

Dated: 16<sup>th</sup> March 2006

**NATIONAL ASSEMBLY FOR WALES  
AND  
SECRETARY OF STATE FOR TRANSPORT**

**JOINT PARTIES' AGREEMENT  
DESCRIBING DIVISION OF RESPONSIBILITIES**

pursuant to a transfer scheme dated 14 October 2005 in  
respect of the rights and liabilities of the Strategic Rail  
Authority in relation to the Arriva Trains Wales franchise

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This Agreement is made the                   day of                   2006 between:

- (1) The Welsh Assembly Government on behalf of the National Assembly for Wales (the "**Assembly**") whose principal place of business is at Cathays Park, Cardiff CF10 3NR; and
- (2) The Secretary of State for Transport (the "**Secretary of State**") whose principal place of business is at 76 Marsham Street, London SW1P 4DR.

**WHEREAS:**

- (A) On 18 October 2003 the Strategic Rail Authority, Arriva Trains Limited and Arriva Trains Wales/Trenau Arriva Cymru Limited entered into a franchise agreement (the "**Franchise Agreement**") in respect of certain passenger rail services.
- (B) By a transfer scheme (the "**Transfer Scheme**") dated 14 October 2005 the property, rights and liabilities of the Strategic Rail Authority in the Franchise Agreement and certain related documents (together the "**Franchise Documents**") were transferred to the Assembly and the Secretary of State for Transport such that the Assembly and the Secretary of State became entitled to those rights and subject to those liabilities jointly and severally.
- (C) Paragraph 3.1 of the Transfer Scheme requires the Assembly and the Secretary of State to enter into an agreement to govern the manner in which they shall exercise the rights and liabilities in the Franchise Documents.
- (D) Paragraph 3.5 of the Transfer Scheme and the schedule thereto require the Assembly and the Secretary of State to ensure that in respect of the period from and including 1 April 2006 until the end of the franchise term provided for by the Franchise Agreement the agreement referred to at C above reflects the following principles:
  - a) In relation to rights under the Franchise Documents which the Secretary of State considers relate primarily to any statutory functions of the Secretary of State under the Railways Act 1993 (as amended) or to the responsibility of the Secretary of State to let and monitor passenger rail franchises, these shall be exercisable by the Secretary of State and not by the Assembly, except insofar as it may be agreed that such rights should be exercised by the Secretary of State and the Assembly jointly.
  - b) The Assembly shall be responsible for rights and liabilities which exclusively or predominantly relate to railway passenger services which are provided exclusively within Wales ("**Wales-only Services**") or which call at stations in England and Wales ("**Welsh Services**").
  - c) The Secretary of State shall be responsible for rights and liabilities which exclusively or predominantly relate to railway passenger services which are provided exclusively within England ("**English Services**").

- d) In relation to rights or liabilities which relate significantly to English Services and either or both of Wales-only Services and Welsh Services, the Secretary of State and the Assembly shall consult and co-operate with each other as to how to proceed, and shall seek to exercise or discharge the relevant rights and liabilities in such a way as best respects the desirability of coherent and consistent management of the Franchise Documents, but acknowledges that the Secretary of State and the Assembly are entitled to act in relation to the services for which they are responsible as they see fit.
- (E) The Assembly and the Secretary of State now wish to enter into such an agreement on the terms set out below.

## NOW IT IS AGREED AS FOLLOWS:

### Definitions and interpretation

- 1 In this Agreement unless the context otherwise requires:
  - 1.1 "**Authority**" has the same meaning as in the Franchise Agreement;
  - 1.2 "**Common Liabilities**" means all Indeterminate Liabilities and all those other liabilities in, under or arising from the Franchise Documents which are not Welsh Liabilities or English Liabilities;
  - 1.3 "**Common Rights**" means all Indeterminate Rights and all those other rights in or arising from the Franchise Documents which are not Welsh Rights, English Rights, Joint Rights or Reserved Rights;
  - 1.4 "**Indeterminate Liabilities**" means all those liabilities in, under or arising from the contractual terms listed in Schedule 1 which:
    - relate significantly to both (1) Wales-only Services or Welsh Services and (2) English Services; or
    - are neither Welsh Liabilities nor English Liabilities;
  - 1.5 "**Indeterminate Rights**" means all those rights in or arising from the contractual terms listed in Schedule 1 which:
    - relate significantly to both (1) Wales-only Services or Welsh Services and (2) English Services; or
    - are neither Welsh Rights nor English Rights;
  - 1.6 "**English Liabilities**" means all those liabilities in, under or arising from the contractual terms referred to in Schedule 1 which relate exclusively or predominantly to English Services and which are not Indeterminate Liabilities;

- 1.7 "**English Rights**" means all those rights in or arising from the contractual terms referred to in Schedule 1 which relate exclusively or predominantly to English Services and which are not Indeterminate Rights;
- 1.8 "**English Services**" shall for the avoidance of doubt include all those services listed in Schedule 6.
- 1.9 "**Franchise**" means the franchise provided for in the Franchise Agreement;
- 1.10 "**Franchisee**" has the same meaning as in the Franchise Agreement;
- 1.11 "**Franchise Operator**" has the same meaning as in the Franchise Agreement;
- 1.12 "**Joint Rights**" means all rights in and arising from the contractual terms referred to in Schedule 3;
- 1.13 "**Reserved Rights**" means all rights in and arising from the contractual terms referred to in Schedule 2;
- 1.14 "**Wales-only Services**" shall for the avoidance of doubt include all those services listed in Schedule 4;
- 1.15 "**Welsh Liabilities**" means all those liabilities in, under or arising from the contractual terms referred to in Schedule 1 which relate exclusively or predominantly to Wales-only Services or Welsh Services and which are not Indeterminate Liabilities;
- 1.16 "**Welsh Rights**" means those rights in or arising from the contractual terms referred to in Schedule 1 which relate exclusively or predominantly to Wales-only Services or Welsh Services and which are not Indeterminate Rights;
- 1.17 "**Welsh Services**" shall for the avoidance of doubt include all those services listed in Schedule 5.
- 1.18 words importing any gender include every gender;
- 1.19 words importing the singular include the plural and vice versa;
- 1.20 words importing persons include firms, companies and corporations and vice versa;
- 1.21 a reference to a "clause", "sub-clause", "paragraph", "sub-paragraph" or "Schedule" is a reference to a clause, sub-clause, paragraph, or sub-paragraph of, or a schedule to, this Agreement;

- 1.22 the headings and sub-headings are inserted for convenience only and shall not affect the construction of the Agreement;
- 1.23 a reference to any deed, agreement or other document is a reference to that deed, agreement or other document as amended, novated, restated, supplemented or extended from time to time;
- 1.24 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment.

## **2 Co-operation and consultation**

Subject as expressly provided elsewhere in this Agreement the Assembly and the Secretary of State agree generally to co-operate and consult with each other and to have due regard to any representations made by the other in relation to the Franchise Documents or this Agreement.

## **3 Commencement**

This Agreement shall take effect as from 1 April 2006.

## **4 Welsh Rights**

- 4.1 The Assembly shall be entitled to exercise the Welsh Rights.
- 4.2 The Secretary of State shall not exercise or attempt or purport to exercise any or all of the Welsh Rights unless the Assembly joins him in so doing or otherwise consents to the Secretary of State's exercise of those rights.
- 4.3 Notwithstanding clause 4.2, the Secretary of State shall, if the Assembly requests him to exercise or enforce any of the Welsh Rights or of the Joint Rights, use all reasonable endeavours to do so. The Assembly shall give reasonable notice of any such request and the Secretary of State shall fulfil his obligations under this clause 4.3 within a reasonable timescale to be agreed at the time.

## **5 Welsh Liabilities**

- 5.1 The Assembly and not the Secretary of State shall be responsible for the discharge of the Welsh Liabilities.
- 5.2 The Assembly will indemnify the Secretary of State and keep him indemnified from and against all actions, proceedings, costs, claims and demands by third parties in respect of:
  - 5.2.1 any damage or liability caused by or arising from the exercise by the Assembly of the Welsh Rights; or

5.2.2 the Welsh Liabilities.

## 6 English Rights and Reserved Rights

6.1 The Secretary of State shall be entitled to exercise the English Rights and the Reserved Rights.

6.2 The Assembly shall not exercise or attempt or purport to exercise any of the English Rights or of the Reserved Rights unless the Secretary of State joins it in so doing or otherwise consents to the exercise by the Assembly of those rights.

6.3 Notwithstanding clause 6.2, the Assembly shall, if the Secretary of State requests it to exercise or enforce any of the English Rights or the Reserved Rights or of the Joint Rights, use all reasonable endeavours to do so. The Secretary of State shall give reasonable notice of any such request and the Assembly shall fulfil its obligations under this clause 6.3 within a reasonable timescale to be agreed at the time.

## 7 English Liabilities

7.1 The Secretary of State and not the Assembly shall be responsible for the discharge of the English Liabilities.

7.2 The Secretary of State will indemnify the Assembly and keep it indemnified from and against all actions, proceedings, costs, claims and demands by third parties in respect of:

7.2.1 any damage or liability caused by or arising from the exercise by the Secretary of State of the English Rights or the Reserved Rights; or

7.2.2 the English Liabilities.

## 8 Common Rights and Liabilities

8.1 The Assembly and the Secretary of State shall use all reasonable endeavours to agree between themselves from time to time as to the exercise of the Common Rights and the discharge of the Common Liabilities.

8.2 In the event that the Secretary of State and the Assembly fail to reach agreement for the purpose of clause 8.1 the matter shall be referred to a sole arbitrator to be appointed by the Secretary of State.

## 9 Statutory duties of the Secretary of State

9.1 Notwithstanding anything else in this Agreement in the event that the position of the Secretary of State as the appropriate designating

authority, appropriate franchising authority or relevant franchising authority for the purposes of Part 1 of the Railways Act 1993 (the "1993 Act") has been or is being seriously prejudiced by:

any exercise or non-exercise by the Assembly of its rights under the Franchise Documents or of its rights pursuant to this Agreement; or

any other act or omission of the Assembly in connection with this Agreement, the Franchise Documents or the Franchise;

the Secretary of State may give written notice (the "Notice") to the Assembly stating the nature and origin of such prejudice (the "Prejudice") and requesting the Assembly to engage in negotiations with him for the purpose of agreeing measures for the prevention or substantial mitigation of the Prejudice whereupon:

- 9.1.1 the Assembly and the Secretary of State shall use best endeavours to agree between themselves upon such measures and to implement the same;
- 9.1.2 if no agreement has been reached for the purpose of clause 9.1.1 within a timescale to be agreed at the time which is reasonable in all the circumstances or in default of such agreed timescale within 30 days of the Assembly's receipt of the Notice or if the Assembly otherwise breaches clause 9.1.1 then the Secretary of State may for the purpose only of preventing or mitigating the Prejudice upon reasonable notice to the Assembly elect that:

any of the Welsh Rights or any other of the rights of the Assembly and of the Secretary of State pursuant to the Franchise Documents shall be treated as a Reserved Right; or

any of the Welsh Liabilities or any other of the liabilities of the Assembly and of the Secretary of State pursuant to the Franchise Documents shall be treated as an English Liability;

and in consequence of such election such right or liability shall be so treated for the purposes of clauses 4 to 8 and clause 10 but only insofar and for such period as is required for the purpose of preventing or mitigating the Prejudice.

## 10 Franchise Management

- 10.1 The Assembly shall be responsible for the management of the Franchise and shall employ such staff as are required for the purpose of fulfilling that responsibility.
- 10.2 The Assembly will accordingly handle the day to day relationship and day to day communications between the Authority and the Franchisee

or Franchise Operator in connection with the Franchise and the Franchise Documents.

- 10.3 The Assembly will in its management of the Franchise in relation to any matters relating to England, English Services or Welsh Services consult with the Secretary of State and have particular regard to any representations made by him in response to that consultation.
- 10.4 The Assembly agrees and acknowledges that insofar as the management of the Franchise carried out by the Assembly pursuant to clause 10.1 relates to English Rights, English Liabilities or Reserved Rights such management is carried out as agent for the Secretary of State and may notwithstanding clause 10.1 be carried out by the Secretary of State if he so elects upon reasonable notice to the Assembly.

## 11 Policy support

The Secretary of State will allow the Assembly reasonable access to his staff for the purpose of obtaining such technical and policy support and advice as the Assembly may reasonably require for the purpose of the performance of its duties under clause 10.

## 12 Payments

- 12.1 Notwithstanding clauses 4 to 8 the Assembly and the Secretary of State shall exercise their rights and discharge their liabilities pursuant to paragraph 2.3 of part 2 of schedule 6 of the Franchise Agreement in the following manner:
  - 12.1.1 the Assembly shall be responsible for the payment of any sums payable by the Authority and shall be entitled to receive any sums due to the Authority pursuant to the said paragraph 2.3 in so far as those sums relate to Wales-only Services or Welsh Services;
  - 12.1.2 the Secretary of State shall be responsible for the payment of any sums payable by the Authority and shall be entitled to receive any sums due to the Authority pursuant to the said paragraph 2.3 in so far as those sums relate to English Services;
  - 12.1.3 the Assembly shall be responsible for the payment of any sums payable by the Authority and entitled to receive any sums due to the Authority under the said paragraph 2.3 which do not fall within clauses 12.1.1 and 12.1.2.
- 12.2 Notwithstanding clause 1 all rights and liabilities of the Authority pursuant to clause 17 of the Franchise Agreement shall be Welsh Rights and Welsh Liabilities respectively.

12.3 This clause 12 shall notwithstanding the above not apply to the payment or receipt of any sum insofar as such sum is payable or due as a result of the operation of clause 18.1 of the Franchise Agreement.

### 13 Fares

13.1 Subject to clause 13.2 the rights and liabilities of the Authority pursuant to clauses 9 and 30 of the Franchise Agreement and to schedule 5 of the Franchise Agreement shall notwithstanding clause 1 be Welsh Rights and Welsh Liabilities respectively.

13.2 The Assembly and the Secretary of State may each by notice to the other elect that clause 13.1 shall not apply whether indefinitely or for a fixed period stated in such notice.

### 14 Meetings

14.1 The Assembly and the Secretary of State will each:

14.1.1 notify the other of any quarterly review meeting held pursuant to clause 15.8 of the Franchise Agreement;

14.1.2 allow the other the opportunity to attend and take part in any such meeting;

14.1.3 if reasonably practicable and if so requested provide the other in advance with the agenda and any papers for any such meeting.

14.2 Any notice for the purpose of clause 14.1 will if possible be given 30 days in advance of the relevant meeting or if that is not possible as soon as reasonably practicable.

### 15 Information

The Assembly and the Secretary of State will each:

15.1 use all reasonable endeavours in a timely manner to keep the other fully informed of any significant or unusual development in relation to the Franchise Documents or the management of the Franchise of which it or he is or becomes aware;

15.2 allow the other to have without charge free and unfettered access to any information relating to the Franchise or to the Franchise Documents which it or he holds;

and will not disclose to any third party any information obtained pursuant to this clause 15 without the prior written consent of the other except as required by law or insofar as such information is already in the public domain and is not in the public domain as a result of any

breach by the party seeking to rely on this exception of any term of this Agreement or of the Franchise Documents.

## 16 Updating of documents

- 16.1 The Assembly and the Secretary of State will each inform the other promptly of any amendment to the Franchise Documents which it or he makes or permits and provide full details of any such amendment.
- 16.2 The Secretary of State will:
  - 16.2.1 maintain electronic versions of the Franchise Documents as amended; and
  - 16.2.2 procure that the Assembly shall have without charge free and unfettered access to those electronic versions.

## 17 Miscellaneous Provisions

- 17.1 This Agreement shall be governed by and construed in accordance with the law of England and Wales and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.
- 17.2 Any notice to be given under this Agreement shall be in writing and shall be sent by registered post, or email (confirmed by registered post), to the address of the relevant party set out at the head of this Agreement, or such other address as that party may from time to time notify to the other party in accordance with this clause.
  - 17.2.1 Notices sent as above shall in the case of registered post be deemed to have been received three working days after the day of posting.
  - 17.2.2 Notices sent as above shall in the case of email be deemed to have been received at the time of transmission.
- 17.3 For the purpose of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.
- 17.4 This Agreement may only be amended in writing signed by duly authorised representatives of the parties.
- 17.5 Neither party may assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement.
- 17.6 This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between

the parties other than the relationship expressly provided for in this Agreement.

- 17.7 If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, that provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.
- 17.8 This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.

In witness whereof 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 is hereunto affixed: )**

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

**THE CORPORATE SEAL of the )  
NATIONAL ASSEMBLY FOR )  
WALES is hereunto affixed: )**

.....  
Authenticated by authority of the National Assembly for Wales



**SCHEDULE 1**  
**Rights exercisable by either the Assembly or the Secretary of State or  
both dependent upon the service area**

The following clauses of the Franchise Agreement (including sub-clauses):

- 5 Passenger Service Requirement
- 6 Provision of Capacity
- 7 The Timetable
- 8 Passengers
- 10 Stations and Depots
- 11 PSR/ASC Changes
- 12 Industry Arrangements
- 13 Pensions
- 14 Other Covenants (except 14.2 and 14.3)
- 15 Monitoring and provision of information (except 15.2 and 15.10)
- 16 Franchise Payments
- 18 Changes (except 18.1)
- 19 Franchise Viability

## **SCHEDULE 2** **Reserved Rights**

The terms contained in following clauses of the Franchise Agreement (including sub-clauses):

- 14.2 Financial Covenants
- 14.3 Performance Bond
- 18.1 Track access and station charging reviews
- 20 Franchise Term
- 21.9 Events of Default (Key Contracts)
- 24 Reletting of Franchise
- 25 Maintenance of Franchise
- 27 Key Contracts
- 29 Franchise Employees
- 30 Fares
- 31 Inter-Operator Schemes
- 32 Franchise Assets
- 33 Spares
- 34 Intellectual Property
- 35 Transfer of Primary Franchise Assets
- 36 Associated Obligations on Termination

**SCHEDULE 3**  
**Joint Rights**

The terms contained in following clauses of the Franchise Agreement:

- 15.2 Delivery of accounts
- 15.10 Right of audit or inspection

**SCHEDULE 4**  
**Wales-only Services**

Treherbert to Cardiff Central via Pontypridd  
Aberdare to Cardiff Central via Pontypridd  
Merthyr Tydfil to Cardiff Central via Pontypridd  
Pontypridd to Cardiff Central via Radyr  
Radyr to Cardiff Central via Cathays or Ninian Park  
Coryton to Cardiff Central  
Rhymney to Cardiff Central  
Cardiff Queen Street to Cardiff Bay  
Penarth to Cardiff Central  
Barry Island to Cardiff Central  
Maesteg to Cardiff Central  
Swansea to Pembroke Dock  
Cardiff Central to Carmarthen via Swansea  
Cardiff Central & Carmarthen to Milford Haven  
Cardiff Central or Swansea or Carmarthen to Fishguard Harbour  
Bridgend to Swansea (Swanline) Local  
Machynlleth to Pwllheli  
Cardiff to Holyhead  
Llandudno Junction to Bangor  
Bangor to Holyhead  
Llandudno Junction to Llandudno  
Llandudno and Llandudno Junction to Blaenau Ffestiniog  
Vale of Glamorgan  
Ebbw Valley

**SCHEDULE 5**  
**Welsh Services**

Shrewsbury to Llanelli and Swansea  
Cardiff Central to Crewe and Manchester  
Cardiff Central to Gloucester  
Cardiff Central to Hereford  
Shrewsbury to Chester  
Shrewsbury to Aberystwyth  
Cardiff to Liverpool  
Chester to Llandudno Junction  
Through services Crewe and Chester to Bangor and Holyhead  
Wrexham to Bidston  
Manchester and Chester to Bangor and Holyhead  
Birmingham to Holyhead  
Cardiff to Holyhead via Shrewsbury

**SCHEDULE 6**  
**English Services**

Hereford to Shrewsbury

Shrewsbury to Crewe

Birmingham New Street to Shrewsbury

Crewe to Chester