

**[XXXX] SUPPLEMENTAL AGREEMENT**

between

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

**TRANSPORT FOR WALES RAIL LTD**

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**relating to the Track Access Contract (Passenger Services) dated 24 December 2019**

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## THIS [Seventh] SUPPLEMENTAL AGREEMENT

is dated [xxxxxxx] 2023 and made between:

- (1) **SEILWAITH AMEY CYMRU / AMEY INFRASTRUCTURE WALES LIMITED**, a company registered in England under number 11389544, whose registered office is at Transport for Wales CVL Infrastructure Depot, Ty Trafnidiaeth, Treforest Industrial Estate, Gwent Road, Pontypridd, United Kingdom, CF37 5UT (the "**CVL IM**"); and
- (2) **TRANSPORT FOR WALES RAIL LTD**, a company registered in England under number 12619906, whose registered office is at 3 Llys Cadwyn, Pontypridd, Wales CF37 4TH (the "**Train Operator**").

### Whereas:

- A. The parties entered into a Track Access Contract (Passenger Services) dated 24<sup>th</sup> December 2019 pursuant to Section 18(6) of the Act, as amended by supplemental agreements from time to time, each in a form approved by ORR pursuant to section 22 of the Act (which track access contract as subsequently amended is hereafter referred to as the "**Contract**").
- B. The parties now propose to enter into this Supplemental Agreement in order to make amendments to the Contract on the terms set out below.

**IT IS HEREBY AGREED** as follows:

## 1 INTERPRETATION

1.1 In this Supplemental Agreement:

- (a) Words and expressions defined in and rules of interpretation set out in the Contract shall have the same meaning and effect when used in this Supplemental Agreement except where the context requires otherwise; and
- (b) "**Effective Date**" shall mean:

the date upon which the Office of Rail and Road issues its approval pursuant to Section 22 of the Act of the terms of this Supplemental Agreement.

## 2 EFFECTIVE DATE AND DURATION

2.1 The amendments made to the Contract pursuant to this Supplemental Agreement shall have effect from the Effective Date and shall cease to have effect at the Expiry Date.

**3 AMENDMENTS TO THE CONTRACT**

- 3.1 In Schedule 7 of the Contract delete the entire Schedule 7 and replace with the one contained in Annex 1.
- 3.2 In Schedule 8 an additional paragraph 21 shall be added to Schedule 8 as contained in Annex 2.

**4. EFFECT OF THIS SUPPLEMENTAL AGREEMENT ON THE CONTRACT**

The parties agree that the Contract, as amended by this Supplemental Agreement, shall remain in full force and effect in accordance with its terms, and during the period in which the amendments made by this Supplemental Agreement are to have effect all references in the Contract to the “contract”, “herein”, “hereof”, “hereunder” and other similar expressions shall, unless the context requires otherwise, be read and construed as a reference to the Contract as amended by this Supplemental Agreement.

**5. LAW**

This Supplemental Agreement shall be governed by, construed and given effect to in all respects in accordance with the law in England and Wales.

**6. COUNTERPARTS**

This Supplemental Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original, but all the counterparts shall together constitute but one and the same instrument.

**7. THIRD PARTY RIGHTS**

No person who is not a party to this Supplemental Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Supplemental Agreement.

**IN WITNESS WHEREOF** the CVL IM and the Train Operator have, by their duly authorised representatives, respectively entered into this Supplemental Agreement on the date first above written.

SIGNED BY )  
 )  
for and on behalf of )  
 )  
**AMEY INFRASTRUCTURE WALES /** )  
**SEILWAITH AMEY CYMRU LIMITED** )

SIGNED BY )  
 )  
for and on behalf of )  
 )  
**TRANSPORT FOR WALES RAIL LTD** )

**Annex 1 REVISED SCHEDULE 7 TO REPLACE THE EXISTING SCHEDULE 7**

## Schedule 7

### Track Access Charges

**[Note – these draft Schedule 7 amendments are subject to agreement with the Train Operator, industry consultation and ORR approval. A supplemental agreement will be required to amend the track access contract.]**

#### Explanatory Note:

*Model A (contained in Section 2 of this Schedule 7) is intended to apply in circumstances where the Train Operator is the only operator running services on the CVL using traction electricity. Under Model A, the CVL IM will levy an Electrification Asset Usage Charge on the Train Operator. The CVL IM will not charge for traction current, which under Model A the Train Operator will procure directly from a third party electricity provider.*

*Model A will apply until the effective date stated in a "Multi Operator Notice" issued by the CVL IM in accordance with Schedule 7, Section 1 (Application of Models A and B), at which point Model B (as described below) will apply unless the CVL IM serves a "Single Operator Notice" in accordance with Schedule 7, Section 1 before the effective date stated in the Multi Operator Notice, resulting in Model A remaining in effect.*

*Model B (contained in Section 3 of this Schedule 7) is intended to apply where the Train Operator is one of multiple operators running services on the CVL using traction electricity. Under Model B, the CVL IM will procure traction electricity from a third party electricity provider and supply this to the Train Operator, for which the Train Operator will pay the CVL IM an electric current for traction charge. The Train Operator will also pay to the CVL IM an Electrification Asset Usage Charge and a charge covering transmission losses incurred by the CVL IM, which in both cases will be apportioned between operators on a mileage basis.*

*This Explanatory Note is for information purposes only, and does not form part of the contract.*

## Section 1

### (Application of Models A and B)

#### 1. Definitions

1.1 Terms used in this Section 1 shall have the following meanings:

**"Model A"** means the provisions of Schedule 7, Section 2 (Model A);

**"Model A Commencement Date"** means the date the Train Operator's trains commence use of the AC System;

**"Model B"** means the provisions of Schedule 7, Section 3 (Model B);

**"Model B Commencement Date"** means the date specified in the latest Multi Operator Notice on which Model B will come into effect;

**"Multi-Operator Notice"** means the latest notice served by the CVL IM in accordance with paragraph 3 of this Section 1; and

**"Single Operator Notice"** means the latest notice served by the CVL IM in accordance with paragraph 4 of this Section 1.

1.2 Terms used in Sections 2 and 3 of this Schedule 7 shall also apply here.

#### 2. Effectiveness of Models A and B

2.1 Model A shall apply from and including the Model A Commencement Date, and shall cease to have effect on the latest Model B Commencement Date specified in the relevant Multi-Operator Notice.

2.2 Model B shall come into effect in place of Model A on the Model B Commencement Date unless the CVL serves a Single Operator Notice before the Model B Commencement Date in accordance with paragraph 4.

#### 3. Multi Operator Notice

3.1 Multi Operator Notices shall be issued in accordance with this paragraph 3 and clause 18.4 of the contract.

3.2 The CVL IM shall be entitled to issue a Multi Operator Notice to the Train Operator following ORR approval of a track access contract between the CVL IM and a train operator other than the Train Operator, where such track access contract includes access rights allowing the relevant train operator to use the AC System.

3.3 The Multi Operator Notice shall include the following information:

- (a) the Model B Commencement Date;
- (b) the reason why the Multi Operator Notice has been issued; and
- (c) the company name of the counterparty (that is, a train operator which is not the Train Operator) to the track access contract referred to in paragraph 3.2 above relating to the new track access rights approved by ORR.

3.4 The Train Operator shall ensure that the activities referred to in Appendix A (of this Part 1) are completed by prior to the Model B Commencement Date, and shall confirm completion of the relevant activities to the CVL IM of all such activities being completed. **[Note – relevant activities and timing for completing them will need to be discussed between the parties.]**

4. **Single Operator Notice**

4.1 Single Operator Notices shall be issued in accordance with this paragraph 4 and clause 18.4 of the contract.

4.2 The CVL IM may elect (at its discretion) to serve a Single Operator Notice on the Train Operator before the Model B Commencement Date specified in the relevant Multi Operator Notice referred to in paragraph 3 above.

4.3 Where the CVL IM serves a Single Operator Notice in accordance with this paragraph 4, the Model B Commencement Date specified in the Multi Operator Notice referred to in paragraph 3 above shall not occur, and Model A shall remain in effect unless and until the occurrence of the Model B Commencement Date pursuant to a subsequent Multi Operator Notice.

4.4 The Single Operator Notice shall include the following information:

- (a) a statement revoking the latest Multi Operator Notice; and
- (b) confirmation that Model A will remain in effect unless the CVL IM serves a subsequent Multi Operator Notice.



## **Appendix A**

The following actions must be completed on or after the Model B Commencement Date:

1. Transfer the supply of power contracts for the CVL from the Train Operator's existing electricity supplier to the CVL IM.
2. [Transfer to the CVL IM of any leases, easements or wayleaves granted by Network Rail to the Train Operator (in relation to the supply of power by Network Rail to the Train Operator).]
3. Grant access to the CVL IM to meter points in relation to the supply to the Network of traction current by physical and electronic means.

## Section 2

### (Model A)

(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.]**

(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;

CPI<sub>2017</sub> means the CPI published or determined with respect to the month of November 2017;  
and

CPI<sub>2018</sub> 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;

"**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 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 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 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".

## **Part 2**

(Track Charges)

### **1. Principal formula**

- 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:

$$T_t = V_t + D_t + EAV_t \text{ where:}$$

$T_t$  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 the CPI published or determined with respect to the month of November in Relevant Year  $t-1$ ; 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

$\Sigma$  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:

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

where:

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

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

$\Sigma$  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:

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

where:

EAV $_t$  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.

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.
- 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; 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.

### 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 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.

**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, 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.

### Appendix 7A

(Not used)

### Appendix 7B

(Not used)

### Appendix 7C

#### Default Train Consist Data

<b>Train Service Code</b>	<b>Type of Train Movement</b>	<b>Default Train Consist Data</b>
25430000	Train movement(s) between Cardiff Queen Street and Cardiff Bay	Class 398
25440000	Train movement(s) between West Boundary and Radyr via City Line	Class 756
25441000	Train movement(s) between East Boundary and Aberdare	Class 398
25445000	Train movement(s) between East Boundary and Coryton	Class 756
25446000	Train movement(s) between East Boundary and Merthyr Tydfil	Class 398
25447000	Train movement(s) between East Boundary and Treherbert	Class 398
25448000	Train movement(s) East Boundary and Rhymney	Class 756
25450100	Unplanned Gemini <sup>1</sup>	Class 756
25450000	Movement(s) of empty coaching stock along any part of the Routes	Class 756

<sup>1</sup> 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.

### Section 3

#### (Model B)

(Track Charges and Other Payments)

**[Note – the allocation of liability for power supply issues under sch 8 remains subject to discussion.]**

#### 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;

**"Charge Correction Amount"** has the meaning given to it in paragraph 18.2 of the CVL Traction Electricity Rules;

**"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 Distribution System Loss Factor"** means the relevant factor that represents the electrical losses between the On-Train Meter and the CVL IM's meter through which it purchases traction electricity for the AC System in Geographic Area g, as set out in Appendix 3 of the CVL Traction Electricity Rules;

**"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;

**"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;

**"Geographic Area g"** means, for the purposes of performing the calculations set out in paragraph 4 of Part 2, and paragraph 18 of the CVL Traction Electricity Rules, the relevant geographic section of the CVL, as set out in Appendix 5 of the CVL Traction Electricity Rules;

**"Gross Tonne Mile"** in relation to a train, means a mile travelled on the CVL, multiplied by each tonne of the aggregate weight of the train in question;

**"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;

CPI<sub>2017</sub> means the CPI published or determined with respect to the month of November 2017; and

CPI<sub>2018</sub> 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;

**"kgtm"** means 1000 Gross Tonne Miles;

**"kWh"** means kilowatt hours;

**"Metered Train m"** means, as the context requires, either:

- (a) a train of a particular type; or
- (b) a specific train having a train ID,

as specified in Appendix 7D;

**"New Modelled Train"** means a type of train for which Etmo is to be calculated for the purposes of paragraph 4.1.1 of Part 2 but in relation to which no train category i, and no modelled consumption rate, is shown in either the Passenger Traction Electricity Modelled Consumption Rates for CP6 or Generic Traction Electricity Modelled Consumption Rates for CP6 tables in the Traction Electricity Modelled Consumption Rates List;

**"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";

**"On-Train Meter"** has the meaning ascribed to it in paragraph 1.2 of the CVL Traction Electricity Rules;

**"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;

**"route type k"** means route type k as identified by type of electrification AC (OLE) in the Track Usage Price List;

**"tariff band j"** means the tariff zone and time band in which the train in question is operated;

**"Timetabled train miles<sub>t</sub>"** has the meaning ascribed to it in paragraph 2A 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 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 Electricity Charge"** means a variable charge for traction current calculated in accordance with paragraph 4 of Part 2;

**"Traction Electricity Modelled Consumption Rates List"** means the document entitled "Traction Electricity Modelled Consumption Rates List" published by the CVL IM the CVL IM on or about [x] and specifying freight and passenger traction electricity modelled consumption rates 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 of Part 2 of Schedule 7 to this contract or a passenger track access contract previously held by the Train Operator;

**"Traction Electricity Modelled Default Rate"** means, in respect of any New Modelled Train used on the CVL by the Train Operator, the corresponding default consumption rate for that type of vehicle set out in the section of the Traction Electricity Modelled Consumption Rates List entitled "Traction Electricity Modelled Default Rates for CP6";

**"Traction Electricity Modelled Default Rate Period"** means the period from the date on which the New Modelled Train is first used on the CVL by the Train Operator until the date on which ORR consents to or determines a supplement to the Traction Electricity Modelled Consumption Rates List under paragraph 9.10 of Part 2 in respect of that New Modelled Train or the train in question has been added to Appendix 7D of this Schedule;

**"Traction Electricity Modelled Default Rate Reconciliation Period"** means the period from the later of:

- (a) the date on which the New Modelled Train is first used on the CVL by the Train Operator; or
- (b) 1 April of the Relevant Year in which ORR consents to or determines a supplement to the Traction Electricity Modelled Consumption Rates List under paragraph 9.10 of Part 2 in respect of that New Modelled Train,

until the date on which ORR consents to or determines a supplement to the Traction Electricity Modelled Consumption Rates List under paragraph 9.10 of Part 2 in respect of that New Modelled Train;

**"Traction Electricity Usage Occurrence Data"** means information as to when a Bimodal Electric Multiple Unit or Bimodal Locomotive is either drawing current from the AC System, or is powered by an alternative source of energy;

**"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 category i"** means train category i as identified in the relevant section of the Traction Electricity Modelled Consumption Rates List, being either:

- (c) where there is a modelled consumption rate for a particular passenger vehicle type operating on a particular Train Service Code, the relevant category set out in the table entitled "Passenger Traction Electricity Modelled Consumption Rates for CP6"; or

where there is a generic consumption rate for a passenger vehicle type not referred to in paragraph (a), the relevant category set out in the table entitled "Generic Traction Electricity Modelled Consumption Rates for CP6"; **"Train Consist Data"** means the information relating to the number(s) and type(s) of railway vehicle comprised in a train movement;

**"Train Service Code"** has the meaning ascribed to it in paragraph 1.1 of Schedule 5;

**"Variable Charges"** means the VUC Default Charge, the Electrification Asset Usage Charge, the Variable Usage Charge and the Traction Electricity 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:

- (d) the date on which the New Specified Equipment is first used on the CVL by the Train Operator; or
- (e) 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".

2. **Not used.**



## Part 2

### (Track Charges)

#### 1. Principal formula

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

$$T_t = V_t + D_t + E_t + EAV_t$$

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;

$E_t$  means an amount in respect of the Traction Electricity Charge in Relevant Year  $t$  which is derived from the formula in paragraph 4; 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 the CPI published or determined with respect to the month of November in Relevant Year  $t-1$ ; 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

$\Sigma$  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:

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

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:

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

where:

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

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

$\Sigma$  means the summation across all relevant New Specified Equipment.

## 4. **Traction Electricity Charge**

4.1 For the purposes of paragraph 1 of this Part 2, the term  $E_t$  means an amount in respect of the Traction Electricity Charge in Relevant Year t, which is derived from the following formula:

$$E_t = E_{tmo} + E_{tme} + E_{tmuAC}$$

where:

$E_{tmo}$  means an amount calculated in accordance with paragraph 4.1.2 below;

$E_{tme}$  means an amount calculated in accordance with paragraph 4.1.3 below; and

$E_{tmuAC}$  means an amount calculated in accordance with paragraph 4.1.4 below.

*Circumstances in which calculation to be based on modelled data and circumstances in which calculation to be based on metered data*

- 4.1.1  $E_{tmo}$  shall be calculated in respect of all trains other than those identified in the table at Appendix 7D, and  $E_{tme}$ , and  $E_{tmuAC}$  shall be calculated in respect of the trains identified in the table at Appendix 7D.

*Calculation of modelled consumption*

- 4.1.2  $E_{tmo}$  is derived from the following formula:

$$E_{tmo} = \sum E_{tmog}$$

where:

$\sum$  means the summation across all Geographic Areas g, as appropriate;

$E_{tmog}$  is derived from the following formula:

$$E_{tmog} = \sum C_i \bullet EF_{gjt} \bullet UE_{igt}$$

where:

$\sum$  means the summation across all relevant train categories i (determined in accordance with paragraph 4.1.1 above), New Modelled Trains and tariff bands j, as appropriate;

$C_i$  means, as appropriate:

- (a) the consumption rate:
  - (i) in kWh per electrified Train Mile in relation to passenger electric multiple units (using the rate for the relevant number of units); or
  - (ii) in kWh per electrified kgm in relation to locomotive-hauled units and all freight traffic,  
  
for train category i shown in the Traction Electricity Modelled Consumption Rates List, taking into account any Regenerative Braking Discount applied in accordance with the CVL Traction Electricity Rules;  
or
- (b) for New Modelled Trains, the Traction Electricity Modelled Default Rate shown in the Traction Electricity Modelled Consumption Rates List, taking into account any Regenerative Braking Discount applied in accordance with the CVL Traction Electricity Rules;

$EF_{gjt}$  means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as agreed or determined pursuant to paragraph 19 of the CVL Traction Electricity Rules; and

UE<sub>igjt</sub> means the actual volume of usage (in electrified Vehicle Miles in relation to passenger electric multiple units or electrified kgtm in relation to locomotive-hauled units and all freight traffic), if any, of trains operated by or on behalf of the Train Operator in train category i and New Modelled Trains operated by or on behalf of the Train Operator, in Geographic Area g, in tariff band j and in Relevant Year t, pursuant to this contract, provided that where train category i or a New Modelled Train is a Bimodal Electric Multiple Unit or Bimodal Locomotive operating in a Traction-Train Compatible situation, it shall be deemed that all mileage (in Vehicle Miles in relation to passenger electric multiple units or kgtm in relation to locomotive-hauled units and all freight traffic), if any, of such trains is electrified.

*Calculation of consumption using metered consumption data*

4.1.3 E<sub>tme</sub> is derived from the following formula:

$$E_{tme} = \sum E_{tmeg}$$

where:

∑ means the summation across all Geographic Areas g, as appropriate;

E<sub>tmeg</sub> is derived from the following formula:

$$E_{tmeg} = \sum \left( (CME_{mgjt} \bullet EF_{gjt}) - (RGB_{mgjt} \bullet EF_{gjt}) \right)$$

where:

∑ means the summation across all relevant Metered Trains m (determined in accordance with paragraph 4.1.1 above) and tariff bands j, as appropriate;

CME<sub>mgjt</sub> means the consumption of electricity (in kWh) by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the CVL Traction Electricity Rules, in Geographic Area g, tariff band j and in Relevant Year t;

EF<sub>gjt</sub> means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as provided by the CVL IM to the Train Operator pursuant to paragraph 20 of the CVL Traction Electricity Rules; and

RGB<sub>mgjt</sub> means the electricity (in kWh) generated by braking by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the CVL Traction Electricity Rules, in Geographic Area g, tariff band j and in Relevant Year t.

4.1.4 E<sub>tmuAC</sub> is derived from the following formula:

$$E_{tmuAC} = \sum E_{tmugAC}$$

where:

∑ means the summation across all Geographic Areas g, as appropriate;

E<sub>tmugAC</sub> is derived from the following formula:

$$E_{tmugAC} = \sum(CME_{mgtAC} \bullet EF_{gjt}) \bullet \lambda_{AC,g}$$

where:

$\Sigma$  means the summation across all relevant Metered Trains m (determined in accordance with paragraph 4.1.1 above) and tariff bands j, as appropriate;

$CME_{mgtAC}$  means the consumption of electricity (in kWh) from the AC System by Metered Trains m operated by or on behalf of the Train Operator, as measured by the On-Train Meters or as otherwise determined in accordance with the CVL Traction Electricity Rules, in Geographic Area g, tariff band j and in Relevant Year t;

$EF_{gjt}$  means the charge for traction current (in pence per kWh) consumed by railway vehicles operated by or on behalf of the Train Operator in Geographic Area g, in tariff band j and in Relevant Year t as provided by the CVL IM to the Train Operator pursuant to paragraph 20 of the CVL Traction Electricity Rules; and

$\lambda_{ACg}$  means the CVL Distribution System Loss Factor for the AC System in Geographic Area g.

*Metered Bimodal Electric Multiple Units and Bimodal Locomotives – deemed electrified mileage*

4.1.5

- (a) Where Metered Train m is a Bimodal Electric Multiple Unit or Bimodal Locomotive, the Train Operator shall, as a minimum, within seven days of the end of each of the third, sixth, tenth and thirteenth Periods, provide to the CVL IM the Traction Electricity Usage Occurrence Data for Metered Train m. The Traction Electricity Usage Occurrence Data provided: within seven days of the end of the third Period shall cover Periods one, two and three; within seven days of the end of the sixth Period shall cover Periods four, five and six; within seven days of the end of the tenth Period shall cover Periods seven, eight, nine and ten; and within seven days of the end of the thirteenth Period shall cover Periods eleven, twelve and thirteen.
- (b) Where, after seven days, any Traction Electricity Usage Occurrence Data is missing in respect of any such Bimodal Electric Multiple Unit or Bimodal Locomotive, all mileage, if any, of such Bimodal Electric Multiple Unit or Bimodal Locomotive operated by or on behalf of the Train Operator shall be deemed, for billing purposes, to be electrified 160 in Traction-Train Compatible.

4.2 Not Used.

5. **Not used**

6. **Not used**

7. **Not used**

8. **Electrification Asset Usage Charge**

For the purposes of paragraph 1, the term  $EAV_t$  means an amount for electrification asset usage which is derived from the following formula:

$$\text{Electrification Asset Usage Charge} = \sum EV_{tk} \bullet UV_{tk}$$

where:

$\Sigma$  means the summation across all route types;

$EV_{tk}$  means an amount in respect of the Electrification Asset Usage Charge per electrified Vehicle Mile on route type k for Relevant Year t, expressed in pence per electrified Vehicle Mile and rounded to two decimal places, which is derived from the following formula:

$$EV_{tk} = EV_{t-1k} \bullet \left( 1 + \frac{(CPI_{t-1} - CPI_{t-2})}{CPI_{t-2}} \right)$$

where:

$CPI_{t-1}$  and  $CPI_{t-2}$  each have the meanings set out in paragraph 3.1 above,

but so that in relation to the Relevant Year commencing on 1 April 2019,  $EV_{tk}$  shall have, in respect of each electrified Vehicle Mile on route type k, the value per electrified Vehicle Mile for the Electrification Asset Usage Charge set out in the Track Usage Price List, multiplied by the Initial Indexation Factor; and in relation to the next following Relevant Year  $EV_{t-1k}$  shall have the same value; and

$UV_{tk}$  means the actual number of electrified Vehicle Miles on route type k in Relevant Year t operated by or on behalf of the Train Operator. Where the Train Operator operates a Bimodal Electric Multiple Unit or Bimodal Locomotive, the actual number of electrified Vehicle Miles on route type k in Relevant Year t shall be calculated as follows:

- (i) where the Bimodal Electric Multiple Unit or Bimodal Locomotive is operating in a Traction-Train Compatible situation and is not a Metered Train m, it shall be deemed that all mileage, if any, of such train is electrified; or
- (ii) where the Bimodal Electric Multiple Unit or Bimodal Locomotive is a Metered Train m, in accordance with paragraph 4.1.5 above.

## 9. **Bilateral supplements to the Traction Electricity Modelled Consumption Rates List and 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.
- 9.2A Where the Train Operator uses a New Modelled Train on the CVL, the CVL IM shall apply the Traction Electricity Modelled Default Rate in order to calculate the Traction Electricity Charge for the purposes of paragraph 4.1.2 above, during the Traction Electricity Modelled Default Rate Period.
- 9.3 No supplement to the Traction Electricity Modelled Consumption Rates List or 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) the Traction Electricity Modelled Consumption Rates List be supplemented as necessary to include a rate in respect of a new train category; or
  - (b) the Track Usage Price List be supplemented 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. 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. 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.
- 9.7 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.
- 9.8 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.
- 9.9 Not used.
- 9.10 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.
- 9.11 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):
      - (A) 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

(B) in the case of a supplement to the Traction Electricity Modelled Consumption Rates List, this will reflect the difference between: (i) the amount paid by the Train Operator in respect of any New Modelled Train to which the Traction Electricity Modelled Default Rate has been applied during the Traction Electricity Modelled Default Rate Reconciliation Period; and (ii) the amount that it would have paid during the Traction Electricity Modelled Default Rate Reconciliation Period in respect of the Traction Electricity Charge had the supplement been in place at the start of that period;

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.

9.12 Any supplement to the Traction Electricity Modelled Consumption Rates List or 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) the Traction Electricity Charge;
- (iii) not used;
- (iv) the Electrification Asset Usage Charge;
- (v) the VUC Default Charge; and

- (vi) 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 to the invoiced amounts attributable to such Period which, acting reasonably, it considers necessary.
- (c) Any invoice issued by the CVL IM under paragraph 18.5 of the CVL Traction Electricity Rules (relating to modelled and actual rates of electricity consumption)



shall, if the aggregate amount stated on the invoice is positive, be payable by the Train Operator within 21 days of the relevant invoice date.

#### 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 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) The actual volume of usage used to calculate any supplementary amount payable under paragraph 18 of the CVL Traction Electricity Rules shall be established on the basis of the Train Consist Data and the Default Train Consist Data applied in calculating the Variable Charges for each of the Periods in Relevant Year t as adjusted in accordance with paragraph 10.3(d) on or before 90 days after the end of Relevant Year t.
- (g) 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.

**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;
- (b) the rate of Variable Usage Charge and any VUC Default Charge and the relevant number of Vehicle Miles applicable to vehicles for each service so charged;
- (c) the amount of the Traction Electricity Charge derived from the on train meters;
- (d) the amount of the Electrification Asset Usage Charge and the number of days covered by the invoice;
- (e) the amount of any sum  $S1_{tw}$  and/or  $S2_{tw}$  and/or any Charge Correction Amount payable as provided in paragraph 18 of the CVL Traction Electricity Rules; and
- (f) in respect of any other sums which have fallen due in accordance with any provisions of this contract other than Part 3A, separately the amount payable in respect of each head of charge.

## **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.

### Appendix 7A

(Not used)

### Appendix 7B

(Not used)

### Appendix 7C

#### Default Train Consist Data

<b>Train Service Code</b>	<b>Type of Train Movement</b>	<b>Default Train Consist Data</b>
25430000	Train movement(s) between Cardiff Queen Street and Cardiff Bay	Class 398
25440000	Train movement(s) between West Boundary and Radyr via City Line	Class 756
25441000	Train movement(s) between East Boundary and Aberdare	Class 398
25445000	Train movement(s) between East Boundary and Coryton	Class 756
25446000	Train movement(s) between East Boundary and Merthyr Tydfil	Class 398
25447000	Train movement(s) between East Boundary and Treherbert	Class 398
25448000	Train movement(s) East Boundary and Rhymney	Class 756
25450100	Unplanned Gemini <sup>1</sup>	Class 756
25450000	Movement(s) of empty coaching stock along any part of the Routes	Class 756

## Appendix 7D

"Metered Trains m" for the purposes of paragraph 4.1.1 of Part 2

<b>Train Type</b>	<b>Train ID</b>	<b>Traction Type</b>
Class 398 "City link"	All	AC and Battery
Class 756 "Flirt"	All	AC, Battery, and Diesel

**ANNEX 2 PARAGRAPH 21 TO BE INSERTED IN SCHEDULE 8.**

**21. Payment by the Train Operator in respect of traction supply failures where electric current for traction is procured by the Train Operator under Model A of Schedule 7**

21.1 The parties acknowledge that, under Model A of Schedule 7, the Train Operator is responsible for procuring traction current. The parties agree that, while Model A of Schedule 7 is in effect:

- (a) the Train Operator shall pay to the CVL IM an amount equal to the calculation set out in paragraph 21.1 in respect of any delays and/or other performance disruptions to Trains, where such delays and/or performance disruptions arise out of or in connection with a failure of the traction power supply; and
- (b) the CVL IM shall not be liable to the Train Operator for any breach of this contract, where such breach arises out of or in connection with a failure of the traction power supply.

21.2 For the purpose of paragraph 21.1, the amount to be paid by the Train Operator shall be the amount assessed by the CVL IM, acting reasonably, in respect of PfPi (Process for Performance Improvement) for the delays and/or other performance disruptions to Trains described in paragraph 21.1(a).

21.3 The CVL IM shall invoice the Train Operator for any payments due under paragraph 21.1(a), with such invoice including a statement of how the CVL IM calculated the payment. The Train Operator shall pay such invoices within 30 days of receipt.