

## Annual General Meeting of Rail North Limited

**Meeting date:** 08/02/2018

**Item:** 7

**Subject:** Transfer of the Business of Rail North Limited to TfN

**Author(s):** Deborah Dimock (Solicitor, TfN)

---

### 1. Purpose of report

- 1.1. To advise Members of the signing of the Regulations establishing TfN as the first Sub-National Transport Body.
- 1.2. For Members to approve the execution by Rail North Limited of the following documents:
  - 1.2.1. The Rail North Business Transfer Agreement
  - 1.2.2. The Rail North Partnership Novation and Variation Agreement
  - 1.2.3. The Rail North Franchise Management Agreement.
- 1.3. For Members to approve in principle the future winding up of Rail North Limited.

### 2. Recommendations

- 2.1. That Members receive the information.
- 2.2. That Members approve the execution by Rail North Limited of the following documents:
  - 2.2.1. The Rail North Business Transfer Agreement;
  - 2.2.2. The Rail North Partnership Novation and Variation Agreement; and
  - 2.2.3. The Rail North Franchise Management Agreement.
- 2.3. That Members approve in principle the future winding up of Rail North Limited.

### 3. Information

- 3.1. Members are advised that on the 22<sup>nd</sup> January 2018 the Sub-national Transport Body (Transport for the North) Regulations 2018 were signed establishing TfN as a corporate body able to transact its own affairs with effect from the 1<sup>st</sup> April 2018.
- 3.2. In the Submission Proposal for TfN one of the guiding principles was that TfN and Rail North would be more closely aligned and that TfN would take over the business of Rail North Limited. This principle was endorsed by the Secretary of State when he accepted the Proposal and provisions to enable this are contained in the Regulations. TfN has continued to develop this proposal and intends to fully incorporate the business of Rail North within the management structure of TfN and the Constitution of TfN reflects this.

- 3.3. At the meeting on the 14<sup>th</sup> September 2017 members received a detailed report setting out the steps TfN and Rail North Limited would need to take to achieve the transfer to TfN of the business of Rail North and its incorporation within TfN. Members are now asked to approve the execution by Rail North Limited of the following Agreements:
- 3.3.1.. The Rail North Business Transfer Agreement
  - 3.3.2. The Rail North Partnership Novation and Variation Agreement
  - 3.3.3. The Rail North Franchise Management Agreement
- 3.4. These Agreements have been the subject of consultation with all the individual Member Authorities and the results of the consultation exercise were reported back to Rail North Directors Board Meeting on the 7th December 2017. The effect of these Agreements taken together is to protect the existing rights and obligations of the Member Authorities while transferring to TfN the rights and obligations of Rail North Limited. The Board received a detailed report into the consultation exercise and were satisfied with the terms of the Agreements and resolved to recommend to the General Meeting of the Company that the Rail North Limited should execute the Agreements. The executed documents will be held in escrow until TfN comes into being after its inaugural meeting on the 3rd April 2018 when it will also be able to execute the Agreements and they can come into effect.
- 3.5. The agreements have been provided to each authority's legal representative, but elected members can also obtain a copy direct from the Rail North Office (0113 212 3262).
- 3.6. The execution of the documents listed below by Rail North Limited will effect the transfer to TfN from Rail North Limited of the Partnership Agreement with the Secretary of State and the business of managing the Northern and TransPennine Express Rail franchises.

**The Rail North Business Transfer Agreement** – this Agreement transfers to TfN all the property and assets of Rail North Limited including any physical property owned by Rail North Limited and any cash held in its bank accounts as well as its property in the Partnership Agreement with the Secretary of State. It will transfer to TfN the Hosting Agreement whereby WYCA employs staff on behalf of TfN until such time as these members of staff can be transferred to TfN under a TUPE transfer. The Agreement will also transfer to TfN all the liabilities of Rail North such as its obligations under the Partnership and Members Agreements and any outstanding VAT liability.

**The Rail North Partnership Novation and Variation Agreement** -this Agreement which will also be signed by the Secretary of State transfers the Original Rail North Partnership Agreement with the Secretary of State from Rail North Limited to TfN and releases Rail North Limited from any further obligations under the original Partnership Agreement. The Agreement also contains the agreement of the parties to enter into the new Rail North Partnership Agreement the terms of which are varied to reflect the new role and status of TfN as a statutory partner of the Secretary of State. A copy of the Partnership Agreement is appended to this Agreement.

**The Rail North Franchise Management Agreement** - this Agreement replaces the current Members Agreement which sets out the relationship between Rail North Limited and the individual Transport Authorities who are each Members of Rail North Limited. The Franchise Management Agreement restates as far as possible the terms of the Members Agreement and retains the existing rights and obligations of the parties under that Agreement but replaces Rail North Limited by TfN and releases Rail North Limited from any further obligations under the original Agreement.

#### TfN's Constitution

- 3.7. To ensure Rail North members' rights and obligations are maintained, the following arrangements in relation to Rail North business operations have been included in TfN's Constitution:
- Part 1 Articles - Sets out the identity of the 'TfN Rail North Authorities' and their right to appoint a co-opted Member to TfN with a right to speak and vote on rail franchise matters;
  - Part 1 Articles – there can be no requirement for increased contributions without the agreement of all the members of TfN and without their prior written agreement
  - Part 4 Committees - TfN's Governance structure - the Rail North Committee will as far as possible carry out the role previously carried out by Rail North Limited and the Rail North Sub-Committee mirrors the membership and functions of the Board of Directors with representation from the same Authority groupings;
  - Part 4 Committees - Arrangements described in 3.13 above, in particular the weighted voting rights base on passenger miles will be retained for Rail Franchise matters and a 75% majority will be required for the Reserved Matters.

#### Winding Up of Rail North Limited

- 3.8. Once the Agreements have come into effect and the business, assets and liabilities of Rail North Limited have all been transferred to TfN there will be no need for the continued existence of the company and it is recommended that at this stage it should be wound up. It is therefore recommended that you approve in principle to the winding up of Rail North Limited subject to the approval of the Final Accounts