



2019

(1) THE WELSH MINISTERS

(2) POWYS COUNTY COUNCIL

(3) NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

STRICTLY PRIVATE AND CONFIDENTIAL

**JOINT VENTURE AGREEMENT REGARDING THE GLOBAL CENTRE OF RAIL EXCELLENCE
IN WALES**

**1 Scott Place
2 Hardman Street
Manchester
M3 3AA**

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THIS AGREEMENT is dated

2019 and made between:

- (1) **THE WELSH MINISTERS** of Cathays Park, Cardiff CF10 3NQ (the "**Government**");
- (2) **POWYS COUNTY COUNCIL** of Powys County Hall, Spa Road East, Llandrindod Wells, Powys, LD1 5LG ("**PCC**"); and
- (3) **NEATH PORT TALBOT COUNTY BOROUGH COUNCIL** of Civic Centre, Port Talbot, SA13 1PJ ("**NPTCBC**").

(together known as the "**Parties**" and individually as the "**Party**").

BACKGROUND:

- (A) The Parties wish to:
 - a. provide a co-ordinated and managed approach to bring forward the development of a Global Centre of Rail Excellence in Wales in an integrated way and in accordance with the Vision;
 - b. enable agreement to be reached on key aspects of the project including scope, funding, timing, consultation, consenting and delivery;
 - c. ensure that all project partners are engaged, coordinate their input and work together to deliver agreed objectives.
- (B) The Parties agree that the provisions contained in this Agreement are intended to provide a framework for the Parties to work together to deliver the aims set out in paragraph (A).
- (C) PCC and NPTCBC enter into this Agreement pursuant to section 2 of the Local Government Act 2000, which provides a power for a Council to do anything to achieve the promotion or improvement of the social, economic, and environmental wellbeing of the area and section 111 of the Local Government Act 1972, which provides a power for a Council to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of its functions.
- (D) The Government enters into this Agreement pursuant to section 60 of the Government of Wales Act 2006, which provides powers for the Government to do anything to achieve the promotion or improvement of the social, economic, and environmental wellbeing of Wales.

1. Interpretation

- 1.1 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.2 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.3 References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the Schedules.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

- 1.5 A reference to any Party shall include that Party's employees, representatives and permitted assigns.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8 A reference to writing or written includes fax and e-mail.
- 1.9 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.10 Any reference to this Agreement terminating shall, where the context requires, include a reference to this Agreement terminating by expiry.

1.11 **Definitions**

Activities	means the activities which the Parties have agreed are required to deliver elements of, or otherwise which fall within, promote or facilitate the Vision as set out in Schedule 4;
Agreement	means this agreement;
Data Protection Legislation	means the Data Protection Act 2018 and the General Data Protection Regulation (Regulation (EU) 2016/679);
Delivery Programme	means the programme of works and other activities and planning designed to deliver the Vision and the Objective;
Objective	means the objective set out at paragraph 3 of Schedule 1;
Steering Group	means the steering group established under this Agreement, the governance details for which are set out in Schedule 2;
Procurement Regulations	means the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016;
Vision	means the overarching scope, area and principles for delivery/development set out in Schedule 1; and
Working Day	means any day other than a Saturday, Sunday or a public holiday.

IT IS AGREED

2. Commencement and Duration

2.1 This Agreement shall commence on the date when it is signed by all the Parties (the "**Commencement Date**") and shall continue until the earlier of any of the following events:

- (a) it is terminated earlier in accordance with this Agreement;
- (b) until the date five (5) years from the Commencement Date (or such later date as the Parties may agree in writing) when it shall terminate automatically without notice.

3. The Vision and the Objective

The Parties intend to collaborate to deliver the Vision and the Objective. The Parties recognise that not all Parties will, or will need to, collaborate on each and every element of the Delivery Programme.

4. The Delivery Programme

4.1 The Parties will as soon as reasonably practicable establish a Delivery Programme that provides structure to the delivery of the Vision and the Objective (recognising that certain elements of the Delivery Programme that fall within the Vision and Objective have already been delivered and in some instances identified but not yet delivered).

4.2 The Parties shall review and develop the Delivery Programme for approval in accordance with Schedule 2 (Governance) at least annually or at such other times as the Parties consider appropriate.

4.3 The Delivery Programme shall include (but not be limited to):

- (a) all of the Activities;
- (b) commentary on how each Activity contributes to the delivery of the Vision and the Objective and which Party shall be responsible for the completion of the Activity;
- (c) a timeline for completion of each Activity and the Delivery Programme.

5. Governance

The Parties shall comply with the governance arrangements as set out in Schedule 2 (Governance).

6. The Parties' Commitments

6.1 Each Party shall use reasonable endeavours to:

- (a) support delivery of the Vision and the Objective in accordance with this Agreement;
- (b) provide full and timely consultation on investment and planning decisions pertaining to elements of the Delivery Programme that are applicable to it; and
- (c) commit to the use of resources to ensure the timely and cost-effective delivery of the

Delivery Programme and the Vision.

6.2 Each Party may:

- (a) submit, either alone or jointly with other private and/or public sector organisations, applications for funding from third parties to support the realisation of the Vision (having regard to clause 6.3);
- (b) agree additional specific obligations (as required and evidenced by each element of the Delivery Programme and approved in accordance with the internal governance requirements of that Party); and
- (c) seek to support the delivery of the Delivery Programme and any element of the Delivery Programme in respect of which that Party has agreed to undertake obligations, in accordance with its powers and statutory functions, and available resources wherever possible.

6.3 The Parties shall work together to identify funding sources (whether third party or otherwise in each case) and promote the Delivery Programme.

7. Collaborative Working

7.1 The Parties agree that the activities under this Agreement shall be performed in:

- (a) good faith;
- (b) accordance with the law;
- (c) a good and workmanlike manner; and
- (d) accordance with good industry practice.

7.2 The Parties may decide to disclose (subject to procurement, data protection and confidentiality restrictions) to each other all relevant information, data, documents, reports and opinions with respect to the work carried out as part of the collaboration.

7.3 The Parties agree to:

- (a) take on, manage and account to each other for the performance of their respective roles and responsibilities;
- (b) each deploy appropriate resources to the collaboration (having regard to the principles in clause 18 (Cost of Supporting the Vision)) and no Party shall be expected to complete a disproportionate amount of the work involved.

8. Engagement with Third Parties

8.1 The Parties acknowledge that the delivery of the Vision and the Objective will involve negotiations and interactions with various third parties. The Parties shall, at the outset of the Delivery Programme, identify appropriate third parties and decide how best to engage with them (taking into account the commitment at clause 6.1(c)) in order to enter into appropriate contractual arrangements or other agreements to facilitate the delivery of the Delivery

Programme. The Parties shall at all times act in good faith towards one another when dealing with other third parties.

9. **Branding, Marketing and Publicity**

9.1 The Parties agree to:

- (a) brand and market the Vision; and
- (b) draft a communications strategy in order to support the branding and marketing of the Vision provided that the Government will take the lead in the preparation and circulation of the communications strategy.

9.2 Any branding or intellectual property rights developed in the Vision through the collaboration shall be owned exclusively by the Government. The Government licenses all such rights to the other Parties ("**Licensees**") free of charge and on a non-exclusive, worldwide basis (a) to such extent as is necessary to enable the Licensees to support the Vision during the life time of this Agreement and (b) without restriction thereafter.

9.3 The prior written consent of all Parties is necessary before any press announcements or publications are made relating to the collaboration or the Vision.

10. **Variation**

10.1 No variation of this Agreement shall be effective unless it is signed by all the Parties (or their authorised representatives).

11. **Procurement**

The Parties recognise that the Government, PCC and NPTCBC are contracting authorities for the purposes of the Procurement Regulations. The Government, PCC and NPTCBC shall ensure that any procurements are conducted in accordance with their constitutions and, as required, the Procurement Regulations.

12. **Dispute Resolution Procedure**

If any dispute arises out of, or in connection with this Agreement, the Parties shall follow the dispute resolution procedure set out at Schedule 3 (Dispute Resolution Procedure).

13. **Termination**

13.1 Any Party shall be entitled to terminate this Agreement in writing to the other Parties if another Party commits a material breach of this Agreement and, where the material breach is capable of remedy, has failed to remedy that material breach within 30 days of written notice requiring remediation.

13.2 Subject to the satisfaction of clause 13.1, termination will take immediate effect on giving written notice to the other Parties.

14. **Frustration**

- 14.1 In the event that PCC or NPTCBC (a) materially frustrates the delivery of the Objective to the extent that it cannot be fulfilled; or (b) its actions or inactions lead to the termination of the Agreement pursuant to clause 13.1 of this Agreement then that party shall be liable to pay the Government within 30 Working Days of written demand a sum equal to the fees the Government has reasonably incurred to deliver the Objective up to that date (up to a value of £100,000.00).
- 14.2 In the event that Government (a) materially frustrates the delivery of the Objective to the extent that it cannot be fulfilled; or (b) its actions or inactions lead to the termination of the Agreement pursuant to clause 13.1 of this Agreement then Government shall be liable to pay PCC and/or NPTCBC within 30 Working Days of written demand a sum equal to the fees reasonably incurred by either party to deliver the Objective up to that date (up to an aggregate total value of £100,000).

15. **Data Sharing**

The Parties shall comply with their obligations in the Data Protection Legislation.

16. **Freedom of Information**

- 16.1 The Parties acknowledge that the Freedom of Information Act 2000 ("**FOIA**") applies to the Government, PCC and NPTCBC (each an "**FOIA Party**" for the purposes of this clause 16 (Freedom of information) where that the FOIA Party has obligations and responsibilities under FOIA to disclose, on written request, recorded information held by it).
- 16.2 Although reasonable endeavours will be used to hold confidential any information provided as part of the collaboration, if required, the FOIA Party may have to disclose information in response to a request, unless the FOIA Party decides that one of the statutory exemptions under FOIA applies.
- 16.3 The decision as to which information will be disclosed by the FOIA Party is reserved to that FOIA Party, notwithstanding any consultation with the other Parties.
- 16.4 Each of the other Parties accepts that the release of certain information pursuant to this clause 16 (Freedom of Information) may be prejudicial to its commercial interests and as such, to assist the FOIA Party with any responses to requests made under FOIA, each of the other Parties shall mark as confidential any information which is commercially confidential in nature, though the FOIA Party shall still be the final arbiter as to whether any documents are disclosable.
- 16.5 The Parties accept that the obligations under FOIA may apply to activities on which the Government, PCC and NPTCBC work with each and all of the other Parties as part of the collaboration.
- 16.6 In certain circumstances, and in accordance with the Code of Practice issued under section 45 of FOIA, the FOIA Party may consider it appropriate to ask the other Parties for their views as to the release of any information before a decision on how to respond to a request is made. In dealing with requests for information under FOIA, the FOIA Party must comply with a strict timetable and the FOIA Party would, therefore, expect a timely response to any consultation within two Working Days.

17. Statutory Functions

17.1 Nothing in this Agreement shall be construed as a fetter, restriction or oblige the Government, PCC or NPTCBC to do or omit to do anything which in each case:

- (a) is incompatible with the lawful exercise of its powers; or
- (b) is incompatible with the lawful discharge of its functions; or
- (c) divests it of its statutory powers; or
- (d) obliges it not to exercise its powers,

and in every instance where there is an inconsistency or conflict between the Government, PCC and NPTCBC statutory functions (whether powers or duties) and the provisions of this Agreement, the Government, PCC and NPTCBC shall not be obliged to comply with the terms of this Agreement.

18. Cost of Supporting the Vision

18.1 The Parties will agree their respective contributions to the costs of support and/or receipts from the Delivery Programme on an as and when basis when determining and agreeing the detail of the Delivery Programme and the Parties' respective commitments thereunder.

18.2 The Government shall bear the cost of the activities of the Chair and the secretariat administration in respect of the Steering Group as set out at Schedule 2 (Governance).

19. Entire Agreement

19.1 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

19.2 The Parties may not rely on other documents, oral agreements or representations as to the operation of the collaboration unless such obligations are covered in the Agreement.

19.3 Each Party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. No Party shall have any claim for innocent or negligent misrepresentation based on any statement in this Agreement.

20. No Partnership

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership between the Parties, or authorise any Party to make or enter into any commitments for or on behalf of the other Parties, except to the extent that such commitments are set out in the Agreement and relate exclusively to the collaborative work undertaken by the Parties under this Agreement.

21. Governing Law and Jurisdiction

21.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject

matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.

- 21.2 Each Party irrevocably agrees that, subject to clause 12 (Dispute Resolution Procedure), the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

22. **Third Party Rights**

A person or entity which is not a Party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties Act) 1999 to enforce any term of this Agreement.

23. **Counterparts**

This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

SCHEDULE 1

The Vision

1. For the purposes of this Agreement, the scope of the area to which the Vision applies is the Nant Helen / Onllwyn area. An indicative layout of the development area within the scope of the Vision is contained in the redline plan as set out in the Appendix to this Schedule 1.
2. The key principle of the Vision is to create an integrated Global Centre of Rail Excellence in Wales. There are a number of strands in support of the vision:
 - 2.1 provide a rail testing and storage facility to alleviate the gap in capacity at existing testing facilities;
 - 2.2 support the rail industry and the wider supply chain in the UK and internationally;
 - 2.3 support research into new technologies for rail electrification, the use of new materials, hydrogen power and digital railways;
 - 2.4 create jobs to support the local economy.
3. The Parties agree that a key objective, which forms part of the Vision, is to deliver the required land to the Government or a third party for £1 consideration which is restored and remediated in order to facilitate the delivery of the Vision (the "**Objective**").

APPENDIX TO SCHEDULE 1

Indicative Layout



SCHEDULE 2

Governance

The Parties agree to collaborate through a steering group (the "**Steering Group**"), and shall adopt the following governance framework in respect of the Steering Group:

1. Steering Group Members

- a. Each Party shall nominate a minimum of 1 representative as their appointee member.
- b. Each appointee member may appoint an alternate to attend specific meetings of the Steering Group. Such alternate shall have appropriate experience, knowledge and authority pertaining to the matters to be discussed at such meetings.
- c. Other representatives of the Parties shall be entitled to attend meetings of the Steering Group as and when required taking into account the commitment by the Parties to deliver the Vision.

2. Chair and Secretariat

- a. One of the Government-nominated representatives shall be designated as the Chair for the Steering Group. On the date of this Agreement, the Chair for the Steering Group is Simon Jones, Director of Economic Infrastructure – Welsh Government.
- b. The Government may appoint an alternative Chair for the Steering Group at any time. Following a change to the Chair, the Government shall communicate such change to PCC and NPTCBC before the date of the next meeting.
- c. The Chair shall have no casting vote within the governance of the Steering Group.
- d. The Government Chair shall also provide the secretariat. The secretariat function shall include:
 - i. the setting up of meetings and hiring of venues;
 - ii. all notifications to Parties and Steering Group members;
 - iii. preparing the agenda and minutes for each meeting,

and such other secretarial functions as are appropriate to the proper functioning of the Steering Group.

3. Agenda and Minutes

- a. The secretariat shall circulate the agenda for each meeting before the date of the meeting, together with copies of all supporting documentation relating to the agenda items.

- b. The secretariat shall circulate a first draft of each set of meeting minutes within 5 Working Days following the date of the meeting. Each attending member (or attending alternate) shall notify any errata to the secretariat within 3 days of receipt and the secretariat will issue a final set of minutes within 10 Working Days of the meeting.

4. Meetings

The Steering Group will initially meet monthly and or as directed by the Government (the first such meeting to be on 15 April 2019).

5. Governance

- a. In accordance with the main provisions of this Agreement, the key activities of the Steering Group are:
 - i. to make recommendations about how to deliver the Vision and the Objective;
 - ii. to report progress and endorse decisions within the agreed governance structures of the members' respective organisations;
 - iii. agree outputs and timing in respect of the Delivery Programme in line with the Vision;
 - iv. ensure the integration of the Delivery Programme into the wider Vision;
 - v. receipt of regular updates on the progress of the Delivery Programme;
 - vi. monitoring of funding and funding contributions in connection with the Delivery Programme; and
 - vii. to provide monitoring and an evidence base to underpin reporting to the Government (as appropriate).
- b. The Steering Group may establish sub-groups where this is considered appropriate in connection with specific elements of the Delivery Programme and will facilitate the progress of the same.

SCHEDULE 3

Dispute Resolution Procedure

1. If any dispute arises out of, or in connection with this Agreement, the Parties shall follow the procedure set out below.
2. The initiating Party shall give to the other Parties written notice of the dispute, setting out its nature and full particulars, together with relevant supporting documents. On receipt of this written notice, the other Parties shall attempt in good faith to resolve the dispute.
3. If the Parties are unable to resolve the dispute within 30 days of receipt of the written notice as detailed in paragraph 1 above, the Parties shall attempt to settle the dispute by reference of the dispute to, in the case of the Government, the Chair of the Steering Group and in the case of PCC and NPTCBC to the Chief Executives.
4. If the Parties are unable to resolve the dispute within 30 days of reference of the dispute to, in the case of the Government, the Welsh Minister and in the case of PCC and NPTCBC to the Council Leaders, then the Parties may undertake such measures to resolve the dispute as are lawfully available to them.

SCHEDULE 4

List of Activities



SIGNATURE PAGE

SIGNED by
under the authority of
the Minister for Economy and Transport
one of
THE WELSH MINISTERS

)
)
)
)
)

.....
Authorised Signatory

SIGNED by
duly authorised to sign
for and on behalf of
POWYS COUNTY COUNCIL

)
)
)
)

.....
Authorised Signatory

The Common Seal of
NEATH PORT TALBOT COUNTY BOROUGH COUNCIL
was hereunto affixed in the presence of:

)
)
)

.....
Proper Officer