

DATED

26/11/2010

- (1) THE SECRETARY OF STATE FOR
TRANSPORT
- (2) ARRIVA TRAINS LIMITED
and
- (3) ARRIVA TRAINS WALES/TRENAU ARRIVA
CYMRU LIMITED and
- (4) THE WELSH MINISTERS

**DEED OF AMENDMENT TO A FRANCHISE
AGREEMENT DATED 18th October 2003 AND
DEED
for the PROVISION OF RAIL SERVICES
FOR THE LONDON OLYMPICS**

**Department for Transport
Great Minster House
London SW1P 4DR**

THIS DEED is made on

BETWEEN

- (1) **THE SECRETARY OF STATE FOR TRANSPORT** ("the Secretary of State");
and
- (2) **ARRIVA TRAINS LIMITED** whose registered number is 3166214 and registered office is at 1 Admiral Way, Doxford International Business Park, Sunderland, Tyne & Wear SR3 3XP (the "**Franchisee**"); and
- (3) **ARRIVA TRAINS WALES/TRENAU ARRIVA CYMRU LIMITED** whose registered number is 4337645 and registered office is at Haywood House North, Dumfries Place, Cardiff/Caerdydd CF10 3GA (the "**Franchise Operator**"), and
- (4) **THE WELSH MINISTERS** ("the Assembly")

WHEREAS

- (A) By the Franchise Agreement, the Strategic Rail Authority, the Franchisee and the Franchise Operator recorded their agreement as to the provision of certain services for the carriage of passengers by railway;
- (B) By a transfer scheme dated 14th October 2005 the property, rights and liabilities of the Strategic Rail Authority in the Franchise Agreement were transferred to the Assembly and the Secretary of State such that the Assembly and the Secretary of State became entitled to those rights and subject to those liabilities jointly and severally.
- (C) The Olympic Delivery Authority, ("the ODA") incorporated under section 3 London Olympic Games and Paralympic Games Act 2006 wishes to secure the provision of railway passenger services for the London Olympic Games;
- (D) The Secretary of State and the Assembly are content to facilitate the provision of the Olympic Services as set out in the schedule;
- (E) The parties to this Deed have agreed that the Olympic Services and other Olympic related activities are to be provided by the Franchise Operator under the Franchise Agreement on the following terms:

NOW IT IS AGREED as follows:

Interpretation

1.1 In this Deed except as otherwise specified:

- | | |
|---------------------------------|---|
| “Existing Services” | means the passenger rail services required to be provided by the Franchise Operator under its Franchise Agreement before the date of this Deed which shall comprise those services within the published December 2009 timetable or as otherwise agreed with the Secretary of State and the Assembly.; |
| “Franchise Agreement” | means the Franchise Agreement dated 18 th October 2003 and made between the Strategic Rail Authority, the Franchisee and the Franchise Operator; |
| “Games-time” | means the periods of the Olympic Games between 27th July to 12th August 2012 and Paralympics between 29th August to 9th September 2012; |
| “Olympic Services” | means the services set out in attached schedule (including the Olympic Train Services and amendments to Existing Services) or any amendments or additions agreed with the Secretary of State and the Assembly; |
| “Olympic Train Services” | means the Olympic Train Services defined in the attached schedule. |
| “Olympics Travelcard” | means the ticket so named issued free to holders of an entry ticket to an event which is part of the Olympic Games, valid for travel on the date of the event on National Rail services; |

1.2 In this Deed except as otherwise specified

- 1.2.1 words and expressions defined in the Interpretation Act 1978 shall have the same meaning in this Deed;

- 1.2.2 words and expressions defined in the Franchise Agreement shall have the same meaning in this Deed;
 - 1.2.3 references to recitals and clauses are to recitals and clauses of this Deed, unless as otherwise stated;
 - 1.2.4 headings and references to headings shall be disregarded in construing this Deed;
 - 1.2.5 any reference to an act is a reference to the same as amended, substituted or amended from time to time;
 - 1.2.6 words importing the plural shall include the singular and vice versa; and
 - 1.2.7 a reference to a document includes that document as amended, restated, novated and supplemented from time to time.
- 1.3 Save as provided herein, the Franchise Agreement shall continue to have full force and effect.
- 1.4 This Deed is supplemental to and shall be read and construed together with the Franchise Agreement, which shall together constitute one and the same instrument. References to the Franchise Agreement in the Franchise Agreement shall refer to the Franchise Agreement as amended by this Deed.

Provision of Services

- 1.5 The Franchisee shall provide the Olympic Services set out in the schedule but the Franchisee will not be in breach of this Deed for any failure to deliver the Olympic Services where such failure is a direct result of an event or circumstance not reasonably foreseeable and beyond its reasonable control. The Franchisee will use reasonable endeavours to mitigate the effects of any such events or circumstances.
- 1.6 Subject to clause 1.10 below, the terms of the Franchise Agreement shall apply to the provision of the Olympic Services under this Deed. Without limitation to the generality of the foregoing, the Franchise Operator shall comply with its obligations under the Franchise Agreement as if the provisions of the attached schedule were specified in Part 6 of Schedule 3 to the Franchise Agreement. The Olympic Train Services are deemed to be approved for the purposes of any requirement contained in clauses 5.1 and 5.2 of the Franchise Agreement.

- 1.7 In the event of any inconsistency or conflict between the terms of this Deed and the Franchise Agreement, the terms of this Deed shall prevail.
- 1.8 The Olympic Train Services shall be included within the Train Plan for all purposes (including the operation of the performance regimes in clause 5.3 in the Franchise Agreement and subject to Network Rail granting the relevant access rights in a relevant Access Agreement).

Compensation

- 1.9 The Franchise Operator acknowledges that it has no claim for any payment in relation to the Olympic Services from the Secretary of State or from the Assembly except as may be specifically provided in the schedule.
- 1.10 Notwithstanding the contrary provisions of any definition of Change the parties have agreed that there is no Net Loss and no Net Gain as a result of this Deed.

Monitoring Systems

- 1.11 The Franchise Operator hereby gives consent to the Secretary of State and to the Assembly to disclose to the ODA any information available to the Secretary of State or the Assembly from time to time in respect of the Olympic Services and/or their provision under this Deed.

Construction

- 1.12 Except as specifically provided in this Deed the Franchise Agreement and the Franchise Plan shall continue to have full force and effect.

Counterparts

- 1.13 This Agreement may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument. Any party may enter into this Agreement by executing any such counterpart.

Governing Law

- 1.14 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

Rights of Third Parties

1.15 This Agreement does not create any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to it other to the ODA in respect of specific obligations referred to in this Deed.

IN WITNESS thereof the parties to this Deed have executed this Deed the day and year first before written:

THE CORPORATE SEAL OF THE SECRETARY OF STATE FOR TRANSPORT

hereto affixed is authenticated by:

.....
Authenticated by authority of the Secretary of State for Transport.

SEAL REF No.
DFT/3352

EXECUTED and delivered)
on behalf of **ARRIVA TRAINS LIMITED** by:

Director

Director/Secretary

EXECUTED and delivered)
on behalf of **ARRIVA TRAINS WALES/TRENAU ARRIVA CYMRU LIMITED**
by:)

Director

Director/Secretary

[Handwritten signature]
[Handwritten signature]

[Handwritten signature]

EXECUTED AS A DEED by applying the seal of the Welsh Ministers. The application of the seal of the Welsh Ministers is AUTHENTICATED by PATRICIA CLARKE
SENIOR LAWYER, who is duly authorised for that purpose by the Director of Legal Services by authority of the Welsh Ministers under section 90(2) of the Government of Wales Act 2006.

Signed

