

Dated

**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 ON**

**BETWEEN**

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

**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 East Anglia passenger rail franchise (the "**Franchise**") in order to let the Franchise in June 2016.
- (b) The Franchise relates to the Anglia route covering a large area with densely populated areas at its southern end, regional hubs at its centre and sparsely populated rural communities in the north. The main markets are commuter travel to London, in particular to the City and the Docklands, and leisure travel to Stansted Airport, the Westfield shopping centre in Stratford, and the coastal resorts of Sheringham, Cromer, Great Yarmouth, Lowestoft, Felixstowe, Walton-on-the-Naze, Clacton-on-Sea and Southend-on-Sea.
- (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 and which he intends to share with the Applicants in relation to their involvement in the Franchise Letting Process.
- (e) The Applicants will require access to such information for the purpose of the Applicants evaluating whether or not and on what terms they might proceed with the Letting Proposal, formulating the Letting Proposal and negotiating, if selected to negotiate, with the Secretary of State for the letting of the Franchise (the "**Agreed Purpose**").
- (f) The Secretary of State intends, subject to this Deed, to provide Applicants with access to a franchise e-procurement portal used for the purposes of the Franchise Letting Process ("**AWARD**") and an electronic data site established for the purposes of the Franchise Letting Process (the "**Data Site**")
- (g) The Parties have agreed to comply with the following terms in connection with their involvement in the Franchise Letting Process, including with regard to general conduct, the use and disclosure of information and access to AWARD and the Data Site.
- (h) It is a condition of participating in the Franchise Letting Process that the Applicants enter into this Deed.

**IT IS HEREBY AGREED AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

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

**2. GENERAL CONDUCT**

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

2.1.1 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

2.1.2 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.

**3. WARRANTY**

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

3.1.1 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;

3.1.2 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;

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

3.1.4 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.

**4. CONFIDENTIALITY**

4.1 Subject to clause 4.3, the Applicants undertake that each Applicant and any person to whom Confidential Information is disclosed by an Applicant (including any Permitted Party):

4.1.1 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;

4.1.2 shall not disclose any Franchise Letting Process Information to any Third Party other than the fact that the Applicants are investigating the possibility of submitting, or have submitted, a Letting Proposal; and

4.1.3 shall not disclose any Franchise Letting Process Information or Secretary of State Information to any Permitted Party, except to the extent that such Permitted Party needs to know the Franchise Letting Process Information or Secretary of State Information for the Agreed Purpose.

4.2 Subject to clauses 4.3 and 4.5.4, 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.

4.3 The undertakings in clauses 4.1 and 4.2 shall not apply to any disclosure of Confidential Information:

- 4.3.1 expressly authorised by this Deed or agreed in writing between the Parties;
  - 4.3.2 required by any applicable law or court order by any supervisory or regulatory body (including the Financial Conduct Authority, the Competition and Markets Authority, 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;
  - 4.3.3 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);
  - 4.3.4 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
  - 4.3.5 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).
- 4.4 The undertakings in clause 4.2 shall not apply to any disclosure of Applicant Information by the Secretary of State:
- 4.4.1 to a Beneficiary, the Office of Rail Regulation, Network Rail, the Railway Safety and Standards Board, the Health and Safety Executive, Parliament or any Parliamentary Committees or any other stakeholding or governmental body or to any of its or their representatives;
  - 4.4.2 which is required to be made under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004; or
  - 4.4.3 for the purposes set out in section 145(2) of the Railways Act 1993.
- 4.5 In the event that any Applicant or any person to whom Confidential Information has been disclosed by an Applicant (including any Permitted Party) becomes compelled by law or by any such supervisory or regulatory body to disclose any Secretary of State Information, the relevant Applicant shall:
- 4.5.1 give prompt notice of that fact and full details of any proposed disclosure to the Secretary of State in writing in advance of such disclosure so that the Secretary of State may seek an appropriate remedy to prevent such disclosure;
  - 4.5.2 take such steps as the Secretary of State may reasonably require for that purpose;
  - 4.5.3 keep the Secretary of State promptly and fully informed of all developments relating to such potential disclosure; and
  - 4.5.4 ensure that disclosure is limited to the minimum amount of Secretary of State Information required to satisfy such disclosure obligation.

## 5. **USE OF CONFIDENTIAL INFORMATION**

### 5.1 The Parties acknowledge that:

- 5.1.1 they have given undertakings in clause 4 in relation to Confidential Information;



- 5.1.2 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
  - 5.1.3 the disclosure of Secretary of State Information permitted under clauses 4.3 and 12.2 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.
- 5.2 The Applicants accordingly undertake that each Applicant and any person to whom Confidential Information is disclosed by an Applicant (including any Permitted Party):
- 5.2.1 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;
  - 5.2.2 shall notify the Secretary of State in writing of the names of any of their current professional advisers and any professional advisers they intend to engage from time to time in relation to the Agreed Purpose;
  - 5.2.3 shall ensure that work in relation to the Agreed Purpose undertaken by or on behalf of an Applicant or any person to whom Confidential Information is disclosed by an Applicant (including any Permitted Party) shall be kept distinct from activities other than such work;
  - 5.2.4 shall use and retain Secretary of State Information only for the Agreed Purpose;
  - 5.2.5 shall at all times keep Confidential Information separate from all electronic and hard copy documents and records not relating to the Franchise Letting Process or the Agreed Purpose;
  - 5.2.6 shall apply the same security measures and degree of care to the Confidential Information as they apply to their own confidential information, which the Applicant warrants as providing adequate protection from unauthorised disclosure, copying or use;
  - 5.2.7 shall not reproduce any Secretary of State Information protected by copyright without the permission of the copyright owner;
  - 5.2.8 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:
    - 5.2.8.1 immediately delete or destroy, return or hand over to the Secretary of State any Secretary of State Information (whether hard or electronic copies) in their possession or control and all notes, memoranda or other records (whether hard or electronic copies) containing or reflecting any Secretary of State Information without keeping any copies thereof (whether hard or electronic copies); and
    - 5.2.8.2 provide written confirmation of their compliance with this clause 5.2.8; and

- 5.2.9 shall so ensure the above by means where applicable including the use of separate communications links, separate accommodation, secure storage of files and separate reporting arrangements.
- 5.3 The Secretary of State (acting reasonably) shall be entitled to audit compliance with this clause 5 and the Applicants shall provide the Secretary of State and his representatives with such access to persons and information as they shall require in connection with any such audit.

## 6. PUBLICITY

- 6.1 The Applicants agree that they shall not and shall ensure that all Connected Persons do not, before the Award Date (in relation to clauses 6.1.1 and 6.1.2) or at any time (in relation to clauses 6.1.3 and 6.1.4), in each case without the prior written consent of the Secretary of State:

6.1.1 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 4.1.2);

6.1.2 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 4.1.2). 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, provided that the Applicants comply with this Deed, including clause 2 (*General Conduct*) and clause 4 (*Confidentiality*);

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

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

in each case whether written or oral and howsoever communicated, including by electronic means, on a website or via social media.

- 6.2 The Applicants agree that 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).

## 7. ACCESS TO AND USE OF AWARD AND THE DATA SITE

- 7.1 The Secretary of State intends to publish Secretary of State Information about the Franchise on the Data Site and grant access to the Data Site to the Applicant in accordance with the Data Site Authorisation Process and this Deed, including this clause 7 and clause 8 (*Data Site Information and AWARD Information*).

- 7.2 The Secretary of State intends to publish Confidential Information relating to the Franchise Letting Process on AWARD and grant access to AWARD in accordance with the AWARD Authorisation Process and this Deed, including this clause 7 and clause 8 (*Data Site Information and AWARD Information*).

- 7.3 Where the Secretary of State provides an Applicant with access to any external database with functionality in the Data Site, clause 4 (*Confidentiality*), this clause 7 and

this Deed shall apply to the Applicant's accessing and use of any such external database as if it were a part of the Data Site.

7.4 The Applicants agree and acknowledge that:

- 7.4.1 if an Applicant wishes to be granted access to AWARD, the relevant Applicant must follow the authorisation process set out in Schedule 3 to this Deed (the "**AWARD Authorisation Process**"), or any other instructions issued by the Secretary of State for that purpose;
- 7.4.2 if an Applicant wishes to be granted access to the Data Site, the relevant Applicant must follow the authorisation process set out in Schedule 4 to this Deed (the "**Data Site Authorisation Process**"), or any other instructions issued by the Secretary of State for that purpose;
- 7.4.3 the Secretary of State may amend the AWARD Authorisation Process, the Data Site Authorisation Process and this clause 7 at any time and will notify the Applicants as soon as reasonably practicable of any such amendments;
- 7.4.4 only Authorised AWARD Users may access AWARD
- 7.4.5 only Authorised Data Site Users may access the Data Site;
- 7.4.6 Data Site Information and AWARD Information will be updated during the Franchise Letting Process, including as further relevant information is made available to the Secretary of State; and
- 7.4.7 while the Secretary of State shall take reasonable steps to notify the Authorised Users of changes to any Data Site Information and/or AWARD Information (as appropriate), it is the sole responsibility of each Applicant to ensure that they are using the most up to date data and information available on the Data Site and/or AWARD.

7.5 The Applicants undertake:

- 7.5.1 not to enable or allow any Unauthorised Person to access the Data Site or AWARD;
- 7.5.2 to only access the Data Site and AWARD during the Franchise Letting Process in accordance with this Deed;
- 7.5.3 to ensure that each Authorised User shall at all times keep their User Account Details secret and confidential;
- 7.5.4 to notify the Secretary of State immediately if at any time he believes that any User Account Details may have been obtained by any Unauthorised Person or that any User Account Details (or any record of either or both) may have been lost or stolen;
- 7.5.5 that, in the event that an Applicant, or a representative of an Applicant, gains access (howsoever gained) to any section of the Data Site and/or AWARD, and/or to any Data Site Information and/or AWARD Information to which an Applicant knows or suspects, or should reasonably have known or suspected, that he should not have gained access, that Applicant shall immediately exit such section or item of Data Site Information and/or AWARD Information, inform the Department of such unauthorised access and immediately delete, destroy or return to the Department at the expense of the Applicants, any copies of any Data Site Information and/or AWARD Information obtained; and



- 7.5.1 not to divulge the fact of any unauthorised access described in clause 7.5.5 above nor the Data Site Information and/or AWARD Information gained thereby to any other person, save where required to do so by an order of a court or other competent body, in which case the Applicant shall inform the Secretary of State accordingly prior to release of any such information.
- 7.6 The Applicants undertake that, when accessing and/or using information obtained from the Data Site or AWARD, each Applicant and any Authorised User shall:
- 7.6.1 fully comply with this Deed, including clause 2 (*General Conduct*), clause 4 (*Confidentiality*), this clause 7 (*Access to and Use of AWARD and the Data Site*) and clause 8 (*Data Site Information and AWARD Information*).
- 7.6.2 subject to clause 4.1.3 and clause 4.3 take all reasonable steps to ensure that none of the Data Site Information or AWARD Information is visible to, or capable of being seen or read by, any Unauthorised Person;
- 7.6.3 not attempt to circumvent any of the security features on the Data Site or AWARD;
- 7.6.4 ensure the correct procedure for exiting and logging out of the Data Site or AWARD is followed; and
- 7.6.5 comply immediately and fully with any instruction from, and submit to any reasonable security procedures required by, the Secretary of State and/or the Department.
- 7.7 By accessing the Data Site and/or AWARD, the Applicant confirms that each Authorised User is deemed to have represented to the Secretary of State that:
- 7.7.1 they are fully aware of and accept the content of this Deed, including the AWARD Authorisation Process and/or the Data Site Authorisation Process, clause 2 (*General Conduct*), clause 4 (*Confidentiality*), clause 7 (*Access to and Use of AWARD and the Data Site*) and clause 8 (*Data Site Information and AWARD Information*); and
- 7.7.2 agree to be bound by, and fully comply with, this Deed.
- 7.8 The Secretary of State reserves the right at his sole discretion to refuse any Applicant access to, or to withdraw consent to an Authorised User, accessing the Data Site and/or AWARD (or any part thereof) or any Data Site Information and/or AWARD Information (or any part thereof) at any time and without providing prior notice or any reason for such refusal or withdrawal.
- 7.9 The Applicants may save Data Site Information and AWARD Information to a computer or any other storage device and print Data Site Information and AWARD Information, provided that they comply with the obligations under this Deed, including clause 4 (*Confidentiality*).
- 8. DATA SITE INFORMATION AND AWARD INFORMATION**
- 8.1 The Secretary of State, in his sole discretion, reserves the right to add Confidential Information to AWARD and/or the Data Site, to amend or remove any Data Site Information disclosed on the Data Site, to amend the Folder Structure on the Data Site (in whole or in part) at any time and to amend or remove any AWARD Information disclosed on the Data Site.
- 8.2 The Secretary of State makes no representation or warranty, express or implied, as to:



- 8.2.1 the accuracy, completeness, reliability, legality, validity, enforceability, or non-infringing character of any of the Data Site Information;
- 8.2.2 the accuracy, completeness, reliability, reasonableness, legality, validity, enforceability, or non-infringing character of any other written or oral communication transmitted or made available in connection with the Data Site Information; and
- 8.2.3 the reasonableness of any opinions in any of the Data Site Information, or the likelihood that any future projections, management targets, estimates, prospects or returns contained in any of the Data Site Information will be achieved,

and the Secretary of State and its representatives (unless otherwise stated) shall not have and will not accept, to the extent permitted by law, any liability for such Data Site Information or for any inaccuracies in respect thereof or omissions therefrom or for any reliance that any Applicant or any other party may seek to place upon such Data Site Information.

- 8.3 Nothing contained on the Data Site is, or shall be relied upon as, a promise or representation, whether as to the past performance of any existing franchise or the current, or future performance of any aspect of the Franchise. Only those representations and warranties made in the franchise agreement (as defined in the Railways Act 1993), and associated agreements, intended to be entered into between the Secretary of State and the Successful Bidder, and subject to such limitations and restrictions as may be specified therein, shall, to the extent an Applicant is the Successful Bidder, have any legal effect between an Applicant and the Secretary of State.
- 8.4 All liability of the Secretary of State, Network Rail, the Existing Franchisee (or equivalent, where the relevant passenger rail services are being operated by the Secretary of State in accordance with Section 30 of the Railways Act 1993) and any other person providing Data Site Information which is made available on the Data Site, including liability for negligence, is excluded to the extent permissible by law. Without prejudice to the generality of the foregoing, the Secretary of State, Network Rail, the Existing Franchisee (or equivalent, where the relevant passenger rail services are being operated by the Secretary of State in accordance with Section 30 of the Railways Act 1993) and any other Data Site Information provider shall have no liability in respect of any loss resulting from any inaccuracy or incompleteness of any Data Site Information contained on the Data Site or for any technical failure, any breach of security or any computer virus.

## 9. DATA PROTECTION

- 9.1 The Applicant warrants and undertakes that each Applicant and any person to whom Secretary of State Information is disclosed by an Applicant (including any Permitted Party), shall, in respect of all Secretary of State Information which is also Personal Data, comply at all times with the Personal Data Legislation and process the Personal Data solely for the Agreed Purpose.
- 9.2 Without prejudice to clause 9.1, the Applicant will not cause or permit the Personal Data to be transferred or otherwise processed outside the European Economic Area without the prior written consent of the Secretary of State.

## 10. INTELLECTUAL PROPERTY

- 10.1 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.

10.2 All Intellectual Property in the Applicant Information shall remain the property of the relevant Applicant or its licensors. The Secretary of State shall not, without the prior consent of the Applicants (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 10.2 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.

10.3 The Applicants shall, in good faith, consider with the Secretary of State any request by the Secretary of State for consent for the purposes of clause 10.2

## 11. **PROHIBITED GIFTS**

11.1 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:

11.1.1 pay any sum to;

11.1.2 grant any concession or benefit to;

11.1.3 make any gift or entertainment of significant cost or value to; or

11.1.4 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.

## 12. **ANTI COLLUSION**

12.1 Subject to clause 12.2, no Applicant shall, and the Applicants shall ensure that their representatives, Associated Entities and representatives of their Associated Entities do not, at any time on or before the Conditions Precedent Satisfaction Date:

12.1.1 fix or adjust the amount of any payment proposed or to be proposed in connection with an Applicant's 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);

12.1.2 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;

12.1.3 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;

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

12.1.5 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

- 12.1.6 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.
- 12.2 The provisions of clause 12.1 shall not apply to the Applicants:
  - 12.2.1 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;
  - 12.2.2 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
  - 12.2.3 to the extent agreed in writing by the Secretary of State.

### 13. **CHANGE OF CONTROL / CIRCUMSTANCES**

- 13.1 The Applicants acknowledge that 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).
- 13.2 If, at any time during the Franchise Letting Process there are any proposed or actual 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.
- 13.3 The Secretary of State reserves the right to revisit the selection and/or evaluation of an Applicant and/or exclude an Applicant, if necessary, as a result of any such material changes. The Secretary of State will be the final arbiter in such matters.

### 14. **NON-SOLICITATION**

- 14.1 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.
- 14.2 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).

### 15. **REMEDIES**

- 15.1 The Applicants undertake to immediately notify the Secretary of State in writing as soon as possible after becoming aware of any breach (or suspected breach) of this Deed or any breach (or suspected breach) of confidence in relation to the Confidential Information by the Applicant or any person to whom Confidential Information has been disclosed by an Applicant (including any Permitted Party).
- 15.2 The Applicants acknowledge and agree that:



- 15.2.1 damages alone would not be an adequate remedy for any breach by an Applicant of the relevant provisions of this Deed;
  - 15.2.2 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
  - 15.2.3 no proof of special damages shall be necessary for the enforcement of this Deed.
- 15.3 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:
- 15.3.1 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
  - 15.3.2 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.

- 15.4 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:
- 15.4.1 eject the Applicants from the Franchise Letting Process; or
  - 15.4.2 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.

- 15.5 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, clause 2 (*General Conduct*) clause 3 (*Warranty*), clause 4 (*Confidentiality*), and 6 (*Publicity*), clause 11 (*Prohibited Gifts*) and clause 12 (*Anti Collusion*).

**16. LIABILITY AND BENEFIT OF UNDERTAKINGS**

- 16.1 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.

- 16.2 In the event that an Applicant discloses Secretary of State Information and Franchise Letting Process Information in accordance with clause 4.1.3 the relevant Applicant shall be liable for the acts and omissions of the recipient party as if they were acts and omissions of the Applicant.

**17. NO COLLATERAL CONTRACT**

- 17.1 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.



- 17.2 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.
- 17.3 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.
- 17.4 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).

18. **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.

19. **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.

20. **WAIVER AND INVALIDITY**

- 20.1 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.
- 20.2 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.

21. **ASSIGNMENT**

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

22. **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.

23. **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.

24. **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.

25. **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.

26. **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 Wales and the Parties hereby irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

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

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.

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**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 “**Account Request Form**” means the form set out in Appendix A submitted by you in accordance with Schedule 4 (*Data Site Authorisation Process*);
- 2 “**Agreed Purpose**” has the meaning set out in Recital (e);
- 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 “**Associated Entity**” means:
  - 5.1 in respect of any Applicant, its Controllers, any entity or person Controlled by an Applicant, and any entity or person other than an Applicant which is Controlled by any of the Applicant's Controllers from time to time;
  - 5.2 any entity or person with whom any Applicant or any Associated Entity (as defined in sub-paragraph 5.1 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
  - 5.3 any Associated Entity (as defined in sub-paragraph 5.1 of this definition of Associated Entity) of a JV Partner;
- 6 “**Authorised AWARD User**” means any person(s) that the Applicants wish to have access to AWARD who is duly authorised in accordance with Schedule 3 (*AWARD Authorisation Process*) to have access to AWARD and whose authorisation has not been rescinded by the Department under clause 7.8 or otherwise;
- 7 “**Authorised Data Site User**” means any person(s) that the Applicants wish to have access to the Data Site who is duly authorised in accordance with Schedule 4 (*Data Site Authorisation Process*) to have access to the Data Site and whose authorisation has not been rescinded by the Department under clause 7.8 or otherwise;
- 8 “**Authorised User**” means an Authorised AWARD User and/or an Authorised Data Site User (as appropriate);
- 9 “**AWARD**” means the Department's web based procurement portal used for the purposes of the Franchise Letting Process;
- 10 “**AWARD Authorisation Process**” has the meaning given to it in clause 7.4.1;
- 11 “**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;
- 12 “**AWARD Information**” means information at any time deposited or contained in AWARD;



- 13 **“AWARD User Account Details”** means the details provided to an Authorised AWARD User to allow them to securely access AWARD;
- 14 **“Beneficiaries”** means the Crown, the Secretary of State for Transport, HM Treasury and their respective representatives;
- 15 **“Bidder”** means a person or entity (or persons or entities) which has or have submitted a response to the PQQ, including an Applicant, and has or have been invited to respond to the ITT;
- 16 **“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;
- 17 **“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;
- 18 **“Confidential Information”** means all information which is either Secretary of State Information or Applicant Information (or both);
- 19 **“Connected Person”** means any:
  - 19.1 Associated Entity;
  - 19.2 representative of or spokesperson for any Applicant or any Associated Entity; or
  - 19.3 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;
- 20 **“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);
- 21 **“Controller”** means any person or entity who has Control;
- 22 **“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;
- 23 **“Data Site Authorisation Process”** has the meaning given to it in clause 7.4.2;
- 24 **“Data Site Information”** means information at any time deposited or contained in the Data Site;
- 25 **“Data Site User Account Details”** means the details provided to an Authorised Data Site User to allow them to securely access the Data Site;
- 26 **“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;

- 27 **“Existing Franchise Agreement”** means the franchise agreement (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) made on 15 April 2014 between The Secretary of State for Transport and Abellio Greater Anglia Ltd;
- 28 **“Existing Franchisee”** means The Secretary of State for Transport and Abellio Greater Anglia Ltd and any successor operator which may be appointed to operate the Existing Franchise from time to time;
- 29 **“Folder Structure”** means the indexed virtual folder structure on the Data Site;
- 30 **“Franchise”** has the meaning attributed to such term in recital (a);
- 31 **“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;
- 32 **“Franchise Letting Process Information”** means 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;
- 33 **“Intellectual Property”** means all copyrights (including rights in computer software), patents, design rights, database rights, rights in undisclosed or confidential information (such as know-how, trade secrets and inventions (whether or not patentable)) and all other intellectual property or similar rights of whatever nature (whether registered or not and including applications to register or rights to apply for registration);
- 34 **“ITT”** means the invitation to tender to be issued by the Secretary of State to Bidders following the pre-qualification process of the Franchise Letting Process;
- 35 **“Letting Proposal”** means the proposal for the Franchise submitted or to be submitted by the Applicants to the Secretary of State as part of the Franchise Letting Process including any pre-qualification application, tender submission and best and final offer;
- 36 **“Network Rail”** means Network Rail Infrastructure Limited and any successor;
- 37 **“Parties”** means the Secretary of State and the Applicants (each being a **“Party”**);
- 38 **“Permitted Parties”** means the representatives of an Applicant, an Associated Entity or the representatives of an Associated Entity (and each a **“Permitted Party”**);
- 39 **“Personal Data”** has the same meaning as in the Data Protection Act 1998 and includes Sensitive Personal Data as defined therein;
- 40 **“Personal Data Legislation”** means the Data Protection Act 1998 and any guidance issued from time to time by the Information Commissioner’s Office and all other legislation relating to the protection and use of personal information (including the Privacy and Electronic Communications (EC Directive) Regulations 2003);
- 41 **“PQQ”** means the pre-qualification questionnaire issued by the Secretary of State as part of the Franchise Letting Process which is used to shortlist applicants to be invited to respond to the ITT;
- 42 **“Proposed Operator”** means the single purpose entity (which may exist, or may be incorporated during the Franchise Letting Process) that the Applicants propose will operate the Franchise if the Applicants are selected to do so;

- 43 “**RSSB**” means the Railway Safety and Standards Board and any successor;
- 44 “**Secretary of State Information**” means:
- 44.4 AWARD Information;
- 44.5 Data Site Information; and
- 44.6 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;
- 45 “**Successful Bidder**” means the Bidder selected under the Franchise Letting Process to whom the Secretary of State intends to award the right to operate the Franchise;
- 46 “**Third Party**” means any person who is not a Party;
- 47 “**Unauthorised Person**” means any person who is not Authorised AWARD User or an Authorised Data Site User;
- 48 “**User Account Details**” means the details provided to an Authorised User to allow them to securely access the Data Site and/or AWARD;
- 49 reference to the **disclosure** of information includes any communication or making available of information and includes both direct and indirect disclosure;
- 50 reference to the **disclosure of information, or provision of access**, by or to the Secretary of State, the Applicants or any Associated Entity includes disclosure, or provision of access, by or to their respective representatives;
- 51 reference to the **representatives** of any person includes the officers, directors, employees, advisers and agents of that person (including Authorised Data Site Users) 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;
- 52 reference to **persons** includes legal and natural persons;
- 53 reference to **any enactment** is to that enactment as amended, supplemented, re-enacted or replaced from time to time;
- 54 reference to clauses and recitals is to clauses of and recitals to this Deed;
- 55 references to appendices are references to appendices hereto and the appendices shall be deemed to be incorporated herein;
- 56 reference to any gender includes any other;
- 57 reference to writing includes email;
- 58 terms defined in the Railways Act 1993 have the meanings attributed to them in that Act when used in this Deed;
- 59 the words “**include**” and “**including**” are to be construed without limitation;
- 60 the singular includes the plural and vice versa;

- 61 the notes to Applicants are for the reference of Applicants while completing the Deed and shall have no contractual effect; and
- 62 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 (whether incorporated or unincorporated), 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).

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.

## **SCHEDULE 3**

### **AWARD Authorisation Process**

1. Should the Applicant wish to be granted access to AWARD, the Applicant must follow any instructions provided by the Secretary of State for this purpose.
2. The Department will review any request by an Applicant for access to AWARD and, subject to the Secretary of State's rights under clause 7.8, will authorise the opening of a personal user account and issue of AWARD User Account Details for AWARD for each Authorised AWARD User up to a maximum of twenty five (25) Authorised AWARD Users. Each Authorised AWARD User will receive instructions on how to gain access to the Data Site using the relevant User Account Details.
3. Only those persons whose details have been submitted to the Department and whose user accounts have been set up and notified will qualify as Authorised AWARD Users.
4. Authorised AWARD Users will be able to access AWARD twenty-four (24) hours a day, seven (7) days a week, subject to the Department's data site provider suspending its service for technical or maintenance reasons, or to update AWARD.

## **SCHEDULE 4**

### **Data Site Authorisation Process**

5. Should the Applicant wish to be granted access to the Data Site, the Applicant must return to the Department a completed Account Request Form (a copy of which is contained in Appendix A) by uploading it to AWARD. The Applicant may complete an Account Request Form for up to a maximum of twenty five (25) Authorised Data Site Users. Further Account Request Forms may be submitted but the Secretary of State's prior consent must be obtained before any person applies for more than twenty five (25) Authorised Data Site Users to have access to the Data Site.
6. The Department will review any completed Account Request Form and, subject to the Secretary of State's rights under clause 7.8, will authorise the opening of a personal user account and issue of User Account Details for the Data Site for each Authorised Data Site User. If the Data Site is included within or access via AWARD, an Authorised User will be given User Account Details which allow him/her to access the Data Site within or via AWARD. Where an Authorised User already has personal user account details to securely access AWARD, then the Department will update the Authorised User's account to permit access to the Data Site and the AWARD personal user account details shall become the User Account Details for the purposes of this Deed Each Authorised Data Site User will receive instructions on how to gain access to the Data Site using the relevant User Account Details.
7. Only those persons whose details have been submitted to the Department and whose user accounts have been set up and notified will qualify as Authorised Data Site Users.
8. Authorised Data Site Users will be able to access the Data Site twenty-four (24) hours a day, seven (7) days a week, subject to the Department's data site provider suspending its service for technical or maintenance reasons, or to update the Data Sites.

**APPENDIX A**

**DATA SITE USER ACCOUNT REQUEST FORM**

APPLICANT: \_\_\_\_\_

First name	Surname	Organisation	Address	Telephone	Email

**PLEASE COMPLETE APPENDIX A AS SEPARATE FILE USING THE FILE “FLPA Data Site User ACCOUNT REQUEST FORM”. TEMPLATE IS IN DOCUMENT FOLDER “01 FLPA TO APPLICANTS”.**

**UPLOAD AS A SEARCHABLE (I.E. NON-SCANNED FILE).**