

**DATED**

**2016**

**(1) RAIL NORTH LIMITED**

**- and -**

**(2) THE MEMBERS OF RAIL NORTH LIMITED LISTED IN SCHEDULE 1 TO THIS AGREEMENT**

**MEMBERS AGREEMENT**

relating to  
devolution of rail responsibilities in the North  
of England including the management of the  
Northern and Transpennine Express Franchise  
Agreements

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**THIS AGREEMENT** is made as a Deed on

2016

**BETWEEN:**

- (1) **RAIL NORTH LIMITED** a company registered in England and Wales (company number 09229441) whose registered office is at West Yorkshire Combined Authority, Wellington House, 40 - 50 Wellington Street, Leeds, LS1 2DE ("**Rail North**");
- (2) **THE MEMBERS OF RAIL NORTH LIMITED**, listed in schedule 1 of this Agreement ("**Members**").

**BACKGROUND:**

- A On 22 November 2013 the Secretary of State for the Department for Transport ("**Secretary of State**") and Rail North issued a statement on how they would take forward their proposals to devolve decision-making on rail services across the North of England.
- B The Members are local transport authorities in the North of England and they have agreed to establish and manage Rail North, a company limited by guarantee which was incorporated under the Companies Act 2006 on 22 September 2014 for the purposes of, *inter alia*, promoting and improving rail services and managing the Franchise Agreements.
- C On 20 March 2015 the Secretary of State and Rail North entered into an agreement which sets out the arrangements as to how Rail North will manage the Franchise Agreements and how the Secretary of State and Rail North will work together to transition further devolution in the future ("**Partnership Agreement**"). Pursuant to the Partnership Agreement, the Strategic Board will be responsible for the day to day management of the Franchise Agreements.
- D The Parties have agreed to enter into this Agreement to set out the terms on which the Members have agreed to participate as Members of Rail North and to govern the interface between the Franchisees, the Strategic Board, the Management Team and each Member of Rail North.
- E Prior to entering into this Agreement, Rail North has appointed a number of staff to manage the operation of this Agreement including the Rail North Strategic Board Members, one of which is the Rail North Lead Officer.

**IT IS HEREBY AGREED:**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement the following words and expressions shall (except where the context otherwise requires) have the following meanings:

"**Additional Contributions**" has the meaning set out in clause 16.6;

"**Additional Matters**" means the matters which are set out in Part 2 of Schedule 2;

"**Agreement Change Notice**" has the meaning set out in clause 14.1;

"**Alternate Rail North Strategic Board Members**" means the employees of Rail North or the appointed officers of a Member with equivalent standing to the Secretary of State

Strategic Board Members appointed pursuant to clause 7.3.4 to act as Rail North Strategic Board Members from time to time and "**Alternative Rail North Strategic Board Member**" shall be construed accordingly;

"**Auditors**" means such externally appointed auditors of Rail North as the Members may from time to time appoint;

"**Board**" means the board of directors from time to time of Rail North;

"**Budget**" means such budget as shall from time to time be prepared by Rail North as provided in clause 16;

"**Change**" means an amendment or variation to this Agreement effected pursuant to clause 14;

"**Cheshire and Potteries Regional Group**" means, for so long as any is a Member, Cheshire East Council, Cheshire West and Chester Council, Staffordshire County Council, Stoke-on-Trent City Council and Warrington Borough Council;

"**Clear Days**" means (in relation to a period of notice) that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;

"**Commencement Date**" means the date of this Agreement;

"**Community Rail Partnership**" means a group, which can include rail operators, local authorities, community organisations and rail user groups, established to govern a line or service designated as a community rail route by the Secretary of State;

"**Consultation Protocol**" has the meaning given to it in clause 12.2;

"**Contracts Manager**" means a contracts manager responsible for day-to-day contact with both Franchisees where provisions of the Franchise Agreements have been delegated to the Management Team pursuant to the Partnership Agreement;

"**Criteria for Further Devolution**" means:

- (a) the record of the Management Team and the Strategic Board Members in the performance of their respective obligations pursuant to the Partnership Agreement in the management and development of the Franchise Agreements. For the avoidance of doubt, a failure by the Franchisee to perform its obligations under the Franchise Agreements which is not caused by a failure of the Management Team or the Strategic Board Members shall not adversely impact the assessment of the record of the Management Team and the Strategic Board Members against this criterion;
- (b) the maturity of Rail North's governance arrangements; and
- (c) the financial capacity of Rail North and the Members to bear additional risk;

"**CRP Proposals**" has the meaning given to it in clause 8.26;

"**Data Room**" has the meaning given to it in clause 11.1;

**"Designated Representative"** has the meaning given to it in clause 12.2;

**"Director"** means any director for the time being of Rail North including where applicable any alternate director;

**"Dispute"** has the meaning given to it in clause 29.1;

**"East Midlands Regional Group"** means, for so long as any is a Member, Derby City Council, Derbyshire County Council, Lincolnshire County Council, Nottingham City Council and Nottinghamshire County Council;

**"EIRs"** means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;

**"Expert"** has the meaning given to it in clause 29.6;

**"Financial Year"** means the period from 1 April to 31 March inclusive;

**"FOIA"** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation;

**"Franchise Agreements"** means the Northern Franchise Agreement and the Transpennine Express Franchise Agreement, and **"Franchise Agreement"** shall be construed accordingly;

**"Franchise Agreement Matters"** means any matters which specifically relate to either Franchise Agreement;

**"Franchisee"** means a franchisee under either of the Franchise Agreements;

**"Franchise Output Adjustment"** means in relation to either Franchise Agreement an amendment to the Train Service Requirement under paragraph 9.4 of Schedule 1.1 of the Franchise Agreements or a Variation which is permitted under the terms of the relevant Franchise Agreement;

**"Further Devolution Proposal"** means a proposal for further devolution from the Secretary of State to Rail North and shall include:

- (a) any steps that are proposed to be taken towards achieving further devolution;
- (b) details of how the proposal shall comply with the Criteria for Further Devolution; and
- (c) details of the basis upon which funding will be provided for the further devolution including any financial guarantees or other support to be provided; and
- (d) other relevant details of such proposal;

**"Further Devolution Study"** has the meaning given to it in clause 17.6;

**"Greater Manchester Regional Group"** means, for so long as it is a Member, Greater Manchester Combined Authority;

**"Head of Investment and Planning"** means a planning and investment manager;

**"Humberside Regional Group"** means, for so long as any is a Member, East Riding of Yorkshire Council, Hull City Council, North East Lincolnshire Council and North Lincolnshire Council;

**"Impaired Plan"** means a plan for the next Financial Year issued pursuant to clause 17.1 which sets out what Rail North is able to deliver on the basis of no Additional Contributions being required;

**"Initial Dispute Board"** has the meaning given to it in clause 29.3;

**"Interested Member"** means any Member or Regional Business Unit affected by any Rail North Matter;

**"Liverpool Regional Group"** means, for so long as it is a Member, Liverpool City Region Combined Authority;

**"Local Transport Authority"** has the meaning given to it in Section 108(4) of the Transport Act 2000;

**"Management Team"** means the team established pursuant to the Partnership Agreement to perform responsibilities allocated to it from time to time by the Strategic Board;

**"Management Team Member"** means any member of the Management Team;

**"Members' Contributions"** has the meaning given to it in clause 16.3;

**"Member's Share"** has the meaning given to it in clause 16.1;

**"North East Regional Group"** means, for so long as it is a Member, North East Combined Authority;

**"North West Regional Group"** means, for so long as any is a Member, Blackburn with Darwen Borough Council, Blackpool Borough Council, Cumbria County Council and Lancashire County Council;

**"North Yorkshire Regional Group"** means, for so long as it is a Member, North Yorkshire County Council;

**"Northern Commercial Manager"** means a commercial manager responsible for the management of those provisions of the Northern Franchise Agreement that have been delegated to the Management Team pursuant to the Partnership Agreement;

**"Northern Franchise Agreement"** means the franchise agreement in respect of the operation of inter-urban, commuter and local rail passenger services across northern England to be entered into between the Secretary of State and the successful bidder in the relevant franchise process pursuant to the notice published in the OJEU in June 2014 with reference 192429-2014 and such term shall include, for the purposes of this Agreement any ancillary agreement entered into by the Secretary of State required for the purposes of managing the Northern Franchise Agreement;

**"Objectives"** has the meaning given to it in clause 2.1;

**"Officer Steering Group"** means the group of representatives comprising of one representative from each of the eleven (11) Regional Groups;

**"Partnership Agreement"** has the meaning given to it in recital C;

**"Partnership Lead Officer"** has the meaning given to it in clause 9.2;

**"Partnership Matters"** means any matters which specifically relate to the Partnership Agreement;

**"Passenger Benefits"** means the delivery of enhanced facilities and/or services for the use of passengers travelling on services within the relevant Franchise Agreement;

**"Pro Forma Hosting Agreement"** has the meaning given to it in clause 19.1;

**"Rail North Area"** means that area in England which is served by the Franchise Agreements or any franchise, concession or operating agreement which may replace them;

**"Rail North Articles"** means the new articles of association adopted by Rail North on 22 September 2014;

**"Rail North Business Plan"** means the initial business plan governing the operation of Rail North and each subsequent annual business plan;

**"Rail North Franchise Output Adjustment"** means a Franchise Output Adjustment that complies with the following criteria:

- (a) it is cost neutral or cost reducing (in respect of both capital and operational costs) for the Secretary of State:
  - (i) in each Financial Year; and
  - (ii) in respect of the Secretary of State's costs under all franchise agreements, including the Secretary of State's likely costs under future franchise agreements (as determined by the Strategic Board pursuant to the Partnership Agreement, acting reasonably),
    - either:
      - (iii) on the basis that such Rail North Franchise Output Adjustment is self-funding; or
      - (iv) on the basis that one or more Members shall fund (or shall procure the funding of) any additional cost to the Secretary of State arising from such Rail North Franchise Output Adjustment; and
- (b) it does not materially increase the risk of the Secretary of State under the relevant Franchise Agreement either:



- (i) because there is no material change in risk profile as a result of such variation; or
  - (ii) because one or more Members has agreed to bear such additional risk (or procured that a third party bears such risk); and
- (c) it does not in the reasonable opinion of the Secretary of State:
- (i) give rise to any procurement law risk (including “material change” risk) to the Secretary of State;
  - (ii) conflict with any of the Secretary of State Duties (as defined in the Partnership Agreement),

always provided that:

- (iii) any Member shall be entitled to propose a Rail North Franchise Output Adjustment which continues to have an effect following the expiry of the Franchise Agreements provided that limbs (a) and (b) of this definition remain satisfied throughout the period that the Rail North Rail North Franchise Output Adjustment has effect; and
- (iv) such Rail North Franchise Output Adjustment may include, but not be limited to incremental changes to services provided under a Franchise Agreement.

**"Rail North Lead Officer"** means the lead officer employed by Rail North to oversee, on behalf of the Board, the discharge of Rail North's obligations under this Agreement, the Partnership Agreement and any other agreements Rail North enters into;

**"Rail North Matters"** means those matters set out in Part 1 of Schedule 2 and any matter which specifically affects the area of a Member or persons living or working in that area or visiting or travelling through that area;

**"Rail North Policies"** means the Rail North long term rail strategy and such policy and strategy documents approved by the Board;

**"Rail North Prejudice"** means the position of Rail North is prejudiced by:

- (a) any exercise or non-exercise by the Secretary of State of its rights under the Partnership Agreement; or
- (b) any other act or omission of the Secretary of State in connection with the Partnership Agreement,

such that Rail North is required to act in breach of its obligations or duties to the Members;

**"Rail North Prejudice Notice"** means the notice issued in respect of a Rail North Prejudice by Rail North to the Secretary of State pursuant to clause 6.16 of the Partnership Agreement;

**"Rail North Strategic Board Members"** means the three (3) senior officials of Rail North appointed on establishment of the Strategic Board pursuant to the Partnership Agreement;

**"Rail North Support Payment"** has the meaning given to it in clause 16.1;

**"RBU Proposals"** has the meaning given to it in clause 8.19;

**"RBU Proposer"** has the meaning given to it in clause 8.19;

**"Regional Business Unit"** means a group of two or more Members formed to jointly oversee rail matters in their geographical areas;

**"Regional Group"** means:

- (a) Cheshire and Potteries Regional Group;
- (b) East Midlands Regional Group;
- (c) Greater Manchester Regional Group;
- (d) Humberside Regional Group;
- (e) Liverpool Regional Group;
- (f) North East Regional Group;
- (g) North West Regional Group;
- (h) North Yorkshire Regional Group;
- (i) Sheffield Regional Group;
- (j) Tees Valley Regional Group;
- (k) West Yorkshire Regional Group,

collectively, the **"Regional Groups"**;

**"Request for Information"** means a request for information or an apparent request for information under the FOIA or the EIRs;

**"Requesting Party"** has the meaning given to it in clause 25.1.1;

**"Reserved Matters"** has the meaning given to it in clause 5.1;

**"Retail Prices Index"** or **"RPI"** means the retail prices index for the whole economy of the United Kingdom and for all items as published from time to time by the Office for National Statistics as "RPI" or, if such index shall cease to be published or the Parties agree (acting reasonably) that there is a material change in the basis of the index, or if, at any relevant time, there is a delay in the publication of the index, such other retail prices index as the Parties shall agree (acting reasonably) is appropriate in the circumstances;

**"Savings Franchise Output Adjustment"** means a Franchise Output Adjustment where the Secretary of State as the result of a requirement to make savings from his departmental budget requires (acting reasonably) savings to be made from either Franchise Agreement;

**"Secretary of State Strategic Board Members"** means the three (3) directors or deputy directors of the Rail Executive of the Department for Transport appointed by the Secretary of State to be the Secretary of State's representatives on the Strategic Board;

**"Service Quality Deduction"** means a deduction made from a franchise payment pursuant to the Service Quality Regime in the Northern Franchise Agreement;

**"Service Quality Regime"** means a regime which establishes and monitors standards for the presentation of trains and stations pursuant to the Northern Franchise Agreement;

**"Service Quality Saving"** means the total amount of Service Quality Deductions in each Franchisee Year (as defined in the Northern Franchise Agreement);

**"Service Quality Programme"** means a programme of works or services to be carried out by a Franchisee pursuant to the Northern Franchise Agreement, Rail North or a Member funded in whole or in part by the Service Quality Savings;

**"Sheffield Regional Group"** means, for so long as it is a Member, Sheffield City Region Combined Authority;

**"Strategic Board"** means the board established pursuant to the Partnership Agreement which shall:

- (a) deal with franchise management with regard to the Franchise Agreements;
- (b) oversee matters relating to the Partnership Agreement;
- (c) act as the primary interface between the Secretary of State and Rail North in relation to the Purpose of the Partnership Agreement (as defined in the Partnership Agreement); and
- (d) oversee co-operation between the Secretary of State and Rail North with regard to investment planning in respect of rail services in the North of England;

**"Strategic Board Business Plan"** means the business plan for the operation of the Strategic Board and the Management Team set out at Schedule 4 to the Partnership Agreement and amended annually in accordance with Schedule 2 to the Partnership Agreement;

**"Strategic Board Member"** means any member of the Strategic Board;

**"Tees Valley Regional Group"** means, for so long as any is a Member, Darlington Borough Council, Hartlepool Borough Council, Middlesbrough Council, Redcar and Cleveland Borough Council and Stockton-On-Tees Borough Council;

**"Termination Notice"** has the meaning given to it in clause 18.3;

**"Transpennine Commercial Manager"** means a commercial manager responsible for the management of those provisions of the Transpennine Express Franchise Agreement that have been delegated to the Management Team pursuant to the Partnership Agreement;

**"Transpennine Express Franchise Agreement"** means the franchise agreement in respect of the operation of rail passenger services across northern England and Edinburgh and

Glasgow to be entered into between the Secretary of State and the successful bidder in the relevant franchise process pursuant to the notice published in the OJEU in June 2014 with reference 192429-2014 and such term shall include, for the purposes of this Agreement any ancillary agreement entered into by the Secretary of State required for the purposes of managing the Transpennine Express Franchise Agreement;

**"Variation"** has the same meaning as in the Franchise Agreements;

**"West Yorkshire Regional Group"** means, for so long as any is a Member, West Yorkshire Combined Authority and City of York Council; and

**"Working Day"** means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London.

1.2 In this Agreement, unless the context otherwise requires:

- 1.2.1 headings are for ease of reference only and are to be disregarded when interpreting this Agreement;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 the words "include", "including" and "in particular" are to be construed without limitation;
- 1.2.4 references to an agreement or any other document are references to that agreement (or document) as varied, amended, novated, supplemented or replaced from time to time;
- 1.2.5 any reference to a statutory provision shall include such provision as from time to time modified or re-enacted or consolidated whether before or after the date of this Agreement so far as such modification, re-enactment or consolidation applies or is capable of applying to any action taken under this Agreement;
- 1.2.6 the Interpretation Act 1978 shall apply to this Agreement in the same way that it applies to an enactment;
- 1.2.7 references to any clause, paragraph, schedule or recital is a reference to a clause, paragraph of a schedule, schedule or recital of this Agreement. All the schedules are an integral part of this Agreement;
- 1.2.8 references to any person, including a party, include that person's successors, transferees or assignees;
- 1.2.9 reference to "**Parties**" means the parties to this Agreement and references to "**Party**" means one of the Parties; and
- 1.2.10 references to any amount being "indexed" or increased in accordance with RPI means that the relevant amount shall be multiplied by the Retail Prices Index for the month of April in the Financial Year in which such amount is indexed divided by the Retail Prices Index on the month of April in the Financial Year in which the Commencement Date falls.

## 2. THE OBJECTIVES

2.1 Each of the Members acknowledges that the purpose and objectives of Rail North consists of the following:

- 2.1.1 promoting and improving rail services in the Rail North Area;
- 2.1.2 arranging for the carriage of passengers by railway between locations in Great Britain;
- 2.1.3 managing the performance of the relevant Franchisee's obligations under the Franchise Agreements; and
- 2.1.4 supporting the delivery of the long term rail strategy of the Members,

together, the "**Objectives**". In carrying out the Objectives, Rail North shall not be required to exceed the powers contained in the constitution of each Member and shall have the powers set out in the Rail North Articles.

2.2 Each of the Members undertakes to the other Members that it shall:

- 2.2.1 exercise all voting rights and powers of control available to it in relation to Rail North so as to give full effect to the terms and conditions of this Agreement;
- 2.2.2 procure that the Directors nominated by it and its other representatives will support and implement all reasonable proposals put forward at meetings of Rail North for the proper development and conduct of the Objectives as contemplated in this Agreement and procure that all third parties, directly or indirectly under its control, shall refrain from acting in a manner which is likely to hinder or prevent Rail North from carrying on the Objectives in a proper and reasonable manner having regard to and without prejudice to the obligations of the Directors; and
- 2.2.3 generally to use its best endeavours to promote the Objectives and the interests of Rail North.

2.3 The Parties acknowledge that the matters Rail North shall be responsible for shall include:

- 2.3.1 agreeing and approving the Rail North Business Plan and related annual budget; and
- 2.3.2 adopting any Rail North Policies.

## 3. VOTING RIGHTS

3.1 The Parties acknowledge that Members' voting rights are set out in Article 41 of the Rail North Articles.

3.2 The Parties agree that the Members shall be entitled to review the weighted voting system set out in Article 41 of the Rail North Articles and agree an alternative weighted voting system. The Parties agree that no such review shall be carried out in the three (3) years following the Commencement Date.

- 3.3 The Members acknowledge that any amendments to the weighted voting system set out in Article 41 of the Rail North Articles must be agreed by more than half of all of the Members (where each Member has one vote) who collectively hold more than 75% of the votes able to be cast on a poll at a general meeting of the Members.
- 3.4 Any renegotiated weighted voting rights under this clause 3 will become effective on a date agreed by the Members in determining the implementation of such weighted voting rights.
- 3.5 The Members acknowledge and agree that any decisions required pursuant to this Agreement can be made either at Members' meetings or by way of written resolutions in accordance with the Companies Act 2006.

#### **4. MEETINGS**

- 4.1 The Parties acknowledge and agree that the procedures that govern Members' meetings are set out in the Rail North Articles.
- 4.2 The Members agree that, whilst this Agreement is in force, meetings of the Members shall be convened at fourteen (14) Clear Days' notice at six (6) month intervals from the Commencement Date, or as otherwise agreed between the Members.

#### **5. RESERVED MATTERS**

- 5.1 The Parties agree that the matters that are reserved for the decision of Members holding at least 75% of the voting rights in Rail North according to Article 41 of the Rail North Articles are as follows:
- 5.1.1 any change to the Rail North Articles;
  - 5.1.2 change of Rail North's name;
  - 5.1.3 withdrawal of Rail North from the Partnership Agreement;
  - 5.1.4 commencing or settling any litigation which would materially affect the business of Rail North;
  - 5.1.5 the approval of the Rail North Business Plan, including the Budget;
  - 5.1.6 borrowing and giving of financial guarantees;
  - 5.1.7 material change in scope or nature of Rail North's business;
  - 5.1.8 the approval of a Further Devolution Proposal; and
  - 5.1.9 any matters requiring the passing of a special resolution by law,
- ("Reserved Matters").

## **6. DIRECTORS**

- 6.1 The Parties acknowledge and agree that the appointment, removal and rights of the Directors together with the rules governing the decision-making and proceedings by Directors will be in accordance with the Rail North Articles.
- 6.2 The Members agree that that they shall procure (insofar as legally able) that whilst this Agreement is in force, meetings of the Board shall be convened on at least two (2) weeks' notice at quarterly intervals from the Commencement Date and the agenda for each meeting shall be circulated to attendees at least two (2) weeks ahead of the meeting of the Board.
- 6.3 The Parties acknowledge that the Board's responsibilities shall include:
- 6.3.1 implementing the Rail North Business Plan;
  - 6.3.2 providing direction to the Strategic Board Members in relation to Franchise Agreement Matters and Partnership Matters;
  - 6.3.3 agreeing recommendations in relation to Reserved Matters which are to be made to the Members, including recommendations relating to the development of the Rail North Business Plan including the Budget;
  - 6.3.4 recommending Rail North Policies to the Members;
  - 6.3.5 appointing Rail North employees, including the Rail North Lead Officer;
  - 6.3.6 delegating recruitment and selection of Rail North employees to the Officer Steering Group; and
  - 6.3.7 nominating Rail North Strategic Board Members.

## **7. OFFICER STEERING GROUP**

- 7.1 The Parties acknowledge and agree that whilst this Agreement is in force, meetings of the Officer Steering Group shall be held at quarterly intervals with each meeting taking place no less than one month before each Board meeting held in accordance with clause 6.2 and the agenda for each meeting shall be circulated to attendees at least two (2) weeks ahead of each meeting of the Officer Steering Group.
- 7.2 The Parties acknowledge that the Officer Steering Group shall elect a chairperson from amongst its members and the Rail North Lead Officer shall attend Officer Steering Group meetings.
- 7.3 The Parties acknowledge that the Officer Steering Group's responsibilities shall include:
- 7.3.1 reviewing draft Board papers (prepared by the Rail North Lead Officer or Strategic Board Members (as relevant)) in order to advise the Board on decisions;
  - 7.3.2 providing strategic support to Rail North Strategic Board Members;
  - 7.3.3 overseeing the recruitment and selection of Rail North employees;

- 7.3.4 overseeing the formulation and presentation of Rail North Policies to the Board including consultation with Members and rail industry bodies and the delegation of tasks to working groups and technical advisors; and
  - 7.3.5 consulting Members on policy and strategy matters.
- 7.4 The Parties acknowledge and agree that the Officer Steering Group shall appoint and maintain a list of Alternate Rail North Strategic Board Members.
- 7.5 Where an obligation is placed on the Officer Steering Group in this Agreement, Rail North shall procure that the Officer Steering Group carries out such obligation.

#### **Rail North Lead Officer**

- 7.6 Rail North shall procure that the Board shall delegate responsibility for overseeing the discharge of Rail North's obligations under this Agreement, the Partnership Agreement and any other agreements Rail North enters into to the Rail North Lead Officer.

### **8. STRATEGIC BOARD**

- 8.1 The Members acknowledge that Rail North and the Secretary of State have established the Strategic Board in accordance with the Partnership Agreement and Rail North have appointed the Rail North Strategic Board Members.
- 8.2 The Parties shall ensure that the Rail North Strategic Board Members perform their duties as a Strategic Board Member properly with regard to the Strategic Board Responsibilities (as set out in the Partnership Agreement) and in good faith. Where an obligation is placed on any Rail North Strategic Board Member in this Agreement, Rail North shall procure that the relevant Rail North Strategic Board Member carries out such obligation.
- 8.3 Rail North shall be entitled to replace a Rail North Strategic Board Member:
- 8.3.1 if a Rail North Strategic Board Member gives notice to Rail North that he no longer wishes to act as a Rail North Strategic Board Member; or
  - 8.3.2 it can be demonstrated by Rail North that a Rail North Strategic Board Member is not performing their duties as a Strategic Board Member properly with regard to the Strategic Board Responsibilities; or
  - 8.3.3 if the Rail North Strategic Board Member's employing authority ceases to be a Member of Rail North.
- 8.4 In the event that Rail North is entitled to replace a Rail North Strategic Board Member pursuant to clause 8.3, the process set out in clauses 8.7 to 8.13 shall apply.
- 8.5 The Parties acknowledge that amongst the Strategic Board's responsibilities is annual preparation and agreement of the Strategic Board Business Plan. The Rail North Strategic Board Members shall issue the first draft of any future Strategic Board Business Plan for comment to each Member not less than:
- 8.5.1 two (2) months prior to the end of the Financial Year 2016-2017; and



- 8.5.2 four (4) months prior to the end of each Financial Year thereafter, commencing in Financial Year 2017-2018.
- 8.6 The Members may provide comments on such first draft of the Strategic Board Business Plan to the Rail North Strategic Board Members within one (1) month of its issue pursuant to clause 8.5 and the Rail North Strategic Board Members shall take any comments received from Members into account when preparing and agreeing the revised Strategic Board Business Plan.
- Replacement Rail North Strategic Board Members**
- 8.7 Rail North shall notify Members within ten (10) Working Days of the circumstances in either clause 8.3.1 or 8.3.2 arising.
- 8.8 Within ten (10) Working Days of notification by Rail North pursuant to clause 8.7, Members shall be entitled to nominate proposed appointees in respect of the replacement Rail North Strategic Board Member to Rail North and all other Members.
- 8.9 If only one nomination is received in respect of the replacement Rail North Strategic Board Member, Rail North shall, subject to clause 8.13, nominate that person as the designated appointee to be considered, and appointed as appropriate, in accordance with the Partnership Agreement.
- 8.10 If more than one nomination is received pursuant to clause 8.8, Rail North shall notify the Members of the persons nominated within ten (10) Working Days of nominations being received.
- 8.11 The Members shall be entitled to vote on the identity of the designated appointee on the basis of a majority vote of one vote per Member, such votes to be cast within ten (10) Working Days of notification by Rail North pursuant to clause 8.10.
- 8.12 Provided the Members have voted in favour of the designated appointee pursuant to clause 8.11 and subject to clause 8.13, Rail North shall then nominate that person as the designated appointee to be considered, and appointed as appropriate, in accordance with the Partnership Agreement.
- 8.13 Rail North shall only nominate the proposed appointee in accordance with the Partnership Agreement provided that:
- 8.13.1 such replacement is of equivalent standing to the Secretary of State Strategic Board Members; and
- 8.13.2 such replacement is an employee of Rail North or an appointed officer of a Member.
- 8.14 When nominating a designated appointee to be considered, and appointed, in accordance with the Partnership Agreement, Rail North shall seek to maintain the composition of the Rail North Strategic Board Members of one appointed officer of a local transport authority Member, one appointed officer of either a combined authority or passenger transport executive Member and one employee of Rail North.

### **Alternate Rail North Strategic Board Members**

- 8.15 The Parties acknowledge and agree that the Officer Steering Group shall be entitled to appoint and shall maintain a list of Alternate Rail North Strategic Board Members pursuant to clause 7.4. The list of Alternate Rail North Strategic Board Members shall be approved by the Board on the basis of a majority vote and the Parties agree that any of the Alternate Rail North Strategic Board Members shall be entitled to act as a Rail North Strategic Board Member in circumstances where a Rail North Strategic Board Member is not available.
- 8.16 Subject to clause 6.4 of the Partnership Agreement, where a Rail North Strategic Board Member is not available to act as a Rail North Strategic Board Member, the relevant Rail North Strategic Board Member shall promptly notify the Officer Steering Group. The Parties acknowledge and agree that the Officer Steering Group shall select an Alternate Rail North Strategic Board Member and the Officer Steering Group shall seek to maintain the composition of the Rail North Strategic Board Members as one appointed officer of a local transport authority Member, one appointed officer of either a combined authority or passenger transport executive Member and one employee of Rail North. Rail North shall procure that the selected Alternate Rail North Strategic Board Member shall act in place of the Rail North Strategic Board Member until such time as the Rail North Strategic Board Member is available to resume their duties under this Agreement and the Partnership Agreement.
- 8.17 Where a Rail North Strategic Board Member has notified the Officer Steering Group that they are not available to act as a Rail North Strategic Board Member and an Alternate Strategic Board Member is not available, the Parties acknowledge that the Officer Steering Group shall ensure that any of its members act as a Rail North Strategic Board Member until such time as the Rail North Strategic Board Member is available to resume their duties under this Agreement and the Partnership Agreement.

### **Regional Business Units**

- 8.18 The Parties acknowledge that amongst the Strategic Board's responsibilities is the allocation of certain Management Team responsibilities to Regional Business Units.
- 8.19 Where Regional Business Units are established, any Member, Members, Regional Group or Regional Groups forming part of a Regional Business Unit ("**RBU Proposer**") shall be entitled to submit proposals ("**RBU Proposals**") to the Board for the allocation of responsibilities of Rail North or the Secretary of State in accordance with the terms of the Partnership Agreement to that Regional Business Unit. The RBU Proposal submitted to the Board shall be fully costed and shall ensure that, and specify how, the relevant Regional Business Unit is, and will be, sufficiently resourced to be able to effectively perform the proposed allocated responsibilities.
- 8.20 Before the RBU Proposals are submitted to the Board pursuant to clause 8.19, the RBU Proposer shall issue the draft RBU Proposals to all Members who may provide comments on the RBU Proposal within the timescale specified by the RBU Proposer and the RBU Proposer shall take these comments into account when finalising the proposals for submission to the Board.
- 8.21 Rail North shall procure that the Board shall consider any RBU Proposals submitted pursuant to clause 8.19 and shall approve such RBU Proposals on the basis of a majority vote.

- 8.22 Rail North shall procure that the Board shall inform the RBU Proposer of the outcome of the Board's consideration of the RBU Proposals pursuant to clause 8.21. Where any RBU Proposal is approved, the RBU Proposer shall be entitled to submit such RBU Proposal to the Rail North Strategic Board Members who shall in turn submit such RBU Proposal for consideration by the Strategic Board in accordance with the Partnership Agreement.
- 8.23 The Rail North Lead Officer shall inform the RBU Proposer proposing the allocation of responsibilities pursuant to clause 8.19, of the outcome of the Strategic Board's consideration of the RBU Proposal, together with the reasons for the Strategic Board's decision.
- 8.24 Where a Regional Business Unit is established, any Member forming part of that Regional Business Unit shall be entitled to give notice to Rail North of any circumstances where Rail North shall engage with the Regional Business Unit in place of the individual Member. In the notice to Rail North, the relevant Member shall reference the circumstances where the Regional Business Unit shall be entitled to exercise such rights by referring to the relevant provisions of this Agreement.
- 8.25 Following the provision of a notice pursuant to clause 8.24 the Regional Business Unit shall be entitled to exercise that Member's rights on its behalf and the relevant Member agrees to be bound by the Regional Business Unit's decisions and actions in the circumstances specified in the notice. If any Member wishes to amend or withdraw from such arrangement, it shall give notice to Rail North and any other constituent Members of the Regional Business Unit.

### **Community Rail Partnerships**

- 8.26 The Franchise Agreements provide that the franchisee shall co-operate with the Secretary of State, Network Rail, the Association of Community Rail Partnerships, local transport authorities and/or any other person as the Secretary of State may nominate for the purposes of developing and furthering the success of Community Rail Partnerships. Rail North shall support the development and success of Community Rail Partnerships. A Member or Regional Group may submit proposals to the Board for the allocation of responsibilities to a designated Community Rail Partnership provided that such a proposal is in accordance with the Community Rail Development Strategy approved by the Strategic Board.

## **9. MANAGEMENT TEAM**

- 9.1 The Members acknowledge that Rail North and the Secretary of State shall establish the Management Team prior to the commencement date of the first Franchise Agreement.
- 9.2 In accordance with the Partnership Agreement, Rail North shall be entitled to nominate a lead officer to lead the Management Team ("**Partnership Lead Officer**") prior to the commencement date of the first Franchise Agreement. The Parties acknowledge and agree that the Partnership Lead Officer to be nominated by Rail North pursuant to the Partnership Agreement shall be appointed by the Board on the basis of a majority vote.
- 9.3 The Parties acknowledge that the Strategic Board is responsible for:
- 9.3.1 identifying each initial member of the Management Team (including their employer); and

- 9.3.2 appointing the Northern Commercial Manager, the Transpennine Commercial Manager, the Contracts Manager and the Head of Investment and Planning prior to the commencement date of the first Franchise Agreement.
- 9.4 The Parties acknowledge that Rail North shall be entitled to propose as a replacement Management Team Member, an employee of Rail North or an employee of a Member where any Management Team Member requires replacement pursuant to the Partnership Agreement for agreement with the Secretary of State.
- 10. SECRETARY OF STATE DUTIES AND RAIL NORTH DUTIES**
- 10.1 If a Secretary of State Prejudice Notice is served under the Partnership Agreement, Rail North shall request that the Strategic Board shall discuss the subject matter of the Secretary of State Prejudice Notice pursuant to clause 6.15 of the Partnership Agreement.
- 10.2 Where reasonably practicable, the Rail North Strategic Board Members shall consult the chairman of the Board prior to reaching agreement on the steps required to remedy the Secretary of State Prejudice Notice and where consulted the chairman of the Board shall provide comments for the Rail North Strategic Board Members to take into account in the discussions at Strategic Board.
- 10.3 As soon as reasonably practicable following discussions of the Strategic Board pursuant to clause 6.15 of the Partnership Agreement, the Rail North Strategic Board Members shall refer the outcome of the discussion to the Board to ratify the steps that have been agreed to be taken to remedy the Secretary of State Prejudice Notice.
- 10.4 If a Rail North Strategic Board Member considers that there has been a Rail North Prejudice, that Rail North Strategic Board Member shall promptly provide details of the relevant Rail North Prejudice to the Board for consideration.
- 10.5 The Board shall consider the details provided of the Rail North Prejudice as soon as reasonably practicable and shall decide on the basis of a majority whether to refer the Rail North Prejudice to the Members.
- 10.6 If the Rail North Prejudice is referred to Members for consideration, the Board shall provide details of any action that may reasonably be required to prevent or resolve the Rail North Prejudice and the Members shall agree:
- 10.6.1 whether the Rail North Prejudice should be raised with the Secretary of State under the Partnership Agreement; and
- 10.6.2 the action required to resolve the Rail North Prejudice,
- such agreement to be a Reserved Matter.
- 10.7 Subject to the agreement of Members pursuant to clause 10.6, Rail North shall issue a Rail North Prejudice Notice in accordance with the Partnership Agreement. The Rail North Strategic Board Members shall inform the Parties of the resolution of the Rail North Prejudice following escalation in accordance with the Partnership Agreement.

## 11. INFORMATION AND NOTICES

- 11.1 Rail North shall establish and maintain a secure virtual data room ("**Data Room**") and shall provide access details to the Data Room to all Members, any Regional Business Units, Rail North Strategic Board Members and Management Team Members as soon as reasonably practicable following the Commencement Date.
- 11.2 The Rail North Strategic Board Members shall collate the information and notices received from the relevant Franchisee pursuant to the Franchise Agreements and upload such information and notices on to the Data Room.
- 11.3 Rail North acknowledges that it is entitled to access information contained on the Data Room subject to clause 24.2.

## 12. CONSULTATION

- 12.1 The Rail North Strategic Board Members shall, in their reasonable determination as to whether a Member is an Interested Member, consult with each Interested Member in respect of Rail North Matters and Additional Matters. For the avoidance of doubt, Rail North Strategic Board Members shall consult a Member or a Regional Business Unit where, in the opinion of the Rail North Strategic Board Member, such Rail North Matter or Additional Matter affects such Member's area or the area of such Regional Business Unit and shall consult all Members and Regional Business Units on matters which affect either Franchise Agreement more widely.
- 12.2 The Parties acknowledge and agree that there shall be a protocol which sets out the process for consultation within the Regional Groups ("**Consultation Protocol**"). Any one Member of each Regional Group shall notify Rail North of the identity of the designated representative for that Regional Group ("**Designated Representative**"). For the purposes of the consultation process set out in this clause 12, the Designated Representative shall be deemed to be properly representing that Regional Group and Rail North shall be entitled to act based on the instructions of the Designated Representative.
- 12.3 As part of any consultation pursuant to clause 12.1, Rail North or the Rail North Strategic Board Member shall provide sufficient details to the Interested Member to allow the Interested Member to consider the Rail North Matter or Additional Matter (as applicable) and shall prescribe the timescale in which comments must be provided by the Interested Member. The Rail North Strategic Board Members shall also include details of the consultation on the Data Room.
- 12.4 The Interested Member shall provide any comments to Rail North or a Rail North Strategic Board Member in respect of the Rail North Matter or Additional Matter (as applicable in accordance with the timescale prescribed in clause 12.2) ("**Rail North Member Response**") and Rail North shall ensure that the Rail North Strategic Board Members take into account such comments in respect of the management of the relevant Rail North Matter or Additional Matter under the Partnership Agreement.
- 12.5 Where the Interested Member fails to provide a Rail North Member Response, the Interested Member will be deemed to have no comments and Rail North shall proceed to manage the relevant Rail North Matter or Additional Matter under the Partnership Agreement in good faith and in accordance with the Objectives.

- 12.6 Where, pursuant to the Partnership Agreement, the Strategic Board has decided to act contrary to any comments from the Interested Members made in the Rail North Member Response, the Rail North Lead Officer shall provide full details of any such decision to all Members who shall be permitted, taking into account timescales under the relevant Franchise Agreement or the Partnership Agreement, to provide further comments to a Rail North Strategic Board Member for further consideration by the Strategic Board.
- 12.7 In the event that a Member or a Regional Business Unit considers that the decision of the Strategic Board made pursuant to clause 12.6 has not been made correctly or has been made on an improper basis, the matter shall be treated as a Dispute and resolved in accordance with clause 29.
- 12.8 The Parties acknowledge that pursuant to the Franchise Agreements, the relevant Franchisee is under an obligation to consult relevant stakeholders and therefore Members or Regional Business Unit may be contacted directly by the relevant Franchisee in respect of such matters. Members agree to respond to the relevant Franchisee in the time requested or specified under the relevant Franchise Agreement. Where a Member responds to the relevant Franchisee, that Member shall provide a copy of such response to the Board and the Rail North Strategic Board Members.
- 12.9 In the event that a Member or a Regional Business Unit considers that there is an issue with the Franchisee's performance that specifically affects the area of a Member, the area of a Regional Business Unit or persons living or working in that area or visiting or travelling through that area, that Member or Regional Business Unit shall initially engage with the relevant Franchisee and the Management Team responsible for the management of that Franchise Agreement to discuss and resolve the issue in accordance with any processes under the relevant Franchise Agreement. If the Management Team determines that the issue raised by the Member or Regional Business Unit is not an issue relating to compliance with the Franchise Agreement or does not take action considered appropriate by the Member or Regional Business Unit (acting reasonably) to resolve the issue, the Member concerned or Regional Business Unit shall be entitled to raise the issue with any of the Rail North Strategic Board Members to enable the Strategic Board to consider the issue.
- 12.10 Members shall be entitled to provide comments to the Rail North Strategic Board Members every six (6) months from the date of commencement of the first Franchise Agreement on the performance of the Franchisees and service delivery in their area. The Rail North Strategic Board Members shall take into account any comments received in the Strategic Board's management of the Franchise Agreements.

### **13. SERVICE QUALITY PROGRAMMES**

- 13.1 The Parties acknowledge that pursuant to the Partnership Agreement, the Secretary of State shall retain any Service Quality Deductions made pursuant to the Northern Franchise Agreement from 1 January 2017 for the purpose of applying Service Quality Savings to the delivery of Service Quality Programmes.
- 13.2 The Members acknowledge that where any proposal for a Service Quality Programme affects a particular Member, or passengers or rail services in that Member's area, that Member shall be consulted in accordance with clause 12 and Part 2 of Schedule 2.

13.3 Any Member shall be entitled to propose a Service Quality Programme in relation to the Northern Franchise Agreement and submit such proposal to the Management Team for further development and approval by the Strategic Board pursuant to the Partnership Agreement. Any Service Quality Programme proposed by a Member must:

13.3.1 demonstrate how the proposal will deliver Passenger Benefits;

13.3.2 include the timescales for implementation and completion which shall be completed within the term of the relevant Franchise Agreement; and

13.3.3 include a plan for the commissioning of the works or services included in the Service Quality Programme.

In proposing a Service Quality Programme, the relevant Member shall have regard to which geographical area the amounts were deducted under the Service Quality Deduction regime in the Northern Franchise Agreement.

13.4 The Rail North Strategic Board Members shall inform the Member which proposed the Service Quality Programme of its acceptance or where the proposal for a Service Quality Programme has been rejected, the reasons for such rejection.

13.5 Where it is agreed pursuant to the Partnership Agreement that a Service Quality Programme is to be carried out by a Member, that Member shall be responsible for delivery of the Service Quality Programme.

#### **14. CHANGES TO THIS AGREEMENT**

14.1 If any Party wishes to propose a Change to this Agreement, it shall do so by serving a notice of change ("**Agreement Change Notice**") on the other Parties. Such notice shall set out the particulars of the proposed Change together with any cost impact.

14.2 Within ten (10) Working Days of receipt of the Agreement Change Notice, any of the receiving parties may respond to the Agreement Change Notice confirming or rejecting the Change and providing reasons.

14.3 Where no response or no rejections to the Agreement Change Notice has been received pursuant to clause 14.2, the Change shall be deemed to be agreed on the terms set out in the Agreement Change Notice.

14.4 Where any of the receiving parties rejects the proposed Change and the party proposing the Change wishes to challenge the rejection of the Change, the parties rejecting the proposed Change and the Party proposing the Change shall meet and use reasonable endeavours to agree amendments to the Change within ten (10) Working Days of the response received pursuant to clause 14.2 so that the Change can be approved. If the Parties fail to agree the proposed Change, the Party proposing the Change shall be entitled to amend the proposed Change and re-submit an Agreement Change Notice pursuant to clause 14.1.

14.5 In agreeing a Change the Parties shall act reasonably when agreeing which Party is responsible for the cost of the Change (including any costs of implementation of the Change) and in the absence of agreement, the Party proposing the Change shall bear such (reasonably incurred) costs.

## 15. FRANCHISE OUTPUT ADJUSTMENTS AND FARES BASKETS

### Franchise Output Adjustments

- 15.1 Any of the Members may at any time during the term of this Agreement serve a notice ("**Rail North Franchise Output Adjustment Notice**") on Rail North and any Members who would be affected by the implementation of such a Rail North Franchise Output Adjustment Notice to request that a Rail North Franchise Output Adjustment be implemented in accordance with this clause 15. Such Rail North Franchise Output Adjustment Notice shall:
- 15.1.1 include such information as is required by the relevant Franchise Agreement;
  - 15.1.2 demonstrate that the costs of the proposed Rail North Output Adjustment are reasonable and proportionate in the circumstances; and
  - 15.1.3 provide details of how the Rail North Franchise Output Adjustment shall be funded, including the provision of appropriate guarantees to support such Rail North Franchise Output Adjustment.
- 15.2 In circumstances where more than one Rail North Franchise Output Adjustment Notice is received by Rail North for consideration at any one time, Rail North shall consider each Rail North Franchise Output Adjustment Notice in order of receipt, save where the Officer Steering Group considers that there are reasons for altering the order of consideration.
- 15.3 Rail North and any of the other Members shall only be entitled to object to the Rail North Franchise Output Adjustment Notice served pursuant to clause 15.1 where:
- 15.3.1 such notice does not comply with the requirements set out in clause 15.1;
  - 15.3.2 it can be demonstrated that the Rail North Franchise Output Adjustment does not meet the criteria set out in that definition; or
  - 15.3.3 it can be demonstrated that the Rail North Franchise Output Adjustment would have an adverse effect if implemented on a Member, or passengers or rail services in a Member's area,
- provided that any such objections are received within twenty (20) Working Days of receipt of the relevant Rail North Franchise Output Adjustment Notice.
- 15.4 Where objections are received pursuant to clause 15.3 the Member proposing the Rail North Franchise Output Adjustment and the Members who have objected shall use reasonable endeavours to resolve the issue such that the objection can be withdrawn. If those Parties are unable to agree, any Party involved in the discussions to resolve the issue shall be entitled to refer the matter for resolution pursuant to clause 29.
- 15.5 Where no objections are received pursuant to clause 15.3, the Rail North Lead Officer shall submit the Rail North Franchise Output Adjustment for approval by the Board on the basis of a majority vote. Where the Board approves a Rail North Franchise Output Adjustment, the Rail North Lead Officer shall submit the approved Rail North Franchise Output Adjustment for consideration by the Strategic Board in accordance with the process set out in clause 12 of the Partnership Agreement and the costs and savings associated with such Rail North



Franchise Output Adjustment shall be as set out in the Rail North Franchise Output Adjustment Notice or otherwise agreed in accordance with the Partnership Agreement.

- 15.6 In the event that the Secretary of State has proposed a Savings Franchise Output Adjustment pursuant to the Partnership Agreement, Rail North shall ensure that the Rail North Strategic Board Members shall provide a copy to the Members with details of any specific timescales in which Members shall be able to comment.
- 15.7 The Members shall be entitled to provide comments and/or objections to the relevant Savings Franchise Output Adjustment to the Rail North Strategic Board Members within any specific timescales prescribed by the Rail North Strategic Board Member pursuant to clause 15.6 in order that the Strategic Board is assisted in reaching agreement on such Savings Franchise Output Adjustment.
- 15.8 The Parties acknowledge that the Secretary of State is entitled to proceed to implement the Savings Franchise Output Adjustment whether or not agreement is reached by the Strategic Board pursuant to the Partnership Agreement. The Rail North Strategic Board Members provide confirmation of the outcome of the discussions at the Strategic Board to Members. If the Secretary of State has decided to proceed to implement the Savings Franchise Output Adjustment notwithstanding any objections raised by Members, the Parties acknowledge that the relevant Member shall be entitled to terminate its involvement in this Agreement in accordance with clause 18.

#### **Fares Baskets**

- 15.9 With regard to Schedule 5.4 of each relevant Franchise Agreement any Member may propose a change to the value of “k” for the purposes of the “Permitted Aggregate Increase” in relation to any Fares Basket by notifying Rail North or a Rail North Strategic Board Member of its proposal and specifying the change it wishes to make to the value of “k” ("**Rail North Fares Change**").
- 15.10 Rail North and any of the other Members shall only be entitled to object to the Rail North Fares Change proposed pursuant to clause 15.9 where it can be demonstrated that the Rail North Fares Change would have an adverse effect on another Member or another Member's rail services if implemented on rail services in a Member's area, provided that any such objections are received within twenty (20) Working Days of receipt of the relevant Rail North Fares Change notification.
- 15.11 If no objections are received pursuant to clause 15.10 Rail North shall propose the Rail North Fares Change in accordance with the Partnership Agreement and the Parties acknowledge that the Rail North Fares Change shall be dealt with in accordance with the Partnership Agreement. Any increase or decrease in Franchise Payments resulting from the Rail North Fares Change shall be used in accordance with the Partnership Agreement.

#### **16. FUNDING**

- 16.1 Each Member shall pay its proportion of £36,000 (in proportion with each Member's voting rights) ("**Member's Share**") to West Yorkshire Combined Authority (acting on behalf of Rail North pursuant to the Pro Forma Hosting Agreement) no later than the Commencement Date and shall each pay its Member's Share (indexed) in respect of each subsequent Financial Year commencing 2016-2017 ("**Rail North Support Payment**") to West Yorkshire

Combined Authority (acting on behalf of Rail North pursuant to the Pro Forma Hosting Agreement) no later than the anniversary of the Commencement Date.

- 16.2 Each Member shall pay the second and following Rail North Support Payment, together with any Additional Contributions that may be agreed in accordance with the Budget to West Yorkshire Combined Authority (acting on behalf of Rail North pursuant to the Pro Forma Hosting Agreement), on or before the start of each Financial Year with the second payment being made on or before the start of the 2016-2017 Financial Year.
- 16.3 The Parties acknowledge that clause 11.2.2 of the Partnership Agreement obliges the Secretary of State to pay in each of the three Financial Years commencing with 2016-17 an aggregate sum of £500,000 (indexed) to those Members (or their passenger transport executive) in rail administrative grant specifically to cover Rail North operating costs ("**Rail North Supplemental Payment**"). Where a Member (or their passenger transport executive) receives a proportion of the Rail North Supplemental Payment from the Secretary of State, that Member shall pay (or procure that the passenger transport executive pays) the amount received from the Secretary of State to West Yorkshire Combined Authority pursuant to the Pro Forma Hosting Agreement.
- 16.4 In the event that the Rail North Supplemental Payment received from the Secretary of State is not separately distinguishable from other rail grant or funding amounts received by the Members (or their passenger transport executive) then the relevant Members in receipt of rail administrative grant shall pay the Rail North Supplemental Payment in the proportions and amounts set out in the following table:

<b>Member</b>	<b>Proportion of Contribution</b>	<b>Amount of Contribution</b>
Greater Manchester Combined Authority	35%	£175,000
Liverpool City Region Combined Authority	10%	£50,000
North East Combined Authority	10%	£50,000
Sheffield City Region Combined Authority	10%	£50,000
West Yorkshire Combined Authority	35%	£175,000

- 16.5 Each Member responsible for payment (or procuring payment) pursuant to clause 16.3 shall pay its proportion of the Rail North Supplemental Payment (or procure payment) to West Yorkshire Combined Authority (acting on behalf of Rail North pursuant to the Pro Forma Hosting Agreement) on or before the start of each Financial Year from 2016/17 to 2018/19 (inclusive).
- 16.6 The Parties acknowledge and agree that the Rail North Support Payment and the Rail North Supplemental Payment (together the "**Members' Contributions**") shall be used to fund the operation of Rail North in accordance with the Rail North Business Plan. Where, and to the extent that, the Members' Contributions are insufficient to fund the operation of Rail North in accordance with the Rail North Business Plan, the Members shall agree any additional

contributions to the annual funding of Rail North ("**Additional Contributions**") as part of the agreement of the Budget and the Members that agree to pay Additional Contributions shall pay such amounts to West Yorkshire Combined Authority (acting on behalf of Rail North pursuant to the Pro Forma Hosting Agreement). In accordance with the process in clause 17, the Parties acknowledge and agree that those Members that do agree to pay Additional Contributions shall be entitled to amend the Budget to include only Additional Contributions agreed by those Members. Whether or not Additional Contributions are agreed, the Members acknowledge and agree that they shall continue to pay the Members' Contributions for which they are responsible.

16.7 In addition to the Members' Contributions, the Parties acknowledge and agree that the Secretary of State shall:

16.7.1 pay to Rail North the sum of £226,000 pro rata until the start of the 2016-2017 Financial Year; and

16.7.2 pay to Rail North the sum of £226,000 (indexed) in each Financial Year commencing 2016-2017,

such sums to be allocated for payment of the Northern Commercial Manager, the Transpennine Commercial Manager and the Contracts Manager, save where one or more of such Management Team Members are employed by the Secretary of State in which case the sum will be reduced in accordance with the Partnership Agreement; and

16.7.3 pay to Rail North or one of the Members an amount equivalent to the value of the Rail North costs identified in the Budget subject to a maximum cap of £500,000 (indexed) in each of the three Financial Years commencing in 2019-2020,

and the Parties acknowledge and agree that these amounts shall be included in the Budget and used to fund the operation of Rail North set out in this Agreement and in accordance with the Rail North Business Plan.

## **17. RAIL NORTH BUSINESS PLAN**

17.1 The Parties acknowledge and agree that each Rail North Business Plan shall include:

17.1.1 the Budget and where relevant an Impaired Plan;

17.1.2 details of resourcing for the forthcoming Financial Year;

17.1.3 details of any material commercial agreements having a value in excess of £50,000 which Rail North proposes to enter into (or amend);

17.1.4 details of any appointment of senior management (other than Directors) and salaries and job titles; and

17.1.5 agreement on progressing the Further Devolution Proposal by commissioning a feasibility study.

17.2 The Parties agree that the process for agreeing the Rail North Business Plan in respect of each Financial Year shall be as follows:

- 17.2.1 not less than six (6) months prior to the end of each Financial Year, the Rail North Lead Officer shall, in consultation with the Officer Steering Group, prepare a draft Rail North Business Plan including draft proposals for the matters set out in clause 17.1;
- 17.2.2 where the draft Budget in the draft Rail North Business Plan would require Additional Contributions, the draft Budget shall clearly identify the proposed funding sources for such Additional Contributions and shall include an Impaired Plan;
- 17.2.3 the Rail North Lead Officer shall issue the draft Rail North Business Plan prepared pursuant to clause 17.2.1 to all Members not less than six (6) months before the end of each Financial Year;
- 17.2.4 Members shall be entitled to comment to Rail North on the draft Rail North Business Plan, provided that such comments are received not less than four (4) months prior to the end of each Financial Year; and
- 17.2.5 Rail North shall take into account comments received by Members pursuant to clause 17.2.4 and the Rail North Lead Officer shall prepare a revised version of the Rail North Business Plan and shall issue this revised version to all Members as soon as reasonably practicable, but in any event not less than three (3) months prior to the end of each Financial Year.
- 17.3 The Members shall vote to approve the Rail North Business Plan not less than two (2) months prior to the start of the next Financial Year and the Parties acknowledge that such approval shall be a Reserved Matter.
- 17.4 If the Rail North Business Plan is not approved pursuant to clause 17.3 as a result of the requirement for Additional Contributions, Rail North shall either:
- 17.4.1 use the Impaired Plan for the next Financial Year; or
- 17.4.2 amend the Budget to include only Additional Contributions which have been agreed by those Members that have agreed to pay Additional Contributions and amend the Rail North Business Plan accordingly,
- and the Rail North Lead Officer shall promptly refer the matter to Members to be approved in accordance with clause 17.3.
- 17.5 The Members acknowledge that the Partnership Agreement contains provisions for further devolution of responsibilities to Rail North. Any Member shall be entitled to make a Further Devolution Proposal for discussion and agreement as part of the Rail North Business Plan, provided that the Further Devolution Proposal meets the Criteria for Further Devolution.
- 17.6 If the Further Devolution Proposal is agreed as part of the Rail North Business Plan the Parties acknowledge and agree that the Rail North Business Plan shall include within the Budget provision for the carrying out of a feasibility study on the Further Devolution Proposal ("**Further Devolution Study**"). Where the Rail North Business Plan is approved on a basis that includes provision of a Further Devolution Study, Rail North shall procure such study in accordance with the relevant Rail North Business Plan. On completion of the Further

Devolution Study, the Rail North Lead Officer shall review the results of such study and shall provide the results of such study and any recommendations in respect of whether to proceed with the Further Devolution Proposal to the Board for consideration.

- 17.7 Rail North shall procure that the Board shall promptly consider the results of the Further Devolution Study. The Board shall determine on the basis of a majority vote whether to submit the Further Devolution Proposal to the Members with a recommendation to approve the Further Devolution Proposal for submission to the Strategic Board for consideration in accordance with the Partnership Agreement.
- 17.8 Subject to approval by the Board pursuant to clause 17.7, the Rail North Lead Officer shall submit the developed Further Devolution Proposal to the Members for approval, including specifying how such proposal would be included in any future Rail North Business Plan and Budgets, as a Reserved Matter. If the Further Devolution Proposal is approved then Rail North shall procure that such Further Devolution Proposal is submitted to the Strategic Board for consideration in accordance with the Partnership Agreement.
- 17.9 If the Further Devolution Proposal is not approved or is deferred by the Members, Rail North shall procure that the Board shall consider and agree whether to withdraw or amend the Further Devolution Proposal. If the Board decides to amend the Further Devolution Proposal, it shall determine whether to resubmit the revised proposal to the Members for consideration and agreement pursuant to clause 17.8 or whether a Further Devolution Study would be included in any future Rail North Business Plan and Budget.
- 17.10 Rail North or the Rail North Strategic Board Members, shall inform the Members of the outcome of the consideration of the Further Devolution Proposal under the Partnership Agreement.
- 17.11 If a Further Devolution Proposal is agreed under the Partnership Agreement, the Rail North Lead Officer shall ensure that any such proposal is included in future Rail North Business Plans and Budgets.

## **18. TERM AND TERMINATION**

- 18.1 The Parties agree that any Member will cease to be a Member with effect from the date that it is no longer a Local Transport Authority.
- 18.2 This Agreement shall continue in full force and effect unless all Members (who have the ability to vote under the Rail North Articles and clause 3) acting unanimously pass a valid resolution to wind-up Rail North.
- 18.3 Subject to clause 18.4, a Member shall be entitled to give notice of its voluntary withdrawal from membership of Rail North:
- 18.3.1 twelve (12) months prior to the end of the next Franchise Agreement renewal;
- 18.3.2 eighteen (18) months before the start of a Financial Year; or
- 18.3.3 where the Secretary of State has implemented a Savings Franchise Output Adjustment notwithstanding any objection raised by the relevant Member pursuant to clause 15.8,

such notice to be provided to all Members and Rail North specifying the date of termination and in the case of clause 18.3.3, such to be provided within five (5) Working Days of the Rail North Strategic Board Members notifying the Members of the Secretary of State's decision to implement such Savings Franchise Output Adjustment pursuant to clause 15.8 ("**Termination Notice**").

- 18.4 Where a Member has issued a Termination Notice to Rail North pursuant to clause 18.3:
- 18.4.1 the Members shall meet within twenty (20) Working Days of such notice to discuss the Termination Notice, save in the case of a Termination Notice served pursuant to clause 18.3.3 in which case the Members shall meet within five (5) Working Days, and may agree to withdraw from the Partnership Agreement (such decision shall be a Reserved Matter) or continue with this Agreement and the Partnership Agreement without the relevant Member: and
- 18.4.2 the Member issuing the Termination Notice shall pay pro rata its Members Contributions contained in this Agreement or the Rail North Business Plan until its exit from this Agreement.
- 18.5 The Parties acknowledge that the withdrawal of 50% or greater of the Members (on the basis of the weighted voting system set out in Article 41 of the Rail North Articles) would require amendments to this Agreement and the Rail North Articles.

## **19. HOSTING AGREEMENTS**

- 19.1 The Parties agree that Rail North shall enter into a hosting agreement with West Yorkshire Combined Authority in the form set out at Schedule 3 ("**Pro Forma Hosting Agreement**").
- 19.2 The Parties agree that Rail North may enter into hosting agreements with other Parties in substantially the same form as the Pro Forma Hosting Agreement.
- 19.3 The Parties agree that the Pro Forma Hosting Agreement and other hosting agreements entered into may include:
- 19.3.1 the basis of any secondments and the financing of such secondments;
- 19.3.2 details of any trading and ancillary arrangements, including goods or services to be provided and the terms on which they are provided; and
- 19.3.3 details of any contribution of licencing and assets.
- 19.4 The Parties agree that any procurement carried out through any hosting agreement (including the Pro Forma Hosting Agreement) shall be carried out in accordance with the hosting Member's standing orders.

## **20. CONDUCT OF RAIL NORTH'S AFFAIRS**

- 20.1 Each of the Members undertakes to the other and with Rail North that it shall exercise all its powers in relation to Rail North so as to procure (insofar as it is able) and Rail North undertakes to the Members (insofar as it is legally able so to do) that during the term of this Agreement:

20.1.1 each of the Members shall be afforded access at any reasonable time and from time to time to examine the books, records and accounts to be kept by Rail North; and

20.1.2 the accounts of Rail North in respect of each Financial Year are prepared in accordance with UK GAAP, and referred to the Auditors as expeditiously as possible following the end of each Financial Year.

## 20.2 **Banking Arrangements**

20.2.1 Subject to alternative arrangements being made between the Members, the banking arrangements for Rail North will be as follows:

20.2.1.1 Rail North accounts shall be held at Lloyds Bank plc;

20.2.1.2 The Directors and the Assistant Director of Finance of West Yorkshire Combined Authority shall be listed on the mandate to any Rail North account; and

20.2.1.3 There shall be no cheques to be drawn on Rail North's account.

## 20.3 **Insurances**

Rail North shall ensure that it has adequate insurance cover in respect of its responsibilities under this Agreement and the Partnership Agreement, through its arrangements with one or more Members.

## 20.4 **Company Secretary**

The Members acknowledge and agree that the Directors have the right to appoint a company secretary in accordance with the Rail North Articles.

## 21. **IMPLEMENTATION COSTS**

The Parties agree that each Member shall bear its own costs and expenses incurred in the connection with the implementation of this Agreement.

## 22. **TRANSFER OF MEMBERSHIP**

22.1 The Parties acknowledge and agree that the membership in Rail North is not transferable. The Parties acknowledge and agree that Members may establish combined authorities and changes may be required to this Agreement and/or the Articles as a consequence of the establishment of new Members. The foregoing shall not exclude the transfer of rights and obligations under this Agreement in accordance with a statutory transfer scheme, including the transfer of rights and obligations under this Agreement from Members to a combined authority formed in the area of those Members and the Parties agree to make such reasonable amendments to this Agreement as may be required to give effect to such a transfer.

22.2 A Member shall be entitled to give notice of its departure as a Member in accordance with clause 18.

**23. ASSIGNMENT, TRANSFER AND NOVATION**

- 23.1 Subject to clauses 23.2 and 23.3, no Party shall sub-contract, assign, underlet, charge, sell, bargain, transfer, novate or create or otherwise deal in any way with the benefit of this Agreement in whole or in part.
- 23.2 Rail North shall be entitled to assign, novate or otherwise transfer its rights and obligations under this Agreement to any person having the legal capacity, power and authority to become a party to and to perform the obligations of Rail North under this Agreement, where such person has assumed Rail North's role in respect of delivery of rail services in the North of England.
- 23.3 The Members shall be entitled to assign, novate or otherwise transfer its rights and obligations under this Agreement to any person having the legal capacity, power and authority to become a party to and to perform the obligations of the relevant Member under this Agreement, where such person has assumed that Member's role in respect of delivery of rail services in the North of England.

**24. CONFIDENTIALITY**

- 24.1 Each Party ("**Receiving Party**") shall keep confidential and not use (without the other Party's ("**Disclosing Party**") written consent) all or any information relating to the Disclosing Party's business supplied by the Disclosing Party pursuant to or as a result of this Agreement, including information identified by the Disclosing Party as confidential and shall not divulge the same to any third party except to the extent that any such information is or becomes public through no fault of the Receiving Party, or disclosure of the same is required by Law (such as disclosure through the FOIA and/or the EIRs) or by any other governmental or other regulatory body.
- 24.2 Where information is received by Rail North pursuant to clause 11, Rail North shall hold in confidence all such information and shall not, except with the Franchisee's prior written authority, publish or otherwise disclose any such information otherwise than as expressly provided for in the relevant Franchise Agreement unless or until Rail North can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of the relevant Franchise Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

**25. FREEDOM OF INFORMATION**

- 25.1 The Parties acknowledge that they are each subject to the requirements of the FOIA and the EIRs. Each Party shall:
- 25.1.1 provide all necessary assistance and cooperation (free of charge) as reasonably requested by the other Party ("**Requesting Party**") to enable the Requesting Party to comply with its obligations under the FOIA and the EIRs;
- 25.1.2 provide the Requesting Party with a copy of all information belonging to the Requesting Party requested in the Request for Information which is in its possession or control in the form that the Requesting Party requires within five (5) Working Days (or such other period as the Requesting Party may reasonably specify) of the Requesting Party's request for such information; and



- 25.1.3 not respond directly to a Request for Information made to the Requesting Party unless authorised in writing to do so by the Requesting Party. For the avoidance of doubt, if the same Request for Information has been issued to each Party separately, both Parties will be required to comply with their own obligations under the FOIA and/or the EIRs in responding to such a Request for Information.
- 25.2 Each Party acknowledges that it may be required under the FOIA and the EIRs to disclose information without consulting or obtaining consent from the other Party. Each Party shall take reasonable steps to notify the other Party of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Requesting Party shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs in relation to any Request for Information made to the Requesting Party.
- 25.3 In relation to other types of requests for information (such as requests outside the scope of the FOIA and/or the EIRs), each Party shall provide, where reasonably practicable within 24 hours and in any event within two (2) Working Days of receipt of a request from the Requesting Party, such information as the Requesting Party may reasonably require in response to any Parliamentary request for information or any other emergency request received from a Crown Body, Chief Officer of Police or other regulatory authority.
- 25.4 The Parties acknowledge and agree that the provisions of this clause 25 shall apply in respect of information received pursuant to clause 11. Where a request is received in respect of such information, the Requesting Party shall inform Rail North where information is required by the a Franchisee and/or to allow Rail North to comply with its obligations under the relevant Franchise Agreement.

## 26. NO WAIVER

No failure to exercise nor delay in exercising any right, power or remedy under or in connection with this Agreement shall operate as a waiver thereof, and no single or partial exercise of any right, power or remedy shall preclude any further or other exercise thereof, or the exercise of any other right or remedy.

## 27. NOTICES

- 27.1 All notices, notifications, instructions, consents, claims and other communications given under this Agreement shall expressly refer to this Agreement and shall be given or made in writing (which includes electronic mail) and shall be delivered:

27.1.1 if to Rail North, to the Rail North Lead Officer;

Address: West Yorkshire Combined Authority, Wellington House, 40-50  
Wellington Street, Leeds, LS1 2DE

Phone no: 0113 348 1881

Email address: [info@railnorth.org](mailto:info@railnorth.org)

- 27.1.2 if to a Member, to the address set out in Schedule 1 or such other address as notified to all Parties in accordance with this clause 27.
- 27.2 Each such communication shall, unless proved otherwise or unless in the case of any notification of a failure in delivery (including automatic reports produced), be deemed to have been received:
- 27.2.1 if personally delivered, at the time of delivery;
- 27.2.2 if sent by first-class post, on the second Working Day following the date on which posted; and
- 27.2.3 if sent by electronic mail at the time of receipt.
- 27.3 All communications shall be sequentially numbered.

## 28. LAW AND JURISDICTION

This Agreement (and any claims arising out of or in connection with it (whether contractual or non-contractual)) shall be governed by, and construed in accordance with, the laws of England and Wales and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

## 29. DISPUTE

- 29.1 The Parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute or difference of whatever nature between them arising under, out of, or in connection with this Agreement (each such dispute or difference a "**Dispute**").
- 29.2 Following any referral of a Dispute to the Dispute Resolution Procedure in accordance with the terms of this Agreement, the provisions set out in this clause 29 shall apply.
- 29.3 The Dispute shall initially be referred for resolution to a senior officer of the Member with sufficient authority to determine the dispute on behalf of that Member ("**Initial Dispute Board**") who shall seek to resolve the matter as soon as reasonably possible and in any event within twenty (20) Working Days of escalation, or such other period as may be reasonable given the nature of the Dispute, and the urgency of resolution. The Initial Dispute Board shall be entitled to request such additional information as may be reasonably requested from either Rail North or any of the Members in respect of the Dispute, including, but not limited to, any information to be provided pursuant to the relevant provisions of this Agreement.
- 29.4 All Parties involved in the Dispute, but only Parties affected by the Dispute, shall be entitled to make oral and/or written representations to the Initial Dispute Board prior to the Initial Dispute Board making its final determination.
- 29.5 Where the Initial Dispute Board are not able to resolve the matter within twenty (20) Working Days of escalation pursuant to clause 29.3, the Initial Dispute Board shall refer the matter for determination by the head of paid service of each Member involved in the Dispute who shall seek to determine the matter within twenty (20) Working Days of escalation, or such other period as may be reasonable given the nature of the Dispute.

- 29.6 If the Parties are unable to resolve the Dispute in accordance with this clause 29, any Party may refer the Dispute to an independent expert for determination ("**Expert**"). The Expert shall be Queen's Counsel appointed by agreement in writing between the Parties (acting reasonably), but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be a Queen's Counsel appointed on the instructions of the president of the Law Society.
- 29.7 The Expert shall act on the following basis:
- 29.7.1 as an expert and not as an arbitrator and shall act fairly and impartially;
  - 29.7.2 the Expert's determination shall be final and binding on the Parties;
  - 29.7.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his/her appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purposes of the determination;
  - 29.7.4 the process shall be conducted in private and shall be confidential; and
  - 29.7.5 the Expert shall not act for any of the Parties individually in connection with the Dispute in any capacity during the term of this Agreement and the duration of the Dispute. The Parties acknowledge and agree that in relation to the Dispute, the Expert is not an agent of, or acting in any capacity for, any of the Parties.

### **30. VARIATION**

No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the Parties hereto.

### **31. SEVERANCE**

If any provision of this Agreement is found by any judicial or other competent authority to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions of this Agreement which shall remain in full force and effect.

### **32. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

No person who is not Party to this Agreement may enforce any term of this Agreement under the Contracts (Rights of Third Parties) Act 1999.

### **33. NO PARTNERSHIP**

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.

### **34. SURVIVAL**

Notwithstanding the termination or expiry of this Agreement, the provisions of this clause and clauses 24, 25, 27, 28, 29, 32 and 35 shall expressly survive such termination or expiry and

continue in full force and effect along with any other clauses of and any schedules to this Agreement necessary to give full and proper effect to those clauses.

**35. AGREEMENT TO PREVAIL**

- 35.1 In the event of any ambiguity or conflict arising between the terms of this Agreement and those of the Rail North Articles, the terms of this Agreement shall prevail, save as permitted by law.
- 35.2 For the avoidance of doubt, the provisions of this Agreement do not constitute an agreement to alter the Rail North Articles.

**36. COUNTERPARTS**

This Agreement may be entered in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

Executed as a deed and delivered on the date appearing at the beginning of this Deed.

**SCHEDULE 1: MEMBERS OF RAIL NORTH**

Name	Address
Blackburn with Darwen Borough Council	Old Town Hall King William Street Blackburn Lancashire BB1 7DY
Blackpool Borough Council	Municipal Buildings Corporation Street Blackpool FY1 1NF
Cheshire East Council	Westfields Middlewich Road Sandbach CW11 1HZ
Cheshire West and Chester Council	Nicholas Street, Chester, CH1 2NP
City of York Council	West Offices, Station Rise, York, North Yorkshire, YO1 6GA
Cumbria County Council	The Courts Carlisle CA3 8NA
Darlington Borough Council	Town Hall Feethams Darlington County Durham DL1 5QT
Derbyshire County Council	County Hall Matlock DE4 3AG
East Riding of Yorkshire Council	County Hall Beverley East Riding of Yorkshire HU17 9BA
Greater Manchester Combined Authority	Churchgate House 56 Oxford Street Manchester M1 6EU
Hartlepool Borough Council	Civic Centre Victoria Road Hartlepool TS24 8AY

Name	Address
Hull City Council	Guildhall Hull HU1 2AA
Lancashire County Council	PO Box 78 County Hall Fishergate Preston Lancashire PR1 8XJ
Lincolnshire County Council	County Offices, Newland, Lincoln, LN1 1YL
Liverpool City Region Combined Authority	c/o Merseytravel PO Box 1976 Liverpool L69 3HN
Middlesbrough Council	PO Box 500 Civic Centre Middlesbrough TS1 9FT
North East Combined Authority	Quadrant, The Silverlink North, Cobalt Business Park, North Tyneside NE27 0BY
North East Lincolnshire Council	Municipal Offices, Town Hall Square, Grimsby, DN31 1HU
North Lincolnshire Council	Civic Centre, Ashby Road, Scunthorpe DN16 1AB
North Yorkshire County Council	County Hall, Racecourse Ln, Northallerton, North Yorkshire DL7 8AD
Nottingham City Council	Loxley House, Station Street, Nottingham, NG2 3NG
Nottinghamshire County Council	County Hall, West Bridgford, Nottingham, NG2 7QP

Name	Address
Redcar and Cleveland Borough Council	Redcar & Cleveland House, Kirkleatham Street, Redcar, TS10 1RT
Sheffield City Region Combined Authority	AMP Technology Centre Advanced Manufacturing Park Brunel Way Rotherham S60 5WG
Staffordshire County Council	Number 1 Staffordshire Place, Stafford, ST16 2DH
Stockton-on-Tees Borough Council	Municipal Buildings, Church Road, Stockton-on-Tees, TS18 1LD
Stoke-on-Trent City Council	Civic Centre, Glebe Street, Stoke-on-Trent, ST4 1RN
Warrington Borough Council	26-30 Horsemarket Street, Warrington WA1 1XL
West Yorkshire Combined Authority	Wellington House 40/50 Wellington Street Leeds LS1 2DE

**SCHEDULE 2: RAIL NORTH MATTERS****Part 1: Franchise Agreement Matters**

No.	Rail North Matter	Specific Consultation Required
1	Development of and changes to the Train Service Requirement	In respect of the level, frequency, maximum journey times and stopping patterns of the railway passenger services and Members shall be entitled to comment on changes to the Train Service Requirement. Members shall provide comments to Rail North on the Train Service Requirement where the Franchisee's proposals affect the Member.
2	Changes to train fleet	Rail North shall consult Members in respect of any proposed amendments to the Train Fleet that would decrease the passenger carrying capacity where the Franchisee's proposals affect the Member or rail services in the Member's area.
3	Assets, leases and third parties	In respect of any new property lease, change to a station lease, new rolling stock related contract or sub-contracting or delegating the provision of passenger services where the Franchisee's proposals affect the Member or rail services in the Member's area.
4	Concessionary Travel, Multi Modal Ticketing Schemes and Smart Transactions	In respect of the implementation of smart card technology, any proposed amendments to concessionary travel schemes, the implementation of or amendments to multi-modal fares schemes or discount operator schemes, where the Franchisee's proposals affect the Member.
5	Performance Management and Enforcement	In respect of matters where the Franchisee's proposals affect the Member or rail services in the Member's area.



6	Matters relating to the deployment of Rolling Stock where this affects any Member (including branding and funding of Rolling Stock)	In respect of any change in the use of rolling stock funded in whole or in part by Rail North or any Member, including Executive Rolling Stock where the Franchisee's proposals affect the Member.
7	Development of and changes to the Train Plan	In respect of any proposed changes to the Train Plan that affect Members.
8	Right to carry out surveys (including carrying out passenger surveys such as surveys required for the purposes of multi operator ticketing schemes and/or concessionary travel reimbursement)	In respect of any surveys that are required to be carried out in the Member's area for the purposes of multi operator ticketing schemes and/or concessionary travel reimbursement.
9	Station facilities addressed by the provisions of a relevant Franchise Agreement, (including staffing levels, passenger facilities, ticket sales, ticketing equipment, information provision, car parks, parking charges, cycle storage, taxi and bus interchange)	<p>Where there relevant Franchisee proposes to reduce staffing levels at stations below the level provided for at the date of commencement of the relevant Franchise Agreement, where such proposals affect the Member's stations.</p> <p>Rail North shall consult the affected Members who shall be entitled to direct Rail North to object to the introduction or variation of car parking charges, where the Franchisee's proposals affect the Member's stations.</p>
10	Right to inspect (including carrying out inspections, surveys of stations, trains and any other passenger facility)	In respect of any inspections that are required to be carried out in the Member's area.
11	The application of fare increases to fares baskets (including fares basket harmonisation and the application of de minimis values)	In respect of any fare increases to fares baskets where the Franchisee's proposals affect the fares in the Member's area.

**Part 2: Additional Matters**

<b>No.</b>	<b>Additional Matter</b>	<b>Specific Consultation Required</b>
1	Development of HLOS and rail investment	In respect of the development of HLOS and rail investment in the Member's area.
2	Disputes under the Partnership Agreement	In respect of any disputes which affect the Member, passengers or rail services in the Member's area.
3	Annual Review and Options Review under the Partnership Agreement	Selection of Proposed Franchising Approach
4	Service Quality Programmes prepared by the Management Team under the Partnership Agreement	Where the Service Quality Programme prepared affect the Member or the Member's area.

**SCHEDULE 3: PRO FORMA HOSTING AGREEMENT**

**DATED**

**2016**

**(1) RAIL NORTH LIMITED**

**- and -**

**(2) WEST YORKSHIRE COMBINED AUTHORITY**

**HOSTING AGREEMENT**

relating to

the provision of services by West Yorkshire  
Combined Authority to Rail North Limited in  
relation to the devolution of rail responsibilities  
in the North of England to Rail North Limited

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**THIS HOSTING AGREEMENT** is made as a deed on

2016

**BETWEEN:**

- (1) **RAIL NORTH LIMITED** a company registered in England and Wales (company number 09229441) whose registered office is at West Yorkshire Combined Authority, Wellington House, 40 - 50 Wellington Street, Leeds, LS1 2DE ("**Rail North**");
  - (2) **WEST YORKSHIRE COMBINED AUTHORITY** whose address is at Wellington House, 40-50 Wellington Street, Leeds, LS1 2DE ("**WYCA**"),
- each a "**Party**" and together the "**Parties**".

**BACKGROUND:**

- A On 20 March 2015 the Secretary of State for the Department for Transport ("**Secretary of State**") and Rail North entered into an agreement which sets out the arrangements as to how Rail North will manage the Franchise Agreements and how the Secretary of State and Rail North will work together to transition further devolution in the future ("**Partnership Agreement**"). Pursuant to the Partnership Agreement, the Strategic Board will be responsible for the day to day management of the Franchise Agreements.
- B On or about the date hereof, Rail North and the Members entered into the Members' Agreement which provided for, amongst other matters, the entry by Rail North into hosting agreements with WYCA and other Members, as relevant, in respect of services to be provided to Rail North.
- C The Parties have agreed to enter into this Agreement to set out the terms on which WYCA will provide personnel and certain services to Rail North to facilitate the organisation and management of Rail North.

**IT IS AGREED:**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement the following words and expressions shall (except where the context otherwise requires) have the following meanings:

"**Additional Contributions**" has the meaning given to it in the Members' Agreement;

"**Agreement Change Notice**" has the meaning set out in clause 14.1;

"**Auditors**" means the auditors of Rail North as WYCA may from time to time appoint on behalf of Rail North;

"**Board**" means the board of directors from time to time of Rail North;

"**Budget**" means such budget as shall from time to time be prepared by Rail North in accordance with clause 17 of the Members' Agreement;

"**Change**" means an amendment or variation to this Agreement effected pursuant to clause 14;

**"Commencement Date"** means the date of this Agreement;

**"Contracts Manager"** has the meaning given to it in the Members' Agreement;

**"EIRs"** means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;

**"Excluded Services"** means:

- (a) technical advice and consultancy services;
- (b) legal advice on the rail industry or technical matters, save to the extent set out in clause 5.7;
- (c) commercial, tax or finance advice, save to the extent set out in clause 5.6;
- (d) recruitment consultancy or agency employment services;
- (e) public relations, communications, web design and/or hosting and design and print services; and
- (f) training and organisational development advice and services;

**"Financial Year"** means the period from 1 April to 31 March inclusive;

**"FOIA"** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation;

**"Franchise Agreements"** means the Northern Franchise Agreement and the Transpennine Express Franchise Agreement, and **"Franchise Agreement"** shall be construed accordingly;

**"Indexation"** means in respect of any payment set out in this Agreement that is stated to be Indexed, the grossing up of such payment by the payer to reflect any adjustment to the Retail Prices Index between the Commencement Date and the date of such payment falling due and payable, and *Indexed* shall be construed accordingly;

**"Initial Term"** has the meaning given to it in clause 3.1;

**"Management Team Member"** has the meaning given to it in the Members' Agreement;

**"Member"** means a member of Rail North, as listed in schedule 1 of the Members' Agreement;

**"Members' Agreement"** means the members' agreement dated on or around the date hereof between Rail North and the members of Rail North as listed in schedule 1 of that agreement, relating to devolution of rail responsibilities in the North of England;

**"Northern Commercial Manager"** has the meaning given to it in the Members' Agreement;

**"Northern Franchise Agreement"** means the franchise agreement in respect of the operation of inter-urban, commuter and local rail passenger services across northern England to be entered into between the Secretary of State and the successful bidder in the relevant

franchise process pursuant to the notice published in the OJEU in June 2014 with reference 192429-2014 and such term shall include, for the purposes of this Agreement any ancillary agreement entered into by the Secretary of State required for the purposes of managing the Northern Franchise Agreement;

**"Partnership Agreement"** has the meaning given to it in recital C;

**"Partnership Lead Officer"** has the meaning given to it in the Members' Agreement;

**"Rail North Business Plan"** means the initial business plan governing the operation of Rail North and each subsequent annual business plan prepared and approved pursuant to clause 17 of the Members' Agreement;

**"Rail North Employees"** has the meaning given to it in clause 4.1;

**"Rail North Lead Officer"** means the lead officer employed by Rail North to oversee, on behalf of the Board, the discharge of Rail North's obligations under the Members' Agreement, the Partnership Agreement and any other agreements Rail North enters into;

**"Request for Information"** means a request for information or an apparent request for information under the FOIA or the EIRs;

**"Retail Prices Index"** or **"RPI"** means the retail prices index for the whole economy of the United Kingdom and for all items as published from time to time by the Office for National Statistics as **"RPI"** or, if such index shall cease to be published or the Parties agree (acting reasonably) that there is a material change in the basis of the index, or if, at any relevant time, there is a delay in the publication of the index, such other retail prices index as the Parties shall agree (acting reasonably) is appropriate in the circumstances;

**"Strategic Board"** has the meaning given to it in the Members' Agreement;

**"Transpennine Commercial Manager"** has the meaning given to it in the Members' Agreement;

**"Transpennine Express Franchise Agreement"** means the franchise agreement in respect of the operation of rail passenger services across northern England and Edinburgh and Glasgow to be entered into between the Secretary of State and the successful bidder in the relevant franchise process pursuant to the notice published in the OJEU in June 2014 with reference 192429-2014 and such term shall include, for the purposes of this Agreement any ancillary agreement entered into by the Secretary of State required for the purposes of managing the Transpennine Express Franchise Agreement;

**"Wellington House"** means Wellington House, 40-50 Wellington Street, Leeds, LS1 2DE;

**"Working Day"** means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;

**"WYCA Lead Officer"** means any senior officer for the time being of WYCA including where applicable any alternate officer;

**"WYCA Host Services"** has the meaning given to it in clause 2.1;

**"WYCA Host Services Fee"** has the meaning given to it in clause 8.4.1; and

**"WYCA Host Services Period"** has the meaning given to it in clause 3.1.

- 1.2 In this Agreement, unless the context otherwise requires:
- 1.2.1 headings are for ease of reference only and are to be disregarded when interpreting this Agreement;
  - 1.2.2 the singular includes the plural and vice versa;
  - 1.2.3 the words "include", "including" and "in particular" are to be construed without limitation;
  - 1.2.4 references to an agreement or any other document are references to that agreement (or document) as varied, amended, novated, supplemented or replaced from time to time;
  - 1.2.5 any reference to a statutory provision shall include such provision as from time to time modified or re-enacted or consolidated whether before or after the date of this Agreement so far as such modification, re-enactment or consolidation applies or is capable of applying to any action taken under this Agreement;
  - 1.2.6 the Interpretation Act 1978 shall apply to this Agreement in the same way that it applies to an enactment;
  - 1.2.7 references to any clause, paragraph, schedule or recital is a reference to a clause, paragraph of a schedule, schedule or recital of this Agreement. All the schedules are an integral part of this Agreement;
  - 1.2.8 references to any person, including a party, include that person's successors, transferees or assignees;
  - 1.2.9 reference to "**Parties**" means the parties to this Agreement and references to "**Party**" means one of the Parties; and
  - 1.2.10 references to any amount being "indexed" or increased in accordance with RPI means that the relevant amount shall be multiplied by the Retail Prices Index for the month of April in the Financial Year in which such amount is indexed divided by the Retail Prices Index on the month of April in the Financial Year in which the Commencement Date falls.

## 2. **ROLE OF RAIL NORTH HOST AUTHORITY**

- 2.1 The Parties agree and acknowledge that WYCA shall facilitate the organisation and management of Rail North on the terms set out in this Agreement and shall, acting at all times in accordance with the reasonable instructions of Rail North during the term of this Agreement:
- 2.1.1 engage employees as Rail North officers in accordance with clause 4 of this Agreement;
  - 2.1.2 provide financial, legal administrative, public relations and HR support in accordance with clause 5 of this Agreement;



- 2.1.3 enter into supply contracts on behalf of Rail North in accordance with clause 5.9 of this Agreement;
- 2.1.4 provide office accommodation and IT services for Rail North at Wellington House in accordance with clauses 5.10.1 to 5.10.5 (inclusive) of this Agreement; and
- 2.1.5 take out adequate insurance cover in respect of Rail North's responsibilities under the Members' Agreement and the Partnership Agreement in accordance with clause 5.11 of this Agreement,

the “**WYCA Host Services**”.

- 2.2 Rail North shall pay WYCA the WYCA Host Services Fee for the provision of the WYCA Host Services, which shall be funded through the Rail North Support Payments and Additional Contributions (if any) made by Members pursuant to clause 16 of the Members' Agreement, in accordance with clause 8.4 of this Agreement.

### **3. WYCA HOST SERVICES PERIOD**

- 3.1 WYCA shall commence provision of the WYCA Host Services on the Commencement Date, with a view to facilitating the full operation of Rail North from the start of the 2016-17 Financial Year, and shall continue to provide the WYCA Host Services for a period no shorter than eight (8) years (the “**Initial Term**”) (the “**WYCA Host Services Period**”).
- 3.2 The Parties agree and acknowledge that it is expected that Rail North will mature and expand in scope and resources during the WYCA Host Services Period, and the Initial Term may be extended pursuant to clause 10.2 of this Agreement.
- 3.3 The Parties agree and acknowledge that six (6) months prior to the start of the 2019-2020 Financial Year, both Parties will review this Agreement and agree any changes to be made in accordance with clauses 14 and 18 of this Agreement which will have effect from the start of the 2019-2020 Financial Year.

### **4. EMPLOYMENT OF RAIL NORTH EMPLOYEES**

- 4.1 WYCA shall engage employees to act as Rail North officers on behalf of Rail North (“**Rail North Employees**”) and shall procure that any such Rail North Employees are employed on WYCA's terms and conditions of employment. Subject to any specific variations agreed in advance in writing between the Parties, WYCA shall procure that WYCA's employment policies (as amended and updated from time to time) shall apply to all Rail North Employees.
- 4.2 WYCA shall pay Rail North Employees monthly in accordance with the arrangements in place in respect of other WYCA staff.
- 4.3 WYCA shall procure that the Rail North Lead Officer and the Partnership Lead Officer who are given direction by the Rail North governance boards shall refer to the WYCA Lead Officer as the employer's representative in respect of human resourcing issues.
- 4.4 The Parties acknowledge and agree that the Rail North Employees are not and are not intended to be employees, workers, agents or partners of WYCA and nothing in this Agreement shall give rise to the presumption that the Rail North Employees are employees, workers, agents or partners of WYCA.

## 5. SUPPORT SERVICES

### Finance

- 5.1 WYCA shall be responsible for managing the income and expenditure of Rail North in accordance with this Agreement.
- 5.2 WYCA shall provide accounting assistance to the Rail North Lead Officer where requested by the Rail North Lead Officer in the development and approval of the Rail North Business Plan, including the Budget and shall prepare annual accounts for Rail North in respect of each Financial Year in accordance with clauses 8.5.3 and 8.5.4.
- 5.3 WYCA shall be responsible for the payment of Rail North Employees in accordance with clause 4.2 of this Agreement and for the payment of contractors engaged on behalf of Rail North in accordance with the arrangements it has in place in respect of contractors engaged by WYCA.
- 5.4 WYCA shall receive, on behalf of Rail North:
- 5.4.1 on the Commencement Date, the Member's Share;
  - 5.4.2 on or before the start of each Financial Year from 2016-17 (and no later than the anniversary of the Commencement Date), the Rail North Support Payment together with any Additional Contributions that may be agreed in accordance with clause 16.6 of the Members' Agreement;
  - 5.4.3 on or before the start of each Financial Year from 2016-17 to 2018-19 (inclusive), any proportion of the Rail North Supplemental Payment received by a Member (as applicable) in accordance with clause 16.3 of the Members' Agreement; and
  - 5.4.4 an amount equivalent to the value of the Rail North costs identified in the Budget subject to a maximum cap of £500,000 (indexed) in each of the three Financial Years commencing in 2019-2020,

in respect of the payments specified in clauses 5.4.1, 5.4.2 and 5.4.3 as paid to it by each Member and in respect of the payments specified in clause 5.4.4 as paid to it by the relevant Member in receipt of such payment from the Secretary of State, in accordance with clause 16 of the Members' Agreement, together with:

- 5.4.5 from the Secretary of State:
- 5.4.5.1 the sum of £226,000 pro rata from the Commencement Date (as defined in the Partnership Agreement) to the start of the 2016-17 Financial Year; and
  - 5.4.5.2 the sum of £226,000 (indexed) in each Financial Year commencing from 2016-17,

such sums to be allocated by WYCA on behalf of Rail North for payment of the Northern Commercial Manager, the Transpennine Commercial Manager and the Contracts Manager, save where one or more of such Management Team Members are employed by the Secretary of State in which case the Parties agree and acknowledge that the sum will be reduced in accordance with the Partnership Agreement pursuant to clause 16.7 of the Members' Agreement.

- 5.5 The Parties agree and acknowledge that each Member's Share, Rail North Support Payment, any Additional Contributions, any proportion of the Rail North Supplemental Payment and the amount referred to in clause 5.4.4 shall be included in the Budget and used by WYCA on Rail North's behalf to fund the operation of Rail North in accordance with the Rail North Business Plan.
- 5.6 WYCA shall provide (or shall procure the provision of) advice and assistance to Rail North (on request) on Corporation Tax and VAT relating to the activities of Rail North. Advice on the implications of taxation on RN Variation Benefits (as defined by the Partnership Agreement) and other general taxation matters shall be an Excluded Service.

### **Legal**

- 5.7 WYCA shall provide (or shall procure the provision of) advice to Rail North on company and governance matters. WYCA shall be responsible for the commissioning of specialist legal advice on Rail North's behalf in respect of rail franchising.

### **Human Resources**

- 5.8 WYCA shall:
- 5.8.1 represent Rail North as the employer of Rail North Employees;
  - 5.8.2 advise (or procure the provision of advice to) Rail North on human resources and organisational development matters; and
  - 5.8.3 support the recruitment of employees to Rail North posts, save as set out in limb (d) of Excluded Services.

### **Procurement**

- 5.9 WYCA shall, on behalf of Rail North, procure goods and services which are required for the operation of Rail North, subject to agreement between the Parties.

### **Accommodation and IT**

- 5.10 WYCA shall provide and maintain office accommodation and IT facilities at Wellington House for Rail North throughout the term of this Agreement in accordance with the following:
- 5.10.1 **Formal Meeting Space** – WYCA shall, where practicable and on reasonable notice from Rail North, make a meeting room capable of accommodating no less than ten (10) attendees available to Rail North to book for its use;
  - 5.10.2 **Informal / Business Meeting Space** – WYCA shall, where practicable and on reasonable notice from Rail North, make a meeting room capable of accommodating approximately six (6) attendees available to Rail North to book for its use;
  - 5.10.3 **Office Space** – WYCA shall provide twelve (12) workstations for Rail North Employees and associates in an 'open plan' office area;
  - 5.10.4 **Reception Services** – WYCA shall allow Rail North to share and make use of the reception facilities provided at Wellington House;

- 5.10.5 **IT Facilities** – WYCA shall provide (or procure the provision of):
- 5.10.5.1 twelve (12) networked PCs or laptops which shall include standard Microsoft Office tools (including Word, Excel, PowerPoint, OneNote, Outlook, Access and Publisher), adjacent colour printer capability, network file storage and back up and robust internet connectivity;
  - 5.10.5.2 desk and mobile telephony services;
  - 5.10.5.3 email services using Microsoft Outlook; and
  - 5.10.5.4 email addresses incorporating the Rail North domain name.

### **Insurance**

- 5.11 WYCA shall take out adequate insurance cover in respect of Rail North's responsibilities under the Members' Agreement and the Partnership Agreement, which includes Rail North as a named insured.
- 5.12 WYCA shall indemnify and keep indemnified Rail North in full for and against all actions, proceedings, claims, costs, expenses (including, without limitation, reasonable legal fees on an indemnity basis) or liabilities whatsoever and howsoever arising, incurred or suffered directly or indirectly by Rail North as a result of any breach or non-observance by WYCA of clause 5.11.

### **Statutory Obligations**

- 5.13 WYCA shall observe and comply with all statutory obligations which apply in relation to the provision of the facilities and services referred to in this clause 5, including but not limited to obligations in respect of health and safety, data protection and insurance.

## **6. EXCLUDED SERVICES**

- 6.1 For the avoidance of doubt, the Parties agree and acknowledge that, except as expressly provided otherwise in this Agreement, WYCA shall not be responsible for the provision of the Excluded Services.
- 6.2 Rail North may, upon reasonable request, require WYCA to procure the Excluded Services on behalf of Rail North, using WYCA's procurement processes and frameworks. Following such a request from Rail North, WYCA shall be entitled to recover from Rail North the full costs of provision of any such Excluded Services required by Rail North, together with any reasonable costs and expenses which WYCA incurs in respect of the procurement and contract management of such Excluded Services.

## **7. RAIL NORTH RESPONSIBILITIES**

- 7.1 Rail North shall employ a suitably competent person to act as budget holder who shall liaise with WYCA's support teams and shall be responsible for authorising and monitoring, subject to authorisation from WYCA's finance team, Rail North's expenditure (including, for the avoidance of doubt, WYCA's expenditure on behalf of Rail North) and supporting the delivery of financial processes by WYCA in respect of Rail North.

7.2 In the event that any Member fails to pay any amount due to WYCA in accordance with clauses 5.4.1 to 5.4.3 (inclusive) of this Agreement, the Parties agree and acknowledge that Rail North shall be responsible for any actions necessary to recover any amounts due from Members and shall provide WYCA with regular updates of the progress of such recovery. WYCA shall provide Rail North with all reasonable co-operation and assistance for the purposes of recovering any amounts due from Members.

## **8. RECOVERY OF COSTS**

### **8.1 Set up costs**

The Parties agree and acknowledge that Rail North has paid the costs of equipping an office for Rail North pursuant to clause 5.10.3 of this Agreement in the Financial Year 2015-16 through the payments made under clause 16 of the Members' Agreement.

### **8.2 Employment costs**

The Parties agree and acknowledge that all employers' costs (including but not limited to any employers' contributions payable in respect of the Local Government Pension Scheme) which are incurred in relation to any Rail North Employees who are employed by WYCA on behalf of Rail North shall be payable by Rail North through the WYCA Host Services Fee.

### **8.3 Direct Expenditure**

The Parties agree and acknowledge that WYCA may procure goods and services on behalf of Rail North by making a direct charge to the Rail North bank accounts within the WYCA finance system. The Parties agree that the provision of mobile telephones to Rail North Employees, office stationery, recruitment advertising and business travel and accommodation in respect of Rail North shall be charged by WYCA to Rail North on this basis.

### **8.4 WYCA Host Services Fee and Recharges**

8.4.1 Rail North shall pay WYCA a fixed fee in respect of all of the services to be provided by WYCA to Rail North in accordance with this Agreement, excluding the employment costs payable in accordance with clause 8.2 (the "**WYCA Host Services Fee**").

8.4.2 The WYCA Host Services Fee for the Financial Year 2016-2017 will be £35,000 and shall be Indexed annually thereafter. The WYCA Host Services Fee for the Financial Year 2016-2017 shall be payable on or before 30 September 2016. The Parties acknowledge that the WYCA Host Services Fee for the Financial Year 2015-2016 has been paid.

8.4.3 The Parties agree that 3 months prior to the start of the 2019-2020 Financial Year, they shall review the WYCA Host Services Fee and agree any changes to be made to the WYCA Host Services Fee which will have effect from the start of the 2019-2020 Financial Year.

8.4.4 The Parties agree that where WYCA carries out work and/or provides services to a Member in relation to Rail North Matters, WYCA shall invoice the Member directly on behalf of Rail North for such work/services.

## 8.5 Banking Arrangements and Accounts

- 8.5.1 The Parties acknowledge that the banking arrangements shall be as set out in clause 20.2 of the Members' Agreement, save where the Parties otherwise agree pursuant to the Members' Agreement.
- 8.5.2 WYCA shall procure that the Rail North Lead Officer and any other person authorised by the Rail North Lead Officer is afforded access to WYCA's finance management system for the purposes of managing the Budgets within such finance management system.
- 8.5.3 WYCA shall prepare (or shall procure the preparation of) annual accounts for Rail North in respect of each Financial Year and shall provide to the Rail North Lead Officer quarterly reports on income, expenditure and performance against the Budget. WYCA shall procure that the accounts of Rail North in respect of each Financial Year are prepared in accordance with UK GAAP as expeditiously as possible following the end of each Financial Year.
- 8.5.4 WYCA shall procure that the costs and revenues of each of the Secretary of State and Rail North are clearly identified in the accounts prepared in accordance with clause 8.5.3 above.

## 8.6 Audit Arrangements

WYCA shall be responsible for the appointment of Auditors and shall procure that the accounts of Rail North Ltd in respect of each Financial Year are prepared in accordance with UK GAAP and referred to the Auditors as expeditiously as possible following the end of each Financial Year.

## 9. CHANGES TO THIS AGREEMENT

- 9.1 If any Party wishes to propose a Change to this Agreement, it shall do so by serving a notice of change ("**Agreement Change Notice**") on the other Party. Such notice shall set out the particulars of the proposed Change together with any cost impact.
- 9.2 Within ten (10) Working Days of receipt of the Agreement Change Notice, the receiving party may respond to the Agreement Change Notice confirming or rejecting the Change and providing reasons.
- 9.3 Where no response or no rejections to the Agreement Change Notice have been received pursuant to clause 14.2, the Change shall be deemed to be agreed on the terms set out in the Agreement Change Notice.
- 9.4 Where the receiving party rejects the proposed Change and the party proposing the Change wishes to challenge the rejection of the Change, the Parties shall meet and use reasonable endeavours to agree amendments to the Change within ten (10) Working Days of the response received pursuant to clause 14.2 so that the Change can be approved. If the Parties fail to agree the proposed Change, the Party proposing the Change shall be entitled to amend the proposed Change and re-submit an Agreement Change Notice pursuant to clause 14.1.
- 9.5 In agreeing a Change the Parties shall act reasonably when agreeing which Party is responsible for the cost of the Change (including any costs of implementation of the Change) and in the absence of agreement, the Party proposing the Change shall bear such (reasonably incurred) costs.

## 10. TERM AND TERMINATION

- 10.1 This Agreement shall commence on the Commencement Date and, subject to clause 10.2, shall continue for the Initial Term unless terminated earlier in accordance with this clause 18.
- 10.2 If Rail North wishes to extend this Agreement beyond the expiry of the Initial Term, it shall give WYCA at least six (6) months written notice prior to the expiry of the Initial Term. If Rail North gives such written notice to WYCA, the Parties shall negotiate in good faith to agree the terms of such extension to this Agreement by no later than three (3) months prior to the expiry of the Initial Term.
- 10.3 If Rail North does not wish to extend this Agreement beyond the Initial Term or the Parties cannot agree the terms of such extension, this Agreement shall expire on the expiry of the Initial Term.
- 10.4 The Parties agree and acknowledge that this Agreement shall terminate:
- 10.4.1 immediately upon termination of the Members' Agreement;
- 10.4.2 in the event that WYCA ceases to be a Member of Rail North, with effect from the date on which WYCA ceases to be a Member of Rail North in accordance with clause 18 of the Members' Agreement, unless the Parties otherwise agree.
- 10.5 Any termination of this Agreement in accordance with this clause 18 shall be without prejudice to any obligations arising as a result of any antecedent breach of this Agreement or any accrued rights.
- 10.6 On termination of this Agreement, WYCA shall provide all data and information required by Rail North to allow Rail North to procure the continuation of the same services as the WYCA Hosting Services for the purposes of fulfilling Rail North's obligations under the Members' Agreement and the Partnership Agreement.

## 11. ASSIGNMENT, TRANSFER AND NOVATION

- 11.1 Subject to clauses 23.2 and 23.3, neither Party shall sub-contract, assign, underlet, charge, sell, bargain, transfer, novate or create or otherwise deal in any way with the benefit of this Agreement in whole or in part.
- 11.2 Rail North shall be entitled to assign, novate or otherwise transfer its rights and obligations under this Agreement to any person having the legal capacity, power and authority to become a party to and to perform the obligations of Rail North under this Agreement, where such person has assumed Rail North's role in respect of delivery of rail services in the North of England.
- 11.3 WYCA shall be entitled to assign, novate or otherwise transfer its rights and obligations under this Agreement to any person having the legal capacity, power and authority to become a party to and to perform its obligations under this Agreement, where such person has assumed WYCA's role in respect of the WYCA Host Services.

## 12. CONFIDENTIALITY

Each Party ("**Receiving Party**") shall keep confidential and not use (without the other Party's ("**Disclosing Party**") written consent) all or any information relating to the Disclosing Party's business supplied by the Disclosing Party pursuant to or as a result of this Agreement,

including information identified by the Disclosing Party as confidential and shall not divulge the same to any third party except to the extent that any such information is or becomes public through no fault of the Receiving Party, or disclosure of the same is required by Law (such as disclosure through the FOIA and/or the EIRs) or by any other governmental or other regulatory body.

### 13. FREEDOM OF INFORMATION

13.1 The Parties acknowledge that they are each subject to the requirements of the FOIA and the EIRs. Each Party shall:

13.1.1 provide all necessary assistance and cooperation (free of charge) as reasonably requested by the other Party ("**Requesting Party**") to enable the Requesting Party to comply with its obligations under the FOIA and the EIRs;

13.1.2 provide the Requesting Party with a copy of all information belonging to the Requesting Party requested in the Request for Information which is in its possession or control in the form that the Requesting Party requires within five (5) Working Days (or such other period as the Requesting Party may reasonably specify) of the Requesting Party's request for such information; and

13.1.3 not respond directly to a Request for Information made to the Requesting Party unless authorised in writing to do so by the Requesting Party. For the avoidance of doubt, if the same Request for Information has been issued to each Party separately, both Parties will be required to comply with their own obligations under the FOIA and/or the EIRs in responding to such a Request for Information.

13.2 Each Party acknowledges that it may be required under the FOIA and the EIRs to disclose information without consulting or obtaining consent from the other Party. Each Party shall take reasonable steps to notify the other Party of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Requesting Party shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs in relation to any Request for Information made to the Requesting Party.

13.3 In relation to other types of requests for information (such as requests outside the scope of the FOIA and/or the EIRs), each Party shall provide, where reasonably practicable within 24 hours and in any event within two (2) Working Days of receipt of a request from the Requesting Party, such information as the Requesting Party may reasonably require in response to any Parliamentary request for information or any other emergency request received from a Crown Body, Chief Officer of Police or other regulatory authority.

### 14. NO WAIVER

No failure to exercise nor delay in exercising any right, power or remedy under or in connection with this Agreement shall operate as a waiver thereof, and no single or partial exercise of any right, power or remedy shall preclude any further or other exercise thereof, or the exercise of any other right or remedy.



**15. NOTICES**

15.1 All notices, notifications, instructions, consents, claims and other communications given under this Agreement shall expressly refer to this Agreement and shall be given or made in writing (which includes electronic mail) and shall be delivered:

15.1.1 if to Rail North, to David Hoggarth;

Address: Wellington House, 40-50 Wellington Street, Leeds, LS1 2DE

Phone no: 0113 348 1881

Email address: [info@railnorth.org](mailto:info@railnorth.org)

15.1.2 if to WYCA, to Director of Resources;

Address: West Yorkshire Combined Authority, Wellington House, 40-50 Wellington Street, Leeds, LS1 2DE

Phone no: 0113 251 7209

Email address: [DR.Office@westyorks-ca.gov.uk](mailto:DR.Office@westyorks-ca.gov.uk)

or such other address as is notified by one Party to the other Party in accordance with this clause 27.

15.2 Each such communication shall, unless proved otherwise or unless in the case of any notification of a failure in delivery (including automatic reports produced), be deemed to have been received:

15.2.1 if personally delivered, at the time of delivery;

15.2.2 if sent by first-class post, on the second Working Day following the date on which posted; and

15.2.3 if sent by electronic mail at the time of receipt.

15.3 All communications shall be sequentially numbered.

**16. LAW AND JURISDICTION**

This Agreement (and any claims arising out of or in connection with it (whether contractual or non-contractual)) shall be governed by, and construed in accordance with, the laws of England and Wales and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

**17. DISPUTE**

17.1 The Parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute or difference of whatever nature between them arising under, out of, or in connection with this Agreement (each such dispute or difference a "**Dispute**").

17.2 Following any referral of a Dispute to the Dispute Resolution Procedure in accordance with the terms of this Agreement, the provisions set out in this clause 29 shall apply.

- 17.3 The Dispute shall initially be referred for resolution to a senior officer of WYCA with sufficient authority to determine the dispute on behalf of WYCA and a senior representative of Rail North nominated by the Board ("**Initial Dispute Board**") who shall seek to resolve the matter as soon as reasonably possible and in any event within twenty (20) Working Days of escalation, or such other period as may be reasonable given the nature of the Dispute, and the urgency of resolution. The Initial Dispute Board shall be entitled to request such additional information as may be reasonably requested from either Rail North or WYCA in respect of the Dispute, including, but not limited to, any information to be provided pursuant to the relevant provisions of this Agreement.
- 17.4 Where the Initial Dispute Board are not able to resolve the matter within twenty (20) Working Days of escalation pursuant to clause 29.3, the Initial Dispute Board shall refer the matter for determination by the head of paid service of WYCA and the Rail North Lead Officer who shall seek to determine the matter within twenty (20) Working Days of escalation, or such other period as may be reasonable given the nature of the Dispute.
- 17.5 If the Parties are unable to resolve the Dispute in accordance with this clause 29, any Party may refer the Dispute to an independent expert for determination ("**Expert**"). The Expert shall be Queen's Counsel appointed by agreement in writing between the Parties (acting reasonably), but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be a Queen's Counsel appointed on the instructions of the president of the Law Society.
- 17.6 The Expert shall act on the following basis:
- 17.6.1 as an expert and not as an arbitrator and shall act fairly and impartially;
  - 17.6.2 the Expert's determination shall be final and binding on the Parties;
  - 17.6.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his/her appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purposes of the determination;
  - 17.6.4 the process shall be conducted in private and shall be confidential; and
  - 17.6.5 the Expert shall not act for either of the Parties individually in connection with the Dispute in any capacity during the term of this Agreement and the duration of the Dispute. The Parties acknowledge and agree that in relation to the Dispute, the Expert is not an agent of, or acting in any capacity for, any of the Parties.

## 18. VARIATION

No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the Parties hereto.

## 19. SEVERANCE

If any provision of this Agreement is found by any judicial or other competent authority to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions of this Agreement which shall remain in full force and effect.

**20. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

No person who is not Party to this Agreement may enforce any term of this Agreement under the Contracts (Rights of Third Parties) Act 1999.

**21. NO PARTNERSHIP**

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.

**22. SURVIVAL**

Notwithstanding the termination or expiry of this Agreement, the provisions of this clause and clauses 24, 25, 27, 16, 29 and 20 shall expressly survive such termination or expiry and continue in full force and effect along with any other clauses of and any schedules to this Agreement necessary to give full and proper effect to those clauses.

**23. COUNTERPARTS**

This Agreement may be entered in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

Executed as a deed and delivered on the date appearing at the beginning of this Deed.

**SIGNATURES**

Executed as a deed and delivered on the date appearing at the beginning of this Deed.

Executed as a deed, but not delivered until the )  
 date specified on this deed, by **RAIL NORTH** )  
**LIMITED** by a director in the presence of a )  
 witness: ) Signature .....

Name (block capitals) .....  
**Director**

Witness signature .....

Witness name .....  
 (block capitals)

Witness address .....  
 .....  
 .....

Given under the Common Seal of the **West Yorkshire Combined Authority** on

The Common Seal of the **WEST** )  
**YORKSHIRE COMBINED AUTHORITY** )  
 was hereunto affixed in the presence of: )

Authorised Signatory .....

Witness signature .....

Witness name .....  
 (block capitals)

Witness address .....  
 .....  
 .....

**SIGNATURES**

Executed as a deed and delivered on the date appearing at the beginning of this Deed.

Executed as a deed, but not delivered until the )  
date specified on this deed, by **RAIL NORTH** )  
**LIMITED** by a director in the presence of a )  
witness: ) Signature \_\_\_\_\_

Name (block capitals) \_\_\_\_\_  
**Director**

Witness signature \_\_\_\_\_

Witness name \_\_\_\_\_  
(block capitals)

Witness address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**THE COMMON SEAL of BLACKBURN** )  
**WITH DARWEN BOROUGH COUNCIL** )  
was hereunto affixed in the presence of: )

Signature .....

Name (block capitals) .....

**Authorised Signatory**

Witness signature .....

Witness name  
(block capitals) .....

Witness address .....

.....

.....

Executed as a deed on the date of this deed by )  
affixing **THE COMMON SEAL** of )  
**BLACKPOOL BOROUGH COUNCIL** in )  
the presence of: )

Signature .....

Name (block capitals) .....  
**Authorised Signatory**

Witness signature .....

Witness name  
(block capitals) .....

Witness address .....  
.....  
.....

Executed as a deed on the date of this deed by )  
affixing **THE COMMON SEAL** of )  
**CHESHIRE EAST COUNCIL** in the )  
presence of: )

Signature .....

Name (block capitals) .....  
**Authorised Signatory**

Witness signature .....

Witness name  
(block capitals) .....

Witness address .....  
.....  
.....



Executed as a deed on the date of this deed by )  
affixing **THE COMMON SEAL** of )  
**CHESHIRE WEST AND CHESTER** )  
**COUNCIL** in the presence of: )

Signature .....

Name (block capitals) .....  
**Authorised Signatory**

Witness signature .....

Witness name  
(block capitals) .....

Witness address .....  
.....  
.....

Executed as a deed on the date of this deed by )  
affixing **THE COMMON SEAL** of **CITY** )  
**OF YORK** in the presence of: )  
)

Signature .....

Name (block capitals) .....  
**Authorised Signatory**

Witness signature .....

Witness name  
(block capitals) .....

Witness address .....  
.....  
.....

Executed as a deed on the date of this deed by )  
affixing **THE COMMON SEAL** of )  
**CUMBRIA COUNTY COUNCIL** in the )  
presence of: )

Signature .....

Name (block capitals) .....  
**Authorised Signatory**

Witness signature .....

Witness name  
(block capitals) .....

Witness address .....  
.....  
.....

**THE COMMON SEAL** of )  
**DARLINGTON BOROUGH COUNCIL** )  
was affixed as its deed in the presence of: )

.....  
**Authorised Signatory**

Witness signature .....

Witness name .....  
(block capitals)

Witness address .....  
.....  
.....

Executed as a deed on the date of this deed by )  
affixing **THE COMMON SEAL** of )  
**DERBYSHIRE COUNTY COUNCIL** in the )  
presence of )

Signature .....

Name (block capitals) .....  
**Authorised Signatory**

Witness signature .....

Witness name  
(block capitals) .....

Witness address .....  
.....  
.....

**THE COMMON SEAL** of **THE EAST** )  
**RIDING OF YORKSHIRE COUNCIL** was )  
hereunto affixed in the presence of: )  
)

Signature .....

Name (block capitals) .....  
**Authorised Signatory**

Witness signature .....

Witness name  
(block capitals) .....

Witness address .....  
.....  
.....

**THE COMMON SEAL of GREATER** )  
**MANCHESTER COMBINED** )  
**AUTHORITY** was hereunto affixed in )  
pursuance of an Order of the said Authority: )

Signature .....

Name (block capitals) .....  
**Authorised Signatory**

Witness signature .....

Witness name  
(block capitals) .....

Witness address .....  
.....  
.....

**THE COMMON SEAL** of **HARTLEPOOL** )  
**BOROUGH COUNCIL** was hereunto affixed )  
in the presence of: )

Signature .....

Name (block capitals) .....  
**Authorised Signatory**

Witness signature .....

Witness name  
(block capitals) .....

Witness address .....  
.....  
.....



The affixing hereto of the Corporate Common )  
Seal of **KINGSTON UPON HULL CITY** )  
**COUNCIL** was affixed hereto in the presence )  
of:

Signature .....

Name (block capitals) .....

**Authorised Signatory**

Witness signature .....

Witness name  
(block capitals) .....

Witness address  
.....  
.....  
.....

Executed as a deed on the date of this deed by )  
affixing **THE COMMON SEAL** of )  
**LANCASHIRE COUNTY COUNCIL** in the )  
presence of: )

Signature .....

Name (block capitals) .....

**Authorised Signatory**

Witness signature .....

Witness name  
(block capitals) .....

Witness address  
.....  
.....  
.....

**EXECUTED** (but not delivered until dated) )  
as a deed by affixing the Common Seal )  
of **LINCOLNSHIRE COUNTY COUNCIL** )  
)  
)  
)

in the presence of:-

.....  
**Authorised Officer Signature**

**Print name:**

Lincolnshire County Council  
County Offices  
Newland  
Lincoln  
LN1 1YS

Witness signature .....

Witness name .....

(block capitals)

Witness address .....

.....  
.....

Executed as a deed, but not delivered until the )  
date specified on this deed, by **LIVERPOOL** )  
**CITY REGION COMBINED** )  
**AUTHORITY** by an Authorised Signatory in )  
the presence of a witness: ) Signed by .....

Louise Outram, Head  
of Legal, Democratic  
Services &  
Procurement –  
**Authorised Signatory**

On Behalf of .....

Witness signature .....

Witness name  
(block capitals) .....

Witness address  
.....  
.....  
.....

Executed as a deed on the date of this deed, by )  
affixing **THE COMMON SEAL** of **THE** )  
**COUNCIL OF THE BOROUGH OF** )  
**MIDDLESBROUGH** in the presence of: )  
)

Signature .....

Name (block capitals) .....  
**Authorised Officer**

Witness signature .....

Witness name  
(block capitals) .....

Witness address .....  
.....  
.....

**IN WITNESS** where of this Agreement has )  
been duly executed as a deed and delivered on )  
the date first before written **THE SEAL** of )  
**THE DURHAM, GATESHEAD,** )  
**NEWCASTLE UPON TYNE, NORTH** )  
**TYNESIDE, NORTHUMBERLAND,** )  
**SOUTH TYNESIDE and SUNDERLAND** )  
**COMBINED AUTHORITY** as hereunto )  
affixed in the presence of:- )

Signature .....

Name (block capitals) .....

**Authorised Signatory**

Witness signature .....

Witness name  
(block capitals) .....

Witness address  
.....  
.....  
.....

Executed as a deed on the date of this deed by )  
affixing **THE COMMON SEAL** of **NORTH** )  
**EAST LINCOLNSHIRE COUNCIL** in the )  
presence of: )

Signature .....

Name (block capitals) .....  
**Authorised Signatory**

Witness signature .....

Witness name  
(block capitals) .....

Witness address .....  
.....  
.....

Executed as a deed on the date of this deed by )  
affixing **THE COMMON SEAL** of **NORTH** )  
**LINCOLNSHIRE** in the presence of: )  
)

Signature .....

Name (block capitals) .....  
**Authorised Signatory**

Witness signature .....

Witness name  
(block capitals) .....

Witness address .....  
.....  
.....



Executed as a deed on the date of this deed by )  
affixing **THE COMMON SEAL** of **NORTH** )  
**YORKSHIRE COUNTY COUNCIL** in the )  
presence of: )

Signature .....  
Name (block capitals) .....  
**Authorised Signatory**

Witness signature .....

Witness name .....  
(block capitals)

Witness address .....  
.....  
.....

Executed as a deed on the date of this deed by )  
affixing **THE COMMON SEAL** of )  
**NOTTINGHAM CITY COUNCIL** in the )  
presence of: )

Signature .....

Name (block capitals) .....  
**Authorised Signatory**

Witness signature .....

Witness name  
(block capitals) .....

Witness address .....  
.....  
.....

Executed as a deed on the date of this deed by )  
affixing **THE COMMON SEAL** of )  
**NOTTINGHAMSHIRE COUNTY** )  
**COUNCIL** in the presence of: )

Signature .....

Name (block capitals) .....  
**Authorised Signatory**

Witness signature .....

Witness name  
(block capitals) .....

Witness address .....  
.....  
.....

Executed as a deed on the date of this deed by )  
affixing **THE COMMON SEAL** of )  
**REDCAR AND CLEVELAND BOROUGH** )  
**COUNCIL** in the presence of: )

Signature .....  
Name (block capitals) .....  
**Authorised Signatory**

Witness signature .....

Witness name  
(block capitals) .....

Witness address .....  
.....  
.....

Executed as a deed on the date of this deed by )  
affixing **THE COMMON SEAL** of )  
**SHEFFIELD CITY REGION COMBINED** )  
**AUTHORITY** in the presence of: )

Signature .....  
Name (block capitals) .....  
**Authorised Signatory**

Witness signature .....

Witness name .....  
(block capitals)

Witness address .....  
.....  
.....

Executed as a deed on the date of this deed by )  
affixing **THE COMMON SEAL** of )  
**STAFFORDSHIRE COUNTY COUNCIL** )  
in the presence of: )

Signature .....  
Name (block capitals) .....  
**Authorised Signatory**

Witness signature .....  
Witness name .....  
(block capitals)  
Witness address .....  
.....  
.....

Executed as a deed on the date of this deed by )  
affixing **THE COMMON SEAL** of )  
**STOCKTON-ON-TEES BOROUGH** )  
**COUNCIL** in the presence of: )

Signature .....  
Name (block capitals) .....  
**Authorised Signatory**

Witness signature .....

Witness name .....  
(block capitals)

Witness address .....  
.....  
.....

Executed as a deed on the date of this deed by )  
affixing **THE COMMON SEAL** of **STOKE-** )  
**ON-TRENT CITY COUNCIL** in the )  
presence of: )

Signature .....

Name (block capitals) .....  
**Authorised Signatory**

Witness signature .....

Witness name  
(block capitals) .....

Witness address .....  
.....  
.....



Executed as a deed on the date of this deed by )  
affixing **THE COMMON SEAL** of )  
**WARRINGTON BOROUGH COUNCIL** in )  
the presence of: )

Signature .....

Name (block capitals) .....  
**Authorised Signatory**

Witness signature .....

Witness name  
(block capitals) .....

Witness address .....  
.....  
.....

**THE COMMON SEAL** of the **WEST** )  
**YORKSHIRE COMBINED AUTHORITY** )  
was hereunto affixed in the presence of: )

**Authorised Signatory** .....

Witness signature .....

Witness name  
(block capitals) .....

Witness address .....

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