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| --- | --- |
| Dated  |  |
|  |
| Unregulated Track Access AgreementVersion 3 |

between

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| --- |
| Seilwaith Amey Cymru / Amey Infrastructure Wales Limited as the CVL IM |

and

|  |
| --- |
| [*Insert Supplier Name*] as Train Operator |

relating to

|  |
| --- |
| Non-Passenger Services for the Provision of Network Services on the Core Valley Lines within the Wales and Borders Rail Franchise |

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| --- |
| **THIS Agreement** is dated and made |

**BETWEEN:**

|  |
| --- |
| 1. SEILWAITH AMEY CYMRU / AMEY INFRASTRUCTURE WALES LIMITED, a company registered in England under number 11389544 having its registered office at Transport For Wales CVL Infrastructure Depot Ty Trafnidiaeth, Treforest Industrial Estate, Gwent Road, Pontypridd, United Kingdom, CF37 5UT (the "CVL IM"); and

(2) [*Insert Supplier Name*], a company registered in [*insert*] under company number [*insert*], having its registered office at [*insert*] (the **“Train Operator”**) |

**WHEREAS:**

|  |
| --- |
| (A) The CVL IM is the facility owner of the CVL; and |
| (B) The CVL IM hereby grants to the Train Operator permission to use the CVL for the purposes of the provision of non-passenger services for the provision of network services (as defined in the Act) on the terms and conditions of this Agreement. |

IT IS AGREED AS FOLLOWS:

**PART A: PRELIMINARY**

# INTERPRETATION

*Definitions*

In this Agreement:

“Act” means the Railways Act 1993;

“Affiliate” means, in relation to any company:

 (a) a company which is either a holding company or a subsidiary of such company; or

(b) a company which is a subsidiary of a holding company of which such company is also a subsidiary,

 and for these purposes “**holding company**” and “**subsidiary**” have the meanings ascribed to them in section 1159 of the Companies Act 2006;

“Agreement” means this agreement (including its schedules) and incorporating the CVL Network Code;

“Associate” has the meaning ascribed to it in section 17 of the Act;

“Attributable to the CVL IM” in respect of any incident, means responsibility for that incident which has been, or would be, allocated to the CVL IM in accordance with the terms of Schedule 8;

“Attributable to the Train Operator” in respect of any incident, means responsibility for that incident which has been, or would be, allocated to the Train Operator in accordance with the terms of Schedule 8;

“Charging Period” means each period of 28 days which coincides with a CVL IM accounting period save that:

(a) the first period and the last period may be of less than 28 days if:

(i) the Transfer Date does not coincide with the first day of one of the CVL IM's accounting periods; or

(ii) the Expiry Date does not coincide with the last day of one of the CVL IM's accounting periods; and

(b) the duration of the first and last such period in any Financial Year may be varied so as to coincide with the duration of the CVL IM’s accounting periods by notice from the CVL IM to the Train Operator;

“Claims Allocation and Handling means the agreement of that name approved by

Agreement” or “CAHA” ORR;

“Collateral Agreements” means the agreements and arrangements listed in Schedule 3;

"Commencement Date" means the later of:

 (a) the Transfer Date; and

 (b) the date upon which the conditions set out in Clause 2.2 have been satisfied;

 “Confidential Information” means information relating to the affairs of one party to this Agreement or any of its Affiliates which has been provided by any such person to the other party under or for the purposes of this Agreement or any matter or thing contemplated by this Agreement or to which this Agreement relates, the disclosure of which is likely materially to compromise or otherwise prejudice the commercial interests of any such person;

“Contract Service” means any of the non-passenger services described in Schedule 5;

“Contract Term” means the period beginning on the Commencement Date and ending on the Expiry Date or, if earlier, the date of termination of this Agreement pursuant to Part C, Clause 12;

 “CPI” means the Consumer Prices Index (all items) whose value is published each month by the Office for National Statistics in its statistical bulletin on consumer price inflation, or:

 (a) if the Consumer Prices Index for any month in any year shall not have been published on or before the last day of the third month after such month, such index for such month or months as ORR may (after consultation with the parties and such other persons as it considers appropriate) determine to be appropriate in the circumstances; or

 (b) if there is a material change in the basis of the Consumer Prices Index, such other index as ORR may (after consultation with the parties and such other persons as it considers appropriate) determine to be appropriate in the circumstances;

“CVL” means the infrastructure of the Core Valley Lines, as more particularly defined in Part A of the CVL Network Code;

|  |  |
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| “CVL Access Dispute Resolution Rules” and "CVL ADRR" | have the meaning ascribed to them in Part A of the CVL Network Code; |

“CVL Emergency Access Code” means the document by that name published by the CVL IM that is applicable to the CVL (if any);

“CVL IM Event of Default” has the meaning ascribed to it in Part C, Clause 10.2;

“CVL Network Code” means the document by that name published by the CVL IM;

"CVL Standards" means any technical standards and operating procedures adopted by the CVL IM on the CVL;

“Default Interest Rate” is two percent above the base lending rate of Barclays Bank PLC, as varied from time to time;

 “Environmental Condition” has the meaning ascribed to it in Part E of the CVL Network Code;

“Environmental Damage” has the meaning ascribed to it in Part E of the CVL Network Code;

“Event of Default” means a Train Operator Event of Default or a CVL IM Event of Default as the context requires;

“Expiry Date” means the earlier of:

(a)  2359 on [●]; and

(b) unless all of the CVL IM's rights and obligations under this contract are novated or otherwise transferred in full to another infrastructure manager, the date on which the CVL IM otherwise ceases to be the infrastructure manager of the CVL;

“Financial Year” means a year commencing at 0000 hours on 1 April and ending immediately before 0000 hours on the next succeeding 1 April save that:

 (a) the first such period shall commence on the date upon which all the provisions of this Agreement come into effect in accordance with Clause 2; and

 (b) the last such period shall end on the Expiry Date;

“Infrastructure Agreement”   means the agreement dated 12 October 2018 between the ODP and the CVL IM, as amended from time to time and as novated by the ODP to TfW;

"Infrastructure Manager" has the meaning given to "infrastructure manager" in the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016;

“Insolvency Event” means in relation to either of the parties, where:

 (a) any step which has a reasonable prospect of success is taken by any person with a view to its administration under Part II of the Insolvency Act 1986;

 (b) it stops or suspends or threatens to stop or suspend payment of all or a material part of its debts, or is unable to pay its debts, or is deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986 except that in the interpretation of this paragraph:

 (i) section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there was substituted £100,000; and

 (ii) it shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is satisfied before the expiration of 21 days from such demand;

 (c) its directors make any proposal under section 1 of the Insolvency Act 1986, or it makes any agreement for the deferral, rescheduling or other readjustment (or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors) of all or a material part of its debts, or a moratorium is agreed or declared in respect of or affecting all or a material part of its debts;

 (d) any step is taken to enforce security over or a distress, execution or other similar process is levied or issued against the whole or a substantial part of its assets or undertaking, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;

 (e) any step is taken by any person with a view to its winding up or any person presents a winding-up petition which is not dismissed within 14 days, or it ceases or threatens to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the other party before that step is taken (which approval shall not be unreasonably withheld or delayed); or

 (f) any event occurs which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above,

 unless:

(i) in any case, a railway administration order (or application for such order) has been made or such order (or application) is made within 14 days after the occurrence of such step, event, proposal or action (as the case may be) in relation to the party in question under section 60, 61 or 62 of the Act and for so long as any such order (or application) remains in force or pending; or

(ii) in the case of paragraphs (a), (d) and (e), the relevant petition, proceeding or other step is being actively contested in good faith by that party with timely recourse to all appropriate measures and procedures;

"Incident Cap" has the meaning ascribed to it in paragraph 5.2, Part V of Schedule 8 of this Agreement;

"Laws" means any enactment or subordinate legislation, rule, regulation, order, directive or other provision including those of the European Union which has the force of law in the United Kingdom;

"Licensing Regulations" means the Railways (Licensing of Railway Undertakings) Regulations 2005;

“Longstop Date” means 20 September 2020;

“National Holiday” means any day, other than a Saturday or Sunday, on which clearing banks in the City of London are not open for business;

"Network Rail" means Network Rail Infrastructure Limited, a company registered in England under company number 02904587 and having its registered office at 1 Eversholt Street, London, NW1 2DN;

"ODP" means Keolis Amey Wales Cymru Limited, a company registered in England under company number 11391059 and having its registered office is at Amey Rail Maindee Depot, Off Caerleon Road, Newport, United Kingdom, NP19 9DZ;

**“**Office of Rail and Road” has the meaning ascribed to it under Section 15 of the Railways and Transport Safety Act 2003, and “ORR” shall be construed accordingly;

 “Railway Code Systems” means necessary systems within the meaning of the Systems Code;

"Railway Group Standards" means the Railway Group Standards as defined in the CVL Network Code;

“Registered” means registered in RSSB's R2 system as acceptable to run on the CVL pursuant to Railway Group Standards, subject to such terms as may be set out in such registration;

"Registered Equipment" means the railway vehicles which are Registered, as such vehicles may be replaced, modified or added to from time to time in accordance with Part F of the CVL Network Code;

“Relevant Losses”means, in relation to:

(a) a breach of this Agreement; or

(b) in the case of Clause 8, any of the matters specified in Clause 8.1(A), (B) or (C) or Clause 8.2(A), (B) or (C) (each a “breach” for the purpose of this definition),

 all costs, losses (including loss of profit and loss of revenue), expenses, payments, damages, liabilities, interest and the amounts by which rights or entitlements to amounts have been reduced, in each case incurred or occasioned as a result of or by such breach;

“Retail Prices Index” means the general index of retail prices published by the Office for National Statistics each month in respect of all items or:

 (a) if the index for any month in any year shall not have been published on or before the last day of the third month after such month, such index for such month or months as the ORR may, after consultation with the CVL IM and the Train Operator, determine to be appropriate in the circumstances; or

 (b) if there is a material change in the basis of the index, such other index as the ORR may, after consultation with the CVL IM and the Train Operator, determine to be appropriate in the circumstances;

"ROGS" means the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

“Route Conductor” means a suitably qualified train driver or supervisor having the route knowledge which is necessary to operate a train along the section of the CVL in question;

“Safety authorisation” has the meaning ascribed to it by regulation 2 of the ROGS;

“Safety certificate” has the meaning ascribed to it by regulation 2 of the ROGS;

“Safety Obligations” means all applicable obligations and laws concerning health and safety (including any duty of care arising at common law, and any arising under statute, statutory instrument or mandatory codes of practice) in Great Britain;

“Scheduled” in relation to the quantum, timing or any other characteristic of a train movement, means that quantum, timing or other characteristic as included in the applicable Working Timetable;

"Secretary of State" means the Secretary of State for Transport;

“Security Interest” means any mortgage, pledge, lien, hypothecation, security interest or charge or other encumbrance or any other agreement or arrangement having substantially the same economic effect, and includes any security as defined in section 248(b) of the Insolvency Act 1986;

“Service” means a non-passenger service which is either a Contract Service or a diverted service which has been agreed by the parties in accordance with Part B, Clause 7.1;

“SNRP” has the meaning ascribed to it in the Licensing Regulations;

“Stabling” means the parking or laying up of the Registered Equipment or such other railway vehicles as the Train Operator is permitted by this Agreement to use on the CVL, such parking or laying up being necessary or reasonably required for giving full effect to the movements of Registered Equipment required for the provision of the Services; and “Stable” and “Stabled” shall be construed accordingly;

“Suspension Notice” means a notice in writing served by the relevant party on the other party in accordance with Part C, Clause 11;

“Systems Code” (a) means the Code of Practice relating to the Management and Development of Railway Information Systems as from time to time approved by ORR; and/or

 (b) such other code as may be agreed with the Train Operator and introduced by the CVL IM in respect of the CVL as from time to time approved by ORR;

“Termination Notice” means a notice in writing served by the relevant party on the other party in accordance with Part C, Clause 12;

"TfW" means Transport for Wales, the company (with company number 09476013) wholly owned by the Welsh Ministers;

“Timetable Period” has the meaning ascribed to it in Part D of the CVL Network Code;

"Timetable Planning Rules" means the Timetable Planning Rules in force in respect of the CVL on the Transfer Date, as from time to time amended or replaced under Part D of the CVL Network Code;

“Timetable Week” has the meaning ascribed to it in Part D of the CVL Network Code;

“Track Charges” means the charges payable by or on behalf of the Train Operator to the CVL IM or its nominee, as set out in or calculated under Schedule 7;

“Train Operator Event of Default” has the meaning ascribed to it in Part C, Clause 10;

"Transfer Date" means the date on which the CVL IM becomes the Infrastructure Manager of the CVL;

“Value Added Tax” means value added tax as provided for in the Value Added Tax Act 1994, and any tax similar or equivalent to value added tax or any turnover tax replacing or introduced in addition to them, and “**VAT**” shall be construed accordingly;

"Welsh Ministers" means the Welsh Ministers whose principal place of business is at Crown Buildings, Cathays Park, Cardiff, CF10 3NO, or any successor to all or part of their rights and functions;

“Working Day” has the meaning ascribed to it in Part A of the CVL Network Code; and

“Working Timetable” has the meaning ascribed to it in Part A of the CVL Network Code.

*Construction and Interpretation*

In this Agreement, except to the extent the context otherwise requires:

words and expressions defined in the CVL Network Code shall have the same meaning in this Agreement;

if there is any conflict of interpretation between this Agreement and the CVL Network Code, the CVL Network Code shall prevail;

references to Recitals, Clauses, Parts, paragraphs, Schedules and Parts of Schedules are to Recitals, Clauses, Parts, paragraphs, Schedules and Parts of Schedules of this Agreement, unless expressly specified to the contrary, and the Schedules form part of this Agreement;

all headings are for convenience of reference only and shall not be used in the construction of this Agreement;

references to any enactment include any subordinate legislation made from time to time under it and are to be construed as references to that enactment as for the time being amended or modified or to any enactment for the time being replacing or amending it;

references to an agreement or any other document (including the CVL Network Code) shall be construed as referring to that agreement or document as from time to time supplemented, varied or amended;

words importing the masculine gender include the feminine and vice-versa, and words in the singular include the plural and vice-versa;

wherever provision is made for the giving or issuing of any notices, consent, approval or determination by any person, unless otherwise specified such notice, consent, approval or determination shall be in writing and the words “notify”, “consent”, “approve” or “determine” and other cognate expressions shall be construed accordingly; and

references to materials, information, data and other records shall be to materials, information, data and other records whether stored in electronic, written or other form; and

words and expressions defined in the Railways Act 1993, the ROGS and the CVL IM's network licence shall, unless otherwise defined in this Agreement, have the same meanings in this Agreement.

*Schedules*

The Schedules shall have effect between the parties, and the CVL IM and the Train Operator shall comply with their respective obligations under them.

*Indemnities*

Indemnities provided for in this Agreement are continuing indemnities in respect of the Relevant Losses to which they apply and hold the indemnified party harmless on an after tax basis.

# CONDITIONS PRECEDENT

*Entry into effect*

The provisions of this Agreement, other than Clause 5 and Schedule 8, take effect from the later of the signature of this Agreement and the Commencement Date.

*Conditions Precedent*

Clause 5 shall take effect when the following conditions precedent have been satisfied in full :

to the extent required by the Act and/or the Licensing Regulations, the Train Operator is authorised to be the operator of trains for the provision of the Services by:

a licence granted under section 8 of the Act; and/or

a European licence and corresponding SNRP;

the CVL IM is authorised by a licence granted under section 8 of the Act to be the operator of the CVL or is exempt from the requirement to be so authorised under section 7 of the Act;

(C) the Claims Allocation and Handling Agreement is executed and delivered by all the parties to each such agreement and is unconditional in all respects (save only for the fulfilment of any condition relating to this contract becoming unconditional); and

(D) each of the parties has, as necessary, a valid safety certificate or safety authorisation as required by the ROGS and has established and is maintaining a safety management system which meets the requirements of those Regulations.

*Obligations to satisfy conditions precedent* *to Clause 5*

Each party shall use all reasonable endeavours to secure that the following conditions precedent are satisfied as soon as practicable, and in any event not later than the Longstop Date:

in the case of the CVL IM, the conditions precedent contained in Clause 2.2(B) and, insofar as within its control, Clauses 2.2(C) and 2.2(D); and

in the case of the Train Operator, the conditions precedent contained in Clause 2.2(A) and, insofar as within its control, Clauses 2.2(C) and 2.2(D).

*Consequences of Non-fulfilment*

If the conditions precedent set out in Clause 2.2 have not been satisfied in full on or before the Longstop Date:

this Agreement shall lapse save for the obligations of confidence contained in Clause 16 which shall continue in force;

neither party shall have any liability to the other except in respect of any breach of its obligations under this Agreement.

*Expiry*

 This Agreement shall continue in force until the earliest of:

lapse under Clause 2.4;

termination under Clause 12; and

the Expiry Date.

*Schedule 8*

The provisions of Schedule 8 shall only take effect from the date specified in a written notice from the CVL IM to the Train Operator specifying that Schedule 8 shall become effective, and prior to such date the provisions of Schedule 8 shall have no effect.

**PART B: TRAIN OPERATIONS**

# PERMISSION

*Permission to use the CVL*

The CVL IM grants the Train Operator permission to use the CVL in accordance with the terms of this Agreement. Nothing in this Agreement shall be construed to mean that the CVL IM has granted or will grant the Train Operator any permission to use the Network Rail network, and the Train Operator shall be responsible for arranging any access it requires to the Network Rail network pursuant to a separate track access agreement with Network Rail.

*Meaning of Permission*

Except where the contrary is indicated, permission to use the CVL shall be construed to mean permission:

to have access to and to use the track comprised in the CVL for the provision of the Services and for Stabling using the Registered Equipment and to the extent reasonably necessary to give full effect thereto and subject to Clause 3.3:

for the Train Operator and its associates to enter upon the CVL, with or without vehicles; and

for the Train Operator and its associates to bring things on to the CVL and keep them there,

and such permission is subject in all respects, in each and every case, to:

the CVL Network Code;

the applicable CVL Engineering Access Statement;

the applicable Timetable Planning Rules;

a Train Operator Variation Request for a Train Slot in respect of any Service, diverted Service, Stabling or Ancillary Movement having been made by the Train Operator and accepted by the CVL IM in accordance with Part D of the CVL Network Code;

the Working Timetable and all appendices to the Working Timetable including the sectional appendices as defined in the Working Timetable and all supplements to the sectional appendices;

any applicable Laws and standards, including Railway Group Standards and CVL Standards;

any other restriction which may from time to time be imposed by the CVL IM.

Compliance with the CVL IM instructions

In relation to the permissions specified in Clauses 3.2(B) and 3.2(C):

the Train Operator shall, and shall procure that its associates shall, wherever reasonably practicable, first obtain the consent of the CVL IM, which consent shall not be unreasonably withheld or delayed;

the Train Operator shall remove any vehicle or other thing so brought onto the CVL when reasonably directed to do so by the CVL IM; and

whilst exercising any rights conferred by Clauses 3.2(B) and 3.2(C), the Train Operator shall, and shall procure that its associates shall, comply with such reasonable instructions or restrictions as the CVL IM shall specify.

*Incorporation*

The CVL Network Code is incorporated in and forms part of this Agreement.

*Compliance by other operators*

Except where ORR has directed otherwise in the exercise of its powers under the Act or the CVL Network Code, the CVL IM shall ensure that all operators of trains having permission to use any track comprised in the CVL agree to comply with the CVL Network Code.

# SAFETY

In relation to Safety Obligations:

the Train Operator shall comply with any reasonable request by the CVL IM in relation to any aspect of the Train Operator's operations which affects or is likely to affect the performance of the CVL IM’s Safety Obligations; and

the CVL IM shall comply with any reasonable request by the Train Operator in relation to any aspect of the CVL IM’s operations which affects or is likely to affect the performance of the Train Operator’s Safety Obligations.

# TRAIN OPERATOR OBLIGATIONS

*Registered Equipment*

The Train Operator shall ensure that any Registered Equipment used in the operation of a Service is of a type and composition which permits the provision of that Service as Scheduled in the Working Timetable and without causing any damage to the CVL (fair wear and tear excepted).

*Personnel*

The Train Operator shall ensure that adequate and suitably qualified personnel are engaged in the operation of the Registered Equipment and in the provision of the Services.

## *Movements of Trains onto and off the CVL*

The Train Operator shall ensure that, in respect of each location where railway vehicles under the control of the Train Operator is Scheduled to move onto and off the CVL, it has been granted suitable access by the third party which controls the facility connected to the CVL at the relevant location so that such railway vehicles shall move promptly onto and off the CVL without interfering with the proper operation of the CVL.

*Planning of network services movements*

Subject to receiving timely instructions from the CVL IM under any relevant supply arrangements, the Train Operator shall submit its requests for a network services movement to the CVL IM not less than 20 Working Days prior to the Timetable Week such CVL services movement is required to operate.

# CVL IM OBLIGATIONS

*Maintenance of CVL*

The CVL IM shall ensure that the CVL is maintained and operated to a standard which will permit the provision of the Services using the Registered Equipment in accordance with the terms of Schedule 5.

*Personnel*

The CVL IM shall ensure that adequate and suitably qualified personnel are engaged in the operation and maintenance of the CVL.

*CVL Network Code*

The CVL IM shall ensure that all operators of trains on the CVL agree to be a party to the CVL Network Code, except where the Office of Rail and Road may have directed otherwise.

# JOINT OBLIGATIONS

Variations to Scheduled Services – *Train Operator Variation Request*

If for any reason the CVL, or any part of the CVL, is not available at the time at which a Service (the **“Original Service”**) is Scheduled to operate over any part of the CVL (or part, as the case may be) then the CVL IM shall co-operate with Network Rail to find an alternative route/timing for the Train Operator to make the relevant train movement.

Subject to Clause 7.1(E) below, if the Train Operator becomes aware or is notified by either the CVL IM or Network Rail that the Original Service is not available, the Train Operator shall submit a Train Operator Variation Request to Network Rail (and shall simultaneously submit a copy of such notice to the CVL IM) in accordance with Part D of the CVL Network Code in respect of an alternative route and/or timing and:

(1) if an alternative route and/or timing is established, the Train Operator shall make the relevant train movement in accordance with the alternative route and/or timing (the **“Alternative Service”**); or

(2) if an alternative route and/or timing is not established, the Original Service shall be treated as cancelled (for the purposes of Schedule 8) unless the part of the CVL over which the Original Service was due to operate is not available for a reason Attributable to the Train Operator or the Train Operator has unreasonably refused to submit a Train Operator Variation Request or, having made a Train Operator Variation Request, has unreasonably rejected an alternative route and/or timing proposed by the CVL IM in response to that Train Operator Variation Request.

If the Train Operator does not have train crew with the necessary route knowledge to make the relevant train movements over any part(s) of the alternative route established pursuant to this Clause and the part of the CVL over which the Original Service was due to operate is not available, the Train Operator shall use all reasonable endeavours to procure the provision of the services of a Route Conductor or Route Conductors (as the circumstances may require) to enable the Alternative Service to operate. If the Train Operator is unable to procure the services of a Route Conductor or Route Conductors then the CVL IM shall use all reasonable endeavours to assist the Train Operator to procure the provision of a Route Conductor or Route Conductors (as the circumstances may require) to enable the Alternative service to operate,

Any Route Conductor shall be under the control of the Train Operator for all purposes and the CVL IM shall have no liability for any act, omission or default of the Route Conductor.

If the non-availability of the CVL is not known about in sufficient time for the Train Operator to make a Train Operator Variation Request, then the CVL IM shall co-operate with Network Rail to find an alternative route/timing for the Train Operator to make the relevant train movement and:

(1) if an alternative route and/or timing is established, the Train Operator shall make the relevant train movement in accordance with the alternative route and/or timing; or

(2) if an alternative route and/or timing is not established, the Original Service shall be treated as cancelled (for the purposes of Schedule 8) unless the part of the CVL over which the Original Service was due to operate is not available for a reason Attributable to the Train Operator.

*Not* *Used*.

*Stabling*

The Train Operator shall use all reasonable endeavours to specify in the applicable Train Operator Variation Request any Stabling requirements to enable the train movement envisaged by any particular Train Slot to be completed without obstructing the CVL.

The CVL IM shall use all reasonable endeavours to provide such Stabling facilities as are necessary for the provision of the Services in accordance with the Working Timetable.

Where, due to unforeseen circumstances, the Train Operator wishes to store railway vehicles on the CVL, it shall first obtain the CVL IM’s approval of the location and period of storage, such approval not to be unreasonably withheld. Following such approval, the Train Operator shall submit a Train Operator Variation Request in accordance with the terms so approved. Subject thereto, the Train Operator has no entitlement to store railway vehicles on the CVL.

*Use of Railway Code Systems*

The parties shall:

#### use the Railway Code Systems and any other applicable System in their dealings with each other in connection with matters provided for in this Agreement; and

comply with the Systems Code on the CVL,

provided that for the purposes of this clause, the CVL IM shall only be required to comply with limb (a) of the definition of the Systems Code on the CVL as a "User" (as such term is defined in the Code of Practice relating to the Management and Development of Railway Information Systems).

### Without prejudice to Clause 7.4(A), the Train Operator shall:

provide to the CVL IM train consist data; and

ensure that such data is true and accurate as far as is reasonable in the circumstances.

### The Train Operator shall notify the CVL IM of any movement onto the CVL and off the CVL of any railway vehicle under the control of the Train Operator by promptly making a full and accurate train release or acceptance entry to the appropriate Railway Code Systems or Applicable System.

The Train Operator consents to the use by the CVL IM of any data or other information supplied by the Train Operator to the CVL IM in the course of complying with its Safety Obligations for the purpose of monitoring the Train Operator's performance of its obligations under this Agreement.

# INDEMNITIES AND LIABILITY FOR PERFORMANCE

*Train Operator Indemnity*

Subject to Clause 8.9, the Train Operator shall indemnify the CVL IM against all Relevant Losses resulting from:

a failure by the Train Operator to comply with its Safety Obligations;

any Environmental Damage arising from the acts or omissions of the Train Operator or the proper taking by the CVL IM under Part E of the CVL Network Code of any steps to prevent, mitigate or remedy an Environmental Condition which exists as a direct result of the acts or omissions of the Train Operator; or

any damage to the CVL arising directly from the Train Operator’s negligence.

*The CVL IM Indemnity*

Subject to Clause 8.9, the CVL IM shall indemnify the Train Operator against all Relevant Losses resulting from:

a failure by the CVL IM to comply with its Safety Obligations;

any Environmental Damage to the CVL arising directly from any acts or omissions of the CVL IM; or

any damage to the Registered Equipment or other vehicles or things brought onto the CVL in accordance with the permission to use granted by this contract arising directly from the CVL IM’s negligence.

*Liabilities for Late Trains*

The rights and obligations of the parties set out in Schedule 8 (Performance Regime) represent the parties' sole entitlement as between themselves to any liabilities arising from cancellations, interruptions or delays to trains.

*Liability under Schedule 8*

Subject to the Incident Cap, the Train Operator’s liability to the CVL IM in respect of all payments that may become due and payable under Schedule 8 in any Financial Year or part thereof, shall not be limited under this Agreement.

*Notification of Claims and Mitigation*

A party wishing to make a claim under an indemnity provided for in this Agreement:

shall notify the other party of the relevant circumstances giving rise to that claim as soon as reasonably practicable after first becoming aware of those circumstances (and in any event within 365 days of first becoming so aware); and

subject to Clause 8.5(C), shall take all reasonable steps to prevent, mitigate and restrict the circumstances giving rise to that claim and any Relevant Losses connected with that claim; and

shall not be required to exercise any specific remedy available to it under this contract.

## *Restrictions on claims by the CVL IM*

Any claim by the CVL IM against the Train Operator for indemnity for Relevant Losses:

shall exclude any Relevant Losses to the extent that they result from a cancellation of or a delay in commencement to a Restriction of Use; and

shall exclude payments to any person under or in accordance with the provisions of any Access Agreement other than any such payments which are for obligations to compensate for damage to property, and so that any claim for indemnity under this contract for such payments for damage to property, in relation to any incident, shall be limited to:

#### the maximum amount for which the Train Operator would be liable for such damage in accordance with the Claims Allocation and Handling Agreement; less

any other compensation which the Train Operator has an obligation to pay for such damage; and

### shall exclude loss of revenue in respect of permission to use any part of the CVL under or in accordance with any Access Agreement with any person; and

shall:

#### include Relevant Losses only to the extent that these constitute amounts which the CVL IM would not have incurred as network operator but for the relevant breach; and

give credit for any savings to the CVL IM which result or are likely to result from the incurring of such amounts.

## *Restrictions on claims by Train Operator*

Any claim by the Train Operator against the CVL IM for indemnity for Relevant Losses:

shall exclude any Relevant Losses to the extent that they result from delays to or cancellations of trains; and

shall:

#### include Relevant Losses only to the extent that these constitute amounts which the Train Operator would not have incurred as train operator but for the relevant breach; and

give credit for any savings to the Train Operator which result or are likely to result from the incurring of such amounts.

## *Restriction on claims by both parties*

Any claim for indemnity for Relevant Losses shall exclude Relevant Losses which:

do not arise naturally from the breach; and

were not, or may not reasonably be supposed to have been, within the contemplation of the parties:

#### at the time of the making of this Agreement; or

#### where the breach relates to a modification or amendment to this contract, at the time of the making of such modification or amendment,

as the probable result of the breach.

## *Limitation on Liability*

Subject to Clause 20.4, Schedule 9 shall have effect so as to limit the liability of the parties to one another under the Agreement, but in relation to a failure to perform an obligation under the CVL Network Code, only to the extent (including as to time and conditions) that the CVL Network Code so provides.

**PART C: TERM AND EVENTS OF DEFAULT**

# TERM

This Agreement shall continue for the Contract Term.

# EVENTS OF DEFAULT

*Train Operator Events of Default*

The following shall be Train Operator Events of Default, and the Train Operator shall notify the CVL IM promptly upon becoming aware of any Train Operator Event of Default:

the Train Operator ceases to be authorised to be the operator of trains for the provision of the Services in accordance with Clause 2.2(A);

an Insolvency Event occurs in relation to the Train Operator;

#### any breach by the Train Operator of this Agreement, its Safety Obligations or any of the Collateral Agreements; or

#### any event or circumstance which is reasonably likely to result in any such breach,

which, by itself or taken together with any other such breach, event or circumstance, the CVL IM reasonably considers constitutes a threat to the safe operation of any part of the CVL;

any Track Charges or other amount due by the Train Operator to the CVL IM under this Agreement remain unpaid for more than seven days after their due date;

any breach of this Agreement or any material breach of any of the Collateral Agreements by the Train Operator which, by itself or taken together with any other such breach, results, or is likely to result, in material financial loss to the CVL IM; and

any breach of this Agreement or any material breach of any of the Collateral Agreements by the Train Operator which, by itself or taken together with any other such breach, results, or is likely to result, in material disruption to train operations of other train operators.

*CVL IM Events of Default*

The following shall be CVL IM Events of Default, and the CVL IM shall notify the Train Operator promptly upon becoming aware of any CVL IM Event of Default:

the CVL IM ceases to be authorised to be the operator of the CVL by a licence granted under section 8 of the Act unless exempt from the requirement to be so authorised under section 7 of the Act;

an Insolvency Event occurs in relation to the CVL IM;

#### any breach by the CVL IM of this Agreement, its Safety Obligations or any of the Collateral Agreements;

any event or circumstance which is reasonably likely to result in any such breach,

which, by itself or taken together with any other such breach, event or circumstance the Train Operator reasonably considers constitutes a threat to the safe operation of the Services or any Ancillary Movements; and

any breach of this Agreement or any material breach of any of the Collateral Agreements by the CVL IM which, by itself or taken together with any other such breach, results, or is likely to result, in material financial loss to the Train Operator.

# SUSPENSION

*Right to suspend*

The CVL IM may serve a Suspension Notice where a Train Operator Event of Default has occurred and is continuing.

The Train Operator may serve a Suspension Notice where a CVL IM Event of Default has occurred and is continuing.

*Contents of Suspension Notice*

A Suspension Notice shall specify:

the nature of the relevant Event of Default;

the date and time at which suspension is to take effect;

in the case of a Suspension Notice served on the Train Operator, reasonable restrictions imposed while the Suspension Notice is in force on the permission to use the CVL or any parts of it;

in the case of a Suspension Notice served on the CVL IM, details of any necessary suspension of the Services; and

whether the party serving the Suspension Notice reasonably considers that the Event of Default is capable of remedy, and where the Event of Default is capable of remedy:

the steps reasonably required to remedy the Event of Default; and

a reasonable grace period for it to be remedied (where the Event of Default is a failure by the Train Operator to pay Track Charges, or other amounts due, seven days shall be a reasonable grace period).

*Effect of Suspension Notice served by the CVL IM*

Where the CVL IM has served a Suspension Notice on the Train Operator:

the Train Operator shall comply with any reasonable restrictions imposed on it by the Suspension Notice;

the Suspension Notice shall remain in full force and effect in accordance with its terms until it is revoked either in whole or in part by notice from the CVL IM to the Train Operator pursuant to Clause 11.5(C);

service of the Suspension Notice shall not affect the Train Operator's continuing obligation to pay the Track Charges; and

service of the Suspension Notice shall not affect the Train Operator’s entitlement to participate in any bidding process provided for in Part D of the CVL Network Code.

*Effect of Suspension Notice served by the Train Operator*

Where the Train Operator has served a Suspension Notice on the CVL IM:

it shall have the effect of suspending the Train Operator's permission to use the CVL to provide the Services to the extent specified in the Suspension Notice;

in relation to Services suspended as specified in the Suspension Notice, the amount of the Track Charge shall be abated on a daily basis by an amount equal to the formula:

X x Z

Y

where:

X is the total Track Charge payable by the Train Operator in respect of the day in question;

Y is the total number of Contract Services to which the Train Operator is entitled on the day in question; and

Z is the total number of Contract Services, the subject of the Suspension Notice, for the day in question.

The Train Operator shall not be entitled to any other payment (whether pursuant to Schedule 8 or otherwise) in respect of the suspended Services;

the Suspension Notice shall remain in full force and effect in accordance with its terms until it is revoked either in whole or in part by notice from the Train Operator to the CVL IM pursuant to Clause 11.5(C); and

the service of the Suspension Notice shall not affect the Train Operator’s entitlement to participate in any bidding process provided for in Part D of the CVL Network Code.

*Suspension to be proportionate to breach*

A Suspension Notice served under Clause 11.3 in respect of any of the Train Operator Events of Default specified in Clause 11.3(A) and Clause 11.3(C) to (F) (inclusive) shall, so far as reasonably practicable, apply only to the:

railway vehicles;

Services; or

categories of train movements or railway vehicles,

or parts or part of them, to which the relevant Train Operator Event of Default relates.

A Suspension Notice served under Clause 11.4 in respect of any of the CVL IM Events of Default specified in Clause 11.4(A), (C) and (D) shall, so far as reasonably practicable, apply only to the:

railway vehicles;

Services; or

categories of train movements or railway vehicles,

or parts or part of them, to which the relevant CVL IM Event of Default relates.

The party served with a Suspension Notice which specifies an Event of Default which is capable of remedy shall:

#### with all reasonable diligence, take such steps as are specified in the Suspension Notice to remedy the Event of Default; and

#### keep the party serving the Suspension Notice fully informed of the progress which is being made to remedying the Event of Default.

Where a party served with a Suspension Notice has complied with its obligations under Clause 11.5(C), whether in whole or in part, and it is reasonable for the suspension effected by the Suspension Notice to be revoked, whether in whole or in part, the party which served the Suspension Notice shall revoke the suspension to that extent. Such revocation shall be effected as soon as practicable after the remedy in question has been effected by notice to the other party specifying the extent of the revocation and the date on which it shall have effect.

# TERMINATION

*The CVL IM - Right to Terminate*

The CVL IM may serve a Termination Notice on the Train Operator:

where the Train Operator fails to comply with any material restriction in a Suspension Notice;

where the Train Operator fails to comply with its obligations under Clause 11.5(C);

where the Train Operator Event of Default specified in Clause 10.1(A) has occurred and is continuing; and

where the Train Operator Event of Default specified in a Suspension Notice served by the CVL IM is not capable of being remedied and three months have elapsed from the service of that Suspension Notice.

*Train Operator - Right to Terminate*

The Train Operator may serve a Termination Notice on the CVL IM:

where the CVL IM fails to comply with its obligations under Clause 11.5(C);

where the CVL IM Event of Default specified in Clause 10.2(A) has occurred and is continuing; and

where the CVL IM Event of Default specified in a Suspension Notice served by the Train Operator is not capable of being remedied and three months have elapsed from the service of that Suspension Notice.

*Contents of Termination Notice*

A Termination Notice shall specify:

the nature of the relevant Event of Default;

the date and time, which shall be reasonable in the circumstances, termination is to take effect; and

whether the party serving the Termination Notice reasonably considers that the Event of Default is capable of remedy, and where the Event of Default is capable of remedy:

the steps which the party serving the Termination Notice believes are reasonably required to remedy the Event of Default; and

a reasonable grace period for it to be remedied (where the Event of Default is a failure of the Train Operator to pay Track Charges, or other amounts due, seven days is a reasonable grace period).

*Effect of Termination Notice*

Where the CVL IM or the Train Operator has served a Termination Notice on the other:

the service of the Termination Notice shall not affect the parties' continuing obligations under this Agreement up to the date of termination which date shall be determined in accordance with paragraph 12.4(C);

the party which has served the Termination Notice shall withdraw it by notice to the other party upon being reasonably satisfied that the relevant Event of Default has been remedied; and

subject to 12.4(B) above, this Agreement shall terminate on the later of:

the date and time specified in the Termination Notice for the Agreement to terminate (or such later date and time as the party which served the Termination Notice notifies to the other before the date and time so specified); and

the date and time upon which notice of such termination is given to the ORR.

*Consequences of Termination*

Immediately before, upon or following termination or expiry of this Agreement, the Train Operator shall comply or procure compliance with all reasonable directions given by the CVL IM concerning the location of the Registered Equipment. If the Train Operator fails to comply with any such directions, the CVL IM shall be entitled to remove or have removed from the CVL or Stable any Registered Equipment left on the CVL or to instruct a third party to do so and any reasonable costs incurred by the CVL IM in taking such steps shall be paid promptly by the Train Operator. The CVL IM shall provide the Train Operator with such evidence of such costs as the Train Operator shall reasonably request.

*Exclusion of Common Law Termination Rights*

The suspension and termination rights set out in Clauses 11 and 12 shall be the parties' sole rights to suspend and terminate this Agreement (whether pursuant to its terms or at law).

*Survival of Clauses*

Clause 8, Clause 12.5, Clause 22, Part D and Schedule 9 of this Agreement shall survive termination of this Agreement irrespective of the reason for termination.

**PART D: PAYMENT TERMS AND CONFIDENTIALITY**

# PAYMENTS

*Payment of Invoices*

Except where otherwise specified in Schedule 5, 7 or 8, all invoices:

shall be paid within 28 days of the date of their receipt; and

shall contain such detail as to the constituent elements of the amounts stated to be payable as shall be necessary or expedient so as to enable the person to whom it is given to understand and check it.

All payments shall be made such that cleared funds are received by the payee on or before the date on which such payment becomes due and payable. All payments shall be made by direct debit mandate or standing order mandate, CHAPS transfer, BACS transfer or other electronic or telegraphic transfer to a London clearing bank or such other financial institution as may be approved by the party entitled to the payment, such approval not to be unreasonably withheld or delayed

*Notification of a dispute*

Except as otherwise provided in this Agreement, within 14 days of receipt of an invoice or statement of amounts payable issued under any provision of this contract, the recipient shall notify the issuer of any aspects of the invoice or statement which it disputes, giving reasons for any dispute. Except to the extent that disputes are so notified, the recipient shall be deemed to have agreed the contents of the invoice or statement.

*Sending invoices*

All invoices or statements of amounts payable issued under any provision of this Agreement shall be delivered by hand at, or sent by prepaid first class post to, the address for service for the recipient specified in Schedule 1 and shall be deemed to have been received by the addressee in accordance with Schedule 1.

*Payment in full*

Subject to Clause 13.5 and except as otherwise provided in this Agreement, where any amount contained in an invoice in accordance with Schedule 7 is in dispute under Clause 13.2:

the Train Operator shall pay the full amount of the invoice, including the disputed amount, in accordance with the terms of the invoice;

payment of the disputed amount shall be without prejudice to the determination of whether such amount is properly due or not; and

Clause 14 shall apply.

*Right to withhold payment of disputed amount*

If:

any amount which is payable under any provision of this Agreement other than Schedule 7 is in dispute under Clause 13.2; or

an invoice or statement of amounts payable under any provision of this contract contains an error and the recipient of such invoice or statement has notified the issuer of any aspects of the invoice or statement which contain an error and which it disputes under Clause 13.2

then:

the undisputed amount shall be paid in accordance with Clause 13.1, or as otherwise provided for in this Agreement;

the disputed balance, or such part of it as has been agreed or determined to be payable, shall be paid or set off, as the case may be, within 35 days after the end of the Charging Period in which the dispute is resolved or determined; and

Clause 14 shall apply also in respect of the disputed balance, or such part of it as has been agreed or determined to be payable

# DEFAULT INTEREST

Without prejudice to any other rights or remedies which one party may have in respect of the failure of the other party to pay any amount on the due date, amounts payable under this Agreement and not paid by the due date shall carry interest (to accrue daily and to be compounded monthly) at the Default Interest Rate from the due date until the date of actual payment (as well after judgment as before), except to the extent that late payment arises from any failure by the invoicing party to comply with Clause 13.1(B) or Clause 13.3.

Where a disputed amount is paid under Clause 13.4 and it is subsequently determined that such amount, or part of it, was not properly due, the payee shall repay the disputed amount, or relevant part, to the payer together with interest (to accrue daily and to be compounded monthly) at the Default Interest Rate from the date of actual payment until the date of actual repayment (as well after judgment as before).

# VALUE ADDED TAX

*Taxable Supply*

Where any taxable supply for VAT purposes is made under or in connection with this Agreement by one party to the other, the payer shall, in addition to any payment required for that supply, pay such VAT as is chargeable in respect of it.

*Reimbursement or Indemnity*

Where under this Agreement one party has agreed to reimburse or indemnify the other in respect of any payment made or cost incurred by the other, then the first party shall also reimburse any VAT paid by the other which forms part of its payment made or cost incurred to the extent such VAT is not available for credit for the other, or for any person with which the indemnified party is treated as a member of a group for VAT purposes, under sections 25 and 26 of the Value Added Tax Act 1994.

*Rebate or Repayment*

Where under this Agreement any rebate or repayment of any amount is payable by one party to the other, and the first party is entitled as a matter of law or of HM Revenue and Customs practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made and the first party shall issue an appropriate VAT credit note to the other party.

# CONFIDENTIALITY

*Confidential Information*

Except as permitted by Clause 16.4, all Confidential Information shall be held confidential during and after the continuance of this Agreement and shall not be divulged in any way to any third party without the prior written approval of the other party.

*The CVL IM - Affiliates*

Except as permitted by Clause 16.4, the CVL IM shall procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information.

*Train Operator - Affiliates*

Except as permitted by Clause 16.4, the Train Operator shall procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information.

*Entitlement to Divulge*

Either party and its Affiliates, and its and their respective officers, employees and agents, shall be entitled in good faith to divulge any Confidential Information without the approval of the other party in the following circumstances:

to the ORR;

to the Secretary of State;

to the Welsh Ministers and TfW;

to any Affiliate of either party or the ODP;

to any officer or employee of the party in question or any person engaged in the provision of goods or services to or for him if disclosure is necessary or expedient to enable the party in question to perform its obligations under this Agreement or to enforce its rights under this Agreement, upon obtaining an undertaking of strict confidentiality from such officer, employee or person;

to any professional advisers or consultants of such party engaged by or on behalf of such party and acting in that capacity, upon obtaining an undertaking of strict confidentiality from such advisers or consultants;

to any insurer or insurance broker from whom such party is seeking insurance or in connection with the making of any claim under any policy of insurance, upon obtaining an undertaking of strict confidentiality from the insurer or insurance broker;

to any lender, security trustee, bank or other institution from whom such party is seeking or obtaining finance , or credit support for such finance, or any advisers to any such entity, or any rating agency from whom such party is seeking a rating in connection with such finance or credit support, upon obtaining an undertaking of strict confidentiality from the entity or advisers or rating agency in question;

to the extent required by the Act, the Licensing Regulations, any other applicable law, the rules of any stock exchange or regulatory body or any written request of any taxation authority;

to the extent that it has become available to the public other than as a result of any breach of an obligation of confidence; and

under the order of any court or tribunal of competent jurisdiction (including the Allocation Chair or any relevant CVL ADRR Forum, each as defined in the CVL ADRR ); and

in the case of the CVL IM, to any other infrastructure manager with regard to any relevant systems, access, performance regime or infrastructure related issue.

*Ownership of Confidential Information*

All Confidential Information shall be and shall remain the property of the party which supplied it to the other party.

*Return of Confidential Information*

Each of the CVL IM and the Train Operator shall promptly return to the other party any Confidential Information requested by the other party if such request:

(a) is made on or within two months after the Expiry Date or, if this Agreement lapses or is terminated earlier, is made within two months after the date on which this Agreement lapses or is terminated;

(b) is reasonable; and

(c) contains a sufficient description of the relevant Confidential Information to enable such information to be readily identified and located.

## *Retention or destruction of Confidential Information*

If the CVL IM or the Train Operator, as the case may be, has not received a request to return any Confidential Information to the other party under and within the time limits specified in Clause 16.6, it may destroy or retain such Confidential Information.

Nothing in this Clause 16 restricts the right of the CVL IM to disclose information to which this Clause 16 applies to the extent that it is permitted or required so to do under the CVL Network Code.

**PART E: DISPUTES AND GENERAL**

# ASSIGNMENT

*No assignment without consent*

Subject to Clause 17.3, the Train Operator shall not (without the prior consent of the CVL IM) assign, or grant any Security Interest on or over, this Agreement (or any part) or any benefit, interest or right in or under this Agreement.

*The CVL IM’s power to assign*

The CVL IM may at any time assign, novate or transfer all or any part of the benefit of, or its rights or obligations under, this Agreement to any third party being a transferee under a transfer made pursuant to Schedule 7 of the Railways Act 1993 (as amended from time to time) or a purchaser of the whole or any part of the CVL IM’s business or share capital pursuant to a sale approved by the Welsh Ministers.

*Novation*

To the extent approved by ORR following consultation with the other party, and subject to the conditions (if any) of ORR's approval, the CVL IM shall be entitled to novate or otherwise transfer in full all of its rights and obligations under this contract, without the consent of the Train Operator, to the company Wales Infrastructure Manager of Last Resort Limited (England and Wales company number 12213395) or to such other Infrastructure Manager as the Welsh Ministers may direct:

### immediately prior to any expiry or termination of Infrastructure Agreement; or

### where the CVL IM ceases to be the infrastructure manager of the CVL.

If the CVL IM exercises its rights under this clause then the Train Operator shall fully co-operate with the CVL IM to achieve such novation or transfer, including by promptly entering into any other documents reasonably requested by the CVL IM in relation to the exercise of such rights.

# INVALIDITY

If any provision in this Agreement shall be held to be void, illegal, invalid or unenforceable, in whole or in part, under any rule of law, such provision shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

# NON WAIVER

No waiver by either party of any default by the other in the performance of any obligation under this Agreement shall operate or be construed as a waiver of any other or further default whether of a like or different character. The failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other right or remedy and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

# ENTIRE AGREEMENT

*Entire Agreement*

 This Agreement contains the entire agreement between the parties in relation to the subject matter of this Agreement;

*No representations*

Each party acknowledges that it has not been induced to enter into this Agreement in reliance upon, nor has it been given, any warranty, representation, statement, agreement or undertaking of any nature whatsoever other than as expressly set out in this Agreement and, to the extent that this is not the case, the relevant party unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to any such matter and neither party shall have any right to rescind or terminate this Agreement either for breach of contract or for misrepresentation or otherwise, except as expressly provided for in this Agreement.

*Rights and remedies*

Subject to Clause 8.4(C) and except as expressly provided in this Agreement:

(A) neither party shall have any liability (including liability arising as a result of any negligence, breach of contract or breach of statutory obligation) to the other in connection with the subject matter of this Agreement; and

(B) the remedies provided for in this Agreement shall be the sole remedies available to the parties in respect of any matters for which such remedies are available.

Without prejudice to the generality of this Clause 20.4, nothing in this Agreement shall exclude, restrict or limit, or purport to exclude, restrict or limit:

any liability which either party would otherwise have to the other party, or any right which either party may have to rescind this contract, in respect of any statement made fraudulently by the other party before the execution of this contract;

any right which either party may have in respect of fraudulent concealment by the other party;

any right which either party may have in respect of a statement of the kind referred to in section 146 of the Act, whether or not proceedings have been instituted in that respect; or

any liability which either party may have towards the other party for death or personal injury resulting from its negligence or the negligence of any of its officers, employees or agents.

# MISCELLANEOUS

*Variation*

No variation of this Agreement shall be effective unless in writing and signed by the parties.

*Counterparts*

This Agreement may be executed in two counterparts which, taken together, shall constitute one and the same document. Either party may enter into this Agreement by signing either of such counterparts.

# DISPUTES

Except as provided in the CVL Network Code and as may otherwise be agreed between the parties, any dispute or claim arising out of or in connection with this Agreement shall be resolved in accordance with the CVL Access Disputes Resolution Rules in force at the time of the reference.

# LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of England and subject to Clause 22 the parties irrevocably agree that the Courts of England are to have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement.

# CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Without prejudice to any right of any competent authority, no person who is not a party to this Agreement shall be entitled in his own right to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

**IN WITNESS** whereof the CVL IM and the Train Operator have entered into this Agreement on the date first above written.

Schedule 1

**NOTICE PARTICULARS**

PART I: NOTICES

# Sending Notices

Except where expressly provided in this Agreement, any notice given under or pursuant to this Agreement shall be in writing and shall be sent to the party on whom the notice is to be served at the address for service of that party specified in this Schedule or to such other address as that party may from time to time have notified to the other in accordance with this Schedule:

by prepaid first-class post when sent from and to any place within the United Kingdom;

by hand or by recorded delivery; or

by electronic data transfer.

# Copy Notices

If there shall be specified in this Schedule any person to whom copies of notices shall also be sent, the party serving a notice in the manner required by this Schedule shall send a copy of the notice in question to such person at the address for serving copies as specified in this Schedule, or to such other person or address as may, from time to time, have been notified by the party to be notified to the notifying party in accordance with this Schedule. Such copy notice shall be sent immediately after the original notice.

# Receipt Of Notices

Notices required to be in writing and served in accordance with this Schedule shall be deemed to have been received by the party to be notified:

if by prepaid first-class post, from and to any place within the United Kingdom, three days after posting unless otherwise proven;

if by hand or by recorded delivery, when delivered; and

if by electronic data transfer, upon sending.

PART II: THE CVL IM

# The CVL IM Details

The CVL IM's address for the service of notices is:

|  |
| --- |
| Seilwaith Amey Cymru / Amey Infrastructure Wales Limited 10 Furnival StreetLondonEC4A 1AB  |
| Email: secretariat@amey.co.uk |
| All written notices to be marked:"URGENT: ATTENTION THE COMPANY SECRETARY "All written notices to be copied to:"URGENT: INFRASTRUCTURE MANAGEMENT DIRECTOR"Seilwaith Amey Cymru / Amey Infrastructure Wales Limited Transport for Wales CVL Infrastructure DepotTy TrafnidiaethTreforest Industrial EstatePONTYPRIDDCF37 5UR |

PART III: TRAIN OPERATOR

# Train Operator Details

The Train Operator’s address for the service of notices is:

Supplier Address

All written notices to be marked:

“URGENT: FOR THE ATTENTION OF THE COMPANY SECRETARY

# Copy Notices

All notices shall be copied to:

Supplier Representative Name

Supplier Address

Schedule 2: Not Used

Schedule 3: COLLATERAL AGREEMENTS

1. An agreement under which the Train Operator agrees to become a party to the Claims Allocation and Handling Agreement.

2. A document entitled CVL Emergency Access Code as approved or directed by ORR.

schedule 4: not used

schedule 5: the services

**Services**

*The Services*

The Train Operator shall be entitled to submit a Train Operator Variation Request for Train Slots for the movement of Registered Equipment:

(a) to the extent such movements are required for the Train Operator to provide the CVL IM with network services;

(b) provided the Train Operator’s rights to Train Slots under this Agreement are subject to such modifications or variations the CVL IM may make to the CVL from time to time. For the avoidance of doubt the Train Operator waives:

(i) any right to be consulted or to compensation in respect of any CVL Network Change made pursuant to Part G of the CVL Network Code;

(ii) any right to be consulted in respect of any proposed train regulation statement under Part H of the CVL Network Code; and

(iii) any right to be consulted in respect of any proposed amendment to the Timetable Planning Rules or the CVL Engineering Access statement.

schedule 6: not used

schedule 7: TRACK CHARGES

**Part I: Definitions**

In this Schedule, unless the context otherwise requires:

“Annual Network Charge” means, in respect of each Financial Year or part thereof the sum of one pound (£1.00).

**Part II: Annual Network** **Charge**

The Train Operator shall pay or procure payment of the Annual Network Charge to the CVL IM or its nominee in the event that the CVL IM or its nominee issue an invoice in respect of the Annual Network Charge in accordance with Clause 13 and Part III of this Schedule 7 of this Agreement.

**Part III: Payment Procedures and Invoice Frequency**

The CVL IM or its nominee shall issue to the Train Operator an invoice as soon as practicable following the expiry of each Charging Period in respect of all amounts (if any) that have become payable under this Agreement to the CVL IM during that Charging Period (the first such Charging Period to commence on the Commencement Date).

**Part IV: Other Amounts Payable**

1. The CVL IM

 The CVL IM or its nominee shall pay to the Train Operator any amount payable in accordance with the terms of this Agreement.

2. Train Operator

The Train Operator shall pay to the CVL IM or its nominee any amount payable in accordance with the terms of this Agreement.

SCHEDULE 8: PERFORMANCE REGIME

**PART I: INTRODUCTION**

# 1A. Effect of Schedule 8

1A.1 The provisions of this Schedule 8 shall only take effect when the CVL IM notifies the Train Operator that this Schedule applies in accordance with Clause 2.6. Prior to such date the provisions of Schedule 8 shall have no effect.

# Definitions and Interpretation

*Definitions*

In this Schedule 8 and its Table, unless the context otherwise requires:

“Commercial Freight Service” means a service for the carriage of goods other than for the maintenance, renewal, construction, upgrading, dismantling and removal of the CVL;

“CVL IM Disruption” means an incident (other than a Planned Incident) in respect of which the CVL IM is allocated responsibility in accordance with the principles set out in Part VI;

“CVL IM's Representative” means any employee of the CVL IM as may be notified in writing from time to time by the CVL IM to the Train Operator for the purposes of this Schedule;

“Joint Disruption” means an incident (other than a Planned Incident) in respect of which the CVL IM and the Train Operator are allocated joint responsibility in accordance with the principles set out in Part VI;

“Minutes Delay” means the number of minutes of delay in respect of a Trigger of a Recording Point calculated in accordance with Part V;

“Operator Disruption” means an incident (other than a Planned Incident) in respect of which the Train Operator is allocated responsibility in accordance with the principles set out in Part VI;

“Planned Incident” means an incident described as such in paragraph 6.6;

 “Rate” has the value attributed to it in Table 1 of this Schedule, subject to any adjustment pursuant to paragraph 9 hereof;

“Recording Point” means:

(a) a location at which the CVL IM using the Performance Monitoring System records the times at which trains arrive, pass or depart; or

(b) a location not on the CVL at which the Train Operator using the Performance Monitoring System records the times at which TOC Services arrive, pass or depart;

“Recovery Time” means additional time incorporated in the Applicable Timetable to allow for a train to regain time lost in delay during an earlier part of its journey;

“Senior Officer” means:

(a) for the CVL IM, the CVL IM Infrastructure Management Director or his nominee; and

(b) for the Train Operator, the Production Director or his nominee;

“Third Party Train” means any railway passenger service or Commercial Freight Service (including any Ancillary Movement associated with such railway services), other than:

(a) a TOC Service; or

(b) a Third Party Network Services Movement;

“Third Party Train Cancellation” in respect of any Third Party Train, means a train which fails to operate at all due to Operator Disruption;

|  |  |
| --- | --- |
| “Third Party Network Services Movement” | means the movement, by a third party not the subject of this Agreement, of equipment necessary for the carrying out of works on the CVL including (without limitation) the maintenance, renewal, construction, upgrading, dismantling and removal of the CVL; |

“TOC Service” means a service the subject of this Agreement;

“TPT Cancellation Minutes” has the value attributed to it in Table 1 of this Schedule;

“Train Operator’s Representative” means any employee of the Train Operator as may be notified in writing from time to time by the Train Operator to the CVL IM for the purposes of this Schedule; and

“Trigger” means the act of a train arriving at, passing or departing from a Recording Point.

*Interpretation*

For the purposes of this Schedule, events in respect of a train shall be treated as occurring on the day on which they occur and not on the day on which the train was Scheduled to depart from its point of origin.

Unless otherwise stated:

any reference to a Table is a reference to a Table forming part of this Schedule; and

where in this Schedule a period is expressed to be between two specific times, that period shall be inclusive of both such times.

Cognate words and expressions deriving from the definitions given in paragraph 1.1 shall be construed accordingly.

**PART II: GENERAL**

**General Principles and Performance Information**

*Information*

The CVL IM and the Train Operator shall each use all reasonable endeavours to keep the other informed of any known or anticipated delay to or cancellation of TOC Services.

*Mitigation*

The CVL IM and the Train Operator shall each take reasonable steps to avoid and mitigate the effects of any incidents upon the TOC Services and Third Party Trains, whilst taking into account the requirements, including contractual requirements (where known), of other operators.

*The CVL IM recording of performance*

The CVL IM shall use reasonable endeavours to record, for each day, in the Performance Monitoring System:

the times at which TOC Services and the Third Party Trains delayed by the Services Trigger Recording Points; and

Minutes Delay to Third Party Trains, together with, in each case, the incident(s) causing them and the allocation of responsibility for those incidents made under Part VI.

*Train Operator recording of performance*

The Train Operator shall participate in the Performance Monitoring process and shall notify to the CVL IM the time of each Trigger by a TOC Service of a Recording Point which is not on the CVL and in respect of each such Trigger advise the CVL IM as to the incident(s) causing delay to any such Trigger.

*Unallocated delay*

In respect of each Trigger by a TOC Service of a Recording Point, the CVL IM shall use reasonable endeavours to record separately, as unallocated delay, those minutes of delay of three minutes or more included in Minutes Delay for which it is unable to identify the incident(s) which caused that delay. The Train Operator shall co-operate with the CVL IM on request by providing all such information as it has in its possession regarding the identification of the incident(s) which caused that delay.

*Performance Data Accuracy Code*

The Performance Data Accuracy Code shall apply to the recording of train performance and the provision of information regarding train performance under this Schedule, and the rights and remedies of the Train Operator in respect of the same shall be subject to and interpreted in accordance with the provisions of the Code.

*Notification*

As soon as reasonably practicable, and in any event no later than the following Working Day, the CVL IM shall provide to the Train Operator through the Performance Monitoring System the information recorded under paragraphs 2.3, 2.4 and 2.5 (the **“Train Performance Information”**).

For the purposes of this Agreement, the Train Operator shall be treated as having agreed all of the information so recorded and provided by the CVL IM except to the extent that, within two clear Working Days of the information being provided, it has notified (the **“TOC Notification”**) the CVL IM of those items of information (if any) which it disputes, giving reasons for any disputes.

The parties shall use their respective reasonable endeavours to resolve each such dispute within two Working Days of the TOC Notification. Following any such resolution, the CVL IM shall provide the Train Operator with a final statement for the day in question setting out the Train Performance Information.

*Coding of Services*

The eight character code applied to trains in the Performance Monitoring System will be agreed by the parties for each TOC Service to facilitate monitoring of the TOC Service.

**PART III: THE CVL IM**

**The CVL IM Performance**

The CVL IM shall have no liability to the Train Operator under this Schedule in respect of delays to or cancellations of any TOC Service for which it is attributed responsibility under Part VI.

**PART IV: TRAIN OPERATOR**

**Train Operator Performance**

*Minutes attributed to Train Operator*

For each Charging Period there shall be calculated

the number of Minutes Delay to Third Party Trains,

the number of TPT Cancellation Minutes for Third Party Train Cancellations,

in each case, resulting from incidents due to Operator Disruption.

*Calculation of amount payable by Train Operator*

In respect of incidents attributable to the Train Operator in accordance with paragraph 6, in each Charging Period, the Train Operator shall be liable to the CVL IM for

an amount equal to the Minutes Delay in such Charging Period as calculated in accordance with paragraph 5 multiplied by the Rate; and

an amount equal to the sum of the TPT Cancellation Minutes for the Third Party Train Cancellations in such Charging Period multiplied by the Rate.

*TOC Performance Statement*

Within five Working Days after the end of each Charging Period, the CVL IM shall provide the Train Operator with a statement (the **“TOC Performance Statement”**):

showing the Minutes Delay and TPT Cancellation Minutes for that Charging Period; and

showing the amount payable by the Train Operator to the CVL IM under this Schedule in respect of the Charging Period.

Any unresolved dispute under paragraph 2.7 in relation to any incident occurring during that Charging Period shall be indicated as such on the TOC Performance Statement.

Within seven Working Days of receipt of the TOC Performance Statement the Train Operator shall sign and return a copy to the CVL IM and indicate on the copy any aspects of the TOC Performance Statement which it disputes, giving reasons for any dispute. Save to the extent that any disputes are so notified or if the Train Operator fails to sign and return to the CVL IM a copy of the TOC Performance Statement, the Train Operator shall be deemed to have agreed the contents of the TOC Performance Statement.

*Resolution of Disputes*

Any dispute concerning a TOC Performance Statement shall be dealt with in accordance with Part VII.

**PART V: MINUTES DELAY**

**Calculation of Minutes Delay**

*Calculation of Minutes Delay*

Subject to paragraph 5.2 and 5.4, the Minutes Delay for a Third Party Train in respect of a Trigger of a Recording Point shall be equal to:

in respect of the first recorded Trigger, the number of minutes (rounded down to the nearest whole minute) if any, by which the time at which the relevant train so Triggers the Recording Point is later than the time at which the train is Scheduled so to Trigger the Recording Point; and

in respect of each subsequent recorded Trigger by a train, the lesser of:

the number of minutes (rounded down to the nearest whole minute), if any, by which the time at which the relevant train so Triggers the Recording Point is later than the time at which the train is Scheduled so to Trigger the Recording Point; and

[(A1-A2) + B], provided that if the product of the formula is a negative amount it shall be deemed to be zero,

where:

A1 is the number of minutes, between the time at which the relevant train Triggers the Recording Point (rounded down to the nearest whole minute) and the time of that train’s last recorded Trigger of a Recording Point (rounded down to the nearest whole minute);

A2 is the Scheduled time between such Triggers; and

B is any Recovery Time between such Triggers.

*Incident Cap*

The Train Operator’s liability for Minutes Delay in respect of a cancellation or any or all delays caused by the same incident or series of related incidents Attributable to the Train Operator shall not exceed 250 minutes (the "**Incident Cap"**).

*Allocation*

The Minutes Delay calculated in accordance with paragraph 5.1 shall be allocated to the incident(s) causing those Minutes Delay as described in Part VI. Any minutes of delay which are included in any Minutes Delay and which are caused by the same incident or series of related incidents and which are less than 3 minutes in aggregate shall for the purposes of this Schedule 8 be deemed to be zero.

**PART VI: RESPONSIBILITY**

**Allocation of Responsibility**

*Responsibility for minutes delay, cancellations and curtailments*

For the purposes of this Schedule responsibility for each minute of delay included in Minutes Delay and for each Third Party Train Cancellation shall be allocated according to the responsibility for the incident which caused such Minutes Delay or Third Party Train Cancellation as established in accordance with this Part VI.

*Incidents*

In assessing the causes of any Minutes Delay, there shall be taken into account all incidents contributing thereto including:

the extent to which each party has taken reasonable steps to avoid and/or mitigate the effects of the incidents contributing thereto, having regard to the responses of that party to similar types of incidents occurring prior to the Commencement Date; and

where a train is affected by the cancellation of or delay to an Ancillary Movement, the incident(s) giving rise to that cancellation or delay.

*The CVL IM Responsibility*

Subject to paragraph 6.5, the CVL IM shall be allocated responsibility for an incident other than a Planned Incident if that incident is wholly or mainly:

caused by breach by the CVL IM of any of its obligations under this Agreement; or

caused by circumstances within the control of the CVL IM (whether or not the CVL IM is at fault) in its capacity as operator of the CVL; or

caused by acts or omissions of the CVL IM’s staff or contractors in relation to the CVL; or

subject to paragraph 6.7, caused by any incident in connection with rolling stock on the CVL for which any train operator (other than the Train Operator) would be allocated responsibility if it were the Train Operator under this Agreement; or

caused by the failure of a CVL IM owned and maintained vehicle unless such failure is caused by circumstances within the control of the Train Operator in its capacity as operator of the vehicle.

*Train Operator Responsibility*

Subject to paragraph 6.5, the Train Operator shall be allocated responsibility for an incident other than a Planned Incident if that incident is wholly or mainly:

caused by breach by the Train Operator of any of its obligations under this Agreement or the Train Operator’s Safety Case; or

caused by circumstances within the control of the Train Operator (whether or not the Train Operator is at fault) in its capacity as an operator of the TOC Services associated with the TOC Services; or

caused (whether or not the Train Operator is at fault) by or in connection with any rolling stock operated by or on behalf of the Train Operator for the purpose of providing or in connection with the provision of the TOC Services or any act, omission or circumstance in connection with such rolling stock, including:

the operation of such rolling stock; or

any act, omission or circumstance in connection with such rolling stock originating in connection with any station (other than in connection with signalling under the control of the CVL IM at that station); or

caused by circumstances arising off the CVL in relation to the TOC Services other than those which are caused by the CVL IM in its capacity as operator of the CVL; or

caused by acts or omissions of the Train Operator’s staff, customers or contractors; or

caused by a TOC Service not being promptly accepted off the CVL for reasons not caused by the CVL IM in its capacity as operator of the CVL.

*Joint Responsibility*

The CVL IM and the Train Operator shall be allocated joint responsibility for any identified incident in respect of which the CVL IM and the Train Operator are equally responsible and for which neither the CVL IM nor the Train Operator is allocated responsibility under paragraph 6.3 or 6.4.

The number of Minutes Delay arising from an incident due to Joint Disruption shall be divided equally between the CVL IM and the Train Operator. For the purposes of Parts III and IV of this Schedule, the number of such minutes so allocated to the CVL IM shall be deemed to be minutes arising from CVL IM Disruption and the number of minutes so allocated to the Train Operator shall be deemed to be minutes arising from Operator Disruption. For the avoidance of doubt, in order to ascertain whether the threshold of 30 Minutes Delay referred to in paragraph 5.2 has been reached, all the Minutes Delay arising from the relevant incident shall be added, whether such Minutes Delay are later allocated to the CVL IM and the Train Operator jointly.

*Planned Incidents*

An incident shall be treated as a Planned Incident to the extent that there is Recovery Time in respect of that incident.

*Depot/Terminal Incidents*

For the purposes of paragraph 6.3(D), where rolling stock operated by or on behalf of another train operator is delayed in entering or leaving the CVL due to any act, omission or circumstance originating in connection with a depot, terminal or network (other than the CVL) and any rolling stock referred to in paragraph 6.4(C) which is Scheduled to leave or enter the CVL at the connection with that depot, terminal or network (other than the CVL) is then delayed behind the first mentioned rolling stock, such delay to the first mentioned rolling stock shall not be an incident for which the CVL IM is allocated responsibility but such delay to the rolling stock referred to in paragraph 6.4(C) shall be an incident for which the Train Operator is allocated responsibility.

For the purposes of paragraphs 6.3 and 6.4, any delay of rolling stock in entering or leaving the CVL at a connection with a depot or terminal which is due to any breach by the CVL IM of its obligations under a connection agreement in relation to such depot or terminal shall be deemed to be an act, omission or circumstance in connection with such rolling stock and, save as provided in paragraph 6.3(D), shall be an incident for which the Train Operator is allocated responsibility and shall not be an incident for which the CVL IM is allocated responsibility.

*Unallocated Delay*

Any minutes of delay, included in Minutes Delay, of 3 minutes or more which occur on the CVL and are recorded as “unallocated” under paragraph 2.5 shall be allocated to the CVL IM.

Any minutes of delay, included in Minutes Delay, of 3 minutes or more which occur off the CVL and are recorded as “unallocated” under paragraph 2.5 shall be allocated to the Train Operator.

**PART VII: PAYMENTS, DISPUTES AND ADJUSTMENTS**

**Payments**

Within ten Working Days after the end of each Charging Period, the CVL IM’s Representative and the Train Operator’s Representative shall meet (the “Resolution Meeting”) with a view to resolving any outstanding disputes notified under paragraph 2.7 or 4.4 in relation to that Charging Period, and to agree the sums payable under this Schedule in respect of that Charging Period.

Where any amount which is the subject of this Schedule is in dispute the disputed balance shall carry interest (accruing daily and compounded monthly) at the Default Interest Rate from the date on which the disputed balance would but for such dispute have been due to be so accounted for until the date of such account.

**Disputes**

If the parties are unable to resolve any matter in dispute at a Resolution Meeting, each party shall promptly, and in any event within seven days after the Resolution Meeting in question, prepare a written summary of the matter(s) in dispute and the reasons for each such dispute and shall submit the summary to its Senior Officer and to the Senior Officer of the other party. Within 28 days after the Resolution Meeting, the Senior Officers from each party shall meet or speak on the telephone with a view to resolving all such disputes.

If the Senior Officers fail to resolve any such disputes at, or within 14 days after, their meeting or telephone conference, then either party may require that the matter(s) in dispute be resolved by the Access Disputes Resolution Committee and if either party is dissatisfied with the decision of that Committee or the ruling of the Chairman thereof (as the case may be) that party shall be entitled to refer the matter for arbitration, pursuant in each case to Part C of the CVL Access Dispute Resolution Rules. Notwithstanding that the parties may have elected to adopt the whole or any part of Part C of the CVL Access Dispute Resolution Rules to apply in the arbitration paragraph C6.3 of those rules shall not apply.

**Adjustments to monetary amounts**

Each of the monetary amounts (each a “value”) set out in Table 1 shall be adjusted (to the nearest penny) in respect of payments made relating to Charging Periods in Financial Year t in accordance with the following formula:

Rt = Rt-1 (1 + RPIt-1)

 100

where:

Rt is the relevant value in the Financial Year t,

Rt-1 is the relevant value in the Financial Year t-1, and

RPIt-1 means the percentage change (whether of a positive or negative value and calculated to two decimal places) in the monthly figures of the General Index of Retail Prices All Items as published in Monthly Digest of Statistics issued by the Office for National Statistics (Table 18.1 reference CHAW) with respect to November in the Financial Year t-1 and the index published or determined with respect to November in the Financial Year t-2

but so that in relation to the Financial Year commencing on 1 April 2007, Rt shall have the relevant value specified in Table 1 at the date of incorporation of this Schedule 8 into this Agreement and in relation to the next following Financial Year Rt-1 shall have the same relevant value.

**TABLE 1**

**Payment Rates**

**Rate TPT Cancellation Minutes**

£0 per minute (or as Zero

amended pursuant to

paragraph 9 of Schedule 8

Part VII)

SCHEDULE 9: LIMITATION ON LIABILITY

**Definitions**

In this Schedule 9:

**"Liability Cap"** means:

in relation to the first Financial Year, the sum of £[*figure to be confirmed*]; and

in relation to any subsequent Financial Year, the sum calculated in accordance with the following formula:

where:

###### C1 is the sum of £[*figure to be confirmed*];

###### Cn is the Liability Cap in the nth subsequent Financial Year;

###### CPIn is the CPI published or determined with respect to the first month of the subsequent Financial Year n;

###### CPI1 is the CPI published or determined with respect to the month in which this contract became effective under Clause 3.1.

**Application**

The limitations on liability contained in this Schedule apply in the circumstances set out in Clause 8.9.

**Limitation on the CVL IM’s liability**

In relation to any claim for indemnity made by the Train Operator to which this Schedule 9 applies:

the CVL IM shall not be liable to make payments in relation to such claims which are admitted in writing or finally determined in any Financial Year to the extent that its liability for such claims exceeds the Liability Cap for such Financial Year; and

to the extent that its liability for such claims exceeds the Liability Cap for such Financial Year, any claim for payment of a sum which exceeds such Liability Cap shall be extinguished and the CVL IM shall have no further liability for it.

**Limitation on Train Operator’s liability**

In relation to any claims for indemnity made by the CVL IM to which this Schedule 9 applies:

the Train Operator shall not be liable to make payments in relation to such claims which are admitted in writing or finally determined in any Financial Year to the extent that its liability for such claims exceeds the Liability Cap for such Financial Year; and

to the extent its liability for such claims exceeds the Liability Cap for such Financial Year, any claim for payment of a sum which exceeds such Liability Cap shall be extinguished and the Train Operator shall have no further liability for it.

**Disapplication of limitation**

To the extent that any Relevant Losses:

result from a conscious and intentional breach by a party; or

are in respect of obligations to compensate any person for liability for death or personal injury, whether resulting from the negligence of a party or the negligence of any of its officers, employees or agents or from a failure by a party to comply with its Safety Obligations,

such Relevant Losses:

shall not be subject to the limitation of liability in Schedule 9; and

shall not be taken into account when calculating the amount of Relevant Losses in respect of claims admitted or finally determined in a Financial Year for the purposes of the limitations of liability in this Schedule 9.

**Exclusion of legal and other costs**

The limits on the parties’ liabilities provided for in paragraphs 3 and 4 shall not apply to costs incurred in recovering any amount under a relevant claim, including legal, arbitral and other professional fees and expenses.

**Exclusion of certain Relevant Losses**

A party shall have no claim for Relevant Losses to the extent that such Relevant Losses result from its own negligence or breach of this contract.

**Continuing breaches**

Nothing in this Schedule 9 shall prevent a party making a new claim for indemnity in respect of a continuing breach of contract which:

is a continuing breach of contract which continues for more than 12 months;

is a continuing breach of contract which continues beyond a period within which it might reasonably be expected to have been remedied; or

is a breach of a Performance Order in relation to a breach of contract,

but any such new claim shall not include any sum which was the subject matter of a previous claim and was extinguished by virtue of paragraph 3.1(B) or 4.1(B).

**Final determination of claims**

For the purpose of this Schedule 9, a determination of a claim for Relevant Losses by a Court or other tribunal shall be treated as final when there is no further right of appeal or review from such determination or in respect of which any right of appeal or review has been lost, whether by expiry of time or otherwise.

**SIGNED BY** )

)

on behalf of )

**SEILWAITH AMEY CYMRU / AMEY INFRASTRUCTURE WALES LIMITED**

**SIGNED BY** )

)

On behalf of )

**SUPPLIER NAME**  )