

DATED

2007

- (1) THE STRATEGIC RAIL AUTHORITY
- (2) ARRIVA TRAINS WALES/TRENAU ARRIVA
CYMRU LIMITED
- (3) NORTH WESTERN TRAINS COMPANY LIMITED

DEED
in relation to
THE RAILWAYS PENSION
SCHEME

Eversheds LLP
Senator House
85 Queen Victoria Street
London
EC4V 4JL
1207469(DS)

THIS DEED is made on

2007

BY

- (1) **THE STRATEGIC RAIL AUTHORITY** created under section 201 of the Transport Act 2000 (the “**Authority**”);
- (2) **ARRIVA TRAINS WALES/TRENAU ARRIVA CYMRU LIMITED** (registered number 4337645) whose registered office is at Haywood House North, Dumfries Place, Cardiff CF10 3GA (the “**Franchise Operator**”); and
- (3) **NORTH WESTERN TRAINS COMPANY LIMITED** (registered number 3007946) whose registered office is at Milford House, 1 Milford Street, Swindon SN1 1HL (the “**Former Operator**”).

BACKGROUND

- (A) By a Business Transfer Agreement (the “**BTA**”) dated 27 September, 2003, certain passenger railway services operated by the Former Operator transferred to the Cardiff Railway Company Limited (registered number 3007927) with effect from 28 September, 2003 (the “**Transfer Date**”).
- (B) By a Franchise Agreement (the “**Franchise Agreement**”) dated on or about the date of this Deed, the Franchise Operator agrees to provide the passenger railway services previously provided by the Cardiff Railway Company Limited, including those services transferred pursuant to the BTA, with effect from the Franchise Commencement Date (as defined in the Franchise Agreement).
- (C) By a schedule to the BTA headed “Pensions”, the Cardiff Railway Company Limited agreed to establish a new shared cost section of the Railways Pension Scheme (the “**New Section**”); all Relevant Employees became members of the New Section for future service after the Transfer Date. By clause 13.1 of the Franchise Agreement, the Franchise Operator agrees to become the Designated Employer of a number of sections of the Railways Pension Scheme, including the New Section.
- (D) The parties to this Deed acknowledge that, pursuant to the provisions of the Pension Trust, the benefits accrued prior to the Transfer Date of those Relevant Employees who have become members of the New Section with effect from the Transfer Date will transfer from the Seller’s Section to the New Section, together with certain assets.
- (E) The parties to this Deed further acknowledge that some of those Relevant Employees are also Protected Employees in respect of whom certain payment obligations may arise by virtue of the Protection Order.
- (F) The parties to this Deed wish to make provision for how any such payment obligations should be addressed.

OPERATIVE PROVISIONS

1. DEFINITIONS

- 1.1 “**Designated Employer**”, “**Pensionable Service**” and “**Trustee**” shall have the meaning given to such terms in the Pension Trust.
- 1.2 Other defined terms which are used in this Deed but which are not defined here shall have the meaning given to them in the schedule to the BTA headed “Pensions”.

2. PAYMENTS UNDER THE PROTECTION ORDER

- 2.1 The parties to this Deed acknowledge that, pursuant to the provisions of Clause 12C of the Pension Trust, the benefits of the Protected Employees in respect of Pensionable Service prior to the Transfer Date are to be transferred to the New Section. The Protected Employees are to be credited in the New Section with benefits in respect of Pensionable Service prior to the Transfer Date in accordance with the terms of the Protection Order.
- 2.2 The parties to this Deed further acknowledge that any payment or payments which may be required to be made pursuant to article 7(4) of the Protection Order in relation to the transfer of such Protected Employees’ benefits to the New Section must be made
 - 2.2.1 in the first instance, by the Former Operator; and
 - 2.2.2 to the extent that any such payment or payments are not made by the Former Operator and are due and payable on or after the Franchise Commencement Date, by the Franchise Operator.
- 2.3 Notwithstanding the provisions of the Protection Order and subject to the Authority making the payments referred to in 2.4.2 below, the Franchise Operator undertakes, in relation to the transfer of the Protected Employees’ benefits to the New Section, to make all and any such payment or payments required to be made on or after the Franchise Commencement Date pursuant to article 7(4) of the Protection Order.
- 2.4 Before any occasion on which the Franchise Operator or, notwithstanding 2.3 above, the Former Operator is required to make any such payment or payments
 - 2.4.1 the Franchise Operator or the Former Operator, as appropriate, shall notify the Authority in writing of the amount of such payment or payments, together with such evidence of the obligation to pay such amount as the Authority may reasonable require; and
 - 2.4.2 subject to 2.4.1, the Authority shall pay to the Franchise Operator or the Former Operator, as appropriate, an amount equal to such payment or payments.

- 2.5 The Franchise Operator or the Former Operator, as appropriate, and the Authority shall use all reasonable endeavours to secure the agreement of the Trustee that the payment of any amounts referred to under 2.3 above may be made
- 2.5.1 in such instalments; and
- 2.5.2 over such period (but having regard to the period over which any deficiency in the Seller's Scheme relating to the benefits of the Protected Employees would have been expected to have been made good)
- as shall be agreed between the Authority and the Trustee.
- 2.6 This Deed may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart.
- 2.7 Each counterpart shall constitute an original of this Deed, but all the counterparts shall together constitute but one and the same instrument.
- 2.8 The parties to this Deed do not intend that any term of this Deed should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Deed.

EXECUTED as a deed and delivered on the date stated at the beginning of this deed.

The corporate seal of)
THE STRATEGIC RAIL AUTHORITY)
hereto affixed is authenticated by:)

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Authorised by
THE STRATEGIC RAIL AUTHORITY

EXECUTED as a deed by)
ARRIVA TRAINS WALES/)
TRENAU ARRIVA CYMRU)
LIMITED acting by two directors or)
a director and its secretary)

Director

Director/Secretary

EXECUTED as a deed by)
NORTH WESTERN TRAINS)
COMPANY LIMITED)
acting by two directors or)
a director and its secretary)

Director

Director/Secretary