

DOCUMENT “ABL” – ALPHALINES BRAND LICENCE

TRADE MARK LICENCE AGREEMENT

Date:

Parties:

(1) 'The Licensor': Strategic Rail Authority, whose registered office is at 55 Victoria Street, London SW1H 0EU

(2) 'The Licensee': Arriva Trains Wales/Trenau Arriva Cymru Limited, Haywood House North, Dumfries Place, Cardiff, CF10 3GA

Recitals:

The Licensor has agreed to grant and the Licensee has agreed to take a licence of certain Trade Mark rights, on the terms set out in this Agreement.

Operative provisions

1 Definitions

1.1 In this Agreement except where the context otherwise requires the following terms shall have the following meanings:

'ASSOCIATED COMPANY' either party's ultimate holding company or any subsidiary of such ultimate holding company ('holding company' and 'subsidiary' having the meanings given in section 736 and section 736A of the Companies Act 1985);

'EXCLUSIVE' in respect of a right granted under this Agreement the grantor will not itself exercise that right and will not authorise others to exercise that right;

'LICENSED TRADE MARK' The Trade Mark details of which are set out in Schedule 1;

'SERVICES' the services listed in Schedule 2 and in respect of which the Licensee is licensed to use the Trade Marks under the terms of this Agreement.

'NON-EXCLUSIVE' in respect of a right granted under this Agreement the grantor may itself exercise that right and may authorise and assist others to exercise that right;

'PERSONS' any person, firm or company or group of persons or unincorporated body;

'TERM' the period of fifteen years;

'TERRITORY' England and Wales.

1.2 The singular includes the plural and vice versa.

1.3 Unless the context otherwise indicates, references to clauses, sub-clauses, recitals and to Schedules are to clauses and sub-clauses of, and recitals and Schedules to this Agreement.

1.4 The Schedules to this Agreement are an integral part of this Agreement.

1.5 Headings to clauses in this Agreement are included for the purpose of ease of reference only and shall not have any effect on the construction or the interpretation of this Agreement.

1.6 References in this Agreement to any statute or statutory provision shall include any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute.

2 Grant

2.1 The Licensor hereby grants to the Licensee a non-exclusive licence under the Licensed Trade Mark in relation to Services in the Territory from the date of this Agreement and for the Term (unless terminated earlier in accordance with the provisions of this Agreement) and on the other terms and conditions set out in this Agreement.

2.2 The Licensee shall have no right to assign the Agreement nor to grant sub-licences under this Agreement. The Licensor may assign this Agreement.

2.3 No further right or licence is granted to the Licensee under the Licensed Trade Mark

save as set out expressly in this clause 2.

- 2.4 The Licensee shall use its best endeavours at all times during the Term to create, promote and retain goodwill in the business utilising the Services under the Licensed Trade Mark.

3 Royalty

- 3.1 This Licence is granted on a royalty-free basis.

4 Protection of the Licensed Trade Mark

- 4.1 In the event that:

4.1.1 any Licensed Trade Mark is attacked or being a Trade Mark application is opposed; or

4.1.2 any application for a Trade Mark is made by or any Trade Mark is granted to a third party by reason of which the third party in the Licensor's opinion may be granted or may have been granted rights which conflict with any of the rights granted to the Licensee under any of the Licensed Trade Marks; or

4.1.3 any application is made for a compulsory licence under any Licensed Trade Marks

the Licensee shall forthwith notify the Licensor of any such matters and shall join the Licensor in taking all such steps (if any) as in the opinion of the Licensor (in its total discretion) shall be desirable for the protection of the Licensor's rights under the Licensed Trade Mark. The expenses incurred in taking such steps and any profits which may be obtained shall, in the absence of agreement to the contrary, be for the account of the Licensor.

5. Use of the trade mark(s) and marking

- 5.1 The Licensee shall use the Licensed Trade Mark in the form stipulated from time to time by the Licensor and shall observe any reasonable directions given by the Licensor as to colours and size of representations of the Trade Mark and their

manner and disposition in relation to the Services and all advertising, promotional and other documentary material which makes use of the Licensed Trade Mark.

- 5.2 The Licensee shall only make use of the Licensed Trade Mark for the purposes authorised in this Agreement and, in particular, shall not use the Licensed Trade Mark in any way which would tend to allow it to become generic, lose its distinctiveness, become liable to mislead the public, or be materially detrimental to or inconsistent with the good name, goodwill, reputation and image of the Licensor.
- 5.3 Whenever the Licensed Trade Mark is used by the Licensee such use shall be accompanied by wording and clear marking, if registered, by use of the ® sign. The terms of such wording and its placing shall be as reasonably requested by the Licensor
- 5.4 The Licensee shall not use the Licensed Trade Mark accompanied by other trade marks (whether registered or not) or words describing the Services unless the Licensed Trade Mark is sufficiently distinguished from the surrounding and adjacent text and the Licensor is clearly identified as the registered proprietor of the Licensed Trade Mark.
- 5.5 The Licensee shall not, by virtue of this Agreement, obtain or claim any right, title or interest in or to the Licensed Trade Mark except the rights of use as are specifically set out in this Agreement, and hereby acknowledges and agrees that the benefit of all such use shall at all times enure to the Licensor.
- 5.6 The Licensee shall not adopt or use any trade mark, symbol or device which incorporates or is confusingly similar to, or is a simulation or colourable imitation of, the Licensed Trade Mark, or unfairly competes with the Licensed Trade Mark. The Licensee shall not at any time, whether during or after termination of this Agreement, apply anywhere in the world to register any trade marks identical to or so nearly resembling the Licensed Trade Mark as to be likely to deceive or cause confusion.
- 5.7 The Licensee shall not at any time, whether during or after termination of this Agreement, use the Licensed Trade Mark as part of any corporate business or trading name or style of the Licensee.

6. Formal Licence

6.1 The Licensee shall, at the Licensor's expense, enter into such formal licence with the Licensor and shall at the Licensor's sole expense join in such registration of this as the Licensor requires in order to protect fully the rights of the Licensor in the Licensed Trade Mark.

6.2 In the event of any inconsistency between the provisions of this Agreement and any formal licence, the provisions of this Agreement shall prevail.

7. Infringement of the trade mark

7.1 If the Licensee learns of any infringement or threatened infringement of the Licensed Trade Mark or of any action detrimental to the Licensed Trade Mark or of any third party allegation that the Licensed Trade Mark is liable to cause deception or confusion to the public the Licensee shall forthwith and without delay notify the Licensor giving full particulars of such circumstances and the Licensee shall make no comment or admission to any third party in respect of such circumstances.

7.2 The Licensor shall have the conduct of all proceedings relating to the Licensed Trade Mark and shall in its sole discretion decide what action (including litigation, arbitration or compromise) if any to take in respect of any infringement or alleged infringement of the Licensed Trade Mark or passing off or any other claim or counterclaim brought or threatened in respect of the use of the Licensed Trade Mark. The Licensor shall not be obliged to bring or defend any proceedings whether for infringement or otherwise in relation to the Licensed Trade Mark if it decides in its sole discretion not to do so and the Licensee shall not be entitled to bring any action for infringement under Section 30 of the Trade Marks Act 1994, regardless of any such decisions.

7.3 The Licensee will at the request of the Licensor give full co-operation to the Licensor (including the provision of documentation and making relevant people available) in any action, claim or proceedings brought or threatened in respect of the Licensed Trade Marks and the Licensor shall meet all reasonable expenses incurred by the Licensee to third parties in giving such assistance.

7.4 In any infringement proceedings which are brought by the Licensor, the Licensor shall be entitled to claim in respect of any loss suffered or likely to be suffered by the Licensee but the Licensor shall be entitled to retain any damages awarded in respect of such claim and the provisions of Section 30(6) of the Trade Marks Act 1994 are

hereby, to such extent only, expressly excluded.

8 Indemnity by Licensee

- 8.1 The Licensee understands and agrees that the exercise of the Licence granted to the Licensee under this Agreement is subject to all applicable laws, enactments, regulations and other similar instruments in the Territory (including, without limitation, all applicable local laws relating to advertising, broadcasting, health and safety and telecommunications), and that the Licensee shall at all times be solely liable and responsible for such due observance and performance. The Licensee will obtain at its own expense all licences, permits and consents necessary for the provision of the Services in the Territory.
- 8.2 The Licensee shall at all times (notwithstanding the termination of this Agreement) be liable for, indemnify and hold harmless the Licensor (together with its officers servants and agents) against any and all liability, loss, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Licensor arising out of the performance or non-performance by the Licensee of this Agreement or resulting from any and all liability claims arising from Services provided by the Licensee in the Territory which would not have been incurred or suffered if this Agreement had not been entered into.
- 8.3. The Licensee shall obtain and maintain (notwithstanding the termination of this Agreement) liability insurance in an amount and on such terms and conditions as shall be acceptable to the Licensor for the claims identified in clause 8.2. Such policy of liability insurance shall contain an endorsement of the interest of the Licensor or otherwise require the insurance company to give the Licensor not less than 30 days' notice of cancellation or non-renewal of such insurance. The Licensee shall supply the Licensor with a copy of its policy, if so requested.
- 8.4 The Licensor does not warrant that the use of the Licensed Trade Mark by the Licensee shall not infringe the rights of any third party other than those rights derived from the Licensor.

9. Maintenance of trade marks

- 9.1 The Licensor will pay all renewal fees for the registration of the Trade Mark falling

due during the period of this Agreement.

- 9.2 The Licensee undertakes not to do or permit to be done any act which would or might jeopardise or invalidate the registration of the Licensed Trade Mark nor to do any act which might assist or give rise to an application to remove the Licensed Trade Mark or which might prejudice the right or title of the Licensor to the Licensed Trade Mark.
- 9.3 The Licensee will on request give to the Licensor or its authorised representative any information as to its use of the Licensed Trade Mark which the Licensor may require and will (subject to the provisions of clause 7 above) render any assistance reasonably required by the Licensor in maintaining the registration of the Licensed Trade Mark.

10. Quality Control

- 10.1 The Licensee shall ensure that the Services supplied by it under the Licensed Trade Mark conform to and comply in all respects with the standards, regulations and other provisions specified in Schedule 3 to this Agreement (if any) and all other requirements in respect of the Services which may be established in writing from time to time by the Proprietor.
- 10.2 The Licensee shall discharge its obligations in connection with the provision of the Services with all due skill, care and diligence including but not limited to good industry practice and in accordance with the Licensee's own established internal procedures.
- 10.3 The Licensee will permit the Licensor or its authorised representative on request to audit the supply of the Services.
- 10.4 The Licensee shall also submit samples of all advertising, promotional and other documentary material including invoices and office stationery to be used in relation to the Services after the date of this Agreement to the Licensor for written approval prior to any such material being used. The Licensee shall not use any such material bearing the Licensed Trade Mark without such prior approval.

11. Duration and termination

11.1 The Licensor shall have the right to terminate this Agreement immediately by notice in writing to the Licensee if:

11.1.1 the Licensee shall fail to make any payment when it becomes due or shall fail to perform or observe any obligation on its part to be performed or observed under this Agreement PROVIDED THAT in a case where (in the opinion of the Licensor) the breach is remediable such notice from the Licensor shall also require the Licensee to remedy the breach and if the Licensee so remedies within 30 days of the notice being served such notice to terminate this Agreement shall be deemed to be void and of no effect; or

11.1.2 if an interim order is applied for or made, or a voluntary arrangement approved, or if a petition for a bankruptcy order is presented or a bankruptcy order is made against the Licensee or if a receiver or trustee in bankruptcy is appointed of the Licensee's estate or (the Licensee being a company) a voluntary arrangement is proposed or approved or an administration order is made, or a receiver or administrative receiver is appointed over any of the Licensee's assets or undertaking or a winding-up resolution or petition is passed or presented (other-wise than for the purposes of reconstruction or amalgamation) or if any circumstances arise which would entitle the court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or make a winding-up order or other similar or equivalent action is taken against or by the Licensee by reason of its insolvency or in consequence of debt;

11.1.3 the Licensee challenges the validity of the Licensed Trade Mark or any of them.

11.2 Termination of this agreement shall be without prejudice to any existing rights and/or claims that the Licensor may have against the Licensee, and shall not relieve the Licensee from fulfilling the obligations accrued prior to such termination.

12 Consequences of termination

12.1 On termination of this Agreement however arising:

12.1.1 all outstanding sums repayable by the Licensee to the Licensor shall

immediately become due and payable;

12.1.2 all rights and licences shall cease;

12.1.3 the Licensee shall cease all and any exploitation of the Licensed Trade Mark;

12.1.4 the Licensee shall co-operate in cancelling any registration of this Agreement.

12.1.5 the parties shall do all such things as may be necessary to cancel any formal licence and the Licensee shall co-operate with the Licensor to secure the removal of the name of the Licensee as a licensee at every Trade Mark Registry where such formal licence has been registered;

12.1.6 the Licensee shall not later than one week from the date of termination remove or obliterate the Trade Mark from all and any materials used in connection with the Services in the possession custody or control of the Licensee;

12.1.7 all provisions of this Agreement which in order to give effect to their meaning need to survive its termination shall remain in full force and effect after termination.

12.2 Subject to the provisions of this clause 12 the Licensee shall do nothing after the expiry or termination of this Agreement which might lead any person to believe that the Licensee is still licensed to use the Licensed Trade Mark or is in any way connected with the Licensor.

13 General

13.1 Except, as expressly permitted in this Agreement the Licensee shall not assign, transfer, charge, encumber or otherwise deal with the whole or any part of this Agreement or any of its rights or obligations under this Agreement.

13.2 If any clause or any part of any clause in this Agreement is declared invalid or unenforceable by the judgement or decree, by consent or otherwise of a court of competent jurisdiction from whose decision no appeal is or can be taken all other

clauses or parts of clauses in this Agreement shall remain in full force and effect and shall not be affected thereby for the term of this Agreement.

- 13.3 No relaxation forbearance delay or indulgence by either party in enforcing any of the terms and conditions of this Agreement or the granting of time by either party to the other shall prejudice, affect or restrict the rights and powers of that party nor shall any waiver by either party of any breach of this Agreement operate as a waiver of or in relation to any subsequent or any continuing breach of this Agreement.
- 13.4 This Agreement may not be amended unless in writing signed by a duly authorised officer of each party.
- 13.5 The parties shall execute all further documents as may be necessary or desirable to give full effect to the terms of this Agreement and to protect the rights of the parties under it.
- 13.6 This Agreement constitutes the entire agreement between the parties relating to its subject-matter and each party confirms to the other that it has not entered into this Agreement on the basis of or in reliance on any representations or warranties made or given by the other party its servants or agents.
- 13.7 Any notice or other document to be given under this Agreement shall be given by sending the same in a pre-paid first class letter or by courier to the address of the relevant party set out in this Agreement or to any other address which that party may have notified to the other for such purpose. Any notice sent by post shall be deemed (in the absence of evidence of earlier receipt) to have been delivered 14 days after despatch and in proving the fact of despatch it shall be sufficient to show that the envelope containing such notice was properly addressed stamped and posted.
- 13.8 This Agreement shall be governed by and construed and interpreted in accordance with the laws of England and the parties hereby submit to the exclusive jurisdiction of the English courts.

IN WITNESS of which the parties have caused this Agreement to be duly executed the day and year first above written.

SIGNED for and on behalf of the Licensor by:

In the presence of:

SIGNED for and on behalf of the Licensee by:

In the presence of:

SCHEDULE 1

The Trade Mark

Trade Mark	Registration No	Class	Date of Registration	Services
ALPHALINE	1569655	39	08.12.95	Passenger transport services; arranging of excursions, expeditions and tours; booking agency services for travel, travel information services; timetable enquiry and ticket reservation services; advisory services relating to transportation; provision of information relating to fares; transportation of passengers and passengers' vehicles; vehicle parking services; all included in Class 39.

A copy of the mark as it appears on the Register is attached.

SCHEDULE 2

SERVICES

Operation of the services permitted to be operated in England and Wales under the Franchise Agreement dated 18 October 2003 between the Licensee, Arriva Trains Limited and the Licensor.

SCHEDULE 3

STANDARDS & REGULATIONS

None specified.