsh components of Welsh services	
54(1)	Exercise of functions for purposes of encouraging investment in railways	E	All franchising functions of the Secretary of State in relation to the Welsh franchise agreement	All franchising functions of the Secretary of State in relation to the Welsh franchise agreement to the extent that the franchised services under it are services other than Wales-only services or Welsh components of Welsh services	Franchising functions (as defined in Section 54(3)) of the Act are exercisable by Welsh Ministers as agent of the Secretary of State to the extent that an agency power in relation to the relevant section of the Act has been granted under this agreement..

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Relevant legislative provision in relation to Secretary of State function	Description of relevant Secretary of State function	Date agency powers to exercise relevant function is exercisable by Welsh Ministers or if no agency powers are granted: E – the Effective Date; F- twenty one (21) days after TFO is made; C – 2.00am on 14 th October 2018; or No agency powers	Scope of relevant agency powers exercisable by Welsh Ministers until relevant function is transferred to Welsh Ministers pursuant to the TFO	Scope of agency powers exercisable by Welsh Ministers after relevant function is transferred to Welsh Ministers pursuant to the TFO	Notes/Conditions
54(2)	Exercise of functions for purposes of encouraging investment in railways – undertakings on how franchising functions will be exercised	No agency powers	No agency powers	No agency powers	The above wording from row 54(1) above is also relevant here. Clause 4.4 of this Agreement
55	Order for securing compliance	C	No agency powers	The Secretary of State's role as appropriate authority under s55 sub paragraphs (10)(ac) of the Act*	Conditions set out in Schedule 3 of this Agreement
56	Procedural requirements for s55 Orders	C	No agency powers	As s55 of the Act*	Conditions set out in Schedule 3 of this Agreement
57A	Penalties	C	No agency powers	As s55 of the Act*	Conditions set out in Schedule 3 of this Agreement

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Relevant legislative provision in relation to Secretary of State function	Description of relevant Secretary of State function	Date agency powers to exercise relevant function is exercisable by Welsh Ministers or if no agency powers are granted: E – the Effective Date; F- twenty one (21) days after TFO is made; C – 2.00am on 14 th October 2018; or No agency powers	Scope of relevant agency powers exercisable by Welsh Ministers until relevant function is transferred to Welsh Ministers pursuant to the TFO	Scope of agency powers exercisable by Welsh Ministers after relevant function is transferred to Welsh Ministers pursuant to the TFO	Notes/Conditions
57B	Statement of policy	C	No agency powers	All duties of the Secretary of State in relation to the Welsh franchise agreement to the extent that the franchised services under it are services other than Wales-only services or Welsh components of Welsh services*	Conditions set out in Schedule 3 of this Agreement
57C	Procedural requirements for penalties	C	No agency powers	As s55*	Conditions set out in Schedule 3 of this Agreement
58	Power to require information for purposes of s55 and 57A	C	No agency powers	As s55*	Conditions set out in Schedule 3 of this Agreement

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Relevant legislative provision in relation to Secretary of State function	Description of relevant Secretary of State function	Date agency powers to exercise relevant function is exercisable by Welsh Ministers or if no agency powers are granted: E – the Effective Date; F- twenty one (21) days after TFO is made; C – 2.00am on 14 th October 2018; or No agency powers	Scope of relevant agency powers exercisable by Welsh Ministers until relevant function is transferred to Welsh Ministers pursuant to the TFO	Scope of agency powers exercisable by Welsh Ministers after relevant function is transferred to Welsh Ministers pursuant to the TFO	Notes/Conditions
59	Meaning and effect of railway administration order	No agency powers	No agency powers	No agency powers	Clause 4.4 of this Agreement
60	Railway administration orders made on special petition	No agency powers	No agency powers	No agency powers	Clause 4.4 of this Agreement
61	Restriction on making winding-up orders	No agency powers	No agency powers	No agency powers	Clause 4.4 of this Agreement
62	Restrictions on voluntary winding up and insolvency proceedings	No agency powers	No agency powers	No agency powers	Clause 4.4 of this Agreement
63	Government financial assistance where railway administration orders made	No agency powers	No agency powers	No agency powers	Clause 4.4 of this Agreement

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Relevant legislative provision in relation to Secretary of State function	Description of relevant Secretary of State function	Date agency powers to exercise relevant function is exercisable by Welsh Ministers or if no agency powers are granted: E – the Effective Date; F- twenty one (21) days after TFO is made; C – 2.00am on 14 th October 2018; or No agency powers	Scope of relevant agency powers exercisable by Welsh Ministers until relevant function is transferred to Welsh Ministers pursuant to the TFO	Scope of agency powers exercisable by Welsh Ministers after relevant function is transferred to Welsh Ministers pursuant to the TFO	Notes/Conditions
73 2(d) and 2(ga)	Keeping of register: - material amendments to Franchise Agreement - Designation of services and variations thereto	C	No agency powers	In relation to services other than Wales-only services and the Welsh component of Welsh services to be provided under the Welsh franchise agreement*	
74	ORR reports	No agency powers	No agency powers	No agency powers	Clause 4.4 of this Agreement
76 (6)(a)	General duties of Passengers' Council	No agency powers	No agency powers	No agency powers	Clause 4.4 of this Agreement
80	Duty of certain persons to furnish information	E	Rights of the Secretary of State to be exercisable by Welsh Ministers in relation to the provision of information reasonably	No agency powers	

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Relevant legislative provision in relation to Secretary of State function	Description of relevant Secretary of State function	Date agency powers to exercise relevant function is exercisable by Welsh Ministers or if no agency powers are granted: E – the Effective Date; F- twenty one (21) days after TFO is made; C – 2.00am on 14 th October 2018; or No agency powers	Scope of relevant agency powers exercisable by Welsh Ministers until relevant function is transferred to Welsh Ministers pursuant to the TFO	Scope of agency powers exercisable by Welsh Ministers after relevant function is transferred to Welsh Ministers pursuant to the TFO	Notes/Conditions
			required by Welsh Ministers in performance of the Act and Railways Act functions exercisable by Welsh Ministers as agent of the Secretary of State in accordance with this Agreement.		
130	Penalty fares	No agency powers	No agency powers	No agency powers	
135	Concessionary travel for railway staff	No agency powers	No agency powers	No agency powers	Proposed to be referenced in a Co-operation & Collaboration Agreement between the Parties
145	Restrictions on disclosure of info	No agency powers	No agency powers	No agency powers	Clause 4.4 of this Agreement
Railways Act 2005					

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Relevant legislative provision in relation to Secretary of State function	Description of relevant Secretary of State function	Date agency powers to exercise relevant function is exercisable by Welsh Ministers or if no agency powers are granted: E – the Effective Date; F- twenty one (21) days after TFO is made; C – 2.00am on 14 th October 2018; or No agency powers	Scope of relevant agency powers exercisable by Welsh Ministers until relevant function is transferred to Welsh Ministers pursuant to the TFO	Scope of agency powers exercisable by Welsh Ministers after relevant function is transferred to Welsh Ministers pursuant to the TFO	Notes/Conditions
12	Transfer schemes at end of franchise agreement	F	No agency powers	All duties of the 'appropriate national authority' in relation to the terminating Current Franchise Agreement	Condition set out in Schedule 3 to this Agreement
13(3)	PTE-Secretary of State agreements in relation to services in their area	C	No agency powers	In relation to services in that area (carriage of passengers, station or bus substitution) under the Welsh franchise agreement*	Condition set out in Schedule 3 of this Agreement No agency powers in respect of section 13(1) and 13(5)(6) of the Act are being granted under this Agreement.
13(8)	Provision of info by Secretary of State and PTEs	C	No agency powers	In relation to services in that area (carriage of passengers, station or bus	No agency powers in respect of section 13(1) and

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Relevant legislative provision in relation to Secretary of State function	Description of relevant Secretary of State function	Date agency powers to exercise relevant function is exercisable by Welsh Ministers or if no agency powers are granted: E – the Effective Date; F- twenty one (21) days after TFO is made; C – 2.00am on 14 th October 2018; or No agency powers	Scope of relevant agency powers exercisable by Welsh Ministers until relevant function is transferred to Welsh Ministers pursuant to the TFO	Scope of agency powers exercisable by Welsh Ministers after relevant function is transferred to Welsh Ministers pursuant to the TFO	Notes/Conditions
				substitution) under the Welsh franchise agreement*	13(5)(6) of the Act are being granted under this Agreement.
22-38, 42, 45	Closure provisions	No agency powers	No agency powers	No agency powers	Proposed to be referenced in a Co-operation & Collaboration Agreement between the Parties
40	Substitute road services	C	No agency powers	In relation to services other than Wales-only and the Welsh component of Welsh services to be provided under the Welsh franchise agreement*	

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Relevant legislative provision in relation to Secretary of State function	Description of relevant Secretary of State function	Date agency powers to exercise relevant function is exercisable by Welsh Ministers or if no agency powers are granted: E – the Effective Date; F- twenty one (21) days after TFO is made; C – 2.00am on 14 th October 2018; or No agency powers	Scope of relevant agency powers exercisable by Welsh Ministers until relevant function is transferred to Welsh Ministers pursuant to the TFO	Scope of agency powers exercisable by Welsh Ministers after relevant function is transferred to Welsh Ministers pursuant to the TFO	Notes/Conditions
51	ORR to assist and advise national authorities	E	Rights of the Secretary of State to be exercisable by Welsh Ministers in relation to the provision of information reasonably required by Welsh Ministers in performance of Act and Railways Act functions exercisable by Welsh Ministers as agent of the Secretary of State in accordance with this Agreement.	No agency powers	Condition set out in Schedule 3 to this Agreement
Schedule 5, Part 4 paragraph 11(5)	Distribution of Passenger Council annual reports	No agency powers	No agency powers	No agency powers	Clause 4.4 of this Agreement

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Relevant legislative provision in relation to Secretary of State function	Description of relevant Secretary of State function	Date agency powers to exercise relevant function is exercisable by Welsh Ministers or if no agency powers are granted: E – the Effective Date; F- twenty one (21) days after TFO is made; C – 2.00am on 14 th October 2018; or No agency powers	Scope of relevant agency powers exercisable by Welsh Ministers until relevant function is transferred to Welsh Ministers pursuant to the TFO	Scope of agency powers exercisable by Welsh Ministers after relevant function is transferred to Welsh Ministers pursuant to the TFO	Notes/Conditions
Schedule 9	Bye-laws by railway operators	No agency powers	No agency powers	No agency powers	Clause 4.4 of this Agreement

*No agency power from the Effective Date to 2.00am on 14th October 2018

SCHEDULE 3

THIS SCHEDULE TAKES EFFECT FROM THE START DATE OF THE WELSH FRANCHISE AGREEMENT.

UNDERTAKINGS AND POSITIVE OBLIGATIONS IN RESPECT OF THE MANAGEMENT OF A WELSH FRANCHISE AGREEMENT

WELSH MINISTERS UNDERTAKINGS

1. Subject to a materiality threshold, in respect of any English services, Welsh Ministers shall not, without the consent of the Secretary of State:

Service Specification:

- 1.1. amend the TSR so as to offer a worsening in the quality or quantum of services to passengers;
- 1.2. specify an increase in the TSR;
- 1.3. amend the operational Performance Benchmarks to permit inferior performance;

Passenger Compensation

- 1.4. amend the Franchisee's passenger compensation regime such that it is worse than that contracted in the Welsh franchise agreement;

Quality

- 1.5. amend any National Rail Passenger Survey (NRPS) (or any similar 'soft quality' regime) benchmarks to permit inferior performance, except to the extent necessary to reflect changes made to the NRPS by Transport Focus;
 - 1.6. require or permit the Franchisee to act in such a way as to introduce or operate service or station quality regimes that unfairly distinguish between services and stations operating in England or Wales;
 - 1.7. implement a Change under a Welsh franchise agreement; or
 - 1.8. amend a Committed Obligation, Milestone or Service Improvement Plan in relation to or connected with English services and English stations.
2. Subject to a materiality threshold, in respect of the Welsh franchise agreement, Welsh Ministers shall not, without the consent of the Secretary of State:

Licensing

- 2.1. require or permit the Franchisee to amend or not to comply with all appropriate passenger and station licences and the Statement of National Regulatory Provisions ("SNRPs") (or any successor documents) as determined by the ORR;

Freedom of Information Act 2000

- 2.2. approve any redactions from Welsh Ministers' Freedom of Information Act 2000 Publication Scheme version of the Welsh franchise agreement in respect of any redactions which affect English services and English stations; or

Fares

- 2.3. permit the Franchisee to implement a Variation to the Welsh franchise agreement in respect of fares (including amending the value of 'k' in the Permitted Aggregate Increase in any Fare Year, the Commuter Fares Document, the Protected Fares Document or any travel schemes set out in Appendix 1 to Schedule 2.5 of the Welsh franchise agreement) such that passengers using English services between stations in England would be disadvantaged as against the rights afforded to such passengers under the Welsh franchise agreement as at the date of that agreement.

Geographic Scope

3. In respect of any English services, Welsh Ministers shall not, without the consent of the Secretary of State:
 - 3.1. amend a Welsh franchise agreement to allow the Franchisee to expand or contract the geographic scope of the Wales & Borders Franchise Area beyond those listed in Appendix 1 to Schedule 3 to this Agreement and contracted in any of the TSRs; or
 - 3.2. permit the Franchisee to seek track access paths outside of the geographic scope of the Wales & Borders Franchise Area beyond those listed in Appendix 1 to Schedule 3 to this Agreement and contracted in any of the TSRs.

WELSH MINISTERS POSITIVE OBLIGATIONS

4. In respect of any English services, Welsh Ministers shall:
 - 4.1. oblige the Franchisee to maintain separate customer quality targets for English stations;
 - 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;
 - 4.3. oblige the Franchisee at any Station at which the Franchisee is the Station Facility Owner, and at which Other Franchisees or Wales Area Franchisees call, to:
 - 4.3.1. provide timetabling for Other Franchisees and Wales Area Franchisees as applicable (who may include open access operators) and share timetabling information;
 - 4.3.2. maintain connections with Other Franchised services and Wales Area services;
 - 4.3.3. display line diagrams to show Other Franchised services and Wales Area services and interchanges;
 - 4.3.4. include reference to all Other Franchised services and Wales Area services in passenger information;
 - 4.3.5. include reference to all Other Franchised services and Wales Area services when making passenger service announcements; and
 - 4.3.6. work co-operatively with Other Franchisees and Wales Area Franchisees;
 - 4.4. maintain and provide an electronic up to date version of the Welsh franchise agreement and ancillary documents, an un-redacted version of which shall be available to the Secretary of State upon request;
 - 4.5. permit the Secretary of State to initiate a Change and Welsh Ministers shall implement such Change under a Welsh franchise agreement, provided that in advance of the Welsh Ministers implementing such Change under a Welsh franchise agreement:

4.5.1. the Secretary of State shall discuss the proposed Change with the Welsh Ministers including any impact on passenger services, relevant timescales for the Parties agreeing the Change and for the Franchisee implementing the Change; and

4.5.2. both Parties shall agree (acting reasonably) the impact of the proposed Change including any costs that may arise as a result of such Change,

provided always that the Secretary of State acknowledges and agrees that all Welsh Ministers' reasonable costs incurred in respect of such Change shall be met by the Secretary of State and Welsh Ministers shall be held harmless regardless of whether or not the Change is agreed and implemented;

4.6. ensure that any breaches by the Franchisee of the pension provisions in the Welsh franchise agreement are notified to the Secretary of State within thirty (30) days of the notification of the breach or within thirty (30) days of becoming aware of the breach (whichever is the earlier) and inform the Secretary of State of enforcement action which Welsh Ministers propose to take under the Act;

4.7. procure that the Franchisee shall create and maintain throughout the Welsh franchise agreement a 'Borders Business Unit' which has a distinct management structure and senior representation within the Franchisee whose purpose is to ensure that stations in England and English services have distinct management attention and also act as focal point for liaison with affected sub-national transport bodies, local authorities and user groups in England;

4.8. inform the Secretary of State regarding the exercise of any Section 55- 58 functions (Enforcement and Penalties) of the Act;

4.9. ensure that any smart ticketing hardware or software proposals can be compatible with, and supports the inter-operability objectives of, the smart ticketing initiatives currently operated, or committed to be implemented but not yet operated, by Other Franchisees;

4.10. inform the Secretary of State if Welsh Ministers propose to enter into any agreements with Passenger Transport Executives or other Devolved Transport Bodies;

4.11. not, without the consent of the Secretary of State, permit the Franchisee to bid for or lease rolling stock (the "**Cascading Rolling Stock**") that forms part of the Train Fleet of another train operator which operates in England, Wales or Scotland (the "**Donor Franchisee**"). The Secretary of State may provide such consent if it can be demonstrated that the Donor Franchisee is able to lease alternative, suitable replacement rolling stock which enables the Donor Franchisee to continue to operate the Donor Franchisee's TSR. In the event that the Secretary of State has given such consent to Welsh Ministers and the Donor Franchisee has entered into a lease with the Franchisee in respect of the Cascading Rolling Stock, if the Donor Franchisee is subsequently unable to lease alternative, suitable replacement rolling stock for whatever reason:

4.11.1. the Secretary of State may instruct Welsh Ministers to direct the Franchisee to sublease the Cascading Rolling Stock back to the Donor Franchisee; and

4.11.2. where the Secretary of State has given an instruction pursuant to paragraph 4.11.1, the Secretary of State shall indemnify Welsh Ministers for the direct costs, including any change in subsidy, incurred by Welsh Ministers in implementing the Secretary of State's instruction;

4.12. procure that the Franchisee shall, fully and effectively co-operate and engage constructively with all the relevant parties responsible for the delivery of the HS2

Project with the intention of assisting in the timely, efficient and cost-effective implementation of the HS2 Project in a manner that provides the best overall solution to the network, provided always that in the event of any HS2 Project required Change, this shall be a Secretary of State initiated Change and the provisions of paragraph 4.5 to this Schedule shall apply; and

- 4.13. provide a copy of the Community Rail Report (as defined in the Welsh franchise agreement) to the Secretary of State following receipt of the same by Welsh Ministers from the Franchisee.
5. In respect of a Welsh franchise agreement:
- 5.1. 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 for which Welsh Ministers are a railway funding authority;
 - 5.2. when exercising the duties of the 'appropriate franchising authority' in relation to Section 27 of the Act (transfer of franchise assets and shares) and Section 12 of the Railways Act 2005 (Transfer Schemes at the end of a franchise agreement), Welsh Ministers will seek the consent of the Secretary of State in respect of any franchise assets funded by the Secretary of State; and
 - 5.3. to the extent the Parties are aware that any strike or other industrial action is indicated, or on the occurrence of any strike or other industrial action by any or all of the employees of the Franchisee, Network Rail, Other Franchisees or the operator of any other railway facility (including the Core Valley Lines) (each an employer) the Parties will:
 - 5.3.1. inform the other Party immediately;
 - 5.3.2. keep the other Party informed as to any:
 - 5.3.2.1. employer proposals; and/or
 - 5.3.2.2. Welsh Ministers or Secretary of State communications with or directions to the employer;
 - 5.3.3. advise what reasonable endeavours the Franchisee is taking to avert and prevent the occurrence of the Force Majeure Event and/or to mitigate and minimise the effect of such Force Majeure Event on the Franchisee's performance of its obligations under the Welsh franchise agreement and to restore the provision of passenger services as soon as reasonably practicable.
6. If Welsh Ministers propose to take any steps to divest, dispose or sell the CVL network infrastructure (or any part thereof), Welsh Ministers shall:
- 6.1. secure the consent of the Secretary of State if Welsh Ministers proposals might result in the CVL network infrastructure being removed from future railway use; or
 - 6.2. consult with the Secretary of State if Welsh Ministers proposals would not result in the CVL infrastructure being removed from future railway use.
7. Welsh Ministers shall ensure that the Brand Guidelines developed with and issued to the Franchisee on trains, stations and for marketing material and publicity (excluding that for Wales-only services), shall recognise and demonstrate the cross-border nature of the Franchise and continue to comply with any licensing requirements regarding the use of trademarks licensed by the Secretary of State to Welsh Ministers.

OPERATOR OF LAST RESORT

8. The Welsh Ministers shall:
 - 8.1. act as the Secretary of State's agent and perform on his behalf his duties under Section 30 of the Act; and
 - 8.2. comply with the terms of the OLR Subcontracting Agreement, or any successor arrangements with the Secretary of State.

SECRETARY OF STATE OBLIGATIONS

9. If the Secretary of State proposes that the regulated fares between English stations will be subject to fares regulation which different to that which is set out in the Welsh franchise agreement, then the Secretary of State shall instruct Welsh Government to implement Change and the Secretary of State shall indemnify Welsh Ministers for the direct costs, including any change in subsidy, of implementing the Secretary of State's instructions.
10. 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 Welsh station in Wales specified under a Welsh franchise agreement.
11. To the extent Welsh Ministers are unable to procure the following information:
 - 11.1. a copy of any reports produced by the ORR,
 - 11.2. any Transport Focus report; and
 - 11.3. any information required by other railway passenger licence holders to be provided to the Secretary of State which the Secretary of State reasonably considers to be relevant to the operation of the Welsh franchise agreement post the TFO coming into force and the Start Date (as defined in the Welsh franchise agreement),

the Secretary of State shall provide such information to Welsh Ministers.
12. In the event that the Secretary of State proposes instructing or consenting to a reduction in Secretary of State specified services as set out the relevant TSR operated by a Wales Area Franchisee (the "**Wales Area service proposal**"):
 - 12.1. the Secretary of State shall engage with Welsh Ministers on the Wales Area service proposal; and
 - 12.2. Welsh Ministers shall inform the Secretary of State of the effect which the Wales Area service proposal would have on the operation of services by the Wales Area Franchisee and the impact on passengers in Wales, in particular:
 - 12.2.1. the cost to the Wales Area Franchisee of increasing the Wales Area Franchisee's TSR to operate services which (if required) would replace those services proposed to be no longer be operated by the Wales Area Franchisee by the most cost effective, revenue generative and operationally efficient means possible;
 - 12.2.2. whether that cost would be a Qualifying Change under the Welsh franchise agreement; and
 - 12.2.3. any evidence of the cost of the Qualifying Change, including providing a copy of the completed Rail Services In-Life Reporting Template under the Welsh franchise agreement to the Secretary of State.

13. If the Secretary of State decides to proceed with the Wales Area service proposal, and provided that the conditions in paragraph 12.2 are met, the Secretary of State shall indemnify Welsh Ministers against the increase in subsidy directly attributable to the Wales Area service proposal being implemented following a run of the relevant financial model under the Welsh franchise agreement.

APPENDIX 1 TO SCHEDULE 3

ENGLISH SERVICES – SECRETARY OF STATE CONDITIONS

As at the Effective Date, the Secretary of State does not support service proposals in respect of the English services other than those listed in the table below and subject to the conditions as indicated. The only exceptions to this would be retention of existing parliamentary services at the current level (e.g. Chester - Stafford – Birmingham).

Newport	Bristol Temple Meads	No paths for Welsh Government specified services until all outstanding upgrade work completed in Bristol area including Bristol East Jn. This is currently projected as mid to late CP6 and so may not be completed until 2024. At this stage there is no indication of the number of paths per hour that will become available following completion. The Secretary of State advises that for the purposes of this franchise competition no cross-border paths to Bristol may be proposed.
Newport	Cheltenham Spa	Up to 1tph, with up to 2 tph permissible between Newport and Gloucester
Newport	Shrewsbury	Up to 3tph
Shrewsbury	Birmingham International	Up to 1tph – all services (including on Sundays) to call at Smethwick Galton Bridge
Shrewsbury	Crewe	Up to 2tph*
Crewe	Manchester	Up to 1tph*
Shrewsbury	Chester	No restrictions required by the Secretary of State
Chester	Crewe	Up to 2tph*
Chester	Manchester via Warrington Bank Quay	Up to 1tph (plus one extra peak working) from Chester via Warrington Bank Quay to Stalybridge (via Manchester Victoria) or Manchester Airport (via Manchester Piccadilly) or Wilmslow (via Manchester Piccadilly and Styal). Services and stock will need to be able to achieve a maximum of one minute dwell time at Manchester Oxford Road and at Manchester Piccadilly if so routed.

Chester	Liverpool via Halton Curve	Up to 1tph
Wrexham	Bidston (For Liverpool)	Up to 2tph

*The Franchisee is encouraged to minimise dwell times at Crewe to assist with station platforming in the long term.