|  |  |
| --- | --- |
|  | |
| DATED | 2021 |

1. lead regional transport authority

**‑ and ‑**

1. **Constituent Local Authorities**

**‑ and ‑**

1. **[Transport for wales]**

**‑ and ‑**

1. **[Welsh Ministers]**

**‑ and -**

1. The OPERATORS

|  |  |  |
| --- | --- | --- |
|  | umbrella Agreement  relating to  the partnership for the provision and operation of bus passenger services in [*insert relevant Region in Wales*][[1]](#footnote-2) |  |

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This Agreement is made on 2021

BETWEEN:

1. Lead regional transport authority of [*address*] ("Lead Authority");
2. Constituent Local Authorities listed at Schedule 1 herein;
3. [Transport for wales of 3 Llys Cadwyn, Pontrypridd, Wales, CF37 4TH[[2]](#footnote-3) (**"TfW"**);]
4. [Welsh Ministers] ("Welsh Government")]; and
5. THE OPERATORS listed at Schedule 2 herein,

(together being "Parties" and each being a "Party").[[3]](#footnote-4)

BACKGROUND:

1. The Welsh Government has been taking action to help bus operators in Wales, including the Operators, get through the inevitable uncertainty of COVID-19 affected operating conditions. Funding has been provided by the Welsh Government to the Lead Authority, which has been distributed by the Lead Authority to bus operators in Wales pursuant to the Bus Hardship Funding letter dated 2 April 2020, the Bus Emergency Scheme 1 letter, Bus Emergency Scheme 1.5 letter and most recently the Bus Emergency Scheme 2 agreement (**“BES 2”**). Those documents set out conditions to the Operator receiving such funding.
2. The terms of BES 2 refer to moving to a lasting partnership, which is intended to enable a fundamental reshaping of Wales' local bus services, through a new approach to managing services, sharing data and information and establishing standards for routes, services, fares and tickets to meet the needs of passengers in a world affected by COVID-19, climate change, new transport choices and changes to working patterns. It is intended that this framework for long term partnership will cover both supported and commercial bus services into the future, noting that Constituent Local Authorities still remain responsible for securing services pursuant to section 63 Transport Act 1985.
3. The Parties therefore wish to formalise their partnership by entering into this umbrella agreement in the form of a voluntary partnership agreement (as described in section 46 of the Local Transport Act 2008, amending section 153(2) of the Transport Act 2000) in relation to bus services in the Region (**"Agreement"**). This Agreement shall form a framework agreement with the Parties having the option to discuss the introduction of QPS at a local level in accordance with the terms of this Agreement and if thought desirable entering into supporting local voluntary partnership agreements either to the QPS or to this Agreement (**"Local VPAs"**), in accordance with the terms of this Agreement. It is acknowledged that one or more QPS at a local level may supplement this Agreement, by allowing only those operators prepared to provide services to the standards specified in such QPS being permitted to use facilities provided by the Lead Authority and/or the relevant Constituent Local Authorities to encourage bus use which are the subject of such QPS. It is also acknowledged that one or more Local VPAs at a local level may supplement this Agreement, which may define specific commercial agreements the parties have reached on a local or specific route basis.
4. The Parties wish to enter into this Agreement for the purpose of achieving the Partnership Obligations, including the provision of the Services and the Reference Network (**"Purpose"**), and other operators of local bus services may accede to this Agreement in accordance with its terms to further achieve such Partnership Obligations.
5. This Agreement is intended to provide a framework for partnership working between the Public Sector Parties and the Operators, which can be built upon over the coming years, including to secure co-production in the design and delivery of bus transport services, increase patronage, improve journey times and reduce variability thereof. In particular the Constituent Local Authorities shall take action to enhance highways infrastructure, bus facilities and service information, subject to the availability of funding.
6. The contribution of the Lead Authority, other Constituent Local Authorities, Welsh Government and TfW to delivering quicker, more reliable and predictable services through traffic and congestion reduction and the introduction and improvement of bus priority is crucial to the successful delivery of bus services.
7. During the partnership, Corporate Joint Committees might be established in the Region under Local Government and Elections (Wales) Act 2021 and that such Corporate Joint Committees may become a Party to this Agreement.
8. The Parties agree that it is their intention that this Agreement will assist in achieving the Bus Improvement Objectives. The Lead Authority and the Constituent Local Authorities have considered and applied the Part 2 Competition Test and the Lead Authority (on behalf of itself and the Constituent Local Authorities) has agreed that the Agreement is an exempt voluntary multilateral partnership agreement within the meaning of paragraph 22(1) of Schedule 10, Part 2 of the Transport Act 2000, and accordingly the prohibition at paragraph 20 of Schedule 10, Part 2 of the Transport Act 2000 should not apply.

## ***EXPLANATORY NOTE***

### *This Agreement is a voluntary partnership framework agreement, being an agreement between relevant bus operators and relevant councils/transport authorities. It clearly defines the area/route the agreement will apply to and reflects the commercial agreement of the parties entering into it. This Agreement provides an umbrella governance for the partnership, setting out key aspirations and objectives.*

## *This Agreement may also be supported by quality partnership schemes for a particular route (or routes) within a specific Local Authority Area which this Agreement covers. QPS is a regulatory scheme which applies to all operators who make use of the facilities specified in the scheme. The scheme will set minimum standards which the operators have to achieve to use certain specified facilities along with specifying the support and investment required by the relevant local authorities in relation to such specified facilities, in accordance with the Transport Act 2000. QPS is progressed when no admissible objections have been received from any bus operators in the area following a consultation, where the relevant local authority is satisfied that the QPS is permitted by the Part 1 Competition Test. QPS can only be amended through statutory procedures and not simply by agreement of the parties. Enforcement of QPS is through the service registration process, operators of services caught by the scheme risk traffic commissioner enforcement, potential de-registration of their service and potentially wider action against their operating licences if they persist in non-compliance with a scheme.*

### *This Agreement may also be supported by supplemental local voluntary partnership agreements, which may be entered into on a local basis for a specific Local Authority Area or specified area which this Agreement covers. Such local VPAs can clearly define specific commercial agreements the parties have reached on a local, specific route (or routes) basis, adhering to the governance of the umbrella agreement. Local VPAs are beneficial as they may set higher standards than QPS. Local VPAs may include specific commitments placed on both the operators and the relevant local authorities where this is permitted by the Part 2 Competition Test.*

*Qualifying agreements may also be used to support this Agreement. Qualifying agreements in this context are made between bus operators only and are certified by the relevant Constituent Local Authority. A typical qualifying agreement might contain agreement about the frequencies and timings of the different operators' services to provide passengers with a service with a regular headway. Use may also be made of the Public Transport Ticketing Schemes Block Exemption Regulations to provide for joint acceptance of tickets on the corridor, so that passengers can make use of any bus to travel up the corridor.*

IT IS AGREED:

# Definitions and interpretation

## In this Agreement:

## Unless the context otherwise requires, the following expressions shall have the meanings set out below:

|  |  |
| --- | --- |
| **"ADR Notice"** | has the meaning given to it in clause 14.3; |
| **"Agreement"** | has the meaning given to it in Recital C; |
| **"BES 2"** | has the meaning given to it in Recital A; |
| **"BSSG"** | means Bus Services Support Grant awarded to a Lead Authority by Welsh Government to support and maintain the core strategic bus network, improve connectivity and quality, provide certain bus and other local transport services, and develop close and effective partnership working; |
| **"Change in COVID-19 Impact Event"** | means any new event or circumstances (or change to event or circumstances) which occurs following the Effective Date which arise as a direct result of COVID-19 and which adversely impacts a Party’s ability to perform its obligations under this Agreement including but not limited to the introduction of lockdown measures, travel restrictions or amended social distancing measures in Wales and/or an adjacent part of England; |
| **"Bus Improvement Objectives"** | means the following objectives stated as being the bus improvement objectives as per Paragraph 2(3) of Schedule 10 of the Transport Act 2000 in the Part 2 Competition Test:  * + 1. securing improvements in the quality of vehicles or facilities used for or in connection with the provision of local services;     2. securing other improvements in local services of substantial benefit to users of local services; and     3. reducing or limiting traffic congestion, noise or air pollution; |
| **"CMA"** | means the Competition and Markets Authority of Victoria House, Southampton Row, London WC1B 4AD; |
| **"Confidential Information"** | means in relation to a Disclosing Party:  * + 1. information of whatever nature concerning the business, assets, liabilities, dealings, transactions, policies or affairs of the Disclosing Party including all trade secrets, financial, marketing and technical information, ideas, concepts, technology, processes, knowledge and know‑how, together with all details of a Disclosing Party's, customers, suppliers, prices, discounts, margins, information relating to research and development, current trading performance and future policy or business strategy and all other information of a like nature; and |
|  | * + 1. any information which is expressly indicated to be confidential or commercially sensitive or which, due to the nature and circumstances of its disclosure or its content might reasonably be considered to be confidential (whether or not marked as such), |
|  | in each case in whatever form or medium (including written, electronic, visual and oral) such information is recorded or kept and whether or not created for the purpose of entering into this Agreement or otherwise; |
| **"****Constituent Local Authorities"** | means the local authorities listed in Schedule 1 and **“****Constituent Local Authority”** shall be construed accordingly; |
| **“Corporate Joint Committee”** | has the meaning given to it in section 68 of the Local Government and Elections (Wales) Act 2021; |
| **"COVID-19"** | means the virus identified and named "COVID-19 virus" by the World Health Organisation which was characterised as a pandemic by the Word Health Organisation on 11 March 2020; |
| **"Data Protection Laws"** | means the UK GDPR and the Data Protection Act 2018, together with the Privacy and Electronic Communication Regulations 2003 and all codes of practice issued by the Information Commissioner; |
| **"Defaulting Party"** | means a Party who commits a material breach of its obligations under this Agreement; |
| **"Disclosing Party"** | means a Party that discloses Confidential Information to one or more Receiving Parties under this Agreement; |
| **"Dispute"** | means a dispute or difference arising out of or in connection with this Agreement or any such matter which a Party deems (acting reasonably) to constitute a dispute; |
| **"Draft QPS"** | has the meaning given to it in clause 3.1(a); |
| **"Economic Contract"** | has the meaning given to it in the Welsh Government "Prosperity for All - Economic Action Plan"; |
| **"Effective Date"** | means the date of this Agreement; |
| **"EIR"** | means the Environmental Information Regulations 2004; |
| **"Fees Regulations"** | means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004; |
| **"FOIA"** | means the Freedom of Information Act 2000; |
| **"Force Majeure Event"** | means any event or occurrence (including fire, flood, violent storm, pestilence, explosion, malicious damage, act of terrorism, epidemic, pandemic, any industrial action by the workforce of an affected Party or by the workforce of a critical or key supplier, armed conflict, acts of terrorism, nuclear, biological or chemical warfare, or any other disaster, natural or man‑made) which:  * + 1. without prejudice to the operation of clause 12.3(c), the affected Party could not reasonably have provided against before entering into this Agreement;     2. materially adversely affects the ability of a Party to perform its obligations (in whole or in part) under this Agreement;     3. which is outside the reasonable control of an affected Party;     4. having arisen, could not reasonably be avoided or overcome by the affected Party;     5. occurs in the United Kingdom; and     6. is not attributable to any act or failure to take reasonable preventative action by an affected Party; |
| **"Infrastructure Improvements"** | means infrastructure improvements including but not limited to, physical, electronic and technological means by which buses are afforded more advantageous use of road space and/or road priorities in order to reduce journey times and/or the variability thereof and improve operational efficiency; |
| **"Insolvent Party"** | has the meaning given to it clause 12.2; |
| **"Intellectual Property Rights"** | means patents, rights to inventions, copyright and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world; |
| **"Joint Rectification Period"** | has the meaning given to it in clause 12.1(b); |
| **"Legislation"** | means any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any Welsh law within the meaning given to it in section 1(3) of the Legislation (Wales) Act 2019, any exercise of the Royal Prerogative, and any enforceable EU right within the meaning of Section 2 of the European Communities Act 1972 (as amended), in each case in the United Kingdom; |
| **“Local Authority Area”** | means a principal area of Wales as defined in section 20(5) Local Government Act 1972 for which a Constituent Local Authority is responsible pursuant to section 21(1) Local Government Act 1972; |
| **"Local Service"** | has the meaning given to it in the section 2 of the Transport Act 1985 and for the avoidance of doubt, this shall not include services which are not registrable pursuant to section 6 of the Transport Act 1985, including any services which are provided where a railway service is temporarily interrupted under section 40 Railways Act 2005; |
| **"Local VPAs"** | has the meaning given to it in Recital C; |
| **"Operator Data"** | means Operator data required to be provided under this Agreement which are confidential or commercially sensitive to the Operator; |
| **"Operators"** | means the operators listed in Schedule 2 and **"Operator"** shall be construed accordingly; |
| **"Part 1 Competition Test"** | means the test for making and varying quality partnership schemes, making and varying ticketing schemes, and inviting and accepting tenders under section 89 or 91 of the Transport Act 1985 (subsidised services) as set out in Schedule 10, Part 1 to the Transport Act 2000 as modified; |
| **"Part 2 Competition Test"** | means the test for certain agreements, decisions and practices as set out in Schedule 10, Part 2 to the Transport Act 2000 as modified; |
| **"Partnership Area"** | means the integrated transport area for the Region as identified by the shaded areas on the map appended Schedule 5 (as defined in the Local Transport Act 2008); |
| **"Partnership Board"** | has the meaning given to it in clause 4.1(a); |
| **"Partnership Obligations"** | means the partnership obligations as specified in Schedule  3; |
| **"Priorities"** | [means the following:  * + 1. supporting learners’ journeys to school or college on registered local bus services;     2. increasing frequencies where demand exceeds capacity;     3. improving accessibility to jobs and services across our regions and communities;     4. supporting economic recovery; and     5. ensuring social inclusion;] |
| **"Public Sector Parties"** | means Welsh Government, TfW, the Lead Authority and the Constituent Local Authorities and each a **"Public Sector Party"**; |
| **"Purpose"** | has the meaning given to it in Recital D; |
| **"Quality Partnership Schemes" or "QPS"** | means a quality partnership scheme as specified in section 114(1) Transport Act 2000; |
| **"Qualifying Agreement"** | means an agreement between bus operators only within the meaning of paragraphs 17(4) of Schedule 10 of the Transport Act 2000 as amended by Schedule 2 of the Local Transport Act 2008; |
| **"Receiving Party"** | means a Party which receives Confidential Information from a Disclosing Party; |
| **"Rectification Period"** | has the meaning given to it in clause 12.1(a)(i); |
| **"Reference Network"** | [means a reference bus network for the Region which has been developed pursuant to the terms of BES 2 and which may be varied from time to time in accordance with the terms of this Agreement or any other partnership arrangements developed in accordance with its terms;][[4]](#footnote-5) |
| **"Region"** | means [                    ]; |
| **"Remedial Action Plan"** | has the meaning given to it in clause 12.1(a)(i); |
| **"Request for Information"** | shall have the meaning set out in the FOIA or any request for information under the FOIA; |
| **"Route"** | means a route, series of routes and/or sections of routes operated by an Operator forming part of the Reference Network; |
| **"Service"** | means a local bus service operated by an Operator along a Route; |
| **"Service Standards"** | [means the set of service standards, agreed as part of the development of the Reference Network pursuant to the terms of BES 2, which will apply to different classifications of routes across Wales;][[5]](#footnote-6) |
| **"Subsidy Control and Procurement Constraints"** | has the meaning given to it in clause 9.2; |
| **"Term"** | has the meaning given to it in clause 2.1; |
| **"UK GDPR"** | means the EU General Data Protection Regulation 2016/679 of the European Parliament and of the Council, as transposed into the laws of the United Kingdom by operation of section 3 of the European Union (Withdrawal) Act 2018, and as amended from time to time; |
| **"Welsh Bus Open Data Agreement"** | means the agreement to be entered into between (1) TfW and (2) the Operator in relation to the Operator providing certain data to TfW which will enable TfW to build a consistent data set for all services in Wales to improve services for passengers; and |
| **"Working Days"** | means any day of the week other than a Saturday, Sunday or Bank Holiday. |

## the Schedule(s) form part of this Agreement and will have the same force and effect as if set out in the body of this Agreement and any reference to this Agreement shall include the Schedule(s);

## references to clauses or paragraphs appearing in the main body of this Agreement are, except where expressly stated to the contrary, references to clauses and paragraphs of this Agreement;

## references to any part or paragraph appearing within a Schedule are, except where expressly stated to the contrary, references to such part or paragraph of that Schedule;

## references to this Agreement are references to this Agreement as varied, assigned and/or novated in accordance with the provisions of this Agreement from time to time;

## references to any other agreement or document are to such agreement or document as varied, assigned or novated from time to time; and

## any reference to any Legislation will include any subordinate legislation made under it and will be construed as a reference to such Legislation as modified, amended, extended, consolidated, re‑enacted and/or replaced and in force from time to time.

# commencement and purpose

## This Agreement shall commence on the Effective Date and shall initially continue in force for a period of five (5) years from the Effective Date unless terminated earlier in accordance with the terms of this Agreement (**"Term"**).

## No later than six (6) months prior to the end of the Term, the Parties shall meet to consider the next stage of their partnership and whether it is appropriate to extend the Term or enter into another agreement in respect of the continued delivery of the Partnership Obligations.[[6]](#footnote-7)

## During the Term, the Parties shall use all reasonable endeavours to cooperate and collaborate with one another in order to achieve the Purpose.

## The Lead Authority shall notify and provide details to the other Parties of any operator who wishes to accede to this Agreement. Provided that an operator can demonstrate, acting reasonably, that they are capable of complying with the obligations of an Operator under this Agreement and the Partnership Obligations, the Lead Authority shall confirm to the new party that it can accede to this Agreement.

# SUPPLEMENTAL Schemes and/or Agreements

## **Quality Partnership Schemes**

### The Parties acknowledge that during the Term of this Agreement, any Party may propose that a QPS may be beneficial in supporting the achievement of the Purpose. The relevant Constituent Local Authorities shall seek to agree with the other parties, such proposals for a QPS (**"Draft QPS"**) in a form to be agreed between the parties (acting reasonably), provided that:

#### agreeing the form of such Draft QPS shall only apply in respect of those Operators who operate Services within the area (which may be a specific Route or Local Authority Area) to which the QPS would relate;

#### agreeing a QPS shall be subject to the co-operation of the Constituent Local Authorities for the Local Authority Areas to which the QPS would relate;

#### the Parties shall consider whether it would be appropriate to enter into a Local VPA in support of such QPS in accordance with clause 3.2(a); and

#### the Lead Authority and the relevant Constituent Local Authorities being satisfied that the Part 1 Competition Test is satisfied in respect of the operation of such QPS,

where pursuant to this Agreement, the Lead Authority and the relevant Constituent Local Authorities are satisfied that an appropriate Draft QPS has been agreed, or substantially agreed, with those operators who would be affected by such Draft QPS, then the relevant Constituent Local Authorities shall be entitled to proceed with such QPS in accordance with the requirements of the Transport Act 2000 and without prejudice to such rights that relevant operators have to object as set out in the Transport Act 2000.

## **Local Voluntary Partnership Agreement to support QPS**

### The Parties acknowledge that during the Term of this Agreement, where it is proposed to introduce a QPS in an area, one or more relevant Operators who are affected by such QPS, TfW, the Lead Authority and the relevant Constituent Local Authorities, may agree that such QPS should be supported by, or enhanced, by the entry into a Local VPA which may list specific Infrastructure Improvements agreed for a specific Route. The relevant parties shall seek to agree and execute such Local VPAs that support or enhance the delivery of benefits of a QPS delivered in accordance with clause 3.1(a), in a form to be agreed between the parties (acting reasonably), setting out the parties agreement, provided that:

#### agreeing and executing a Local VPA shall only apply in respect of those Operators who operate Services within the area (which may be a specific Route or Local Authority Area) to which a Local VPA relates;

#### agreeing and executing a Local VPA shall be subject to the co-operation of the Lead Authority and the relevant Constituent Local Authorities in each Local Authority Area to which a Local VPA relates; and

#### the parties to such Local VPA being satisfied that where relevant the Part 2 Competition Test is satisfied in respect of the operation of such Local VPA,

and provided that each relevant party continues to act in good faith to seek to agree the terms of each Local VPA as soon as reasonably practicable then no party shall be in breach of this Agreement where they fail to enter into a Local VPA.

## **Local Voluntary Partnership Agreements to support this Agreement**

### The Parties acknowledge that during the Term of this Agreement any Party may propose that this Agreement should be supported by, or enhanced, by the entry into a Local VPA which may list specific Infrastructure Improvements agreed for a specific Route. The relevant parties shall seek to agree and execute such Local VPAs that support or enhance the delivery of benefits of this Agreement, in a form to be agreed between the parties (acting reasonably), which shall set out the parties agreement, provided that:

#### agreeing and executing such Local VPAs shall only apply in respect of those Operators who operate Services within the area (which may be a specific Route or Local Authority Area) to which a Local VPA relates;

#### agreeing and executing such Local VPAs shall be subject to the co-operation of the Lead Authority and the relevant Constituent Local Authorities in each Local Authority Area to which the Local VPA relates; and

#### the parties to such Local VPA being satisfied that where relevant the Part 2 Competition Test is satisfied in respect of the operation of such Local VPA,

and provided that each relevant Party continues to act in good faith to seek to agree the terms of each Local VPA as soon as reasonably practicable then no party shall be in breach of this Agreement where they fail to enter into a Local VPA.

## **Qualifying Agreements**

### Where a Lead Authority and/or Constituent Local Authority or one or more Operators identifies an instance where a Qualifying Agreement between two or more Operators may be appropriate in order to:

#### further the Bus Improvement Objectives; and/or

#### give effect to a principle expressed in this Agreement,

provided that any such Qualifying Agreement is permitted by competition laws , then the Lead Authority and/or the relevant Constituent Local Authorities may enter into discussions with the Operators concerned. Following such discussions, if the Lead Authority and/or the relevant Constituent Local Authorities is satisfied that the Part 2 Competition Test is met, the Operators may enter into an agreement compliant with the Part 2 Competition Test and the Lead Authority and/or the relevant Constituent Local Authorities shall certify such agreement as a Qualifying Agreement in the form attached at Schedule 4.

# Governance[[7]](#footnote-8)

## **Partnership Board**

### The Parties shall establish a partnership board (**"Partnership Board"**) to provide a forum to:

#### [set the strategy and objectives of the partnership as set out in this Agreement;

#### monitor and report on the performance of the partnership;

#### consider and attempt to resolve disputes; and

#### consider any changes to the Reference Network.][[8]](#footnote-9)

### The Partnership Board shall meet on a [*quarterly*][[9]](#footnote-10) basis and be chaired by [                     ][[10]](#footnote-11) or their replacement and/or proxy, as may be notified from time to time by the Lead Authority to the Parties. [A Party may by 30 days' written request to the Partnership Board, request that a meeting is held sooner, providing reasons for this request in the notice.]

### [Twenty (20) Working Days] before a meeting of the Partnership Board, the Lead Authority shall prepare and circulate a proposed agenda for the meeting to each member of the Partnership Board. Each of the Operators may propose additional items to the agenda [ten (10) Working Days] before the meeting of the Partnership Board. The Operators shall circulate, at least 48 hours in advance of the meeting, any related reports or documents required or reasonably requested by any other member for consideration at or subsequent to any meeting.

### The Partnership Board shall comprise of the following members:

#### [at least one representative from [ ]; and

#### [at least one representative from [ ].][[11]](#footnote-12)

### The identity of the representatives of each member may be rotated without notice and as frequently as each member sees fit provided that each representative is properly affiliated with the relevant member(s).

### At least [twenty (20) Working Days'] written notice of a meeting shall be given to each member. The quorum for each meeting shall be [ ].[[12]](#footnote-13)

### At a meeting of the Partnership Board, on a show of hands the representatives of the members shall have the following voting rights:

#### [ ] – [ ]% in total; and

#### [ ] – [ ]% in total.[[13]](#footnote-14)

### The Parties acknowledge that the voting rights of the Operators shall be reviewed and adjusted when a new Operator accedes to this Agreement or a selling Operator novates this Agreement to a new Operator in accordance with clause 19.2.

# Parties' Obligations

## The Parties acknowledge and agree that Partnership Obligations underpin this Agreement, and that in carrying out the commitments specified in this clause 5 each Party shall always have regard to the achievement of those Partnership Obligations in the way that they perform such commitments.

## The Parties acknowledge that their commitments are:

## **Public Sector Party**

## [                     ].

## **Operator**

## [                    ][[14]](#footnote-15)

# Reference Network Review[[15]](#footnote-16)

## The Parties acknowledge and agree that the Reference Network has been defined pursuant to the terms of BES 2.

## The Parties acknowledge and agree that for the purposes of continued improvement in the provision of local bus services in Wales, it will be necessary to periodically review and develop the Reference Network which sets out the target requirements for routes and services to be provided across Wales. The Reference Network shall be reviewed and developed in response to changing passenger demand and patterns of travel, with adjustments to timetables and routes being made where necessary to integrate services with other bus services and modes of transport to provide passengers with improved journey times and a better experience of public transport. The Parties agree that the Reference Network shall be developed for the Region in line with the local and regional rankings of the Priorities and in support of a coherent Wales wide Reference Network.

## The review and development of the Reference Network shall include:

### use of data provided by the Parties;

### consideration of regional strategic Priorities for the provision of Local Services;

### examination of existing routes;

### exploration of options for new routes;

### the viability and affordability of the existing and proposed new routes;

### consideration of investment or other measures that may be required to support any revised Reference Network; and

### consideration of the Service Standards.

# Change PROCEDURE

## The Parties acknowledge and agree that from time to time during the Term, any Party may request a change to this Agreement. A Party may present its proposal for change to the Partnership Board who shall consider the proposal within [ ] days.

## Where the Parties unanimously agree to amend this Agreement, the Lead Authority shall take all reasonable steps to implement those amendments to the Agreement as soon as reasonably practicable, but in no event later than [ ] months after the amendment has been agreed. The Parties acknowledge that any changes agreed pursuant to this clause, are not subject to the general amendment clause at clause 20.

## If any changes are required to any Local VPA, the relevant Parties shall use reasonable endeavours to agree such amendments to such Local VPA. The Parties acknowledge that where such changes are not capable of acceptance by the relevant counterparty of the Local VPA, such relevant Party shall not be deemed in breach of this clause.

# PERFORMANCE aSSESSMENT

## **Performance Indicators**

### The Parties acknowledge that the Lead Authority shall [continuously] monitor the performance of the Services during the Term.[[16]](#footnote-17)

### The Parties agree to complete a periodic review[[17]](#footnote-18) of the Reference Network and actions committed to or otherwise agreed by the Parties to consider the success of the partnership under the following headings:

#### [increased patronage;

#### accessibility to local bus services ensuring social inclusion;

#### improved journey times and reduced variability thereof;

#### economic recovery; and

#### any others determined to be required for the specific partnership.]

## **Local VPA KPIs**

### The Parties acknowledge that specific key performance indicators may be agreed within the Local VPAs, which the relevant parties may be obliged to comply with.

# funding and Constraints

## . Each Party shall be responsible for funding their own obligations under this Agreement (provided that it is acknowledged that the Operators may have access to funding pursuant to BES 2 or otherwise from Welsh Government or Constituent Local Authorities during the Term), save where the funding of any obligation is expressly specified, and otherwise in accordance with this clause 9.

## It is acknowledged that funding from (or provisions of works, services or supplies which have been funded by) Welsh Government is subject to constraints on public spending, including the application of UK rules in respect of subsidy control and procurement (**"Subsidy Control and Procurement Constraints"**). It is acknowledged that Welsh Government, TfW and the Lead Authority shall not be required to fund or deliver anything pursuant to this Agreement which would be in breach of such requirements.

## Where any Party is unable to perform an obligation under this Agreement due to Subsidy Control and Procurement Constraints the Parties agree to work together in good faith to determine those changes required to this Agreement whilst not breaching such requirements. It is acknowledged that this may include the Parties working together to identify exemptions which may be applicable and where necessary engaging with third parties including the CMA in order to implement the terms of this Agreement.

# Open Data Agreement[[18]](#footnote-19)

## The Parties acknowledge that pursuant to the terms of BES 2, each Operator is required to enter into the Welsh Bus Open Data Agreement. The Operators agree that, to the extent that they have not already entered into the Welsh Bus Open Data Agreement on signing this Agreement, they shall also enter into the Welsh Bus Open Data Agreement as soon as is reasonably practicable and in any event within [three (3) months] of signing this Agreement. In the event where a new operator accedes to this Agreement in accordance with clause 2.4, the Lead Authority shall use reasonable endeavours to procure that such acceding operator enters into the Welsh Bus Open Data Agreement within [three (3) months] of the date of accession to this Agreement.

## The Parties agree that in the event of a conflict between the terms of the Welsh Bus Open Data Agreement and this Agreement, the Parties agree that this Agreement shall take priority during the Term of this Agreement and upon termination or expiry of this Agreement, the Welsh Bus Open Data Agreement shall take priority.

# Intellectual Property Rights

* 1. To the extent that any Intellectual Property Rights are generated, other than pursuant to the terms of the Welsh Bus Open Data Agreement, the Parties agree that such Intellectual Property Rights shall be maintained for the benefit of the partnership and:

## the Intellectual Property Rights shall remain the absolute property of the Party which generated such rights; and

## each such Party shall hereby grant to each other Party a perpetual, irrevocable, non-exclusive, fully paid up and royalty free licence (with the right to sub-licence) to use such Intellectual Property Rights for any purpose relating to this Agreement or any successor partnership or other arrangement relating to the provision of local bus services within the Partnership Area.

# TERmination

* 1. This Agreement, or a Party's participation in this Agreement, may be terminated in accordance with the provisions of this clause 12.[[19]](#footnote-20)

## **Defaulting Party Material Breach**

* 1. If during the Term of this Agreement:

### any Party has committed a material breach of its obligations under this Agreement:

#### the Partnership Board may by written notice inform the Defaulting Party setting out details of the breach. Following any such notification, the Defaulting Party shall have [20 Working Days] (**"Rectification Period"**) to rectify such breach. Where such breach has not been rectified within the Rectification Period, the Defaulting Party shall prepare a remedial action plan setting out:

##### details of the material breach(es);

##### detailed reasons for the material breach(es);

##### any proposed mitigation measures in respect of the breach(es) prior to rectification; and

##### a detailed plan as to how the Defaulting Party intends to remedy the breach(es), including timescales and required actions,

(**"Remedial Action Plan"**). For the avoidance of doubt this Remedial Action Plan is separate from and not linked to any action plan under any secured service contract between an Operator and the Lead Authority or the relevant Constituent Local Authorities;

#### the Remedial Action Plan shall be presented at the next meeting of the Partnership Board. The Partnership Board shall consider:

##### the contents of the Remedial Action Plan; and

##### whether it conflicts with any other Remedial Action Plans.

The Partnership Board shall agree the final form Remedial Action Plan.  The Parties agree that in voting on the final form Remedial Action, the Defaulting Party shall not be entitled to vote on the decision. The Defaulting Party shall adhere to this final form of Remedial Action Plan.

#### if a Defaulting Party either:

##### fails to comply with any material terms of its Remedial Action Plan; or

##### fails to agree a Remedial Action Plan with the Partnership Board and any relevant material breach is continuing,

then the Parties agree that damages shall not be an adequate remedy for the failure to comply with the Remedial Action Plan and/or rectify the material breach and the non-Defaulting Party(ies) shall be entitled to seek an order of specific performance, compelling the Defaulting Party to perform its obligations under the Remedial Action Plan or rectify the material breach to the extent permitted by competition laws; or

### more than one Party has committed a breach of their material obligations under this Agreement and either such breaches are related or, the steps needed to rectify such breaches require the co-operation of more than one Defaulting Party, the Partnership Board shall by written notice inform the relevant Defaulting Parties. The Defaulting Parties shall have [two (2) months] (**"Joint Rectification Period"**) to rectify such breach, and where joint action is required by the parties then the Partnership Board shall act in good faith (but at no additional material cost) in supporting any required action. Where such breach has not been rectified within the Joint Rectification Period then each Defaulting Party shall prepare a Remedial Action which shall be presented at the next meeting of the Partnership Board and the Partnership Board shall:

#### collectively review each Remedial Action Plan in line with the points set out in clause 12.1(a)(i);

#### consider whether there are any conflicts between each Remedial Action Plan; and

#### produce a final form Remedial Action Plan. The Parties agree that in voting on this final form Remedial Action Plan, each of the relevant Defaulting Parties shall not be entitled to vote on their Remedial Action Plan. Each of the Defaulting Parties shall adhere to their relevant final form Remedial Action Plan.

### If any of the Defaulting Parties fail to adhere to their Remedial Action Plan by the next appropriate meeting of the Partnership Board and the Parties agree that damages shall not be an adequate remedy for the failure to comply with any of the Remedial Action Plans and/or rectify the breach, the non-Defaulting Party(ies) shall be entitled to an order of specific performance, compelling the relevant Defaulting Party to perform its obligations under the Remedial Action Plan or rectify the material breach to the extent permitted by competition laws.

### If any Defaulting Party is still in material breach of the terms of this Agreement, after following the relevant procedure set out in either clause 12.1(a) or 12.1(b), the Defaulting Party may by written notice from the Partnership Board be terminated from this Agreement, provided that the breach has, and continues to, cause a non-Defaulting Party harm for which it is not provided adequate relief under the terms of this Agreement or has made it impossible for the non-Defaulting Party to perform substantial obligations under this Agreement. For the avoidance of doubt, the termination of such Defaulting Party shall not terminate this Agreement. [If such event occurs, the Partnership Board may also by written notice require the Defaulting Party pay damages to the other Parties, and the Defaulting Party shall pay such damages in accordance with the terms of the notice provided that:

#### such damages shall be determined on the basis of the losses suffered (or likely to be suffered) by those other Parties as a result of such breach (including any failure to rectify such breach in accordance with this clause 12.1); and

#### the Defaulting Party shall be entitled to refer the value of such damages for resolution as a Dispute pursuant to clause 14.][[20]](#footnote-21)

## **Insolvency**

* 1. Any non-Defaulting Party may by written notice terminate the participation in this Agreement of another Party (**"Insolvent Party"**) who:

### passes a resolution for its winding up or summons a meeting to pass any such resolution (other than for the purpose of and followed by a solvent reconstruction or amalgamation);

### has a petition for a winding-up order presented against it (other than for the purpose of and followed by a solvent reconstruction or amalgamation);

### has an application made to court, or an order made, for the appointment of an administrator or any step is taken to appoint an administrator in respect of the Insolvent Party;

### has a receiver, administrative receiver, receiver and manager or similar officer appointed by any person of all or any part of the Insolvent Party's property, assets or undertaking;

### makes a proposal for a voluntary arrangement as defined in Section 1 of the Insolvency Act 1986;

### enters into any other arrangement with its creditors or any of them;

### takes or suffers any other action in consequence of debt including, without limitation, giving notice to its creditors or any of them that it has suspended or is about to suspend payment; or

### has a proposal or threat to do any of the above acts or things made; or an event analogous to the aforesaid occurs in whatever jurisdiction.

## **Continuing Force Majeure**

### No Party shall be liable to any other Party for any delay in, or failure to perform its obligations under this Agreement arising from any Force Majeure Event, provided that the affected Party shall:

#### as soon as reasonably practicable, send to the other Parties a written notice setting out the circumstances of the event and its anticipated effect; and

#### use all reasonable endeavours to minimise the effect of any such circumstances.

### If the affected Party’s ability to perform its obligations under this Agreement is materially adversely affected (in whole or in part) due to a Force Majeure Event continuing for a period of six (6) months or more, any Party (including the affected Party) may terminate the affected Party's participation in this Agreement with immediate effect by serving written notice to the other Parties, **PROVIDED THAT** no such notice shall be served until the Parties have met at the next scheduled meeting of the Partnership Board (or such other meeting which shall be arranged between the Parties for this purpose) in good faith to discuss and seek to agree whether this Agreement should continue in modified form (such agreement not to be unreasonably withheld).

### Notwithstanding any other provision under this Agreement, the Parties agree that they were aware of COVID-19 and that the existence of COVID-19 in itself shall not constitute a Force Majeure event save that a Change in COVID-19 Impact Event may be deemed to be a Force Majeure Event provided it satisfies the criteria set out in sub-paragraphs (b) to (f) (exclusive) of the definition of Force Majeure.

## **Termination by agreement of the Parties**

### The Parties acknowledge and agree that participation of any Party in this Agreement may be terminated immediately on a vote of the Partnership Strategy Board whereby [                     per cent [of the votes] [of the members] agreed to such termination.

### This Agreement shall be terminated in respect of any Party which disposes of its business in accordance with clause 19.2.

### This Agreement shall be terminated in respect of any Operator which no longer holds a Public Service Vehicle operator license in accordance with The Public Service Vehicles (Registration of Local Services) 1986 (as amended by The Public Service Vehicles (Registration of Local Services) (Amendment) Regulations 2018).

### In the event where amendment(s) are required to this Agreement in accordance with clause 18.2, and where the Parties have been unable to agree the extent and nature of such amendment(s) required which has then been referred to the Dispute resolution process in accordance with clause 14, but has still failed to be resolved, the Parties acknowledge and agree that any party may terminate its participation in this Agreement immediately.

## **Effect of Termination**

### The termination of this Agreement for any reason:

#### shall be without prejudice to any rights or obligations which shall have accrued or become due prior to the date of termination; and

#### shall not prejudice the rights or remedies which any Party may have in respect of any breach of the terms of this Agreement prior to the date of termination.

### The termination of the participation of an Operator in this Agreement shall not affect the continuation of this Agreement between the other Parties, and:

#### shall be without prejudice to any rights or obligations of the Operator which shall have accrued or become due prior to the date of termination of its participation in this Agreement; and

#### shall not prejudice the rights or remedies which any Party may have in respect of any breach of the terms of this Agreement by the Operator prior to the date of termination of its participation in this Agreement.

# survival

1. This clause 13 and the following provisions (and any clauses/schedules referred to in them/and or necessary in order to give effect to them) shall survive termination of this Agreement:

## clause 1 (Definitions and interpretation);

## clause 11 (Intellectual Property Rights);

## clause 14 (Dispute Resolution);

## clause 15 (Confidentiality);

## clause 16 (Data Protection);

## clause 17 (Freedom of information); and

## clause 27 (Governing Law and Jurisdiction),

## which shall continue in force after such termination.

# Dispute Resolution

## Where any Dispute arises between one or more Parties out of or in connection with this Agreement, the Parties shall try and resolve the Dispute in good faith. If the Parties are unable to resolve the Dispute within [ ] Working Days the matter shall be referred to the Partnership Board for resolution.

## The Parties shall attempt in good faith to negotiate the settlement of such Dispute at such meeting(s) of the Partnership Board. Any decision, judgement or settlement resulting from a Dispute which is resolved between the Parties shall be recorded in writing, signed by all the Parties involved, and shall be binding on the Parties.

## If the Parties are unable to resolve a Dispute within [two (2)][[21]](#footnote-22) months, the Parties shall attempt to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, within [ten (10)] Working Days of service of referral to mediation, the mediator shall be nominated by CEDR. To initiate the mediation, a Party must serve notice in writing (**"ADR Notice"**) to the other Parties requesting mediation. A copy of the ADR Notice should be sent to CEDR. Unless otherwise agreed between the Parties, the mediation shall start no later than [ten (10)] Working Days after the date of the ADR Notice.

## If the Dispute is not resolved within [ten (10)] Working Days after service of the ADR Notice, any Party fails to participate or ceases to participate in the mediation before the expiry of that [ten (10)] Working Day period, or the mediation terminates without resolution before the expiry of that 10 Working Day period, the Dispute shall be finally resolved by the courts of England and Wales, provided that the right to issue proceedings is not prejudiced by a delay. Where the Parties have submitted the Dispute to the Courts of England and Wales, the decision of the Courts of England and Wales shall be binding on the Parties.

## The Parties may by written agreement, agree to vary the time periods set out in this clause 14 to resolve a Dispute.

## During the period starting on and from the commencement of the Dispute and ending on the settlement or determination of such Dispute, the Parties shall continue to comply with their respective obligations under this Agreement.

# Confidentiality

## **General**

### The Parties agree that the provisions of this Agreement shall not be treated as Confidential Information and may be disclosed without restriction.

### Each Receiving Party shall:

#### keep the Disclosing Party's Confidential Information confidential;

#### use the Confidential Information (or any part thereof) only in connection with performing its obligations under the Agreement; and

#### subject to clause 15.2(a) and 17, not disclose the Confidential Information to anyone without the prior written consent of the Disclosing Party.

## **Exceptions**

### The consent referred to in clause 15.1(b)(iii) shall not be required for the disclosure by a Receiving Party of any Confidential Information which:

#### is disclosed to:

##### the CMA; or

##### the Department for Transport,

##### in each case where either there is a legal requirement to disclose such information or where such party has agreed to observe the same restrictions on the use of the relevant information as are contained in clause 15.1(b)(ii);

#### at any time comes into the public domain otherwise than as a result of breach of this Agreement by the Receiving Party;

#### is disclosed to the Receiving Party's officers, contractors or agents, in each case to the extent required to enable the Receiving Party to carry out its obligations under this Agreement provided that the Receiving Party makes such person aware of the Receiving Party’s obligations under this Agreement and the Receiving Party requires such person to observe the same restrictions on the use of the relevant information as are contained in clause 15.1(b)(ii);

#### is disclosed to the Receiving Party's professional advisers who are bound to such Receiving Party by a duty of confidence which applies to any information disclosed;

#### is received from a third party who is not in breach of any relevant duty of confidence whether express or implied;

#### is independently developed without access to the Confidential Information; or

#### is required to be disclosed by any applicable law or regulatory requirement to which the Receiving Party is subject or pursuant to any order of the court or other competent regulatory authority or tribunal.

### These restrictions and prohibition on use, exploitation, communication and disclosure set out in this clause 15 shall continue to apply after the expiration or termination of the Agreement in respect of any Confidential Information for such period of time as such information remains Confidential Information.

## **Required Disclosure**

* 1. If the Receiving Party becomes required, in circumstances contemplated by clause 15.2(a)(vii) to disclose any Confidential Information, the Receiving Party shall (save to the extent prohibited by law) give to the Disclosing Party such notice as is practical in the circumstances of such disclosure and shall co‑operate with the Disclosing Party, having due regard to the Disclosing Parties' views, and take such steps as the Disclosing Party may reasonably require in order to enable it to mitigate the effects of, or avoid the requirements for, any such disclosure.

## **Remedy**

## The Public Sector Parties acknowledge and agree that money damages may not be an adequate remedy for any breach or threatened breach of this clause 15 and that a breach by any Public Sector Party(ies) of this clause 15 may result in immediate and irreparable competitive injury. The Public Sector Parties therefore agree that in addition to any other remedies that may be available, by law or otherwise, the relevant Operator shall be entitled to seek injunctive relief against any breach or threatened breach of this clause 15 by the Public Sector Parties.

# Data Protection

## In this clause 16, the expressions **"Process/Processing"**, **"Controller"**, **"Processor"**, **"Data Subject"**, **"Personal Data"**, **"Personal Data Breach"** and **"Supervisory Authority"** shall have the same meaning as in the Data Protection Laws.

## Each Party shall Process Personal Data under this Agreement as a separate Controller, and shall comply at all times with its respective obligations under Data Protection Laws.

## In respect of any disclosures of Personal Data by one Party (**"Personal Data Disclosing Party"**) to another Party (**"Personal Data Receiving Party"**), the Personal Data Disclosing Party shall:

### ensure that it has established a lawful basis under Data Protection Laws to disclose Personal Data to the Personal Data Receiving Party;

### implement appropriate technical and organisational security measures in relation to its mechanism for disclosure of the Personal Data; and

### ensure that a privacy notice has been made available to Data Subjects that anticipates transfers to third parties such as the Personal Data Receiving Party.

## The Personal Data Receiving Party shall:

### only Process the disclosed Personal Data where reasonably necessary for the purposes of performing its obligations, or exercising its rights, under this Agreement (including in respect of any onward disclosures to third parties);

### not transfer Personal Data outside the UK and the European Economic Area without the prior written consent of the Personal Data Disclosing Party; and

### notify the Personal Data Disclosing Party without undue delay upon becoming aware of any Personal Data Breach involving the Personal Data.

## Each Party shall co-operate with the other, to the extent reasonably requested, in relation to:

### any requests from Data Subjects to exercise rights under the Data Protection Laws;

### any other communication from a Data Subject concerning the Processing of their Personal Data; and

### any communication from a Supervisory Authority concerning the Processing of Personal Data, or compliance with the Data Protection Laws.

# Freedom of information

## The Operators shall cooperate to facilitate the Public Sector Parties in complying with their respective obligations under the FOIA and the EIR, together with any guidance and/or codes of practice issued from time to time by the Information Commissioner or the Secretary of State, in the manner provided for in this clause 17, which shall apply whenever any Public Sector Party receives a Request for Information which in that Public Sector Party's reasonable opinion is likely to involve the disclosure of Confidential Information.

## Where the relevant Public Sector Party receives a Request for Information in relation to Operator Confidential Information it shall notify the Operator in writing of the Request for Information as soon as practicable after receipt and in any event within five (5) Working Days of receiving a Request for Information and shall consult in good faith with the Operator to ascertain whether disclosure of the requested information would be likely to prejudice the commercial interests of the Operator for the purposes of section 43(2) of FOIA or regulation 12(5)(e) of EIR.

## Where the relevant Public Sector Party receives a Request for Information relating to Operator Confidential Information, the relevant Public Sector Party shall keep the Operator fully informed and the Operator shall provide all necessary assistance reasonably requested by the relevant Public Sector Party to enable it to respond to a Request for Information in accordance with Section 1 and Section 10 of the FOIA or regulation 5 of the EIR.

* 1. The relevant Public Sector Party agrees that (and shall procure that the Constituent Local Authorities agree that) Operator Data shall, for the purposes of the FOIA, constitute:
     1. exempt information pursuant to Part 2 of the FOIA which is provided to the Welsh Government, the Lead Authority and/or TfW in confidence and that disclosure of the Operator Data would constitute a breach of confidence actionable by the Operator; and/or
     2. exempt information pursuant to Part 2 of the FOIA in that it constitutes either a trade secret of the Operator and/or information which if disclosed to the public would prejudice the commercial interests of the Operator and the Welsh Government, the Lead Authority and TfW will therefore treat all Operator Data as exempt for the purposes of the FOIA.
  2. In the event that notwithstanding the provisions of clause 17.4, any Public Sector Party is bound by the FOIA to disclose any Operator Data to the public, the relevant Public Sector Party shall nonetheless provide the Operator with a minimum of 48 hours written notice prior to the disclosure of any such data.

# Competition and Procurement Law

## The Parties:

### have considered the application of competition law to this Agreement, in particular the Part 2 Competition Test, and are satisfied (acting reasonably and by reference to the prevailing law at the time of such consideration) that this Agreement meets the Part 2 Competition Test and as such the Lead Authority has completed the certificate in the form attached at Schedule 6; and

### intend that this Agreement shall not breach the Public Contracts Regulations 2015 or the Utilities Contracts Regulations 2016.

## Notwithstanding clause 18.1, if:

### statements by, advice from, or decisions by competent authorities (including, but not limited to, the CMA) provides additional detail or guidance in relation to the Part 2 Competition Test (or more generally, the applicability of competition law to Voluntary Partnership Agreements (as defined under the Local Transport Act 2008)) which may impact on the position of this Agreement under the Part 2 Competition Test (or competition law more generally),

### statements by, advice from, or decisions by competent authorities impact on the position of this Agreement under procurement law,

* 1. the Parties agree to (i) meet in good faith and review the impact of such change or other developments on this Agreement; and (ii) make any amendment necessary to ensure that this Agreement complies with applicable competition law or procurement law then in force in the light of such development, whilst taking account of the Parties' commercial intentions as expressed in this Agreement. In the event that the Parties are unable to agree as to the extent and nature of such amendments within one month, any party shall be entitled to refer the decision to the Dispute process in accordance with clause 14.

# Assignment

## This Agreement is personal to the Parties and subject to clause 19.2, may not be assigned (whether absolutely or by way of security and whether in whole or in part), sub‑contracted (other than subcontracting of Services or Routes which shall be permitted at the discretion of the relevant Operator), delegated, transferred, mortgaged, charged, declared in trust for a third party, or otherwise disposed of in any manner whatsoever to any third party (each of the above a **"dealing"**) without the prior written consent of each of the other Parties and any such purported dealing in contravention of this clause shall be ineffective.

## In the event that an Operator disposes of its business (or part of its business), the Operator shall act reasonably to:

### ensure that the party to which its business is transferred enters into an agreement on equivalent terms to this Agreement in respect of that business (or part of the business) (including any other agreement entered into to further the intent of this Agreement); and

### terminate its participation under this Agreement in accordance with clause 12.4, to the extent that the whole of the business is disposed of; or

* + 1. amend this Agreement to reflect the remaining business where part of the business is disposed of.

# Amendment

## Subject to clause 7.2, this Agreement may only be amended, modified, varied or supplemented in writing signed by or on behalf of each and all of the Parties to this Agreement.

## The Parties shall, as soon as reasonably practicable following the coming into force of any legislation, regulations or statutory instruments (or any amendments to existing legislation, regulations or statutory instruments) which impacts the terms of this Agreement, review and, if necessary, amend the terms of this Agreement to account for such changes.

## Pursuant to clause 2.4, a new Operator may accede to this Agreement by means of the written agreement in the form appended at Schedule 7 and all Parties shall act in a fair, reasonable and non‑discriminatory manner when deciding whether to agree to any such accession. Upon accession to this Agreement, a new Operator's services shall be deemed to be Services and additional to the Reference Network.

## In the event where a Corporate Joint Committee has been established which assumes some or all of the functions of one or more Constituent Local Authorities, the Parties shall agree any amendments required to the terms of this Agreement to allow such Corporate Joint Committee to exercise such function. For the avoidance of doubt, such amendments shall not extend the obligations of the Operators under the terms of this Agreement.

# Waiver

1. The rights and remedies of the Parties shall not be affected by any failure to exercise or delay in exercising any right or remedy or by the giving of any indulgence by any other Party or by anything whatsoever except a specific waiver or release in writing and any such waiver or release shall not prejudice or affect any other rights or remedies of the Parties. No single or partial exercise of any right or remedy shall prevent any further or other exercise thereof or the exercise of any other right or remedy.

# Notices

## Any notice (including any approval, consent or other communication) in connection with this Agreement shall be given in writing and shall either be personally left at the address of the addressee or sent by pre-paid first class post or be sent by electronic mail. The address for service of a Party shall be its address as stated in the parties clause above or any other address or electronic mail address notified to the other Parties in accordance with this clause 22.1.

## In the absence of evidence of earlier receipt, any notice shall take effect from the time that it is deemed to be received in accordance with clause 22.3.

## A notice is deemed to be received:

### in the case of a notice personally left at the address of the addressee during normal working hours, upon delivery at that address or if not during normal working hours the next Working Day; or

### in the case of a posted letter (within the United Kingdom), on the third Working Day after posting; or

### in the case of an email, in the absence of a delivery error message, at the time of sending to the relevant addressee,

* 1. and for the purpose of deemed receipt under this clause 22.3, it shall be sufficient to prove that personal delivery was made or that the envelope containing the posted notice was properly addressed or the email contained the correct email address.

# SEVERABILITY

## If any term of this Agreement is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from this Agreement and this will not affect the remainder of this Agreement which will continue in full force and effect.

# THIRD PARTY RIGHTS

## Save as otherwise expressly provided for in this Agreement, a person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

## The rights of the Parties to terminate, rescind or agree any variation to this Agreement are not subject to the consent of any other person.

# ENTIRE AGREEMENT

## This Agreement constitutes the entire agreement between the Parties and supersedes any prior agreement or arrangement in respect of its subject matter and:

### no Party has entered into this Agreement in reliance upon, and will have no remedy in respect of, any misrepresentation, representation or statement (whether made by any other Party or any other person and whether made to the first Party or any other person) which is not expressly set out in this Agreement; and

### the only remedies available for any misrepresentation or breach of any representation or statement which was made prior to entry into this Agreement and which is expressly set out in this Agreement will be for breach of contract.

## For the avoidance of doubt, nothing in this clause 25will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.

# COUNTERPARTS

## This Agreement may be executed in any number of counterparts, and by the Parties as separate counterparts but will not be effective until each Party has executed at least one counterpart.

## Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same Agreement.

# Governing Law and Jurisdiction

## This Agreement and any non‑contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English and Welsh law.

## Subject to the Dispute Resolution Procedure, the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with this Agreement including (without limitation) in relation to any non‑contractual obligations.

**IN WITNESS** whereof this Deed has been duly executed by the Parties and delivered on the date and year stated at the beginning of this Agreement.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Executed as a deed, but not delivered until the first date specified on page 1, by **LEAD REGIONAL TRANSPORT AUTHORITY** by the affixing of its common seal in the presence of: | | ))))) | *SEAL* | |
|  | |  |  | |
| Signature |  | | |  |
|  |  | | |  |
| Name (block capitals) |  | | |  |
|  | **Authorised Signatory** | | |  |
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| Signature |  | | |  |
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| Name (block capitals) |  | | |  |
|  | **Authorised Signatory** | | |  |

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| Executed as a deed, but not delivered until the first date specified on page 1, by **[                     COUNCIL**] by the affixing of its common seal in the presence of: | | ))))) | *SEAL* | |
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| Signature |  | | |  |
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|  | **Authorised Signatory** | | |  |
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| Signature |  | | |  |
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|  | **Authorised Signatory** | | |  |

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| Executed as a deed, but not delivered until the first date specified on page 1, by **TRANSPORT FOR WALES** by the affixing of its common seal in the presence of: | | ))))) | *SEAL* | |
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| Name (block capitals) |  | | |  |
|  | **Authorised Signatory** | | |  |
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| Name (block capitals) |  | | |  |
|  | **Authorised Signatory** | | |  |

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| Executed as a deed, but not delivered until the first date specified on page 1, by **WELSH MINISTERS** by the affixing of its common seal in the presence of: | | ))))) | *SEAL* | |
|  | |  |  | |
| Signature |  | | |  |
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| Name (block capitals) |  | | |  |
|  | **Authorised Signatory** | | |  |
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| Signature |  | | |  |
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| Name (block capitals) |  | | |  |
|  | **Authorised Signatory** | | |  |

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| --- | --- | --- | --- |
| Executed as a deed, but not delivered until the first date specified on page 1, by [**OPERATOR**]: | ))) | Signature |  |
|  |  |  |  |
|  |  | Name (block capitals) |  |
|  |  |  | **Director** |
|  |  |  |  |
|  |  | Signature |  |
|  |  |  |  |
|  |  | Name (block capitals) |  |
|  |  |  | **[Secretary/]Director** |

[***DN: Parties to confirm preferred execution blocks.***]

1. Constituent Local Authorities

[*Note: Details of the relevant local authorities within the Region to be listed here.]*

1. OPERATORS

[*Note: Table of operators to be included here, with their company number and registered office address.]*

1. PARTNERSHIP OBLIGATIONS

The Parties agree and acknowledge the following objectives in relation to this Agreement and that they will work together where permitted by competition law, and otherwise work with individual Operators in collaboration with the Public Sector Parties, to develop and, where agreed, implement proposals to:

1. register routes and timetables that support the journey times and interchange opportunities identified in the Reference Network;
2. consolidate core routes, including determining how passengers can benefit from services on core routes irrespective of bus operator, to the extent enabled by competition law;
3. de-duplicate and harmonise route numbering;
4. identify unserved markets and routes that could serve those markets;
5. develop and implement individually for each Operator, a code of practice on employment terms and driver standards to offer a safe and high quality service to passengers;
6. facilitate the introduction of demand responsive or other approaches to service delivery, e.g. by deregistering the existing Local Services, where it is identified that routes may be more effectively served by other means;
7. align new routes within the Reference Network where appropriate whilst allowing the Operator innovation in respect of new routes and bus services;
8. improve value and/or convenience for passengers. This shall, to the extent enabled by competition law, include working with TfW and the Constituent Local Authorities on the introduction of ticketing schemes (whether statutory or voluntary) which may:
   1. introduce pay as you go capping;
   2. rationalise fares; and/or
   3. introduce day and/or weekly tickets,
9. establish multi-operator ticketing schemes;
10. provide information to support passengers, including the prompt communication of changes to bus timetables through Traveline Cymru, Lead Authority, Constituent Local Authorities and TfW; and
11. invest in bus services each of the operators provide, with the aim of improving customer experience.
12. invest in infrastructure, traffic management, parking enforcement and similar measures where Welsh Government and Constituent Local Authorities have the funding to do so.

In addition to supporting the above objectives, the Operators shall:

1. comply with the Welsh Government’s "Restarting public transport: guidance for operators" ([**https://gov.wales/restarting-public-transport-guidance-operators-html**](https://gov.wales/restarting-public-transport-guidance-operators-html)) and any updated guidance provided in response to emerging requirements to respond to the public health impact of the COVID 19 pandemic;
2. support the introduction of new and emerging institutional arrangements between the Public Sector Parties that Welsh Government believe are reasonably required to more effectively support the management of bus services in Wales in the future;
3. engage with TfW, Welsh Government and the Lead Authorities on behalf of their Constituent Local Authorities to reform funding and reimbursement mechanisms such as BSSG and the Concessionary Travel Scheme to improve the quality and viability of the local services available to passengers in Wales;
4. work with TfW and Welsh Government to develop a vehicle replacement strategy which will help to inform Welsh Government’s plans for a sustainable public transport fleet. Subject to the availability of funding and compliance with subsidy control rules, Welsh Government may fund measures to bring the national fleet up to the required minimum standard;
5. comply with the terms of the Economic Contracts that they developed as part of the BES 2 arrangements; and
6. commit to a charter of behaviours in which they **shall not**:
   1. act in a way which is primarily intended or expected to make cost effective delivery of the Reference Network more difficult;
   2. carry out their business in a manner which can be shown to, overall, have the intent or expectation of reducing passenger benefits from the bus network in Wales; and
   3. register local services which have the primary effect of undermining the value for money of the network of services which are secured on a subsidised basis by the Constituent Local Authorities (provided that nothing in this paragraph 18.3 shall prohibit the Operator from replacing a service which has been secured on a subsidised basis by a Constituent Local Authority with a commercial Service which provides the same or better service across all hours of operation of such secured service).
7. Local Transport Act 2008 – Certificate of the Local Authority

The Qualifying Agreement appended to this certificate is certified in accordance with paragraph 18(3) of Schedule 10 to the Transport Act 2000 which states that:

“*A qualifying agreement falls within this sub-paragraph if:*

1. *it has as its object or effect the prevention, restriction or distortion of competition in the area of the authority, or the combined area of the authorities, but*
2. *the authority, or any of the authorities, has certified that they have considered all the terms and effects (or likely effects) of the agreement and that in their opinion the requirements mentioned in paragraph (4) are satisfied*”.

This is a certificate provided by [the Constituent Local Authority in whose are the coordinated service (principally) operates] (**“Authority”**).

The Authority certifies that, having considered all the terms and effects, or likely effects, of the proposed agreement appended herein between:

(1) [*Operator A*];

(2) [*Operator B*]; and

(3) [                    ].

It is of the opinion that it meets the requirements of paragraph 18 (4) of Schedule 10 to the Transport Act 2000 in that it: (a) is in the interests of persons using local bus services within the area of the Authority; and (b) does not impose on the above named operators restrictions that are not indispensable to the attainment of the Authority’s bus improvement objectives.

For the avoidance of doubt this certificate relates to the Agreement between (1) [*operator A*], (2) [*operator B*], and (3) [                    ].

1. Partnership Area
2. Certificate

The [*regional*] Umbrella Partnership Agreement dated [*date*] is certified in accordance with paragraph 18(3) of Schedule 10 to the Transport Act 2000 which states that:

*“A partnership agreement falls within this sub-paragraph if*

1. *It has as its object or effect the prevention, restriction or distortion of competition in the area of the authority, or the combined area of the authorities, but*
2. *The authority, or any of the authorities, has certified that they have considered all the terms and effects (or likely effects) of the agreement and that in their opinion the requirements mentioned in paragraph (4) are satisfied.”*

This is a certificate provided by [*the Lead Authority*] (**“Authority”**).

The Authority certifies that, having considered all the terms and effects (or likely effects) of the [*regional*] Umbrella Partnership Agreement it is of the opinion that it meets the requirements of paragraph 18 (4) of Schedule 10 to the Transport Act 2000 in that it: (a) is in the interests of persons using local bus services within the area of the Authority; and (b) does not impose on the above named operators restrictions that are not indispensable to the attainment of the Authority’s bus improvement objectives.

For the avoidance of doubt this certificate relates to the [*regional*] Umbrella Partnership Agreement between [*the Lead Authority*] Welsh Ministers, Transport for Wales, other local authorities and bus operators dated [*date*] and does not necessarily apply to any modification or variation of that Agreement.

Signed

……………………………………………………………………….

Name:

Position:

On behalf of [*Lead Authority*]

Date                     2021

1. Accession Deed

To: [                    ]

From: [*New* *Operator*]

Dated: [                    ] 20[]

Dear Sirs

**UMBRELLA AGREEMENT DATED [                    ] 20[**] **("Umbrella Agreement")**

1. We refer to the Umbrella Agreement. This deed (**"Accession Deed"**) shall take effect as a Deed for the purposes of the Umbrella Agreement. Terms defined in the Umbrella Agreement have the same meaning in this Accession Deed unless given a different meaning in this Accession Deed.
2. [*New Operator*] agrees to be bound by the terms of the Umbrella Agreement pursuant to clause 2.4 of the Umbrella Agreement that with effect on and from the date of this Accession Deed it is bound by the Umbrella Agreement as an Operator as if it had been Party originally to the Umbrella Agreement in that capacity. [*New Operator*] is a [*entity*] duly incorporated under [the laws of [*name of relevant jurisdiction*] and is a  *entity* and registered number [                    ].
3. [*New Operator's*] administrative details for the purposes of the Umbrella Agreement are as follows:

Address: [                    ]

Email address: [                    ]

Attention: [                    ]

1. This Accession Deed and any non-contractual obligations arising out of or in connection with it are governed by English and Welsh law.

[*New Operator*]

|  |  |
| --- | --- |
| **EXECUTED AS A DEED**  By: [*New Operator*] | ) ) |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Director  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Director/Secretary | |

**[Transport for Wales]**

By:

Date:

1. This VPA has been drafted on the basis that it will be for a Region to mirror the BES 2 agreement. [↑](#footnote-ref-2)
2. We understand that TfW have recently changed their registered office. Please confirm that the above details are accurate. [↑](#footnote-ref-3)
3. Parties to be considered and amended where necessary. [↑](#footnote-ref-4)
4. Definition to be amended to reflect clause 8 of BES 2 and any other terms in this agreement to develop the reference network. [↑](#footnote-ref-5)
5. Definition to be reviewed to reflect how the service standards are developed pursuant to BES 2. [↑](#footnote-ref-6)
6. Note: Option to extend has been included, but parties to consider whether this is applicable and whether the notice period of 6 months is adequate. [↑](#footnote-ref-7)
7. This governance section has been drafted on the assumption that there will a single partnership board that oversees performance of the VPA. We have seen VPAs in the past that contain both a partnership and an operational board. In those instances, the partnership board oversees the general performance of the VPA with the operational board sitting above it to discuss and agree the more complex matters in the VPA. This tiered approach also allows matters to be escalated in the event of disputes or instances where the partnership board has been unable to resolve an issue. [↑](#footnote-ref-8)
8. Purpose of the board to be considered, suggested drafting has been provided. [↑](#footnote-ref-9)
9. Timings of the meetings to be considered. [↑](#footnote-ref-10)
10. Details of the chairperson to be inserted. [↑](#footnote-ref-11)
11. Details of the members to be inserted once agreed. Consider how the number of representatives fits with how many votes each member is entitled to - consider whether there should be one representative for a group Operator with each operator in the group entitled to a separate vote or combined voting for group operators. [↑](#footnote-ref-12)
12. Quorum for the board meetings to be considered. [↑](#footnote-ref-13)
13. Voting rights to be populated, which should be agreed locally in respect of both votes per member (this could be based on registered miles thresholds for operators) , consider whether multiple operators in same group are entitled to joined or separate percentages, and the majority required to pass a decision. [↑](#footnote-ref-14)
14. Drafting to be considered specified here in respect of specific agreed partnership obligations. These would be expected to vary between Partnership Agreements depending upon the priorities of the Region: Key obligations could be scheduled or listed within this clause. [↑](#footnote-ref-15)
15. Drafting taken from BES 2, we would however expect the parties to develop a more detailed process for the review of the reference network for this VPA. [↑](#footnote-ref-16)
16. Consideration needs to be given to KPIs, we have drafted on the assumption that key themes will be set in the umbrella VPA and specific KPIs will instead be included in Local VPAs? [↑](#footnote-ref-17)
17. Consider whether this should be annual or biannual. [↑](#footnote-ref-18)
18. Rather than entering into a separate DSA, we have instead referred to the Welsh Bus Open Data Agreement – parties to consider if the data agreement as drafted covers the VPA or if the Welsh Bus Open Data Agreement needs to be amended. [↑](#footnote-ref-19)
19. Parties to consider whether any further termination rights should be included here. [↑](#footnote-ref-20)
20. The damages payable depend upon the impact of the breach and will therefore need to reflect actual losses incurred as a result of breach, rather than being penal. [↑](#footnote-ref-21)
21. Time period to be considered, currently drafted to align with BES 2. [↑](#footnote-ref-22)