

Dated [Insert date]

**FRANCHISE LETTING
PROCESS AGREEMENT
BETWEEN**

THE SECRETARY OF STATE FOR TRANSPORT

AND

THE APPLICANTS (AS DEFINED)

Department for Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR

THIS DEED IS MADE [Insert date]

BETWEEN

- (1) **THE SECRETARY OF STATE FOR TRANSPORT** whose principal place of business is Great Minster House, 33 Horseferry Road, London SW1P 4DR acting as part of the Crown (the “Secretary of State”);

AND

- (2) Each entity named in Schedule 2 to this Deed (each an “Applicant” and collectively the “Applicants”).

NOTE TO APPLICANTS: Please complete Schedule 2.

BACKGROUND:

- (a) The Secretary of State has announced his intention to invite bids for the Northern passenger rail franchise (the “**Franchise**”) in order to let the Franchise in February 2016.
- (b) The Franchise relates to broadly the same geographical area as the franchise operated by the Existing Franchisee pursuant to the Existing Franchise Agreement.
- (c) The Applicants have submitted or are about to submit an application to the Secretary of State to pre-qualify to participate in the Franchise Letting Process.
- (d) The Secretary of State possesses certain information relating to the Franchise, the Existing Franchise and the Existing Franchisee, which is of a confidential nature.
- (e) The Applicants will require access to such information for the purpose of formulating a letting proposal and negotiating, if selected to negotiate, with the Secretary of State for the letting of the Franchise.
- (f) It is a condition of participating in the Franchise Letting Process that the Applicants grant the undertakings contained in this Deed.

It is now agreed as follows:

1. **DEFINITIONS AND INTERPRETATION**

The provisions of Schedule 1 to this Deed (which contains definitions and principles of interpretation) are incorporated in this Deed.

2. **WARRANTY**

The Applicants warrant, represent and undertake to the Secretary of State that:

- 2.1 all Applicant Information is unless otherwise notified in writing to the Secretary of State and accepted by him, accurate, complete and not misleading in all material respects both as at the date disclosed to or obtained by the Secretary of State (as the case may be) and at all times prior to the Award Date;
- 2.2 they will inform the Secretary of State in writing of any material change to, and of any material change in circumstances which may affect the truth, completeness or accuracy of, any Applicant Information immediately upon becoming aware of such change;

2.3 each Applicant is duly authorised to sign this Deed and each Applicant has validly executed this Deed as a deed in English law; and

2.4 the Deed executed by the Applicants is identical to the draft deed published by the Secretary of State on his website, subject only to amendments permitted by the Notes to Applicants shown in that draft deed.

3. **CONFIDENTIALITY**

3.1 Subject to clause 3.3, the Applicants undertake that each Applicant and any person to whom Confidential Information is disclosed by an Applicant (including any Associated Entity and the representatives of the Applicant or any Associated Entity):

3.1.1 shall at all times (whether or not negotiations in relation to the Letting Proposal proceed) keep all Secretary of State Information secret and confidential and shall not disclose any Secretary of State Information to any Third Party;

3.1.2 shall not disclose to any Third Party any information about the Franchise Letting Process or the process for the letting of passenger rail franchises generally or any details relating to the status of any negotiations between the Secretary of State and the Applicants or any Alternative Applicant other than the fact that the Applicants are investigating the possibility of submitting, or have submitted, a Letting Proposal;

3.1.3 shall not disclose Secretary of State Information to the representatives of any Applicant, any Associated Entity or the representatives of any Associated Entity except to the extent that such representatives or such Associated Entity need to know Secretary of State Information for the purposes of evaluating whether or not and on what terms the Applicants might proceed with the Letting Proposal;

3.1.4 shall not make contact with the Existing Franchisee, or any other franchisee or franchise operator (not being an Associated Entity) or any of their representatives or associates in connection with the Letting Proposal or the Franchise Letting Process without the prior written consent of the Secretary of State; and

3.1.5 shall, on written demand from the Secretary of State or if the Applicants withdraw or are ejected from the Franchise Letting Process or are notified by the Secretary of State in writing that the Applicants will not be selected to operate the Franchise, return any Secretary of State Information in their possession or control to the Secretary of State without keeping any copies thereof (whether hard or electronic copies) and either hand over to the Secretary of State or destroy all notes, memoranda or other records (whether hard or electronic copies) containing or reflecting any Secretary of State Information and, if required to do so by the Secretary of State, provide written confirmation of their compliance with this clause 3.1.5.

3.2 Subject to clauses 3.3 and 3.5, the Secretary of State undertakes that he and his representatives shall at all times keep all Applicant Information secret and confidential and shall not disclose any Applicant Information to any Third Party.

3.3 The undertakings in clauses 3.1 and 3.2 shall not apply to any disclosure of Confidential Information:

3.3.1 expressly authorised by this Deed or agreed in writing between the Parties;

- 3.3.2 required by any applicable law or court order by any supervisory or regulatory body (including the Financial Conduct Authority, the Competition Commission, the National Audit Office and the Takeover Panel) to whose authority the disclosing party (including its shares or securities) is subject or with whose rules the disclosing party is required to comply;
- 3.3.3 which is in or subsequently comes into the public domain (unless as a result of a breach of this Deed or any undertaking given pursuant to this Deed);
- 3.3.4 which is lawfully in the disclosing party's possession (as can be demonstrated by its written records) and, where the disclosing party is not a Beneficiary, was not acquired directly or indirectly from any Beneficiary; or
- 3.3.5 to Network Rail in accordance with any instructions or guidance given by the Secretary of State from time to time (including under any invitation to tender or similar document),

provided that should any Applicant or any of its representatives become aware that it or they may become compelled by law or by any such supervisory or regulatory body to disclose any Secretary of State Information, the Applicant shall give prompt notice of that fact to the Secretary of State in writing so that he may seek an appropriate remedy to prevent such disclosure and the relevant Applicant will take, and will ensure that its representatives take, such steps as the Secretary of State may reasonably require for that purpose and will keep the Secretary of State promptly and fully informed of all developments relating to such potential disclosure.

- 3.4 In the event that any Applicant or its representatives become compelled by law or by any such supervisory or regulatory body to disclose any Secretary of State Information, the relevant Applicant will give full details of any proposed disclosure to the Secretary of State in advance and such disclosure will be limited to the minimum amount of Secretary of State Information required to satisfy such disclosure obligation.
- 3.5 The undertakings in clause 3.2 shall not apply to any disclosure of Applicant Information by the Secretary of State:
 - 3.5.1 to a Beneficiary, the Office of Rail Regulation, Network Rail, the Railway Safety and Standards Board, the Health and Safety Executive or any other stakeholding or governmental body or to any of its or their representatives;
 - 3.5.2 which is required to be made under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004; or
 - 3.5.3 for the purposes set out in section 145(2) of the Railways Act 1993.

4. **PROHIBITED GIFTS**

The Applicants shall not, and shall ensure that their representatives do not, before the Conditions Precedent Satisfaction Date directly or indirectly without the prior written approval of the Secretary of State:

- 4.1 pay any sum to;
- 4.2 grant any concession or benefit to;
- 4.3 make any gift or entertainment of significant cost or value to; or
- 4.4 enter into any business relationship with,

any representative of any Beneficiary or Alternative Applicant, undertake to do so or indicate to any person that it will or may do so.

5. **ANTI COLLUSION**

5.1 Subject to clause 5.2, no Applicant shall, and the Applicants shall ensure that their representatives and Associated Entities do not, at any time on or before the Conditions Precedent Satisfaction Date:

5.1.1 fix or adjust the amount of any payment proposed or to be proposed in connection with its Letting Proposal (including any franchise payment) by or in accordance with any agreement or arrangement with any Alternative Applicant or Associated Entity of an Applicant (other than a member of its own consortium or supply chain);

5.1.2 communicate to any person other than as expressly permitted by the terms of this Deed the amount or approximate amount of any payment (including any franchise payment) so proposed;

5.1.3 enter into any agreement or arrangement with any person that such person shall refrain from making any proposal for the letting of the Franchise or as to the amount of any payment (including any franchise payment) proposed or to be proposed in connection with any such proposal for the letting of the Franchise to be submitted or that such person should amend or withdraw any such proposal once offered or vary the amount of any payment (including any franchise payment) proposed or to be proposed in connection with any such proposal;

5.1.4 cause or induce any person to enter into an agreement to inform the Applicant of the amount or approximate amount of any other proposal for the letting of the Franchise;

5.1.5 pay, give or offer or agree to pay or give any sum of money, inducement or other valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other proposal for the letting of the Franchise any act or omission; or

5.1.6 disclose to any person other than the Secretary of State and except as permitted by this Deed the whole or any part or any details of the Letting Proposal.

5.2 The provisions of clause 5.1 shall not apply to the Applicants:

5.2.1 to the extent that any Applicant discloses the approximate amount of any payment proposed in connection with the Letting Proposal in confidence in order to obtain any insurance premium quotations required for the purposes of and in compliance with any written requirement of the Secretary of State;

5.2.2 to the extent that any Applicant discloses details of the Letting Proposal in confidence to any person with whom it is necessary that the Applicant negotiates or enters into any contract in order to achieve the Agreed Purpose; and

5.2.3 to the extent agreed in writing by the Secretary of State.

6. GENERAL CONDUCT

6.1 The Applicants undertake that each Applicant shall at all times:

6.1.1 conduct itself in a manner which is consistent with applicable legal requirements and the Secretary of State's objective of carrying out of a fair, transparent and non-discriminatory Franchise Letting Process; and

6.1.2 co-operate with the Secretary of State in order to allow him to ensure that the Franchise Letting Process is carried out in a fair, transparent and non-discriminatory manner.

7. PUBLICITY

7.1 The Applicants agree that they shall not and shall ensure that all Connected Persons do not, before the Award Date (in relation to clauses 7.1.1 and 7.1.2) or at any time (in relation to clauses 7.1.3 and 7.1.4), in each case without the prior written consent of the Secretary of State:

7.1.1 issue any press notice, press release or statement in relation to or connected with the Franchise Letting Process or the Letting Proposal (except as permitted by clause 3.1.2);

7.1.2 make any statement or comment (whether to national, local or industry media, Passenger Focus, Passenger Transport Executives, Members of Parliament, stakeholders or otherwise) in relation to or connected with the Franchise Letting Process or the Letting Proposal (except as permitted by clause 3.1.2). For the avoidance of doubt this shall not prevent the Applicants holding confidential discussions with such persons for the purpose of developing or informing its Letting Proposal;

7.1.3 seek to canvas public opinion in relation to or connected with the Franchise Letting Process or the Letting Proposal; or

7.1.4 otherwise seek to publicly influence the outcome of the Franchise Letting Process,

in each case whether written or oral and howsoever communicated (including without limitation by electronic means, on a website or via social media). If there are compelling reasons to make a public statement or comment then the Applicants shall discuss the contents of such a statement or comment with the Secretary of State in advance and shall only make such a statement or comment when the written consent of the Secretary of State has been obtained (not to be unreasonably withheld or delayed where the Applicant is legally required to make such a statement or comment).

8. CHANGE OF CONTROL / CIRCUMSTANCES

8.1 The Secretary of State relies on the information provided by Applicants at each stage during the Franchise Letting Process (including but not limited to information concerning the members and structure of any consortia). If, at any time during the Franchise Letting Process there are any material changes to such information (including any Change of Ownership), the Applicant must advise the Secretary of State as soon as practicable of any proposed changes. The Secretary of State reserves the right to revisit the selection and/or evaluation of the Applicant and/or exclude the Applicant, if necessary, as a result of any such material changes. The Secretary of State will be the final arbiter in such matters.

9. **NON-SOLICITATION**

9.1 No Applicant will before the date 6 months after the Award Date without the prior written consent of the Secretary of State solicit or endeavour to entice away any person employed or otherwise engaged by the Secretary of State or the Existing Franchisee other than pursuant to a response to a bona fide public advertisement of an employment vacancy.

9.2 No Applicant will before the date 6 months after the Award Date attempt to contact or interview or solicit information from any employee of the Secretary of State without the express written consent of the Secretary of State (which may be given generally or specifically).

10. **REMEDIES**

10.1 The Applicants acknowledge and agree that:

10.1.1 damages alone would not be an adequate remedy for any breach by an Applicant of the relevant provisions of this Deed;

10.1.2 without prejudice to all other remedies to which the Beneficiaries may be entitled as a matter of law, any Beneficiary shall be entitled to the remedies of injunction and specific performance and other equitable relief for any threatened or actual breach of the relevant provisions of this Deed; and

10.1.3 no proof of special damages shall be necessary for the enforcement of this Deed.

For the purpose of this clause 10, "relevant provisions" includes, but is not limited to, clauses 2, 3, 4, 5, 6 and 7.

10.2 Each of the Applicants hereby indemnifies the Secretary of State jointly and severally for any loss he suffers in connection with, or arising out of, the following:

10.2.1 the Secretary of State is found by a court to be liable for breach of any of his legal obligations in relation to the Franchise Letting Process; and/or

10.2.2 the Secretary of State abandons the Franchise Letting Process so as to avoid a breach or likely breach of any of his legal obligations in relation to the Franchise Letting Process,

in each case, to the extent that such breach is attributable to any of the Applicants.

10.3 Without prejudice to all other remedies and relief to which the Beneficiaries may be entitled, the Secretary of State may, in his absolute discretion, in the event of any material breach of this Deed:

10.3.1 eject the Applicants from the Franchise Letting Process; or

10.3.2 where the Franchise Letting Process has been concluded with the result that the Proposed Operator (or any other vehicle used by the Applicants) has been selected to be the franchisee for the Franchise, revoke such selection and (if applicable) terminate any franchise agreement to which the Proposed Operator (or any other vehicle used by the Applicants) is a party.

10.4 The Applicants acknowledge and agree that a material breach of this Deed shall have occurred in the event of any breach of their obligations under such clauses that impose a material obligation, which shall include, but not be limited to, clauses 2 (Warranty), 3

(Confidentiality), 4 (Prohibited Gifts), 5 (Anti Collusion), 6 (General Conduct) and 7 (Publicity).

11. INTELLECTUAL PROPERTY

11.1 All Intellectual Property in the Secretary of State Information shall remain the property of the Secretary of State or his licensors. The disclosure by the Secretary of State to the Applicants of Secretary of State Information does not imply or confer any licence or permission for the Applicants to use such Secretary of State Information for any purpose other than the Agreed Purpose.

11.2 All Intellectual Property in the Applicant Information shall remain the property of the relevant Applicant or its licensors. The Secretary of State will not, without the prior consent of the relevant Applicant (such consent not to be unreasonably withheld or delayed), be entitled to use or authorise any other person to use the Intellectual Property in the Applicant Information except for the purposes of the Franchise Letting Process. This clause 11.2 is without prejudice to any rights of the Secretary of State existing as at the date of this Deed and any rights he may have in respect of any franchise agreement or other agreement which may be entered into pursuant to the Franchise Letting Process.

11.3 The Applicants will, in good faith, consider with the Secretary of State any request by the Secretary of State for consent for the purposes of clause 11.2.

12. USE OF SECRETARY OF STATE INFORMATION

12.1 The Applicants shall not use or retain Secretary of State Information for any purpose other than the Agreed Purpose.

12.2 The Parties acknowledge that:

12.2.1 any Applicant or any Associated Entity may now or in the future be in a contractual or commercial relationship with the Secretary of State in relation to matters other than the Agreed Purpose; and

12.2.2 the disclosure of Secretary of State Information permitted under clauses 3.3 and 5.2 may result in an Applicant disclosing Secretary of State Information to Third Parties who are now or may in the future be in a contractual or commercial relationship with the Secretary of State in relation to matters other than the Agreed Purpose.

12.3 The Applicants accordingly undertake to ensure that:

12.3.1 it and any person to whom it discloses Secretary of State Information shall at all times use all Secretary of State Information so disclosed only for the Agreed Purpose;

12.3.2 only such persons as may be approved by the Secretary of State in writing from time to time shall be engaged in relation to the Agreed Purpose by the Applicants or any person to whom the Applicants disclose Secretary of State Information;

12.3.3 all Secretary of State Information shall be stored securely and separately from information not relating to the Agreed Purpose; and

12.3.4 work in relation to the Agreed Purpose undertaken by or on behalf of the Applicants or any person to whom any Applicant discloses Secretary of State Information shall be kept distinct from activities other than such work,

and shall so ensure by means where applicable including the use of separate communications links, separate accommodation, secure storage of files and separate reporting arrangements. The Secretary of State (acting reasonably) will be entitled to audit compliance with this clause 12.3. The Applicants shall provide the Secretary of State and his authorised representatives with such access to persons and information as they shall require in connection with any such audit.

13. BENEFIT OF UNDERTAKINGS

The undertakings, acknowledgements, warranties and representations (whether or not expressed or described as such) made or given by the Applicants in this Deed may be so enforced against any Applicant, or any number of them, at the sole discretion of the Secretary of State.

14. NO COLLATERAL CONTRACT

14.1 The Parties agree that save as expressly provided in this Deed no contract or legal obligation shall result from any disclosure of information or other communication by the Secretary of State in connection with the Franchise Letting Process, including the issue of any pre-qualification document or invitation to tender, or from the reliance of any person on any information so disclosed or any such communication.

14.2 The Applicants further acknowledge and agree that no disclosure of information or other communication by the Secretary of State in connection with the Franchise Letting Process will constitute an offer or an acceptance by or on behalf of any Beneficiary. The only contracts between the Parties or between any Beneficiary and any Associated Entity which may come into existence pursuant to the Franchise Letting Process are a duly executed written agreement on the face of which it is apparent that such agreement is intended by all parties thereto to be a franchise agreement for the purposes of the Railways Act 1993 and any contracts ancillary to such an agreement.

14.3 Nothing in the Franchise Letting Process is intended to or shall be considered to form a contract between the Secretary of State and the Applicant (express or implied) unless and until a contract is awarded to and completed with the Applicant at the conclusion of the Franchise Letting Process. The Secretary of State reserves the right to cancel, amend or vary the Franchise Letting Process at any point with no liability on his part.

14.4 In particular, the Secretary of State is not liable for any costs (whether incurred by an Applicant or an Associated Entity) resulting from any amendment or cancellation of, or delay to, the Franchise Letting Process, nor for any costs (whether incurred by an Applicant or an Associated Entity) resulting from an Applicant expressing an interest in, negotiating or tendering for the Franchise (including any third party costs or expenses howsoever arising).

15. NO AGENCY

The Applicants warrant and represent to the Secretary of State that each Applicant is acting as a principal on its own account and not as agent or broker for any other person(s) and that the Applicants will be responsible for their costs incurred in connection with the Letting Proposal or the Franchise Letting Process.

16. ENTIRE AGREEMENT

This Deed constitutes the entire understanding between the Parties in relation to the subject matter hereof and none of the Beneficiaries accepts any responsibility or liability (other than in respect of fraudulent misrepresentation) for, or makes any representation or warranty (express or implied) as to, the accuracy, reasonableness or completeness of any Secretary of State Information or any oral or other communication in connection with the Secretary of State Information, the Letting Proposal or the Franchise Letting Process.

17. **WAIVER AND INVALIDITY**

17.1 No failure or delay by any Party in exercising any right, power or privilege under this Deed shall constitute a waiver thereof nor shall any single or partial exercise thereof preclude further exercise thereof or the exercise of any other right, power or privilege hereunder or otherwise.

17.2 If any provision of this Deed is prohibited or unenforceable in any jurisdiction in relation to any Party or Beneficiary such prohibition or unenforceability will not invalidate the remaining provisions of this Deed or affect the validity or enforceability of the provisions of this Deed in relation to any other Party or Beneficiary or any other jurisdiction.

18. **ASSIGNMENT**

No Applicant shall be entitled to assign any of its rights or obligations under this Deed.

19. **THIRD PARTY RIGHTS**

No person who is not a party to this Deed shall be entitled to any benefit under or to enforce any term of this Deed.

20. **PARTIAL INVALIDITY**

If any provision of this Deed is held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this Deed but the legality, validity and enforceability of the remainder of this Deed shall not be affected.

21. **JOINT AND SEVERAL LIABILITY**

Where there is more than one Applicant, each Applicant shall be jointly and severally liable for the performance of obligations conferred on the Applicants under this Deed.

22. **FURTHER STEPS**

The Applicants will take such further steps as may be requested by the Secretary of State to ensure this Deed takes full legal effect.

23. **GOVERNING LAW AND JURISDICTION**

This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and the Parties hereby irrevocably submit to the exclusive jurisdiction of the English courts.

24. **COUNTERPARTS**

This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original but all the counterparts shall together constitute the one agreement.

This Deed is executed as a deed and delivered on the date stated at the beginning of this Agreement.

The corporate seal of the
**Secretary of State for
Transport IS** }

HEREUNTO AFFIXED:

Authenticated by
authority of the Secretary
of State for Transport:

NOTE TO APPLICANTS: Please use a copy of this execution page for each Applicant. If the relevant Applicant is a UK company, please use the execution block at the top of the page. If the relevant Applicant is not a UK company, please use the execution space below the line below.

EXECUTED AS A DEED

for and on behalf of :

[insert Applicant's name] by:

(1) DIRECTOR

}

(2) DIRECTOR/
SECRETARY

}

Note to Applicants: This document is a Deed. Where the Applicant is a UK company, it must be executed by two representatives of the Applicant – one Director, and a second person who is either a Director or the Company Secretary. You should not modify this execution block without written permission from the Department for Transport.

FOR AN APPLICANT WHICH IS NOT A UK COMPANY:

[Insert Applicant's name]

EXECUTED AS A DEED:

Note to Applicants: Execution formalities vary between jurisdictions and types of legal entity. You should seek legal advice on the words and procedure necessary for the relevant Applicant to execute a Deed under English law, and execute the Deed in the space above, as appropriate. The Secretary of State reserves the right to ask any Applicant to provide a legal opinion in a form acceptable to the Secretary of State confirming that this Deed has been validly executed by any Applicant.

SCHEDULE 1

Definitions and Interpretation

In this Deed:

- 1 **“Associated Entity”** means:
 - 1.1 in respect of any Applicant, its Controllers, any entity or person Controlled by an Applicant, and any entity or person other than the Applicant which is Controlled by any of the Applicant’s Controllers from time to time;
 - 1.2 any entity or person with whom any Applicant or any Associated Entity (as defined in sub-paragraph 1.1 of this definition of Associated Entity) of any Applicant is in joint venture or partnership with in relation to the Proposed Operator (a **“JV Partner”**); and
 - 1.3 any Associated Entity (as defined in sub-paragraph 1.1 of this definition of Associated Entity) of a JV Partner;
- 2 **“Agreed Purpose”** means the purpose of the Applicants formulating the Letting Proposal and negotiating, if selected to negotiate, with the Secretary of State for the letting of the Franchise;
- 3 **“Alternative Applicant”** means any person, other than an Applicant, participating in the Franchise Letting Process (whether individually or as part of a consortium) with a view to being selected to operate the Franchise and any person submitting or proposing to submit alternative proposals for the letting of the Franchise or the transfer to it of the Franchise, or shares in a franchisee or a franchise operator;
- 4 **“Applicant Information”** means all information of whatsoever nature whether oral, written or in any other form disclosed or required to be disclosed by the Applicants to the Secretary of State as part of or for the purposes of the Letting Proposal or the Franchise Letting Process, provided always that information originating from the Secretary of State shall not constitute Applicant Information;
- 5 **“Award Date”** means the date on which the Secretary of State publicly announces the identity of the franchisee selected for the Franchise pursuant to the Franchise Letting Process;
- 6 **“Beneficiaries”** means the Crown, the Secretary of State for Transport, HM Treasury and their respective representatives;
- 7 **“Change of Ownership”** means (a) any person acquiring or ceasing to have any legal, beneficial or equitable interest (whether directly or indirectly) in the Proposed Operator (including control over the exercise of voting rights conferred on those shares, control over the right to appoint or remove directors and rights to dividends); or (b) where the Proposed Operator is not yet incorporated, any change in the proposed legal, beneficial or equitable interests (whether direct or indirect) in respect of the Proposed Operator;
- 8 **“Conditions Precedent Satisfaction Date”** means the earlier of (i) the date on which all conditions precedent to the effectiveness of any franchise agreement entered into pursuant to the Franchise Letting Process have been either satisfied or unconditionally waived; and (ii) the date on which the Secretary of State issues a certificate specifying the date on which the operation of passenger rail services pursuant to such franchise agreement is to commence;
- 9 **“Confidential Information”** means all information which is either Secretary of State Information or Applicant Information (or both);

- 10 **“Connected Person”** means any:
- 10.1 Associated Entity;
 - 10.2 representative of or spokesperson for any Applicant or any Associated Entity; or
 - 10.3 any other person who the Secretary of State reasonably considers represents or speaks for or in the interests of any Applicant or any Associated Entity;
- 11 **“Control”** means the power of a person or other entity (“C”) to secure that the affairs of a person or other entity are conducted in accordance with C's wishes. In relation to a body corporate Control may be secured by means of the holding of shares or the possession of voting power in relation to that or any other body corporate, or as a result of any powers conferred by the articles of association or other document regulating that or any other body corporate. Control shall include Control held indirectly as well as directly, negative Control (exercised by veto rights), and joint Control (where there is one or more other persons or entities in addition to C which also exercise Control, or C together with any other person or entity exercises Control).
- 12 **“Controller”** means any person or entity who has Control.
- 13 **“Data Site”** means the electronic data site established by or on behalf of the Secretary of State for the purposes of the Franchise Letting Process;
- 14 **“Data Site Information”** means information at any time deposited or contained in the Data Site;
- 15 **“Existing Franchise”** means the passenger rail franchise (or equivalent, where the relevant passenger rail services are being operated by the Secretary of State for Transport in accordance with Section 30 of the Railways Act 1993) operated as at the date of this Deed by the Existing Franchisee pursuant to the Existing Franchise Agreement;
- 16 **“Existing Franchise Agreement”** means the franchise agreement made on 26th March 2014 between the Secretary of State for Transport and the Existing Franchisee
- 17 **“Existing Franchisee”** means Northern Rail Limited whose registered company number is 04619954 and whose registered office is Serco House, 16 Bartley Wood Business Park, Bartley way, Hook, Hampshire RG27 9UY and any successor operator which may be appointed to operate the Existing Franchise from time to time;
- 18 **“Franchise”** has the meaning attributed to such term in recital (a);
- 19 **“Franchise Letting Process”** means the procedure (as varied from time to time) adopted by the Secretary of State for the selection of a franchisee for the Franchise, including submission of pre-qualification documents, tenders and best and final offers (if required), and the negotiation and finalisation of a new franchise agreement and any documents to be entered into under or in relation to the new franchise agreement;
- 20 **“Intellectual Property”** means trade marks, service marks, trade names, logos, get-up, patents, inventions, registered and unregistered design rights, copyrights, semi-conductor topography rights, database and all other similar proprietary rights and other intellectual property rights which may subsist in any part of the world including, where such rights are obtained or enhanced by registration, any registration of such rights and any applications and any rights to apply for such registration;
- 21 **“Letting Proposal”** means the proposal for the Franchise submitted or to be submitted by the Applicants to the Secretary of State including any pre-qualification application, tender submission and best and final offer;

- 22 “**Network Rail**” means Network Rail Infrastructure Limited and any successor;
- 23 “**Parties**” means the Secretary of State and the Applicants;
- 24 “**Proposed Operator**” means the single purpose entity (which may exist, or may be incorporated during the Franchise Letting Process) that the Applicants propose operate the Franchise if the Applicants are selected to do so;
- 25 “**RSSB**” means the Railway Safety and Standards Board and any successor;
- 26 “**Secretary of State Information**” means:
- 26.1 Data Site Information; and
- 26.2 all other information of whatsoever nature whether oral, written or in any other form disclosed by the Secretary of State to the Applicants for the purposes of or pursuant to the Franchise Letting Process;
- 27 “**Third Party**” means any person who is not a Party;
- 28 reference to the disclosure of information includes any communication or making available of information and includes both direct and indirect disclosure;
- 29 reference to the disclosure of information, or provision of access, by or to the Secretary of State or the Applicants or any Applicant includes disclosure, or provision of access, by or to the representatives of the Secretary of State or the Applicants (as the case may be);
- 30 reference to the representatives of any person includes the officers, directors, employees, advisers and agents of that person and, where the context admits, providers or potential providers of finance to the Applicants or any Associated Entity in connection with the Letting Proposal and the representatives of such providers or potential providers of finance;
- 31 reference to persons includes legal and natural persons;
- 32 reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time;
- 33 reference to clauses and recitals is to clauses of and recitals to this Deed;
- 34 reference to any gender includes any other;
- 35 reference to writing includes email;
- 36 terms defined in the Railways Act 1993 have the meanings attributed to them in that Act when used in this Deed;
- 37 the words “include” and “including” are to be construed without limitation;
- 38 the singular includes the plural and vice versa;
- 39 the notes to Applicants are for the reference of Applicants while completing the Deed and shall have no contractual effect; and
- 40 the headings contained in this Deed shall not affect its construction or interpretation.

SCHEDULE 2

The Applicants

- (1) [Insert name of Applicant 1], a [company] [incorporated] [established] in [insert country of registration or establishment], whose [registered office] [principal place of business] is at [insert registered address or principal place of business] [and whose registered number is [insert registered number]]; and
- (2) [Insert name of Applicant 2], a [company] [incorporated][established] in [insert country of registration or establishment], whose [registered office][principal place of business] is at [insert registered address or principal place of business] [and whose registered number is [insert registered number]]; and

NOTES TO APPLICANTS:

This Deed should be executed by (i) the applicant (meaning the entity or person which will submit a response to the Pre-Qualification Questionnaire including, where the applicant is a joint venture or consortium, each member of the joint venture or consortium); and (ii) each of the Guarantor(s) (as that term is defined in the Pre-Qualification Questionnaire and the Pre-Qualification Process Document).

Upon receipt of the applicant's response to the Pre-Qualification Questionnaire, the Department for Transport will check that the relevant parties have executed this Deed.

If you have incorporated a single purpose entity for the purposes of your bid, this entity (the Proposed Operator) should also execute this Deed.

You should complete this section by replacing the text in square brackets in each paragraph with the Applicants' details. If there is one Applicant, please complete paragraph (1) and delete or cross through paragraph (2). If there are more than two Applicants, please repeat paragraph (2) as many times as necessary.

If an Applicant is not a company, please replace the word 'company' with a description of the Applicant's legal form.