

Section 2

(Model A)

~~Schedule 7~~

(Track Charges and Other Payments)

Note – the CVL IM expects the Train Operator to be liable for power supply issues under Model A. Provisions reflecting this principle will be added to Model A in due course.

~~Part 1~~

(Interpretation)

1. **Definitions**

In Part 1 – Part 7 inclusive, unless the context otherwise requires:

"AC System" means the infrastructure provided by the CVL IM for the alternating current electricity traction supply on the CVL;

"Bimodal Electric Multiple Unit" means an electric multiple unit that is Traction-Train Compatible;

"Bimodal Locomotive" means a train hauled by a locomotive that is Traction-Train Compatible;

"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 Traction Electricity Rules" means the traction electricity rules published by the CVL IM in relation to the CVL on [date], as may be updated from time to time; **Note – references to the CVL Traction Electricity Rules in Models A and B will be updated to reflect the CVL Traction Electricity Rules as this progresses.**

"Default Train Consist Data" means the data listed in Appendix 7C as amended from time to time in accordance with paragraph 10.4 of Part 2;

"Electrification Asset Usage Charge" means a charge levied or to be levied by the CVL IM on the Train Operator for the Train Operator's usage of the AC System, calculated in accordance with paragraph 8 of Part 2;

"Initial Indexation Factor" is derived from the following formula:

$$IIF = \left(1 + \frac{(CPI_{2018} - CPI_{2017})}{CPI_{2017}}\right)^2$$

where:

IIF means the Initial Indexation Factor;

CPI₂₀₁₇ means the CPI published or determined with respect to the month of November 2017; and

CPI₂₀₁₈ means the CPI published or determined with respect to the month of November 2018.

The value derived from this formula shall be rounded to three decimal places;

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"New Specified Equipment" means a type of railway vehicle not included in the section of the Track Usage Price List entitled **"Passenger Variable Usage Charge rates"**;

"Period" has the meaning ascribed to it in Schedule 8;

"Relevant Year" means a year commencing at 00:00 hours on 1 April and ending at 23:59 hours on the following 31 March; "Relevant Year t" means the Relevant Year for the purposes of which any calculation falls to be made; "Relevant Year t-1" means the Relevant Year preceding Relevant Year t; and similar expressions shall be construed accordingly;

"Track Charges" means the charges calculated in accordance with paragraph 1 of Part 2;

"Track Usage Price List" means the document entitled "Track Usage Price List" published by Network Rail on or about 20 December 2018 (which, for the purposes of this contract, shall be deemed to incorporate any supplements to that document consented to or determined pursuant to paragraph 9.10 ~~9.40~~ of Part 2 of Schedule 7 to this contract) or such other track usage price list published by the CVL IM from time to time, which shall take priority over the Track Usage Price list published by Network Rail;

"Traction-Train Compatible" means a situation in which a Bimodal Electric Multiple Unit or Bimodal Locomotive is located on the CVL, is capable of drawing current from the AC System and is also capable of being powered by an alternative source of energy, including but not limited to diesel;

"Train Consist Data" means the information relating to the number(s) and type(s) of railway vehicle comprised in a train movement;

~~**"Train Mile"** in relation to a train, means a mile travelled by that train on the CVL;~~

"Train Service Code" has the meaning ascribed to it in paragraph **Error! Reference source not found.** of Schedule 5;

"Variable Charges" means the VUC Default Charge, the Variable Usage Charge and the Electrification Asset~~Variable~~ Usage Charge;

"Variable Usage Charge" means a variable charge, calculated in accordance with paragraph 3.1 of Part 2;

"Vehicle Mile" in relation to a railway vehicle, means a mile travelled by that vehicle on the CVL;

"VUC Default Charge" means a variable charge calculated in accordance with paragraph 3.3 of Part 2;

"VUC Default Period" means the period from the later of:

- (a) the date on which the New Specified Equipment is first used on the CVL by the Train Operator; or
- (b) 1 April 2019,

until the date on which ORR consents to or determines a supplement to the Track Usage Price List under paragraph 9.10 of Part 2 in respect of that New Specified Equipment; and

"VUC Default Rate" means, in respect of any New Specified Equipment used on the CVL by the Train Operator, the corresponding passenger default rate for that type of vehicle set out in the section of the Track Usage Price List entitled "Passenger Variable Usage Charge default rates" and

~~**"Weekday"** has the meaning ascribed to it in paragraph 1.1 of Schedule 5.~~

~~2. **Not used**~~

Part 2

(Track Charges)

1. Principal formula

CVL Schedule 7 comparison against proposed Model A Schedule 7

- 1.1 During each Relevant Year, the CVL IM shall levy and the Train Operator shall pay Track Charges in accordance with the following formula:

$$T_t = V_t - V_t + D_t + EAV_t$$

where:

T_t means Track Charges in Relevant Year t ;

V_t means an amount in respect of the Variable Usage Charge in Relevant Year t which is derived from the formula in paragraph 3.1;

D_t means an amount (if any) in respect of the VUC Default Charge in Relevant Year t which is calculated in accordance with paragraph 3.3; and

EAV_t means an amount in respect of the Electrification Asset Usage Charge, calculated in accordance with the formula in paragraph 8.-

2. **Not used**

3. **Variable Usage Charge**

- 3.1 **Variable Usage Charge**

For the purposes of paragraph 1, the term V_t means an amount in respect of the Variable Usage Charge in Relevant Year t which is derived from the following formula:

$$V_t = \sum V_{it} \bullet UV_{it}$$

where:

V_{it} means an amount for vehicle type i for Relevant Year t , expressed in pence per Vehicle Mile and rounded to two decimal places, which is derived from the following formula:

$$V_{it} = V_{it-1} \bullet \left(1 + \frac{(CPI_{t-1} - CPI_{t-2})}{CPI_{t-2}} \right)$$

where:

CPI_{t-1} means ~~has~~ the CPI published or determined with respect to the month of November meaning set out in Relevant Year t-1 paragraph ~~Error! Reference source not found.~~ above; and

CPI_{t-2} means the CPI published or determined with respect to the month of November in Relevant Year $t-2$,

but so that in relation to the Relevant Year commencing on 1 April 2019, V_{it} shall have, in respect of vehicle type i , the corresponding variable usage charge rate per Vehicle Mile for that vehicle type i set out in the Track Usage Price List, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year, V_{it-1} shall have the same value;

UV_{it} means the actual volume of usage (in Vehicle Miles) in Relevant Year t of vehicle type i (referred to in the Track Usage Price List) operated by or on behalf of the Train Operator; and

Σ means the summation across all relevant categories of vehicle types i .

- 3.2 **Not used**

- 3.3 **VUC Default Charge**

For the purposes of paragraph 1, the term D_t means the amount of VUC Default Charge payable in respect of New Specified Equipment in Relevant Year t which is derived from the following formula:

$$D_t = \sum D_{nt} \bullet UD_{nt}$$

where:

D_{nt} means the VUC Default Rate for that New Specified Equipment for Relevant Year t , expressed in pence per Vehicle Mile and rounded to two decimal places, which is derived from the following formula:

$$D_{nt} = D_{nt-1} \bullet \left(1 + \frac{(CPI_{t-1} - CPI_{t-2})}{CPI_{t-2}} \right)$$

CVL Schedule 7 comparison against proposed Model A Schedule 7

where:

~~CPI_{t-1} and CPI_{t-2} have~~has the ~~meanings~~meaning set out in paragraph ~~3.1 of this Part 2~~~~Error! Reference source not found.~~ above; and

~~CPI_{t-2} has the meaning set out in paragraph 3.1 above,~~

but so that in relation to the Relevant Year commencing on 1 April 2019, D_{nt} shall have, in respect of New Specified Equipment, the corresponding VUC Default Rate for that New Specified Equipment, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year D_{nt-1} shall have the same value;

UD_{nt} means the actual volume of usage of New Specified Equipment in Vehicle Miles during the VUC Default Period in Relevant Year t operated by or on behalf of the Train Operator; and

Σ means the summation across all relevant New Specified Equipment.

4. **Not used**

5. **Not used**

6. **Not used**

7. **Not used**

8. Electrification Asset Usage Charge

8.1 The Electrification Asset Usage Charge is derived from the following formula:

$$\text{Electrification Asset Usage Charge} = \text{EAVt} * \left(1 + \frac{(\text{CPI}_{t-1} - \text{CPI}_{t-2})}{\text{CPI}_{t-2}} \right)$$

where:

EAVt means an amount equivalent to the cost that is directly incurred by the CVL IM as a result of operating, maintaining and repairing the AC System, as calculated by the CVL IM; and

CPI_{t-1} and CPI_{t-2} have the meanings set out in paragraph 3.1 of this Part 2.

~~8. Not used~~

9. Bilateral supplements to the Track Usage Price List

9.1 Where the Train Operator intends to use New Specified Equipment on the CVL, it shall where reasonably practicable inform the CVL IM in writing of the date or likely date from which it intends to do so.

9.2 Where the Train Operator uses New Specified Equipment on the CVL, the Train Operator shall pay the CVL IM the relevant VUC Default Charge during the VUC Default Period.

9.3 No supplement to the Track Usage Price List shall have effect under this contract unless it has been:

- (a) agreed between the parties and ORR has consented to it; or
- (b) determined by ORR.

9.4 Either the Train Operator or the CVL IM shall be entitled to propose that a supplemental agreement be agreed between the Train Operator and the CVL IM to incorporate into this contract any supplement to the Track Usage Price List as necessary to include a new vehicle type and corresponding rate.

9.5 Any proposal of a kind referred to in paragraph 9.4 shall be made by notice to the other party and shall be accompanied by a specification of the proposal in reasonable detail and the reasons for it. -The parties shall thereafter seek to agree in good faith the necessary supplement to the list in question.

9.6 Either party may request from the other such information that it reasonably requires in connection with the proposal and the party from whom the information was requested shall use reasonable endeavours to provide this information promptly.

CVL Schedule 7 comparison against proposed Model A Schedule 7

- 9.7 Where the parties agree to incorporate into this contract, a supplement to the Track Usage Price List following a proposal under paragraph 9.4, they shall request ORR's consent to such supplement and provide such information as ORR reasonably requires in order to decide whether to give its consent.
- 9.8 If the parties fail to reach agreement within 45 days of the date of the notice given under paragraph 9.5, at any point thereafter either party shall be entitled to refer the matter to ORR for determination.
- 9.9 Following a reference to ORR under paragraph 9.8, the parties shall, within such timescales as ORR may reasonably specify, furnish ORR with such information and evidence as ORR shall reasonably require to determine the matter. If a party fails to furnish such information and evidence within the specified timescale, ORR shall be entitled to determine the matter without that information and evidence and the party in default shall have no grounds for complaint in that respect.
- 9.10 ORR may:
- (a) consent to any supplement that is agreed by the parties and submitted to it under paragraph 9.7, or following consultation with the parties, determine that a different supplement should apply; or
 - (b) following a referral to ORR under paragraph 9.8, determine the supplement that should apply.
- 9.11 Not used.
- 9.12 In the case of a supplement to the Track Usage Price List, the supplement shall have retrospective effect from the first day of the VUC Default Period.
- 9.13 Following ORR's consent or determination under paragraph 9.10 the CVL IM shall:
- (a) apply the supplement from the date in accordance with paragraph 9.12 above; and
 - (b) within 28 days of the date of ORR's consent or determination:
 - (i) issue any adjusting invoice or credit note to the Train Operator (or procure that its nominee issues such adjusting invoice or credit note to the Train Operator) and in the case of a supplement to the Track Usage Price List, this will reflect the difference between the amount paid by the Train Operator for the VUC Default Charge during the VUC Default Period and the amount that it would have paid during the VUC Default Period in respect of the Variable Usage Charge had the supplement been in place at the time the Train Operator first used the relevant railway vehicle on the CVL; and
 - (ii) publish on its website details of the supplement alongside the details of any other such supplements to which ORR has consented or determined pursuant to this Contract or consented to or determined prior to the Transfer Date pursuant to any other track access contract to which the CVL IM is a party.
- 9.14 Any supplement to the Track Usage Price List which ORR has consented to or determined pursuant to this Contract or consented to or determined prior to the Transfer Date pursuant to a passenger track access contract held or previously held by the Train Operator shall also apply to this contract.
10. **Payment of Track Charges and other sums due under the contract**
- 10.1 ***Payment of Track Charges and other sums due under the contract***
- (a) Save where the contract provides otherwise, the Train Operator shall pay or procure the payment to the CVL IM or its nominee of:
 - (i) the Variable Usage Charge;
 - (ii) not used;
 - (iii) not used;
 - (iv) not used;
 - (v) the VUC Default Charge;
 - (vi) [the Electrification Asset Usage Charge](#)~~not used~~; and

- (vii) any other sums which have fallen due in accordance with any provision of this contract,

attributable to any Period as invoiced by the CVL IM or its nominee on or after expiry of each such Period within 21 days of the invoice date or 28 days after the end of the Period, whichever is later.

(b) The CVL IM may make any corrections for the Electrification Asset Usage Charge attributable to such Period which, acting reasonably, it considers necessary.

~~(b) Not used.~~

10.2 **Train Consist Data**

The CVL IM shall calculate the Variable Charges payable by the Train Operator in respect of each Period using the Train Consist Data supplied by the Train Operator and, to the extent such Train Consist Data is not available to the CVL IM, the Default Train Consist Data.

10.3 **~~Invoices and right to object to invoices~~**

- (a) The CVL IM will notify the Train Operator on a weekly basis of the train movements for which Default Train Consist Data has been used to establish the Variable Charges payable by the Train Operator. At either party's request, the parties shall consult with a view to substituting Train Consist Data for Default Train Consist Data but such consultation shall not delay the issue by the CVL IM or its nominee of the invoice for the Variable Charges in respect of the Period concerned.
- (b) For each Period, the CVL IM or its nominee shall be entitled to invoice the Train Operator for Variable Charges in respect of any and all train movements operated by the Train Operator during that Period based on either:
- (i) Train Consist Data provided by the Train Operator in respect of any train movement at or prior to the time that such train movement is completed; or
 - (ii) Train Consist Data agreed by the parties under paragraph 10.3(a) in respect of any train movement; or
 - (iii) Train Consist Data provided by the Train Operator in respect of any train movement (other than any train movement where the Specified Equipment used in operating the relevant movement is loco hauled) by the end of the day on which such train movement has been completed,

or (to the extent that (i) or (ii) or (iii) above do not apply) Default Train Consist Data. Each such invoice will be payable in accordance with the provisions of paragraph 10.1.

- (c) Either party shall be entitled, at any time prior to the later of 23:59 hours on the 14th day following the expiration of the relevant Period and seven days following receipt by the Train Operator of the relevant invoice or credit note, to notify the other that it objects to any Train Consist Data (including, where applicable, the use of Default Train Consist Data) on which the whole or any part of the Variable Charges included in the relevant invoice or credit note are based and any such notice shall specify in reasonable detail what that party believes to be the Train Consist Data for the relevant train movement(s) ("**notice of objection**"). In the absence of any notice of objection being served within such time the Train Consist Data used in the relevant invoice or credit note shall be final and binding on the parties. The Train Operator shall supply the data to the CVL IM in the format:

Train ID	Start date & time	Train Slot origin	Train slot destination	Train Consist (actual): Specified Equipment used

- (d) The parties shall seek to agree the Train Consist Data specified in any notice of objection and any consequential financial adjustment required to the relevant invoice or credit note. If the parties

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are unable to agree such Train Consist Data within 14 days following receipt of a notice of objection, either party may refer the matter for resolution in accordance with the CVL ADRR.

- (e) Within 14 days of any Train Consist Data being agreed or determined in accordance with paragraph 10.3(d), the CVL IM or its nominee shall, if any consequential or financial adjustment of the relevant invoice is required, issue a further invoice to, or (as the case may be) a credit note in favour of, the Train Operator in the amount of the relevant adjustment. The invoice or credit note shall be payable at the same time as the invoice for Variable Charges for the relevant Period or, if issued later than 21 days after the end of the relevant Period, within seven days after the date of its issue.
- (f) Where, as a result of any invoice or credit note issued pursuant to paragraph 10.3, any sum of money which has been paid shall become repayable or any sum of money which has been unpaid shall become payable the party to whom such sum shall be paid shall be paid or allowed interest at the Default Interest Rate on such sum from the date when it (if repayable) was paid or the date when such sum (if payable) ought to have been paid until the date of payment or repayment.

10.4 ***Unrepresentative Train Consist Data***

- (a) If at any time during this contract either party considers the Default Train Consist Data specified in Appendix 7C is not representative of the Train Operator's Services and in particular, but without limitation, the type(s) of railway vehicles then in use and the regular number of carriages forming part of those railway vehicles in the operation of its Services, either party shall be entitled on written notice to the other to request that the Default Train Consist Data be amended. Any such request shall specify in reasonable detail the grounds for the request and the proposed amendments to the Default Train Consist Data.
- (b) The parties shall endeavour to reach agreement on any amendments to the Default Train Consist Data within 21 days of the date of the request referred to in paragraph 10.4(a) and if the parties are unable to agree such amendments within such time period, either party may refer the matter for resolution in accordance with the CVL ADRR.
- (c) Upon the earlier of agreement between the parties or determination by a relevant CVL ADRR Forum, the parties shall notify ORR of the proposed amendments to the Default Train Consist Data and, subject to ORR not objecting to the proposed amendments within 14 days (the "**14 day period**") of receipt of the notification by ORR, such amendments shall take effect from the first day of the next Period following the earlier of ORR confirming its consent to the proposed amendments and the expiry of the 14 day period. If ORR objects to the proposed amendments within the 14 day period, the parties shall endeavour to reach agreement with ORR on the appropriate amendments, if any, to the Default Train Consist Data which shall then take effect on the first day of the Period next following that in which agreement is reached.

10.5 ***Disputed amounts repayment and interest rate***

- (a) Where a party wishes to contest any invoice issued to it under this Schedule 7 (including any invoice in respect of Track Charges) it shall, within 14 days of receipt of the invoice, notify the other party in writing of the amount which is in dispute but shall pay the full amount of the invoice, including the disputed amount, in accordance with the terms of the invoice.
- (b) Where a party has given notice under paragraph 10.5(a) that it disputes part of any invoiced amount:
 - (i) payment of such sum shall be without prejudice to the determination of whether such sum is properly due or not; and
 - (ii) if it is subsequently determined that the disputed sum, or part of it, was not properly due the payee shall repay the disputed sum, or relevant part, to the payer together with interest (to accrue daily and be compounded monthly) at the Default Interest Rate from the date of payment until the actual date of repayment.

CVL Schedule 7 comparison against proposed Model A Schedule 7

Part 3

(Not used)

Part 3A

(Not used)

Part 4

(Not used)

Part 5

(Not used)

Part 6

(Supplemental Provisions)

Each invoice or credit note issued by the CVL IM or its nominee to the Train Operator shall contain or be accompanied by separate itemisation of the following charges and other information (as relevant) in respect of the period covered by the invoice or credit note:

- (a) not used; and
- (b) the rate of Variable Usage Charge, [the Electrification Asset Usage Charge](#) and any VUC Default Charge [\(and, in relation to the Variable Usage Charge and VUC Default Charge only, and](#) the relevant number of Vehicle Miles applicable to vehicles for each service so charged).:-

Part 7

(Future Access Charges Reviews)

1. **General**

The Track Charges will be reviewed and adjusted by the CVL IM on 1 April 2024 and thereafter reviewed and adjusted on a five-yearly basis and the parties acknowledge and agree that such review and adjustment shall:

- (a) comply with relevant applicable law; and
- (b) be consistent with the charging framework published by ORR in respect of the CVL.

CVL Schedule 7 comparison against proposed Model A Schedule 7

Appendix 7A

(Not used)

Appendix 7B

(Not used)

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Appendix 7C

Default Train Consist Data

Train Service Code	Type of Train Movement	Default Train Consist Data
25430000	Train movement(s) between Cardiff Queen Street and Cardiff Bay	1 Class 398150 Diesel Multiple Unit (2 x motor units)
25440000	Train movement(s) between West Boundary and Radyr via City Line	Class 7561 Class 150 Diesel Multiple Unit (2 x motor units)
25441000	Train movement(s) between East Boundary and Aberdare	Class 3981 Class 150 Diesel Multiple Unit (2 x motor units)
25445000	Train movement(s) between East Boundary and Coryton	Class 7561 Class 150 Diesel Multiple Unit (2 x motor units)
25446000	Train movement(s) between East Boundary and Merthyr Tydfil	Class 3981 Class 150 Diesel Multiple Unit (2 x motor units)
25447000	Train movement(s) between East Boundary and Treherbert	Class 3981 Class 150 Diesel Multiple Unit (2 x motor units)
25448000	Train movement(s) East Boundary and Rhymney	Class 7561 Class 150 Diesel Multiple Unit (2 x motor units)
25450100	Unplanned Gemini ¹	Class 7561 Class 150 Diesel Multiple Unit (2 x motor units)
25450000	Movement(s) of empty coaching stock along any part of the Routes	Class 7561 Class 150 Diesel Multiple Unit (2 x motor units)

¹ Covers all movements of multiple units made pursuant to a spot bid which do not fall under any type of train movement included or to be included within this table.

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